

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

|                                                 |   |                           |
|-------------------------------------------------|---|---------------------------|
| In the Matter of the Application of             | ) |                           |
|                                                 | ) | <b>FILE NO. 04 116155</b> |
| <b>PORT BLAKELY TREE FARMS L.P.</b>             | ) |                           |
| (Heichel Heights)                               | ) |                           |
|                                                 | ) |                           |
| Request for an 11-lot Rural Cluster Subdivision | ) |                           |
| on 36.5 acres with boundary line adjustment     | ) |                           |

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**DECISION SUMMARY**

The application for an 11-lot subdivision and boundary line adjustment is **CONDITIONALLY APPROVED**.

**BASIC INFORMATION**

**GENERAL LOCATION:** This project is located on the west side of Sunday Lake Road, about 4/10 mile south of its intersection with SR 532, about four miles east of the City of Stanwood.

**ACREAGE:** 36.53 acres

**NUMBER OF LOTS:** 11

**AVERAGE LOT SIZE:** 46,888 square feet

**MINIMUM LOT SIZE:** 43,918 square feet

**DENSITY:** .30 du/ac (gross)  
.31 du/ac (net)

**ZONING:** Rural-5 (R-5)

**COMPREHENSIVE PLAN DESIGNATION:**

|                                  |                         |
|----------------------------------|-------------------------|
| General Policy Plan Designation: | Rural Residential-5     |
| Subarea Plan:                    | Northwest County        |
| Subarea Plan Designation:        | Rural (1 du/2.3 – 5 ac) |

UTILITIES:

Water: Individual wells  
Sewer: Individual on-site sewage 3 disposal systems

SCHOOL DISTRICT: Stanwood No. 401

FIRE DISTRICT: No. 14

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions  
Public Works (DPW): Approval subject to conditions

### **INTRODUCTION**

The applicant filed the Master Application on July 21, 2004. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 24, 25 and 26)

A SEPA determination was made on June 8, 2005. (Exhibit 22) No appeal was filed.

The Examiner held an open record hearing on August 11, 2005, the 315<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

### **PUBLIC HEARING**

The public hearing commenced on August 11, 2005 at 1:04 p.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Port Blakely Tree Farms, was represented by Ry McDuffy, Land Resolutions. Snohomish County was represented by Bob Pemberton of the Department of Planning and Development Services and no staff was present from the Department of Public Works. No member of the public testified in support or in opposition. Documents raising concern are in the record from Laura Boro, Mark Boursaw, Earl and Evelyn Engel, Steve Epperson and Nancy and Merton Gribble. Their primary concerns are vehicular impacts and related safety and impacts on their potable water. (Exs. 29-33)
3. At the hearing, the applicant submitted into the record and Certification of Lot Status (Ex. 48) which satisfies a previously recommended precondition that a parcel proposed for a boundary line adjustment be established as a separate legal lot.

The hearing concluded at 1:27 p.m.

**NOTE:** The above information summarizes the information submitted to the Examiner at the hearing. However, for a full and complete record, electronic recordings of the hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file as if set forth in full herein.
2. Unless specifically noted otherwise herein, the PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for an 11-lot subdivision of 36.5 acres utilizing the rural cluster subdivision provisions of SCC 30.41C. This will result in lots with an average size of 46,888 square feet with 22 acres of open space. Access to the lots will be by a new internal private road connecting to East Sunday Lake Road.
4. The 11 single family dwellings proposed will produce 105 daily trips, of which ten will be A.M. peak-hour trips and 11 will be P.M. peak-hour trips (Ex. 11). Those trips will approximately double when the tract which abuts on the north is developed. That tract's vehicular access will be through the subject plat. That trip contribution to SR-532's current traffic volume is minor. However, this applicant's testimony is that his firm now has 12 plats contemplated in the vicinity. The applicant also points out that, in his opinion, this plat will actually increase visibility and road conditions on the abutting stretch of Sunday Lake Road by adding improvements along its 700-800 feet of frontage and by adding a sight distance triangle 26 feet deep to improve driver's sight at the curve.
5. The concerned citizens mentioned above herein plead for immediate improvements at Sunday Lake Road's two intersections with SR-532. They refer to fatalities at those intersections, most recently at Christmas 2004. The traffic study performed for this application (Ex. 11) notes that the section of SR-532 from milepost 8 to 9.49 is deemed a High Accident Corridor on the 2004 High Accident Corridor List. Mark Boursaw, whose family has lived on Sunday Lake for about 70 years, urges installation of traffic lights with turn lanes at both intersections and widening of the entire Sunday Lake Road loop on both sides and with six-foot walkways on both sides. All parties agree that improvements are needed quickly. State Senator Haugan, who resides on Camano Island, has pressed for safety improvements to SR-532 from I-5 to Stanwood.
6. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,056.00 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

9. A small Category 3 wetland is located in the northwest corner of the subject site with a Type 5 stream flowing easterly out of the wetland. Neither the wetland nor the stream will be disturbed and both will be protected by a minimum 50-foot-wide Native Growth Protection Area buffer in accordance with Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations.
10. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
12. The subject property is designated Rural Residential -5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
13. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
14. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.
15. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
16. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.

3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.
4. The request should be approved subject to compliance by the applicant with the following conditions:

**CONDITIONS:**

- A. The preliminary plat received by the Department of Planning and Development Services on June 8, 2005 (Exhibit 23) shall be the approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. Indicate on the face of the plat the 250-ft centerline distance between the Tract 996 and Sunday Lake Road and Sunday Lake Road and 12<sup>th</sup> Avenue NW intersections.
  - ii. Modify plat to include a minimum forty (40) foot radius turnaround easement located outside of the private road tract on Lot 7 and Lot 8 for the temporary turnaround radius.
  - iii. The turnaround easement on Lot 7 and Lot 8 shall be extinguished when the access road is extended northward into the abutting property.
  - iv. “The lots within this subdivision will be subject to school impact mitigation fees for the Stanwood School District No. 401 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit.”
  - v. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
  
\$2,143.68 per lot for mitigation of impacts on county roads paid to the County,  
\$209.68 per lot for mitigation of impacts on the City of Arlington streets paid to the City.  
\$138.59 per lot for mitigation of impacts to state highways paid to the County.

Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- vii. Lots within a rural cluster subdivision and adjacent to or within 1,300 feet of agricultural or forestry uses located in a designated open space tract may be subject to inconvenience or discomforts arising from agricultural or forestry activities, including but not limited to noise, odors, fumes, dust, smoke, the operation of machinery of any kind, timber harvest, brush control, the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural or forestry activities.

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$1,056.00 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- ii. Rural standard frontage improvements are required along Sunday Lake Road, according to EDDS Standard Plan 3-010 and 3-030A/B.
- iii. Construct an adequate pedestrian refuge area at the intersection of Sunday Lake Road and proposed development access road.
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

E. In conformity with applicable standards and timing requirements:

The preliminary landscape plan (Exhibit 4) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

5. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

## **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for an 11-lot rural cluster subdivision and boundary line adjustment on 36.5 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 26<sup>th</sup> day of August, 2005.

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Ed Good, Deputy Hearing Examiner

## **EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 6, 2005**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 9, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:



- (a) The decision exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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Staff Distribution:

Department of Planning and Development Services: Bob Pemberton  
Department of Public Works:

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.” A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.