



200501110090

Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SPECIAL USE MODIFICATION SU 04 0167

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: PORT GARDNER TIMBER CO.

ASSESSOR PARCEL NO: P48691, P48701

LEGAL DESCRIPTION: The proposed project is located at 16812 Colony Road; within the west 1/2 of the northeast 1/4 of the northeast 1/4 of Section 35, Township 36 North, Range 3 east, WM; Skagit County, Washington.

**BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY**

Applicant: Port Gardner Timber Co.
17400 Cook Road
Burlington Washington 98233

File No. PL 04-0167

Request: Special Use Permit Modification

Location: 16812 Colony Road

Within a portion of the West ½ of the Northeast ¼ of the
Northeast ¼ of Section 35, Township 36, North Range 2
East, W.M., Skagit County, Washington.

**Skagit County Assessor's
Account Nos.:** 360335-1-003-0108, 360335-1-012-0008

**Skagit County Assessor's
Parcel Nos.:** 48691 & 48701

Land Use Designation: Rural Reserve (RRv) Summary of Proposal:

Request to modify SPU 92-006 for extension of mill
operating hours from 4:30 p.m. to 6:30 p.m., Monday
through Friday. Extension of hours to be used for repairs,
routine maintenance and mill cleaning

Public Hearing: After reviewing the report of the Planning & Permit
Center, the Hearing Examiner, *pro tem*, conducted a
public hearing on November 17, 2004.



Witnesses:

Brent Morrow, Planning & Permit Center
Bill Vaux, Port Gardner Timber
Ron Palmer, Skagit County Health Department
Pam Kutscher, Listen Audiology
Judy Clifford
Clare Wixom
Jan Gordon
John Everett
Ann Brooking
Mr. Dixon
Eric Stark
Tim Lewis
Howard Dorsey, Sr.
Don Wick
Thelma Dodge
Corwin Fergus

Exhibits:

1. Planning & Permit Center Staff Report
2. Application packet 7/9/03
3. Environmental Checklist 7/9/04
4. Aerial Site Photograph
5. County Map of property
6. Permits Plus database pages
7. Notice of Violation CE 03 0091, March 12, 2004
8. Notice of Development October 14, 2004
9. SEPA Addendum 10/7/04 – extending operating hours
10. DNS Addendum 10/28/02 – rebuild mill after fire
11. Staff report SPU 92 0061, 5/12/93
12. Hearing Examiner decision SPU 92 0061, 5/17/93
13. Letter 7/9/04 applicant to County – maint & repair
14. Letter 9/15/04 applicant to County – noise mitigation
15. Comment letters:
 - 15-1. Leighton Riber
 - 15-2. Eric Stark
 - 15-3. Corwin Fergus
 - 15-4. Cynthia Novotny
 - 15-5. Ann Brooking
 - 15-6. Jan Gordon
 - 15-7. Liz Ziebold
 - 15-8. Ryan Ziebold
 - 15-9. Clifford Bucknell
 - 15-10. R. Clare Wixom



- 15-11. John/Glenda Everett
- 15-12. Jesse/Eva Zenonian
16. Aerial photograph
17. Photographs 1-17
18. Noise Survey Addendum 11/4-7/2004
19. Sound Exposure Profiling Results
20. WAC 17.60.040
21. Assessor Section Map w/annotations
22. Letters
- 22-1. Arlyn Livingston
- 22-2. Jim James
- 22-3. Benedict Giltner
- 22-4. Gerald/Peggy VanAllen
- 22-5. Virgil/Thelma Dodge
- 22-6. Chuck/Bonny Storrs
- 22-7. Tom Pasma
- 22-8. Gene Secor
- 22-9. L. Crisman
23. Letter Carolyn & Michelle Mamchur
24. Statement of Jan Gordon
25. DVD of site prepared by Eric Stark

Decision:

Application is approved, subject to conditions.

FINDINGS OF FACT

1. The subject property is designated as Rural Reserve (RRv) as indicated within the Comprehensive Plan and associated maps as adopted July 24, 2000, and as thereafter amended.

2. Per Section 14.06.100 of the Skagit County Code, the application was determined to be complete on October 7, 2004. A Notice of Development Application was posted on the subject property, mailed to the adjacent property owners within 300 feet of the subject property, and published in a newspaper of general circulation on October 14, 2004, as required by Section 14.06.150 of the Skagit County Code.

3. The application has been reviewed in accordance with the State Environmental Policy Act (SEPA) guidelines (WAC 197-11 and RCW 43.21C). A Determination of Nonsignificance (DNS) was issued on March 5, 1993 for the original Special Use Permit that approved the mill operation. A SEPA Addendum (Exhibit 10) was issued October 28, 2002 for the purpose of reconstruction and configuration of the existing Bow Hill Mill operation that was destroyed by fire on June 8, 2002. A SEPA Addendum was issued on October 7, 2004 describing the request for the change in operating hours (allow additional operating hours from 4:30 pm to 6:30 pm) of the mill for the purpose of maintenance and repair.

C:\ds Documents\BowHillMill010405.doc - 3



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2 4. The subject property is not located in a flood hazard zone.

3 5. The original mill operation proposal is described in detail in a staff report SPU-
4 92-006 (Exhibit 11). The Hearing Examiner approved this proposal in a decision (Exhibit 12)
5 dated May 17, 1993. The decision was not appealed. The mill operation was modified after
6 being destroyed by a fire on June 8, 2002. After the fire the owner obtained a building permit
7 (BP02-1084) to reconstruct and configure the mill operation.

8 6. The zoning of the mill site at the time of original permit approval was zoned
9 Rural. The use at that time was permitted by the approved special use permit. The property is
10 now zoned Rural Reserve and the use is not permitted outright or by way of a special use
11 permit. The mill continues to operate today as an existing nonconforming use. The request to
12 extend operating hours with the special use permit modification for maintenance and repair
13 purposes is not an expansion of the nonconforming use.

14 7. The majority of the surrounding area is currently rural and residential in
15 character.

16 8. The applicant is requesting a special use permit application modification to extend
17 mill operating hours from 4:30 pm to 6:30 pm Monday through Friday. The applicant is
18 requesting a special use permit application modification (#PL04-0167) to a previously approved
19 special use permit (SPU92-006). The additional hours will be used to make repairs, do routine
20 maintenance, and clean up the mill. These activities are described in a letter from the applicant
21 (Exhibit 13) dated July 9, 2004.

22 9. The application was routed to the Fire Marshall and no comments were received.

23 10. The application was routed to the Skagit County Public Works Department for
24 review and no comments were received.

25 11. The application was routed to critical areas staff for review and no comments
were received.

12. The application was routed to the Health Department for review. The Health
Department had the following comments:

Operation, including after hour clean up if authorized, must comply with
Chapter 173-60 WAC "Maximum Environmental Noise Levels" and
Skagit County Code (SCC) 14.16.840 "Performance Standards." The
maximum allowable noise level during day time (sic) hours (between the
hours of 7:00 am and 10:00 pm) is 60 decibels. Noise surveys to date
conducted by this department have not yielded noise in excess of this



threshold when taken on the properties of complaints, using survey methodologies prescribed by Chapter 173-58 WAC.

13. Section 14.16.900 Special Uses of the Skagit County Code indicates that certain items will be reviewed when approving or denying Special Use permits. Those items are as follows:

A. The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.

The parcel is designated as Rural Reserve (RRv). The mill is a pre-existing nonconforming use that was approved with the original special use permit. The requested modification to extend operating hours does not intensify the use, as the additional requested operating hours are to be utilized solely for maintenance, repair, and clean up of the mill, and not to expand the use.

B. The proposed use complies with Skagit County Code.

As stated above, the use of the site as a mill is permitted as a pre-existing nonconforming use, and an extension of operating hours for the purposes of maintenance and repair is not considered to be an increase in the nonconformity.

C. The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.

There have been ongoing noise issues associated with the mill operation. The applicant has submitted a noise mitigation plan (Exhibit 14) that outlines measures that have been taken in the past, are currently taking place, and will take place in the future to improve noise abatement during approved and proposed operating hours. Noise readings have been taken by Pamela Kutscher and were submitted. It appeared that no noise readings at a residence were in excess of those allowed under WAC 173-60. It would appear that the performance standards requirements of SCC 14.16.840 are met. It is undeniable that the noise from the mill does and will create impacts on surrounding and existing dwelling units. However, the noise is in compliance with SCC 14.16.840 and therefore "not undue."



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2 D. The proposed use will not generate intrusions on privacy of surrounding
3 uses.

4 The proposed expansion of operating hours may generate noise that will
5 intrude on the surrounding uses which are rural residential home sites.
6 However, the current and proposed extension of operation hours for
7 maintenance and repair will not be permitted to violate the performance
8 standards for noise as outlined by SCC 14.16.840.

9 E. Potential effects regarding the general public health, safety, and
10 general welfare.

11 Counterbalancing the impacts of noise on the surrounding area is the fact
12 that the mill operation provides living wage jobs which could be
13 jeopardized if the operation is required to cut back the time of production
14 to fit its required plant cleanup efforts into the current allowed schedule.
15 The potential loss of jobs would be a negative effect on the general
16 public welfare.

17 F. For special uses in Industrial Forest-Natural Resource Lands,
18 Secondary Forest-Natural Resource Lands, and Rural Resource-Natural
19 Resource Lands, the impacts on long-term natural resource management
20 and production will be minimized.

21 The mill operation is not located in a natural resource land zone.

22 G. The proposed use is not in conflict with the health and safety of
23 the community.

24 The proposed extension of operating hours for maintenance and repairs
25 does not appear to be in conflict with the health and safety of the
community. This is especially true given the fact that the plant owner
has recently installed noise mitigation measures related to those activities
that occur during maintenance and repair times. Given that the
thresholds described by SCC 14.16.840 are met, it appears that the
proposal does not conflict with the health and safety of the community.

H. The proposed use will be supported by adequate public facilities or services
and will not adversely affect public services to the surrounding areas, or
conditions can be established to mitigate adverse impacts on such facilities.

The use is supported by adequate public facilities and services and no adverse
effect on public services to the surrounding areas will occur.



CONCLUSIONS OF LAW

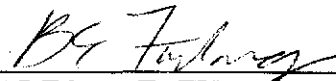
1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.
2. The requirements of SEPA have been met.
3. The Findings of Fact support the conclusion that the proposal, as conditioned, will be consistent with the approval criteria for a special use permit set forth in SCC 14.16.900(2)(b)(v).
4. Any Finding of Fact herein which may be deemed a Conclusion is hereby adopted as such. Any Conclusion that may be deemed a finding of Fact is adopted as such.

CONDITIONS

1. The applicant shall comply with the conditions contained in the Hearing Examiner's decision of May 17, 1993 for the original special use permit (SPU 92-006), with the exception that the hours permitted for maintenance and repair of the mill will be extended from 4:30 p.m. to 6:30 p.m. Monday through Friday. No production work shall occur during the hours from 4:30 p.m., to 6:30 p.m.
2. The mill operation, including maintenance and repair activities must comply with Chapter 173-60 WAC, "Maximum Environmental Noise Levels" and SCC 14.16.840, "Performance Standards". The maximum allowable noise levels during the daytime hours between the hours of 7:00 a.m. and 10:00 p.m. must not exceed 60 decibels at adjacent properties.
3. The applicant shall continue to investigate and implement reasonable noise mitigation measures to lessen noise impacts on surrounding properties.
4. The applicant shall comply with all applicable provisions of the Skagit County Code.
5. Failure to comply with any condition of approval may result in permit revocation.

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2 **DECISION**

3 The requested Special Use Permit is approved subject to the conditions set forth above.
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7 **BRADFORD E. FURLONG**
Hearing Examiner Pro Tem

8 Date of Action: 1/5/05
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10 Date Transmitted to Applicant: 1/5/05

11 As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning
12 and Permit Center within 10 days after the date of this decision. As provided in SCC
13 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a
14 written Notice of Appeal with the Planning and Permit Center within 14 days after the date of
15 the decision, or decision on reconsideration, if applicable.
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