

# **REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

DATE OF DECISION: August 18, 2005

PLAT/PROJECT NAME: Sun Peak Estates

APPLICANT/  
LANDOWNER: Kevin Sundberg

FILE NO.: 04 110228

TYPE OF REQUEST: 12-lot Rural Cluster Subdivision (RCS) on a 41 acre site within a Rural-5 (R-5) zone. Lot sizes vary from 1 acre to 1.23 acres.

DECISION (SUMMARY): Approval subject to Preconditions and Conditions

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located on the north side of 316<sup>th</sup> Street NW, approximately 2,000 feet east of the intersection with English Grade Road.

ACREAGE: 40.73 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 46,491 square feet

MINIMUM LOT SIZE: 43,639 square feet

DENSITY: .29 du/ac (gross)  
.41 du/ac (net)

OPEN SPACE: 1,142,644 square feet or 63.94 percent of the area.

ZONING: R-5

### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Rural Resource-10 Resource Transition (1 du/10 acres)  
Subarea Plan: Arlington  
Subarea Plan Designation: Rural (.2 - .4 du/ac)

UTILITIES:

Water: Individual well  
Sewage: Individual wastewater septic

SCHOOL DISTRICT: Stanwood No. 401

FIRE DISTRICT: 14

SELECTED AGENCY RECOMMENDATIONS:

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

**INTRODUCTION**

The applicant filed the Master Application on December 9, 2004. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on July 21, 2005 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19, 20 and 21)

A SEPA determination was made on June 3, 2005. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on August 3, 2005, the 124<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 3, 2005 at 2:05 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Kelley Wrigg, representing the applicant, appeared and stated that they support the PDS staff recommendations, however, he spoke to some of the conditions with which he had concerns and stated that he has no objections to the other conditions.
3. Mr. David Radabaugh of PDS appeared and stated that Precondition B is no longer necessary and he had changes to other conditions as a result of discussions with Mr. Wrigg, and those changes are set forth in Exhibit 38.
4. No one appeared in opposition to the request.

The hearing concluded at 2:46 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

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. 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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a 12-lot RCS on a 41 acre site within an R-5 zone. The lots will vary in size from 1 acre to 1.23 acres. Open space tracts will consist of 21.6 acres.

There will be a new private road that will connect to 316<sup>th</sup> Street NW. Water supply is to be provided by private wells and individual wastewater septic systems are proposed.

4. The property is designated Rural Resource-10 Resource Transition and is zoned R-5. Land to the west and south is also designated the same while land to the north and east is designated commercial forest and zoned Forestry.
5. Three letters were received regarding the project raising various concerns. PDS has indicated that the project, however, is consistent with the County Code.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,077.00 for each new single-family home.
7. 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. (See Pages 3-5, Exhibit 37)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. The subject property is bisected by a Type 4 stream and a Category 3 wetland is associated with the stream. There is a Category 3 wetland located in the southeast corner of the site. PDS has reviewed the Critical Areas Study and determined that the project complies with the Critical Areas Regulations under Chapter 30.62 SCC.

10. Stormwater from roads in the plat will be directed to a stormwater detention pond in Tract 993. 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. Private water and local septic systems will be part of this project and electrical power is available.
12. The Snohomish Health District recommends approval subject to certain conditions.
13. The subject property is designated Rural Residential-10 (Resource Transition) (RR-10-RT: 1 dwelling unit per 10 or more acres). This designation includes lands which have been included in Forestry designations on existing subarea plans but not zoned Forestry and includes lands on the Tulalip Reservation adjacent to or in close proximity to lands designated for forestry or agriculture use by the GPP and the Tulalip Tribes' Comprehensive Plan and lands adjacent to the estuary of Quilceda Creek. The implementing zone is the RRT-10 zone. Until completion of the Rural/Resource Plan, existing zones within this designation, except where located on the Tulalip Reservation, may remain, but zoning regulations shall limit the minimum lot size in new subdivisions within this designation to 10 acres with an option for using the rural cluster subdivision technique with a lot yield that is determined by utilizing a minimum lot area of 200,000 square feet. On the Tulalip Reservation only, lands designated RR-10-RT were zoned RRT-10 by an areawide rezone which became effective on August 1, 1999. The RRT-10 zone requires a minimum lot size of 10 acres for each house in a new subdivision. The rural cluster subdivision technique maybe used in the RRT-10 zone with a basic lot yield calculated by utilizing a minimum lot size of 10 acres.
14. The request meets the RCS standards found under Chapter 30.41C SCC.
15. The proposal complies with the provisions of Section 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 64% (40.73 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage-related problems; the project complies with Snohomish County's Critical Areas Regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

In this regard, the staff has correctly analyzed the effect of the Rural Cluster Subdivision on Page 8 of the PDS staff report. (Exhibit 37)

16. 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.
17. 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.

18. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

**CONCLUSIONS:**

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. There are changes to the recommendations of the staff report, resulting in agreed upon conditions.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request would allow for the development of lots on large pieces of land, while at the same time preserving the rural character of the area, thereby providing for rural type homes in this attractive area of Snohomish County.
5. The request should be approved subject to compliance by the applicant with the following Conditions:

**PRECONDITIONS:**

- A. A revised plat map shall be provided for review and approval by the Department of Planning and Development Services that:
  - i. Delineates the site obscuring buffer around the entire site.
  - ii. Delineates the 100 foot forest lands setback on the north 100 feet of the subject property.
  - iii. Delineates the panhandle for Lot 5 to be within and part of Lot 5.
  - iv. A separate tract be shown for the upper pond improvements currently located within Tract 999.
- B. Revise plat map in a manner acceptable to the Department of Planning and Development Services to identify the area of the soil stockpile in Tract 999. No stockpiling shall occur in the required site obscuring buffer.

**CONDITIONS:**

- A. The preliminary plat, as revised by the preconditions above, shall be the approved plat configuration. 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 platlor 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.
  - iii. A revised detention plan landscape plan shall be provided for the Department of Planning and Development Services review and approval that provides Type A landscaping or a living fence around the entire perimeter of the detention pond exclusive of the maintenance access.
  - iv. A landscape plan shall be provided for the proposed supplemental plantings in Tracts 999 in the vicinity of Lots 11 and 12.
  - v. There shall be no soil stockpiles placed in the restricted open space tracts shown on the approved preliminary plat map.
  - vi. The applicant staff shall verify in a manner acceptable to the Department of Planning and Development Services staff that the existing road within Tract 991 is a minimum of 16 feet in width adjacent to Tracts 997 and 998. The requirement that this road have an existing minimum width of 16 feet is a condition of this preliminary approval. The road within Tract 991 may not be widened from its existing condition adjacent to Tracts 997 and 998.
  - vii. Applicant shall provide a landscape plan to revegetate to soil stockpile area in Tract 999 acceptable to the Department of Planning and Development Services.
  
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. “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.”
  - ii. 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. Proof of payment shall be provided.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lot(s) therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iii. 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."

- iv. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- v. The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.
- vi. Well protection zones are shown in the Snohomish health District records for Lots 1 through 12 of this plat. The well protection zones are not based on actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.
- vii. The forest management disclosure text in SCC 30.32A.220 shall be included of the face of the final plat.

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$1,077.00 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 frontage improvements shall be constructed along the parcel's frontage on 316<sup>th</sup> Street NW to the specifications of the Department of Public Works.

- iii. 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.

- iv. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
  - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
  - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan, Exhibit 9.
- v. The Department of Planning and Development Services staff shall confirm that the sight obscuring buffer continues to perform its sight obscuring function.

E. In conformity with applicable standards and timing requirements:

- i. The approved landscape plan 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.

- 7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.



**DECISION:**

The request for a 12-lot Rural Cluster Subdivision on 40.73 acres is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the PRECONDITIONS and CONDITIONS set forth in Conclusion 5, above.

Decision issued this 18<sup>th</sup> day of August, 2005.

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Robert J. Backstein, Hearing Examiner

**EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **AUGUST 29, 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;

- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 1, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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 this case.

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### Staff Distribution:

Department of Planning and Development Services: David Radabaugh  
Department of Public Works: Mark Brown

<p>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.</p>
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**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than AUGUST 18, 2006.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of

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Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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