

October 4, 2012

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse, Room 1200

516 3rd Avenue

Seattle, Washington 98104

Telephone (206) 296-4660

Facsimile (206) 296-0198

Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L12P0002**
Proposed Ordinance No. **2012-0323**

SUGARLOAF MOUNTAIN EAST

Preliminary Plat Application

Location: South side of SE Kent-Kangley Road between
309th Avenue SE and 320th Avenue SE

Applicant: 9700 Partners LLC
represented by **Thomas Barghausen**
18215 72nd Avenue S
Kent, WA 98032
Telephone: (425) 251-6222
Email: tbarghausen@barghausen.com

King County: Department of Development and Environmental Services
represented by **Kimberly Claussen**
900 Oakesdale Avenue SW
Renton, WA 98057
Telephone: (206) 296-7167
Email: kimberly.claussen@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	Approve, subject to conditions

EXAMINER PROCEEDINGS:

Hearing Opened: September 27, 2012
Hearing Continued: September 27, 2012

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**1. General Information:**

Owner/Developer: 9700 Partners LLC
18215 72nd Avenue South
Kent, WA 98032
(425) 251-6222

Engineer: Barghausen Consulting Engineers
18215 72nd Avenue South
Kent WA 98032
(425) 251-6222

STR: 33-22-07

Location: The site is located on the south side of SE Kent-Kangley Road between 309th Ave SE and 320th Avenue SE (approximately) postal City Ravensdale

Zoning: RA-5
Acreage: 152 acres
Number of Lots: 25 lots
Density: One dwelling unit per five acres
Lot Size: Approximately 3-5.5 acres
Proposed Use: Single Family Detached Dwellings
Sewage Disposal: On-site septic systems
Water Supply: Covington Water District
Fire District: King County Fire District
School District: Tahoma
Complete Application Date: May 10, 2012
Date Determined Complete: June 7, 2012

Other Associated Permits: Surface Water Design Manual Adjustment L11V0004
2007 KCRDCS variance (roads) L08V0018
Boundary Line Adjustment L10L0054
Grading Permit L11CG030
Preliminary Plats L08P0001, L11P0002

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's (LUSD) preliminary report to the King County Hearing Examiner for the September 27, 2012, public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. As the DDES staff report notes, the current application encompasses part of a property that has been undergoing various forms of permitting review since 2008. At that time, an approximately 630-acre section of tree farm traversed by a 565-foot wide BPA power line transmission easement was purchased by the Applicant, 9700 Partners, LLC, for plat development. The initial 2008 preliminary plat application (file no. L08P0001) proposed a 126-lot cluster subdivision for the entire 630 acres, with both the BPA easement and slightly more than 150 acres along the western slope of Sugarloaf Mountain designated as open space tracts. This application received preliminary approval from King County on August 20, 2008, and was thereafter slightly revised under file no. L09RE023. This plat application established the basic road design for the 630-acre parcel but has never received final approval. A road variance decision issued in 2011 discussed this application under the assumption that it had been withdrawn, but at the September 27, 2012, public hearing Tom Barghausen, the Applicant's managing partner and chief engineer, said that such was not in fact the case.
4. For our purposes file no. L08P0001 is important in two major respects. First, it is the only plat application that encompasses the entire 630-acre site. Second, it received a mitigated determination of non-significance (MDNS) under SEPA authority. The MDNS imposed a rather elaborate procedure to be followed if archaeological remains were uncovered by plat ground disturbance activities and required the plat to contribute to the correction of level of service and traffic safety issues at the Landsburg Road SE/Kent-Kangley Road intersection west of the site.
5. In 2010, a boundary line adjustment (file no. L10L0054) was approved for the 630-acre site based on reconfiguring the 32 underlying parcels. The BLA incorporated the 2008 plat's loop road system and created 27 building lots plus associated tracts. The adjusted lot lines created 13 smaller acreage parcels along the northern boundary of the property adjacent to Kent-Kangley Road, generally ranging in size between 5 and 10 acres, with the remaining parcels left in larger acreages. The Applicant then filed a grading permit application (file no. L11CG030) for construction of the road tracts in a manner generally consistent with the BLA and the 2008 plat application.
6. In 2011 the Applicant began processing the 630-acre original site in separate smaller applications. A 52-lot, non-cluster preliminary plat application was submitted under file

- no. L11P0002 on approximately 290 acres of the original 630-acre site. Excluded from this plat application were the large critical areas tracts along the western slope of Sugarloaf Mountain, the BPA easement, the access and utility tracts, and the 13 smaller BLA tracts located along Kent-Kangley Road. This application was granted preliminary approval by King County on March 7, 2012 and remains active although it too has not been constructed.
7. The current 25-lot application on 152 acres proposes an alternative layout for lots 36 through 52 within file no. L11P0002 located east of the BPA easement. But now instead of 17 lots in this location there would be 25. This is to be accomplished by including in the current application a sufficient quantity of the BPA easement to meet base density requirements, with the new lots themselves being clustered outside the BPA easement. The open space, access and utility tracts remain outside the plat boundaries under regulatory authority of the approved boundary line adjustment and its associated grading permit.
 8. Looking at the entire 630-acre site what we see now is a likely possibility for the creation overall of 73 lots. The northernmost 13 lots remain unchanged from their configuration under the BLA, 35 lots correspond to lots 1 through 35 as depicted on the western half of preliminary plat L11P0002, and the eastern 25 lots will be created by the instant plat application. All the open space, access and utility tracts remain outside of the boundaries of the current plat application, and their development will be governed by the grading permit issued for the roads, except that now a portion of the BPA tract has been appended to this application in order to meet clustering standards.
 9. Two things seem to be driving most of this curious maneuvering. First, the hot real estate market that existed when the 630 acres were first purchased and the initial plat application was filed fell precipitously into a recessionary slump; thus the financial assumptions underlying the development have changed. Second, the number of lots that the Covington Water District is committed to serve has fluctuated. The current total is now 73, with the instant application designed to take full advantage of that level of water service allocation.
 10. But this kind of regulatory fragmentation also creates problems. First, the section of BPA easement that is now supporting clustering for the current application was previously marshaled as part of the clustering acreage for the original 2008 application. Thus the 2008 application needs to be unequivocally withdrawn at some point prior to final plat approval for this 25 lot iteration. The Applicant has agreed to do this.
 11. Second, the loop road for the entire 630 acres needs to be completed in an orderly fashion so that appropriate access for this plat is provided. The loop road in its entirety runs some 14,000 linear feet. It will access Kent-Kangley Road on the north and will be stubbed to the south to provide for the possibility of a future linkage offsite in that direction. The Applicant's current development plan appears to be to construct the western tier of lots within file no. L11P0002 first, which would create at least the theoretical possibility of continuing the loop road counter-clockwise up into the instant plat. If this occurred, the

result would be an unacceptably long cul-de-sac. The full loop back to Kent-Kangley Road through the current plat needs to be completed before final plat approval. A condition to such effect will be added to the current decision.

12. Finally the most problematic aspect of the overall 630-acre site arises out of the fugitive all-terrain vehicle playground that currently exists within the wetland and streambed lying at the toe of Sugarloaf Mountain and extending into the gap between proposed lots 4 and 5. Exhibit no. 13, the 2007 wetland report done by Chad Armour for the original site, contains the following descriptions:

Most of the site is accessible by a network of gravel and dirt roads. The gravel roads are blocked by berms and tank traps or steel gates where they connect to the Kent-Kangley Road. Several dirt roads allow access to most of the remainder of the site. Some of these dirt roads are deeply rutted by ATVs. Standing water from one onsite seasonal stream accumulates in these ruts. An informal camp is located adjacent to this stream. The camp and associated ATV rails have modified the stream course.

The stream coming off the western slope of Sugarloaf Mountain empties to Wetland C as described within the Exhibit no. 13 report, which supplies the following additional description:

Wetland C, which covered 135,773 sf, is located at the base of Sugarloaf Mountain on its southwest flank. . . It is associated with what appears to be a perennial stream whose flow disappears into the ground. This wetland has been very disturbed by human activity. What appears to be a camp for ATV enthusiasts is located in and adjacent to this wetland. Most of the understory vegetation has been removed and the wetland has numerous deep ruts caused by ATVs and presumably pick-up trucks with oversized tires. Because we could not easily identify what was once the wetland edge, we included all wet areas within the wetland boundary, including parts of two dirt roads.

Mr. Armour's descriptions are accurate as far as they go but fail to capture the unique ambience of the site. This ongoing critical areas desecration can surely lay claim to be one of the ugliest in all of King County.

CONCLUSIONS:

1. Although the original 630-acre site that was the subject of the original 2008 plat application has since been sliced and diced by a variety of permitting strategies, it is clear that the development of the site as a whole constitutes a single development proposal in all meaningful respects. Thus the fact that the severely damaged stream and wetland complex lying at the toe of Sugarloaf Mountain and neatly wedged between plat lots 4 and 5 is technically offsite from the current proposal does not truly provide a satisfactory

- pretext for failing to deal with this egregious critical areas issue. KCC 20.24.250 provides the Hearing Examiner with ample authority to reconsider prior final actions if such actions were based in whole or in part on erroneous facts or information, the action failed to comply with existing laws or regulations applicable to the project, or an error of procedure occurred adversely affecting the interests of persons directly affected by the action. Plat file nos. L08P0001 and L11P0002 are still active applications; if necessary they could be reopened for reconsideration along with the instant plat in attempting to fashion a satisfactory solution to the critical areas problem. With regard to SEPA review, WAC 197-11-060(3)(b) requires that “proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document.” WAC 197-11-340(3) requires, *inter alia*, the lead agency to withdraw a DNS for substantial and impact-generating changes to the proposal or significant new information as to the proposal’s impacts.
2. This decision proposes a simpler and more direct solution to the problem. A multi-part condition has been added to the end of the plat decision that undertakes to provide some basic coordination between the current 152-acre proposal and the overall 630-acre project. This condition requires actions beyond the boundaries of the immediate plat but within the overall framework of the 630-acre project; it represents an attempt to provide the coordination that the current application lacks. The Applicant may choose to accept these conditions on the basis that they correct obvious problems with respect to implementing the project as a whole, or he may ask that the conditions be modified on reconsideration in the context that other regulatory requirements not disclosed by the record adequately deal with the problems identified in this report. Alternatively, he may challenge the Examiner’s authority to impose conditions beyond the boundaries of the immediate application, in which case the likely response will be Examiner reconsideration of earlier final actions on the entire site pursuant to KCC 20.24.250.
 3. If approved, subject to the conditions imposed below, the proposed subdivision will make appropriate provision for the public health, safety and welfare; serves the public use and interest; and will meet the requirements of RCW 58.17.110.
 4. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes; are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The preliminary plat application for Sugarloaf Mountain East as received May 10, 2012, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.

2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the RA-5 zone classification. All lots shall meet the minimum dimensional requirements of the RA-5 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of DDES. Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession, or a conflict of title. The applicant shall comply with the clustering requirements of KCC 21A.14.040. Open space tracts created by the clustering shall be designated as permanent open space.
4. The Applicant must obtain final approval from the King County Health Department, prior to recording.
5. All construction and upgrading of public and private roads shall be done in accordance with the 2007 King County Road Design and Construction Standards established and adopted by Ordinance 15753.
6. The Applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.

If all lots are 35,000 square feet in size or more, or if the subdivision is outside an Urban Growth Area and is developed at a density no greater than one residential building lot per five acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five acres, the subdivision is exempt per K.C.C. 17.08.030. However, if fire hydrants are provided the installation of hydrants and water mains must be under permit from King County Fire Engineering.

7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (KCSWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 2009 KCSWDM and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.

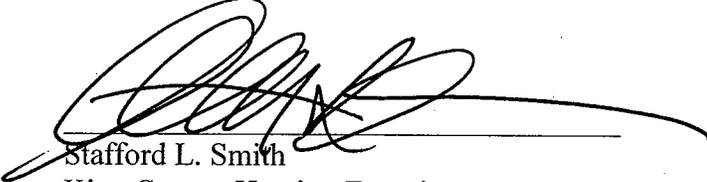
- b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
- c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
8. The drainage facilities shall meet the requirements of the 2009 KCSWDM. Note that stormwater infiltration facilities are proposed for this site.
9. Individual lot infiltration drainage facilities are proposed for the lots in this project. The construction and permitting of the individual lot facilities shall be accomplished with the building permits; unless otherwise approved by DDES. Notes to this effect shall be provided on the final recorded plat and the engineering plans.
10. To implement the required Best Management Practices (BMPs) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2009 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
11. The following road improvements are required to be constructed according to the 2007 King County Road Design and Construction Standards (KCRDCS):
 - a. The internal roads providing access to this subdivision shall be constructed according to previously approved Grading Permit L11CG030 or subsequent grading permits and the 2007 KCRDCS prior to recording. If the internal roads are not constructed according to the above Grading Permit, a new plat hearing is required.
 - b. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.

12. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
13. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
14. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
15. The following conditions are required to coordinate currently proposed plat development with approvals for the overall development site under file nos. L10 L00054, L11CG030 and prior preliminary plat applications, and to avoid project piecemealing under SEPA:
 - a. Prior to final plat approval the 2008 preliminary plat application approved under file no. L08P0001 shall be formally withdrawn and vacated.
 - b. Prior to final plat approval the access road loop shall be completed through the plat north to Kent-Kangley Road.
 - c. A grading permit shall be approved by DDES or its successor that includes a plan for the restoration of the wetland and stream complex within BLA tract E, which terminates between lots 4 and 5 and extends upgradient to the southeast. The restoration plan provisions shall repair damage to the wetland and stream caused by offroad vehicles, restore the pre-existing hydrology, replant denuded areas, and provide for a reasonable monitoring period after restoration work completion. The restoration work shall either be completed or fully bonded prior to final plat approval.
 - d. In case of discovery on the 630-acre site described by file no. L10L0054 of cultural materials with potential pre-historic significance, all earthwork within a 100-foot radius of such discovery shall be halted immediately and the discovery reported to the Washington State Department of Archaeology and Historical Preservation Program (DAHP) and the King County Historic Preservation

Program (KCHPP). Further earthwork in the vicinity of the discovery shall be conducted subject to DAHP procedures for the protection of pre-historic materials.

ORDERED October 4, 2012.



Stafford L. Smith
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before October 22, 2012***. If a notice of appeal is filed, the original and two copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before October 29, 2012***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1039, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE SEPTEMBER 27, 2012, PUBLIC HEARING ON DDES FILE NO. L12P0002.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the proceeding were Kim Claussen and Bruce Whittaker for DDES and Thomas Barghausen representing the Applicant.

The following exhibits were offered and entered into the record:

- Exhibit no. 1 DDES File No. L12P0002
- Exhibit no. 2 DDES preliminary report dated September 27, 2012
- Exhibit no. 3 Application submitted May 10, 2012, complete June 7, 2012
- Exhibit no. 4 Environmental checklist received May 31, 2012 (revision)
- Exhibit no. 5 Declaration of Non-significance (DNS) dated August 16, 2012
- Exhibit no. 6 Affidavit of Posting indicating June 19, 2012 as date of posting and June 20, 2012 as the date the affidavit was received by DDES
- Exhibit no. 7 Plat Map received May 10, 2012
- Exhibit no. 8 Assessors maps; SE 33-22-07; NW 33-22-07; NE 33-22-07; SW 33-22-07
- Exhibit no. 9 Boundary line adjustment L10L0054 (recorded)
- Exhibit no. 10 Revised text and condition #11
- Exhibit no. 11 Water Availability Certificate – Covington dated April 19, 2012
- Exhibit no. 12 Waiver of submittal requirements – May 12, 2012
- Exhibit no. 13 Wetland, stream, wildlife assessment by Chad Armour dated October 25, 2007
- Exhibit no. 14 Transpo traffic analysis dated March 16, 2012
- Exhibit no. 15 Sugarloaf Examiner Decision on L08P0001
- Exhibit no. 16 Sugarloaf Examiner Decision (revision to L08P0001) – L09RE023
- Exhibit no. 17 Sugarloaf Examiner Decision on L11P0002
- Exhibit no. 18 Copy of July 19, 2011 letter to Thomas Barghausen from Molly Johnson on the surface water design manual adjustment on file no. L11V0004
- Exhibit no. 19 Revised plat maps

SLS/gao