

REVISED¹

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

DATE OF DECISION: November 17, 2006

PLAT/PROJECT NAME: *L 101-1 SUTHERLAND*

APPLICANT/
LANDOWNER: L 101-1 Sutherland, LLC

FILE NO.: 04 120529

TYPE OF REQUEST: Preliminary plat approval for a 193 lot subdivision/planned residential development (PRD), to be developed in two phases.

DECISION (SUMMARY): **APPROVED** subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 7713 20th Street SE, Everett, WA

ACREAGE: 38.3 acres

DENSITY: 5 du/ac (gross)
19.18 du/ac (net)

NUMBER OF LOTS: 193

AVERAGE LOT SIZE: 3,546 square feet

MINIMUM LOT SIZE: 2,546 square feet

OPEN SPACE: 574,516 square feet

ZONING: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (6 du/ac)

Subarea Plan: Lake Stevens UGA Plan

Subarea Plan Designation: Urban low Density Residential (6 du/ac)

¹ See [Conditions](#)
[04120529A.doc](#)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewage: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to conditions
Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed a Revised Master Application on December 30, 2004. (Exhibit 6)

The Hearing Examiner (Examiner) made a site familiarization visit November 1, 2006 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 27, 28 and 29)

A SEPA determination of non-significance was made on August 25, 2006. (Exhibit 26) No appeal was filed.

The Examiner held an open record hearing on October 31, 2006, the 81st 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 October 31, 2006 at 9:03 a.m.

1. The Examiner indicated that he has read the PDS staff report and reviewed the file and therefore had a general idea of the particular request involved. The Examiner viewed the area the next day.

The hearing concluded at 9:25 a.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. Based on all of the evidence of record, the following Findings of Fact are entered:

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2. 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.
3. 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 unless otherwise stated below.
4. L101-1 Sutherland, LLC (applicant) seeks approval of the preliminary plat/planned residential development of Sutherland at the northwest corner of 20th Street SE (Hewitt Avenue) and 79th Avenue SE. The applicant proposes to construct 193 single-family lots in two phases: 64 lots in Phase I and 129 lots in Phase II. The site contains 38.3 acres in area and has two residences and outbuildings on the site, which will be demolished. There are six Category 3 wetlands and one Category 4 wetland on the site, as well as one Type 4 stream and one Type 5 stream.
5. Stormwater will be managed by construction of two underground vaults and one detention pond.
6. Water and sewer services are available at the site.
7. The comprehensive plan designates the site for Urban Low Density Residential – Limited (ULDR-6du/ac). The site is zoned R-7200.
8. All trees will be removed by grading the site, and these will be replaced at a ratio of 2:1.
9. The applicant will be required to construct a southbound right turn lane from 79th Avenue SE to 20th Street SE and an eastbound left turn lane from 20th Street SE to 79th Avenue SE, and to install a traffic signal at this intersection. The applicant will also construct frontage improvements on these two streets, including 20th Street SE all the way west to Cavalero Road.
10. Notice of the application was posted as required by ordinance.
11. One neighborhood resident commented on the proposal, concerned that the development would make traffic congestion worse. The project was granted a concurrency certificate on the condition that the turn lanes and traffic light referred to in Finding 9 were constructed.
12. Interior roads in the plat will be public roads, dedicated to the County. No lot in the plat will have direct access to either 20th Street SE or 79th Avenue SE.
13. Public sidewalks will be provided throughout the development, and children will have a safe way to reach the school bus stops at road "A" or road "C" on 79th Avenue SE. School impact fees will be paid to the Lake Stevens School District.
14. The plat will provide 6.75 dwelling units per acre (du/ac) and will comply with the general design criteria for a PRD. Open space equal to 34% of the gross site area will satisfy the code minimum of 20%. Useable open space and active residential spaces space requirements will be satisfied.
15. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

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CONCLUSIONS of LAW:

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 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 should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS: ²

- A. The Preliminary Plat (Exhibit 21) received by PDS on July 28, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The Preliminary Plat/PRD Site Plan received by PDS on July 28, 2006 (Exhibit 21), Conceptual Building Elevations received by PDS on December 30, 2004 (Exhibit 7) and Detailed Landscape and Recreation plan approved per condition B. i., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. A detailed landscape, tree retention and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 23 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan. .
 - ii. The applicant 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 final mitigation plan based on the Conceptual Mitigation Report for L101-1 Sutherland, LLC. prepared by The Jay Group, Inc. dated Revised July 27, 2006 shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. “Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
\$3,191.67 per lot for mitigation of impacts on county roads paid to the county,

² The ~~C~~onditions in the original decision had been superseded by PDS but inadvertently omitted by the Hearing Examiner’s Office when the decision was prepared

\$0.78 per lot for impacts to WSDOT project DOT-22 (SR-9/SR-528 interchange signal and channelization paid to the county,

\$13.85 per lot for impacts to WSDOT project DOT-37 (SR 9 at 60th Street NE) paid to the county,

\$73.30 per lot for impacts to WSDOT project DOT-08 (SR 9/SR 2 interchange modification) paid to the county,

\$4.27 per lot for impacts to WSDOT project DOT-09 (SR-9 from 56th Street SE and 42nd signal and channelization) paid to the county,

These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”

- ii. Twenty six to forty six feet of right-of-way to provide a total right-of-way of 46 feet from centerline shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel’s frontage on north side of 20th Street SE along with a 35-foot radius right-of-way at the northwest corner of the intersection of 79th Avenue SE and 20th Street SE, on the final recorded plat [SCC 26B.55.060].
- iii. Twenty-five to thirty-five feet of right-of-way to provide a total right-of-way from centerline shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel’s frontage on west side of 79th Avenue SE on the final recorded plat [SCC 26B.55.060].
- iv. Additional right-of-way to complete improvements along the frontage of 15th Place SE as depicted on the preliminary plat shall be dedicated to Snohomish County on the final recorded plat [SCC 26B.55.060].
- v. A forty-two (42) foot temporary turnaround radius easement shall be placed at the terminus of Road “F” across Lot 80 through Lot 83. The temporary turnaround easement on Lot 80 through Lot 83 shall be extinguished when the Road “F” is extended to the west.
- vi. A forty-two (42) foot temporary turnaround radius easement shall be placed at the terminus of Road “A” across Lots 53 and 54 and Tract 985. The temporary turnaround easement on Lots 53 and 54 and Tract 985 shall be extinguished when the Road “A” is extended to the west.
- vii. “No direct access to 20TH Street SE or 79TH Avenue shall be permitted for any lot within this subdivision.”
- viii. A 35-foot radius right-of-way at the northwest and southwest corners of the intersections of 79th Avenue SE and Road A and 79th Avenue SE and Road I.
- ix. Right-of-way necessary to accommodate a bus pull-out along the north side of 20th Street SE approximately 100 feet west of the intersection of 79th Avenue SE.
- x. “All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-120529-SD.”

- xi. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include any critical areas and their buffers, open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, benches, and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”
- xii.. “The dwelling units within this development are subject to park impact fees in the amount of \$1,128.00 per newly approved dwelling unit, as mitigation for impacts to the Snohomish park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by December 30, 2009 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
- xiii.. “The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District 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 six existing lots. Lot 1-6 shall receive credit.”
- xiv. 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.”

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel’s frontage on 79th Avenue SE and 20th Street SE to the specifications of the DPW [SCC 30.66B.410]. 20TH Street SE is in the cost basis analysis for Chapter 30.66B SCC. Credit towards the applicant’s traffic impact fee is applicable for any frontage improvements or right-of-way dedication, if the roadway improvements or dedicated right-of-way (greater than 30 feet from the centerline) can be used with the ultimate roadway improvements.
- ii. Urban frontage improvements shall be in-place or constructed along the north side of 20th Street SE from the development’s frontage improvements to Cavalero Road. Credit towards the applicant’s traffic impact fee is applicable for any improvements, if the roadway improvements can be used with the ultimate roadway improvements.
- iii. Construct a southbound (SB) right turn lane from 79th Avenue SE to 20th Street SE, an eastbound (EB) left turn lane from 20th Street SE to 79th Avenue SE and install a traffic signal at the intersection of 79th Avenue SE and 20th Street SE. Credit towards the applicant’s traffic impact fee is applicable for any improvements or dedicated right-of-way, if the roadway improvements

or right-of-way (greater than 30 feet from the centerline) can be used with the ultimate roadway improvements.

- iv. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- v. Construct temporary 42-foot radius turnarounds with public easements across Lots 80 through 83, Lots 53 through 54 and Tract 985 to the specifications of DPW.
- vi. Construct a Far-Side Bus Turnout along 20th Street SE approximately 100 feet west of the intersection with 79th Avenue SE. The bus turnout will be equipped with a shelter pad in accordance with Community Transit standard specifications.
- vii. 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.

- viii. The final mitigation plan shall be completely implemented.
- ix. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS.
- x. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved, unless a bond or other guarantee of performance is submitted to and accepted by PDS, pursuant to Condition D. xi. below.
- xi. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b) and SCC 30.42B.210(3) (PRD development and landscaping).
- xii. An agreement to terminate the variance on the property (File number 01-107436LU) shall be executed by the applicant and recorded with the County Auditor per SCC 30.43B.128.



- E. Prior to occupancy of any unit in the PRD:
- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

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

5. 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 193 lot PLANNED RESIDENTIAL DEVELOPMENT on 38.3 acres is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 4, above.

Decision issued this 17th day of November, 2006.

Gordon Crandall, Hearing Examiner Pro Tem

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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **NOVEMBER 27, 2006**. 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **DECEMBER 1, 2006** 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.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin/Andy Smith

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.

