

I Appeal

The complete Hearing Examiner record is available upon request of the Clerk of the Council

Exhibit No.

V.xx Pending Council Staff Report

I. Appeal Letter

V.1 Appeal Letter received via e-mail March 21, 2023, @ 3:00 p.m. from Tom Ehrlichman, Attorney for the Appellants, Megan (Tucker) Snowden and Steven Snowden; Kathleen M. Richardson; Sue Keller; Christi M. Bell and Joyful Tower; and Christopher and Patricia Larson

BEFORE THE COUNTY COUNCIL
FOR SNOHOMOSH COUNTY

SNOHOMISH COUNTY COUNCIL

EXHIBIT # V.1

FILE 22-102230 CUP

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In Re:

Appeal by:
Megan (Tucker) Snowden and
Steven Snowden;
Kathleen M. Richardson;
Sue Keller;
Christi M. Bell and Joyful Tower; and
Christopher and Patricia Larson

NO. _____

APPEAL TO COUNTY COUNCIL OF
TYPE 2 DECISION
SCC § 30.72.070

of the *Decision of the Snohomish County
Hearing Examiner* –
File No. 22-102230 CUP
Residential Treatment Facility North
(March 7, 2023)



SUMMARY OF APPEAL

This is an administrative appeal to the Snohomish County Council requesting reversal of a decision issued by the Hearing Examiner on March 7, 2023 approving the Conditional Use Permit application filed under File No. 22-102230 CUP ("Decision"). The Council has jurisdiction to hear this appeal, reverse the Decision and deny the Conditional Use Permit application, under Snohomish County Code § 30.72.070. The facts and the law mandate reversal for the reasons set forth herein.

The Hearing Examiner erred in approving a proposed residential treatment facility on a 4.66-acre parcel that the County Council has designated as Local Commercial Farmland (LCF). The site is located along the northern edge of the Stanwood urban growth area within a large land base of designated agricultural lands, based on soils conducive to long term commercial agricultural use.

1 The proposed use of the site involves over 80,000 square feet of impervious surfaces¹ on designated
2 agricultural land. The Hearing Examiner's approval of this institutional residential use was expressly
3 prohibited under the Comprehensive Plan and its implementing regulations.

4 This misuse of agricultural land directly violates the Council's longstanding Comprehensive
5 Plan directive in Land Use Policy LU 7.B.1 which prohibits uses that are not exclusively for
6 agricultural purposes:

7 LU Policies 7.B.1 Areas designated Local Commercial Farmland and not zoned
8 Agriculture-10 shall not be divided into lots of less than 10 acres except
when used exclusively for agricultural purposes.

9 Snohomish County General Policy Plan (Oct. 2021) ("GPP") at 108-09. The CUP approval also
10 ignored County code expressly implementing this policy:

11 Areas designated local commercial farmland shall not be divided into
12 lots of less than 10 acres unless:

13 A properly executed deed restriction which runs with the land and which provides that
14 the land divided is to be used exclusively for agricultural purposes and specifically not
for a dwelling(s), is recorded with the Snohomish County Auditor.

15 Snohomish County Code (SCC) § 30.32B.120.

16 The lot in this case was divided by a boundary line adjustment (BLA) into a site that was less
17 than 10 acres in size. Nothing in the BLA decision removed the land from the LCF Comprehensive
18 Plan designation. While acknowledging the LCF designation, the Decision was in error because it did
19 not mention or enforce the above-cited land use policy or code provision.

20 The Decision misinterpreted the law when it elevated the list of permitted uses in the Rural-5
21 Acre Zoning Matrix over these applicable land use controls. The Decision ignored an entire chapter
22 of code devoted to protection of agricultural lands, Chapter 30.32B,² including the specific code
23

24 ¹ The proposal is to pave over and construct buildings on 80,750 square feet of Local Commercial Farmland, in the form of
25 two separate residential dormitory/office buildings, parking lots, septic drainfields, roads and other hard surfaces that will
forever prevent long-term use of the land for agricultural purposes. Exhibit K.1 (Staff Report) at 19; Exhibit A.1 (Master
26 Permit Application) at 2.

27 ² Adopted as part of the Unified Development Code (Ord. No. 02-064) and Amended Ord. No. 05-089. The purpose of
Chapter 30.32B is to "regulate development on and adjacent to designated farmlands in order to conserve farmland
28 resources and ensure compatibility between farmlands and adjacent uses." SCC § 30.32B.110.

1 prohibition in Section .120. That land use control specific to LCF lands overrides the broad,
2 permissive listing in the zoning matrix land use control, which applies countywide. Where two codes
3 appear to be at odds, the zoning code requires use of the specific control over the more general
4 control.³ The Decision did not analyze the applicable LCF code and limited its decision to a review of
5 the more general R-5 zoning matrix list of permissible uses applicable countywide.⁴ The Decision
6 approving the CUP and planned institutional residential use was in error because, in total, it did not
7 give required legal effect to the agricultural land designation.

8 The import of this error is significant and it must be reversed to prevent error in this
9 particular case and in future planning decisions about broader use of agricultural land. The
10 Decision itself acknowledged that this interpretation of law has the practical effect of a "loss" of
11 agricultural land:

12 The comprehensive plan designates the area as Local Commercial Farmland and is
13 zoned Rural 5-acre. Tulalip Tribes obtained a boundary line adjustment of the
14 approximately 30-acre site to carve out 4.66 acres for the facility and leave the
15 remaining 25 acres for agricultural use. While less than 5 acres **will be removed from**
16 **agricultural use**, county code explicitly permits the proposed use if conditioned to
17 mitigate its impact on the immediate community. Further, **the loss** must be balanced
18 against other community needs and comprehensive plan goals and objectives.

19 Decision at 8:17-22 (emphasis added).

20 This permit decision involves an unlawful removal of land from agriculture use. Nothing in
21 County code authorizes the Hearing Examiner to legislate a loss of agricultural lands, or any portion
22 thereof, from the County's agricultural land base. To interpret the code in that manner would give
23 the Hearing Examiner unprecedented authority to alter the County's agricultural land protection
24 program. To reach that result, the Decision erroneously cited a novel CUP test that involves
25 assessing the need for social services and then balancing the loss of agricultural land against that
26 need. *Id.* Those are legislative functions beyond the scope of the Hearing Examiner's authority and a
27 quasi-judicial land use proceeding.

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³ SCC § 30.22.040.

⁴ SCC § 30.22.110.

1 If this unlawful CUP Decision is allowed to go forward, the practice threatens use of other
2 areas designated LCF in a substantial land area throughout the County. This case sets an important
3 adverse precedent for thousands of acres of lands north of Stanwood, west of Granite Falls and in
4 other parts of the County designated "Local Commercial Farmland."⁵

5 As the Council is well aware, Snohomish County has invested three decades of work and
6 planning resources to establish a robust agricultural lands base and series of protective measures, in
7 line with the Growth Management Act. The Council's continued protection of that agricultural land
8 base is important to Appellants, all of whom are actively engaged in small-scale farming farm in the
9 area north of Stanwood and who hope to preserve that way of life for future generations.

10 There are undoubtedly good intentions in seeking approval to construct a new two-wing
11 treatment facility near Stanwood. However, based on the law on the books, the Council must reverse
12 the Decision, deny the CUP, and protect the designated agricultural land.

13 **OUTLINE OF THIS APPEAL**

14 The legal arguments and factual basis for this appeal are set forth in the following sections in
15 the following order:

- 16 I. LISTING OF SPECIFIC ERRORS IN THE DECISION
- 17 II. STANDING
- 18 III. STATEMENT OF FACTS
 - 19 A. Facts from the Decision Exhibit List.
 - 20 B. Official Notice
 - 21 C. Illustrative Exhibit
- 22 IV. GROUNDS/ARGUMENT
- 23 V. CONCLUSION
- 24 VI. PRAYER FOR RELIEF

25 *APPENDIX 1: Applicable Law in Support of Claims

26 ⁵ Appellants request that Council take official notice of the areas shown on the Future Land Use Map and Official Zoning
27 Map where agricultural land is designated LCF, and also zoned R-5. In doing so, Council can determine for itself that the
28 area of overlap is approximately 3,060 acres. See Illustrative Exhibit. If the Hearing Examiner's Decision is approved, all
of that area will be subject to uses in the R-5 zoning matrix, including proposals for motocross racetracks.
SCC § 30.22.110.

1 **I. LISTING OF SPECIFIC ERRORS IN THE DECISION**

2 As set forth in more detail in the Argument section of this appeal, below, the Hearing
3 Examiner made incorrect factual statements contradicted by the record below, committed errors of
4 law that misinterpret which codes govern in this case, and exceeded his jurisdiction by approving a
5 use that is not in conformity with adopted law, as follows.

6 **A. Fact-Statements Not Supported by the Record.**

7 Several statements of fact/factual findings in the Decision, were not supported by substantial
8 evidence because the project actually will adversely affect the ability to use the adjacent 25 acre
9 parent parcel for long-term commercial agricultural, thus effectively removing portions of that land
10 as well from LCF usage. These factual errors and erroneous Findings in the Decision appear at:

- 11 • Decision at 5:24-27
12 (the remaining 25-acre parcel "will not be developed under this proposal");
- 13 • Decision at 8:18-20 (the proposal will "leave the remaining 25 acres for agricultural use.
14 Less than 5 acres will be removed from agricultural use. . . ").

15 **B. Failure to Meet All CUP Approval Criteria at SCC § 30.42C.100(1)(a-d).**

16 The Decision approving the proposed use was in error because the use did not meet the code
17 criteria for approval of a CUP. (The criteria are listed in full in the attached Appendix 1, which is
18 incorporated herein by reference).

19 **1. The proposed use is in conflict with the Comprehensive Plan (§ 100(1)(a)).**

20 In multiple locations, the Decision makes erroneous findings and conclusions that the proposal
21 is consistent with the Comprehensive Plan. These errors incorrectly found and concluded that the
22 LCF designated land could be used for a non-agricultural use, as follows:

- 23 • Finding F(1) at 8 was incomplete because it did not mention or analyze a single
24 Comprehensive Plan policy, let alone any that applied to LCF;
- 25 • Finding F(1) at 8 failed to analyze the applicability of GPP Land Use Objective 7.B or
26 Land Use Policy 7.B.1 as required for a complete consistency review;
- 27 • Conclusion No. 2 and the second Conclusion "No. 2" at 16 incorrectly found that the
28 project was consistent with Comprehensive Plan objectives and policies.
- The second "Conclusion No. 2" at 16 was in error because the Applicant never did
 meet their burden of showing consistency with the Comprehensive Plan.

1 **2. The application fails to comply with all UDC requirements (§ 100(1)(b)).**

2 The Decision does not correctly analyze applicable development regulations to ensure
3 consistency with the Unified Development Code (UDC). The Decision committed errors of law when
4 it:

- 5 • Failed to apply SCC § 30.22.040 to the limit the effect of the R-5 zoning matrix, when
6 more specific use regulations apply specifically to LCF land;
- 7 • Does not mention the UDC's agricultural lands regulation applicable to LCF at SCC
8 § 30.32B.120;
- 9 • Thereby failed to achieve the purposes for agricultural land protection under SCC
10 § 30.32B.010; and
- 11 • Failed to limit the effect to the prior BLA approval under SCC § 30.41E.300 (BLA
12 approval "does not guarantee or imply that the subject property may be developed"); the
13 effect of this mistake was the erroneous conclusion that the 4.66 parcel was developable
14 for non-agricultural residential use.

12 These errors also constitute a violation of a code provision that applies to all permit reviews and
13 requires denial if the project does not comply with applicable development regulations.

14 SCC § 30.70.130.

15 **3. The proposed non-agricultural use is detrimental and incompatible with uses in
16 the vicinity (§ .100(1)(c), (d)).**

17 The Decision makes erroneous findings and conclusions that, despite the proposal's misuse of
18 designated agricultural land as described herein, the proposal will not be detrimental to and is
19 somehow compatible with the agricultural uses and properties in the surrounding areas. Decision at 6-
20 8, 15:4-16 (para.3); 15:17-22 (para. 4). The discussion on detriment and compatibility in these
21 sections focused on various concerns expressed at hearing, some by Appellants; but the Decision did
22 not address Appellants' comments characterizing the surrounding agricultural landscape, or the
23 damage this use would do to the agricultural land based due to construction of a complex of
24 institutional residential buildings, parking lots and infrastructure. Importantly, the Decision did not
25 analyze the effect that a diminished land base could have on long-term viability for farming in the
26 area, and did not attempt to describe mitigation or conditions that would somehow cure that
27 permanent loss of agricultural land.

1 The surrounding area was best described in the Letter from Appellant Kathy Richardson:

2 II. Project Site and Surrounding Area

3 This development is proposed in the northeast corner of what was originally a much
4 larger parcel consisting primarily of pasture and wetland where the existing residences
5 and accessory structures are located on the far west portion of the property, directly
6 adjacent to 80th Street Northwest.

7 The surrounding area is characterized by large multi-acre swaths of pasture interrupted
8 by smaller sections of 2nd and 3rd growth timber and dotted with single family homes
9 and accessory buildings designed for rural residential and agricultural uses. . . .

10 The only buildings in the area of a comparable size are the commercial poultry houses
11 visible on properties near the lower left and upper right portions of this image. These
12 poultry houses are located on large, 20 – 40 acre, parcels with substantial setbacks
13 from neighboring properties.

14 Exhibit 2 and Exhibit 3 are recent pictures of the views along 300th St. NW facing East
15 and West respectively. Collectively, these images illustrate the extremely low density,
16 rural character of the area. The only uses in this area are residential and agricultural
17 business.

18 Exhibit M.10 (Letter from Kathy Richardson, Jan. 2023). At Figure 5 of this letter, Ms. Richardson
19 illustrated her point graphically, showing the extent of the LCF lands surrounding the entire northern
20 perimeter of the Stanwood UGA, and the project site. The Decision did not ensure that "the proposal
21 is compatible with" or responds to the physical characteristics of the surrounding property as required
22 by SCC § 30.42C.100(1)(d).

23 **C. Failure to Make Adequate Provisions for Public Health, Safety and General Welfare.**

24 Based on the foregoing, the Decision failed to meet the Public Interest. The agricultural lands
25 designations and the County's program for conservation of agricultural land embody the General
26 Welfare. Conclusion No. 4, Decision at 16, was in error and not supported by substantial evidence.

27 **D. Errors Under the Criteria for Appellate Review to Council. SCC § 30.72.080.**

28 Based on the foregoing and the argument below, Appellants respectfully request that the
Council reverse the Decision and deny the CUP under the Council's appellate criteria.

1. The decision exceeded the hearing examiner's jurisdiction.

In the absence of a basis in code authorizing him to approve the use the Examiner exceeded his
jurisdiction. The Hearing Examiner exceeded his jurisdiction by allowing the loss of designated

1 farmland without citation to governing laws; by approving a non-agricultural use on a parcel divided
2 through a prior boundary line adjustment; and by allowing a use that is incompatible with long-term
3 agricultural use of the designated farmland. While a permit decision does not change the
4 comprehensive plan designation of farmland, the Examiner himself stated that the effect of his use
5 approval "removed" the land from agricultural use. Decision at 8. The change, loss or removal of
6 designated agricultural land is a legislative decision beyond the scope of the Hearing Examiner's
7 jurisdiction.

8 The Hearing Examiner had no authority to utilize equitable principles or tests during permit
9 review that do not appear in County Code. The Examiner acted beyond his authority when he
10 balanced goals or objectives in the Comprehensive Plan that were not in conflict; and when he
11 evaluated whether behavioral health treatment facilities are needed in the community as a criterion for
12 his decision. Decision at 8:16-24, Para. F(1). Because those criteria are not found in the code for
13 review of a CUP, the Hearing Examiner was without jurisdiction to approve the CUP on that basis.

14 **2. The hearing examiner failed to follow applicable procedure.**

15 The Decision failed to include an adequate consistency evaluation as required by code for
16 approval of a CUP (see discussion above for citations). As a result, the Examiner did not follow the
17 correct procedure for review of the CUP application.

18 **3. The hearing examiner committed errors of law.**

19 The Decision approved the CUP based on errors of law. Each of the erroneous interpretations
20 of law described above were errors of law. Those erroneous legal conclusions were arrived at, in part,
21 by reliance on statements of fact that were inaccurate or incomplete. A more complete discussion of
22 many of these errors is contained in the Argument section, below.

23 **4. The decision is not supported by substantial evidence in the record.**

24 See Section I(A), above, incorporated herein by reference.

25 This listing of the specific errors is augmented by the Grounds/Argument section below.
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II. STANDING

The Appellants in this matter are all parties of record to the proceedings below.⁶ Each of them have standing to bring this appeal as "aggrieved parties of record," SCC § 30.72.070(2)), based on the following. Each of the Appellants individually is a landowner on either 80th Avenue NW or 300th Street NW, the cross streets for the CUP project site north of Stanwood in unincorporated Snohomish County. Each Appellant engages in small-scale private farming or commercial farming on designated agricultural lands directly adjacent to or in close proximity to the proposed 4.66-acre development parcel.

The undersigned law firm is the representative for the Appellants. The name, mailing address, daytime telephone number and email address of the Appellants' representative appears below.

The name, property ownership, and mailing address of each Appellant is as follows:

- A. The Snowdens
Megan (Tucker) Snowden and Steven Snowden
29614 80th Ave NW
Stanwood, WA 98292
- B. Kathleen M. Richardson
7920 300th St NW
Stanwood WA 98292
- C. Sue Keller
29720 80th Ave NW
PO Box 601
Stanwood WA 98292
- D. Christi M. Bell and Joyful Tower
7011 300th St NW
Stanwood WA 98292
- E. The Larsons
Christopher and Patricia Larson
30130 80th Avenue NW
Stanwood WA 98292

⁶ Each Appellant is a party of record within the meaning of County Code, either by express listing in the Hearing Examiner Decision at 28-31, or because their marital partner is listed and submitted a comment on behalf of their community real property ownership.

1 Each of the Appellants is engaged currently in some type of agricultural/farming enterprise in
2 proximity to the agricultural land at issue in this case and has a proprietary or personal right that
3 would be substantially affected by a CUP approval that undermines conservation of the nearby
4 agricultural land ecosystem. SCC § 1.01.040.

5 Farming activities engaged in by the Appellants include the following. Christi Bell and Joyful
6 Tower farm the nutrient-rich soil on their land and grow a mixed vegetable garden for market; they
7 are in the process of configuring a farm stand for retail sales and a seed starts/propagation operation
8 for retail sales; they raise turkeys small-scale, sell chicken and duck eggs, and this spring are
9 preparing the soil to plant a "u-pick" flower garden; they have actively sought additional farm
10 property in the area for a pumpkin grow, so far unsuccessfully due to rising farmland prices. Kathy
11 Richardson grows a garden for personal use, which includes a pumpkin patch for friends and family.
12 She has a restored barn, has rehabilitated her pasture hay feed harvesting, and has had horses on her
13 property. She plans to continue farming her land. Chris and Patricia Larson graze cattle on their
14 farmland. Sue Keller grows a garden for personal use, has raised chickens in the past, and graze
15 horses on her farmland. In the area surrounding the Appellants' properties, neighbors continue to
16 grow and harvest hay feed.

17 Steven and Megan Snowden operate their small family farm on land that was owned by four
18 generations of their ancestors. Beginning in the 1800's, their relations homesteaded multiple larger
19 farms in the area including commercial potato farm, dairy and berry farming. In the past, the
20 Snowdens grew pigs and chickens.⁷ Steve and Megan currently have a mixed-vegetable garden for
21 personal use and have started scaling up their small farm last year for local retail markets, including
22 sale of eggs, toward a future farm stand. They maintain a small mixed-fruit orchard and grow berries
23 and flowers. The children in the family are engaged in the family farming effort.

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26 ⁷ Appellant Steven Snowden's mother, Ramona Snowden (also a party of record), recalls that their ancestors are sixth
27 generation farmers in the Stanwood area. The story of these early days is told in *Pioneers of the Stillaguamish* by Dennis
28 Conroy with Carol Husby Ronken (Steven's great aunt). While not appearing as a named party, Mrs. Snowden can testify
as to Steven Snowden's standing herein, as a member of a longstanding Stanwood farming family with interests in
upholding the County's farmland conservation program.

1 Each of the Appellants are aggrieved by a CUP decision that will bring impacts related to
2 removal of farmland from the land base and replacement with intensive residential uses. The site is
3 part of a 30.2-acre ownership and the proposed facility is to be located on one of the least constrained
4 portions of that property; the property already has developed areas on the west side, fronting 80th
5 Avenue N.W. The 4.66-acre parcel and the area planned for septic drainfield are still viable
6 undeveloped commercial farmland. The loss of viable farming activity on an adjacent parcel will
7 directly and adversely affect each of the Appellants at this location by increasing the likelihood that
8 less land may be available in the future, long-term, for farm expansion, and that they will have fewer
9 opportunities to lease or purchase hay nearby for their livestock and horses; farmers exchange seed
10 crops locally and the change in use will reduce those future opportunities.

11 A reduction in farming in the future from an adjoining farm owner will undermine the north-
12 Stanwood farmland ecosystem that is their home. lifestyle in the area remains viable, and that future
13 generations can engage in local agricultural production.

14 III. STATEMENT OF FACTS

15 A. Facts From the Decision and Record Documents, Hearing Examiner Exhibit List.

16 The Decision was based upon the following baseline facts:

- 17 1. The Applicant filed a CUP master application with Snohomish County on January 31,
18 2022 and it was deemed complete as of that date. Exhibit A.1, K.1 at 22.
- 19 2. The property was designated Local Commercial Farmland (LCF) in the Snohomish County
20 Comprehensive Plan. Exhibit K.1 at 9.
- 21 3. The project site is part of a 30-acre parcel divided into two lots by Short Plat
22 ZA9007384SP. Exhibit G.2.
- 23 4. The Applicant altered the boundary between the two short plat parcels to create a smaller
24 parcel just 4.66 acres in size through a boundary line adjustment. *Id.*
- 25 5. The remaining portion of that original parcel was absorbed into the other short plat lot,
26 resulting in one lot less than 10 acres in size and the other lot of approximately 25 acres in
27 size. *Id.*
- 28 6. The CUP master application proposed a residential treatment facility on the lot that was
less than ten acres in size. Exhibit A.1. The other remaining lot (25 acres) was not listed
as a parcel on the master application, but was proposed as a septic drainfield and reserve.
Exhibits B.1, B.2 at C-402.

1 7. The proposed project will create 79,300 square feet of new hard surfaces and replace 1,450
2 square feet of existing hard surfaces, for a total hard surface area of 80,750 square feet.
3 Exhibit K-1 at 19.

4 8. The Decision relied in part on a balancing of the County's agricultural lands designation
5 with Comprehensive Plan Objective I.C(1)(G), cited in Footnote 10 of the Decision at 8.

6 **B. Official Notice.**

7 Appellants request that the Council take official notice of the following facts and sources:

- 8 1. The version of the Snohomish County Comprehensive Plan in effect at the time of the
9 filing of a complete application in this case was the General Policy Plan dated October 6,
10 2021, and its Future Land Use Map dated October 22, 2021.⁸
- 11 2. The BLA took effect upon the date of recording, which was February 23, 2023 (twenty
12 days after the close of the Hearing Examiner's evidentiary record, but just prior to issuance
13 of the Decision on March 7, 2023). Snohomish County Auditor's File No. 202302240105.
- 14 3. A survey was recorded on February 24, 2023. Snohomish County Auditor's File No.
15 202302245002. The survey shows four large buildings, roadways and parking areas on the
16 larger of the two parcels at issue in this case (25.54 acres). [Note: This is parcel also is
17 proposed for septic drainfields and reserve areas serving the 4.66-acre parcel. Exhibit B.2
18 at C-402.]

19 **C. Proposed Illustrative Exhibit.**

20 Appellants request that the Council take official notice of the maps identified in Footnote 5,
21 above. Appellants have prepared an illustrative exhibit showing what those maps would yield if
22 Council were to identify those areas designated LCF on the Future Land Use Map that also have R-5
23 zoning. As shown in the attached illustrative map entitled *Comparison of FLUM (LCF) and Zoning*
24 *Maps (R-5)*, there are approximately 3700 acres of LCF designated land. The illustrative map shows
25 which areas are zoned R-5. This comparison estimates that approximately 3,000 acres of the LCF
26 land is zoned R-5.

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⁸ As of this writing, that version of the FLUM was accessed at:
https://www.snoco.org/v1/services/Docs/SCD/PDF/PDS_GMA_FLU/Map1_FutureLandUse.pdf

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IV. GROUNDS/ARGUMENT

Other portions of this appeal provide grounds for reversal and argument on the merits; all are hereby incorporated into this section of the appeal, as though fully set forth herein.

The issue presented in this case is whether designated farmland can be converted to non-agricultural uses, piecemeal, through permitting and boundary line adjustment. For the past thirty years, and as now required by the Snohomish County Code, the selection of appropriate uses on farmland has been determined legislatively, through evaluation of soil types and an area-wide determination of necessary conservation measures.

Appellants respectfully ask Council to reject the invitation by the Applicant for the County to switch to a system that allows site-specific "rezoning" through permitting, which will set a precedent throughout the LCF designation areas of the County. Appellants request that Council maintain adherence to the time-honored legislative process and reject that kind of ad hoc decisionmaking, parcel by parcel. The policy stakes are too high for the County's farmers. Granting this appeal will uphold the spirit of the Growth Management Act protection of resource lands along the urban perimeters of the County and keep in place a coherent, time-honored conservation program.

A. The County's GMA Legislative Program to Conserve LCF Lands Remains the Law.

Appendix 1 hereto contains a full explanation of the evolution of the County's commercial farmland designations, in a comprehensive legislative program that began some forty years ago. Appendix 1 describes that evolution that started with interim designations and regulations in 1982. That early planning phase was followed in 1990 by the state's Growth Management Act, as embraced and implemented by Snohomish County, and culminating in adoption of the first GMA comprehensive plan in 1995, the General Policy Plan (GPP). The LCF designation on this site has remained inviolate for thirty years of legislative updates, based on a policy of protecting the fertile farmland north of the City of Stanwood for future generations.

On Pages 148-49 of the GPP, the Plan explains that the County originally designated three types of land primarily devoted to the commercial production of agriculture: Local Commercial

1 Farmland (LCF),⁹ Upland Commercial Farmland (UCF) and Riverway Commercial Farmland (RCF).
2 Beginning on Page 107 of the GPP, the Plan outlines the criteria utilized for designating these three
3 types of farmland, and defines a *legislative* process by which a landowner can apply for legislative
4 approval to remove land from the designation. Land Use Policy 7.A.2, GPP at 108. In this case, the
5 Applicant chose not to seek legislative approval to redesignate its land, i.e., to remove it from the
6 longstanding LCF designation. Instead, the Applicant chose to parcelize, first dividing the parcel into
7 a smaller size and then seeking to use the permit process, instead of the legislative process, in order to
8 use that smaller parcel for non-agricultural purposes.

9 Parcelization and piecemeal permitting of this kind is contrary to the fundamental objective of
10 the County's GMA farmland conservation program north of Stanwood:

11 Objective LU 7.B. Conserve designated farmland and limit the intrusion of non-agricultural
12 uses into designated areas.

13 GPP at 108-09. At the time it adopted this Objective LU 7.B, the County Council foresaw the
14 parcelization problem on LCF lands. It fashioned a specific regulatory policy that would prevent de-
15 designation of LCF farmland through parcelization:

16 LU Policies 7.B.1 Areas designated Local Commercial Farmland and not zoned
17 Agriculture-10 shall not be divided into lots of less than 10 acres except
18 when used exclusively for agricultural purposes.

19 *Id.* Notably, periodic amendments to the GPP through the years did not remove or diminish the force
20 of the policy preventing non-agricultural uses on smaller parcels, nor did Council ever reduce the
21 agricultural land base north of Stanwood. See Future Land Use Map (Oct. 22, 2021).

22 **B. The Law Protecting LCF Land is Also Found in County Regulations.**

23 The County placed the restrictive LCF Policy into regulation when the Unified Development
24 Code was adopted in 2002 (Ord. No. 02-064):

25 Areas designated local commercial farmland shall not be divided into lots of less than 10
26 acres unless:

27 ⁹ When the County Council selected lands appropriate for agricultural designation, under the GPP's resource lands
28 protection legislation, it used the 10-acre parcel size as a threshold minimum for consideration. GPP at 107-108.
Thereafter, the agricultural lands policies ensured that further dividing these parcels into smaller lots would not remove
them from protection. GPP, LU Policy 7.B.1 at 108.

1 A properly executed deed restriction which runs with the land and which provides that the
2 land divided is to be used exclusively for agricultural purposes and specifically not for a
dwelling(s), is recorded with the Snohomish County Auditor.

3 SCC § 30.32B.120. This implementing regulation, like the GPP Policy, specifically requires that the
4 4.66-acre site in this case "be used exclusively for agricultural purposes and specifically not for a
5 dwelling(s)." This parcelization rule remains the law in Snohomish County and must be enforced in
6 this case.

7 **C. The Hearing Examiner Decision Failed to Ensure Consistency With these Laws.**

8 As discussed earlier in this appeal, when the Hearing Examiner issues a Decision on a CUP
9 application, he or she must adopt findings and conclusions determining whether the proposal meets all
10 of the CUP approval criteria, including consistency with the comprehensive plan and applicable
11 development regulations.

12 **1. The Decision was contrary to law.**

13 The Decision was in error because the proposed use on was not authorized by the GPP or UDC
14 on LCF designated land. As seen above, the GPP Policy LU-7.B.1 and SCC § 30.32B.120 expressly
15 required that the 4.66-acre site in this case "be used exclusively for agricultural purposes and
16 specifically not for a dwelling(s)." The Decision approving the proposed residential use on LCF land
17 was therefore contrary to law because it was inconsistent with the GPP and UDC, in violation of SCC
18 § 30.42.100(1)(a),(b); § 30.70.130.

19 **2. The Hearing Examiner misapplied the law to the facts of BLA approval.**

20 Prior to appearing before the Hearing Examiner on the CUP, the Applicant obtained approval
21 of a boundary line adjustment from the Snohomish County Department of Planning and Development
22 Services to divide a thirty-acre holding into a 4.66-acre parcel, with a remaining 25-acre parcel.
23 Exhibit G.2.¹⁰ The Hearing Examiner misapplied the law to those facts in a way that defeated the
24 intent and letter of GPP Policy 7.B.1 and the regulatory prohibition under SCC § 30.32B.120.
25 Decision at 8. The Hearing Examiner's error is as follows.

26 _____
27 ¹⁰ The 30-acre holding had already been short platted into two lots (Lot 1: 15.55 acres and Lot 2: 15.10 acres). Short Plat
28 No. ZA9007384 SP; AFN 9106140048, described in Exhibit G.2 at 2.

1 The Hearing Examiner erroneously approved the non-agricultural use of a small parcel less
2 than ten acres in size, when policy and code specifically prohibit that use. He did so by citing to the
3 BLA approval by the Planning Department as a "carve out" of the smaller 4.66-acre parcel. He then
4 concluded that the parcel resulting from the BLA "will be removed from agricultural use" through his
5 CUP permit approval:

6 Tulalip Tribes obtained a boundary line adjustment of the approximately 30-acre site to
7 carve out 4.66 acres for the facility and leave the remaining 25 acres for agricultural
8 use. While less than 5 acres will be removed from agricultural use, county code
9 explicitly permits the proposed use if conditioned to mitigate its impact on the
10 immediate community.

11 *Id.* The Hearing Examiner misapplied the law of agricultural land designations to the facts involving
12 the BLA and the effect of a CUP permit process, as follows.

13 **(a) The BLA approval did not change the FLUM designation of LCF.**

14 The Decision erroneously indicated that approval of the BLA excused the property from the
15 agricultural designation applicable to the property. *Id.* This was an error of law because the
16 prohibition on non-agricultural residential uses in SCC § 30.32B.120 (and its parent Policy LU 7.B.1)
17 continued to operate on the LCF-designated property. The agricultural lands designation on the
18 FLUM is a legislative decision unchanged by a BLA administrative approval.¹¹

19 **(b) The BLA approval did not "carve out" land from the LCF designation.**

20 The Hearing Examiner misinterpreted the law governing the effect of BLAs when he
21 concluded that designated agricultural land can be "carved out" from its existing LCF designation on
22 the GPP Future Land Use Map through a BLA. The law does not allow removal of the LCF Plan

23 ¹¹ The BLA decision took effect on February 24, 2023 when the decision was recorded. SCC § 30.41E.400. Official
24 Notice: AFN 202302240105. But the BLA decision did not include any language indicating any change in land use
25 designation. Exhibit G.2. Appellants are not challenging the validity of the BLA, because it did not change the LCF
26 designation. Importantly, we note that the applicant has yet to record the required "properly executed deed restriction"
27 stating that the land was to be used exclusively for agricultural purposes and not for dwellings. That is expressly required
28 by code when a parcel less than ten acres is created within the LCF designation. SCC § 30.32B.120, cited above. In
denying the CUP, Appellants request that Council include an order requiring the landowner to comply with § .120.

1 designation from a parcel of any size through a Boundary Line Adjustment. Land Use Policy 7.A.2,
2 GPP at 108, requires amendment of the Future Land Use Map (FLUM) to make that kind of change in
3 land use. Nothing in the BLA approval may be construed under the law as providing any substantive
4 approval for the requested "carve out." SCC § 30.41E.300 (BLA approval does not authorize
5 development). The Hearing Examiner's conclusion was a misinterpretation of the law governing
6 BLAs and a misapplication of the law to the facts involving the BLA.

7 **(c) The Decision misinterpreted the law governing the process for removal of**
8 **the LCF designation from the FLUM.**

9 By concluding erroneously that the BLA parcel was no longer subject to restrictions on the use
10 of LCF lands, Decision at 8, the Hearing Examiner demonstrated an incorrect understanding of the
11 law governing FLUM designation amendments. Changes to the LCF designation on the FLUM are
12 legislative in nature and cannot be approved administratively (through a BLA) or by the Hearing
13 Examiner (through a CUP approval permit review). Amendments to the FLUM designation of
14 agricultural land can only be redesignated if the procedures in SCC ch. 30.73 and ch. 30.74 are
15 followed.

16 Those procedures require that a landowner request inclusion in the County Council's docket
17 for a FLUM amendment and then go through the entire legislative process, including Planning
18 Commission review. SCC § 30.74.010(2), .060. The Decision erroneously gave effect to the BLA
19 parcelization process and CUP permit process, as actions removing land from agricultural use, rather
20 than applying the law requiring a legislative process in SCC ch. 30.73, .74. These errors were further
21 compounded by the Hearing Examiner's application of the R-5 zoning designation.

22 **3. The Hearing Examiner's treatment of the R-5 Use-Matrix was a misapplication of**
23 **law to the facts and an error of law.**

24 Arriving at the mistaken conclusion that the 4.66-acre parcel was no longer subject to
25 regulation as GPP-designated agricultural land, the Decision erroneously applied the list of
26 permissible uses under the R-5 zoning matrix at SCC § 30.22.110. This mistaken approach ignored
27 the effect and operation of SCC § 30.32B.120, a land use control specifically tailored to LCF
28

1 designated lands, in the chapter of the UDC addressing regulation of uses on GPP designated
2 agricultural lands.

3 At Page 6:18, the Decision found erroneously that "the proposed use is explicitly permitted
4 by county code;" at Page 8, The Decision found erroneously that "county code explicitly permits
5 the proposed use." See also Decision at 9:4-5. These statements all relied upon an incorrect
6 interpretation of the effect of the R-5 zoning matrix.¹² Relying on that conclusion, the Decision
7 was in error also in Conclusion No. 2 at 16 in finding that the proposal is consistent with county
8 codes and that the type and character of land use is permitted on the project site.

9 It was an error of law for the Decision to rely on the R-5 matrix as a standalone, without
10 taking into account code provisions instructing the Hearing Examiner to subordinate the R-5 matrix
11 in favor of the more specific land use controls addressing LCF designated land. The critical rule of
12 construction for interpreting use matrices in the UDC is that more specific regulations will
13 supersede general or implied regulations:

14 **30.22.040 Interpretation of matrices.**

15 The following rules apply to interpretation of the use matrices:

- 16 (1) Specific regulations or requirements shall supersede general or implied
17 regulations;

18 SCC § 30.22.040.

19 Correctly applying that rule of construction for the UDC use matrix, the Decision should have
20 identified the "general or implied" regulation as the R-5 matrix, including its authorization for Level II
21 Health and Social Service Facilities countywide within that zone. Then, to complete the directive, the
22 Decision should have identified the "Specific regulations or requirements" as SCC § 30.32B.120; that
23 more specific prohibition applied to a specialized case, applicable here, where LCF lands are zoned
24 R-5 and are restricted to agricultural uses where small parcels less than ten acres in size are involved.

25 This interpretation is correct because the R-5 zoning matrix is of general application, used to
26 regulate lands throughout the County in a wide variety of FLUM designations; it is not a specific

27 ¹² SCC § 30.22.110.

1 implementing zone designed to protect agricultural lands. Indeed, on its face, the R-5 zoning matrix
2 would allow motocross racetracks, airports, lumber mills, park and ride lots, and permanent structures
3 for institutional facilities, including their pavement for roads and parking lots. SCC § 30.22.110.

4 This misinterpretation by the Hearing Examiner was a misapplication of the rules of
5 construction to the facts involving the R-5 zoning designation on this LCF property. It was also an
6 error of law violating GPP Objective 7.B; GPP Policy LU 7.B.1; and SCC § 30.32B.120 (prohibiting
7 non-agricultural use of divided lots less than 10 acres).

8 This Appeal asks Council to correct this misinterpretation of land use controls applicable to
9 lots less than 10 acres in size within LCF lands. If the Applicant's arguments are accepted and the R-5
10 zoning matrix is controlling without limitation – as reflected in the incorrect Decision, all LCF lands
11 throughout the County would be vulnerable to any development authorized in the R-5 zoning matrix,
12 regardless of parcel size. Fortunately, that result is prohibited on small parcels (less than ten acres in
13 size) by the rules of construction and the code's protections of LCF-designated agricultural lands.

14 **D. The Decision Failed to Follow Applicable Procedure Because it did not Cite Relevant
15 GPP Policies and UDC Regulations in Order to Determine Consistency.**

16 This was a CUP decision. The criteria for Hearing Examiner review required that the
17 Decision include an analysis of applicable policies and procedures in order to include findings and
18 conclusions as to consistency. SCC § 30.42C.100(1)(a), (b). (In this claim, there was an absence
19 of discussion, so it is not possible to cite particular pages or findings and conclusions). The result
20 was a Decision that was in error when it found that the proposal was consistent with applicable
21 Plan objectives and policies and with applicable development regulations.

22 The Decision at 8-16 cited only selective policies and regulations. The procedural error was
23 a failure to analyze consistency for *all* relevant policies and rules and in particular:

- 24 • GPP Objective LU-7.B (limit the intrusion of non-agricultural uses);
- 25 • GPP Policy LU-7.B.1 (restriction on use of Local Commercial Farmland); or
- 26 • SCC § 30.32B.120 (restriction on use of Local Commercial Farmland on parcels less
27 than 10 acres in size).

1 The Decision failed to mention SCC ch. 30.32B at all – the County's implementation code for
2 agricultural lands Plan policies. Given the acknowledgment in the Decision at 8:17 that the land
3 was still designated Local Commercial Farmland, it is frankly inexplicable that the Decision's
4 consistency determination never cited these laws.¹³

5 In the record before the Hearing Examiner, Appellants raised the issue of inconsistency with
6 resource lands policies, e.g., Policy LU-7.B.1, in their submittals to the Hearing Examiner, as did
7 other neighbors. See e.g., Exhibit M.10 (Richardson Letter) at 7 (section 3). The Decision did not
8 respond to those citations to policy, instead omitting any mention of those comments in the list of
9 "concerns" appearing at Pages 6-8 of the Decision.

10 As a result of these omissions, the Decision failed to comply with the procedural
11 requirements of RCW 30.70B.030 (requiring consistency determination); SCC § 30.70.130
12 (requiring consistency determination); and SCC § 30.42C.100 (requiring consistency determination
13 under CUP approval criteria).

14 **E. Factual Conclusions That are not Supported by Substantial Evidence.**

15 Where a Hearing Examiner's findings of fact are contradicted by the record below, the Council
16 on appeal should substitute the correct findings from the record below in its decision. In this
17 Decision, the Hearing Examiner made several unsupported assertions of fact that are not supported by
18 the record below.

19 The Decision incorrectly asserted that the proposal only affected a 4.66-acre parcel within the
20 Applicant's total 30-acre ownership:

- 21 • Decision at 5:24-27
22 (the remaining 25-acre parcel "will not be developed under this proposal");

23
24 ¹³ The Examiner may have been following the erroneous suggestion in the Applicant's closing statement on CUP
25 consistency. The Applicant acknowledges they are aware of the LCF designation on the FLUM, and then reasons that,
26 because the land is zoned R-5, "It is therefore necessary to be consistent with the Rural Land Uses, but not with the
27 Agricultural Land Uses." Hearing Examiner Exhibit M-28, Attachment E. That logic of course turns Washington's GMA
28 comprehensive planning structure on its head. At a minimum, in light of SCC § 30.22.040, the LCF designation on the
FLUM, and the BLA's parcelization of the LCF land, the Decision should have included findings and conclusions about
whether GPP Objective LU-7.B and Policy LU-7.B.1 apply, as implemented in SCC § 30.32B.120. That inquiry, in turn,
would have led to denial of the CUP.

- Decision at 8:18-20 (the proposal will "leave the remaining 25 acres for agricultural use. Less than 5 acres will be removed from agricultural use. . . ").

To the contrary, the preponderance of the evidence in the record shows that a substantial portion of the project will take place upon the larger 25-acre parcel even though it was not listed on the CUP master application, Exhibit A.1.

The Decision was unsupported by substantial evidence when it asserted that the parcel would remain untouched.. The evidence submitted at Exhibit B.2 (Civil Plans, Sheet C-402, Utility Plan West) plainly showed that the CUP proposal includes future development on the 25-acre parcel. The evidence shows that the project will in fact use that parcel for the project's septic drainfields and reserve areas. A septic drainfield and reserve area serving 32 residents will render that portion of the remaining 25-acre site incompatible with long term commercial agricultural production. Exhibits B.2 and G.2 also depict substantial *existing* development on the 25-acre adjoining parcel that already includes substantial impervious surface coverage on the 25 acres. The Decision underplayed the impact of the project as though it were limited to increasing loss of only 4.66 acres from the agricultural land base. Council must substitute accurate factual findings for the impact of the project on the LCF land within the 25-acre parcel.

V. CONCLUSION

The Hearing Examiner Decision contains factual errors unsupported by the record, commits numerous errors of law, and uses improper procedure. The errors of law are not correctable through a remand. The correct conclusion under the law would lead to denial – the proposed use is inconsistent with the County's longstanding GMA policy directives for the conservation of agricultural lands.

The Applicant is undoubtedly well-meaning in seeking approval to construct a new two-wing behavioral health services facility near Stanwood. However, unless and until a legislative decision removes the parcels involved from the agricultural lands program, the land is subject to the agricultural lands designation; there is no permit procedure that can grant approval for covering over 80,000 square feet of agricultural land with hard surfaces. It was a mistake to allow the permit process to be used to remove property from the base of land available for agricultural use, long-term.

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VI. RELIEF REQUESTED

Rather than remand the matter for correction of flawed interpretations of law, Appellants request that the Council apply the correct interpretation of law and deny the CUP. Appellants request a written decision from the County Council granting this appeal, denying the Conditional Use Permit without remand to the Hearing Examiner, and including the following findings and conclusions:

- A. The Decision exceeded the Hearing Examiner's jurisdiction by approving a use that is not permitted by applicable code;
- B. The Hearing Examiner failed to follow the applicable procedure requiring findings as to consistency with all applicable policies and regulations in reaching the Decision;
- C. The Hearing Examiner committed the errors of law outlined above; and
- D. The Hearing Examiner's findings and conclusions concerning affected agricultural lands are not supported by substantial evidence in the record.

Respectfully submitted this 21st day of March,

DYKES EHRLICHMAN LAW FIRM



Tom Ehrlichman, WSBA No. 20952
Counsel for Appellants

VERIFICATION:

As one of the Appellants herein, I have read this appeal and hereby affirm its contents,



Steven Snowden

Date: March 21, 2023

Original

CERTIFICATE OF FILING

I, Tom Ehrlichman, am a partner at the Dykes Ehrlichman Law Firm and hereby certify that I caused this *Appeal* to be filed by hand delivery with the Snohomish County Department of Planning and Community Development with payment of applicable appeal fees on the date, below.

I also caused delivery via electronic mail of a courtesy copy of this appeal to Prosecuting Attorney Jason Cummings.

Signed, March 21, 2023:



Tom Ehrlichman, WSBA No. 20952

ATTACHMENTS:

1. Appendix 1: Laws
2. Hearing Examiner Decision
3. Exhibit B.1 Site Plan
4. Recorded BLA
5. Recorded Survey
6. Exhibit M.28, Attachment E
7. Illustrative Exhibit: Map

APPENDIX I

LAWS

APPENDIX I

I. STATE LAW

Beginning in the 1980's, Washington citizens became increasingly concerned about urban sprawl and the rate at which rural resource lands were disappearing, including agricultural land adjacent to expanding cities and their suburbs. The state legislature responded to a citizen initiative and in 1990 adopted the Growth Management Act, codified at RCW ch. 36.70A ("GMA"). Thereafter, in 1995, the state legislature addressed problems of permit processing in the new GMA era, clarifying the role of the comprehensive plan during the permit review process.

A. The Growth Management Act.

The GMA required the Puget Sound counties to amend their comprehensive plans to include a land use element, and to identify and designate, by September 1991, agricultural lands that were "not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.070, .170(1).

The GMA established "planning goals" to guide this process, including Goal 8:

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.020(8). Section .060 of the GMA required counties and cities to adopt development regulations "to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170." Thereafter, the County was required to "perform its activities" in conformity with these GMA comprehensive plan conservation measures. RCW 36.70A.120.

Snohomish County's longstanding agricultural lands programs stems from this GMA-mandated program to conserve agricultural lands and discourage incompatible uses through comprehensive planning.

B. The Regulatory Reform Act.

The state legislature adopted the Regulatory Reform Act in 1995 to clarify the permit review process, following adoption of the GMA and during the implementation phase by cities and counties. In addition to requiring clear permit review and notice procedures, the Act mandated that every

APPENDIX I

1 project permit should be evaluated for consistency with adopted plans and regulations. RCW
2 36.70B.030(1), .040.

3 RCW 36.70B.030(1).

4 Project review—Required elements—Limitations.

5 (1) Fundamental land use planning choices made in adopted comprehensive plans
6 and development regulations shall serve as the foundation for project review. The
7 review of a proposed project's consistency with applicable development regulations, or
8 in the absence of applicable regulations the adopted comprehensive plan, under RCW
9 36.70B.040 shall incorporate the determinations under this section.

10 (2) During project review, a local government or any subsequent reviewing body
11 shall determine whether the items listed in this subsection are defined in the
12 development regulations applicable to the proposed project or, in the absence of
13 applicable regulations the adopted comprehensive plan. At a minimum, such applicable
14 regulations or plans shall be determinative of the:

15 (a) Type of land use permitted at the site, including uses that may be
16 allowed under certain circumstances, such as planned unit developments and
17 conditional and special uses, if the criteria for their approval have been
18 satisfied;

19

20 RCW 36.70B.030(1), (2)(a).¹

21 **C. Definition of "Division" in State Platting Statute.**

22 RCW ch. 58.17.020 defines the term "subdivision" to mean the division or redivision of land
23 into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of
24 ownership, except as provided in subsection (6) of this section [short subdivisions]." The statute
25 requires that all subdivisions and short subdivisions comply with the provisions of the statute.

26 Subsection (6) , specifies what types of land divisions must go through a formal subdivision process.

27 In the explanation of when the statute is inapplicable, RCW 58.17.040 states:

28 (6) A division made for the purpose of alteration by adjusting boundary lines, between
platted or unplatted lots or both, which does not create any additional lot, tract, parcel,
site, or division nor create any lot, tract, parcel, site, or division which contains

¹ The County implemented this state-law requirement in SCC § 30.70.100.

APPENDIX I

1 insufficient area and dimension to meet minimum requirements for width and area for a
2 building site;

3 RCW 58.17.040 (Chapter inapplicable, when.) An alteration of boundary lines between platted or
4 unplatted lots is deemed a "division."

II. COUNTY ORDINANCES

5
6 **A. Agricultural Lands Directives in the Comprehensive Plan.**

7 Snohomish County's agricultural lands designations had their start in 1982, when the County
8 adopted an interim program for conservation of agricultural lands. In 1993 a Citizens Advisory
9 Committee was formed to advise the County Executive and County Council on proposed policies,
10 designation criteria and regulations. In 1995 the County adopted its first GMA comprehensive plan,
11 the "General Policy Plan." That plan was superseded by amendments in 2006 and 2021. Today, the
12 2021 version of the GPP retains the same Local Commercial Farmland conservation policies and
13 designation criteria present in the earlier plans.

14 The Land Use Element of the GPP contains a section on agricultural lands, as "resource lands"
15 defined in the GMA, above. On Pages 148-49 of the GPP, the Plan explains that the County
16 designated three types of land primarily devoted to the commercial production of agriculture: Local
17 Commercial Farmland (LCF), Upland Commercial Farmland (UCF) and Riverway Commercial
18 Farmland (RCF).

19
20 Beginning on Page 107 of the GPP, the Plan outlines in great detail the criteria and process
21 utilized both for designating these three types of farmland, but also the right of a landowner to apply
22 for legislative approval to remove land from the designation. Land Use Policy 7.A.2, GPP at 108.
23 Beginning with Objective LU 7.B, the Plan at Page 108-109 articulates the overarching goal of
24 County policy and regulation in the field of agricultural land conservation:

25 Objective LU 7.B. Conserve designated farmland and limit the intrusion of non-agricultural
26 uses into designated areas.

APPENDIX I

1 subsequent modification or variance requests. (Added by Amended Ord. 02-064, Dec. 9, 2002,
2 Eff date Feb. 1, 2003).

3 SCC § 30.41E.300.

4 **D. CUP Determination of Consistency With Plan and Regulations.**

5 30.42C.100 Decision criteria - conditional use permit.

6 (1) The hearing examiner may deny, approve, or approve with conditions an application for a
7 conditional use permit. If an application for a conditional use permit satisfies all of the criteria
8 set forth below, the application may be approved or approved with conditions. If any of the
9 criteria set forth below are not met, the application must be denied.

10 (a) The proposal is consistent with the comprehensive plan;

11 (b) The proposal complies with applicable requirements of this title;

12 (c) The proposal will not be materially detrimental to uses or property in the immediate
13 vicinity; and

14 (d) The proposal is compatible with and incorporates specific features, conditions, or
15 revisions that ensure it responds appropriately to the existing or intended character,
16 appearance, quality of development, and physical characteristics of the site and
17 surrounding property.

18 SCC § 30.42C.100. Elsewhere, the County code mandates denial of a permit application if the use is
19 determined to be inconsistent with applicable regulations:

20 A project permit application that does not comply with applicable development regulations
21 or is determined inconsistent under SCC 30.70.100 shall be denied.

22 SCC § 30.70.130 (Authority to impose conditions or deny application).
23
24
25
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28

DECISION BEING APPEALED

MARCH 7, 2023



Snohomish County
Office of Hearings Administration
3000 Rockefeller Ave., M/S 405
Everett, WA 98201
(425) 388-3538
Hearing.Examiner@snoco.org
www.snoco.org
Peter Camp
Hearing Examiner

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

I. SUMMARY

DATE OF DECISION: March 7, 2023

PROJECT NAME: Residential Treatment Facility North

APPLICANT: Tulalip Tribes
6406 Marine Drive
Tulalip, Washington 98271

LOCATION: 7800 block of 300th St.
Stanwood, Washington 98292

OWNER: Tulalip Tribes
6406 Marine Drive
Tulalip, Washington 98271

FILE NO.: 22-102230 CUP

REQUEST: Conditional use permit to construct and operate a secure civil behavioral health services facility (level II health and social services facility)

DECISION SUMMARY: Conditional use permit to construct and operate a secure civil behavioral health services facility (level II health and social services facility) is approved with conditions

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Residential Treatment Facility North

22-102230 CUP

Decision Approving Conditional Use Permit with Conditions

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III. SITE SUMMARY

LOCATION: 78xx 300th St. NW
Stanwood, Washington 98292

TAX PARCEL NOS.: 320418-001-001-00
320418-001-014-00

ACREAGE: 4.66 acres

COMPREHENSIVE PLAN DESIGNATION: Local Commercial Farmland

ZONING: R-5

UTILITIES:

Water: City of Stanwood

Sewer: Not in a sewer district

Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Stanwood-Camano School District No. 401

FIRE DISTRICT: North County Regional Fire Authority

PDS STAFF RECOMMENDATION: Approve the proposed behavioral health facility with conditions

1 Based on a preponderance of the evidence in the record, the Hearing Examiner finds the following
2 facts and makes the following conclusions of law.

3 IV. FINDINGS OF FACT

4 A. *Regulatory Review and Vesting*

5 Applicant Tulalip Tribes of Washington, a federally recognized Indian tribe and native sovereign
6 nation, applied to Snohomish County Planning and Development Services department (PDS) on
7 January 31, 2022 for a conditional use permit to construct and operate a secure civil behavioral
8 health services facility. PDS determined the application to be complete for vesting as of the date of
9 submittal. Tulalip Tribes submitted additional information on June 27, 2022 and August 22, 2022.

1 **B. Open Record Hearing**

2 An open record hearing was held on January 24, 2023 and January 26, 2023. The record was left
3 open until February 3, 2023 for the limited purpose of allowing PDS and Tulalip Tribes to respond
4 to public comments and provide additional information regarding traffic and whether patients could
5 walk out of the facility's doors when the civil order confining the patient expires.

6 **C. The Record**

7 The Hearing Examiner considered exhibits A.1 through M.28, O.1, O.3, P.5 and P.6.¹ The Hearing
8 Examiner did not consider exhibit U.1, which was a public comment submitted after the record
9 closed to public comment. The Hearing Examiner also considered the testimony of the witnesses
10 at the open record hearing. A recording of the hearing is available in the Office of Hearings
11 Administration.

12 **D. Public Notice**

13 PDS notified the public of the open record hearing, threshold determination, and concurrency and
14 traffic impact fee notifications.²

15 **E. Background Information**

16 **1. Proposal**

17 Tulalip Tribes proposes to construct and operate a 32-bed secure civil behavioral health facility for
18 adults, consisting of two buildings with 16 beds each. Tulalip Tribes will provide parking for 60
19 vehicles. The facility is intended to serve patients who are involuntarily committed by court order
20 pursuant to chap. 71.05 RCW for stays between 90 and 180 days and patients who voluntarily
21 commit themselves to inpatient treatment. The patient population will be medically stable and not
22 involved in the criminal justice system.

23 **2. Site Description and Surrounding Uses**

24 The site is zoned R-5 and was created by a boundary line adjustment of a 30-acre site to create a
25 parcel of approximately 4.66-acres and parcel of approximately 25 acres. The latter parcel will not
26 be developed under this proposal. The parcel is undeveloped pasture. Surrounding properties are
27 rural residential properties on five or more acres.

¹ Exhibits O.1, O.3, P.5, and P.6 were submitted by SEPA appellants. The Hearing Examiner dismissed the SEPA appeal, but considers the appeal documents as public comments.

² Exhibits F.1 through F.14.

1 **3. Site Visit**

2 The Hearing Examiner visited the site unaccompanied and viewed the area from public rights of
3 way on Wednesday, February 15, 2023. H. Ex. Rule of Proc. 1.9 (2021).

4 **4. Concerns**

5 Many community concerns were raised in written comments and testimony in the open record
6 hearing. The concerns range from public safety to protection of the environment to the impact on
7 the rural character of the community. Concerns were raised, too, about the appropriateness of the
8 location for such a facility.

9 Some of the public worried that the facility would house patients accused or convicted of crimes.
10 However, the facility will not be part of the criminal justice system and will not house patients
11 charged with or convicted of crimes.³ The facility is for civil commitment pursuant to chap. 71.05
12 RCW and for patients who voluntary place themselves in the facility for care.

13 Some testified that other locations with closer proximity to public transportation would be more
14 appropriate for the proposed facility. However, the purpose of these proceedings is not to
15 determine the optimal location for the facility or whether another location may be better, but to
16 evaluate this application against county code requirements. County code does not authorize the
17 Hearing Examiner to reject an application because he thinks another location would be more
18 suitable for a proposed development. The proposed use is explicitly permitted by county code and
19 can only be rejected if it cannot be sufficiently conditioned to mitigate its impact on the
20 neighborhood.

21 County code and associated regulations protect critical areas such as wetlands. Health department
22 regulations protect wellheads and public welfare by requiring approval of the design, location, and
23 installation of on-site sewer systems. Setback, building height, and landscaping requirements
24 mitigate a development's impact on the surrounding properties.

25 Although the county drainage manual's default preference is for infiltration of stormwater, it is not
26 required when subsurface conditions make infiltration infeasible. Here, subsurface exploration
27 demonstrated the infeasibility of infiltration due to a shallow low permeability layer. Stormwater
28 from hard surfaces such as roofs and the parking area will be collected, detained, receive
29 enhanced water quality treatment, and be discharged at its historic, natural discharge location at a
30 rate and volume designed to maintain the hydroperiod of the on-site wetlands.

³ It is possible that a patient could have been convicted of a crime in the past. The facility will not serve those currently in the criminal justice system.

1 Neighbors expressed concern regarding the impact of the facility on their water wells, but the
2 facility will not draw from the aquifer used by the neighbors and instead will obtain water from the
3 city of Stanwood.

4 Perhaps most importantly, the community is deeply concerned about safety—a secure civil
5 behavioral health facility is specifically designed to treat patients who are a grave danger to
6 themselves and possibly others. The facility is secure; patients cannot just walk out the door.
7 Elopements (escapes) of patients subject to court-ordered treatment are rare and almost always
8 occur away from the facility, such as when a patient visits a health care provider. Between January
9 2018 and December 2022, 60,000 people entered treatment at similar facilities, but less than one-
10 tenth of 1% eloped.⁴

11 Some raised the specter of patients refusing care and simply walking out the door into the rural
12 neighborhood. This is extremely unlikely for several reasons. First, a court ordered the patient to
13 be held in a secure facility so they may receive treatment and begin to recover their health. If they
14 refuse care (including refusal to participate in planning their discharge), they are very unlikely to be
15 freed by expiration of a court order; a further court order would usually be entered to maintain them
16 in a secure treatment facility until such time as the patient sufficiently improves or, in the worst
17 case scenario, is transferred to a different facility better able to care for the patient on a long-term
18 basis. Second, approval will be conditioned on prohibiting discharge directly into the rural
19 community. Discharge planning will include transportation to the patient's next residence, whether
20 taken there by a friend or family in a car or by taxi or shared ride service.

21 Some expressed concern about calls for emergency services. The patient population is not likely to
22 be medically fragile as in a skilled nursing facility.⁵ Patients who are not medically stable will be
23 kept at an acute care facility and not transferred to this facility unless and until they are medically
24 stable.

25 Community members worried that the facility would look "institutional" or like a prison and therefore
26 be inconsistent with the character of the neighborhood. Some even worried that the facility would
27 be ringed with barbed wire. However, the facility is not designed to look institutional, or like a
28 prison, or have barbed wire. The buildings will be one-story with sloped metal roofs like many
29 residential and agricultural buildings in the area.⁶ The siding of buildings will have residential
30 treatments and fenced areas will be secured without looking like a prison.⁷

⁴ 59 elopements out of 60,000 detentions. Testimony of Dr. Waterland.

⁵ If the patients were medically fragile, it is unlikely they would be moved from an acute care facility to this facility, which is not designed or equipped to provide acute medical care.

⁶ E.g., ex. B.4.

⁷ E.g., exhibits M.3 and M.4.

1 Some expressed concerns about the impact of the facility on area property values. The record
2 does not contain sufficient legal basis to reject the application. Generalized concerns over impact
3 of a development on area property values do not constitute substantial evidence sufficient to deny
4 the application. See *Omnipoint Corp. v. Zoning Hearing Bd. of Pine Grove Twp.*, 181 F.3d 403, 409
5 (3d Cir. 1999), citing *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 496 (2d Cir. 1999).
6 The record demonstrates that impact on property values is equivocal at best.⁸

7 **F. Conditional Use Permit (Chapter 30.42C SCC)**

8 An application for a conditional use permit must meet the following criteria:⁹

- 9 a. The proposal must be consistent with the county's comprehensive plan;
- 10 b. The proposal must comply with the applicable requirements of title 30 SCC;
- 11 c. The proposal will not be materially detrimental to the uses or property in the immediate
12 vicinity; and
- 13 d. The proposal is compatible with, and incorporates specific features, conditions, or revisions
14 that ensures it responds to, the existing or intended character, appearance, quality of
15 development, and physical characteristics of the site and surrounding property.

16 **1. Consistency with Comprehensive Plan (SCC 30.42C.100(1)(a))**

17 The comprehensive plan designates the area as Local Commercial Farmland and is zoned Rural
18 5-acre. Tulalip Tribes obtained a boundary line adjustment of the approximately 30-acre site to
19 carve out 4.66 acres for the facility and leave the remaining 25 acres for agricultural use. While
20 less than 5 acres will be removed from agricultural use, county code explicitly permits the proposed
21 use if conditioned to mitigate its impact on the immediate community. Further, the loss must be
22 balanced against other community needs and comprehensive plan goals and objectives. The
23 comprehensive plan explicitly supports public health initiatives like this.¹⁰ No one disputed that
24 more facilities such as this are needed. The proposal is consistent with the comprehensive plan.

⁸ Ex. M.25.

⁹ SCC 30.42C.100(1) (2012).

¹⁰ Comprehensive Plan, Objective IC(1)(G).

1 **2. Compliance with Title 30 SCC (SCC 30.42C.100(1)(b))**

2 ***a. General Zoning Standards (Chapters 30.22 through 30.26 SCC)***

3 ***i. Conditional Use Allowed in Zone (Chap. 30.22 SCC)***

4 The proposed project is a level II health and social services facility, which is a permitted use with
5 conditions in the R-5 zone.

6 ***ii. Height, Setback, Bulk, and Lot Dimensions (Chap. 30.23 SCC)***

7 The proposed structure and ground support equipment comply with height, setback, bulk, and lot
8 dimension requirements.

9 ***iii. Parking (SCC 30.26.030(1))***

10 County code requires PDS to determine an appropriate number of parking stalls. SCC 30.26.035.
11 A parking study¹¹ prepared at PDS' request estimated peak parking hours, parking space demand,
12 and turnover. Although the number of staff will vary depending on patient census and visits by
13 providers, case workers, family, and friends, Tulalip Tribes proposed a ratio of 1.88 parking stalls
14 per bed, resulting in 30 stalls per building and 60 stalls total. The day shift will likely see
15 approximately 25 employees per building at full census. This is likely to be an adequate amount of
16 parking.

17 ***iv. Landscaping (SCC 30.25.025)***

18 County code typically requires a 20-foot-wide type A landscaping buffer along the perimeter of a
19 conditional use permit site, although it requires a 20-foot type B landscaping buffer for critical areas
20 and a 10-foot type B landscaping buffer along a road frontage.¹² Tulalip Tribes proposes to install
21 perimeter landscaping consistent with these requirements.

22 ***b. Environmental Review (SEPA) (Chapter 30.61 SCC)***

23 PDS issued a threshold determination of non-significance.¹³ An appeal from the threshold
24 determination was filed on October 3, 2022,¹⁴ and dismissed on December 21, 2022.¹⁵

¹¹ Ex. C.6.

¹² SCC 30.25.025(1) (2018).

¹³ Ex. E.1.

¹⁴ Ex. O.1.

¹⁵ E. T.3.

1 **c. Critical Areas Regulations (Chapters 30.62A, 30.62B, and 30.62C SCC)**

2 Three wetlands lie on the site. All three are category III wetlands. One has a habitat score of 6,
3 requiring a buffer of 150 feet, and the other two have habitat scores of 5, requiring buffers of 80
4 feet. Tulalip Tribes will use mitigation measures to reduce the buffers from 150 to 110 feet and
5 from 80 feet to 60 feet. Tulalip Tribes will also use buffer averaging allowed by SCC
6 30.62A.320(1)(g)(i) in the eastern portion of the buffers. The buffer will be reduced by 12,610 sq. ft.
7 and replaced by the same amount between the on-site wetlands. The maintenance road,
8 stormwater facilities, and septic drain field line will suffer temporary and permanent impacts, but
9 will be mitigated at an enhanced ratio as provided in SCC 30.62A.320.

10 Douglas Creek is approximately 500 feet east of the northeastern corner of the site. An on-site
11 swale converges with Douglas Creek approximately one-quarter mile south of the site, but the
12 swale does not meet the definition of a regulated stream for at least 550 feet south of the site.

13 **d. Drainage and Grading (Chapters 30.63A, 30.63B, and 30.63C SCC)**

14 Full infiltration of stormwater is not feasible at the site because of relatively low permeability and
15 the fine-grained nature of lodgement till at a shallow depth. Stormwater will therefore be collected
16 and conveyed to a detention vault. Enhanced water quality treatment will be provided by a
17 Department of Ecology approved filter plus a bioretention system. Stormwater will be discharged at
18 a rate, volume, and duration mimicking predeveloped forested conditions to the existing discharge
19 location to maintain the hydroperiod of the on-site wetlands.

20 Grading quantities are expected to be approximately 8,500 cubic yards of cut and 10,000 cubic
21 yards of fill.

	Description	How Fulfilled?
1	Stormwater Site Plan	The targeted drainage report and preliminary civil drawings satisfy this requirement. ¹⁶
2	Stormwater Pollution Prevention Plan (SWPPP)	Tulalip Tribes submitted a SWPPP that is adequate for preliminary approval.
3	Water pollution source control for new development or redevelopment	Tulalip Tribes must comply with source best management practices.
4	Preservation of natural drainage systems	Natural drainage systems will be preserved to the extent feasible. Stormwater will be discharged at the natural location with an approved dispersion

¹⁶ Exhibits B.2 and C.2.

		device. No impact to downstream drainage is expected based upon analysis of downstream conditions.
5	On-site stormwater management	On-site stormwater management will be adequate as described in the stormwater site plan and drainage narrative.
6	Runoff treatment	Enhanced water quality treatment will be provided by two modular wetland systems for parking, the drive aisle, and fire turnaround. A bioretention cell will provide treatment for roadway runoff from 300 th St. NW.
7	Flow control requirements for new development or redevelopment	Flow control will be provided by a detention vault.
8	Detention or treatment in wetlands or wetland buffers	Stormwater discharge will meet wetland hydroperiod protection criteria.
9	Inspection, operation, and maintenance requirements	Tulalip Tribes provided sufficient operation and maintenance information for preliminary approval.

e. Impact Mitigation Fees (Chaps. 30.66A, 30.66B, and 30.66C SCC)

The project is not defined as development under SCC 30.91D.200 (2005) and is therefore not subject to parks and recreation impact mitigation fees otherwise required by chapter 30.66A SCC. School impact mitigation fees will not be assessed because the project is not a development as defined by SCC 30.91D.220 (2005).

f. Transportation (Title 13 SCC, EDDS §3-02, and SCC 30.66B.420)

i. Area Transportation

a. Concurrency Determination (SCC 30.66B.120)

County ordinances prescribe the measures and tests with which a development must comply. This project meets those measures and tests. The project must be approved if it does not affect a county arterial unit in arrears or cause a county arterial to go into arrears, i.e., fall below the minimum level of service established by ordinance.¹⁷ Transportation Service Area (TSA) A had no

¹⁷ SCC 30.66B.120(1) (2003). Public Works deemed the proposed development concurrent as of August 8, 2022.

1 arterial units in arrears or at ultimate capacity as of the date of submittal. The development will not
2 likely generate more than 50 peak-hour trips.¹⁸

3 b. Inadequate Road Conditions (IRC) (SCC30.66B.210)

4 Irrespective of the existing level of service, a development which adds at least three evening peak
5 hour trips to a place in the road system that has an Inadequate Road Condition (IRC) must
6 eliminate the IRC to be approved. The development will not affect any IRCs in TSA A with three or
7 more evening peak hour trips, nor will it create an IRC. Therefore, it is expected that mitigation will
8 not be required with respect to IRC and no restrictions to issuance of building permits, certificates
9 of occupancy, or final inspection will be imposed under SCC 30.66B.210.

10 c. Impact Fees

11 i. County

12 The proposed development must mitigate its impact upon the future capacity of the county's road
13 system by paying a road system impact fee.¹⁹ The road system impact fee will be the product of
14 the average daily trips (ADT)²⁰ created by the development multiplied by the amount per trip for
15 TSA D identified in SCC 30.66B.330. Based on the average daily trips projected for the facility,
16 Tulalip Tribes must pay \$49,104.32 for impacts to the county road system.

1	Number of Beds	32
2	ADT per Bed	8.87
3	New ADT (line 1 x line 2)	283.84
4	ADT Credit for Existing Trips	-0-
5	Net New ADT (line 3 – line 4)	283.84
6	TSA A mitigation fee per ADT	\$173.00
7	Total Road System Impact Fee (line 5 x line 6)	\$49,104.32
8	Number of new square feet to be constructed	31,000
9	Impact Fee per square foot (line 7 ÷ line 8)	\$1.58

¹⁸ 32 beds x 0.91 AM peak-hour trips/beds = 29.12 net new morning peak-hour trips. 32 beds x 0.67 PM peak-hour trips/bed = 21.44 net new evening peak-hour trips.

¹⁹ SCC 30.66B.310 (2003).

²⁰ Public Works accepted the ADT calculation using sample data from five similar sites.

1 *ii. Other Jurisdictions*

2 *a. State Highway Impacts (SCC 30.66B.710)*

3 When a development's road system includes a state highway, mitigation requirements will be
4 established using the county's SEPA authority consistent with the terms of the interlocal agreement
5 between the county and the WSDOT. This is consistent with the county's SEPA policy²¹ through
6 which the county designates and adopts by reference the formally designated SEPA policies of
7 other affected agencies for the exercise of the county's SEPA authority.

8 No state highway mitigation payment will be required because no projects on Exhibit C of the
9 interlocal agreement between WSDOT and the county will be affected by three or more directional
10 trips from the development.

11 *b. Cities (SCC 30.66B.710)*

12 The county has reciprocal traffic mitigation interlocal agreements with the cities of Arlington and
13 Stanwood. The proposed project will not sufficiently affect the road network of the city of Stanwood
14 as defined by the interlocal agreement to require a mitigation payment to the city.

15 With respect to Arlington, Tulalip Tribes contends that project will not trigger any mitigation fees
16 under the interlocal agreement. Arlington disagreed and requested mitigation based upon the use
17 of mitigation measure two's mitigation zone map. However, an applicant can choose between
18 mitigation measure one or mitigation measure two. Measure one requires a mitigation impact
19 payment if one percent or more the development's evening peak-hour trips affect any
20 improvements identified in the comprehensive plan. Tulalip Tribes chose mitigation measure one
21 and no planned Arlington improvements will be affected by one percent or more of the
22 development's peak-hour trips. Therefore, Arlington's requested mitigation based on measure two
23 is not reasonably related to the impacts of the development as defined by the interlocal agreement
24 and will not be imposed.

25 ii. Project Site

26 a. Access

27 The development site will access the public road network on 300th St. NW. Sight distance at the
28 access point to the west is adequate, but sight distance to the east is not.²² Tulalip Tribes applied
29 for a deviation from the Engineering Design and Development Standards (EDDS) §3-08.²³ Tulalip

²¹ SCC 30.61.230(9) (2012).

²² Ex. C.7, p.5.

²³ PDS file no. 22-102225 WMD.

1 Tribes proposed restricting the access to right-in only from eastbound 300th St. NW and right-out
2 only from the development on to 300th St. NW. The County Traffic Engineer approved the
3 deviation, conditioned on installation of a median island to restrict turning movements.²⁴

4 b. Right of Way

5 The site fronts on 300th St. NW, a minor arterial usually requiring 40 feet of right of way on each
6 side of the center line. Only 35 feet exists on the development's side of the center line. An
7 additional five feet of right of way will be required. The additional right of way will not be credited
8 against the road mitigation payment because 300th St. NW is not in the impact fee's cost basis.

9 c. Internal Road System

10 No new public roads will be created within the development. A private commercial access and fire
11 lane will provide internal vehicular circulation.

12 d. Frontage Improvements (SCC 30.66B.410)

13 Full urban frontage improvements are usually required where the project abuts a public road.²⁵
14 Approval will be conditioned installation of asphalt concrete pavement 12 feet wide from the center
15 line with an eight-foot-wide paved shoulder. This work will not be credited against the county's road
16 impact mitigation fee because 300th St. NW is not in the impact fee's cost basis.

17 ADA ramps at the intersections of all the roads of the development must comply with minimum
18 ADA standard requirements for grades and landings as detailed in the current EDDS §4-05 D and
19 WSDOT Standard Plans F-40 series. A detail of each ADA ramp will be required in the
20 construction plans.

21 A horizontal clear/control zone is required along the parcel's frontage.²⁶ Existing or proposed fixed
22 object obstructions must be removed or relocated from this buffer for motorist safety, including
23 utility poles. The clear zone must be established as part of the frontage improvements which must
24 be implemented before the earlier of (a) approval of the final plat or (b) issuance of any occupancy
25 certificate. The clear zone will be addressed during construction plan review.

26 e. Bicycle

27 The site borders a bicycle route shown on the county-wide bicycle facility system map. The
28 frontage improvements will provide the needed bicycle path.

²⁴ Ex. G.1.

²⁵ Snohomish County Department of Public Works Rule 4222.020(1).

²⁶ EDDS §§4-15, 8-03; WSDOT Utility Manual.

1 f. Signing and Striping

2 Approval will be conditioned on payment by Tulalip Tribes to the county for signing and striping
3 installed or applied by county forces.

4 **3. Not Materially Detrimental to Nearby Uses or Property**

5 The facility is not physically detrimental to uses or property in the immediate facility, nor is the
6 proposed use materially detrimental. The facility will be set back from the property lines and
7 visually screened by landscaping buffers. The architectural elements of the proposed facility are
8 consistent with the area.²⁷ The buildings are a single story with sloped roofs and residential style
9 window design and spacing. The buildings are therefore architecturally consistent with area
10 development and not detrimental to nearby uses or property. External speakers or public address
11 systems will not be allowed, nor will exterior light fixtures without full cut-off features that prevent
12 glare and light pollution. Parking will be behind the buildings; it will not look a strip mall was
13 transplanted from the suburbs to a rural area. Water will be provided by the city of Stanwood and
14 the facility will not impair any neighboring wells or the aquifer. Too, the on-site sewer system will be
15 designed and installed consistent with health department requirements that will protect wellheads
16 of other property in the area.

17 **4. Compatibility with Site and Surrounding Property**

18 As found above, the proposed facility is visually compatible with the site and surrounding property.
19 The buildings are consistent with the scale of barns, landscaping will screen them visually, and
20 parking will be hidden from view. The wetlands will be protected by a recorded critical area site
21 plan and buffers. Stormwater will be collected, detained, treated, and discharged at its historic
22 location at a rate and volume to maintain the hydroperiod of the wetlands.

²⁷ Ex. B.4.

1 **V. CONCLUSIONS**

2 1. The Hearing Examiner has authority to approve conditional use permits. SCC 30.42C.020
3 (2003); SCC 30.42C.100 (2012); SCC 30.70.025 (2021); SCC 30.72.025 (2012).

4 2. The proposal is consistent with the county's comprehensive plan, complies or can comply
5 with the applicable requirements of title 30 SCC, will not be materially detrimental to the uses or
6 property in the immediate vicinity, and is compatible with, and incorporates specific features,
7 conditions, or revisions that ensures it responds to, the existing or intended character, appearance,
8 quality of development, and physical characteristics of the site and surrounding property.²⁸

9 2. The Hearing Examiner concludes that Tulalip Tribes met its burden of showing the criteria
10 established by county code have been met. The proposal is consistent with the comprehensive
11 plan, county codes, the type and character of land use permitted on the project site, and applicable
12 design and development standards, subject to the conditions described below.

13 3. The Hearing Examiner concludes that adequate public services exist to serve the proposed
14 project.

15 4. The proposed project will make adequate provisions for public health, safety, and general
16 welfare with conditions as described below.

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

19 6. Any conclusion of law in this decision which should be deemed a finding of fact is hereby
20 adopted as a finding of fact.

21 **VI. DECISION**

22 Based on the foregoing findings of fact and conclusions of law, the Hearing Examiner hereby
23 approves the conditional use permit, subject to the following conditions:

24 **VII. CONDITIONS**

25 ***A. Operating Conditions***

26 1. The facility and its operation shall comply with all applicable federal and state laws and
27 regulations, including those of the Washington State departments of Social and Health Services
28 and Health. If applicable state or federal standards and regulations change, the facility and its

²⁸ SCC 30.42C.100(1) (2012).

- 1 operation shall comply with the changed regulation within the timelines required by the revised
2 regulation.
- 3 2. The use of external speakers or an external public address system is prohibited.
- 4 3. Patients shall not be discharged as pedestrians at the facility's location. Discharge plans shall
5 include transportation from the facility to the patient's next residence. For example, a patient
6 should not be allowed to walk out the facility's doors on discharge except to a waiting vehicle
7 that will transport them to their next residence, such as a friend, family, or caregiver's vehicle,
8 medical transport vehicle, taxi, or shared ride service vehicle.
- 9 4. Tulalip Tribes will develop written procedures for notification of the public in case of elopement.
10 The procedures will be developed in consultation with law enforcement and with due regard for
11 privacy and safety of the patient and community. The procedures may provide for different
12 notification procedures and recipients for different situations. The procedures will be available
13 to the public upon request and a copy provided to PDS. The procedures shall be finalized prior
14 to occupancy and shall be updated no less often than every three years.
- 15 5. The facility will be staffed at a ratio of at least one clinical staff per four patients, unless
16 subsequent standards or best practices identify a higher ratio of staff to patients.
- 17 6. All approved landscaping shall be maintained after installation. Dead or significantly damaged
18 plants and other landscaping material shall be replaced within three months of the death or
19 damage. PDS may authorize delay in replacement up to 180-days when plant death or damage
20 occurs outside the normal planting season.
- 21 7. Buildings shall be equipped with NFPA 13 automatic sprinkler systems and NFPA 72 fire alarm
22 systems, which shall be maintained in good working order.
- 23 8. All exterior lighting installed initially or in the future shall prevent glare and light pollution on
24 adjacent properties by being shielded, directed downward, and have full-cutoff features. All site
25 area lighting shall be equipped with (a) motion sensors and (b) integral photocells for dusk to
26 dawn operation. All building-mounted exterior lighting shall be controlled by dusk to dawn
27 sensors.
- 28 9. Access from and to 300th St. NW shall be restricted to right-in/right-out only, as required by the
29 EDDS deviation approved by the County Traffic Engineer.²⁹
- 30 10. Minor and major revisions to the administrative site plan shall be subject to SCC 30.70.210 or
31 30.70.220.

²⁹ PDS file no. 22-102225 WMD.

1 11. Nothing in this approval excuses Tulalip Tribes, an owner, lessee, agent, successor or assigns
2 from compliance with any other federal, state, or local statutes, ordinances, or regulations
3 applicable to this project.

4 **B. Development Conditions**

5 **1. General**

6 12. Exhibit B.1 received by PDS on August 22, 2022 shall be the official site plan. No changes to
7 the scope or configuration are permitted without prior PDS approval. Any discrepancies
8 between the approved site plan and title 30 SCC shall be resolved in favor of title 30 SCC.

9 13. Exhibit B.3 received by PDS on August 22, shall be the approved preliminary landscaping
10 plan. Any discrepancies between the approved site plan and title 30 SCC shall be resolved in
11 favor of title 30 SCC.

12 **2. Prior to Commencement of Any Work**

13 14. No on-site construction activity other than surveying and marking is authorized unless and until
14 the required plan approvals have been obtained.

15 15. Boundary line adjustment 22-104576 BLA shall be recorded, and the recording number shall be
16 provided to PDS.

17 16. Tulalip Tribes shall have installed advance warning signs that warn drivers of construction
18 vehicles entering and exiting the site. The signs and locations shall be approved by the county.
19 The signs shall remain in place until the access point is restricted to right-in and right-out only.

20 17. A landscape maintenance security may be required in accordance with SCC 30.84.150 if
21 Tulalip Tribes requests a planting delay and PDS concurs with the suitability of the delay.

22 18. Tulalip Tribes must temporarily mark the boundary of all Critical Area Protection Areas (CAPAs)
23 required by chapter 30.62A SCC and the limits of the proposed site disturbance outside of the
24 CAPA, using methods and materials acceptable to the county.

25 19. A right-of-way use permit is required for work within the county road right-of-way.

26 20. Tulalip Tribes shall obtain the permits required for the facility, including a land disturbing activity
27 permit required by chapters 30.63A and .63B SCC.

28 21. The application for a land disturbing activity permit shall include:

29 a. A proposed final landscaping plan generally consistent with the approved preliminary
30 landscaping plan. The final landscaping plan shall include specifications for design and
31 locations for CAPA signs and split rail fencing.

Residential Treatment Facility North

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Decision Approving Conditional Use Permit with Conditions

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- 1 b. Revised civil and landscape plans that correctly identify the wetlands as wetlands A, B, and
2 C and are consistent with the approved *Wetland Buffer Mitigation Plan* written by Widener
3 and Associates and *Wetland and Fish and Wildlife Habitat Assessment Report* written by
4 Soundview Consultants, LLC dated January 26, 2022.
- 5 c. A final mitigation plan based on the approved mitigation plan contained in the *Wetland Buffer*
6 *and Mitigation Plan* written by Widener and Associates dated June 16, 2022, and revised
7 August 19, 2022. The mitigation plan shall be included as a plan sheet(s) in the land
8 disturbing activity plan set. Any temporary or permanent impacts resulting to Wetlands A
9 and B from the proposed culvert replacement shall be accounted for in the final mitigation
10 plan. Culvert designs and specifications shall be provided in the land disturbing activity
11 construction plans.
- 12 d. The landscape plan review fee. SCC 30.86.145(1).
- 13 e. A full drainage plan pursuant to chapters 30.63A and 30.63B SCC.

14 22. The land disturbing activity permit shall include:

- 15 a. Conditions that incorporate the inadvertent discovery protocols contained in the Cultural
16 Resources Assessment for a Proposed 32-Bed Behavioral Health Center, prepared by
17 Drayton Archaeology, dated January 5, 2022.
- 18 b. The following text required by SCC 30.32B.210:³⁰

19 Your real property is on, adjacent to, or within 1,300 feet of designated farmland;
20 therefore, you may be subject to inconveniences or discomforts arising from
21 agricultural activities, including but not limited to, noise, odors, fumes, dust,
22 smoke, the operation of machinery of any kind (including aircraft), the storage
23 and disposal of manure, the application by spraying or otherwise of chemical or
24 organic fertilizers, soil amendments, herbicides and pesticides, hours of
25 operation, and other agricultural activities.

26 Snohomish County has adopted an Agricultural Lands Regulations (chapter
27 30.32B SCC) which may affect you and your land. You may obtain a copy of
28 chapter 30.32B SCC from Snohomish County.

29 A provision of chapter 30.32B SCC provides that "agricultural activities
30 conducted on designated farmland in compliance with acceptable agriculture

³⁰ SCC 30.32B.210(2) (2018) requires the disclosure in all development permits. Although "development permit" is undefined in county code, and "development" is defined in chap. 30.91D SCC in a way that does not include this work, the definition of "development activity" includes land disturbing activity. SCC 30.91D.240 (2003).

1 practices are presumed to be reasonable and shall not be found to constitute a
2 nuisance unless the activities have a substantial adverse effect on the public
3 health or safety."

4 This disclosure applies to the real property upon any development or building
5 permit approval; or, in the case of real property transfers, the disclosure applies
6 to the subject property as of the date of the transfer. This disclosure may not be
7 applicable thereafter if areas designated as farmland are changed from the
8 farmland designation.

9 Prior to issuance of the land disturbing activity permit:

10 23. Tulalip Tribes shall obtain approval of its on-site sewer system design from the Health
11 Department and provide a copy of the design and approval to PDS.

12 24. Tulalip Tribes shall record the following with the County Auditor and provide PDS with a copy of
13 the recorded document and Auditor's file number:

14 a. Stormwater facility easement.

15 b. Off-site septic easement.

16 c. Declaration of covenant for maintenance of the pre-treatment system of the on-site sewer
17 system.³¹

18 d. A Critical Areas Site Plan (SCC 30.62.160) that designates critical areas and their buffers
19 as Critical Area Protection Areas (CAPAs). A copy of the recorded plan and the Auditor's
20 recording file shall be provided to PDS. The plan must identify areas which are currently
21 being used for other purposes (e.g., mowed fields). The plan must contain the following
22 restrictive language:

23 Except as provided herein All CRITICAL AREA PROTECTION AREAS shall be
24 left permanently undisturbed in a substantially natural state. No clearing, grading,
25 filling, building construction or placement, or road construction of any kind shall
26 occur except: non-ground disturbing interior or exterior building improvements;
27 routine landscape maintenance of established, ornamental landscaping; non-
28 ground disturbing normal maintenance or repair; felling or topping of hazardous
29 trees based on review by a qualified arborist; removal of noxious weeds
30 conducted in accordance with chapter 16-750 WAC; maintenance or
31 replacement that does not expand the affected area of septic tanks and

³¹ See testimony of Evan Haines.

1 drainfields, wells, or individual utility service connections; data collection by non-
2 mechanical means; and non-mechanical survey and monument placement.

3 e. An executed land use permit binder.

4 25. Tulalip Tribes shall have paid:

5 a. A landscape site inspection fee consistent with SCC 30.86.145(3).

6 b. The amount required by the county for installation of signs and striping. SCC 13.10.180.

7 **3. Prior to Combustible Construction**

8 26. Tulalip Tribes shall have provided PDS with a final certificate of water availability that verifies all
9 hydrants have been installed, are charged and operational, and the minimum required fire flow
10 can be met.

11 **4. Prior to Final Inspection of the Land Disturbing Activity Permit**

12 27. The high decorative screen fence detailed on sheet L-520 of the approved preliminary
13 landscape plan must be satisfactorily installed adjacent to the parking lot, as depicted on
14 sheets L-210, L-211, and L-212 of the preliminary landscape plan.

15 28. All CAPA boundaries shall have been permanently marked on the site prior to final inspection
16 by the county, with both CAPA signs and adjacent markers which can be magnetically located
17 (e.g., rebar, pipe, or 20 penny nails). Tulalip Tribes may use other permanent methods and
18 materials if they are approved by the county before installation. Where a CAPA boundary
19 crosses another boundary (e.g., lot, tract, plat, or road), a rebar marker with surveyors' cap and
20 license number must be placed at the line crossing.

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

26 30. The final mitigation plan shall have been implemented to the satisfaction of the county.

27 31. Mitigation maintenance and warranty security shall have been provided in accordance with the
28 mitigation and warranty security requirements of chapter 30.84 SCC to ensure that the
29 mitigation meets the performance requirement targets contained in the approved mitigation
30 plan.

31 32. Split-rail fencing shall be satisfactorily installed around the boundary of CAPA.

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1 **5. Building Permits**

2 33. The architectural plans submitted for building permit review shall comply with all applicable
3 building and fire code requirements and with conditions 7 (automatic fire sprinklers and alarms)
4 and 8 (exterior lighting).

5 34. Prior to building permit issuance:

- 6 a. Tulalip Tribes shall provide PDS with a copy of the Snohomish County Department of
7 Health's approval of the on-site sewer system installation.
- 8 b. Tulalip Tribes shall pay an impact fee to Snohomish County for traffic impacts on the
9 county's road system in the amount of \$49,104.32. The impact fee shall be distributed to
10 each Transportation Service Area in accordance with SCC 30.66B.340, as indicated in the
11 allocation table below. This payment may be made proportionately with each building
12 permit.

Road System Impact Fee Allocation Table	
To TSA	Total Amount
TSA A	\$16,312.46
TSA B	\$4,556.88
TSA C	\$373.19
TSA D	\$21,055.93
TSA E	\$2,293.17
TSA F	\$4,512.69
Total Owed: \$49,104.32	

- 13
- 14 c. Tulalip Tribes shall have deeded five feet as right of way along the property frontage on
15 300th Street NW for a total of 40 feet from the center line of the right of way, or as determined
16 by the Department of Public Works.

17 35. As required by SCC 30.32B.210, the following disclosure language of SCC 30.32B.220 shall be
18 included on the commercial building permit:

19 Your real property is on, adjacent to, or within 1,300 feet of designated farmland;
20 therefore, you may be subject to inconveniences or discomforts arising from
21 agricultural activities, including but not limited to, noise, odors, fumes, dust, smoke,
22 the operation of machinery of any kind (including aircraft), the storage and disposal
23 of manure, the application by spraying or otherwise of chemical or organic fertilizers,
24 soil amendments, herbicides and pesticides, hours of operation, and other
25 agricultural activities.

1 Snohomish County has adopted an Agricultural Lands Regulations (chapter 30.32B
2 SCC) which may affect you and your land. You may obtain a copy of chapter 30.32B
3 SCC from Snohomish County.

4 A provision of chapter 30.32B SCC provides that "agricultural activities conducted on
5 designated farmland in compliance with acceptable agriculture practices are
6 presumed to be reasonable and shall not be found to constitute a nuisance unless
7 the activities have a substantial adverse effect on the public health or safety."

8 This disclosure applies to the real property upon any development or building permit
9 approval; or, in the case of real property transfers, the disclosure applies to the
10 subject property as of the date of the transfer. This disclosure may not be applicable
11 thereafter if areas designated as farmland are changed from the farmland
12 designation.

13 **6. Prior to Occupancy**

14 36. The elopement notification procedures required by condition 4 shall be finalized and a copy
15 provided to PDS.

16 37. Prior to installation of the proposed monument sign, Tulalip Tribes shall obtain a sign permit.
17 The proposed monument sign shall substantially match the proposed monument sign on the
18 conditional use application signage plan and be located as shown on the approved site plan.

19 38. All required landscaping, including perimeter, parking, and site, shall be installed, and a
20 qualified landscape designer shall certify to PDS that the installation complies with county code
21 and the approved plans.

22 39. All fire hydrants shall have been equipped with the following:

23 a. A 4-inch Storz steamer port.

24 b. The top of the hydrant shall be painted pursuant to the level of service provided. The tops
25 of the hydrants shall be painted blue because the level of service provided is greater than
26 1,500 gpm.

27 40. Tulalip Tribes shall have installed blue street reflectors hydrant side of the center line to assist
28 approaching emergency vehicles apparatus to locate the hydrant.

29 41. Tulalip Tribes shall have installed all fire lane pavement striping per the approved site plan. The
30 fire lane shall be labeled "No Parking Fire Lane" every 50 feet.

31 42. Tulalip Tribes shall have constructed rural frontage improvements along the parcel's frontage
32 on 300th Street NW to the satisfaction of the county.

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1 43. The access point shall be restricted to right-in/right-out only and the construction of this access
2 restriction will be to the satisfaction of the county

3 **C. Termination and Expiration**

4 44. This conditional use permit shall expire:

- 5 a. Five years from the date of this approval if the proposed use has not commenced (SCC
6 30.70.140); or
- 7 b. One year after the site ceases to be used as a secure inpatient behavioral health facility.

8 45. This conditional use permit shall terminate if:

- 9 a. Conditions of this permit are violated and not promptly corrected;
- 10 b. Conditions of this permit are repeatedly violated, even if promptly corrected;
- 11 c. Any license or permit required by state or other law or regulation for operation of the facility
12 expires or is terminated; or
- 13 d. Applicable federal, state, or local laws or regulations are violated and not promptly corrected.

Decision issued this 7th day of March, 2023.

Peter B. Camp

Peter B. Camp
Hearing Examiner

1 **VIII. EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

2 The decision of the Hearing Examiner is final. Any party of record petition the Hearing Examiner to
3 reconsider the decision and any party of record may appeal the decision to the County Council.
4 However, reconsideration by the Hearing Examiner may also be sought by a party of record. The
5 following paragraphs summarize the reconsideration and appeal processes. For more information
6 about reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective
7 Hearing Examiner and Council Rules of Procedure.

8 ***Reconsideration***

9 Any party of record may request reconsideration by the Hearing Examiner from the date of this
10 decision. A petition for reconsideration must be filed in writing with the Office of Hearings
11 Administration, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett,
12 Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) by
13 hand delivery, US mail, or email³² **on or before March 17, 2023**. There is no fee for filing a petition
14 for reconsideration. The petitioner for reconsideration shall mail or otherwise provide a copy of the
15 petition for reconsideration to all parties of record on the date of filing. SCC 30.72.065.

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

22 The grounds for seeking reconsideration are limited to the following:

- 23 (a) The Hearing Examiner exceeded his jurisdiction;
- 24 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- 25 (c) The Hearing Examiner committed an error of law;
- 26 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the
27 record;
- 28 (e) New evidence is discovered which could not reasonably have been produced at the hearing
29 and which is material to the decision; or

³² Hearing.Examiner@snoco.org.

1 (f) The applicant proposed changes to the application in response to deficiencies identified in
2 the decision.

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

6 ***Appeal***

7 An appeal to the County Council may be filed by any aggrieved party of record **on or before**
8 **March 21, 2023**. Where the reconsideration process of SCC 30.72.065 has been invoked, no
9 appeal may be filed until the reconsideration petition has been decided by the hearing examiner.
10 An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the
11 County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on
12 appeal to the County Council shall be limited to those issues raised in the petition for
13 reconsideration.

14 Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the
15 Department of Planning and Development Services, 2nd Floor, County Administration-East
16 Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000
17 Rockefeller Avenue, Everett, WA 98201), and shall be accompanied by a filing fee in the amount of
18 five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged
19 to a department of the County. The filing fee shall be refunded in any case where an appeal is
20 summarily dismissed in whole without hearing under SCC 30.72.075.

- 21 1. Scan the original manually signed (handwritten) copy of the appeal document;
- 22 2. Send your appeal as an email attachment to epermittech@snoco.org. Please include your
23 phone number where you can be reliably reached.
- 24 3. Staff will call you to collect your credit card information and process your payment.
- 25 4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA 98201.

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

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

- 34 (a) The decision exceeded the Hearing Examiner's jurisdiction;
- 35 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- 36 (c) The Hearing Examiner committed an error of law; or

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1 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by
2 substantial evidence in the record. SCC 30.72.080

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

6 Staff Distribution:

7 Department of Planning and Development Services: Rebecca Samy

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

	Name	Address	City	State	Zip	E-Mail	Concerns
POR & Agency List	22-102230-CUP	Residential Treatment Facility North	Hearing: Jan 24, 25 & 26 2023, 9:00 a.m. and 6:00 p.m. on Jan 26, 2023				
PUBLIC COMMENTS	Allen Saunders					allen.saunders@comcast.net	Comments/Opposition
	Allie Perry					sheparda@hotmail.com	Comments/ Opposition
	Allison Warner	316 Dove Drive	Camano Isla	WA	98282	allisivy@gmail.com	Comments/Support
	Amy Bergemeier					abergemeier@yahoo.com	Comments/ Opposition
	Anna Nepomuceno	1107 NE 45th St, Suite 330	Seattle	wa	98105	anepomuceno@namiwa.org	Comments/Support
	Anne Jones	7607 Stauffer Rd	Stanwood	WA	98292	anniewaynorth@yahoo.com / ajones@sno-i	Comments/ Opposition
	Brent Koos					brentkoos@gmail.com	POR/Comments
	Bruce Collins					bruceposu@frontier.com	Comment/Opposition
	Bruce & Peggy Kitting	7229 286th Pl NW	Stanwood	WA	98292	peggypoch321@yahoo.com	POR/Opposition
	Candace Trautman	1025 Aqua Vista Lane	Camano Isla	WA	98282	philandcandy@wavecable.com	Comments/Support
	Carol Dvorak Volkman					caroldvorak@outlook.com	Comments/support
	Carol Korpi					korpcj1@gmail.com	Comments/Support
	Catherine Carpenter	5128 Happy Hollow Road	Stanwood	WA	98292	uryurhere@earthlink.net	Comments/Opposition
	Chris Davis					cdavisbusiness@yahoo.com	POR/Comments
	Chris Larson					captlarski1@gmail.com	POR/Opposition
	Christi Bell					christimbell@yahoo.com	Comments/Opposition
	Christina Gravin					cgarvin86@gmail.com	Comments/Opposition
	Christina Robertson					moosetales@aol.com	Comments/Opposition
	Claudia Davidson					claudia@mainstreet yarn.com	Comments/Support
	CM Nate Nehring					nate.nehring@co.snohomish.wa.us	Comments
	Darren and Alyona Franz					izbushka.llc@gmail.com	Comments/Opposition
	David Fugate	Mount Baker Meadows				mountbakermeadows@gmail.com	POR/Comments
	Dean Van Vleet					dean.namiskagit@gmail.com	POR
	Deana Ottum					kezo@comcast.net	POR/Comments/Support
	Deb Hubenthal					deborahhubenthal@gmail.com	POR
	Debbie Jadwin					djadwin53@gmail.com	Comments/Opposition
	Dee Shishido	31707 West Lake Ketchum Road	Stanwood	WA	98292	tangles39@hotmail.com	POR/Opposition
	Delbert Fox	7229 300th St. NW	Stanwood	WA	98292		Comments/Support US Mail
	Diana Perry					diventuresinc@aol.com	Comments/Opposition
	Dinah Aldrich					dinahaldrich@gmail.com	Comments/Support
	Donna Knight					errymor@gmail.com	Comments
	Donna Olson	Board Chair for Take the Next Step				donnaolson@gmail.com	Comments/Support
	Elizabeth Reed	31522 West Lake Ketchum Road	Stanwood	WA	98292	elizabeth@interfacetechnw.com	Comments
	Frederic Berg	8202 317th Pl NW	Stanwood	WA	98292	fredericpberg@msn.com	POR Request/General Opposition
	Garry Olson	273rd Street NW	Stanwood	WA		stanwoodstumpy@hotmail.com	Comments/Opposition
	Gay-Lynn Beighton					gay-lynnb@namisnohomishcounty.org	POR Request/Comments
	Ganelle Swindler	4621 191st Pl NE	Arlington	WA	98223	swindler_gan@LIVE.COM	Comments/opposition
	G.L. DeBortole	30432 80th Ave NW	Stanwood	WA	98292	Geno6860@gmail.com	Comments/Opposition
	Gregg Small					gregg.small@wsu.edu	Comments/opposition
	Gretchen Saari					gsaari@msn.com	Comments/support
	Gwen Phillips					mcinlineq@gmail.com	Comments/Opposition
	Hank Tingler	7420 300th St NW	Stanwood	WA	98292	brownshoo@earthlink.net	POR Request
	Harvey Stackhouse					hstackhouse1948@gmail.com	Comments, safety, response times. Etc.
	James Hamilton	9718 271ST ST NW	Stanwood	WA	98292		Comments/opposition US Mail

Jan Iverson				janiverson4950@gmail.com	Comments/Opposition
Janet Graafstra				graafstrajan@gmail.com	Comment/Opposition
Jayson Russell				jaysonrussell@outlook.com	Comment/Opposition
Jeremiah Bauman				jeremiah.r.bauman@gmail.com	Comment/Support
Jessica Gilman				jessicamarie0125@aol.com	Comment/Opposition
Jim Bloss				jbloss132@gmail.com	POR request
Jim Dolan	10027 269th Place NW	Stanwood	WA	98292 jbdolan@jbdolan.com	comment/support
Joan Andrews	28130 Lund Hill Rd	Stanwood	WA	98292 andfre65@yahoo.com	POR/General Opposition
Joan Rave				fedheads@hotmail.com	Comment/Support
Joseph Chartier				jac98270@comcast.net	Comments/Support
Joseph Wilson				joeyw206@gmail.com	Comments/Support
Julia Katzenmaier				j_katzenmaier@icloud.com	Comments/Road Improvements
Julie Melville				julielmelville@gmail.com	POR Request/Comments Support
Kaitlinn Donham				kkaters20@aol.com	Comments/ Opposition
Kandyce Hansen	30627 87th AVE NW	Stanwood	WA	98292 kandycehansen1@gmail.com	Comments/Opposition
Kara Dineen	202 South Sams Street	Monroe	WA	98272 kara@ttns.org	Comments/Support
Karen Dickson				kranmom@hotmail.com	Comments/Opposition
Karen Schilde	5012 West View Drive	Everett	WA	98203 schildek@comcast.net	Comments/Support
Kathleen Chiles	21423 55th Ave SE	Woodinville	WA	98072 k.chiles22@live.com	Comments/Support
Kathleen McKee	PO Box 121	Stanwood	WA	98292 mckee.kdm@gmail.com	POR request
Kathy Richarson				kathymrichardson@yahoo.com	POR/Questions
Katie & Ed Farrey	27313 Pioneer Hwy	Stanwood	WA	98292 kffarrey@gmail.com	Comments/Support
Katie Mahoney				katie.a.mahoney@gmail.com	Comments/Support
Katie Weeks	32030 76th Ave NW	Stanwood	WA	98292 klweeks@gmail.com	Comments/Opposition
Kelsey Edwardsen				kelseyedwardsen@gmail.com	POR request
Kelsi Opland				KelsiOpland@hotmail.com	Comments/Opposition
Kevin & Jenell Jones				jordannursery@yahoo.com	Comments
Kiley Casey				caseykiley@me.com	Comments/Opposition
Kimberly Acuff				kimberly.acuff@gmail.com	Comments/Opposition
Kip Litehiser & Margo Townsend				litetown@frontier.com	Comments/Opposition
Konni Kasemeier				katokon@aol.com	Comment/Opposition
Kris Cimino				kriscimino@comcast.net	Comments/Opposition
Laura Oltman				horsenerd801@gmail.com	Comments/ Opposition
Lauren Simonds	1107 NE 45th St, Suite 330	Seattle	WA	98105 LSimonds@namiwa.org	POR/supportive
Leanna Partridge				leannapartridge@gmail.com	Comments/Opposition
Liliana Uribe				lilianadelourdes@yahoo.com	Support comment
Linda Godwin				lgodwin5601@gmail.com	Comments/support
Lynn White				ldaviswhite@yahoo.com	POR/Opposition
Lynne Donovan				lynne51donovan@yahoo.com	POR/Opposition
Marcy Imus				deterow@aol.com	Comments/ Opposition
Maria Arreola				Maria_arreola@nsbhaso.org	POR
Mark Schinman	8324 300th St NW	Stanwood	WA	98292 mark@schinman.com	Comments/Opposition
Marsha J. Hicks	6705 57th Steet NE	Marysville	WA	98270 marjon.hicks@gmail.com	Comments/Support
Mary Anne Osborn	PO Box 670	Edmonds	WA	98020 mawosborn@msn.com	Comments/Support
Mary Gage				meliz50@hotmail.com	Comments
MaryAnn Kridler	8120 300th Street NW	Stanwood	WA	98292 mi.cha.el9.mk@gmail.com	Comments/Opposition
Meagen Watne				meagen.watne@gmail.com	Comment

Meg McClure					megmccclure234@gmail.com	Comments/Support
Megan Tucker					malone812003@yahoo.com	Comments/Opposition
Melanie & Paul Sobotta					paulandmelanie@wavecable.com	Comments/Opposition
Melissa Walstad					braaten794@icloud.com	Comments
Michael Carmichael	28807 80th Av NW	Stanwood	WA	98292	stokewood33@yahoo.com	POR /Comments
Michael James					mjf62@yahoo.com	POR
Michele Meaker					michelem@namisnohomishcounty.org	Comments/Support
Mike Buckland					bucklandmike@hotmail.com	Comments/Support
Mike Hayslip					mikejenhayslip@hotmail.com	Comments/Support
Murphy Russell	7314 300th St NW	Stanwood	WA	98292	jnmr0617@gmail.com	Comments/Opposition
Nora Davis					lowcforme@gmail.com	Comments/support
North Stanwood Concerned Citizens					northstanwoodconcernedcitizens@gmail.c	Comments/Support
Pam Reeves	29106 68th Ave Nw	Stanwood	WA	98292	preevesrq@gmail.com	Comments
Pamela Thompson	29330 46th Drive NW	Stanwood	WA	98292	dogday@myfrontiermail.com	Comments/Opposition
Pat Wilder	8305 311th St NW	Stanwood	WA	98292	fanta002@aol.com	POR Request/Comments
Patrick & Heidi Wade					pjwade_454@yahoo.com	Comments
Patty Tingler					animalfancy@gmail.com	Comments
Paul & Candice Amrine	31009 76th Ave. NW	Stanwood	WA	98292	candipaul@aol.com	Comments/Opposition
Paul Miller	30733 76th Ave NW	Stanwood	WA	98292	millerpaulcutler@gmail.com	POR request
Paula Segale					PaulaSegale@msn.com	POR/Opposition
Peggy Kitting	7229 286th Pl NW	Stanwood	WA	98292	peggypooh321@yahoo.com>	Comments/Opposition
Peggy Miller	30733 76th Ave NW	Stanwood	WA	98292	pfmiller.49@gmail.com	POR Request/Comments/Opposition
Rachelle Cummings					rachellecummings92@gmail.com	POR/Opposition
Ralph & Amy Esary	4626 Village Road	Stanwood	WA	98292	esary5@frontier.com	Comments/Opposition
Ramona Snowden					ramona.thepest@frontier.com	Comments/Opposition
Richard Moparman					richardmoparman@aol.com	Comments/Opposition
Richard Vaughan					windenrayn@yahoo.com	POR
Rick Flores					rick.d.flores@gmail.com	POR/Questions
Rob Gilden					robgilden@yahoo.com	Comment/Opposition
Robert and Gloria Drury					drurylane1@yahoo.com	Comment
Robert James					lovelychevytruck@gmail.com	Comment/Opposition
Robin Carmichael					robinwood333@yahoo.com	Comments/Opposition
Robyn Gibson	8217 313th Pl NW	Stanwood	WA	98292	gibsonrobyn9@gmail.com	POR/Comments
Ron Howell					rhowell@wavecable.com	Comment/Opposition
Rose Dennis					roseden21@hotmail.com	Comment/Support
Roy Everett					royamy@wavecable.com	POR/Comments
Sam Keller					sam_c_Keller@hotmail.com	POR request
Sandra E. Sanford					sandysanford@comcast.net	Comments/Support
Sarah Gibson					s.j.gibs1@gmail.com	Comments/ Opposition
Saranne Moersch					saranne.moersch@gmail.com	Comments/Support
Sean Gillespie					omalley1537@yahoo.com	Comments/ Opposition
Sharon Swift					sharonbuddy@wavecable.com	Comments/support
Sheila Harrington	3520 214th St SW	Brier	WA	98036	sheharr@aol.com	Comment/Support
Shirley O					zocs@comcast.net	Comment/Support
Sid Roberts	10220 270th St SW	Stanwood	WA	98292	sid.roberts@stanwoodwa.org	Comments
Skyler Malan					Skyler.Malan@snoco.org	Comments/support
Sonya Johnson					sjohnson409@gmail.com	Comments/Support

Stacy Moore					stacyamoore@ymail.com	comments/support
Stan Burwell	8627 Myrtle Road	Stanwood	WA	98292	stanburwell78@gmail.com	Comments/Opposition
Stephen Hendrickson	29206 64th Ave NW	Stanwood	WA	98292	steve@hendricksonhomestead.com	POR
Steve Snowden					steve.snowden@frontier.com	Comments/Opposition
Stuart Heady	851 Westview Court	Stanwood	WA	98282	stuart.heady@gmail.com	POR/Supportive Comments
Sue Keller	PO Box 601	Stanwood	WA	98292	sjkeller61@gmail.com	POR request
Susann E Hendrickson					suehenhome@gmail.com	Comments/Opposition
Teresa Buckland					bucklandmike@hotmail.com	Comments/Support
Tim Schmitt	26910 92nd Ave NW, Suite C5, Box 115	Stanwood	WA	98292	lETHalwit@hotmail.com	POR request/questions
Tina Sharp					myemail2tina@yahoo.com	Comments/Opposition
Toni Reading					toni.reading@gmail.com	Comments/POR support
Tracy Sellers					tracy271wa@yahoo.com	POR request/questions
Trisha Pearce	PO Box 121	Stanwood	WA	98292	tpearcern@yahoo.com	Comments
Tyler Shellenberg					tyler.shellenberg@outlook.com	Comments/support
Vicki Russell	PO Box 626	Stanwood	WA	98292	vmranch@msn.com	POR/Opposition
Vivian Henderson					vmail@cedarcomm.com	Comment/Support

AGENCIES/TRIBAL

Amy Rusko	Ci of Arlington				arusko@arlingtonwa.gov	
Mary Wicklund for Mark Flury	PUD - electrical				MLWicklund@SNOPUD.com	
Roland Storme	WSDOT				stormer@wsdot.wa.gov	
Tansy Schroeder	Ci of Stanwood				Tansy.Schroeder@ci.stanwood.wa.us	
Kevin Hushagen	Ci of Stanwood Public Works				kevin.hushagen@ci.stanwood.wa.us	
Antonia Weiss	Health Department				antonia.weiss@snoco.org	
Lucas Larson	Health Department				lucas.larson@snoco.org	
Ian Huri	Sno Co Sheriffs Office				ian.huri@co.snohomish.wa.us	
Scott Robertson	Sno Co Sheriffs Office				Scott.Robertson@co.snohomish.wa.us	
Steve Goforth	North County EMS				sgoforth@northcountyfireems.com	
Rebecca Samy	Sno Co Pland & Dev Svcs				rebecca.samy@snoco.org	
Doug McCormick	Sno Co DPW				Doug.McCormick@so.snohomish.wa.us	
Shelley Klasse	Stanwood -Camano School District				rklasse@stanwood.wednet.edu	
Ann C. House	Staff Attorney for Snoqualmie Tribe				ann.harrie@snoqualmietribe.us	wetland information request
Gene Enick	Tulalip Tribe Cultural Division				genick@tulaliptribes-nsn.gov	Requesting Cultural Assessment
Todd Gray	Tulalip Tribe Environmental Division				toddgray@tulaliptribes-nsn.gov	Comments/Wetlands
Kelsey Payne	Snoqualmie Tribe/Water Quality Manager				kelsey.payne@snoqualmietribe.us	wetland information request
Richard Young	Tulalip Tribes Cultural Division				ryoung@tulaliptribes-nsn.gov	

MEDIA

Hannah Furfaro	Seattle Times				hfurfaro@seattletimes.com	POR Request
Izzie Lund	Stanwood Camano News				ilund@scnews.com	POR Request
Jacqueline Allison	Everett Herald				jacqueline.allison@soundpublishing.com	Inquiry for Hearing Date

APPLICANT/OWNER CONTACT PERSON

Kelsey Edwardson	Tulalip Tribes				kelsey@wenahagroup.com
Christine Phillips	BCRA				cphillips@bcradesign.com
Evan Haines	Korsmo				ehaines@korsmo.com
Keith Banes	Wenaha Group representing Tulalip Tribes				KeithB@wenahagroup.com
Zachary Crum	BCRA				zcrum@bcradesign.com
Dr. Charissa Fotinos	HCA				charissa.fotinos@hca.wa.gov
Dr. Keri Waterland	HCA				keri.waterland@hca.wa.gov

Jim Wolch
Aaron Van Aken

BCRA
Heath and Associates

jwoich@bcradesign.com
avanaken@heathtraffic.com

SEPA APPEAL (Dismissed 12/21/22)

APPEAL

Applicant

Christine Phillips, BCRA (Applicant) BCRA
Evan Haines, Korsmo (Applicant) Korsmo
Keith Banes, Wenaha Group (Applic Wenaha Group representing Tulalip Tribes
Jim Wolch, BCRA (Applicant) BCRA
Rhylee Marchand, Tulalip Tribes (App Counsel for Tulalip Tribes
Lisa Koop, Tulalip Tribes (Applicant) Counsel for Tulalip Tribes
Tyler Eastman, Tulalip Tribes (Applic Counsel for Tulalip Tribes

PDS

Rebecca Samy, PDS
Laura Kisielius, PDS
David Irwin, PDS
Erin Harker, PDS
Kenneth Crossman, PDS
Caleb Duhnke, PDS
Seth Henderson, PDS
Tom Barnett, PDS
Michael Dobesh, PDS
Mohammad Uddin, PDS
Douglas McCormick, PDS

Health Dist

Antonia Weiss, SnoHD
Lucas Larson, SnoHD

Appellant

Kathy Richardson, Appellant

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DMcCormick@co.snohomish.wa.us

antonia.weiss@snoco.org
lucas.larson@snoco.org

kathymrichardson@yahoo.com

EXHIBIT B.1
SITE PLAN

**OFFICIAL NOTICE
RECORDED BOUNDARY LINE ADJUSTMENT**

202302240105
BOUNDARY LINE ADJUSTMENT
Rec: 5277.50
2/24/23 11:15 AM 1 of 11
SNOHOMISH COUNTY, WA

Tulalip Tribes of WA
Return Name
6406 Marine Dr
Street Address
Tulalip WA, 98271
City, State, ZIP

2023 Taxes paid in full on Tax Parcel(s)
See below
By: Demetrius Date 2/24/23
Deputy Treasurer

Standard Cover Sheet



The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

Document Title(s)

- | | |
|--|----------|
| 1. Affidavit of Boundary Line Adjustment | 3. _____ |
| 2. Boundary Line Survey Map | 4. _____ |

Reference Number(s) of Related Documents

22-104576

202302245002

Additional reference numbers on page _____

Grantor(s)

- | | | | |
|-----------------------------|------------|----------------|-------|
| 1. The Tulalip Tribes of WA | _____ | _____ | _____ |
| Last Name | First Name | Middle Initial | |
| 2. _____ | _____ | _____ | _____ |
| Last Name | First Name | Middle Initial | |

Additional names on page _____

Grantee(s)

- | | | | |
|-----------------------------|------------|----------------|-------|
| 1. The Tulalip Tribes of WA | _____ | _____ | _____ |
| Last Name | First Name | Middle Initial | |
| 2. _____ | _____ | _____ | _____ |
| Last Name | First Name | Middle Initial | |

Additional names on page _____

Legal Description (abbreviated form: 1a lot, block, plat or section, township, range)

Lot 1 & 2 of Short Plat No. ZA9007384SP recorded under Auditor's File Number 9106140048

Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.

Assessor's Property Tax Parcel/ Account Number

32041800101400 & 32041800100100

Number not yet assigned

Additional numbers on page _____

AFTER RECORDING RETURN TO:

The Tulalip Tribes of WA
6406 Marine Dr
Tulalip WA,98271

Affidavit of Boundary Line Adjustment

RECEIVED
3/16/2022
PLANNING & DEVELOPMENT
SERVICES

File Number: 22 - 104576 - BLA
NE 1/4, NE 1/4, 18 SEC, 32 TWP, 4 RNG
1/4, 1/4, 18 SEC, 32 TWP, 4 RNG
1/4, 1/4, 18 SEC, 32 TWP, 4 RNG
1/4, 1/4, 18 SEC, 32 TWP, 4 RNG
 Zoning: R-5

Filed Under the Provisions of Chapter 30.41E SCC

STATE OF WASHINGTON)
) ss
 COUNTY OF SNOHOMISH)

Conveyor(s): Tulalip Tribes of WA

Receiver(s): Tulalip Tribes of WA

Tax Account Numbers: 32041800100100 & 32041800101400

Sewage Disposal Method: Septic Sewer Other: _____

Related Subdivision(s): Short Plat ZA9007384SP A.F. No. 9106140048

Record of Survey if recorded separately, AFN: _____

County Approval. The following approval must be signed by the appropriate County representative to verify that the boundary line adjustment meets all regulatory requirements.

SNOHOMISH COUNTY
 PLANNING AND DEVELOPMENT SERVICES
 Michael McCrary, Director

On the basis of the representations hereby submitted, I conclude that the proposed boundary line adjustment is consistent with applicable County plans and development regulations; now therefore, I hereby approve the proposed boundary line adjustment, in accordance with the provisions of Snohomish County Code Chapter 30.41E, this 11 day of August, 2022.

Barnett, Tom Notary Public for Snohomish County, WA
 Commission Expires 08/31/2024

 APPROVING OFFICIAL

Affidavit of Boundary Line Adjustment

Current Ownership. The undersigned are the respective owners of the following legally described parcels of property lying adjacent to each other (note by reference):

- a. Lot/Parcel 1 (Conveyor) constitutes approximately 15.55 acres or 677,482 square feet, as described in attached Exhibit , "6181Lot1-Before"
- b. Lot/Parcel 2 (Receiver) constitutes approximately 14.65 acres or 638,154 square feet, as described in attached Exhibit , "6181Lot2-Before"

Proposed Conveyance. The undersigned are considering an ownership transfer for a portion of land from the above-described conveyor's ownership to the receiver, which constitutes approximately 10.89 acres or 474,564 square feet and is more particularly described in attached Exhibit , "6181BLA-Transfer"

Boundary Line Adjustment. It is the intent of the undersigned that the proposed conveyance would constitute a boundary line adjustment. Accordingly, it is represented and understood by the undersigned that:

- a. The proposed conveyance would not detrimentally affect access to the described lots.
- b. Each resulting lot has an accessible building area as defined by SCC 30.41E, unless a building area does not exist on the original lot(s). This requirement shall not apply to lots that are zoned commercial or industrial.
- c. County approval of this boundary line adjustment does not guarantee or imply that the subject property may be developed or subdivided, and that the boundary line adjustment approval may not be grounds for approval of subsequent modification or variance requests.
- d. Each resulting lot has not been created through a subdivision exemption as set forth in SCC 30.41A.020(6) or 30.41A.020(7) or short subdivision exemption as set forth in SCC 30.41B.020(6) or 30.41A.020(7) within the last 5 years.
- e. No new lot would be created by the proposed conveyance, but rather the conveyed property together with the receiver's existing ownership, described on the preceding page would constitute a single lot and be as described in Exhibit constituting approximately 25.54 acres or 1,113,718 square feet, "6181Lot2-After"
- f. The conveyor's ownership after the proposed conveyance would not be reduced in size below the minimum required square footage nor would it violate other zoning requirements. The conveyor's ownership would now be as described in Exhibit constitutes approximately 4.66 acres or 202,918 square feet, "6181Lot1-After"

FOR ADDITIONAL OWNERSHIP AND CONVEYANCES, APPEND SEPARATE SHEETS AS APPROPRIATE.

Affidavit of Boundary Line Adjustment

Signatures. The signatures below are of the owner(s) of the property and must be signed in the presence of a notary public.

Conveyor: *Teri Gobin* 3-9-22
Signature Date
Teri Gobin
Printed Name

Conveyor: _____
Signature Date
Printed Name

Conveyor: _____
Signature Date
Printed Name

Conveyor: _____
Signature Date
Printed Name

Receiver: *Teri Gobin* 3-9-22
Signature Date
Teri Gobin
Printed Name

Receiver: _____
Signature Date
Printed Name

Receiver: _____
Signature Date
Printed Name

Receiver: _____
Signature Date
Printed Name

Lot 1 'BEFORE' Description

Lot 1 of Short Plat No. ZA9007384SP recorded under Auditor's File Number 9106140048, records of Snohomish County, Washington, being a portion of the Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.

Situate in the County of Snohomish, State of Washington.

Official Document

61811.otl-Before.docx

Lot 2 'BEFORE' Description

Lot 2 of Short Plat No. ZA9007384SP recorded under Auditor's File Number 9106140048, records of Snohomish County, Washington, being a portion of the Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.

EXCEPT that portion described as follows:

Beginning at the Southwest corner of Lot 2 of Short Plat ZA9007384SP, being also the Northeast corner of the South 198.00 feet of the Northeast Quarter of the Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.;
less the West 30.00 feet thereof;
thence North 01° 13'02" East along the West boundary a distance of 19.64 feet to an existing wood fence;
thence South 87°48'17" East along said fence a distance of 610.22 feet;
thence South 87°56'04" East along said fence a distance of 610.31 feet to a point on the East boundary of said subdivision, being 12.38 feet North of the North line of the South 198.00 feet of said subdivision;
thence South 00°21'31" West along the East line of said subdivision a distance of 12.28 feet to the North line of the South 198.00 feet of said subdivision;
thence North 88°12'55" West along the North line of said South 198.00 feet a distance of 1220.62 feet to the point of beginning.

Situate in the County of Snohomish, State of Washington.

61811.012-Before.docx

BCRA Transfer Parcel

That portion of Lot 1, Short Plat No. ZA9007384SP recorded under Auditor's File Number 9106140048, records of Snohomish County, Washington, being a portion of the Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.; lying west of the following described line:

Commencing at a point on the line common to Lot 1 and Lot 2, point bearing North 89°38'29" West, 249.06 feet from the Southeast corner of Lot 1 and the Northeast corner of Lot 2; thence North 27°41'00" West, 399.44 feet; thence North 2°01'26" East, 195.27 feet more or less to a point bearing North 87°58'34" West, 431.36 feet from the Northeast corner of said Lot 1, and point being 35 feet South of the North line of said Northeast Quarter, and terminus of said line.

Situate in the County of Snohomish, State of Washington.



Lot 1 'AFTER' Description

Lot 1 of Short Plat No. ZA9007384SP recorded under Auditor's File Number 9106140048, records of Snohomish County, Washington, being a portion of the Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.

EXCEPT that portion of said Lot 1, lying west of the following described line;

Commencing at a point on the line common to Lot 1 and Lot 2, point bearing North 89°38'29" West, 249.06 feet from the Southeast corner of Lot 1 and the Northeast corner of Lot 2; thence North 27°41'00" West, 399.44 feet; thence North 2°01'26" East, 195.27 feet more or less to a point bearing North 87°58'34" West, 431.36 feet from the Northeast corner of said Lot 1, and point being 35 feet South of the North line of said Northeast Quarter, and terminus of said line.

Situate in the County of Snohomish, State of Washington.



61811.011-After.docx

11 1

Lot 2 'AFTER' Description

Lot 2 of Short Plat No. ZA9007384SP recorded under Auditor's File Number 9106140048, records of Snohomish County, Washington, being a portion of the Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.,

EXCEPT that portion described as follows:

Beginning at the Southwest corner of Lot 2 of Short Plat ZA9007384SP, being also the Northeast corner of the South 198.00 feet of the Northeast Quarter of the Northeast Quarter of Section 18, Township 32 North, Range 4 East, W.M.;
 less the West 30.00 feet thereof;
 thence North $01^{\circ} 13'02''$ East along the West boundary a distance of 19.64 feet to an existing wood fence;
 thence South $87^{\circ}48'17''$ East along said fence a distance of 610.22 feet;
 thence South $87^{\circ}56'04''$ East along said fence a distance of 610.31 feet to a point on the East boundary of said subdivision, being 12.38 feet North of the North line of the South 198.00 feet of said subdivision;
 thence South $00^{\circ}21'31''$ West along the East line of said subdivision a distance of 12.28 feet to the North line of the South 198.00 feet of said subdivision;
 thence North $88^{\circ}12'55''$ West along the North line of said South 198.00 feet a distance of 1220.62 feet to the point of beginning.

TOGETHER WITH that portion of Lot 1, Short Plat No. ZA9007384SP, lying west of the following described line;

Commencing at a point on the line common to Lot 1 and Lot 2, point bearing North $89^{\circ}38'29''$ West, 249.06 feet from the Southeast corner of Lot 1 and the Northeast corner of Lot 2;
 thence North $27^{\circ}41'00''$ West, 399.44 feet;
 thence North $2^{\circ}01'26''$ East, 195.27 feet more or less to a point bearing North $87^{\circ}58'34''$ West, 431.36 feet from the Northeast corner of said Lot 1, and point being 35 feet South of the North line of said Northeast Quarter, and terminus of said line.

Situate in the County of Snohomish, State of Washington.



6181BLA1.n12-After.docx

**OFFICIAL NOTICE
SURVEY RECORDED**

20230323
11:28 AM
COUNTY CLERK
COUNTY OF SHOSHONE

LOT 1 BEFORE
 LOT 1 OF SHORT PLAT NO. Z490073845P RECORDED UNDER AUDITOR'S FILE NUMBER 2003022415002, RECORDS OF SHOSHONE COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 32 NORTH, RANGE 4 EAST, W.M.
 SITUATE IN THE COUNTY OF SHOSHONE, STATE OF WASHINGTON.

LOT 2 BEFORE
 LOT 2 OF SHORT PLAT NO. Z490073845P RECORDED UNDER AUDITOR'S FILE NUMBER 2003022415002, RECORDS OF SHOSHONE COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 32 NORTH, RANGE 4 EAST, W.M.
 EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 OF SHORT PLAT Z490073845P, BEING ALSO THE NORTHEAST CORNER OF THE SOUTH 198.00 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 32 NORTH, RANGE 4 EAST, W.M.;
 LESS THE WEST 30.00 FEET THEREOF;
 THENCE NORTH 01°13'02" EAST ALONG THE WEST BOUNDARY A DISTANCE OF 19.84 FEET TO AN EXISTING WOOD FENCE;
 THENCE SOUTH 87°48'17" EAST ALONG SAID FENCE A DISTANCE OF 610.32 FEET;
 THENCE SOUTH 87°26'28" EAST ALONG SAID FENCE A DISTANCE OF 610.31 FEET TO A POINT ON THE EAST BOUNDARY OF SAID SUBDIVISION, BEING 12.28 FEET NORTH OF THE NORTH LINE OF THE SOUTH 198.00 FEET OF SAID SUBDIVISION;
 THENCE SOUTH 60°21'31" WEST ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 12.28 FEET TO THE NORTH LINE OF THE SOUTH 198.00 FEET OF SAID SUBDIVISION;
 THENCE NORTH 88°25'55" WEST ALONG THE NORTH LINE OF SAID SOUTH 198.00 FEET A DISTANCE OF 1220.63 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SHOSHONE, STATE OF WASHINGTON.

LOT 1 AFTER
 LOT 1 OF SHORT PLAT NO. Z490073845P RECORDED UNDER AUDITOR'S FILE NUMBER 2003022415002, RECORDS OF SHOSHONE COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 32 NORTH, RANGE 4 EAST, W.M.
 EXCEPT THAT PORTION OF SAID LOT 1, LYING WEST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A POINT ON THE LINE COMMON TO LOT 1 AND LOT 2, POINT BEARING NORTH 89°28'29" WEST, 249.08 FEET FROM THE SOUTHEAST CORNER OF LOT 1 AND THE NORTHEAST CORNER OF LOT 2;
 THENCE NORTH 27°41'00" WEST, 397.44 FEET;
 THENCE NORTH 20°17'41" EAST, 155.33 FEET MORE OR LESS TO A POINT BEARING NORTH 87°26'28" WEST, 431.36 FEET FROM THE NORTHEAST CORNER OF SAID LOT 1, AND POINT BEING 25 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST QUARTER, AND TERMINUS OF SAID LINE.

SITUATE IN THE COUNTY OF SHOSHONE, STATE OF WASHINGTON.

LOT 2 AFTER
 LOT 2 OF SHORT PLAT NO. Z490073845P RECORDED UNDER AUDITOR'S FILE NUMBER 2003022415002, RECORDS OF SHOSHONE COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 32 NORTH, RANGE 4 EAST, W.M.
 EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 OF SHORT PLAT Z490073845P, BEING ALSO THE NORTHEAST CORNER OF THE SOUTH 198.00 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 32 NORTH, RANGE 4 EAST, W.M.;
 LESS THE WEST 30.00 FEET THEREOF;
 THENCE NORTH 01°13'02" EAST ALONG THE WEST BOUNDARY A DISTANCE OF 19.84 FEET TO AN EXISTING WOOD FENCE;
 THENCE SOUTH 87°48'17" EAST ALONG SAID FENCE A DISTANCE OF 610.32 FEET;
 THENCE SOUTH 87°26'28" EAST ALONG SAID FENCE A DISTANCE OF 610.31 FEET TO A POINT ON THE EAST BOUNDARY OF SAID SUBDIVISION, BEING 12.28 FEET NORTH OF THE NORTH LINE OF THE SOUTH 198.00 FEET OF SAID SUBDIVISION;
 THENCE SOUTH 60°21'31" WEST ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 12.28 FEET TO THE NORTH LINE OF THE SOUTH 198.00 FEET OF SAID SUBDIVISION;
 THENCE NORTH 88°25'55" WEST ALONG THE NORTH LINE OF SAID SOUTH 198.00 FEET A DISTANCE OF 1220.63 FEET TO THE POINT OF BEGINNING.

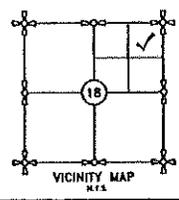
TOWNSHIP WITH THAT PORTION OF LOT 1, SHORT PLAT NO. Z490073845P, LYING WEST OF THE FOLLOWING DESCRIBED LINE:
 COMMENCING AT A POINT ON THE LINE COMMON TO LOT 1 AND LOT 2, POINT BEARING NORTH 89°28'29" WEST, 249.08 FEET FROM THE SOUTHEAST CORNER OF LOT 1 AND THE NORTHEAST CORNER OF LOT 2;
 THENCE NORTH 27°41'00" WEST, 397.44 FEET;
 THENCE NORTH 20°17'41" EAST, 155.33 FEET MORE OR LESS TO A POINT BEARING NORTH 87°26'28" WEST, 431.36 FEET FROM THE NORTHEAST CORNER OF SAID LOT 1, AND POINT BEING 25 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST QUARTER, AND TERMINUS OF SAID LINE.

SITUATE IN THE COUNTY OF SHOSHONE, STATE OF WASHINGTON.

AUDITOR'S CERTIFICATE
 FILED AND RECORDED THIS 23rd DAY OF Feb 2023
 AT 11:28 AM IN BOOK 11 OF _____ AT PAGE _____
 AT THE REQUEST OF SERRAN ENGINEERING AND SURVEYING, PLLC.
 G. Nathan Fall COUNTY AUDITOR
 G. Nelson DEPUTY COUNTY AUDITOR
 AP# 2003022415002

NOTE
 1. BASIS OF BEARING: WASHINGTON STATE PLAN COORDINATE SYSTEM, ZONE NORTH, FROM ALTA SURVEY RECORDED UNDER AUDITOR'S FILE NUMBER 20111025003 BEARING OF NORTH LINE OF SECTION 9 87°26'34" E.
 2. SURVEY PROCEDURE: STATIONED FIELD TRIANGULAR AND REVERSE GPS.
 3. INSTRUMENTATION USED: LEICA W550 THEODOLITE DISTANCE METER, LEICA NVA 14 GPS/GNSS RECEIVERS.
 4. AFFIDAVIT OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AP# 2003022410108

SURVEYOR'S CERTIFICATE
 THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF TULIP TRIBE IN FEBRUARY 2022.
 JOHN B. SERRAN, P.E., P.L.S., CERTIFICATE NO. 20618 DATE: 2-14-2023
 SERRAN ENGINEERING & SURVEYING, PLLC.
 2110 INTERSTATE DRIVE, SUITE 200
 MOORE, WYOMING, WY 82232



22-104676-BLA		DATE: AUGUST 11, 2022	
LOT 1 AND LOT 2, SHORT PLAT NO. Z490073845P IN A PORTION OF THE NE 1/4 OF THE NE 1/4 SECTION 18, T. 32 N., R. 4 E., W.M. FOR THE TULIP TRIBE			
FR. NO.	2003022415002	SCALE: 1"=100'	
MODULAR:	WSPH	SERRAN ENGINEERING & SURVEYING SERRAN ENGINEERING & SURVEYING SERRAN ENGINEERING & SURVEYING SERRAN ENGINEERING & SURVEYING	208 NO. 6170

Unofficial Doc

20230214002 Document M R V E R Rec: 1292.59 Page 1 of 2
 Recvd Date: 2/24/2023 11:18 AM Address: 8001, WA

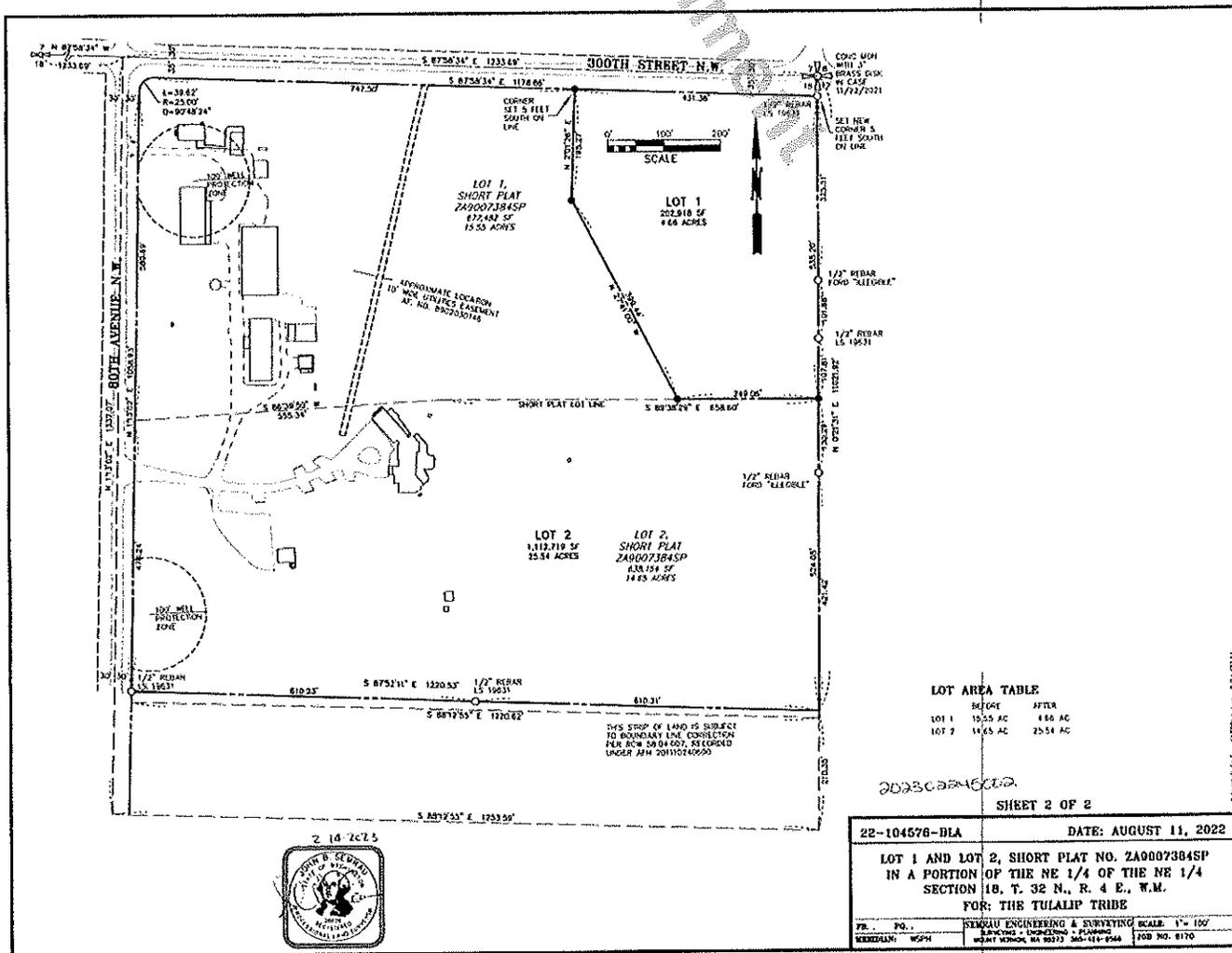


EXHIBIT M.28
ATTACHMENT E

APPLICANT'S CLOSING STATEMENT
REGARDING CUP

FEB. 3, 2023



2106 Pacific Avenue, Suite 300
Tacoma, WA 98402

Project Name: 32-Bed Residential Treatment Facility
No. 22-102230 CUP
Applicant's closing statement regarding CUP, February 3, 2023

This is the closing statement for responding to the Criteria for Approval of the Conditional Use Permit.

You have my original response to the criteria in Exhibit A-3. There were statements made specifically by Kathleen Richardson about failure to comply with the Comprehensive Plan, which is the first criteria for approval. I would like to clarify those comments here.

As mentioned by Ms. Samy during the hearing, this area has always been zoned R-5, long before the GMA and Comprehensive Plan added specific sections for Agricultural, Forest, and Mineral lands. The R-5 zone designation relates to the Rural Lands section in the Land Use Chapter of the Comprehensive Plan. Just as the R-5 designation is within the Rural zone classification and A-10 is in the Resource classification in the Municipal Code. See Table 30.10.020 from Municipal Code below.

30.21.020 Establishment of zones.

C

ZONE CATEGORY	ZONES	
RURAL	Rural Diversification	RD
	Rural Resource Transition – 10 Acre	RRT-10
	Rural 5-Acre	R-5
	Rural Business	RB
	Clearview Rural Commercial	CRC
	Rural Freeway Service	RFS
	Rural Industrial	RI
RESOURCE	Forestry	F
	Forestry and Recreation	F&R
	Agriculture-10 Acre	A-10

We had discussions early on with County staff about the Future Land Use Map (FLUM) designation of Local Commercial Farmland and were told that, yes, that designation existed on this site, but that their documentation over the years, detailed through various footnotes to the Comp Plan and Zoning code prescribed that this project follow the setbacks and standards for the proposed use in the R-5 zone. Our understanding, which was documented through the Pre-Application meeting notes is that this project needed to conform to SCC Chapter 30.23 and also SCC 30.23.110 (10), which requires the 30-foot setback.



2106 Pacific Avenue, Suite 300
Tacoma, WA 98402

This is from the Pre-App notes:

Chapter 30.23 SCC – Bulk Regulations

The table below displays the bulk regulations of the R-5 zone required for this project. Based on the submitted concept site plan, it appears that the proposal could with these bulk regulation requirements. Below is a screen shot of the applicable bulk matrix, SCC 30.23.030:

Table 30.23.030 Rural, Resource, Urban (Non-Residential) and Other Zone Categories Bulk Matrix

Category	Zone	Max. Bldg. Height (ft) ^{27,64}	Lot Dimension (ft) ⁵⁴			Setback Requirements From: (ft) ¹¹					Max. Lot Coverage ⁹
			Min. Lot Area ^{22,28}	Min. Lot Width	Min. Corner Lot Width	Commercial and Industrial Zones	Residential, Multifamily, and Rural Zones ¹³	Resource Lands ¹³		Water Bodies ¹²	
								Ag ²⁰	Forest ²¹		
Resource	F ²⁵	45 ⁶	20 ac ²	300	300	100 ¹³	100 ¹³	50	100 ¹⁰	25 ¹³	35%
	F&R ^{15,39}	30 ⁷	200,000 sq ft ²³	100	100	5	5	50	100 ¹⁰	25	35%
	A-10 ^{27, 29}	45	10 ac	none	none	5	5	50	100 ²²	25	none
Rural	RR1-10	45	10 ac	225	225	5	5	50	100 ¹⁰	25	35%
	R-5 ^{27, 28, 30, 40, 43}	45	200,000 sq ft ²⁴	165 ²⁴	165 ²⁴	5	5	50	100 ¹⁰	25	35%
	RD ²⁰	45	200,000	165	165	5	5	50	100 ¹⁰	25	35%
	RB	35	none	none	none	none	50	50	100	none	35%
	CRC	35 ¹²	none	none	none	none	25	50	100	none	50% ¹⁴ 30% ¹⁵

If the property adjacent to the site had been zoned Agricultural, the building would be required to be set back 50' from the property line. But it isn't. Like the project site, it is zoned R-5, and according to the table would allow a 5-foot setback.

Instead what triggers the 30' setback is the use of the Health Facility, SCC 30.23.110 (10):

(10) *Health and Social Service Facility, Level II.* All buildings must be at least 30 feet from all external property boundaries.

Ms. Richardson states that the property *should* be zoned Agricultural-10. But it isn't and has never been. It is therefore necessary to be consistent with the Rural Land Uses, but not with the Agricultural Land Uses. Policies and Objectives under LU 7 are applicable to Agricultural Lands and do not apply to the Rural Lands. The inconsistency of the FLUM designation is in the Agricultural Lands Section and this section was deemed to be not applicable to this site.



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Furthermore, in the Introduction to the Comprehensive Plan, the Plan details the Major Concepts and differentiates between Resource Areas and Rural Areas. The Plan states that the **GMA requires a "Rural Element" that includes lands "not designated for urban growth, agriculture, forest, or mineral resources" (RCW 36.70A.070(5)).**

As Ms. Richardson also stated, Rural Land Use Objective LU 6.B does apply.

"Encourage land use activities and development intensities that protect the character of rural areas, avoid interference with resource land uses, minimize impacts upon critical areas, and allow for future expansion of UGAs."

Yes, this objective *encourages* the standard uses that one would see in the area. It does not state that no other uses can be proposed, especially if care is taken to minimize impacts on critical areas, which we did, and with care in the design of the structures. The R-5 zone allows up to a 45-foot building height which would accommodate a three-story building (see table on previous page). This project chose to limit the height of the structure to a single story and to use residential materials, and to include additional landscape screening.

Lastly, Ms. Richardson lists the Rural Land Use and Resource Lands Development Goal DP-30 which desires to restrict new commercial and industrial enterprises from non-UGA land. This goal firstly uses the phrase "should" rather than any stricter terminology, plus it allows the exception of the following which we believe we fit into.

d. Low traffic and employment enterprises that benefit from a non-urban location due to large lots, vegetative buffers, etc.

With the additional clarifications on the compatibility with the Comprehensive Plan I believe we have fulfilled our burden of proof for the Conditional Use Permit criteria for approval.

Sincerely,

Christine Phillips, AICP
BCRA Senior Planner

From: [Tyler Eastman](#)
To: [Hearing.Examiner](#)
Cc: [Rhylee Marchand](#)
Subject: 22-102230 CUP
Date: Friday, February 3, 2023 2:32:52 PM
Attachments: [image001.png](#)
[Applicant's Final Statement - 2-3-2023.pdf](#)

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

Good afternoon Mr. Examiner,

Attached is the Applicant's Final Statement for submission as an exhibit for Case No. 22-102230 CUP.

Best,

Tyler

Tyler J. Eastman
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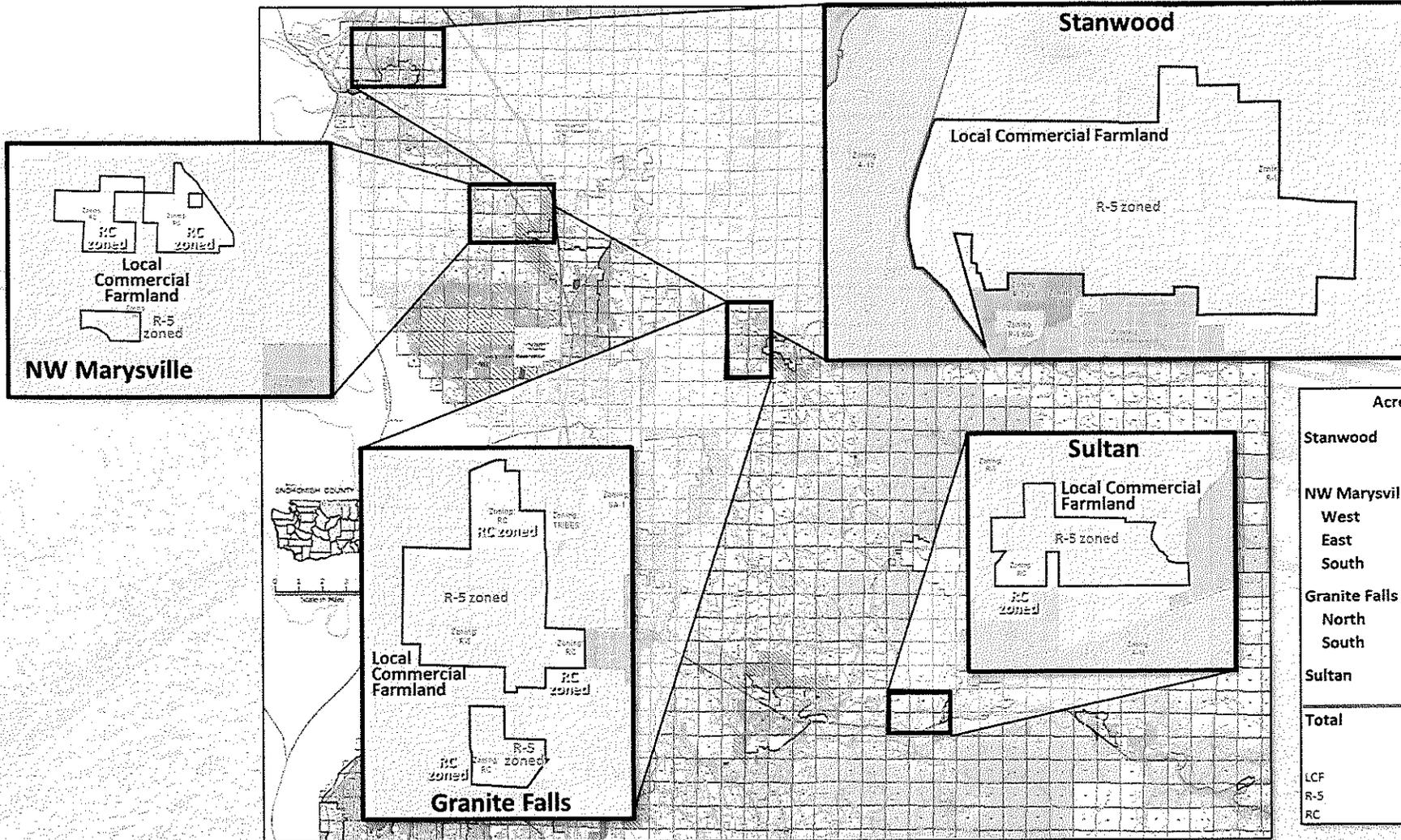


Tulalip Tribes Office Of The
**Reservation
Attorney**

ILLUSTRATIVE EXHIBIT ONLY

OVERLAY FUTURE LAND USE MAP
AND
OFFICIAL ZONING MAP (R-5)

Local Commercial Farmland and Zoning in Snohomish County



Acres by Designation			
Stanwood	LCF	R-5	RC
	2057.5	2057.5	
NW Marysville	LCF	R-5	RC
	181.6		181.6
	207.4		207.4
Granite Falls	LCF	R-5	RC
	634	470.18	163.82
Sultan	LCF	R-5	RC
	444.6	384.03	60.57
Total	3707.8	3062.12	645.68
		83%	17%
	LCF	Local Commercial Farmland	
R-5	Rural S Zoning		
RC	Rural Conservation Zoning		