

## **V Rebuttal**

## V. Rebuttal

V.5 Written Rebuttal of Applicant's Response from Tom Ehrlichman, Attorney for the Appellant, submitted via e-mail and received on April 18, 2023, at 4:54 p.m. (*corrected version received at 5:08 p.m. and accepted by Appellant*)

**Hearing Examiner exhibits listed in order as cited in appellant's written rebuttal**

M.1 Applicant, Testimony of Experts

**BEFORE THE COUNTY COUNCIL  
FOR SNOHOMOSH COUNTY**

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. 22-102230 CUP APPEAL

APPELLANTS' PREHEARING  
REPLY BRIEF

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

Appellants have met their burden of proof in this appeal and respectfully request that the County Council deny the Applicant's conditional use permit. The Hearing Examiner's Decision was contrary to law because it omitted any analysis of a comprehensive plan policy applicable to the property and specifically setting limits on use of land designated as Local Commercial Farmland (LCF). The Decision also omitted any mention of a development regulation that expressly prohibits the proposed residential use on this or any other LCF parcel reduced to less than 10 acres in size.

The Hearing Examiner was required to analyze the plan policy and code restriction concerning LCF in his Decision, contrary to the assertions in the Applicant's response to this appeal. The code governing review of CUP applications expressly requires this analysis because when a proposed use is inconsistent with the plan and code, the CUP "must be denied:"

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

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

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

2                                   . . . . .

3                                   Snohomish County Code (SCC) § 30.42C.100 (emphasis added). Since the Decision never contained  
4                                   this analysis for Policy LU-7.B.7 and Snohomish County Code § 30.28.120, the CUP must be denied.

5                                   The Applicant's Response Brief never explains why the Decision omits the required finding of  
6                                   these provisions, offering only a blanket assertion of a right to use LCF land for an institutional  
7                                   residence under the rural zoning designation, despite SCC § 40.42C.100's requirement that the CUP  
8                                   be consistent with the comprehensive plan and applicable development regulations.

9                                   The Appellants offer this Prehearing Reply Brief: (a) to demonstrate that the specific LCF  
10                                   policy and code section omitted from the Decision do apply to this proposed use; and (b) to  
11                                   demonstrate how the proposal violates the plan and code prohibitions on residential use of small-  
12                                   acreage LCF land. The rules of statutory construction are highlighted to respond to the Applicant's  
13                                   strained reading of the rural zoning code in a vacuum. The law requires giving effect to the County's  
14                                   statutory scheme for preservation of farmland under the Growth Management Act.<sup>1</sup>

15                                   **A. Relief Requested/ Proposed Findings and Conclusions.**

16                                   The Appellants request that Council issue a decision containing the following written findings  
17                                   and conclusions responding to each of the Applicant's arguments in response to this appeal:

- 18                                   (a) The CUP parcel has the following undisputed characteristics:
- 19   • Less than ten acres in size;
  - 20   • Designated "Local Commercial Farmland" in the comprehensive plan Future Land  
21   Use Map; and
  - 22   • Zoned (R-5) (not zoned "Agricultural-10");
- 23                                   (b) The Applicant proposes use of this LCF land for a non-agricultural, multi-dwelling  
24                                   residential use, involving construction of permanent institutional housing, paved  
25                                   parking areas, and roadway construction and maintenance;
- 26                                   (c) Due to the size of the parcel, the LCF farmland designation, and type of proposed use,  
27                                   the parcel is subject to Comprehensive Plan Policy LU-7.B.1 and SCC § 30.28.120;
- 28                                   (d) The proposed use of the land for residential dwellings on a 4.66-acre site<sup>2</sup> is  
                                       inconsistent with:

<sup>1</sup> Planning and Development services did not file a response to the appeal.

<sup>2</sup> None of the parties contests the validity of the prior Boundary Line Adjustment administrative approval, which rearranged the boundaries of the property into a 4.66-acre lot.

- Comprehensive plan policy LU-7.B.1 that specifically limits use of LCF land to agricultural uses on smaller parcels; and
  - SCC § 30.28.120 prohibiting non-agricultural uses on small parcels of LCF land;
- (e) The R-5 zoning of the property does not grant the proposed use outright; the proposed use is approvable only after a consistency review as part of a conditional use permit review and approval process;
- (f) SCC § 30.42C.100 containing the criteria for conditional use permit approval requires that the proposed use be consistent with the County's adopted protections for farmland in the comprehensive plan policy and applicable development regulations;
- (g) The Hearing Examiner Decision dated March 7, 2023 omitted this required consistency review and therefore the CUP must be denied under SCC § 30.42C.100; and
- (h) The Decision is reversed and the conditional use permit is denied.

These findings and conclusions are offered in reply to the issues raised in the Applicant's prehearing response brief.

**B. The Applicant's Response Brief Does not Justify the Omissions in the Decision.**

Nowhere in its response brief does the Applicant explain or justify why the Hearing Examiner Decision omits any mention of Comprehensive Plan Policy LU-7.B.1, when the criteria for approval in SCC § 30.42C.100 expressly required a consistency determination with relevant portions of the plan. As noted in the appeal, the Decision at Page 8 contains a section entitled "Consistency" but omits any mention of the following specific comprehensive plan policy applicable to this case:

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

Policy LU-7.B.1 (emphasis added).<sup>3</sup> Like the Decision, the Applicant never cites to this policy and makes no effort to explain how the project is consistent with it.

The plain language of the LCF policy continues to operate to restrict use of the LCF parcel after the BLA and thus should have been considered in the CUP Decision. Because the Decision offers no detail on Policy LU-7.B.1, and the Applicant seeks to divert attention from it, Appellants' seek to provide a clear record for Council of exactly why the policy applies in this case, as follows.

**C. Comprehensive Plan Policy LU-7.B.1 Applies to the Facts of this Case.**

Policy LU-7.B.1 applies to this CUP under the facts of this case, all of which are uncontested.

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<sup>3</sup> Appellant Richardson brought the policy to the Hearing Examiner's attention in a comment letter prior to hearing.

1 All agree that the lot in question had been divided into a 4.66 parcel "less than 10 acres in size,"  
2 through a very recent boundary line adjustment (not at issue in this appeal), thus matching the first  
3 element of the LCF policy (parcel size less than ten acres). All agree that the site is zoned "R-5" and  
4 therefore is "not zoned Agricultural-10," thus meeting the second element of the LCF policy (non-  
5 farmland zoning). All agree that the proposed site will not be "used exclusively for agricultural  
6 purposes:" the proposal is for a residential treatment facility – a non-agricultural use, thus matching  
7 the third element of the policy. All of the factual elements described in the policy match this site and  
8 this proposal. Therefore, Policy LU-7.B.1 applies to this CUP proposal. The proposed findings,  
9 above make these elements clear.

10 **D. The R-5 Zoning Does not Authorize the Proposed Use Outright;  
11 Plan Consistency is Required Through the CUP Review Process.**

12 The Applicant's Prehearing Brief asserts repeatedly that the question of use should focus solely  
13 on the fact that the property is zoned R-5. The Applicant reasons that, because the proposed use  
14 appears on the R-5 zoning matrix, the comprehensive plan designation and policy protecting LCF  
15 lands are either irrelevant or "in conflict" with the R-5 zoning. The premise of that argument is that  
16 the use is permitted outright under the R-5 zoning, which it is not. But that is not what the zoning  
17 matrix says. It requires that the use be examined for consistency with the comprehensive plan and the  
18 County's applicable farm protection ordinances. This reply brief shows how the R-5 zoning can and  
19 should be interpreted consistent with the plan and code, keeping intact the County's agricultural  
20 planning under the Growth Management Act. RCW 36.70A.070(1), .170 (GMA).<sup>4</sup> Treating the R-5  
21 zoning as supreme is inconsistent with the plan.

22 All the R-5 zoning matrix says is that a Level II Health Facility *can be* authorized through a  
23 CUP process, *not that the listed use is permitted outright*. This is a critical principle for the outcome  
24 of this case, because the CUP criteria are invoked by that R-5 matrix. The Level II Health Facility is  
25 authorized only if it meets all of the tests set forth in the CUP approval criteria, at SCC § 30.42C.100,

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26  
27 <sup>4</sup> As explained in the Appellants' opening Appeal brief, the County Council established a comprehensive program  
28 for preservation of GMA natural resource land. RCW ch. 36.70A.030(3) (Agriculture), .070(1) (Land Use Element),  
.170 (Natural Resource Lands, including agricultural lands of long term commercial significance). As part of that  
program, the Council adopted an entire new chapter of code dedicated to regulation of agricultural land designated in  
the comprehensive plan, at SCC ch. 30.28. The stated purpose of this chapter is "to regulate development on and  
adjacent to designated farmlands."

1 including compliance with the County's GMA farm preservation policies. The CUP consistency tests  
2 required the Hearing Examiner to make an effort to interpret the R-5 zoning uses in light of the  
3 minimum lot size requirements of the comprehensive plan policies and regulations which modify  
4 allowable uses on lands designated LCF.

5 **E. There is no Conflict Between the R-5 Zoning and the Comprehensive Plan LCF Rules.**

6 The Applicant's brief suggested that the plan LCF designation and the R-5 zoning are in  
7 conflict and therefore the LCF designation is irrelevant. There is no conflict between plan and the  
8 R-5 zoning; they exist simultaneously, with a minimum lot size requirement for non-agricultural  
9 uses. When it applied the R-5 zoning designation to the property, the Council did not repeal Policy  
10 LU-7.B.1 or otherwise remove it from force of law, the implication being that the Council viewed the  
11 parts as a harmonious whole, working in concert. Because the Council applied the R-5 zoning  
12 designation to the site *after* adopting the agricultural lands designation, the R-5 zoning must be  
13 interpreted consistent with the GMA farmland policies that set a minimum lot size for uses called out  
14 in the R-5 zoning matrix.

15 The interpretation that gives the most effect to the plan and code as a whole is that the uses  
16 authorized by R-5 zoning are subject to the adopted agricultural lands policy; rather than approving  
17 the institutional use outright, the size of the land in question is to be evaluated during the conditional  
18 use permit process to determine whether it meets the plans policy of retaining 10-acre parcels in LCF.  
19 Under this reading, the plan policy directs the use of the R-5 zoning matrix in a manner that  
20 recognizes the agricultural plan designation of the land as GMA natural resource land. The rural  
21 zoning must be read to give effect to the GMA statutory scheme as a whole.

22 **F. Rules of Statutory Construction Require Harmonizing R-5 and the GMA Policy.**

23 As noted in the preceding Section C, above, Policy LU-7.B.1 applies to the facts of this case.

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

26 The plain language of Policy LU-7.B.1 expresses the intent that agricultural uses be retained as the  
27 exclusive use of LCF land that is not zoned "Agricultural-10," when reduced to a small lot less than  
28 ten acres in size.

1 The Applicant's Response Brief advocates ignoring the operation of this policy directive under  
2 the plan's natural resource lands program. In essence, the Applicant's theory would allow the de-  
3 designation of agricultural land through boundary line adjustment and subsequent CUP approval.<sup>5</sup>  
4 This approach ignores the farmland preservation program in general and the minimum lot size  
5 requirement specifically. A basic rule of statutory construction is that "[a] statute must be read as a  
6 whole giving effect to all the language used, and each provision must be harmonized with other  
7 provisions to insure proper construction of every provision." *Carlton v. Black*, 153 Wn.2d 152, 162,  
8 102 P.3d 796, 802 (2004)(citations omitted). Conversely, words in a statute cannot be read in  
9 isolation in disregard of the language of the statute as a whole. *Renton Sch. Dist. No. 403*, 2 Wn.App.  
10 2d at 41.

11 Policy LU-7.B.1 clearly mandated that its restriction on residential uses apply to lands  
12 designated LCF, when they are not zoned "Agricultural-10" and they are reduced to smaller parcels.  
13 In other words, it intended a lot-size restriction on LCF even when zoned R-5. The plain meaning is  
14 derived from the ordinary meaning of the language at issue, the context of the chapter or title in  
15 which the provision is found, and the statutory scheme as a whole. *Renton Sch. Dist. No. 403 v.*  
16 *Dolph*, 2 Wn.App. 2d 35, 40-41, 415 P.3d 269, 272 (2017).

17 The words in Policy LU-7.B.1 were part of the County's GMA program for the preservation of  
18 natural resource lands designated as agricultural land and the rules of statutory construction require  
19 giving that scheme its effect. Even if, for the sake of argument only, the plan could be excluded  
20 because it is not a development regulation, the corresponding development regulation, SCC §  
21 30.28.120, contains the same minimum lot-size mandate to further the purposes of the GMA farmland  
22 program; lots can be reduced in size, but only with a restriction that they be used for agricultural.

23 In order to understand the context of the R-5 zoning matrix, therefore, the comprehensive  
24 plan directive in Policy LU-7.B.1 and the entire Unified Development Code must be read as a whole.

25  
26  
27 <sup>5</sup> To its credit, the Applicant does not anywhere assert that its proposal will somehow preserve the land for long term  
28 commercial agriculture use. Instead, the Applicant faults the Appellants for suggesting the County must give regard to  
that LCF natural resource land designation on the 4.66-acre parcel. The Decision at 8 similarly does not try to justify the  
non-agricultural use, instead describing the CUP as a "removal" of the land from the agricultural land base. The appeal  
argues that this change in land designation in a permit decision exceeds the Examiner's authority.



1 Doing so gives effect to the County's GMA statutory scheme. By contrast, bifurcating the R-5  
2 zoning matrix from that scheme to justify this one proposed use is contrary to law.

3 **G. The Decision was in Error Because it Omitted Analysis of a Key Development Regulation**  
4 **Prohibiting Non-farm uses on Smaller Parcels Designated LCF.**

5 As noted, the CUP approval criteria in SCC § 30.42C.100 require that the CUP be consistent  
6 with the comprehensive plan's GMA policy framework for preservation of agricultural uses. The CUP  
7 criteria also require an analysis of whether the project is consistent with applicable development  
8 regulations. SCC § 30.42C.100. The Applicant suggests that the Decision did not need to pay heed to  
9 a specific code requirement regulating LCF minimum lot sizes:

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

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

15 SCC § 30.32B.120 (emphasis added). This provision implements Policy LU-7.B.1 in the form of  
16 a development regulation. It directly implements the plan's intent to restrict uses on LCF land  
17 when smaller lots are created.

18 The Applicant is correct in one sense: the Hearing Examiner did not have before him the  
19 question of whether to approve a Boundary Line Adjustment that created the smaller lot in  
20 question here. There is no factual dispute there; that prior approval was not part of the CUP  
21 review and is not at issue in this appeal. (The BLA code chapter regulating approval of lot line  
22 changes is in a different section of code, at SCC ch. 30.41E). But the fact of the BLA division did  
23 not excuse the Hearing Examiner from examining this code provision as part of the County's  
24 development regulations protecting GMA farmland. The lot size requirement in SCC  
25 § 30.32B.120 was intended to continue operating after a BLA approval and continues to apply in  
26 this case. This development control regulates use of agricultural land *after a BLA approval*.

27 The County's BLA code states that approved lots are still subject to subsequent permit  
28 review, in this case a CUP review for consistency with applicable development regulations, in this  
case Chapter 30.32B:

1 30.41E.300 Future development approvals.

2 The applicant shall acknowledge by signature on the application form that county  
3 approval of a BLA proposal does not guarantee or imply that the subject  
4 property may be developed . . .

5 SCC § 30.41E.300. The Decision should have considered SCC § 30.32B.120 as a mandate running  
6 with the land, even after a BLA approval. During CUP review, after the BLA reduced the lot size  
7 to 4.66 acres, the Hearing Examiner was required to determine consistency with this code  
8 limitation on the size of lots that can be used for non-agricultural purposes: "the land divided is to  
9 be used exclusively for agricultural purposes and specifically not for a dwelling(s). . . "

10 SCC § 30.32B.120.

11 The purpose of Chapter 30.32B is "to regulate development on and adjacent to designated  
12 farmlands." SCC § 30.32B.120 is an official control regulating development on LCF land adopted by  
13 the County Council. The determination of which official controls apply to land is a legislative zoning  
14 decision. Alterations to the official controls adopted by Council are not made by the Hearing  
15 Examiner in a CUP decision.<sup>6</sup> The Examiner is bound to follow the code as written and adopted by  
16 Council, and no past treatment of the R-5 zoning matrix can justify a deviation from that legislative  
17 protection of the County's GMA farmland. No "balancing" of social goods can amend that legislation.

18 The Applicant's response briefing offers no authority to counter the appeal's contention that the  
19 Hearing Examiner exceeded his authority in this regard. The law supports this appeal. It is well  
20 settled law in Washington that the public's interest in zoning laws is superior to an administrative  
21 officer's determination during permitting as to what proposals would be desirable. In the case  
22 of *Dykstra v. Skagit Cy.*, 97 Wn. App. 670, 677, 985 P.2d 424, 428 (1999), the Washington State

23 <sup>6</sup> The Examiner's Decision treated the 4.66-acre parcel as though the CUP decision could remove the land from the LCF  
24 use category:

25 While less than 5 acres will be removed from agricultural use, county code explicitly permits the proposed use if  
26 conditioned to mitigate its impact on the immediate community. Further, the loss must be balanced against other  
27 community needs and comprehensive plan goals and objectives.

28 Decision at 8:17-22. Here, the Examiner is saying the land "will be removed from agricultural use" as a result of the CUP  
approval. In Attachment E to Exhibit M.1, the Applicant testified that County staff had taken a similar position, treating  
the land as though it had been removed from the natural resource land designation and that allowable uses were now to be  
evaluated as though the property were designated as "rural" land. Only the Council could make a legislative determination  
to de-designate GMA resource lands. In this case the Council applied Chapter 30.32B to this parcel, since it was and still  
is designated as LCF, thereby limiting its use to non-residential agricultural uses, exclusively.

1 Court of Appeals determined that local zoning and land use ordinances cannot be bypassed by well-  
2 meaning officers charged with implementing them:

3 The governmental zoning power may not be forfeited by the action of local officers  
4 in disregard of the statute and the ordinance. The public has an interest in zoning  
5 that cannot thus be set at naught. The plaintiff landowner is presumed to have  
known of the invalidity of the exception and to have acted at his peril.

6 The *Dykstra* court relied on the Washington State Supreme Court's similar conclusion  
7 in *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 211, 884 P.2d 910, 919 (1994)  
8 (administrative agency cannot base its decisions on a possible past error in another case  
9 involving different property) ("The governmental zoning power may not be forfeited by the  
10 action of local officers in disregard of the statute and the ordinance; the public has an  
11 interest in zoning that cannot be destroyed"). The County Council is not precluded from  
12 enforcing zoning regulations when its staff or Hearing Examiner have failed to properly  
13 enforce those regulations. *Mercer Island v. Steinmann*, 9 Wn.App. 479, 483 (1973).

14 It is contrary to law to interpret the R-5 zoning matrix in this case without any reference to the  
15 development regulations in Chapter 30.28 specific to LCF – official controls that were adopted with  
16 the intent of regulating development on the County's designated farmland of long term commercial  
17 significance.

18 **H. The BLA was a "Division of Land" Within the Meaning of SCC § 30.28.120.**

19 The Applicant seeks to sidestep the clear directive in Chapter 30.28 at SCC § 30.28.120  
20 by arguing that its scope should be limited to divisions of land that involve a "rural cluster  
21 subdivision." State law defines "divisions" to include boundary line adjustments. RCW 58.17.040.  
22 County code does not provide a definition that would exclude a BLA from the term "division."

23 The Applicant asserts incorrectly that, despite these definitions, the effect of SCC  
24 § 30.28.120 should be limited to "rural cluster subdivisions" because the heading for that code  
25 section references that type of division. That interpretation might fly if it were not for the rules  
26 of construction in the County code itself that expressly discount use of headings:

27 1.01.050 Title, Subtitle, Chapter and Sections Headings.

28 Title, subtitle, chapter and section headings contained in this code shall not be deemed  
to govern, limit, modify or in any manner affect the scope, meanings or intent of the  
provisions of any title, subtitle, chapter or section of this code.

1 SCC § 1.01.050. Section .120 applies to any "division" and does not exclude parcels whose  
2 boundaries are created through a boundary line adjustment.

3 **I. Conclusion.**

4 At the end of the day, the Decision unlawfully avoided consideration of the County's policy  
5 and regulation limiting use of LCF land exclusively to agricultural uses, on small parcels. This  
6 contravenes the County's GMA agricultural lands legislative scheme. That policy foundation  
7 cannot be ignored. It is best summarized by the farmland comprehensive plan objective cited by  
8 the Appellants to the Hearing Examiner:

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

11 The only issue in this appeal is whether this CUP request is consistent with the  
12 comprehensive plan policy implementing that objective and protecting LCF farmland (Policy LU-  
13 7.B.1), and the specific code section regulating LCF, after boundary line adjustments are approved,  
14 SCC § 30.32B.120. The CUP is not consistent with the intent or letter of the comprehensive plan's  
15 GMA program for preservation of Local Commercial Farmland and it is not consistent with code  
16 designed to protect farmland from non-agricultural uses when smaller lots are created. The law  
17 requires denial of the CUP. The law could not be more plain: This 4.66-acre lot "is to be used  
18 exclusively for agricultural purposes" and specifically not for dwellings. The Council must reverse  
19 the Decision and deny the CUP.

20 Respectfully submitted this 18<sup>th</sup> day of April, 2023,  
21 DYKES EHRLICHMAN LAW FIRM



22  
23 Tom Ehrlichman, WSBA No. 20952  
24 Counsel for Appellants



2106 Pacific Avenue, Suite 300  
Tacoma, WA 98402

Project Name: 32-Bed Residential Treatment Facility  
No. 22-102230 CUP

HEARING EXAMINER  
RECEIVED

JAN 24 2023

CASE **22-102230**  
EXHIBIT **M.1**

Testimony of Christine Phillips, Senior Planner with BCRA

- Why are we here?
  - RTF in R-5 zone requires Conditional Use Permit (CUP)
  - Review process includes public hearing
- CUP Criteria for approval – **Exhibit A3**
  - a. Consistent with County Comprehensive Plan
  - b. Compliant with County Codes
  - c. Not materially detrimental to community
  - d. Compatibility

The proposed project of a Residential Treatment Facility is located within the R-5 zone in Snohomish County. This zone specifies that this type of behavioral healthcare facility requires approval of a CUP in order to proceed with construction. A public hearing before the Hearing Examiner is part of the review process as described in detail by the HE.

The presenters who follow me are subject matter experts who will address the details of how this facility and the site will be designed and constructed, and operated. Their commentary often responds to, and will demonstrate, that this proposal is in keeping with each of the criteria for approval for the requested Conditional Use Permit. They will also take any questions you may have of them, Mr. Examiner.

Mr. Examiner, you have heard from our team today addressing many aspects of this project. All of this testimony is both to inform you of the project detail and also to show that we meet the criteria for CUP approval. I put together a document titled CUP Approval Criteria which was submitted to the county as part of our permit application and should be in your materials as **Exhibit A3**. In this document I detailed how this project meets each of the criteria for approval, along with a project narrative.

And as we wrap up our presentation, I will briefly summarize here:

CUP Criteria for approval - 30.42C.100 Decision criteria

Consistency with Comprehensive Plan

I did a thorough review of the county comp plan and in my document I shared several goals, policies and objectives of the Comp Plan that support this project, and also found none to be directly contradictory

Compliance with County Codes

This project is designed in accordance with the county's applicable codes, standards, and regulations as required for permit. In addition, this project is designed to be in compliance with state WAC's and RCW's, Department of Health licensing requirements, and other state and county regulations.

Not materially detrimental to community – key points

- In cooperation with County staff, traffic impacts and parking needs have been analyzed and additional requirements have been identified that resulted in the modified driveway access to the site.
- Neighbors' concerns about a new well's water use impacts on existing wells shifted this project from installation of a well to connecting to public water service, requiring a significant service extension to the project. This also brings future benefits to community members with the ability for them to hook into public water.
- Our wetlands and landscaping professionals have worked with county staff to ensure that the onsite wetlands are not impacted and the buffers are planted in accordance with code.
- Onsite stormwater management will appropriately manage all runoff and direct runoff away from neighboring properties.
- Septic is designed for full operational capacity for both buildings and will be permitted through the Health Dept and comply with all requirements.
- The operation of the use should not have significant impacts on the neighboring properties or persons residing or working in the general area and will bring local family wage jobs and mental health resources to the residents of Snohomish County.
- Representatives from Wenaha and HCA have met with fire personnel and emergency services to discuss this project. The project will provide additional resources and services to people in crisis.

#### Compatibility of the project

The buildings are being designed as single-story structures with residential components such as sloped roofs, window design and spacings, and finish materials that are similarly found in residential construction. In addition to landscaping that will be provided around the base of the buildings, the wetland buffer enhancement and landscaping along property lines will provide additional landscaping to meld the project into the site. The site currently is open pastureland but with the proposal the project will add trees and plantings that will support the wetlands and benefit wildlife.

Thank you for your attention to this project, Mr. Examiner. If you have further questions for me or the team, we are happy to respond.

A handwritten signature in blue ink that reads "Christine Phillips".

Christine Phillips, Senior Planner, BCRA

## Script Hearing Examiner for Stanwood RTF: Dr. Charissa Fotinos

### Governor's Vision:

In 2018 Governor Inslee announced a 5-year plan to shift civil mental health treatment out of the state hospitals into smaller community based psychiatric treatment facilities across the state of Washington. The intent of this plan is to serve individuals in need of psychiatric care closer to their homes, families, and communities. Research has shown that inpatient psychiatric care that involves an individual's family and friends leads to improved engagement in outpatient services at the time of discharge (Haseldon et al., 2019).

There is a statewide effort to invest in expanding long term psychiatric beds in community-based treatment facilities. Development of these new treatment beds will provide increased access to inpatient mental health care for individuals experiencing a crisis as well as providing assurance that individuals will receive timely and appropriate services.

### RCW 71.05:

The proposed community behavioral health facility will provide long term mental health treatment to individuals. This specific treatment facility will provide services to people who have received a court order for treatment. We commonly refer to this process of involuntary treatment as a civil commitment. Important to note is that these individuals have not committed a crime, rather they are experiencing a mental health crisis. The mental health crisis in this case is so severe that it comes to the attention of Designated Crisis Responder who is specifically credentialed to assess and determine if someone has the need for involuntary behavioral health treatment.

The treatment provided within this facility will be for individuals who have undergone a period of treatment prior to admission. Prior to admission individuals will have received an initial evaluation and treatment period of 120 hours, followed by an additional 14 days of treatment, and finally it has been determined that the individual would benefit from an extended length of treatment of up to 90 or 180 days.

### Treatment and Discharge:

The Health Care Authority will procure an organization to provide health care services within the facility. The selected organization will hold a contract with The Health Care Authority for services rendered. The selected behavioral health care provider will be responsible for provision of all inpatient treatment services including the development and maintenance of state required policies and procedures.

The staffing will be dependent upon the vendor selected. However, best practices indicate that there is a ratio of one staff person for every four individuals receiving treatment in the facility, and this may vary by shift. For example, the day and swing shift have more staff, as the individuals in the facilities are awake.

## Script Hearing Examiner for Stanwood RTF: Dr. Charissa Fotinos

Interventions that a person admitted to this facility will receive are robust and individualized to meet their specific needs. Each person within the facility has a set of individualized treatment goals that once met will signify a readiness for discharge. A multidisciplinary team of trained health care professionals will work closely with each individual on a daily basis to make progress toward their treatment goals. Treatment can vary based on an individual's need but in general may consist of one on one and group therapy, peer counseling, case management, medication management, and skill building.

Assessment to determine whether someone is ready for discharge is ongoing and planned discharge can occur any time during the 90- or 180-day treatment period. Immediately upon admission to the facility the patient will be paired with a discharge coordinator who will work with them to identify and access essential elements for their return to the community. The discharge process is patient lead and involves the support of family and friends. Discharge planning consists of connection to resources such as safe housing, outpatient behavioral health treatment, transportation from the facility to one's home at the time of discharge and follow up medical care. Transportation at discharge is often coordinated with one's family or friends but can also occur using medical transportation paid for by an individual's insurance. The facility will always ensure that a person who has completed their treatment has way to return to their place of residence.



## Hearing Examiner Script for Stanwood RTF: Dr. Keri Waterland

### Safety:

This healthcare facility is intended to be a therapeutic space that promotes healing and well-being. It is important that individuals at the facility feel safe and comfortable in order to receive the most benefit from treatment. The facility has been designed to include therapeutic elements that incorporate nature, creativity, and a sense of serenity.

It is important to be aware that research has shown that people with a mental illness are more likely to be victims of a violent crime than the perpetrator (Ghiasi, Azhar, & Singh, 2022).

While incidents are rare, the facility will be equipped with policies and procedures to manage events such as patient elopement, assault, and urgent medical needs.

Facility staffing may vary by shift, and best practices indicate that there is a ratio of one staff person for every four individuals receiving treatment in the facility. Specifically, the facility will employ 24-hour staff to include medical professionals and therapeutic support professionals. The program will ensure that patients receive whole person care for their mental health as well as physical health needs. Individuals receiving treatment at the facility will also have undergone a thorough medical evaluation prior to admission to ensure that their medical needs are met in the appropriate setting. This facility will not serve individuals with acute medical issues. Individuals may develop a need for medical care and their needs will be met either by the physician serving the facility or through referral to a local medical provider, as appropriate for each individual patient. Medical emergencies among the individuals that will receive services at this facility are uncommon and will be treated in the same manner as they do for the residents who live in the community.

The facility will have policies and procedures in place if a call to emergency services is necessary. HCA has engaged in correspondence with the local fire authority and expects that the contracted provider will develop a good working relationship with the local Emergency Medical Service provider to ensure that these resources are available for individuals receiving treatment at the facility should they be necessary.

Staffing patterns within the facility will be robust and always allow for a four patient to one staff ratio. Staffing will be multidisciplinary to include a variety of mental health professionals, medical professionals, and therapeutic support professionals. This type of facility most commonly employs over 40 full time staff, majority of which will provide direct care services to admitted individuals.

To maintain patient and staff safety, employees at the facility will be trained in verbal and physical de-escalation techniques, including the use of seclusion and restraint/ pharmacological restraint methods. Seclusion and restraint are strictly for the emergent safety of a patient. These interventions are uncommon and require a provider order to carry out. Staff at the facility will be trained in de-escalation techniques in order to reduce the need for seclusion or restraint.

## Hearing Examiner Script for Stanwood RTF: Dr. Keri Waterland

This site is designed to be secure in that all external exits feature a twostep lock system. This feature is to ensure that all patients remain safely in the care of the treatment team during their time of healing. It is extremely rare that there would be an individual that leaves the secure portion of the facility without authorization (known as an elopement). Data has demonstrated that elopements are most likely to occur at a third-party location external to the secure facility- such as at an Emergency Department. Data extracted in November 2022 has shown that out of 24,177 involuntary treatment act detentions occurring between 9/2020 to 8/2022, there were 30 total elopements reported. Data also demonstrates that elopement is more likely to occur when a person is at the Emergency room or another external site which is not designed to be secure.

### Community Engagement:

HCA and its partners have created and maintained frequently asked questions (FAQs) with information about the proposed facility. The FAQs have been updated as new information becomes available about the project. In addition, a webpage has been created that houses a sign up for listserv announcements that will send a notification email with updates to individuals who would like to stay informed about the project. The FAQs and webpage will be updated as new information becomes available. In addition, HCA will also be sharing information about the proposed facility through Gov Delivery.

The projects communications outreach work group has hosted several public outreach events. The first event featured a virtual town hall where members of the public were able to hear an overview of the project, and then were able to submit questions to subject matter experts in a question-and-answer format. Following this, HCA hosted a local in person open house that included booths with subject matter experts from the builders, architects, Wenaha Group, and the Health Care Authority. The booths provided information to the public, including a virtual walk through of the facility, and detailed description of a day in the life of an admitted patient. The third and most recent in person town hall was hosted locally to include a panel question and answer session with subject matter experts. Each community member was encouraged to sign up to ask their questions of the panel.

HCA will continue its outreach efforts with an educational video series for the public to view next year.

### Additional Information

If an individual leaves the facility without authorization the facility staff will assess the situation and determine whether disclosing the elopement and information about the individual is necessary and permitted under Washington's mental health services law. This law strikes a balance between the individual's legal right to privacy and disclosures to certain parties. An individual's right to privacy limits the circumstances in which third-parties can be notified. The scenarios below explain the types of disclosures that can be made under RCW 70.02.230

## Hearing Examiner Script for Stanwood RTF: Dr. Keri Waterland

- Scenario No. 1: Disclosures can be made to appropriate law enforcement agencies and to a person, when the identity of the person is known and that person's health and safety have been threatened by the individual, or the person is known to have previously been repeatedly harassed by the individual.
- Scenario No. 2: Disclosures can be made to appropriate corrections and law enforcement agencies in the event of a crisis or emergent situation that poses a significant and imminent risk to the public.
- Scenario No. 3: Disclosures can be made to the individual's relatives and the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the individual or the professional person in charge of the facility, or his or her professional designee when necessary for the protection of the individual or others.

In each of these scenarios, there is no obligation for the facility to directly notify homeowners or the members of the community at large—those notifications will be handled by law enforcement when necessary. Procedures will be developed with law enforcement to address this situation.

### References:

Family Involvement in Psychiatric Hospitalizations: Associations With Discharge Planning and Prompt Follow-Up Care. Morgan Haselden, B.A., Tom Corbeil, M.P.H., Fei Tang, M.P.H., Mark Olfson, M.D., M.P.H., Lisa B. Dixon, M.D., M.P.H., Susan M. Essock, Ph.D., Melanie M. Wall, Ph.D., Marleen Radigan, Dr.P.H., M.S., Eric Frimpong, Ph.D., M.A., Rui Wang, M.S., Steven Lamberti, M.D., Matthew Schneider, M.D., Thomas E. Smith, M.D. Published Online:16 Jul 2019 <https://doi.org/10.1176/appi.ps.201900028>

Psychiatric Illness and the Community. Norman Ghiasi, Yusra Azhar, & Jasbir Singh. (2002) <https://www.ncbi.nlm.nih.gov/books/NBK537064/>

## **Snohomish County Conditional Use Permit Hearing, January 24, 2023**

### **Hearing Examiner Testimony – Keith Banes, Wenaha Group, Owner Representative for Tulalip Tribes of Washington State**

#### **Tribal Support – Keith**

Good morning Examiner Camp, I am Keith Banes, 505 South 336<sup>th</sup> St, Suite 630, Federal Way, WA 98003

I work for Wenaha Group, a native owned project management firm. We are the Owner's representative consultant for Tulalip Tribes to coordinate the project team on the Regional Treatment Facility North Project.

The nexus of this project is the Compact agreement between the governments of the State of Washington and the Tulalip Tribes of Washington State. The terms of the compact require that Tulalip Tribes build this facility on land owned by Tulalip Tribes. Once the facility construction is completed the facility will be operated by the State of Washington.

This site was selected because it is:

- land owned by Tulalip Tribes,
- satisfied the requirements of the Compact,
- and the facility is an allowed conditional use per the Snohomish County codes.

Through the permitting process Tulalip, HCA, and the rest of the project team have diligently sought out input from the public and worked closely with the County to complete a design that complies with the requirements of Snohomish County.

The project team has made every effort to comply with the County codes throughout the design and permitting process, including this conditional use permitting process. The AHJ's concerns raised throughout the permitting reviews have been responded to, to assure that the facility complies with the County requirements in every way.

We acknowledge and appreciate the public questions and input received as part of the conditional use process. The team has worked diligently to respond to each of those comments with the most accurate and complete information that is available.

We appreciate the time and effort that all project stakeholders have contributed to this project.

As Owner's of this property, like any property owner in the United States, the Tulalip Tribes of Washington State enjoys the right and freedom to utilize this property, within the limits and requirements of the applicable and prevailing land use provisions.

## **Jim Wolch' s testimony**

### **Site Plan slide**

I'm Jim Wolch, Principal architect with BCRA. The project is located in the northeast corner of the property on 300<sup>th</sup> and 80<sup>th</sup> St owned by the Tulalip Tribes. The project is accessed off of 300<sup>th</sup> via right-in and right-out drive access. The project consists of two construction phases, each phase constructs a 16,000 SF building that has 16 in-patient beds. Phase I which will include sitework for both buildings and will provide 60 parking stalls. Each building has its own emergency generator, so the entire building is powered in event of power failure.

### **Building Character**

The building is designed to fit the residential character of the area. The buildings are single story with shed roofs. The exterior materials include fiber cement siding and brick veneer, and metal roofs, similar to what would be used on nearby residential properties.

### **Floor Plan Slide**

This is the floor plan. Patient bedrooms are in the wings to the right and left of the plan. The central area includes group spaces, dining, life skills, and exercise spaces for the patients. Staff areas are to the north, and upper north is back of house areas. The projects anticipates that 25 full-time equivalent staff positions will be needed to operate the facility. The 25 staff positions is the total number of staff anticipated to be spread over three shifts.

### **Safety Slide**

The building is designed to be a state-of-the-art behavioral health facility. Patient and staff safety is a top consideration in the design and will also result in reduced need for emergency services. Suicide is a risk in behavioral health facilities and this facility is designed with anti-ligature plumbing fixtures, door hardware, and light fixtures. The construction is hardened construction. This limits breakage of materials that could cause an injury. Wide corridors are included to reduce aggression. De-escalation spaces are included and visual connections to nature promote calming.



**Project Name: 32-Bed Residential Treatment Facility North (RTFN)**  
No. 22-102230 CUP

Testimony by:

Zachary Crum, PE  
Senior Associate Civil Engineer, BCRA  
2106 Pacific Ave, Suite 300  
Tacoma, WA 98402

### **Wetlands**

Three Category III Palustrine Emergent wetlands were delineated within the development area by Soundview Consultants, LLC in November of 2021, and January of 2022. The wetlands are labeled as Wetland A, B, and C and exist in the central portion of the site that currently receives off-site runoff from 300<sup>th</sup> and neighboring properties to the north.

The site was designed to avoid wetland impacts and minimize buffer impacts to the maximum extent feasible in accordance with Snohomish County Code 30.62A.310. Several iterations of the site plan were evaluated to fit the proposed development prioritizing the avoidance and minimization criteria. The proposed site plan was selected because it avoided wetland impacts and minimized wetland buffer impacts for proposed project scope.

Widener & Associates prepared a Wetland Buffer Mitigation Plan that assigned appropriate mitigation for the impacts resulting from the development. Impacts include both temporary and permanent buffer impacts. Mitigation methodology includes buffer enhancement plantings, buffer averaging, and designation of new buffer on the adjacent property as well as restoration of temporary impacts. The buffer enhancements will improve the existing horse pasture with native plantings suitable for the wetland buffer habitat. These enhanced areas will be protected with perimeter split rail fencing and notification signage and maintained by the developer.

### **Stormwater**

The stormwater mitigation facilities were designed in accordance with the 2021 Snohomish County Drainage Manual (Storm Manual) and Snohomish County Code Title 25 Storm and Surface Water Management.

Protection of the on-site wetlands and their buffers is the primary goal of the storm drainage design in accordance with Minimum Requirement #8 Wetland Protection.

Water quality measures include three enhanced treatment facilities designed for removal of sediment and heavy metals such as dissolved copper and zinc. These facilities treat runoff from the roadways and parking areas where pollution is most prevalent. Flow control measures include an underground chamber detention facility and a grass-lined dispersion swale. These facilities are designed to collect and hold stormwater flows from the development and release at a rate that matches the hydrology of the downstream wetland and protects it from erosion. The downstream dispersion device is a secondary measure to control flow rates at the outfall from the system. It is located to direct drainage toward the central wetlands and away from neighboring properties to the east.

### Water Main Extension

A water main extension is proposed to serve the property extending from City of Stanwood's public water main infrastructure to the site along 80<sup>th</sup> Ave NW from the connection point at 284<sup>th</sup> to the site location off of 300<sup>th</sup> St. This extension will include fire hydrants and water service connections to adjoining properties along 80<sup>th</sup> Ave NW to provide public water where most properties along the road do not currently have access to public infrastructure.

### Site Utilities

The water main extension will be extended onto the site to provide domestic, irrigation, and fire protection service needs for the proposed buildings.

In addition to water, the site will also be served by Snohomish PUD primary power infrastructure, communication services, and an private emergency generator for each building.

Sewer flows from the proposed buildings will be managed with an on-site septic system.

Project Name: 32-Bed Residential Treatment Facility  
No. 22-102230 CUP

Good morning, Mr. examiner,

My name is Evan Haines, I am the preconstruction manager for Korsmo construction the design-builder selected for this project by the Tulalip Tribes of WA.

**Septic System**

Our team has applied for new onsite septic system through Snohomish County Health District.

The design includes aerobic treatment unit which pre-treats the sewage prior to making its way to the drain-fields.

The design is based on 1500 gallons per day per facility using on non-residential design flows also based on comparative data from similar facilities. These flow rates were reviewed and accepted by Snohomish County Health District. This confirmed the project could stay out of a Large Onsite Septic system. The permits are being submitted in phases at the request of the Health District. Currently Phase 1 that you see on the slide here has been re-submitted to address the comments received under the first permit review cycle.

There will be an easement agreement in place for force main pipes crossing the property boundary line to the West tax parcel where the drain fields will be installed.

Additionally, a declaration of covenant will be recorded requiring annual maintenance and service be performed in accordance with the recommended standards and guidance and Snohomish Health District Sanitary Code.