

**BEFORE THE HEARING EXAMINER  
FOR SEDRO-WOOLLEY**

In the Matter of the Application of	)	No. CUP-2019-362
	)	
<b>Christine Phillips, BCRA, on behalf of Skagit County Public Health</b>	)	<b>Skagit County Stabilization Campus CUP</b>
	)	
	)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit for phased development of the Skagit County Stabilization Campus for mental health facilities, a Type One essential public facility, within the 1400 block of State Route 20 (SR-20), is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner for the City of Sedro-Woolley (City) held an open record hearing on the request on June 18, 2020, using remote technology in light of the COVID-19 outbreak. The record was left open until June 22, 2020, to allow the Applicant and the City to submit additional materials as requested at the open record hearing and to assure that any member of the public having difficulty connecting to the remote hearing would have the opportunity to provide comments on the request.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Katherine Weir, City Assistant Planner  
John Coleman, City Planning Director  
Christine Phillips, Applicant Representative  
Kayla Schott-Bresler, Skagit County Deputy Administrator  
Zachary Crum  
Mike Hudson

Attorney Julie Nichol represented the Applicant at the hearing.

Exhibits:

The following exhibits were admitted into the record:

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- A. Transmittal & Report Memorandum (Staff Report)
- B. Conditional Use Permit Application, dated October 3, 2019
- C. Essential Public Facilities Application Requirements Narrative, undated
- D. Decision Criteria for Essential Public Facilities, Type One Facilities Narrative, undated
- E. Consistency with Comprehensive Plan & City Regulations Narrative, undated
- F. Notice of Application and SEPA Comment Period, published November 1, 2019, with building site plan
- G. SEPA Notice of Threshold Determination, Mitigated Determination of Nonsignificance (MDNS), issued December 9, 2019
- H. Comment on SEPA Environmental Checklist from Richard Quam, received November 12, 2019
- I. Letter from Katelynn Piazza, SEPA Coordinator, Department of Ecology, dated November 15, 2019
- J. Letter from William “Lin” Tucker, Sedro-Woolley Police Chief, to Sedro-Woolley Planning Department, dated November 18, 2019
- K. Notice of Public Hearing, published February 28, 2020
- L. Site Plan (Sheet C-101), dated February 12, 2020
- M. Building Elevations, undated
- N. Critical Area Reconnaissance Results for P104178 and P76502, Bachman Environmental, dated May 2, 2018
- O. Riparian Buffer Mitigation Bank Use Plan, Widener & Associates, dated February 25, 2020
- P. SEPA Environmental Checklist, dated October 4, 2019
- Q. Notice of Public Hearing, published June 8, 2020
- R. Letter from Skagit County Board of Commissioners to Hearing Examiner, dated June 17, 2020
- S. Letter from Applicant re: request for amended approval conditions, dated June 11, 2020.
- T. Response letter from City Planning Department re: request for amended approval conditions, dated June 18, 2020
- U. In-meeting chat comments from Judy Heinemann (two screenshots).
- V. Applicant Supplemental Response Letter, dated June 22, 2020
- W. City Final Comments Letter, dated June 22, 2020
- X. Additional Comments from Richard Quam, dated June 19, 2020

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing.

## **FINDINGS**

### Application and Notice

1. Christine Phillips, BCRA, on behalf of Skagit County Public Health (Applicant), requests approval of a conditional use permit to develop the Skagit County Stabilization Campus

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for mental health facilities on vacant property measuring approximately 7.8 acres. The proposed facility would replace the existing Evaluation and Treatment Center located at the Swift Center and would create a new Detox Program. The proposed development would occur in two phases. Phase One would include construction of a 16-bed Evaluation and Treatment Center, administrative offices, and infrastructure improvements to support both phases, including a new driveway, parking areas, utilities, stormwater management, and landscaping. Phase Two would include construction of a separate building with 24 secure, acute detox management beds. The proposed development is a Type One essential public facility (EPF).<sup>1</sup> *Sedro-Woolley Municipal Code (SWMC) 17.88.060.A*. The property is located within the 1400 block north of SR-20.<sup>2</sup> *Exhibit A, Staff Report, pages 1 and 2; Exhibits B through E; Exhibit L; Exhibit M.*

2. Pursuant to the requirements for a Type One EPF proposal, the City of Sedro-Woolley (City) held a pre-application meeting on January 30, 2019, and a public meeting on August 13, 2019. *SWMC 17.88.060*. The City determined that the application was complete on October 30, 2019. The same day, the City provided notice of the application by mailing notice to all residents and property owners within 500 feet of the subject property, with a comment deadline of November 15, 2019. The City posted notice on the property on October 31, 2019, and published notice in the *Skagit Valley Herald* on November 1, 2019. On February 28, 2020, the City provided notice of the open record hearing associated with the application by mailing notice to all parties of interest, residents, and property owners within 500 feet of the subject property, posting notice on-site, and publishing notice in the *Skagit Valley Herald*. The scheduled open record hearing was later postponed due to the COVID-19 pandemic. On June 8, 2020, the City provided notice of the rescheduled open record hearing by mailing notice to all parties of interest and to residents and property owners within 500 feet of the subject property, posting notice on-site, and publishing notice in the *Skagit Valley Herald*. The City's notice materials stated that the hearing would be held using remote meeting technology in light of the COVID-19 pandemic. In response to its notice materials, the City received three comments, which are discussed in detail below. *Exhibit A, Staff Report, pages 4 and 5; Exhibit F; Exhibit K; Exhibit Q.*

#### State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code

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<sup>1</sup> SWMC 17.88.060 defines *Type One essential public facilities* as: major essential public facilities that provide public services to more than one county and where the provider has statutory authority to site and construct the facility and where a regional, inter-governmental siting process has been followed. These facilities may include, but are not limited to, regional transportation facilities, such as regional airports, state correction facilities, and stated educational facilities.

<sup>2</sup> The property ownership is identified by tax parcel numbers P104178, P76502, and P76503. Parcel P76503 lies outside city limits, and is not part of the site development. *Exhibit A, Staff Report, page 2.*

of Washington (RCW). The City consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a comment deadline of November 15, 2019. The notice materials stated that the City expected to issue a Mitigated Determination of Nonsignificance (MDNS) for the proposal. As noted above, the City received three comments in response to its notice materials. Area resident Richard Quam commented that deer often travel through the proposed project site. The Washington State Department of Ecology (DOE) commented that eight contaminated sites were located within a one-mile radius of the project site, with three of the contaminated sites having received No Further Action determinations and four of the sites under 'Cleanup Started' status. City Police Chief William Tucker requested that the proposed mental health facility have adequate staffing to manage patients, noting that the police department does not have adequate resources to assist in patient management. After reviewing the Applicant's Environmental Checklist and other information on file, the City determined that, with mitigation, the proposal would not have a significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) on December 9, 2019. The MDNS requires the Applicant to shield vehicle lights and other exterior lighting from the residential properties and to comply with all local, state, and federal regulations, including SWMC Chapter 13.36 Stormwater Management Standards; Chapter 13.40 Stormwater Facilities Maintenance; Chapter 15.40 Public Works Construction Standards; Title 17 Zoning; Sedro-Woolley Public Works Design Standards and requirements; and the Sedro-Woolley Comprehensive Plan. The MDNS provided for an appeal deadline of December 23, 2019. The MDNS was not appealed. *Exhibit A, Staff Report, pages 4 and 5; Exhibit F; Exhibit G; Exhibit H; Exhibit I; Exhibit J; Exhibit P.*

#### Comprehensive Plan and Zoning

4. The property is designated Mixed Commercial by the City Comprehensive Plan. The purpose of the Mixed Commercial designation is to allow for a comparable mix of commercial and residential development, with standards intended to present an attractive and welcoming appearance to visitors at the entrances to the city and at selected nodes along major roads. *City Comprehensive Plan, page 31.* City staff identified the following Comprehensive Plan policies as relevant to the proposal:
  - Support inter-jurisdictional efforts to address problems that may arise having regional impacts (Policy LU2.1).
  - Require, as appropriate, site-specific delineation of sensitive and critical areas by owners/developers of property as part of the development review process (Policy LU16.3).
  - Ensure that City planning and development regulations identify and allow for the siting of "essential public facilities," as described in the Growth Management Act. Work cooperatively with Skagit County and neighboring jurisdictions in the siting of public facilities of regional importance (Policy CF1.4).

City staff determined that, with conditions, the proposal would conform with the City Comprehensive Plan. *Exhibit A, Staff Report, pages 2, 5, and 6.*

5. The property is zoned Mixed Commercial. The intent of the Mixed Commercial zone is to encourage a compatible mix of commercial and residential development, with standards intended to present an attractive and welcoming appearance to visitors at city entrances and selected nodes along major roads; manage traffic impacts; encourage non-motorized trips; and reduce stormwater runoff. *SWMC 17.20.005.* Essential public facilities are conditional uses in all zoning districts. *SWMC 17.88.060.C.1.* SWMC 17.20.020 provides bulk restrictions applicable to development in the Mixed Commercial zone, including minimum setback and maximum building height requirements. City staff reviewed the Applicant's site plan and determined that the proposal would meet the bulk restrictions under SWMC 17.20.020. *Exhibit A, Staff Report, page 2 and 6; Exhibit L.*
6. Property to the north of the proposed project site is zoned Mixed Commercial and consists of undeveloped agricultural land. Property to the south is zoned Residential 7 and Public and is developed with single-family residences and a public park. Property to the east is zoned Mixed Commercial and is developed with various retail businesses. Property to the west is zoned Mixed Commercial and is developed with a skilled nursing and rehabilitation facility, Life Care Center of Skagit Valley. *Exhibit A, Staff Report, page 2.*

#### Conditional Use Permit

7. As noted above, the Applicant requests a CUP to develop, in two phases, a Type One essential public facility, with Phase One to include the construction of a 16-bed Evaluation and Treatment Center, administrative offices, and associated infrastructure improvements, and Phase Two to include the construction of a separate building with 24 secure, acute detox management beds. The project site is located immediately north of SR-20. Brickyard Creek, a Type 3 fish-bearing stream, runs along the south edge of the property, abutting the north side of SR-20. The Applicant's project narrative asserts that the proposal would not impact traffic on SR-20 because the proposed development would not generate significant traffic trips and because the proposal would result in decreased travel time to the existing facility. The City and Skagit County are working together under other project permits to widen SR-20 in front of the site to accommodate a middle turn lane, to construct a regional pedestrian path along the north side of Brickyard Creek, and to construct an open-bottom culvert across the creek to provide access to the property. The proposed culvert would be sized to accommodate anticipated stormwater swelling of the creek. City staff reviewed the Applicant's site plan and determined that the proposal would meet the off-street parking requirements under Chapter 17.36 SWMC. City staff also reviewed the Applicant's building elevation drawings and determined that the project would comply with the design review requirements of Chapter 15.44 SWMC. Review for compliance with the City Design Standards and Guidelines Manual would occur during the building permitting stage. The Applicant

would be required to submit landscaping plans demonstrating compliance with the landscaping requirements of Chapter 17.50 SWMC with its building permit application. *Exhibit A, Staff Report, pages 2, 8, and 9; Exhibit C; Exhibit D; Exhibit E; Exhibits L through O.*

8. Bachman Environmental submitted a Critical Area Reconnaissance letter on behalf of the Applicant, which noted that no wetland indicators were detected on-site or immediately off-site, but that Brickyard Creek along the southern edge of the property is a Type 3 fish-bearing stream. Under SWMC 17.65.530.B, Type 3 streams require a 110-foot buffer from the ordinary high water mark. The Applicant has requested a 55-foot reduction in the required buffer width under SWMC 17.65.530.B.2, noting that the buffer reduction would be required to provide access to the proposed facilities from SR-20 and to provide sufficient parking and access around the proposed facilities. Widener & Associates prepared a Riparian Buffer Mitigation Bank Use Plan on behalf of the Applicant, which determined that the impacted area within the Brickyard Creek buffer is routinely disturbed and provides no habitat function; that the proposed decreased buffer width would not be less than 50 percent of the standard buffer; that the reduced buffer would not adversely affect habitat function; and that continued maintenance requirement would make any enhancement of the existing buffer inappropriate. The Applicant proposes to purchase 0.054 credits from the Skagit Environmental Bank to mitigate for permanent impacts to 0.27 acres of riparian buffer. The Applicant would submit proof of purchase of mitigation bank credits to the City and Skagit County prior to any ground-disturbing activity. City staff reviewed the Applicant's proposed buffer reduction request and mitigation banking plan and determined that, with conditions, the proposal would meet the critical area regulations of Chapter 17.65 SWMC. *Exhibit A, Staff Report, pages 8 and 9; Exhibit N; Exhibit O.*
  
9. City staff analyzed the proposal to ensure that it would be consistent with the criteria for Type One essential public facilities and determined:
  - The Applicant provided meaningful opportunity for public participation in the siting decision and development of mitigation measures by publishing notice, requesting public comment, and holding a public meeting.
  - The size of the project site would be sufficient to contain both proposed facilities, required parking, and site development such as landscaping.
  - The proposal, as conditioned, would adequately mitigate for any probable significant impact on critical areas or resource land.
  - The proposal incorporates specific features to ensure it responds appropriately to the existing or planned character, appearance, quality of development, and physical characteristics of the site and surrounding property.
  - The proposed buildings would be designed in a visually appealing way with varying colors and materials.
  - The proposed design matches the surrounding properties, Life Care Center of Skagit County to the west and Sedro-Woolley Tire & Auto repair to the east.

- The proposed facilities would not be incompatible with surrounding developments.
- The Applicant is not required to propose measures consistent with the Uniform Relocation Act because the property is currently undeveloped.
- The proposed site is along SR 20, a significant transportation corridor through the City.
- There are no schools, preschools, or daycare facilities within 300 feet of the project site.

*Exhibit A, Staff Report, pages 7 and 8.*

10. City staff determined that the proposal did not adequately address the criterion for Type One essential public facilities related to mitigation for public health and safety impacts under SWMC 17.88.060.E.4. City staff therefore proposed the following conditions to ensure the project’s compliance with this criterion:
- Sedro-Woolley Police and Fire shall not act as enforcement or treatment for patients. Facility must be staffed to support the level of care necessary for all patients accepted at the facility without reliance on the Sedro-Woolley Police or Fire Department for support or services other than those generally provided to all citizens (i.e., emergency calls). Facility must provide a staffing and level of services plan to the city for review and approval annually, no later than December 1st for the following year.
  - There shall be a written plan to address transportation for both new patients and released patients so as to prevent patient from simply walking in and out the front doors. This plan and any future changes to this plan must be approved by the Sedro-Woolley Police Department.

*Exhibit A, Staff Report, pages 7, 9, and 10.*

11. The Applicant submitted a letter in advance of the open record hearing requesting that the above proposed conditions be replaced with the following language:
- Prior to building occupancy approval, Skagit County shall submit a facility operations plan to the City, which shall address staff and patient safety and security measures, the use of local emergency services, and patient transportation. Skagit County, the facility operator, and the City of Sedro-Woolley will work in good faith to address any facility operation concerns as they arise.

The Applicant also requested to strike a proposed condition prohibiting co-located housing on the property. The City responded that the Applicant’s request to modify the proposed public health and safety conditions was reasonable. The City also proposed the following new condition to replace the recommended condition regarding co-located housing:

Per 17.56.010 “All aspects of the application, including site plans and design of signs and other improvements, are considered binding.” After

approval of a CUP is issued for a property, that property is required to conform to the scope of development and specific conditions included in the CUP approval unless the CUP is modified or expires per the time limitations in Chapter 17.56 SWMC. Conditional uses and uses allowed per the underlying zoning may not be combined without modifying the CUP. Any future changes in use or new construction on the property shall be within the scope of the approved CUP.

*Exhibit S; Exhibit T.*

#### Testimony

12. City Assistant Planner Katherine Weir testified generally about the proposal and how, with conditions, it would meet the requirements for approval of a conditional use permit for an essential public facility. She noted that the proposed development would be on vacant property in the Mixed Commercial zone. Ms. Weir explained that health facilities are a permitted use in the Mixed Commercial zone but that a conditional use permit would be required because the project is classified as a Type 1 essential public facility. She described the proposed phases of development, noting that infrastructure improvements for both phases would be developed in Phase One and would include a new driveway, parking areas, utilities, stormwater management, and landscaping. Ms. Weir stated that the City had reviewed the proposal and determined that, with conditions, it would comply with the criteria for conditional uses and Type 1 essential public facilities, SEPA, regulations for development in the Mixed Commercial zone, and standards for parking, design review, landscaping, and critical areas. *Testimony of Ms. Weir.*
13. City Planning Director John Coleman testified about the City's recommended conditions, noting the Applicant's request to modify and combine two of the recommended conditions and to eliminate one of the recommended conditions, as well as the City's responses to the Applicant's request, as detailed above in Finding 11. Mr. Coleman stated that, in response to the Applicant's request to eliminate a condition prohibiting co-located housing on the property, the City proposed new language for the condition that would ensure that future uses of the property would be within the scope of the approved CUP. He noted that impacts to Brickyard Creek, located along the front of the property, would be addressed primarily through wetland mitigation banking as stated in the buffer mitigation bank use plan. Mr. Coleman stated that, under SWMC 17.56.050, CUPs become void if substantial construction progress is not made within two years or if the use has not commenced within five years, and that these time limits may be extended by the Hearing Examiner for good cause. He noted that it would be difficult for the Applicant to complete Phase Two of the proposal within five years of CUP approval. *Testimony of Mr. Coleman.*
14. Skagit County Deputy Administrator Kayla Schott-Bresler testified that the County initiated the project in 2018 to identify options for relocating services currently provided

at the North Cascades Gateway Center in Sedro-Woolley. She noted that the North Cascades Gateway Center, which currently offers 141 behavioral health treatment beds, is expected to close and relocate throughout the region. Ms. Schott-Bresler stated that downsizing to smaller mental health facilities is a Washington State health-care priority. She noted that the proposed 16-bed Evaluation and Treatment Center would provide inpatient care designed to quickly evaluate, diagnose, and stabilize acute mental health symptoms. Ms. Schott-Bresler stated that the Center would also provide short-term acute mental health and psychiatric care for people who are gravely disabled or pose an imminent danger to themselves or others and would be the only facility providing these services in the region. She discussed the proposed project site, noting that the location was selected due to its proximity to Interstate 5, ease of access, zoning regulations, and other considerations. Ms. Schott-Bresler discussed the proposed phases of development, noting that the acute detox facility proposed for Phase Two would provide secure withdrawal management for people who are a danger to themselves, others, or property due to drug or alcohol issues. She noted that the proposal would primarily serve Island, San Juan, Whatcom, Skagit, and Snohomish counties, and that over \$10 million has been secured in state funding for the project. *Testimony of Ms. Schott-Bresler.*

15. Applicant Representative Christine Phillips testified that she is a certified planner with BCRA and that Skagit County hired BCRA to design the proposed facilities. She discussed the Applicant's site plan, noting the proposed locations of the Evaluation and Treatment Center to be developed in Phase One and the secure detox center to be developed in Phase Two, as well as the associated infrastructure, such as driveways, parking areas, and landscaping. Ms. Phillips stated that the Applicant has thoroughly responded to all the requirements for project approval. She noted the Applicant's concerns with some of the recommended conditions of approval, as detailed above in Finding 11. Ms. Phillips requested time for the Applicant to review and respond to the City's proposed revision to the condition prohibiting co-located housing on the property. She noted that the Applicant has no plans for co-located housing on the property and that the Applicant believes the condition to be unnecessary. She discussed the timing of the proposed development, noting that Phase Two of the development still requires funding to complete the project design. *Testimony of Ms. Phillips.*
16. Applicant Attorney Julie Nichol stated that the Applicant would appreciate additional time to respond to the City's proposed revision to the recommended condition prohibiting co-located housing on the property, as well as to provide more information regarding the timing of the proposal so as to assist the Hearing Examiner in determining whether to extend the time limits under SWMC 17.56.050 for project construction and commencement. *Presentation of Ms. Nichol.*
17. Civil Engineer Zachary Crum testified generally about the Applicant's proposed buffer mitigation banking plan. He noted that Brickyard Creek is a Type 3 fish-bearing stream and, therefore, the Applicant has been working with Widener & Associates to seek permit

approval through the Washington State Department of Fish and Wildlife (WDFW) and the United States Army Corps of Engineers. Mr. Crum stated that the Applicant has received hydraulic project approval from WDFW and has submitted a Joint Aquatic Resource Permit Application (JARPA) to the Army Corps of Engineers. He noted that Widener & Associates had informed the Applicant that there would be mitigation credits available through the local wetland mitigation bank. *Testimony of Mr. Crum.*

18. Mike Hudson, Skagit Valley REACH Center Director, testified that the REACH Center is a non-profit organization that supports people with substance use disorders and mental health issues in their recovery. He noted that the proposed facility is vitally essential for providing these recovery services. *Testimony of Mr. Hudson.*
19. During the open record hearing, Judy Heinemann of National Alliance on Mental Illness (NAMI) Skagit, submitted in-meeting chat comments that noted NAMI Skagit fully supports the proposal. *Exhibit U.*

#### Additional Materials

20. The Hearing Examiner left the record open until June 22, 2020, to allow the Applicant and the City to submit additional materials addressing disagreements as to the proposed conditions of approval for the project and addressing the time limitations for CUPs under SWMC 17.56.050. The Applicant submitted a letter requesting that the Hearing Examiner reject the recommended condition regarding a prohibition on co-located housing as well as the City's proposed modification of this condition. The Applicant argues that the proposed condition is unnecessary because City code adequately reflects the requirement that any future proposal to change the conditional use would require additional City review and approval. The Applicant further argues that the proposed condition could cause confusion should there be any later changes to City code. The Applicant contends that the time limitations for CUPs under SWMC 17.56.050 would apply to the entire phased project such that the project would not be voided if substantial construction progress for Phase One is made within two years of CUP approval and if the proposed use for Phase One is made within five years of CUP approval. The Applicant seeks clarification from the Hearing Examiner as to how the timing requirements of SWMC 17.56.050 would apply to the phased project. *Exhibit V.*
21. The City submitted a letter requesting that the Hearing Examiner adopt its recommended condition regarding limitations on future uses of the property, asserting that the condition would provide parties with a clear understanding of the use approved in the CUP. Regarding timing issues, the City recommends that the Hearing Examiner impose a condition specifying the timeframe for the commencement of Phase One as five years from the date of CUP approval and that the commencement of Phase Two shall be within five years after the date of commencement of use for Phase One, and further specifying that the approval date of the Certificate of Occupancy would constitute the date of commencement of use for Phase One. *Exhibit W.*

22. The record was left open to allow those who were unable to participate in the open record hearing because of technological problems to submit written comments in lieu of testimony. Area resident Richard Quam wrote the City with concerns about the facility operations plan, especially in regard to safety, because his property is so close to the subject proposal. Mr. Quam also reiterated concerns he previously expressed about deer passage through the subject property. *Exhibit X*.

Staff Recommendation

23. City staff recommends approval of the conditional use permit, with conditions. *Exhibit A, Staff Report, pages 9 and 10; Exhibit W*.

**CONCLUSIONS**

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide conditional use permit applications. *SWMC 17.56.030.E; Chapter 17.61 SWMC*.

Criteria for Review

*Conditional Use Permit*

The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- A. Conforms to the comprehensive plan;
- B. Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and
- C. Is well-planned in all respects so as to be an asset to the community.

*SWMC 17.56.060*.

*Essential Public Facility*

- A. The designated hearing body, giving substantial weight to the recommendations of the staff report, shall review the application under the following criteria:
  - 1. Whether the proposed action as recommended by city staff is consistent with the criteria established under Sections 17.88.060 and 17.88.080 if applicable;
  - 2. Whether modifications to recommended conditions or restrictions, if any, are adequate to mitigate impacts in a manner which meets the standards of this code and any related development agreement; and
  - 3. Whether project conditions cumulatively are reasonable and would not preclude development of the EPF.
- B. Recognizing that RCW 36.70A.200(2) prohibits the city from precluding the siting of an essential public facility, if the permit application proposes siting of a project in a location other than the city's preferred location as

recommended by city staff or otherwise designated under the city's comprehensive plan or zoning code, the applicant shall present information as to why the city's preferred location, rather than the location applied for, will preclude development of the project. The applicant shall provide any engineering, financial, and other studies and information necessary to explain its position. The hearing examiner, with additional analysis and input from city staff, if requested, shall make findings and a decision as to whether siting the project at the city's preferred location would be impossible, impracticable, or otherwise preclusive. The said findings and decision shall not be deemed, however, to preclude the authority of a regional decision-making body, under law now existing or subsequently amended, to determine where a regional EPF shall be sited, assuming applicable laws and legal requirements are complied with. This section shall not apply to the siting of SCTFs.

- C. As a condition of approval pursuant to Section 17.88.060, the hearing examiner may:
1. Increase requirements in the standards, criteria, or policies established by this title;
  2. Stipulate the exact location as a means of minimizing hazards to life or limb, property damage, impacts to the environment, erosion, underground collapse, landslides, or transportation systems;
  3. Impose conditions necessary to avoid, minimize or mitigate any adverse impacts identified as a result of the project;
  4. Require the posting of construction and maintenance bonds sufficient to secure to the city the estimated cost of construction, installation and maintenance of required improvements;
  5. Impose any requirement that will protect the public health, safety, and welfare; and
  6. Impose conditions as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance-generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters.

*SWMC 17.88.100.*

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

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### Conclusions Based on Findings

- 1. With conditions, the proposal would conform to the Comprehensive Plan.** The Applicant seeks a conditional use permit to develop, in phases, mental health facilities consisting of a 16-bed Evaluation and Treatment Center with administrative offices and a 24-bed Detox Program, with associated improvements including a new driveway, parking areas, utilities, stormwater management, and landscaping. The proposed development has been classified as Type One essential public facility by the City Planning Director and is necessary for the relocation of mental health treatment and substance withdrawal management services currently provided at the North Cascades Gateway Center. The property is designated Mixed Commercial by the City Comprehensive Plan, which allows for a comparable mix of commercial and residential development. The proposal to develop regional mental health facilities is consistent with relevant City Comprehensive Plan policies, including policies supporting inter-jurisdictional efforts, to address problems that may arise having regional impacts, and working cooperatively with Skagit County and neighboring jurisdictions in the siting of public facilities of regional importance.

Conditions are necessary to ensure that the development generally conforms with the Applicant's submitted site plan; that the Applicant submits a facility operations plan to the City addressing staff and patient safety, security measures, use of local emergency services, and patient transportation; that the Applicant complies with all MDNS mitigation conditions, as detailed below; and that the Applicant provides a landscape plan at the time of building application. The City has proposed a condition that would prohibit co-located housing on the property or, in the alternative, clarifying that uses allowed in the underlying zone may not be combined without modifying the CUP. The Hearing Examiner concludes that the City's proposed condition and alternative proposed condition are not necessary for CUP approval. Although the underlying Mixed Commercial zone allows for residential units above the first story of commercial buildings, this combined use is not a concern for the proposal because the proposed buildings would be only one story. *SWMC 17.20.010.A.2*. Additionally, because City code provisions clearly prohibit uses that would be outside the scope of the approved CUP, a condition further clarifying this prohibition is unnecessary.

*SWMC 17.56.050* provides that CUPs shall become void if substantial progress toward construction of improvements is not made within two years or if the use has not commenced within five years. *SWMC 17.56.050* provides the Hearing Examiner with authority to extend these time limits for good cause. The Applicant has requested clarity on the timing requirement as applied to the proposal to develop the facilities in two phases or, in the alternative, to extend the time requirement for good cause. To the extent that *SWMC 17.56.050* requires the commencement of uses related to both phases of development to be commenced within five years, the Hearing Examiner concludes that there is good cause to extend the time limit. A condition specifying the time limits for

the project, as detailed below, is necessary to ensure that the use is developed in a timely manner in compliance with SWMC 17.56.050. *Findings 1, 4 – 23.*

2. **With conditions, the proposal would be compatible with the surrounding area and cause no unreasonable adverse impacts.** The property is zoned Mixed Commercial, which encourages a compatible mix of commercial and residential development. Surrounding property to the north is also zoned Mixed Commercial, consisting of undeveloped agricultural land, with property to the east and west zoned Mixed Commercial and developed with various commercial uses. Property to the south is zoned Residential 7 and Public and is developed with single-family residences and a public park. The Applicant's submitted site plan and other application materials show that the project would comply with bulk restrictions applicable to development in the Mixed Commercial zone, including requirements for minimum setbacks and maximum building heights. The Applicant would be required to submit landscaping plans with its building permit application to demonstrate compliance with City code landscaping requirements. Review for compliance with the City Design Standards and Guidelines Manual would also occur during the building permitting stage.

City staff analyzed the proposal and determined that, with conditions, it would comply with applicable criteria for Type One essential public facilities. This analysis included the determination that the project would incorporate specific features to ensure that it would be compatible with the existing character of surrounding developments. The Hearing Examiner concurs with City staff's assessment. A 55-foot buffer reduction to the 110-foot buffer of Brickyard Creek, a Type 3 fish-bearing stream, is required to provide access to and adequate parking for the proposed development. The Applicant would purchase credits from the Skagit Environmental Bank to mitigate for permanent impacts to the buffer and would submit proof of purchase of such mitigation bank credits to the City and Skagit County prior to any ground-disturbing activity. As detailed in Conclusion 1, conditions would ensure that the proposal meets all requirements of the municipal code and criteria required for CUP approval. *Findings 1, 3 – 23.*

3. **The proposal is well planned in all aspects to thus be an asset to the community.** The City provided reasonable notice of the application and associated open record hearing. The City's police chief provided a comment requesting that the proposed mental health facility have adequate staffing to manage patients, noting that the police department does not have adequate resources to assist in patient management. One area resident expressed a similar concern. The City and the Applicant addressed this issue, and a condition requiring Skagit County to submit a facility operations plan to the City would ensure that the project would not adversely affect the policing resources of the community. The Applicant and City are encouraged to include nearby area residents that may be impacted by the proposal in evaluating the operations plan to ensure that any additional concerns (especially related to safety) are appropriately addressed. The Applicant has complied with all the procedural requirements for Type One essential

public facility proposals under SWMC 17.88.050. The City issued an MDNS for the proposal with additional requirements that must be followed to ensure the project does not have adverse impacts on the environment. The MDNS was not appealed. All appropriate planning has occurred with the proposal to ensure that it is an asset to the community. *Findings 1 – 23.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a conditional use permit for the phased development of the Skagit County Stabilization Campus for mental health facilities, a Type One essential public facility, within the 1400 block of SR-20 is **APPROVED**, with the following conditions:

1. All development shall generally conform to the plans date stamped received October 21, 2019.
2. Prior to building occupancy approval, Skagit County shall submit a facility operations plan to the City, which shall address staff and patient safety and security measures, the use of local emergency services, and patient transportation. Skagit County, the facility operator, and the City of Sedro-Woolley will work in good faith to address any facility operation concerns as they arise. In addition, the Applicant and the City are encouraged to seek input on the facility operations plan prior to its implementation from nearby area residents to ensure that their concerns have been adequately addressed.
4. The Applicant shall comply with the following mitigation requirements set forth by the MDNS:
  - Shield vehicle lights and any other exterior lighting from the residential properties; and
  - Construction shall comply with all local, state, and federal regulations, including Sedro-Woolley Municipal Code Title 13.36 Stormwater Management Standards; Title 13.40 Stormwater Facilities Maintenance; Title 15.40 Public Works Construction Standards; Title 17 Zoning; Sedro-Woolley Public Works Design Standards and requirements and the Sedro-Woolley Comprehensive Plan.
5. Provide a landscape plan per Chapter 17.50 SWMC at time of building application.
6. This conditional use permit shall become void if substantial progress toward construction of improvements is not made within two years from the date this decision has been issued or if the commencement of use related to Phase One of the project has not begun within five years and the commencement of use related to Phase Two of the project has not begun within five years of the commencement of use for Phase One. The date of

commencement of use for Phase One shall be the approval date of the Certificate of Occupancy for the building associated with Phase One.

Decided this 6<sup>th</sup> day of July 2020.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center