

1 **Exhibits**

2 Exhibits A-U of the June 13, 2021, staff report were admitted into the record during the hearing.
3 Exhibit V, "Nursing Home Inspect," was admitted during the hearing at the request of the Applicant.

4 **FINDINGS OF FACT**

5
6 **Procedural:**

- 7 1. Applicant. Huitt-Zollars and BCRA on behalf of Claudia Johnson, Emerald City
8 Enhanced Services, LLC
- 9 2. Hearing. A hearing was held on the subject application at 10 am on June 14, 2021 on Zoom,
10 Meeting ID No. 969 9875 7836.

11 **Substantive:**

12 3. Project Description. Emerald City Enhanced Services LLC has applied for a conditional use
13 permit to construct a 10,400 square foot building at 11435 and 11417 Pacific Hwy SW to serve as
14 Enhanced Service Facility (ESF), which would provide behavioral health care services to a
15 maximum of 16 residents who are transitioning out of Western State Hospital. The facility is
16 proposed to operate 24-hours a day, seven days a week and will host no more than 8 staff members
on site at a given time for the largest shift. No commercial vehicles are proposed for this use. The
site will be fully fenced and outdoor spaces will include a recreation patio, sidewalks and a gazebo.

17 The facility provides a home-like setting, similar to an adult family home or assisted living facility,
18 but with a higher level of support and services from professional staff and trained caregivers than is
19 typically available in those programs. An ESF is licensed and regulated by DSHS, Aging and Long-
Term Support Administration. Residential Care Services (RCS) provides regulatory oversight,
including licensure, inspections, and complaint investigations.

20 4. Surrounding Area. This property is surrounded by commercial uses that range from one story
21 to the multilevel parking garage and hotel. There are no nearby less intensive residential land uses.
22 The project site adjoins Pacific Highway Southwest. The Sounder Station is directly across the
street. To the east is a hotel, to the south is I-5 and to the southwest is Lakewood Ford. Tr. 7.

23 5. Adverse Impacts. There are no significant adverse impacts associated with the project.
24 Pertinent impacts are addressed as follows:

- 25 A. Critical Areas. There do not appear to be any critical areas located at the project site. The
26 record contains no information on critical areas. However, the Applicant's Trip Generation
Assessment, Ex. K, includes an aerial photograph of the project site that shows the property as
entirely composed of bare, level dirt plus a couple buildings. In the absence of any other

1 information, this shows that the project likely does not have any critical areas. One exception
2 may be an aquifer recharge area, but protection measures for aquifer recharge areas are
3 implemented during building permit review and would not involve any requirements that would
entail any modification to the proposed development design.

4 B. Traffic/Transportation. The proposal will not create any significant traffic impacts. The
5 Applicant's Trip Generation Assessment, Ex. K, estimates that the proposal will generate 10
6 PM peak hour trips. The estimate is based upon trip generation rates of similar facilities. The
7 traffic generated by the proposal does not exceed the thresholds found necessary in the City's
development standards to trigger a traffic impact analysis. For this reason, the trip generation
of the proposal is not found to be significant.

8 Public Works staff has done a preliminary assessment of the project for conformance to public
9 works standards, including on-site circulation, access and parking. With conditions adopted by
10 this Decision, Public Works has no objections to the proposal. See Ex. M. Public works has
not identified the need for any on or off-site traffic improvements. Such requirements may still
11 be imposed as part of site plan review.

12 C. Hazardous Conditions. No hazardous conditions are associated with the proposed use or
13 development. The Applicant states no hazardous conditions are associated with the proposal
and none are apparent from the administrative record.

14 D. Compatibility. The proposal will not create any significant noise, aesthetic or other adverse
15 impacts that would affect surrounding properties. The proposed use is fairly benign and
16 moderate in scale compared to other uses authorized and developed in the surrounding Transit
17 Oriented Commercial zoning. Further, all areas that are not covered with building or parking
and drives will be landscaped, enhancing aesthetic compatibility. Public works and planning
18 staff have also evaluated the proposal for conformance to the City's development standards and
19 have no found any compliance issues beyond needing additional information to evaluate the
20 local need of the project. Se Tr. 6; Ex. M. The Applicant asserts that once construction is
completed there will be little noise, emissions, light or traffic produced by the proposed use and
that neighboring uses will have a higher impact on noise, light, and traffic. The record supports
the position of the Applicant on this issue.

21 E. Adequacy of Utilities. The proposal will be served by adequate utilities. All required utilities
22 are available at the site as this site was previously developed with a commercial business.

23 F. Tree Retention. The proposal provides for adequate retention of trees. Any significant tree
24 removal will be regulated by the City's tree ordinance and may trigger a requirement for a tree
removal permit. The aerial photograph of the project site in the Applicant's traffic report only
shows one or two trees located in the southeastern portion of the project site.

25 G. Impact on Public Services. The record establishes that the proposal will not create any greater
26 demand upon public services than similarly sized residential arrangements that don't involve a
special needs population.

1
2 The City submitted DSHS investigation reports from the last approximately three years of other
3 ESF facilities in Everett, Spokane and Vancouver to show what types of incidents are
4 associated with these facilities. Ex. S. According to the Applicant, the reports include every
5 incident that involves a police response. Tr. 18. The reports did not show any indication that
6 an ESF is prone to create incidents that place a strain on police or emergency services. The
7 only incidents that may have necessitated a police response was one resident who went to a
8 store and yelled at a clerk, another resident suffered a fall that necessitated a hospital visit,
9 another was hospitalized due to taking the wrong medication, another became confused and got
10 lost for a couple days and another went missing and was found later living with a family
11 member. It's unknown how many if any of these incidents involved a police or ambulance
12 response. However, at most there were six incidents from a total group of what appears to be
13 48¹ residents spanning a period of about three years.

14
15 The Applicant also presented evidence supporting her position that ESFs will not unduly burden
16 public services. The Applicant noted that the median age of ESF residents is 35-55 years, so
17 medical response would be anticipated to be less than in senior living arrangements. As
18 repeatedly emphasized by the Applicant, the residents admitted into the proposal will be
19 patients from Western State Hospital who do not have a continuing record and history for
20 violent behavior and who are not in crisis. They will be sent to the proposed ESF only after they
21 are stabilized. They are stringently assessed prior to admission to not pose a risk to self, the
22 staff, and the community.

23
24 The Applicant noted that the ESF will be staffed with qualified professionals trained to prevent
25 incidents requiring police/emergency response from occurring. Every staff member will be
26 trained to handle residents who are in crisis, and most importantly to prevent residents from
reaching crisis. Staff members will also be trained in de-escalation techniques and prevention
and management of disruptive behavior. Training has to be DSHS approved and is DSHS
enforced. This facility will also be staffed with one healthcare provider per four residents.
Staffing includes 8 hours/day on site and round the clock access to mental health professional.
The medical staff will be made up of mental health care professionals, registered nurses,
licensed vocational nurses, and certified medical assistants. The other daily staff will be a
housekeeper and a cook trained in ESF behavioral health training.

From all of the factors above, there is no basis to conclude that the proposed ECF will create
any significant demand upon police and emergency services. Without more information about
comparable police and emergency response rates from non-special needs housing, it is not
possible to draw any conclusions as to whether the proposed ESF will create a burdensome
demand upon emergency response, whether in isolation or cumulatively with other approved
ESF facilities.

¹ The total number of residents may have exceeded 48 if the reports include more than one ESF in each of the three cities presented for review.

1 6. Continuum of Service. There are currently only five ESF's in the State of Washington. Tr.
2 16. The ESF's are located in Spokane, Olympia, Everett and Vancouver. According to the
3 Applicant, ESFs serve to fill a gap in the continuum of mental health services. Voluntary residential
4 community-based facilities such as ESFs help fill the gap in residential living arrangements between
5 locked down facilities such as Western State Hospital and release into the community. The ESFs
6 provides the support necessary to assure a successful transition from Western State Hospital into
7 independent living. There are currently 500 civilly committed people at Western State who are
8 waiting for admission into an ESF. Tr. 21.

9 The Applicant notes that Washington State is at the beginning of a major reform of the entire mental
10 health service delivery model. The large state hospitals will evolve into a Center of Forensic
11 Excellence through phased renovation, and the construction of new hospitals designed with a new
12 model for mental health care. Serving people in their home communities is essential to this plan. To
13 do this, this transformation requires development of a continuum of services that can prevent or
14 divert people from being committed to the state hospitals and can support people in their recovery
15 after treatment in a hospital is complete. The ESF serves that latter role.

16 7. ESF Operations. ESF operations are proposed to prevent nuisances and adverse impacts on
17 surrounding uses. The planned ESF budget includes staffing, operations, and all costs. Training will
18 be done under the DSHS guidelines and the nurse operator/manager will be trained by DSHS under
19 this program, and then train staff on the job. The owner/operator is a nurse with a BS in nursing and
20 is qualified to teach and orient health care employees and other employees. The medical staffing ratio
21 is four health care providers to 16 residents. Staff also includes a cook and housekeeper on staff daily.

22 The ESF will be inspected by DSHS and has to comply with DSHS guidelines that include adequate
23 provisions for litter control and solid waste disposal as well as building and site maintenance. The
24 Applicant states that staff will be trained on an ongoing basis on property maintenance and public
25 nuisance codes.

26 The Applicant has provided the City with a main point of contact. The ESF standard operating
manual also has state mandated rules for addressing grievances and complaints. There is also an
online complaint resource at: <https://www.dshs.wa.gov/altsa/residential-care-services/residential-care-services-onlineincident-reporting>.

The major points of the operations plan described above have been proposed by the Applicant and are
made a condition of approval.

Conclusions of Law

1. Authority. LMC 18A.20.080 classifies conditional use permits as a Process III application
subject to hearing examiner review.

2. Zoning Designations. Transit Oriented Commercial (TOC).

1 3. City Has Burden to Establish Alleged Impacts Based Upon Disability. The City has the
2 burden to establish any impacts it believes to result from the disabilities of ESF residents. For this
3 application, that burden specifically applies to the concern that the proposed ESF may unduly
burden public services, most important police calls for service.

4 The City's burden to establish impacts based upon disability arises from the American with
5 Disabilities Act ("ADA") and the Fair Housing Act ("FHA"). Both Acts prohibit discrimination on
6 the basis of disability in zoning. The ADA prohibits discrimination based on disability in programs,
7 services, and activities provided or made available by public entities. Likewise, the FHA prohibits
8 discrimination in the sale, rental, and financing of dwellings, and in other housing-related
9 transactions, based on disability. The House Report on the FHA emphasizes that its 1988
10 amendments were "*intended to prohibit the application of special requirements through land-use
11 regulations, restrictive covenants, and conditional or special-use permits that have the effect of
12 limiting the ability of such individuals to live in the residence of their choice in the community.*"
13 H.R. Rep. No. 100-711 at 24.

14 The staff report identifies that the City's police chief requested the Applicant to provide information
15 on police calls for service for ESFs. City staff also submitted Ex. S, T and U, which identify
16 complaints at ESF investigated by DSHS. The City appears to be concerned that ESF facilities may
17 generate a disproportionate demand for public services such as police and emergency medical
18 response. The City would likely not be pursuing these concerns if the proposal was for apartment
19 complex or townhome development housing 16 residents instead of an ESF. In this regard,
20 conditions based upon disability could be considered disparate treatment under ADA/FHA case law.
21 Disparate treatment arises when a party expressly treats members of a protected group differently
22 than others who are similarly situated. *See Children's Alliance v. City of Bellevue*, 950 F. Supp.
23 1491, 1495 (W.D. Wash. 1997).

24 Despite the negative connotation of labelling an action "disparate treatment," courts recognize that
25 cities can have legitimate reasons for protecting their communities from the impacts of projects
26 housing the disabled even if those impacts are attributable to disability. If the actions of a City
result in disparate treatment, the City can validate those actions if the City can "show" that the
action benefits the protected class or that its responds to legitimate public impacts. *See Id.* at 1499².
The *Children's Alliance* case only expressly stated that demonstrated public safety impacts could
validate disparate treatment. However, the court's review of other potential justifications for
disparate treatment strongly suggests that other impacts that are significant, concrete and based in
clearly documented evidence would suffice as well.³

² The Children's Alliance case was directly addressed with the facially disparate impact of a group home ordinance. The reasoning of the case appears to equally apply to disparate treatment in the application of an ordinance as well, such as application of the conditional use criteria in this case.

³ The Bellevue court noted that the justification for disparate treatment must survive a higher scrutiny than rational basis review. *See Id.* 1498-99. Although the court only identified public safety as a basis for disparate treatment, this doesn't appear to preclude other impacts such as possibly a heavily disproportionate allocation of facilities serving the disabled that demonstrably places a significant burden on local public services.

1 The City's burden of proof is addressed in this Decision because it is determinative for the
2 resolution of whether the proposed ESF is unduly burdensome on public services. It is normally the
3 Applicant's burden to demonstrate compliance with all conditional use criteria. This would usually
4 include LMC 18A.30.130C, which requires that a proposed use not be unduly burdensome on
5 public services. If the burden of proof remained on the Applicant to establish unduly burden on
6 services, from the evidence in the record it would have to be concluded that the Applicant has failed
7 to make her case – the DSHS incident reports show that ESFs potentially do generate demand for
8 service. With that evidence, it would be up to the Applicant to show that those incidents do not
9 unduly burden public services. The Applicant has not proven that fact. However, since the burden
10 is on the City, it's up to the City to prove the opposite, that the incidents identified in the DSHS
11 reports will unduly burden public services. For the reasons identified in Finding of Fact No. 5G, the
12 City hasn't established that point.

13 3. Review Criteria. As identified in LMC 18A.40.120B, ESFs are authorized in the TOC
14 zone as a conditional use. LMC 18A.30.130 governs the criteria for conditional use permit review
15 and LMC 18A.40.120C3 adds additional standards for special care facilities. Applicable conditional
16 use criteria are quoted below in italics and applied through corresponding conclusions of law.

17 **LMC 18A.30.130(A):** *The granting of the conditional use permit will not:*

18 *1. Adversely affect the established character of the surrounding vicinity. For the purposes of this*
19 *section, character shall mean the distinctive features or attributes of buildings and site design on*
20 *adjacent properties and in the vicinity and as articulated in the comprehensive plan, including but*
21 *not limited to building facade, length, building modulation, building height, roof form, tree cover,*
22 *types of flora, location of landscaping, size and location of signs, setbacks, amount and location of*
23 *parking, fencing type, height and location, and the like;*

24 4. The criterion is met as conditioned for the reasons identified in Finding of Fact 5D.

25 **LMC 18A.30.130(A)(2):** *The proposed use will not be detrimental to the public health, safety, and*
26 *general welfare; and.*

1 The criterion is met. As determined in Finding of Fact No. 5, no significant adverse impacts
will be created by the proposal. Since the proposal creates no significant adverse impacts, it will not
be detrimental to public health, safety and welfare.

LMC 18A.30.130(A)(3): *The proposed use will not be injurious to, or adversely affect the uses,*
property, or improvements adjacent to, or in the vicinity of, the site upon which the proposed use is to
be located.

6. The criterion is met. As determined in Finding of Fact No. 5, no significant adverse impacts
will be created by the proposal and the proposal is compatible with surrounding uses. Consequently,
it will not be injurious or adversely affect surrounding uses.

1
2
3 **LMC 18A.30.130(B):** *The granting of the proposed conditional use permit is consistent and*
4 *compatible with the goals and policies of the comprehensive plan, and any code, ordinance,*
5 *regulation or standard in effect to implement the plan.*

6 7. The criterion is met. The proposal is consistent with the comprehensive plan for the reasons
7 identified at page 9 of the staff report. As previously identified, planning and public works staff have
8 reviewed the proposal for consistency with the City's development standards and found the project to
9 be consistent. There is nothing in the record to reasonably suggest otherwise.

10 **LMC 18A.30.130(C):** *The proposed use is properly located in relation to other land uses,*
11 *transportation and public facilities and services in the vicinity; and further, that the capacity of the*
12 *transportation system and other public facilities and services will adequately serve the proposed use*
13 *without placing an undue burden on such systems, facilities and services.*

14 8. The criterion is met. As determined in Finding of Fact No. 5(B), (E) and (G), the proposal is
15 served by adequate public facilities and services.

16 **LMC 18A.30.130(D):** *The intensity (i.e., the nature, types and hours of human activity) and*
17 *character of the proposed use are compatible with the intensity and character of the uses of adjacent*
18 *property and of property in the vicinity.*

19 9. The criterion is met. As determined in Finding of Fact No. 5(D), the intensity and character of
20 the proposed use is compatible with the surrounding commercial uses.

21 **LMC 18A.30.130(E):** *That the site is of sufficient size to accommodate the proposed use; and*
22 *further that, in the opinion of the City, all yards, open spaces, landscaping, walls and fences,*
23 *parking, loading, and other necessary features are properly provided to assure the proposed use will*
24 *be compatible with adjacent uses and the character of the vicinity.*

25 10. The criterion is met. As conditioned, proposed on-site circulation and parking have been
26 found to conform to City design standards as determined by Public Works staff. City planning staff
have also found that the proposal conforms to all other design and development standards as well.
Given the low intensity of the proposed use in relation to surrounding commercial uses and the
projects conformance to City design and development standards, the City is found to be of sufficient
size to accommodate the use and provide for compatibility of use.

LMC 18A.30.130(F): *The proposed use will not introduce hazardous conditions at the site that*
cannot be mitigated so as to protect adjacent properties, the vicinity, and the public health, safety
and welfare of the community from such hazards.

11. The criterion is met as identified in Finding of Fact No 5C.

1 **LMC 18A.30.130(G):** *The conditions necessary to mitigate the impacts of the proposed conditional*
2 *use are capable of reasonable monitoring and reasonable enforcement.*

3 12. The criterion is met. All conditions imposed by this decision are recommended by staff with
4 minor modification and are capable of reasonable monitoring and enforcement.

5 **LMC 18A.40.120C3:** *Special Needs Housing Specific Conditional Use Permit Review Criteria. In*
6 *addition to the requirements outlined in Chapter 18A.30 LMC, Article II, a conditional use permit for*
7 *a special needs housing facility shall only be approved upon a finding that such facility is consistent*
8 *with all of the following criteria:*

9 *a. There is a demonstrated need for the use due to changing demographics, local demand for*
10 *services which exceeds existing facility capacity, gaps in the continuum of service, or an increasing*
11 *generation of need from within the community.*

12 13. The criterion is met. The Applicant has established a demonstrated need for the proposal by
13 filling a gap in the continuum of service for the reasons outlined in Finding of Fact No. 6. The ESF
14 operates to fill the gap between a lock down facility such as Western State Hospital and release into
15 the community. The ESF gives residents the support and supervision necessary to make the
16 transition between institutionalized living and independent living.

17 The criterion quoted above could arguably be construed as requiring that the gap in service occur for
18 local service as opposed to a broader scale. The Applicant focused her argument on a statewide need
19 for ESFs and did not identify it as a need specific to Lakewood. According to the Applicant, the ESF
20 will be used to house Western State Hospital residents. See staff report, p. 3. However, since
21 Western State serves the state as a whole, addressing its need for service is not considered to be
22 local. It is recognized that, as testified by Ms. Johnson, families of Western State Hospital have
23 moved to Lakewood. Nonetheless, those families moved to Lakewood because of Western's State's
24 statewide role. As such, they do not represent a locally generated need for service.

25 Ultimately, however, the "gap" criterion should not be limited to local need. Unlike other clauses of
26 LMC 18A.40.120C3, the "gap" language is not linked to any local community need. A broad
construction of LMC 18A.40.120C3 is also advisable to assure that decisions for special needs
housing are not invalidated due to noncompliance with the ADA and FHA. As outlined in
Conclusion of Law No. 3, the City has to demonstrate impacts to the community such as threats to
public safety to justify conditions based upon the disabled status of its residents. See *Children's*
Alliance v. City of Bellevue, 950 F. Supp. 1491, 1495 (W.D. Wash. 1997). It is questionable whether
exceeding local need would be proper grounds under the *Bellevue* case to condition or deny a special
care facility. The local need focus of the criterion quoted above addresses the City's concern of
overconcentration of special care facilities in Lakewood. See Tr. 5-6. As pointed out in the staff
report, Lakewood already accommodates Western State Hospital, 113 Adult Family Homes and the
Oakbrook Center. Rather than recognized as valid grounds for restricting special care facilities,
statements made by city councilmembers expressing concern about over-concentration of such
facilities has been judicially construed as evidence of discriminatory intent under the FHA and ADA.

1 See Reg. *Economic Community v. City of Middletown*, 294 F.3d 35, 50 (2d Cir. 2002)⁴. To protect
2 the City's special needs criteria from potential FHA/ADA invalidation, the "local need" requirements
3 of LMC 18A.40.120C3 should be narrowly construed as necessary to avoid ADA/FHA violations.
4 The "local need" criterion may be amenable to a broader construction when coupled with other
5 proven impacts, such as overly burdensome demand upon public services.

6 **LMC 18A.40.120C3b:** *The proposed use is consistent with the goals and policies of the City of
7 Lakewood Comprehensive Plan, and the City of Lakewood Consolidated Plan for Housing and
8 Community Development.*

9 14. The criterion is met. The proposal is consistent with the comprehensive due to its
10 consistency with the comprehensive plan policies listed at page 9 of the staff report. The proposal
11 also appears to be consistent with the Lakewood Consolidated Plan for Housing and Community
12 Development. The Coordinated Plan seeks to address numerous housing issues in Lakewood,
13 including homeless and affordable housing. The proposal at least indirectly serves these objectives
14 by giving residents the training and support necessary to avoid falling into homelessness once they
15 are released for fully independent living.

16 **LMC 18A.40.120C3c:** *The proposed location is or will be sufficiently served by public
17 services which may be necessary or desirable for the support and operation of the use. These may
18 include, but shall not be limited to, availability of utilities, access, transportation systems, education,
19 police and fire facilities, and social and health services.*

20 15. The criterion is met for the reasons identified in COL No. 8. The proposal is located directly
21 across the street from the Sounder station, which makes it ideally accessible to public transportation
22 for ESF residents. There is nothing in the record to suggest that the location of the proposal is not
23 otherwise suitably located for support of the facility.

24 **LMC 18A.40.120C3d:** *The use shall be located, planned, and developed such that it is not
25 inconsistent with the health, safety, convenience, or general welfare of persons residing in the facility
26 or residing or working in the surrounding community. The following shall be considered in making a
27 decision:*

- 28 *i. The impact of traffic generated by the proposed use on the surrounding area, pedestrian
29 circulation and public safety and the ability of the proponent to mitigate any potential
30 impacts.*
- 31 *ii. The provision of adequate off-street parking, on-site circulation, and site access.*

32 ⁴ As evidence of discriminatory intent, the Court included two quotes from City Councilmembers -- "*there's an
33 over-concentration of residential and social service facilities in the City*" and "*[t]he problem is that . . . there seems
34 to be a tremendous over-concentration of these types of facilities [i.e., halfway houses] in this City as compared to
35 the surrounding townships.*" Id. at 50.

1 iii. *The adequacy of landscaping, screening, yard setbacks, open spaces, or other*
2 *development characteristics necessary to mitigate the impact of the use upon neighboring*
3 *properties, to include the following development criteria:*

4 (a) *All program activities must take place within the facility or in an appropriately*
5 *designed private yard space.*

6 (b) *Adequate outdoor/recreation space must be provided for resident use.*

7 iv. *Compatibility of the proposed structure and improvements with surrounding properties,*
8 *including the size, height, location, setback, and arrangements of all proposed buildings,*
9 *facilities, and signage, especially as they relate to less intensive residential land uses.*

10 v. *The generation of noise, noxious, or offensive emissions, light, glare, traffic, or other*
11 *nuisances which may be injurious or to the detriment of a significant portion of the*
12 *community.*

13 vi. *Demonstration of the owner's capacity to own, operate, and manage the proposed facility,*
14 *to include the following:*

15 (a) *Provision of an operation plan which will provide for sufficient staffing,*
16 *training, and program design to meet the program's mission and goals.*

17 (b) *Provision of a maintenance plan which will provide for the exterior of*
18 *the building and site to be maintained at a level that will not detract from*
19 *the character of the surrounding area, including adequate provision for*
20 *litter control and solid waste disposal.*

21 (c) *Demonstration of knowledge of the City's Property Maintenance and*
22 *Public Nuisance Codes, and plans to educate the facility staff.*

23 (d) *Provision of a point of contact for the facility to the City.*

24 (e) *Written procedures for addressing grievances from the neighborhood,*
25 *City, and facility residents.*

26 16. The criterion is met. The proposal provides for adequate on-site circulation, access, parking
and traffic mitigation for the reasons identified in Finding of Fact No. 5B. The proposal provides for
adequate landscaping etc. because it meets the City's zoning code standards as determined by City
staff and outlined in Finding of Fact No. 5D. As identified in Finding of Fact No. 3, outdoor
recreation areas are provided for residents and visitors and those areas will be enclosed with fencing
or landscape buffers. The proposal is compatible with surrounding uses and will not be a source of
noise or similar nuisances as identified in Finding of Fact No. 5D. The proposal's operations plan
will assure prevention of nuisances and adverse impacts as outlined in Finding of Fact No. 7.

DECISION

Conditional Use Permit Application No. LU-20-000199 satisfies all conditional use criteria as
determined in the Conclusions of Law of this decision and is therefore approved subject to the
following conditions:

CONDITIONAL USE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1. The Emerald City Enhanced Services Facility shall be constructed in substantial compliance with this staff report and all conditions of approval. Minor modifications to the plans will require Community Development and Public Works Departments approval, and major modifications will require a land use modification permit.
2. This project is located within the Lakewood Station District. A subarea plan for the Lakewood Station District was adopted on June 3, 2021, under Title 18C of the Lakewood Municipal Code. Future building design, site layout and development shall be required to meet compliance with Title 18C.
3. Pursuant to LMC 18A.40.120.C.4 - Concomitant Agreement. Upon issuance of a conditional use permit for a special needs housing facility, the applicant shall sign and record with the Pierce County Auditor a notarized concomitant agreement. Such agreement shall be in a form specified by the Community and Economic Development Director and subject to the approval of the City Attorney, and shall include as a minimum: the legal description of the property which has been permitted for the special needs housing facility; and the conditions of the permit and applicable standards and limitations. The property owner shall submit proof that the concomitant agreement has been recorded prior to issuance of a certificate of occupancy by Community and Economic Development Department. The concomitant agreement shall run with the land as long as the facility is maintained on the property. The property owner may, at any time, apply to the Community and Economic Development Department for termination of the concomitant agreement. Such termination shall be granted upon proof that the facility no longer exists on the property.
4. Registration of Existing Special Needs Housing. Facilities existing as of the effective date of the ordinance codified in this title shall be required to register with the Community and Economic Development Department by one (1) year after the effective date of the ordinance codified in this title. Such registration shall be in a form provided by the Community and Economic Development Department.
5. Abandonment. Any existing special needs housing facility that is abandoned for a continuous period of one (1) year or more shall not be permitted to be re-established, except as allowed in accordance with the standards and requirements for establishment of a new facility.


- 1 6. No building permit shall be issued prior to approval and recordation of the required
2 Boundary Line Adjustment.
- 3
- 4 7. A Site Development Permit and Drainage review are required for this project. The
5 applicant shall abide by the comments and project requirements provided by City of
6 Lakewood Public Works Engineering dated January 28, 2021 (Exhibit M).
- 7
- 8 8. Design Review is required for this proposal pursuant to LMC 18A.70 Article I. Design
9 Review approval shall be issued prior to building permit approval.
- 10
- 11 9. All necessary permits from outside agencies, such as, Lakewood Water District and
12 Pierce County Sewer shall be obtained prior to construction activities.
- 13
- 14 10. Emerald City Enhanced Service Facility shall ensure that any residents admitted into their
15 facility with a history of violence be assessed as ‘stable’ prior to official admittance.
16 Failure to meet this condition shall be grounds for rehearing before the Hearing
17 Examiner.
- 18 11. The applicant is required to obtain a City of Lakewood business license as well as
19 demonstrate compliance with all licensing requirements pursuant to RCW 70.97, or as
20 amended by the state legislature.
- 21 12. Prior to building permit issuance, a written management plan shall be provided for the
22 Director's review and approval. At a minimum, the management plan shall address the
23 following components:
 - 24 a. Identify potential impacts on nearby residential uses and proposed methods to
25 mitigate those impacts;
 - 26 b. Identify the project management or agency responsible for the support staff and
who will be available to resolve concerns pertaining to the facility. The plan shall
specify procedures for updating any changes in contact information;
 - c. Identify staffing, supervision and security arrangements appropriate to the facility.
A twenty-four-hour on-site supervisor is required at all times.

- 1 d. Have an approved communications plan in place in the event that information to
2 the surrounding neighborhood would be needed throughout the time the ESF is in
3 operation.
- 4 e. Provide for a maintenance plan which will provide for the exterior of the building
5 and site to be maintained at a level that will not detract from the character of the
6 surrounding area, including adequate provision for litter control and solid waste
7 disposal.
- 8 f. Demonstrate knowledge of the City’s Property Maintenance and Public Nuisance
9 Codes, and plans to inform/instruct the facility staff.

10 13. Any changes in property and/or business operations shall be reported to the City no later
11 than 30-days following any transaction(s).

12 14. Pursuant to LMC 18A.30.180, Noncompliance with the conditions of the permit shall be
13 grounds for rehearing before the Hearing Examiner, in addition to fines and penalties.
14 The Hearing Examiner may suspend or revoke a conditional use permit pursuant to this
15 section and/or impose penalties for violation of any of the provisions of this title or
16 original conditions of approval.

17 DATED this 28th⁵ day of June 2021.

18 
19 Phil A. Olbrechts

20 Hearing Examiner for Lakewood

21 **Appeal Right and Valuation Notices**

22 LMC 18A.20.080 provides that the final decision of the Hearing Examiner is subject to appeal to
23 superior court. Appeals of final land use decisions to superior court are governed by the Land Use
24 Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict

25 ⁵ The Decision was re-issued with minor modification on July 2, 2021 to correct outdated citations to the City’s
26 conditional use criteria. References to LMC 18A.10.150 were replaced with references to LMC 18A.30.130. The
correction did not result in any material or significant change in the substantive evaluation of the proposal. An
outdated reference to a code provision in the “Appeal Right” section has also been updated.

1 service requirements. Persons wishing to file LUPA appeals should consult with an attorney to
2 ensure that LUPA appeal requirements are correctly followed.

3 Affected property owners may request a change in valuation for property tax purposes
4 notwithstanding any program of revaluation.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26