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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Washington State Dept. of Social and Health Services (DSHS))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
Master Plan Amendment)	
LU20-00027)	
)	

Summary

DSHS has applied for a conditional use permit and master plan review to amend the 1999 Western State Hospital (WSH) Master Facilities Plan for a major reconstruction of the WSH campus. The reconstruction serves the objective of transitioning from civil commitment to forensic commitment with a central feature involving the addition of a 350-bed forensic hospital. The conditional use permit and master plan review are approved subject to conditions.

As outlined in the summary below, one of the conditions of approval added by this Decision may instigate a reconsideration request. City staff will be emailing any such requests authorized for comment to all parties who have submitted their email addresses. Any such reconsideration requests and associated briefing will also be posted at the City’s WSH website, <http://wshmasterplan.org>. Given the large numbers of persons who submitted email addresses, it cannot be guaranteed that all persons who submitted such addresses will receive all distributed reconsideration requests. Ultimately, all parties are responsible for checking the website if they wish to ensure they are abreast of any reconsideration requests and associated modifications to this Decision. Reconsideration requests must be filed within eight days of the date this Decision is rendered. The procedures for requesting reconsideration, as quoted directly from LMC 1.36.271, are located at the end of this Decision.

The project generated over 150 comment letters. Most of the comment letters, many of them form

1 letters, opposed the project asserting that the planned mental illness treatment is ineffective and cruel
2 and exposes residents to violence, that there are racial disparities in commitment rates and that
3 taxpayer money is better spent elsewhere. Those are important matters of discussion, but beyond the
4 scope of this proceeding. This Decision is the result of a land use proceeding, limited to addressing
5 whether the proposal is adequately designed and mitigated to avoid significant adverse impacts to the
6 Lakewood community and environment. As an essential public facility, another relevant consideration
7 is whether DSHS has fairly and appropriately located the proposed improvements in Lakewood as
8 opposed to another community.

9 For residents potentially impacted by the proposal, the issue of greatest concern was public safety.
10 Several public comment letters asserted that WSH had a history of escapes, but no specific instances
11 were identified. Concerns were also raised about dangerous WSH residents being reintegrated into the
12 Lakewood community upon release. Along these lines DSHS was asked during the hearing if it could
13 identify historical escape rates for the facility. DSHS representatives were unable to answer this
14 fundamental question. DSHS has identified many security enhancements and design features that are
15 very likely an improvement over existing measures, but there is no data provided on how effective
16 these measures have proven in other facilities to prevent escape.

17 In the absence of any supporting data, the record doesn't provide compelling assurance that the facility
18 is sufficiently secured to protect the surrounding community. On matters of this type of uncertainty,
19 adaptive monitoring is an appropriate form of mitigation. Given the large amount of taxpayer money
20 involved in any security upgrades and the trade-offs involved between security and treatment, the most
21 appropriate form of monitoring is simply transparency. As noted in one public comment letter, DSHS
22 doesn't notify residents when escapes occur. DSHS wasn't able to provide escape data at the public
23 hearing itself. Lakewood residents have every right to know when and how often escapes occur. A
24 condition of approval requires DSHS to provide email notice to residents who requested such notice of
25 when escapes occur. DSHS is also required to submit yearly reports to the planning department
26 tabulating how frequently escapes occur. That information in turn will empower residents to solicit
their elected and appointed government officials to provide for improved security if the proposed
security measures fall short. Finding of Fact No. 5C of this Decision, p. 7-8, addresses the escape
issue.

Another significant modification to the staff recommendation involves proposed modifications to
mandatory development standards. Those proposed modifications are denied. Finding 20 of the staff
report and Page 29 of the staff report identify several sets of design standards purportedly waived by
approval of the Master Plan. There is nothing immediately apparent in the City's development
standards that authorizes waiver of mandatory development standards in the PI zone. The waivers are
expressly denied by Condition 9 of this decision. The parties are free to request reconsideration if they
can identify a code provision that authorizes such waivers. In the alternative, DSHS will have to
acquire approval of a variance to the extent that the "exceptions" listed at Page 29 of the Master Plan
conflict with the PI zone mandatory development standards listed in LMC 18A.60.080C-E. The
waiver issue is addressed in Conclusion of Law No. 23, p. 20-21.

A less significant departure from the staff report involves traffic mitigation. The DSHS traffic report
bases its mitigation recommendations on an estimated reduction in trip generation due to the proposed

1 reduction in the number of beds. This estimate is somewhat questionable given that the number of
2 staff will significantly increase as the type of bed use is transferred from civil to forensic commitment.
3 In addition, the reduction in beds is only based on the number of beds projected to be in place by 2031.
4 The proposed improvements will actually result in an increase in bed capacity over the current bed
5 count. There is no reason to believe that the trend for an increase in bed demand will stop in 2031.
6 Use of the outstanding bed capacity will result in a bed count after 2031 that is higher than current bed
7 usage. Under the traffic reports own metrics, this means that trip generation will increase over current
8 levels sometime after 2031. As outlined in Conclusion of Law No. 3, the trip generation metrics used
9 in the traffic report can't be modified in this proceeding because it wasn't timely appealed as part of
the SEPA MDNS¹. However, the nature of the proposal is clarified by Condition 6. Condition No. 6
identifies that the proposal for purposes of project review is defined as an 864-bed facility. If and
when DSHS chooses to take advantage of its added bed capacity, that should be considered a
modification to the proposal and processed accordingly. Traffic impacts are addressed in Finding of
Fact No. 5B, pages 5-6.

10 Finally, a few letters were submitted inquiring about a reduction in the WSH open space area
11 dedicated to disc golf. DSHS is not proposing any reduction in the open space surrounding its
12 development. It does not have any legal responsibility to provide recreational opportunities to the
13 public. At hearing a DSHS representative testified that DSHS has signed a four-year lease with the
14 Pierce County Disc Golf Association for play on the former Fort Steilacoom Golf Course. There
15 apparently will be some reduction in play space, but that is an issue between the players and DSHS.
16 The Examiner has no authority to require preservation of disc golf space at the WSH project site.

17 **Testimony**

18 A computer-generated transcript has been prepared of the appeal hearing to provide an overview of
19 the hearing testimony. The transcript is provided for informational purposes only as Appendix A.
20 Since the transcript is computer generated, it is not 100% accurate, but does provide a useful
21 indication of what testimony was presented during the hearing.

22 **Exhibits**

23 Exhibits 1-16 identified at page 16-17 of the staff report were admitted during the hearing. Nine
24 public written comments were submitted after close of the July 27, 2022 hearing and are admitted as
25 part of Exhibit 11, as is the August 9, 2022 DSHS response to those post-hearing comments. Exhibit
26 11 contains the 116 comment letters linked to the public comment matrix, as well as the 26 letters
from the project drop box file "Public Comments Received in advance."

¹ SEPA is the State Environmental Policy Act, Chapter 43.21C RCW. It is the state legislation that requires preparation of environmental impact statements for qualifying government decisions. An MDNS is a mitigated determination of non-significance. It's a finding that, as mitigated by the MDNS, an environmental impact statement does not have to be prepared for a proposal because it does not create probable significant adverse environmental impacts. See Washington Administrative Code Section 197-11-330(1)(b).

1 **FINDINGS OF FACT**

2 **Procedural:**

- 3 1. Applicant. Washington State Department of Social and Health Services (DSHS).
- 4 2. Hearing. A hearing was held on the subject application on July 27, 2022 at 9:00 am in the
- 5 Lakewood City Hall Council Chambers. The record was left open through August 5, 2022 for
- 6 additional public written comment and DSHS was authorized to submit a response on August 9,
- 2022.

7 **Substantive:**

8 3. Project Description. DSHS has applied for a conditional use permit and master plan review

9 to amend the 1999 Western State Hospital (WSH) Master Facilities Plan for a major reconstruction

10 of the WSH campus. The reconstruction serves the objective of transitioning from civil

11 commitment to forensic commitment with a central feature involving the addition of a 350-bed

forensic hospital. The amended Master Plan is entitled Western state hospital Master Plan 2020,

dated December 15, 2021, Ex. 3. The document is referred to as “Master Plan” in this decision.

12 The WSH campus is currently comprised of 56 buildings that provides facilities supporting the

13 hospital’s administrative services, mental health treatment wards, outpatient treatment facilities,

14 hospital court room and legal services, a central laundry, a central food preparation kitchen, a

15 central dining room, patient convenience store, staff training and development center, video

conference center, pharmacy, and commissary. The Master Plan proposes an expansion of the

hospital capacity, including the following with building numbers as identified in Figures 11 and 12

of the Master Plan:

- 17 1. A new 350-bed forensic hospital on the property. This will require the demolition of
- 18 several existing buildings on site.
- 19 2. A new 18-bed residential cottage at the Child Study and Treatment Center.
- 20 3. A new community residential treatment facility (RTF) of 48 beds, contingent on
- 21 completion of a parallel study to site community facilities throughout the region.
- 22 4. The expansion of or additions to Buildings 50, 51, and 54 (Child Study & Treatment
- 23 Center facilities) and Building 29 (Gymnasium addition),
- 24 5. The renovation of Buildings 17, 19, 20, 28, and 29 (patient wards), and
- 25 6. The demolition of seventeen (17) outmoded building as indicated in Figure 20 and
- 26 summarized in Table 8 in the 2020 Master Facilities Plan.

1 Long term, the state’s goal is to transition the hospital to serve primarily forensic patients and fewer
2 civil commitment patients, which make up the majority of the approximately 850 patients on site
3 today. To support the new buildings, infrastructure and circulation improvements are also included
4 in the proposal.

4 The project site is 288.34 acres in size. 72.63 acres of that is zoned and used for open space. The
5 remaining 215.71 acres is zoned Public/Institutional (PI) and used for the campus buildings. The PI
6 zoned area is currently used as the campus for both Western State Hospital and the Child Study and
7 Treatment Center. A site context and surrounding uses map (see figure 6) is included in the Master
8 Plan. The site is composed of four tax parcels. Tax parcel 0220321022 is comprised of the 215.71
9 acres zoned PI. The existing WSH campus is primarily located on this parcel. The parcel is largely
10 developed with a ravine between the existing Western State Hospital and the former Fort
Steilacoom golf course to the north. Tax parcels 0220283027, 0220321007, and 0220283026 total
72.63 acres in size and are located in the Open Space & Recreation 1 zoning district. These parcels
include recreational play fields, former Fort Steilacoom golf course, and areas used as a disc golf
course (not DSHS use).

11 Total projected bed usage as shown in Table 1 of the Master Plan will decrease from 922 beds in
12 2019 to 864 beds in 2031. Bed capacity for that same date range will increase from 922 beds to
1,011 beds.

13 4. Surrounding Area. The West Pierce Fire & Rescue Station 24 and Oakridge Community
14 Facility are located on the easternmost portion of the project site with frontage off of 87th Avenue
15 SW. Oakridge is a 16-bed juvenile rehabilitation Community Facility that provides a residential
16 environment dedicated to job training for juveniles and serves as a step down to prepare youth for
return to their communities.

17 Beyond the uses identified above are the following surrounding uses:

- 18 North – Residential and Municipal Golf Course
- 19 West – (Town of Steilacoom) residential, commercial and Steilacoom High School
- 20 South – Fort Steilacoom Park open space
- 21 East – Neighborhood commercial and multi-family residential

21 Pierce College is located less than a mile to the south.

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

24 A. Critical Areas. The DSHS critical areas report defers critical areas assessment to a future date.
25 This is acceptable, so long as DSHS assumes the risk that the presence of critical areas may
trigger revisions to the Master Plan that will necessitate further review.

26 The WSH site contains two documented wetlands and two streams. Both wetlands are
associated with the Garrison Springs/Garrison Creek riparian corridor in the northwestern

1 portion of the site, between the WSH main campus and the golf course. The second stream is
2 an unnamed tributary to Chambers Creek located at the northern edge of the site, north of the
3 golf course.

4 No work is proposed in or over these streams or wetlands as part of the Master Plan, nor is any
5 dredging, fill, or water diversion. Development activities under the Master Plan would not
6 include any discharge of waste materials to surface waters, and no work is proposed within a
7 mapped flood plain. Individual Master Plan projects that require State or Federal funding or
8 permits will be required to assess the presence of any additional wetlands or streams.

9 Stormwater runoff under the Master Plan would be similar to existing conditions – sources
10 would include building roofs, parking areas, and internal roads. Under the Master Plan, all
11 stormwater runoff will be collected and infiltrated on-site using a combination of pervious
12 pavement, bioretention cells, and roof drain infiltration galleries.

13 The northwestern portion of the campus contains steep slope areas that may contain unstable
14 soils, but the Master Plan does not propose any future development activities in those
15 locations.

16 The WSH campus has oak tree stands that qualify as protected critical areas that have been
17 identified in Figure 23 of the Master Plan. All facilities anticipated in the Master Plan have
18 been sited to reduce impact on the oaks (pp. 39). The Master Plan further requires site-specific
19 designs to avoid development of hardscape and building footprints under the drip line of the
20 oaks (pp. 40). This Plan further requires that irrigation plans for future landscape should avoid
21 over-watering the oak root zone (pp. 40). The SEPA MDNS (Exhibit 13) reviewed the
22 potential impacts to significant vegetation and provided additional mitigation measures that
23 will have to be incorporated with each individual project. (Condition 1)

24 DSHS has submitted a critical areas study, but the study does not evaluate the potential
25 impacts of any proposed improvements at the project site. Rather it identifies where potential
26 critical areas may exist, with the comment that “[f]uture Master Plan projects at the Campus
should conduct detailed field studies to identify ESA listed, priority, and critical species and
habitats in the immediate project facility.” Given that the report doesn’t address the potential
impacts of any proposed improvements, it must be concluded that the “future” projects
referenced in the report include the currently proposed projects, including the new 350 bed
forensic unit.

Despite the preliminary nature of the critical areas report, it does present some general
conclusions about where critical areas may be located. As noted previously, there are streams
and wetlands on the project site and the staff report identifies that the project will not be built
into these wetlands and streams. It’s not entirely clear whether the buffers of those critical
areas will also be located outside the development area of any project, but given that these
features are located within the steep, undevelopable slopes of the project site that is likely to be
the case. Protected oak are identified and it is understood that the Applicant will avoid
building into the oak stands on the project site. See Figure 5 of critical areas report.

1
2 A few public comment letters asserted that the critical areas evaluation didn't follow protected
3 species protocol by failing to do site visits several times. As acknowledged in the critical areas
4 report, page 9, "*formal presence studies were not complete for the presence of ESA species or*
5 *rare plants.*" As previously noted, the critical areas report was contingent upon additional
6 study for "future" projects, which would include a more thorough field assessment for
7 protected species. The report identifies that protected species may be located along or within
8 the streams of the project site. Page 15 of the report also identifies that the riparian areas of
9 the project site qualify as protected biodiversity areas. It's unclear whether these areas would
10 extend into any proposed construction areas.

11 Given the preliminary nature of the critical areas report, a staff recommended condition of
12 approval is imposed to clarify that further critical areas study will be required for future permit
13 review.

14 **B. Traffic.** As conditioned, the proposal adequately mitigates for traffic impacts.

15 A Traffic Impact Analysis dated January 31, 2020 prepared by Transportation Solutions, Inc.
16 was submitted with the Master Plan (Appendices 3A and 3B). The analysis is referenced in this
17 Decision as the DSHS traffic report. The traffic report indicates a long-term decrease in
18 vehicle trip generation at the site, resulting in approximately 6% fewer weekday AM and PM
19 peak hour trips compared to current conditions. Short-term (1-5 years), weekday AM and PM
20 peak hour trips would increase by approximately 7% over current conditions. All affected
21 intersections would operate at LOS D or better in both the short and long-term, with the
22 exception of the CSTC Entrance on Steilacoom Blvd SW, which currently operates at LOS F
23 at AM peak and LOS E at PM peak, and the Chapel Gate Drive entrance, which is projected to
24 degrade from its current PM peak LOS D to LOS E under all future scenarios. The Traffic
25 Impact Analysis indicates that the projected LOS impacts could be mitigated through
26 intersection improvements, such as signalization or widening of Steilacoom Blvd SW. The
SEPA MDNS (Exhibit 13, p. 11-12) identifies that the proposal should be mitigated through
the intersection improvements identified in the MDNS.

The traffic report on its face appears somewhat debatable because of the metric used to
estimate future traffic impacts. The report elects to base trip generation estimates on bed
counts. Given the difference in the nature of care between civil commitment beds and forensic
beds, this doesn't appear to be a very convincing metric. The residents themselves are not
driving, it is the people caring for them that are driving. Although the number of beds is
decreasing as part of the transition to forensic care, the number of support staff is increasing
from the current 2,800 to 3,155, a 13% staff increase. Since the number of staff are increasing
and the residents aren't driving, the decrease in trip generation projected by the DSHS traffic
report would have to be attributable to a significant decrease in visitors and contractors and
vendors. This doesn't appear likely.

It is recognized that the generic bed metric might be the most accurate metric available to
estimate traffic counts. There may not be enough data available to differentiate civil bed

1 counts from forensic bed counts. If that is the case, however, it does appear that the least the
2 traffic report could have done was add in the added traffic attributable to the increase in staff.
3 Unless there is some empirical evidence that forensic patients even out the increase in staff by
4 creating less trip generation from other sources, the staff increase would appear to be a simple
addition to make the trip estimates more accurate.

5 The trip generation estimates are further questionable because they're only based upon the
6 number of beds projected to be used by 2031, which totals 864 beds, as opposed to bed
7 capacity, which is 1,011 beds. See Tables 1 and 2 of the Master Plan. Assuming that the
8 state's forensic bed demand will keep increasing past 2031, it is reasonable to assume that beds
will be added to the 864 beds after 2031. It is not apparent from the record why trip generation
estimates are only based upon projected use in 2031, as opposed to the bed capacity of the
facility.

9 C. Hazardous Conditions/Public Safety. As conditioned, the proposal presents no significant
10 impact of hazardous conditions.

11 As to the presence of hazardous substances, there is nothing in the record to suggest that the
12 proposal will generate any hazardous substances that are not otherwise adequately regulated
13 and controlled. As noted in the staff report, all individual projects anticipated in the Master
14 Plan are required to comply with LMC Title 18A, Title 12, and the Building International
Code and International Fire Code, which according to the staff report will ensure that the
15 project does not introduce hazardous conditions that place a burden on adjacent properties, the
vicinity, and the public health safety and welfare of the community.

16 As to other hazardous conditions and/or threats to public safety, the one issue of concern not
17 addressed elsewhere in these findings is that of potential escape. Numerous letters point out
18 that the WSH facility is located within walking distance of schools and a park. DSHS has
identified numerous measures to minimize escapes, but there is nothing in the record that
provides the assurance necessary that these measures will be enough.

19 The MDNS, Ex. 13, p. 11, identifies the measures DSHS is taking with the design of the
20 forensic hospital to increase security, as follows:

- 21 • The building envelope of the forensic hospital will constitute the secure perimeter
22 of the facility. The exterior walls will be constructed of an assembly consisting of
23 light gage steel framing and multiple layers of very high impact gypsum board.
24 Windows will be capable of withstanding impacts of 2,000 foot-pounds. Exterior
25 courtyards will be either enclosed by the building or by security fencing. Where
26 installed, secure fencing will be no less than 14'-0" high and will be constructed of
non-climbable materials.
- The new hospital building will be constructed as a "fail-secure" facility. In the
event of a fire alarm, patients will exit to other smoke compartments within the
building. Patients will exit the building only in the event of an all-consuming

1 structure fire, if bodily danger is imminent. All exterior doors will be part of
2 vestibules, each door requiring a key for egress. All staff will be responsible for
3 carrying keys required for exiting the building and will be trained in the established
4 egress protocols for evacuating patients in the event of an emergency. Protocols
5 will be established to control the movement of patients once they have exited
6 through the secure perimeter of the hospital.

- 7 • Deliveries and services to the building will not penetrate the building's secure
8 perimeter without passing through a sallyport (vestibule with interlocking doors).
9 Visitors and staff entering the building shall also move through sallyports,
10 preserving the control of the secure perimeter of the new hospital.

11 DSHS also pays for the use of City of Lakewood emergency services as outlined in Finding of
12 Fact No. 6.

13 At hearing, DSHS was unable to identify the historical rate of escape for the existing campus,
14 only to say that the escape rate has improved significantly. Several letters from nearby
15 residents complained of numerous escapes. One resident also noted that surrounding residents
16 are not notified when escapes occur. This background, along with the lack of historical data
17 from DSHS, does not inspire full confidence that the surrounding community will be
18 adequately protected.

19 On matters of uncertainty such as the security at issue, adaptive monitoring is an appropriate
20 form of mitigation to assure that community safety is mitigated to the maximum extent
21 practicable. Given the large amounts of taxpayer money involved in any security upgrades
22 and the trade-offs involved between security and treatment, the most appropriate form of
23 monitoring is simply transparency. The residents of Lakewood have every right to know when
24 and how often escapes occur. A condition of approval requires that residents who wish to be
25 notified by email of when someone has escaped should be given that information. A condition
26 also requires a yearly report to the City's planning department tabulating yearly escapes. That
information in turn will empower residents to solicit their elected and appointed government
officials to enhance security measures should the proposed measures fall short.

D. Compatibility. The proposal is compatible with surrounding uses. As shown in Table 8 of the
Master Plan, the proposed improvements will only result in a net increase in building space of
252,326 square feet. This represents less than 3% of the 215.71 acres of the project area zoned
for Public Institutional (i.e. available for institutional development). Further, as shown on
Figure 17 of the Master Plan, the proposed project design involves a compact campus that will
preserve the open areas to the west, north, and east of the WSH campus, which will act as a
natural buffer to surrounding community. Additionally, as a result of the public comment
letters and public meetings, the city issued correction letters that resulted in further
compatibility with the community. Design, landscape and tree retention standards imposed in
the PI district by LMC 18A.60.080D-E further enhances compatibility.

1 One comment letter noted that the forensic hospital may be too massive in scale for the corner
2 of Steilacoom Blvd and Sentinel Dr. However, the hospital will be significantly separated
3 from any sensitive land uses on all sides. The campus itself and adjoining open space abuts
4 the planned hospital location on its north and east sides. Steilacoom Way, a four lane road,
5 will separate the hospital from the open space located to the south and a gas station is located
6 across Sentinel Drive to the west. Design review as required by LMC 18A.60.080D-E should
7 also result in design features that reduce the large-scale appearance of the building.

8 E. Adequacy of Utilities and Emergency Services. The proposal will be served by adequate
9 utilities and emergency services.

10 The state owns, operates, and maintains much of the utility infrastructure currently serving the
11 campus. This includes water production wells, storage, and distribution system; high/mid/low-
12 voltage electrical distribution system, emergency power generation, sanitary sewer mains, a
13 stormwater collection and drainage system including on-site retention and infiltration ponds,
14 and an integrated fire alarm system with 24/7 manned monitoring and emergency operations
15 center.

16 Electrical service to the WSH campus is provided by Tacoma Power. The existing campus
17 distribution system has two (12.47kV) feeder connections, fed from separate utility
18 substations. Tacoma Power has indicated that up to 1 MW of additional demand could be
19 accommodated on each feeder, but that greater loads would require a detailed study of the
20 system. With development under the Master Plan - and assuming a similar blend of
21 gas/electrical fuel split as the campus currently uses - campus electrical use is projected to
22 grow by 55%, with an estimated additional 1 to 2 MW of load on the Tacoma Power grid.
23 There are no infrastructure upgrade projects currently planned for the two substations.
24 Therefore, if the campus growth does increase demand by more than the 1-2MW preliminary
25 estimate, a new switch and/or new feeder at one or both of the utility substations may be
26 required. Additionally, campus electrical upgrades and modification would likely be required
downstream of the utility meter to support future growth.

Puget Sound Energy (PSE) is the natural gas supplier to the WSH campus. Three gas feeds
serve the campus. Based on the Master Plan building area growth projections, it is expected
the natural gas demand may increase by 30% for the campus, assuming a more traditional
building system design. The campus has an intermediate pressure distribution main with
sufficient capacity the increased demand if a new service is brought onto the campus.

The existing Group A water system has capacity for additional connections. The system has
adequate fire flow based on testing. Lakewood Water District (LWD) and DSHS have had
preliminary discussions regarding the potential to incorporate Western State Hospital into the
LWD service area, either partially or entirely. Discussions on conversion of the overall system
are on-going, although DSHS' intent is that new major facilities - the new forensic hospital and
potential residential treatment facility - would be connected to LWD service.

1 The campus has its own sewer system that is privately owned and maintained and discharges
2 to the public sewer system operated by the Town of Steilacoom. Based on conversations with
3 both WSH operations staff and Steilacoom Public Works, DSHS has learned that the internal
collection system has adequate capacity.

4 DSHS currently contracts with the Lakewood Police Department and Pierce County Fire
5 District 3 for police and fire services at the WSH campus. The facility provides its own on-site
6 security and the level required generally correlates to the number of patients housed at the
7 hospital. Under the Master Plan, bed counts and patient counts are not anticipated to change
8 significantly, resulting in no anticipated need for additional emergency services.

9 F. Greenhouse Gases. Several comment letters expressed concern over greenhouse gases,
10 expressing particular concern over comments in the Master Plan that the proposal would
increase natural gas usage would increase by 30%. The administrative record of this
11 proceeding only supports requiring transparency in adhering to state policies already in place
12 to pursue net zero energy usage.

13 DSHS is already subject to Governor Inslee’s Executive Order 18-10. That order sets goals for
14 achieving net zero increases in production of greenhouse gases from new construction. At
15 best, the Master Plan only suggests that DSHS will try to comply with the order. No
16 assurances are made that Order 18-10 will be implemented during building permit review or
any other subsequent development stage. Instead, comments of possible compliance are
17 made, such as where discussing migration away from use of steam to heat buildings: “...a
18 result of meeting the net zero policy mandate over time **could be** an increase in electrical
19 demand.” (emphasis added). During the hearing, a DSHS representative did assure that
20 overall greenhouse gas emissions would decrease².

21 Although several comment letters stated more should be done, there was no data presented on
22 the greenhouse gas impacts of the proposal or how net zero policies could be reasonably
23 achieved. Especially given the RCW 36.70A.200(4) mandates that no development regulation
24 preclude the siting of essential public facilities, the City’s development regulations must be
25 applied in a manner that reasonably regulates the impacts of those facilities. In the absence of
26 any data supporting mitigation and any locally adopted policies or regulations directly
addressing greenhouse gases, the City is limited in what it can do to address greenhouse gas
emissions. Executive Order 18-10 if actually implemented would serve as adequate mitigation
for greenhouse gas emission. The best the City can do is help ensure that it is implemented.
To that end, a condition of approval requires yearly reporting on compliance to facilitate
demands for accountability from concerned citizens.

² Bob Hubenthal presented the testimony on greenhouse gases. From the perspective of mitigating project impacts, DSHS doesn’t need to achieve net zero but arguably only needs to reduce greenhouse gas emissions over emissions currently generated by the project site. Mr. Hubenthal mentioned measures such as solar panels and heat pumps to reduce those emissions. Those measures are not specifically committed to in the Master Plan, so it’s unclear if an overall reduction in greenhouse gas emissions will actually be achieved without some voluntary measures added to the Master Plan proposal.

1 6. Site Selection. The location of the proposed facility improvements is appropriate. The
2 following findings pertain to LMC site selection criteria:

3 A. Documentation of Need. Although many of the comment letters strongly disagree with
4 state strategies in caring for and treating the mentally ill, DSHS has provided extensive
5 documentation that clearly demonstrates a need for some type of residential care for the
6 mentally ill. The Master Plan section on Goals & Project Need (p.20-22) describes the
7 policy considerations that underlie the project need. The subsection “Washington State
8 Demographics” (p. 21) summarizes the need within the WSH service area. A summary
9 of health care facilities in the region was provided by DSHS as a stand-alone document,
10 Ex. 6.

11 B. Service Area. The current Washington State population of 7.67 million is expected to
12 increase to 8.90 Million by 2040. Over half of the State population resides along the I-5
13 corridor between Olympia to the South and Everett to the North. The counties with the
14 highest population in Washington are King and Pierce. A 2015 report from the
15 Washington State Institute for Public Policy found that the rate for mental illness in the
16 state are among the highest in the U.S., with 7% of the population meeting the criteria for
17 “serious” mental illness. The WSH campus is located within this population center, close
18 to where patients and their immediate family members live.

19 C. Minimum Site Requirements. The extensive acreage of the project site is uniquely suited
20 to meeting the extensive needs of the project as shown in Tables 1 (p. iv-v) and 6 (p. 22)
21 of the Master Plan.

22 D. Alternative Sites. Other sites available to DSHS are not as ideally suited to meet the
23 objectives of the project. Ex. 5 provides a scoring matrix of seven alternative sites and
24 their assessment of suitability. The WSH site had the highest score at 46 points, with the
25 next closest site the adjoining Lakewood Former Fort Steilacoom Golf Course at 40
26 points. After that is Hawk’s Prairie near Cabellas at 34 points.

E. Distribution of Facilities. Lakewood takes on more than its proportionate share of
DSHS mental health care facilities.

A few public comment letters asserted that the City takes on more than its fair share of
group homes. It’s unclear how many of these group homes qualify as mental health
facilities tabulated by DSHS. However, as limited to mental health facilities disclosed
by DSHS, the record is fairly clear that Lakewood takes on more than its proportionate
share of mental health facilities.

DSHS provided a list of mental health care facilities and their locations within Pierce
County (Exhibit 6). This list shows that mental health services are provided throughout
Pierce County including the cities of Lakewood, Tacoma, Puyallup, Fife, Gig Harbor,
University Place, and Sumner. In total, including the existing Western State Hospital, the

1 City of Lakewood is home to fifteen (15) of the approximately 140 Behavioral Health
2 Agency facilities within Pierce County.

3 In short, Lakewood has about 7% of the Pierce County’s population but takes on more
4 than 10% of its DSHS identified mental health care facilities. This disproportionate
5 share is likely much more pronounced if a metric of mental health care patients per capita
6 for Lakewood is compared to the per capita number for Pierce County residents given the
7 relatively large concentration of mental health patients at the WSH facility.

8 Although citizen concerns over disproportionate share are borne out by the information
9 provided by DSHS, the economies of using the uniquely large scale of the existing WSH
10 campus to accommodate the extensive construction needs of DSHS cannot be ignored. A
11 few comment letters suggested McNeil Island as another viable alternative due to its
12 extensive size and isolated location. As testified by DSHS at the public hearing,
13 inaccessibility to the 3,155 staff necessary to service the site is a significant factor against
14 that location. The state legislature has also specifically funded the Lakewood campus to
15 serve Western Washington. Given the highly unique benefits of using the existing WSH
16 campus, the disproportionate burden placed upon Lakewood for its redevelopment is
17 outweighed as a determinative factor. However, for any future mental health facilities at
18 other Lakewood sites, the disproportionate share issue should have a greater role in
19 assessing site adequacy.

20 F. Public Participation. DSHS engaged in extensive outreach and public participation
21 suitable for the scale and significance of the proposal.

22 As detailed in the Appendix 1 of the Master Plan, DSHS had meetings with Historic Fort
23 Steilacoom Association, the Town of Steilacoom, Pierce College at Steilacoom,
24 Steilacoom Historical School District, and partnered with city on two open public
25 meetings. The August 21, 2021 public meeting was an in-person at Custer Elementary
26 School in Lakewood. The September 9, 2021 public meeting was a virtual meeting to
allow those concerned about COVID-19 to participate in the public meetings. This public
participation was beyond that specifically required by the LMC for the public hearing
and associated public comment periods.

G. Appropriate mitigation. The proposal has been appropriately mitigated to the extent
legally authorized to address all impacts to the surrounding community and the
environment. As outlined in Finding of Fact No. 5, with the mitigation measures
imposed upon the proposal, all impacts are appropriately mitigated. These mitigation
measures necessarily include the mitigation measures included in the SEPA MDNS.
They also include staff recommended conditions adopted by this Decision, which include
the following:

- *Future development under the updated Master Plan will employ site-specific Construction Storm Water Pollution Prevention (CSWPP) and Temporary Erosion and Sediment Control (TESC) plans, as required by City development regulations.*

- *Future development at the WSH campus will be subject to the Lakewood Municipal Code provisions regarding significant trees (LMC 18A.50.320).*
- *Specific measures to mitigate impacts on significant vegetation include:*
 - *Site-specific landscaping designs will limit the development of hardscapes and building footprints within the drip-lines of significant trees, including protected White Oaks.*
 - *Site-specific irrigation plans for future landscaped areas near oak stands will establish procedures to avoid overwatering of the root zone.*
 - *During construction, all significant trees will be protected by tree fencing located at the drip-line, with no soil disturbance or material storage allowed within the drip-line.*
 - *Project permitting will require development of a tree retention plan that locates all significant trees on the site by species and caliper size, including the extent of drip-lines.*
 - *Removal of any significant trees during construction will be replaced according to applicable development regulations in the Lakewood Municipal Code.*
- *Individual development projects will be subject to Pierce County and Lakewood regulations for control and removal noxious and invasive weeds.*
- *The updated Master Plan retains approximately 48 acres of wildlife habitat in its current condition, which includes Oregon White Oak, wetlands, streams, and riparian areas on or adjacent to the campus.*
- *Individual projects under the Master Plan will be required to conduct site specific field studies to identify sensitive species and habitats and evaluate potential impacts associated with the proposed development activities.*
- *Construction activities associated with implementation of the Master Plan will comply with City of Lakewood health and safety regulations, including LMC Chapter 8.36 – Noise Control. Construction activities will be limited to daylight hours.*

In addition to the staff recommended conditions above, this Decision added Conditions 6-9 that were added to further mitigate against the dangers of escape, to provide transparency on DSHS efforts to minimize greenhouse gas emissions, to provide for more comprehensive mitigation of traffic impacts and to prohibit the waiver of PI design standards designed to increase compatibility of the WSH campus with surrounding uses.

Conclusions of Law

1. Authority. LMC 18A.20.080 classifies major modifications to public facilities master plans and conditional use permits as Process III applications subject to hearing examiner review and final decision.

1
2 2. Zoning Designations. Public Institutional (PI).

3 3. Revisiting SEPA Traffic Analysis. As outlined in Finding of Fact No. 5B, on its face the
4 DSHS traffic analysis uses a questionable metric for estimating trip generation. However, since
5 this analysis wasn't challenged in an appeal of the MDNS for the project, it is concluded that the
6 issue cannot be revisited as part of this permit review.

7 As identified in Finding of Fact No. 5B, the MDNS of the proposal bases traffic mitigation upon
8 the suggestions based in the Applicant's traffic report. The MDNS was not timely appealed by
9 anyone.

10 Given that the public had the opportunity to challenge the DSHS traffic report as an appeal of the
11 MDNS, the traffic report cannot be questioned in this proceeding. Generally, under principles of
12 judicial finality, land use approvals cannot be collaterally attacked in subsequent permit
13 applications if they are not timely appealed, even if they are approved contrary to code
14 requirements. *See, e.g., Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410-11 (2005)(special
15 use permit approval could not be collaterally attacked in appeal of grading permit).

16 The courts have made clear that failure to include mitigation in a SEPA document does not
17 necessarily preclude a city or county from requiring mitigation under another land use review
18 process if relevant to those review criteria. *See Quality Rock Products, Inc. v. Thurston County*,
19 139 Wn. App. 125 (2007). *Quality Rock* addressed the impact of a SEPA review on the ability of a
20 county to impose further mitigation under a special use permit on a proposed gravel pit expansion.
21 Groundwater located at the gravel pit recharged the nearby Black River. A MDNS was issued for
22 the project without any mitigation measures addressing recharge impacts to the Black River. The
23 hearing examiner approved the project without any mitigation for Black River impacts. On appeal,
24 the Thurston County Board of Commissioners denied the permit, finding that the location for the
25 gravel pit was not appropriate given its potential impacts to the Black River.

26 The *Quality Rock* applicant appealed the denial to superior court, arguing in part that under
principles of judicial finality the County could not find the location inappropriate on the basis of
Black River impacts since the MDNS had to be based upon a finding that the proposal would
create no probable significant adverse environmental impacts. The Court of Appeals disagreed,
noting that one of the criteria for special use permit approval was that the proposed use would not
result in substantial or undue adverse affects to the natural environment. 139 Wn. App. At 141.
Notably, the court found it significant that the County issued the MDNS without access to most of
the Black River information that the hearing examiner and Board of Commissioners based their
decision upon. The environmental checklist didn't even identify the Black River as a surface water
body in the project vicinity.

As in the *Quality Rock* decision, the conditional use criteria overlap with SEPA review. The
MDNS review required a finding that the proposal would not create probable significant adverse
impacts to traffic infrastructure. One of the conditional use criteria, LMC 18A.10.150(E), requires
that the traffic generated by the proposed use will not unduly burden the traffic circulation system

1 in the vicinity. A determinative distinguishing feature from *Quality Rock*, however, is that the only
2 significant traffic information considered for traffic mitigation was entirely used for the SEPA
3 review, i.e. the Applicant’s traffic report. If the public disagreed with that traffic report, it had the
4 opportunity to challenge it by appealing the MDNS. That kind of opportunity was not present in
5 *Quality Rock*, since all of the information on Black River impacts was submitted for consideration
6 in the hearing on the special use permit and was not available for the SEPA review.

7 Limiting the *Quality Rock* holding to circumstances where permit information wasn’t available
8 during SEPA review strikes a fair balance between the benefits of judicial finality and providing a
9 meaningful opportunity for public input on permitting criteria. If a general finding of no probable
10 significant adverse impacts is found to preclude the assessment of any environmental impacts in
11 subsequent permit review, that would effectively shut the public out from any meaningful
12 application of most permit criteria. By the same token, if the SEPA review is based upon
13 significant information such as a traffic report and the permit hearing provides no new information,
14 it is fair and reasonable to expect that if the public had a problem with the traffic report they should
15 have appealed as part of SEPA review. Since there was no appeal filed of the MDNS on its traffic
16 mitigation, that mitigation must be found adequate. The intersection improvements adopted into
17 the MDNS are found to adequately mitigate traffic impacts, despite any perceived shortcomings in
18 the metrics used to estimate traffic, as identified in Finding of Fact No. 5B.

19 Although the adequacy of the MDNS traffic mitigation cannot be challenged, that mitigation can
20 be clarified if its scope is unclear. The MDNS does not identify whether the “proposal” subject to
21 the traffic mitigation is limited to the projected bed count in 2031 (i.e. 864 beds), or whether the
22 proposal is considered to include the entire 2031 capacity of the facility, 1011 beds. Since the
23 estimated trip generation is based upon the 2031 projected bed counts, the proposal is considered
24 to be limited to a facility with 864 beds. A condition of approval will clarify that for purposes of
25 assessment traffic impacts, any additions to that bed count will have to be considered
26 modifications to the approved Master Plan and processed accordingly.

4. EIS Requests Untimely. Several letters requested preparation of an environmental impact
statement for the project. The MDNS constitutes the City’s determination that, as mitigated, an
environmental impact statement is not necessary for the project. To the extent that anyone was
requesting the examiner to require an EIS³, since the MDNS was not timely appealed, the examiner
has no jurisdiction to consider the issue. *See, e.g., Habitat Watch v. Skagit County*, 155 Wn.2d
397, 406-07 (2005)(holding that even illegal decisions under local land use codes must be timely
challenged to be considered).

5. Review Criteria. LMC 18A.40.060B5 requires a public facilities master plan for all essential
public facilities using contiguous parcels of land over 20 acres in size. A public facilities master

³ It is recognized that the letters requesting an EIS were submitted during the SEPA comment period, i.e. before
issuance of the MDNS. That was a valid time to make the request and the City’s responsible official would have
considered those requests when deciding whether to require an EIS. Conclusion of Law No. 4 was included in this
Decision to explain why the Examiner did not address the merits of an EIS.

1 plan is required for the proposal because (1) the proposal qualifies as an essential public facility
2 under LMC 18A.10.180, which defines essential public facilities to include mental health facilities,
3 and (2) the project site is well over twenty acres in size. LMC 18A.40.060B6 provides that uses not
4 included in an approved public facilities master plan with inapplicable exceptions must follow the
5 same review process as establishment of an initial public facilities master plan. LMC 18A.40.060B2
6 requires a conditional use permit for approval of essential public facilities and adds additional
7 conditional use criteria for master plan approval. LMC18A.40.060B4 adds additional conditional
8 use criteria for mental health facilities. Curiously, there do not appear to be any review criteria for
9 master plans themselves⁴. All required criteria are quoted in italics below and applied via
10 corresponding conclusions of law.

11 **Mental Health Facility EPF Conditional Use Criteria**

12 **LMC 18A.40.060B4:** *Additional Siting Criteria for Mental Health Facilities – Purpose. The*
13 *purpose of the public facilities master plan process is to encourage essential public facilities civic*
14 *uses on large parcels of land to be developed holistically, with internally compatible uses and*
15 *physical development and with accommodations made for natural site and environmental*
16 *conditions, assuring that:*

17 *a. Appropriate provisions are made for water, sanitary sewer, drainage ways, utilities, roadways,*
18 *emergency services, and any other applicable infrastructure or services;*

19 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No. 5E.

20 **LMC 18A.40.060B4b:** *Critical areas will be protected;*

21 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No. 5A.

22 ⁴ LMC 18A.40.060 couches all the review criteria for master plans as additional conditional use criteria. LMC
23 18A.40.060B2 characterizes the general EPF criteria of LMC 18A.40.060 as “[i]n addition to the regular
24 conditional use permit review criteria...” The specific mental health facility criteria of LMC 18A.40.060 are
25 identified as “additional siting criteria,” -- since those criteria only add on to the previous additional conditional
26 use criteria for essential public facility conditional use review, it appears that these “additional siting criteria” are
also additional conditional use criteria. There is nothing else within the LMC that could potentially be regarded as
master plan (as opposed to conditional use) criteria. Despite this lack of standards, master plans are identified as
separate applications in LMC 18A.20.080. The LMC doesn’t even appear to identify what’s required in a master
plan except to require a compatibility study with content specified in LMC 18A.40.060B6. Given these
parameters, it is understood that staff is left with the authority to determine whether the Master Plan contains all
required content via their authority to determine whether an application is complete. Hearing Examiner review is
limited to the application of the conditional use criteria quoted in this decision.

1 **LMC 18A.40.060B4c:** *Usable open space will be provided;*

2 8. Criterion met. As noted in Finding of Fact No. 3, 73 acres of the 288-acre project site is
3 zoned and used for open space.

4 **LMC 18A.40.060B4d:** *Appropriate provisions are made for motorized and nonmotorized*
5 *transportation circulation, including sidewalks and other planning features that assure safe walking*
6 *conditions for students who walk to and from school;*

7 9. The criterion is met. The campus already has a viable circulation system. As noted by
8 DSHS, the on-campus road network is proposed to be improved, with clearer wayfinding, and clarity
9 between use areas. Access to the campus will be shifted to focus on the entries directly from
10 Steilacoom Blvd., reducing traffic on 87th and Sentinel Drive. There will presumably not be any
11 students walking to or from any off-campus schools, so the school portion of the criterion is
12 inapplicable. A shared-use path is on the Fort Steilacoom Park side of Steilacoom Blvd. SW. On
13 Sentinel Dr. SW, curb, gutter and sidewalk extend from Steilacoom Blvd. SW to the high school.
14 The Master Plan doesn't identify whether internal roads will have sidewalks.

15 **LMC 18A.40.060B4e:** *Approval criteria and mitigation measures are established which include*
16 *general design elements and linkage components; and*

17 10. Criterion met. The Master Plan includes both general design elements and linkage
18 components. Development pattern and principles are provided on page v and the setback and height
19 limits are provided in Table 7 on page 29 of the Master Plan.

20 **LMC 18A.40.060B4f:** *The safety of the general public as well as workers at and visitors to the*
21 *facility is ensured.*

22 11. Criterion met. As to the safety of the general public, the criterion is met for the reasons
23 identified in Finding of Fact No. 5C.

24 As to worker safety, that is addressed by state law. RCW 72.23.400 requires state hospitals to
25 develop a Workplace Safety Plan (Plan) to reasonably prevent and protect employees from violence
26 at the workplace. The Plan is required to address detailed security and safety issues. Federal laws
administered by the Occupational Safety and Health Administration are also designed to protect
worker safety, as well as laws implemented by the Washington State Department of Occupational
Safety and Health (including Chapter 72.23 RCW).

A public comment letter was submitted from a former worker in the mental health field identifying
additional safety measures. There is no data or basis within the record to conclude that the extensive
set of regulations designed to assure worker safety are inadequate. Furthermore, it is likely that state
and federal worker safety laws preempt the authority of the City to impose its own standards.

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General EPF Conditional Use Criteria

LMC 18A.40.060B2: *Except for existing electrical transmission lines of higher voltage than 115 kV and military installations, essential public facilities shall require a conditional use permit. In addition to the regular conditional use permit review criteria, the following shall apply:*

a. Documentation of Need. Project sponsors must demonstrate the need for their proposed EPFs. Included in the analysis of need should be the projected service population, an inventory of existing and planned comparable facilities and projected demand for this type of essential public facility.

12. Criterion met. As determined in Finding of Fact No. 6A, DSHS has demonstrated the need for the proposed facility improvements.

LMC 18A.40.060B2b: *Consistency with Sponsor's Plans. The proposed project should be consistent with the sponsor's own long-range plans for facilities and operations.*

13. Criterion met. DSHS states that the Master Plan constitutes its plan for development of the site. The plan is detailed and comprehensive enough to fulfill this objective.

LMC 18A.40.060B2c: *Consistency with Other Plans. The proposal must demonstrate the relationship of the project to local, regional and state plans. The proposal should be consistent with the comprehensive plan and other adopted plans of the prospective host community. In evaluating this consistency, consideration shall be given to urban growth area designations and critical area designations, population and employment holding capacities and targets, and the land use, capital facilities and utilities elements of these adopted plans.*

14. Criterion met. These criteria are listed in the Master Plan section "Planning Regulatory Context" beginning on p. 5. The City's Compatibility of Use criteria are addressed on p.7. The County's Key Evaluation Criteria are summarized on pp. 7-8, with explicit page references for each criterion. The plan is also found to be consistent with the City's comprehensive plan for the reasons identified at Section D of the staff report. The proposal meets critical area requirements as outlined in Finding of Fact No. 5A. It conforms to capital facilities and utilities elements of the comprehensive plan for the reasons identified in Finding of Fact No. 5B and 5E.

LMC 18A.40.060B2d: *Relationship of Service Area to Population. With the exception of linear transmission facilities, the facility's service area population should include a significant share of the host community's population, and the proposed site should be able to reasonably serve its overall service area population.*

15. The criterion is met for the reasons identified in Finding of Fact No. 6B. As noted in 6B, the service area of the proposed improvements is primarily located along the I-5 corridor and the proposal will most likely meet all the forensic bed needs of the Lakewood community.

1 **LMC 18A.40.060B2e:** *Minimum Site Requirements. Sponsors shall submit documentation showing*
2 *the minimum siting requirements for the proposed facility. Site requirements may be determined by*
3 *the following factors: minimum size of the facility, access, support facilities, topography, geology,*
4 *and mitigation needs. The sponsor shall also identify future expansion needs of the facility.*

4 16. The criterion is met for the reasons identified in Finding of Fact No. 6C.

5 **LMC 18A.40.060B2f:** *Alternative Site Selection. The project sponsor shall search for and*
6 *investigate two (2) alternative sites before submitting a proposal for siting review. The proposal*
7 *shall indicate whether any alternative sites have been identified that meet the minimum site*
8 *requirements of the facility. The sponsor's site selection methodology will also be reviewed. Where a*
9 *proposal involves expansion of an existing facility, the documentation shall indicate why relocation*
10 *of the facility to another site would be infeasible.*

9 17. The criterion is met for the reasons identified in Finding of Fact No. 6D.

10 **LMC 18A.40.060B2g:** *Distribution of Essential Public Facilities. In considering a proposal, the*
11 *City shall examine the overall distribution of essential public facilities within greater Pierce County*
12 *to avoid placing an undue burden on any one community.*

13 18. The criterion is marginally met. As outlined in Finding of Fact No. 6E, the Applicant has
14 provided some useful information to assess overall distribution. Ultimately, Lakewood is being
15 asked to assume more than its proportionate share of mental health facilities. However, this
16 disproportionate impact cannot be avoided because the efficiencies and benefits of using the site far
17 exceed any other alternatives. The criterion only requires that disproportionate impact be avoided
18 and does not mandate denial in all cases for disproportionate impact. The City likely could not deny
19 the proposal on disproportionate share alone and still apply its essential public facility standards in a
20 manner to avoid preclusion of such facilities as required by RCW 36.70A.200(4). To reduce
21 disproportionate impact, the criterion above should play a more major role for future projects
22 involving other sites where the location is not as significantly efficient and beneficial as it is for this
23 project.

20 **LMC 18A.40.060B2h:** *Public Participation. Sponsors shall encourage local public participation*
21 *in the development of the proposal, including mitigation measures. Sponsors shall conduct local*
22 *outreach efforts with early notification to prospective neighbors to inform them about the project*
23 *and to engage local residents in site planning and mitigation design prior to the initiation of formal*
24 *hearings. The sponsor's efforts in this regard shall be evaluated.*

23 19. The criterion is met for the reasons identified in Finding of Fact No. 6F. DSHS has engaged
24 in a commendable public participation program which according to the staff report has resulted in
25 several improvements to the proposal.

25 **LMC 18A.40.060B2i:** *Consistency with Local Land Use Regulations. The proposed facility shall*
26 *conform to local land use and zoning regulations that are consistent with the applicable county-wide*
27 *planning policies. Compliance with other applicable local regulations shall also be required.*

1
2 20. The criterion is met. The proposal is an authorized use in the PI zone that applies to the
3 improvements. Bulk and dimensional standards will be addressed during subsequent permit review
4 for each individual building/improvement. Page 7-9 of the Master Plan addresses how the proposal
conforms to county-wide planning policies.

5 **LMC 18A.40.060B2j:** *Compatibility with Surrounding Land Uses. The sponsor's documentation*
6 *shall demonstrate that the site, as developed for the proposed project, will be compatible with*
surrounding land uses.

7 21. The criterion is met. The proposal is compatible with surrounding uses for the reasons
8 identified in Finding of Fact No. 5D. The Master Plan documents this compatibility in the
referenced sections of 5D as well as page 8 of the Master Plan.

9 **LMC 18A.40.060B2k:** *Proposed Impact Mitigation. The proposal must include adequate and*
10 *appropriate mitigation measures for the impacted area(s) and community(ies). Mitigation measures*
11 *may include, but are not limited to, natural features that will be preserved or created to serve as*
12 *buffers, other site design elements used in the development plan, and/or operational or other*
13 *programmatic measures contained in the proposal. The proposed measures shall be adequate to*
substantially reduce or compensate for anticipated adverse impacts on the local environment.

14 22. The criterion is met for the reasons identified in Finding of Fact No. 6G.

15 **Conditional Use**

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

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

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

23 Compatible site and building design is also assured by the City's PI design standards. LMC
24 18A.60.080D-E requires master plans to comply with Articles I-III of Chapter 18A.70 LMC. These
25 code provisions contain detailed standards for building and site design, landscaping standards and
26 tree protection standards. Despite this, Finding No. 20 of the staff report appears to excuse
compliance with these standards, "*where provisions are explicitly overridden by the 2020 Master
Facilities Plan.*" The same position is taken at page 29 of the Master Plan. Three sets of standards
are then listed in both the Master Plan and Finding No. 20 adopted by the Master Plan that are
apparently in conflict with and presented as superseding any conflicting standards mandated by

1 LMC 18A.60.080D-E These superseding standards excuse compliance with the City’s tree retention
2 standards and also set height and setback requirements that apparently conflict with LMC
3 18A.60.080D-E⁵.

4 The staff report and Master Plan do not identify any code provision that authorizes the waiver of
5 development standards that apply within the PI zone under LMC 18A.60.080D-E. No such code
6 provision is readily found in the LMC⁶. Consequently, unless the parties identify such code
7 authority in a motion for reconsideration, the design parameters identified in staff report Finding No.
8 20 (including Master Plan Table No. 7) are not authorized to the extent they conflict with any
9 mandatory development standard required in the PI zone by LMC 18A.60.080D-E.

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

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

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

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

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

24 ⁵ The design and bulk and dimensional standards set by LMC 18A.60.080D-E are fairly subjective so it’s not
25 possible to pinpoint exactly what standards DSHS intends to waive.

26 ⁶ The best guess at what the City and Applicant may be relying upon in waiving mandatory standards is LMC
18A.60.080A, which provides that general development standards in the PI zone may be set on a “case-by-case” basis by
the Community and Economic Development Director and the City Engineer. However, LMC 18A.60.080C-E conflicts
with this authority, as it specifies specific development standards that “shall be required” in the PI zone. This conflict is
easily resolved by the rule of statutory construction that when interpreting statutes (and city ordinances), the courts require
that all the language in a statute be given effect, with no portion rendered meaningless or superfluous. *See WSDOT v. City
of Seattle*, 192 Wn. App. 824, 838 (2016). If the authority of LMC 18A.60.080A to set all development standards
overrides the prescriptive standards expressly targeted for PI development in LMC 18A.60.080C-E, those prescriptive
standards are rendered meaningless. They can be ignored just like any other generally applicable zoning standard and
there’s no point in listing them. In any discussion of setting development standards on a “case-by-case” basis City staff
will logically look to existing development standards as a starting point and work from there. Listing specific provisions
such as those in LMC 18A.60.080C-E does nothing to change that review process if those standards can be ignored under
LMC 18A.60.080A.

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2 26. The criterion is met.

3 The proposal is consistent with the comprehensive plan for the reasons identified in Section D of the
4 staff report.

5 The proposal is consistent with the City's zoning standards primarily because staff has
6 recommended approval of the Master Plan. This is because LMC 18A.60.080A authorizes the
7 planning director in conjunction with the City Engineer to set general development standards in a
8 master plan on a case by case basis. Consequently, the zoning design parameters proposed in the
9 Master Plan, since it is supported by staff, is construed having been approved on a case by case basis
by the planning director under LMC 18A.60.080A. The one exception are the development
standards set by LMC 18A.60.080C-G. Except as identified in Conclusion of Law No. 23, the
proposal has been found by staff to conform to the requirements of LMC 18A.60.080C-G.

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*
without placing an undue burden on such systems, facilities and services.

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

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

17 28. The criterion is met. As determined in Finding of Fact No. 5(D) and Conclusion of Law No.
18 23, the intensity and character of the proposed use is compatible with the surrounding commercial
uses.

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

22 29. The criterion is met for the reasons identified in FOF No. 5D. Overall, the WSH site covers
23 over 288 acres of developed and undeveloped land. As part of this proposal, and shown on Figure 17
24 of the Master Plan, this master plan update incorporates a compact facility footprint to allow for
greater security. The physical characteristics of the site are appropriate for the use considering the
25 use currently exists on site and the amount of open space around the developed portions of the site.
The site is adequately sized for the proposed use and all facilities and amenities required by this title
26 and desired by DSHS. As conditioned, Staff has found the Master Plan to be compliant with this
criterion.

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

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

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

7 32. The criterion is met. All conditions imposed by this decision are recommended by staff with
8 minor modification and are capable of reasonable monitoring and enforcement.

9 **DECISION**

10 The conditional use permit and master plan application to amend the Master Plan of Western State
11 Hospital (WSH) to is found to comply with all conditional use permit criteria for the reasons
12 identified in the associated conclusions of law above and is approved, subject to the following
conditions:

13 1. The City issued a Modified SEPA Mitigated Determination of Non-significance dated June
14 6, 2022. All mitigation measures are incorporated herein by reference as conditions of approval.

15 2. Alterations, expansions or major improvements not included in this Master Facilities Plan
update shall require a land use modification permit.

16 3. Individual projects under the 2020 Master Facilities Plan may require site specific field
17 studies to identify sensitive species and habitats and evaluate potential impacts associated with the
18 proposed development activities depending on the location of the project. The State Department of
19 Social and Health Services or associated agents shall consult with the Planning Department to
determine what site specific field studies are required, if any.

20 4. Building, Plumbing and Mechanical permits shall be required through the City of
21 Lakewood prior to construction of any buildings. The State Department of Social and Health
22 Services or associated agents shall consult with the City of Lakewood regarding these permits and
the individual construction activities.

23 5. Site Development permits shall be obtained for the project through City of Lakewood
24 Public Works Engineering Department as necessary. The State Department of Social and Health
25 Services or associated agents shall inquire with Public Works Engineering to determine which
activities, improvements or expansions will require site development.

26 6. For purposes of mitigating traffic impacts, the proposal is considered to be limited to an
864-bed facility for the reasons identified in Conclusion of Law No. 3. Any increase in that


1 number of beds shall be considered a modification to the approved Master Plan and shall be
2 processed accordingly.

3 7. To the extent consistent with applicable law, notice of escapes from the forensic beds or
4 any other patients that may pose a danger to others shall be sent to those who have requested email
5 notice by DSHS. DSHS shall supply the City’s planning department with the contact information
6 necessary for the public to make this request and this information shall be forwarded to residents
7 who make the request to the planning department and/or the City shall place this information on its
8 website. To the extent consistent with applicable law, DSHS shall also submit a yearly report to
9 the Lakewood Planning Manager by the first of each year detailing the number and duration of
10 escapes by patients that may pose a danger to others from the previous year. The reports shall also
11 identify measures taken to reduce escapes, to the extent that doing so doesn’t compromise the
12 effectiveness of those measures.

13 8. DSHS shall submit a yearly report to the Lakewood Planning Manager by the first of each
14 year identifying actions taken and plans adopted in the previous year to meet Executive Order No.
15 18-01 for the new construction and uses generated by the master plan amendment. This
16 requirement shall expire upon achieving compliance with the executive order. Staff may also
17 waive compliance if DSHS demonstrates that the overall project will reduce greenhouse gas
18 emissions over current levels (see Footnote 2). In lieu of compliance with this condition, DSHS
19 can elect to demonstrate for each building permit application that proposed construction will meet
20 the net zero standard.

21 9. The master plan design specifications identified in Finding No. 20 of the staff report are not
22 authorized to the extent they conflict with Chapter 18A.70.A LMC.

23 DATED this 19th day of August, 2022.

24 
25 Phil A. Olbrechts

26 Hearing Examiner for Lakewood

27 **Appeal Right and Valuation Notices**

28 LMC 18A.20.080 provides that the final decision of the Hearing Examiner is subject to appeal to
29 superior court. Appeals of final land use decisions to superior court are governed by the Land Use
30 Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict
31 service requirements. Persons wishing to file LUPA appeals should consult with an attorney to
32 ensure that LUPA appeal requirements are correctly followed.

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

3 **Reconsideration**

4 LMC 1.36.271: *Any party of record feeling that a decision of the Examiner is based upon erroneous*
5 *procedures, errors of law or of fact, error in judgment, or has discovered new evidence which could*
6 *not be reasonably available at the open record public hearing, may make a written request to the*
7 *Examiner, filed with the City Clerk, together with any fee that may be set forth in the City's fee*
8 *schedule pursuant to LMC 3.20.010, for reconsideration by the Examiner within eight business days of*
9 *the date the decision is rendered. The City Clerk shall forward the request for reconsideration to the*
10 *Examiner within three business days. The request shall set forth the specific errors or new information*
11 *relied upon by such appellant, and the Examiner, after review of the request(s) and the record, may:*

- 12 A. *Affirm in writing the previous decision;*
- 13 B. *Reopen the record and public hearing process;*
- 14 C. *Take further action as he/she deems proper.*

15 *The filing of a request for reconsideration by the Hearing Examiner shall effectively stay the appeal*
16 *period until the Examiner takes further action. Such action shall occur within 10 business days of the*
17 *date of filing a request for reconsideration.*

18 **All reconsideration requests must be based upon the administrative record (exhibits and**
19 **testimony already rendered) and no new evidence will be considered.**
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