

BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH

**In Re Residential Treatment Facility  
North,**

No. 22-102230 CUP

Kathleen Richardson,

Appellant,

Tulalip Tribes,

Applicant,

Scheduling Order

Snohomish County Planning and  
Development Services Department,

Respondent.

1 A pre-hearing conference was held in person and on Zoom on October 27, 2022. Appellant  
2 Kathleen Richardson appeared. Laura Kisielius, Esq. of the Snohomish County Prosecuting  
3 Attorney's Office appeared for the Snohomish County Planning and Development Services  
4 department (PDS). Lisa Koop Gunn, Esq., Federal Advocate Attorney for the Tulalip Tribes  
5 appeared on behalf of the Tulalip Tribes.

6 **GENERAL**

7 Documents should be filed with the Office of Hearings Administration by emailing them to  
8 [Hearing.Examiner@snoco.org](mailto:Hearing.Examiner@snoco.org) and copies sent to the other principal parties. In the event  
9 files are too large for email, arrangements for a shared facility may be made with the clerk.

10 Principal parties are reminded that communications or documents sent to the Office of  
11 Hearings Administration should be copied to the other principal parties. If copying other  
12 principal parties is not obvious from the communication or document, a declaration of  
13 service should be filed either at the foot of the communication or separately.

14 Communications and declarations of service should be sent to  
15 [Hearing.Examiner@snoco.org](mailto:Hearing.Examiner@snoco.org). Non-substantive questions may also be addressed to the  
16 office by telephone: (425) 388-3538. H. Ex. R. of Proc. 1.8 (2021).

1 This schedule supersedes any conflicting dates previously identified or indicated by the  
2 Hearing Examiner's Rules of Procedure.

3 **SETTLEMENT**

4 The Hearing Examiner urges the parties to meet and discuss settlement. Although the  
5 Hearing Examiner cannot participate directly in settlement discussions, he can facilitate  
6 discussions by providing conference facilities or providing names of potential mediators.  
7 The parties may contact the clerk for more information.

8 **DISPOSITIVE MOTIONS**

9 Dispositive motion proceedings shall be filed as follows:

	<b>Deadline</b>
Dispositive motion(s)	November 14, 2022
Response or opposition to dispositive motion(s)	November 30, 2022
Reply in support of dispositive motion(s)	December 7, 2022

10 The Hearing Examiner intends to decide the motion(s) by December 16, 2022.

11 **EXHIBITS, WITNESSES, DEPARTMENT REPORT, AND OTHER FILINGS**

12 Duplicates of exhibits should be avoided and not be offered. Each exhibit should have a  
13 specific purpose in proving or disproving one or more material facts. If an exhibit does not  
14 have such a purpose, the offering party should reconsider its offer.

15 Exhibits should be in PDF file format, OCR'd (enhanced scan), and pages individually  
16 paginated and marked with exhibit number. The title in the PDF properties sheet should  
17 begin with the exhibit number (e.g., A.1) and followed by a brief title or summary (e.g.,  
18 geotechnical report). Each principal party has a different preliminary alpha designator. A  
19 sample exhibit list is attached for the principal parties' convenience. Parties should consult  
20 with the clerk for assistance and regarding numbering.

21 If all principal parties do not agree to the admissibility of a document prior to the hearing, the  
22 document will need to be individually offered and admitted before the Hearing Examiner will  
23 consider it.

1 Exhibits, lists of witnesses and exhibits, department report, and hearing briefs are due as  
2 follows:<sup>1</sup>

December 28, 2022 PDS provides appellant and applicant a draft list of PDS' exhibits. The draft list should not be filed with the clerk.

January 4, 2023 Appellants and applicant advise the other principal parties of additional exhibits they wish to offer. Copies of proposed exhibits should be provided to the other principal parties upon request.

Parties should advise each other whether admissibility of proposed exhibits is agreed or disputed.

Principal parties exchange proposed witness lists. The subject area of each witness's testimony should be described briefly. For experts, a short description of the subject area, opinions, and *curriculum vitae* should be included.

January 11, 2023 Appellant, PDS, and applicant file exhibit and witness lists and exhibits with the Office of Hearings Administration. The exhibit lists should identify which exhibits may be admitted and considered by agreement and any exhibits whose admissibility is disputed.

Departmental report due.

January 20, 2023 Hearing briefs (optional).

January 24-26, 2023 Open record hearing begins at 9 a.m. in hybrid format (in-person and Zoom) in the Stillaguamish Room (public hearing room no. 2) in the Robert J. Drewel building on the county campus, 3000 Rockefeller Ave., Everett, Washington 98201. The hearing is expected to last two days, but an additional day is scheduled in case proceedings run longer.

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<sup>1</sup> Tardy identification of exhibits or witnesses may result in their exclusion based on unfair surprise or prejudice.

1 **OPEN RECORD HEARING**

2 A consolidated hearing on the conditional use permit application and SEPA appeal will  
3 begin on January 24, 2023.

4 **1. CONDITIONAL USE PERMIT APPLICATION**

5 The conditional use permit application will be heard first. Applicant Tulalip Tribes has the  
6 burden of proof and therefore will open and close the conditional use permit application  
7 portion of the hearing.

8 Tulalip Tribes will begin the hearing by describing its proposal, calling witnesses it feels  
9 appropriate to carry its burden of proof. Applicants often offer the testimony of their project  
10 manager, architect/engineer, and such other members of the applicant or project team as  
11 they feel appropriate. Cross-examination is not allowed of witnesses, whether applicant,  
12 PDS, or public commenters, in this phase.<sup>3</sup>

13 PDS will then describe its review of the application. After PDS describes its review and  
14 recommendations, the Hearing Examiner will hear comments from the public. Following  
15 public comment, PDS and then Tulalip Tribes may respond to the comments.

16 **2. SEPA APPEAL**

17 After the development application portion is completed, SEPA appeal portion will begin.  
18 Appellant Kathleen Richardson has the burden of proof and therefore will open and close  
19 the SEPA appeal portion. Opening statements are optional. Appellant Kathleen Richardson  
20 will call her witnesses, who may be cross-examined by counsel for PDS and Tulalip Tribes.  
21 After she rests, PDS will offer its witnesses (with cross-examination), followed by the Tulalip  
22 Tribes' witnesses (with cross examination). Examination of witnesses will be by question  
23 and answer if the party is represented by counsel. Direct examination of witnesses called by  
24 parties not represented by counsel may testify by narrative instead of question and answer.  
25 Cross-examination of other party's witnesses by unrepresented parties will be by question  
26 and answer. For example, appellant Richardson's witnesses may testify by narrative on  
27 direct, but she must use the question-and-answer format when cross-examining PDS's  
28 witnesses.

29 Duplication of evidence between the two phases of the consolidated hearing should be  
30 avoided. Documentary and testimonial evidence admitted in either phase of the

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<sup>2</sup> In addition to the PDF filing, a copy in Word format would be appreciated.

<sup>3</sup> Cross-examination by principal parties is allowed in the adversarial SEPA appeal.

1 consolidated hearing will be considered by the Hearing Examiner in deciding both the  
2 conditional use permit application and the SEPA appeal.

3 Cross-examination will not be allowed during the development application portion of the  
4 hearing. However, applicant and PDS witnesses and any public comment during the  
5 development application phase upon which appellant relies for its SEPA appeal are subject  
6 to recall in the SEPA appeal phase to allow for examination by opposing parties. The  
7 Hearing Examiner notes the SEPA appeal issues are limited to the issues identified by the  
8 appellant in its notice of appeal and that testimony during the development application  
9 phase is not so limited. In other words, a witness recalled to testify during the SEPA appeal  
10 phase may only be examined on the stated SEPA appeal issues, not on the witness's prior  
11 testimony unrelated to the SEPA appeal.

## 12 **ADDITIONAL PREHEARING CONFERENCES**

13 Any party may request a further pre-hearing conference. The parties are urged to confer  
14 first and then discuss scheduling with the Clerk of the Hearing Examiner.

15 DATED this 1<sup>st</sup> day of November, 2022.

16 *Peter B. Camp*

17 Peter B. Camp

18 Snohomish County Hearing Examiner

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## 19 **RECONSIDERATION**

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20 This is an interim order from which no right of appeal lies. However, a principal party may  
21 ask the Hearing Examiner to reconsider this decision as provided by SCC 2.02.170 (2013).  
22 The following paragraphs summarize the reconsideration process. For more information  
23 about reconsideration procedures, please see chapter 2.02 SCC and the Hearing Examiner  
24 Rules of Procedure.

### 25 **Reconsideration**

26 Any principal party may request reconsideration by the Hearing Examiner pursuant to SCC  
27 2.02.170 (2013). A petition for reconsideration must be filed in writing by email to  
28 [Hearing.Examiner@snoco.org](mailto:Hearing.Examiner@snoco.org) or by US mail to the Office of Hearings Administration, 3000  
29 Rockefeller Avenue, M/S #405, Everett WA 98201, **on or before November 14, 2022.**<sup>4</sup>  
30 There is no fee for filing a petition for reconsideration. The petitioner for reconsideration  
31 shall mail or otherwise provide a copy of the petition of reconsideration to all parties to the  
32 appeal on the date of filing.

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<sup>4</sup> The tenth day is a holiday. The deadline therefore continues to the next business day.

- 1 The petition for reconsideration does not have to be in any special form but must:
- 2 (a) Contain the name, mailing address and daytime telephone number of the petitioner,  
3 together with the signature of the petitioner or of the petitioner's attorney, if any;
  - 4 (b) Identify the specific findings, conclusions, actions, or conditions for which  
5 reconsideration is requested;
  - 6 (c) State the relief requested; and,
  - 7 (d) Where applicable, identify the specific nature of any newly discovered evidence  
8 and/or changes proposed by the applicant.

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

- 10 (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- 11 (b) The Hearing Examiner failed to follow the applicable procedure in reaching the  
12 Hearing Examiner's decision;
- 13 (c) The Hearing Examiner committed an error of law;
- 14 (d) The Hearing Examiner's findings, conclusions or conditions are not supported by the  
15 record; or
- 16 (e) New evidence which could not reasonably have been produced and which is  
17 material to the decision is discovered.

18 Please include the county file number in any correspondence regarding this case.

# SAMPLE ONLY

<b>APPLICANT:</b>	<b>[NAME]</b>
<b>APPELLANT:</b>	<b>[NAME]</b>
<b>FILE:</b>	<b>[FILE NO]</b>

## APPLICATION DOCUMENTS

<b>A.</b>	<b>APPLICATION</b>
A.1	Master Permit Application
A.2	Project Narrative
<b>B.</b>	<b>PLANS</b>
B.1	Site Plan
B.2	Landscape Plan
B.3	Frontage Improvements Plan
B.4	Wetland Mitigation Plan
<b>C.</b>	<b>REPORTS</b>
C.1	Traffic Report
C.2	Targeted Drainage Report
C.3	Geotechnical Report
C.4	Critical Area Study and Wetland Mitigation Plan Report
C.6	Transportation Memo
C.7	Drainage Memo
C.8	Critical Area Memo
C.9	Fire Marshal Memo
<b>D.</b>	<b>PROPERTY</b>
D.1	Ownership – Zoning Map
D.2	Aerial Map
<b>E.</b>	<b>ENVIRONMENTAL</b>
E.1	SEPA Threshold Determination
<b>F.</b>	<b>NOTICE AND ROUTING DOCUMENTS:</b>
F.1	Affidavit of Mailing(s)– Notice of Open Record Hearing, Threshold Determination, and Concurrency and Traffic Impact Fee Determinations
F.2	Affidavit of Notification (publication) – Notice of Open Record Hearing, Threshold Determination, and Concurrency and Traffic Impact Fee Determinations
F.3	Posting Verification – Notice of Open Record Hearing, Threshold Determination, and Concurrency and Traffic Impact Fee Determinations
<b>G.</b>	<b>GOVERNMENT / TRIBAL COMMENTS:</b>
G.1	Water / Sewer Purveyor
G.2	Snohomish Health District
<b>H.</b>	<b>PUBLIC COMMENTS:</b>

H.1	Jane Smith Comment
H.2	John Doe Comment
<b>I.</b>	<b>RESPONSE TO AGENCY / PUBLIC COMMENTS:</b>
I.1	Response letter
I.2	Response letter 2
<b>J.</b>	<b>STAFF RECOMMENDATION - Department of Planning and Development Services</b>
J.1	Staff Recommendation
<b>K.</b>	<b>SUBMITTED AT HEARING:</b>
K.1	Misc. document

### SEPA DOCUMENTS

<b>O.</b>	<b>APPEAL DOCUMENTS</b>		
O.1	Notice of Appeal		
O.2	Verification of Appeal		
O.3	Sworn Statement Supporting Appeal		
<b>P.</b>	<b>PLEADINGS</b>	<b>Date</b>	
P.1	Applicant's Motion for Dismissal	1/1/01	
P.2	Appellant's Response to Motion to Dismiss	1/14/01	
P.3	Applicant's Reply re Motion to Dismiss	1/21/01	
<b>Q.</b>	<b>APPELLANT EXHIBITS</b>	<b>Date</b>	<b>Admitted (y/n)</b>
Q.1			
Q.2			
Q.3			
<b>R.</b>	<b>PDS EXHIBITS</b>	<b>Date</b>	<b>Admitted (y/n)</b>
R.1			
R.2			
R.3			
<b>S.</b>	<b>APPLICANT EXHIBITS</b>	<b>Date</b>	
S.1			
S.2			
S.3			
<b>T.</b>	<b>ADMINISTRATIVE</b>	<b>Date</b>	
T.1	Scheduling Order	11/1/2022	