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DECLARATION OF SERVICE

On this day I served a copy of the document on which this declaration appears by email transmission to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA this 2ND day of September, 2020.



Erika Hamerquist, Secretary/Tellina Sandaine, Paralegal

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OFFICE OF THE HEARING EXAMINER
IN AND FOR THE CITY OF SEQUIM

RE: CDR20-001)
)
Consolidated Administrative Appeals)
of January 24, 2020 Notice of) File No. CDR20-001
Determination of Procedure Type:)
May 15, 2020 Director’s Report and) CITY’S MOTION TO DISMISS BILOW,
Staff Decision; and May 11, 2020) PARKWOOD, AND SAVE OUR SEQUIM
MDNS for Jamestown S’Klallam Tribe) (S.O.S.) APPEALS
Outpatient Clinic)
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I. INTRODUCTION AND RELIEF REQUESTED

The City asks the Hearing Examiner to dismiss Appellants Bilow, Parkwood, and Save Our Sequim’s (S.O.S.) (collectively Appellants) appeals because they lack standing and because the Jamestown S’Klallam Tribe’s (Tribe) project is not an “Essential Public Facility (EPF).”

1 Appellants' arguments ignore the basic tenets of statutory construction, land use law, federal
2 Americans with Disabilities Act/Rehabilitation Act (ADA/RA) and the Sequim Municipal Code
3 (SMC). As stated below and despite Appellants' strained and superficial interpretations of the
4 law, the City cannot require the Tribe to go through the Essential Public Facilities' "C-2"
5 process. The City properly classified the project as a "medical clinic" based upon the Tribe's
6 actual application submittals and consistent with the SMC and the ADA/RA. Appellants'
7 arguments hinge solely on the *type of patients treated and medication provided* at the facility,
8 which under clearly established anti-discrimination laws cannot be a basis for issuing land use
9 decisions under the ADA/RA. As such, there are myriad reasons why the issues raised by
10 Appellants are not justiciable and their appeals should be dismissed.

11 In addition, Appellants' appeals are unclear and the City does not entirely understand
12 some of the arguments being raised, which in itself is an independent reason these appeals
13 should be dismissed for failure to state a claim due to the lack of specificity in and nature of
14 their appeals. The grounds for dismissal of these appeals are based on facts or representations in
15 each of the Appellants' appeals, the City's established record on the appeals, or on other facts
16 that are not subject to dispute; therefore this Motion is timely and properly brought before the
17 scheduled hearing on the appeals.

18 The City has consolidated its understanding of the claims and issues raised by
19 Appellants Bilow, Parkwood, and S.O.S. and will address the various claims by Party, rather
20 than by consolidating issues. The City hopes that using this process will assist the Examiner in
21 reviewing the appeals and ruling on a clean and clear record.
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II. BACKGROUND

The Tribe submitted its building permit and design review applications for a medication-assisted treatment clinic (MAT Clinic) on January 10, 2020. Pursuant to City Code, the City’s Community Development Director (Director) issued his Notice of Determination of Procedure Type on January 24, 2020 (Typing Decision). Appellants Bilow, Parkwood, and S.O.S. timely appealed the Typing Decision (Typing Appeal(s)). In accordance with the Sequim Municipal Code, the appeals were consolidated and stayed until they could be combined with a decision on the merits of the relevant permits.

On May 11, 2020, the Director issued a Revised Mitigated Determination of Nonsignificance (MDNS) as required under the State Environmental Policy Act (SEPA). Appellants Parkwood and S.O.S. timely appealed that decision (SEPA Appeal(s)); the Tribe timely appealed that decision as well. Appellant Bilow did not appeal the City’s SEPA decision.

III. SUMMARY OF ARGUMENT FOR DISMISSAL OF APPEALS

Appellants Bilow, Parkwood, and S.O.S. lack standing to challenge the Typing Decision because they are not aggrieved parties as required under the Sequim Municipal Code. For the same reasons, Appellants Parkwood and S.O.S. lack standing to challenge the SEPA Threshold Decision — the MDNS and its conditions or alleged lack of conditions. In addition, Appellants base their arguments upon the flawed logic of what constitutes an EPF and the EPF process, disregarding the plain language of Washington State laws and rules and the Sequim Municipal Code. Finally, Appellants’ arguments hinge upon a misguided interpretation of SEPA laws and an outdated interpretation of ADA/RA laws. As a result, the City respectfully urges the Hearing Examiner to **dismiss** Appellants’ Typing Decision and SEPA Appeals in their entirety.

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IV. ARGUMENT

A. APPELLANT BILOW LACKS STANDING BECAUSE HE IS NOT AN AGGRIEVED PARTY AND CANNOT DEMONSTRATE A JUSTICIABLE CONTROVERSY; THEREFORE, HIS APPEAL OF THE TYPING DECISION MUST BE DISMISSED.

Pursuant to the Sequim Municipal Code, only parties of record who “may be aggrieved by the administrative decision may appeal to the hearing examiner.” SMC 20.01.090(E). The City’s definition of “aggrieved party” is substantially similar to the standing provisions identified in the Land Use Petition Act, RCW 36.70C (LUPA). SMC 20.010.020(B) defines an “aggrieved party” as follows:

B. “Aggrieved party” is a party of record who can demonstrate the following:

1. The land use decision will prejudice the person;
2. The asserted interests are among those the city is required by city code to consider in making a land use decision; and
3. A decision on appeal in favor of the person would substantially eliminate or redress the prejudice alleged to be caused by the land use decision.

Compare this definition to the one in LUPA at RCW 36.70C.060. Accordingly, case law interpreting general standing requirements, especially “aggrieved party” under LUPA, is instructive in interpreting and applying the City’s standing requirements under SMC 20.010.020(B).

An interest sufficient to support standing must be more than the abstract interest of the general public having others comply with the law. *Chelan Cty. v. Nykriem*, 146 Wn.2d 904, 935 (2002). Petitioners must demonstrate that they would suffer an “injury-in-fact” as a result of the land use decision. *Knight v. City of Yelm*, 173 Wn.2d 325, 341 (2011). To show such injury, the plaintiff must show a specific and perceptible harm. *Id.*, emphasis added. If the injury is threatened, rather than existing, the threatened injury must be “immediate, concrete, and

1 specific; a conjectural or hypothetical injury will not confer standing.” *Id.* In general, adjacent
2 property owners who allege the project will injure their property have standing. *Id.* One who
3 lacks standing cannot appeal a land use decision at all. *Grundy v. Brack Family Trust*, 116 Wn.
4 App. 625, 633 (2003) *reversed on other grounds*, 155 Wn.2d 1; RCW 36.70C.060.

- 5 1. Appellant Bilow is not an adjacent property owner and failed to articulate any harm
6 to his property; accordingly, his Typing Decision appeal must be dismissed.

7 Appellant Bilow lives “slightly outside” the Sequim city limits; yet he states without
8 support that he is “certainly within the area of impact of any decisions....” (Appellant Bilow
9 Typing Appeal, p. 2.) In reality, Appellant Bilow lives 3.7 miles¹ from the project site.

10 Appellant Bilow is not an adjacent property owner and therefore lacks standing. *Cf., Lauer v.*
11 *Pierce Cty.*, 173 Wn.2d 242, 254 (2011) (adjacent landowner has standing under LUPA).

12 Further, Appellant Bilow failed to articulate any harm to his property or describe how a decision
13 is his favor would redress that alleged harm. (*See generally*, Appellant Bilow Typing Appeal.)

14 A generic and boilerplate statement that he believes he is within the area of impact of the
15 Tribe’s MAT clinic is completely self-serving, without any evidence, and pure speculation.

16 Because he failed to articulate how the City’s decision harms his property, he is not an
17 “aggrieved party” and therefore lacks standing, so his appeal must be dismissed.

- 18 2. Appellant Bilow merely argues that the City “used the wrong process”, which does
19 not confer standing. Therefore, his appeal must be dismissed.

20 Appellant Bilow’s alleged “harm” mirrors the abstract interest in having a jurisdiction
21 follow its code that the Washington State Supreme Court clearly rejected in *Chelan County*,
22 *supra. Chelan Cty.* at 935. There, the intervenors’ “sole interest ... is to preserve the protections
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¹ In accordance with SMC 2.10.050(E), the City asks the Hearing Examiner to take judicial notice of the City’s
attached Exhibit A.

1 of the zoning in the district in which they are located.” *Id.* The court rejected this argument,
2 denied standing, and held that “without alleging more specific injuries adversely affecting them
3 or their property” the intervenors could not demonstrate they were aggrieved parties under the
4 law. *Id.*

5 As with the intervenors in *Chelan County*, Appellant Bilow’s arguments hinge upon
6 allegations that the City failed to follow its own code or that it should have determined process
7 *before* determining use. (*E.g.*, Appellant Bilow Typing Appeal, p. 2 (Director “reached his
8 decision ‘erroneously’ by proceeding through analysis based upon **Title 18** ... rather than the
9 proper Title 20...”, emphasis and quotes in original); *id.* at p. 3 (Director is “clearly
10 ‘processing’ this Application erroneously under SMC Title 18...”) Appellant Bilow’s
11 arguments merely represent the “abstract interest of the general public” rejected by the *Chelan*
12 *County* court. Allegations that the City must follow its own code are insufficient to confer
13 standing, and one must have a direct and personal impact to confer standing to appeal a land use
14 decision. *Chelan Cty.* at 935; *Grundy* at 633. Appellant Bilow has offered no evidence to this
15 effect. Thus, Appellant Bilow’s arguments must be rejected, and his appeal must be dismissed.

17 Moreover, in *Thompson v. City of Mercer Island*, the Court of Appeals dismissed a
18 neighbor’s action for lack of standing because he failed to allege any specific harm or
19 threatened harm to his property. *Thompson v. City of Mercer Island*, 193 Wn. App. 653, 664
20 (2016) amended on denial of reconsideration, *rev. denied*, 186 Wn.2d 1013). There, the
21 appellant argued that the city’s approval of a short plat application violated the city’s code,
22 comprehensive plan, and Washington State law. *Id.* at 663-664. The appellant argued, without
23 authority, that the court “must assume his allegations of legal error are true and ‘presume’ harm
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1 to adjacent property.” *Id.* at 663. Citing *Chelan Cty. v. Nykriem*, the *Thompson* court reasoned
2 as follows:

3 Thompson believes the creation of Tract X violates the city's code and
4 comprehensive plan for land use, as well as Washington law. His land use
5 petition identifies 11 legal errors surrounding the creation and approval of Tract
6 X. But it does not allege any specific injury to Thompson or his property.
7 Thompson's sole interest is trying to enforce zoning protections in his
8 neighborhood. His abstract interest in having others comply with the law is not
9 enough to confer standing.

10 *Thompson* at 663.

11 Thompson’s argument mirrors what Appellant Bilow would have the Hearing Examiner
12 do in his appeal. Appellant Bilow impliedly asks the Hearing Examiner to “presume” harm to
13 his property; the Court of Appeals rejected this invitation and the Hearing Examiner should as
14 well. Appellant Bilow cannot show specific, concrete harm attributed to the land use decision;
15 therefore, he lacks standing and his appeal must be dismissed.

16 Finally, Appellant Bilow’s interests are not those the City is required to consider when
17 making its decision, *Cf. Knight* at 345 (*Knight* satisfied RCW 36.70C.060(b)(2) because the
18 Yelm City Council was required to consider whether there were adequate water sources before
19 it granted preliminary plat approval). Appellant Bilow’s “interest” in this matter is nothing more
20 than demanding that the City process the MAT Clinic permit applications in the manner he
21 deems appropriate. Appellant Bilow is not an “aggrieved party” and therefore lacks standing, so
22 his appeal must be dismissed.

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2 3. Appellant Bilow's arguments misapply the City's land use permit processing codes
3 and lead to absurd results. Therefore, his appeal should be dismissed.

4 Appellant Bilow argues that the City's Director improperly classified the proposed
5 project because he looked to Title 18 first, rather than Title 20². (Appellant Bilow Typing
6 Appeal, p. 2.) Under Appellant Bilow's analysis, he apparently would have the Examiner and
7 the City first determine which process the proposal falls under *and then* look to see if the zoning
8 allows the proposed use. *Id.* He further concludes that because a project generates community
9 interest, it must, therefore, be a C-2 process³. (Appellant Bilow Typing Appeal, pp. 3-4.) This
10 logic is flawed and contrary to the development review process as envisioned in Washington
11 Administrative Code (WAC) 365-196-845 and the City's municipal code.

12 Appellant Bilow's contention that the Director should have consulted Title 20, the City's
13 procedural code requirements for processing land use permits, before consulting the City's
14 zoning code (Title 18) makes no more sense from a practical perspective than it does from a
15 conceptual perspective.

16 In general terms – Zoning Ordinances, such as that found in SMC Title 18, typically do
17 the following⁴:

- 18 (1) Divide a city into various land use designations;
19 (2) List permitted uses within those designations;
20 (3) Provide for permitted, conditional, and accessory uses;
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22 ² The City does not fully understand this argument and what follows is our best attempt to unpackage and respond
23 to this vague and confusing argument.

24 ³ The C-2 process involves a public hearing before the City Council on projects with substantial discretion and
25 broad public interest. SMC 20.01.020(W).

⁴ The City also processes other land use-related permits not always included in the zoning use table including, but
not limited to, building permits, road vacations, and right of way permits.

- 1 (4) List prohibited uses within those designations;
- 2 (5) Establish development standards such as building height, setbacks, lot
- 3 coverage, parking, signage, and landscaping; and
- 4 (6) Provide for procedures (administrative, quasi-judicial, and legislative) for
- 5 processing subdivisions, boundary line adjustments, variances, conditional use
- 6 permits, design review, zoning map and text amendments, and appeals.

7 Appellant Bilow insists the Director should have looked at #6 above before looking at

8 #2 or #3 to decide the proposed land use permit process. This, of course, makes little sense

9 because one cannot always determine the permit process without knowing what the proposed

10 land use is and whether the proposed land use is allowed in a particular zoning district and, if it

11 is, whether it is permitted outright or conditionally.⁵

12 Moreover, applying Appellant Bilow's "logic" flies in the face of Washington State

13 vesting laws, which require building permit and plat applications to be considered under the

14 laws in place at the time of application. RCW 19.27.095; RCW 58.17.033; *see also, Noble*

15 *Manor Co. v. Pierce Cty.*, 133 Wn.2d 269, 278 (1997), emphasis added (if a jurisdiction

16 requires an applicant to apply for a *use* for the property in the application, and the applicant

17 discloses the requested use, then the applicant *has the right* to have the application for that use

18 considered under the laws existing on the date of application). Processes do not vest under

19 Washington law and may be changed at any time, whereas uses do vest [under certain

20 circumstances] if a completed application has been filed before any change in use. *Graham*

21 *Neighborhood Ass'n v. F.G. Assoc.*, 162 Wn. App. 98, 116-117 (2011); *see also, Potala Village*

22 *Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191, 203-204 (2014).

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25 ⁵ Staff will sometimes know if a land use is permitted outright or conditionally in a zoning district, but it is always good practice to check the zoning table before making such a presumption.

1 Land use processes vary by the type of permit involved and the jurisdiction. Some minor
2 land use decisions are made by planning staff without any public notice or hearing. *E.g.*, Port
3 Townsend Municipal Code 20.01.200(A); Port Orchard Municipal Code 20.22.030(6) and
4 .040(5); SMC 20.01.030 Table 1(A) and (B). More significant decisions typically require public
5 notice of the application and an open record public hearing before a decision-making body
6 (such as a hearing examiner), followed by the opportunity for appeal. *E.g.*, Port Townsend
7 Municipal Code 20.01.235(C); Port Orchard Municipal Code 20.22.050(5); SMC 20.01.030
8 Table 1.

9 WAC 365-196-845 includes a short list of some of the permit types a local government
10 processes on a regular basis, such as building permits, subdivisions, binding site plans, planned
11 unit developments, and conditional uses⁶. This WAC also provides that

12 ...cities administer many different types of permits, which can generally be
13 grouped into categories which include different permit processes and decision-
14 makers. The following are examples of project permit categories:

- 15 (i) Permits that do not require environmental review or public notice, and
16 may be administratively approved;
- 17 (ii) Permits that require environmental review, but do not require a public
18 hearing; and
- 19 (iii) Permits that require environmental review and/or a public hearing and
20 may provide for a closed record appeal.

21 The City's procedural policy directing the "typing" of permit applications is found in
22 SMC 20.01.040 and Table 2, SMC 20.01.030 and is consistent with WAC 365-196-845 by

23 ⁶ RCW 36.70B.020(4) "Project permit" or "project permit application" means any land use or environmental permit
24 or license required from a local government for a project action, including but not limited to building permits,
25 subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development
permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized
by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan,
subarea plan, or development regulations except as otherwise specifically included in this subsection.

1 categorizing permits as: (i) Type A-1 Permits that do not require environmental review or public
2 notice, and may be administratively approved; (ii) Type A-2 & B Permits that require
3 environmental review, but do not typically require a public hearing; and (iii) Type C1-C3
4 Permits that require environmental review and/or a public hearing, and may provide for a closed
5 record appeal.

6 Therefore, the permit “typing” process outlined in WAC 365-196-845 recognizes
7 jurisdictions administer many different types of permits and these permits can generally be
8 categorized into groups based on complexity and who the ultimate decision-maker is. For
9 example, in most cases where a public hearing is required (i.e., quasi-judicial and legislative
10 decisions) a Hearing Examiner or the City Council is the final decision-making authority. For
11 administrative or ministerial decisions, the decision-maker is usually a senior staff member. *See,*
12 *e.g.,* SMC 20.01.030 Table 1. When one considers that certain permits require a public hearing
13 and others cannot be subjected to a hearing and others, by statute, require the legislative body to
14 make the decision, the permit types start to fall fairly neatly into the three different permit
15 categories envisioned by the WAC.
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17 Therefore, the WAC envisions a predictable and predefined permit decision-making
18 process that includes, 1) a list of land use permits categorized by whether they are
19 administrative, quasi-judicial, or legislative, 2) a list of what the permit review process should
20 include, and 3) the authority for the local jurisdiction to appoint decision-makers for each
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1 permit type. This envisioned process is consistent with the Regulatory Reform Act ⁷ and the
2 SMC⁸.

3 Applying Appellant Bilow’s flawed analysis means that the City would first need to
4 guess what level of “broad community interest” a project would generate and then determine
5 whether the use is permitted outright, permitted conditionally, or prohibited in the zoning
6 district. Under this “process”, two otherwise similar land uses may require the decision-maker
7 to undergo a significantly different and more rigorous analysis than the other because it
8 generated more “broad public interest”, such as if a building permit that received an unusual
9 amount of public scrutiny because it is two or more stories high received a heightened review
10 standard. Further, Appellant Bilow’s “process” gives no certainty or predictability to a project
11 applicant because staff would need to guess at the level of “broad public interest” generated by
12 a project. Such analysis makes local land use decisions ripe for claims of arbitrary and
13 capriciousness.
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15 An example of how arbitrary and capricious the process Appellant Bilow promotes is
16 illustrated by the following scenario of a proposed 4-lot⁹ subdivision. This hypothetical short
17 subdivision may not generate much interest from community members because of its proposed
18 location on the fringe of the city limits and, therefore, is¹⁰ subjected to a ministerial process and
19 decision by staff. But, if located closer to the city’s central core, the exact same project
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22 ⁷ The Local Project Review Act is part of the Land Use Regulatory Reform Act signed into law in 1995 (ESHB
23 1724, codified, in part, in Chapter 36.70B RCW).

24 ⁸ See, e.g., SMC 20.01 and SMC Title 18.

25 ⁹ City code currently only authorizes four-lot short subdivisions. SMC 17.20.010(B).

¹⁰ According to SMC 20.01.030 Table 2.

1 generates a large upswell of community angst and is therefore subjected to a more stringent C-2
2 review process in which the City Council makes the decision. This, of course, is no way to
3 determine a permit's appropriate process track and flies in the face of constitutionally protected
4 equal protection and due process rights.

5 Finally, if Appellant Bilow's analysis is accepted, the Hearing Examiner will be making
6 a determination that RCW 36.70B, its associated WACs, and various local government
7 regulations including the SMC are wrong. Therefore, this analysis cannot stand, and his appeal
8 must be dismissed.

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10 4. The C-2 process is inappropriate for the proposed project because under the City's
11 Code, C-2 projects require exercising "substantial discretion and about which there
12 is broad public interest"; there is no opportunity to exercise "substantial discretion".
13 Thus, Appellant Bilow's arguments fail, and his Typing Decision appeal should be
14 dismissed.

15 The applications submitted by the Tribe are for a building permit and design review,
16 which are ministerial acts with little discretion. SMC 20.01.020(T) and (U). As held by the
17 court in *Mission Springs v. City of Spokane*, 134 Wn.2d 947 (1998), "neither a grading permit,
18 building permit, nor any other ministerial permit may be withheld at the discretion of a local
19 official to allow time to undertake a further study." *Id.* at 961. Government agencies have little
20 discretion in changing/denying ministerial land use development permit applications; if the
21 permit application meets the standards set forth in its ordinances, the agency must approve the
22 application or face potential legal consequences. *Id.* at 960-961. Denying a permit violates equal
23 protection laws when the applicant meets the formal, stated requirements. *Id.* at 972. Legislative
24 discretion is exercised during the legislative process, i.e., ordinance adoption process, not the
25 permit application and decision/quasi-judicial process. *Snohomish Cty. v. Pollution Control*

1 *Hrng's Bd.*, 187 Wn.2d 346, 364 (2016), citing *State ex rel. [City of] Ogden v. Bellevue*, 45
2 Wn.2d 492 (1954).

3 The legislature's reliance on Ogden thus suggests that the legislature
4 understood the vested rights doctrine as curbing local discretion where
5 none was warranted.

6 *Id.*

7 Washington Practice provides a similar analysis:

8 Washington's position seems to be this: If a city... has no standing
9 regulation on a particular subject..., the city... has broad discretion to
10 fashion requirements on that subject and to deny... applications that do
11 not meet those requirements. It would seem that the only limit on the
12 exercise of discretion would be that it could not be arbitrary and
13 capricious. On the other hand, if there are standing regulations on the
14 particular subject and if the proposed [project] complies with those
15 regulations, then the... application may not be denied on the ground that
16 it fails to serve the public interest on that subject. Perhaps it can be said
17 that, in adopting the standing regulations, the local government has
18 already defined the public interest on the subjects covered by those
19 regulations.

20 WA. Pract., § 5.4, emphasis mine.

21 As such, Appellant Bilow cannot demonstrate where the City could exercise the
22 “substantial discretion” identified in the C-2 process. SMC 20.01.020(W). In sum, the City must
23 apply the codes to a project as written, not as others may want them to be written. Because the
24 C-2 process requires substantial discretion and broad public interest, Appellant Bilow’s claims
25 must fail, and his appeal should be dismissed.

5. Appellant Bilow concedes an “outpatient facility” is authorized under the SMC;
therefore, there is no justiciable controversy and his appeal must be dismissed.

In his appeal brief, Appellant Bilow concedes that “an ‘outpatient facility’ appears
permitted under Title 18...”. (Appellant Bilow Typing Appeal, p. 4.) As set forth in SMC
18.33, the City’s zoning code for the River Road Employment Opportunity Area (RREOA)
where the MAT Clinic is to be constructed, allows “outpatient” clinics outright within the zone.

1 Table SMC 18.33.031. Appellant Bilow’s analysis then changes when he asserts without
2 authority that “if during the Title 20 Process (sic) the City should find that the facility will be
3 exclusively used for **Coronavirus research...**” the facility would be prohibited.¹¹ (Appellant
4 Bilow Typing Appeal, p. 4, emphasis in original.) The City does not understand this argument.
5 His argument only makes sense if Appellant Bilow also concedes that it is the use that drives
6 the process, not the other way around. Similarly, the City also does not fully understand
7 Appellant Bilow’s allegations that the Community Development Director’s decision was
8 premature because it fails for the same reason. Consequently, the City urges the Hearing
9 Examiner to dismiss Appellant Bilow’s appeal on this basis too.

10 **B. APPELLANT PARKWOOD LACKS STANDING AND FAILS TO ARTICULATE**
11 **WITH ANY SPECIFICITY WHY THE CITY’S TYPING AND SEPA DECISIONS,**
12 **MITIGATIONS, AND ANALYSES ARE WRONG. THEREFORE, ITS APPEALS**
13 **SHOULD BE DISMISSED.**

14 Appellant Parkwood lacks standing for the same reasons as Appellant Bilow, as set forth
15 in Sections A(1) and (2), and the City incorporates those arguments and authorities as though
16 fully set forth here. Appellant Parkwood’s manufactured home community is located *nearly*
17 *three miles* away and outside of the city limits, so it is not an adjacent property owner.
18 (Appellant Parkwood Typing Appeal, p. 2, Ins. 21-22, emphasis mine.) Further, as shown in its
19 Notice of Appeals for both decisions, Appellant Parkwood failed to establish specific and
20 perceptible harm as required under the law. (*See, e.g., id.* at p. 2, ln. 23 (Parkwood is
21 “concerned about the health, safety, and welfare of its community residents); *id.* at p. 7, ln. 18,
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25 ¹¹ There is nothing in the Tribe’s application supporting this assertion and this argument should be rejected by the
Hearing Examiner for that reason alone. The City expanded on this aspect, however, to illustrate the contradictory
nature of Appellant’s Bilow’s arguments regarding permit processing under Title 20.

1 and Appellant Parkwood SEPA Appeal, pp. 2-3 (City should “apply the appropriate rules and
2 procedures for evaluating the project.”.) Therefore, Appellant Parkwood lacks standing because
3 it is not an aggrieved party. As a result, its Typing and SEPA appeals should be dismissed.

4 In addition, Appellant Parkwood seems to adopt some or all of Appellant Bilow’s
5 arguments that the “appropriate” process for reviewing the Tribe’s project is the C-2 process.
6 (Appellant Parkwood Typing Appeal, p. 3, lns. 9-11 (Notice of Determination is “wrong” and
7 the City’s code “require[s]” the C-2 process).) To the extent it does so, the City incorporates its
8 arguments and authorities as set forth in Sections A(3-5). Appellant Parkwood also concedes
9 that a standalone outpatient clinic would comply with the City’s zoning code. (*See, id.* at pp. 3-
10 4.) Appellant Parkwood’s real issue, which is not (and cannot be) the subject of this appeal, is
11 with a hypothetical, future “Phase 2” of the MAT Clinic, which could consist of a “16-bed
12 inpatient evaluation and treatment psych (sic) hospital.” (*Id.* at p. 4, ln. 1.) As the City will show
13 below, Appellant Parkwood’s arguments based on this possible future “Phase 2” fail because
14 this concept is not part of the current proposal, and speculative at best. Accordingly, its Typing
15 and SEPA Appeals should be dismissed.

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17 1. The project is not an EPF and Appellant Parkwood’s arguments rely entirely on that
18 assumption; therefore, the Hearing Examiner should dismiss Parkwood’s Typing and
19 SEPA Appeals.

20 An “Essential Public Facility” as identified under Washington State law describes
21 “inpatient” facilities. RCW 36.70A.200(1). This statute requires local jurisdictions to develop a
22 process to allow siting of such facilities. *Id.* The Sequim Municipal Code Chapter 18.56 applies
23 to Essential Public Facilities proposed in zones in which they are prohibited. SMC 18.56.030.
24 Pursuant to SMC 18.33, the City’s zoning code for the River Road Employment Opportunity
25 Area (RREOA) allows “outpatient” clinics outright within the zone. Table SMC 18.33.031. The

1 proposed clinic is a standalone project and does not rise to the level of an “Essential Public
2 Facility” as defined by State law or City ordinance; therefore, Appellant Parkwood’s Typing
3 and SEPA Appeals should be dismissed.

4 a. *Appellant Parkwood ignores the statutory construction of RCW 36.70A.200(1), which*
5 *applies to “inpatient” facilities. Statutes must be interpreted with their plain meaning to*
6 *give statutory intent, with no portion rendered meaningless. Nothing in the application*
7 *proposes inpatient facilities; therefore, Appellant Parkwood’s Typing and SEPA*
8 *Appeals must be rejected.*

9 Appellant Parkwood relies on the Essential Public Facilities statute to support its
10 arguments but ignores the grammatical structure of the law and then misapplies it. The same
11 rules of statutory construction apply when interpreting municipal ordinances as interpreting
12 state statutes. *Seattle Housing Authority v. City of Seattle*, 3 Wn. App.2d 532, 538-539 (2018).
13 In statutory interpretation, the “fundamental objective is to ascertain and carry out the
14 Legislature’s intent.” *Id.*, quoting *Citizens All. v. San Juan Cty.*, 184 Wn.2d 428, 435 (2015).
15 When a statute’s meaning is clear, courts must give effect to the plain meaning as an expression
16 of legislative intent. *Seattle Housing Authority* at 538. Courts consider the ordinary meaning of
17 words, the basic grammatical rules, and the statutory context to conclude what the Legislature
18 has provided for in the statute and related statutes. *Id.* Courts may also look to a dictionary to
19 determine the plain meaning of an undefined term and construe the statute to give all words
20 effect and avoid absurd results, with no portion rendered meaningless or superfluous. *Id.* at 538-
21 539.

22 Here, RCW 36.70A.200(1) defines Essential Public Facilities as “... *inpatient* facilities,
23 including substance abuse facilities, mental health facilities....” RCW 36.70A.200(1), emphasis

24 //

25 //

1 added. The words after “including¹²” are merely examples illustrating what is meant by
2 “inpatient facilities”. *Chicago Manual of Style Q&A*. If the Legislature intended for outpatient
3 substance abuse and mental health facilities to be included in the definition, it would have said
4 so; courts do not add or modify the plain language of a statute if the statute is unambiguous. *Dot*
5 *Foods, Inc. v. Wash. Dep’t of Revenue*, 166 Wn.2d 912, 920 (2009).

6 Further, as discussed below, interpreting the law as Appellant Parkwood suggests would
7 be a violation of the ADA/RA because the City would also be required to treat all standalone,
8 outpatient substance abuse and mental health facilities as Essential Public Facilities, which
9 clearly is not allowed under State law or City Code. Consequently, Appellant Parkwood’s
10 attempts to shoehorn outpatient substance abuse and mental health facilities into the definition
11 of an Essential Public Facility are without merit. As such, the proposed MAT Clinic application
12 is not — and cannot be construed as — an Essential Public Facility. Appellant Parkwood’s
13 arguments should be rejected, and its Typing and SEPA Appeals must be dismissed.
14

15 *b. RCW 36.70A.200(1) only requires that local governments develop a process for siting*
16 *Essential Public Facilities. The City has done so, and its EPF code only applies when a*
17 *proposed use is prohibited within a zone, not when allowed outright as is the case here.*
Therefore, even if it was determined that the proposed Mat Clinic was an EPF,
Appellant’s Typing and SEPA Appeals must be dismissed.

18 RCW 36.70A.200(1) only requires that the local government develop a process¹³ for
19 siting Essential Public Facilities, and the City has done that. The City’s Essential Public
20 Facilities ordinance provides as follows (emphasis added):
21

22 _____
23 ¹² “Including” and “such as” signal a nonrestrictive phrase, meaning that what follows is not essential to retain
24 meaning for the rest of the sentence or phrase. *Chicago Manual of Style Q&A*, last accessed March 9, 2020.
<https://www.chicagomanualofstyle.org/qanda/data/faq/topics/Commas.html?page=6>

25 ¹³ RCW 36.70A.200(1) “The comprehensive plan of each... city that is planning under RCW 36.70A.040 shall
include a process for identifying and siting essential public facilities. Essential public facilities include those
facilities that are typically difficult to site....” Emphasis added.

1 18.56.030 Permitted uses.

2 The council may permit the following uses in districts from which
3 they are now prohibited by this title:

4 J. Group homes, alcoholism or drug treatment centers, detoxifica-
5 tion centers, work release facilities for convicts or ex-convicts, or
6 other housing serving as an alternative to incarceration with 12 or
7 more residents.

8 Presuming without conceding that the proposed MAT Clinic is an Essential Public Facility, the
9 City’s River Road Employment Opportunity Area (RREOA) zoning allows “state and regional”
10 Essential Public Facilities outright. SMC Table 18.33.031.¹⁴ Thus, Appellant Parkwood’s
11 arguments must fail because — despite its insistence that the MAT Clinic is an Essential Public
12 Facility (which it is not, as further described below) — SMC 18.56.030 applies only when the
13 proposed use is prohibited in a zone. Such is not the case here and Appellant Parkwood’s
14 arguments to the contrary must be rejected.

15 Appellant Parkwood also fails to acknowledge WAC 197-11-550(1)(e), which provides
16 as follows:

17 Cities... may not require applicants who operate essential public facilities to
18 use an essential public facility siting process for projects that would otherwise
19 be allowed by the development regulations. Applicants who operate essential
20 public facilities may not use an essential public facility siting process to obtain
21 approval for projects that are not essential public facilities.

22 WAC 197-11-550(1)(e), emphasis added.

23 But this is precisely what Parkwood is demanding that the City do. Such action would be in
24 violation of State law.

25 ¹⁴ SMC 18.33.030(A)(1) A permitted (P) use is one that is permitted outright, subject to all the applicable provisions of this title and relevant portions of the Sequim Municipal Code. SMC 18.08.020 defines “clinic” as “a building designed and used for the diagnosis and treatment of human outpatients excluding overnight care facilities.”

1 As described above and in Section B(2) below, the proposal is an outright permitted use in
2 the RREOA zone¹⁵, and therefore Appellant Parkwood's arguments should be rejected and its
3 Typing and SEPA Appeals dismissed.

4 *c. Appellant Parkwood's Typing¹⁶ and SEPA Appeals should be dismissed; the MAT Clinic*
5 *as proposed complies with SEPA because any future phases are wholly independent*
6 *from one another and are not closely related.*

7 Appellant Parkwood argues that the project "must be" an Essential Public Facility
8 because the Tribe has indicated that a future, potential phase may include inpatient facilities.
9 (See generally, Appellant Parkwood's Typing and SEPA Appeals.) The State Environmental
10 Policy Act codified under RCW 43.21C controls when and how jurisdictions must conduct their
11 environmental review of project proposals. The Washington Administrative Code defines when
12 projects must be considered together.

13 Proposals or parts of proposals that are related to each other closely enough to be,
14 in effect, a single course of action shall be evaluated in the same environmental
15 document. Proposals or parts of proposals are closely related... if they:

- 16 (i) Cannot or will not proceed unless the other proposals (or parts of
17 proposals) are implemented simultaneously with them; **or**
18 (ii) Are interdependent parts of a larger proposal **and depend on the larger**
19 proposal as their justification or for their implementation.

20 WAC 197-11-060(b), emphasis added.

21 As further explanation, WAC 197-11-784 defines "proposal" as follows, emphasis
22 added:

23 "Proposal" means a proposed action and includes both actions and regulatory
24 decisions of agencies as well as any actions proposed by applicants. A proposal
25 exists... when an agency is presented with an application, or has a goal and is

26 ¹⁵ Table SMC 18.33.031; n.14 above.

27 ¹⁶ The City includes Appellant Parkwood's Typing Appeal in its arguments here because Appellant's apparent
28 basis for claiming the MAT Clinic "should be" a C-2 process is because of the speculative Phase 2 project.

1 actively preparing to make a decision on one or more alternative means of
2 accomplishing that goal, and the environmental effects can be meaningfully
3 evaluated.

4 Failing to consider projects in conjunction with the definitions above constitutes impermissible
5 “piecemealing” and violates SEPA. *Murden Cove Preservation Ass’n v. Kitsap Cty.*, 41 Wn.
6 App. 515, 525 (1985). Permissible piecemealing is when a first phase of the project is
7 independent of the second and if the consequences of the ultimate development cannot be
8 initially assessed. *Id.* at 526. Impermissible piecemealing is when a series of interrelated steps
9 constitutes an integrated plan and the *current project* is dependent upon subsequent phases. *Id.*
10 In the absence of any specific plans for future development, SEPA does not require a
11 jurisdiction to consider “every remote and speculative consequence of an action.” *Id.* at 526.

12 Here, Appellant Parkwood claims that the proposed project is an Essential Public
13 Facility because the Tribe indicated “[p]rior to filing [its applications]”, that a subsequent
14 phase for “inpatient evaluation and treatment psych hospital” may be added “*if the needs*
15 *arise.*” (Appellant Parkwood Typing Appeal, p. 4, lns. 1-12.) However, Appellant Parkwood
16 fails to apply the rest of the law regarding project proposals. A passing reference to “Phase 2” is
17 not a proposal as defined under the WAC. The *agency*, i.e., City, has not been presented with an
18 application for a Phase 2, or any other phase or segment of potential future use or expansion;
19 *nor* does it have a goal and is actively preparing to make a decision. WAC 197-11-784.

20 As described in *Murden Cove*, such a standalone project is not subject to environmental
21 review on conceptual aspects of a project. In *Murden Cove*, the court held that approval of a
22 rezone and a Planned Unit Development were not functionally related to or dependent upon the
23 other for development. *Murden Cove* at 526. The court further noted that the “rule of reason”
24 requires deferral of assessing environmental consequences until they are presented in a “more
25

1 specific form” for governmental action. *Id.* at 527. Appellant Parkwood’s arguments rely on
2 mere past statements that the Tribe may offer Phase 2 services at some unknown time in the
3 future. This speculation requires the Hearing Examiner to ignore the “rule of reason” set forth in
4 *Murden Cove*. Appellant Parkwood would have the City attempt to assess and mitigate the
5 environmental impacts of a speculative and hypothetical project which, in fact, might never go
6 forward. Yet, this is not the law. The project before the City is more akin to the rezone and PUD
7 as described in *Murden Cove*. Developers walk away from potential projects all the time and the
8 law does not allow — much less require — that the City consider “every remote and speculative
9 consequence.” *Id.* at 526.

10 As stated above, the City has not been presented with anything relating to other future
11 phases or components or uses, and any assessment of environmental consequences at this
12 juncture is hypothetical and speculative. Consequently, Parkwood’s Typing and SEPA Appeals
13 must be dismissed.

14 Further, assuming *arguendo* that this City has been presented with an application
15 implicating a Phase 2 project or use, or will otherwise take action on a Phase 2 development,
16 Appellant Parkwood cannot demonstrate that Phase 1 and Phase 2 are interrelated and
17 dependent upon one another for their existence. *Id.* at 526; *see also Concerned Taxpayers*
18 *Opposed to Modified South Sequim Bypass v. Wash. Dept. of Trans.*, 90 Wn. App. 225, 229
19 (1998) (WDOT consideration of two-lane options rather than only four-lanes, which would
20 resolve safety concerns, would have been impermissible piecemealing). Appellant Parkwood
21 has offered no authority or facts to substantiate its apparent argument that a clinic and inpatient
22 facilities must be interrelated and dependent upon one another for their respective existence. In
23 fact, one must only look at the relationship between various physical/mental health clinics and
24
25

1 other “inpatient” facilities to see that no such interdependence required under SEPA exists. If
2 Appellant Parkwood’s analysis was correct, the only “stand-alone” clinics would be near
3 inpatient facilities because the clinics would depend on the inpatient facilities for their
4 existence, similar to a two-lane option versus the four-lane option at issue in *Concerned*
5 *Citizens, supra*. Because Appellant Parkwood cannot show a level of interrelation and
6 dependency similar to that of a two-lane highway and a four-lane highway, their Typing and
7 SEPA Appeals fail.

8 As shown above, Appellant Parkwood cannot demonstrate that the proposal is an
9 Essential Public Facility. Because Appellant Parkwood’s arguments require a finding that the
10 proposal is an Essential Public Facility, all its arguments fail. Therefore, Appellant Parkwood’s
11 Typing and SEPA Appeals must be dismissed.

12
13 *d. Appellant Parkwood asserts baseless claims that the project is difficult to site. The only*
14 *thing “difficult” to site about this project is the opposition from a small fraction of the*
15 *public, and a land use permit cannot be denied based upon community sentiment. Thus,*
Appellant Parkwood’s arguments fail, and its Typing and SEPA appeals must be
dismissed.

16 “[T]he major component in the identification of an essential public facility is whether it
17 provides or is necessary to provide a public service and whether it is difficult to site.” WAC
18 365-196-550(1)(f).

19 WAC 365-196-550(2) identifies “difficult to site” facilities as follows, emphasis added:

20 Criteria to determine if the facility is difficult to site. Any one or more of
21 the following conditions is sufficient to make a facility difficult to site.

22 (a) The public facility needs a specific type of site of such as size,
location, available public services, which there are few choices.

23 (b) The public facility needs to be located near another public facility or is
an expansion of an essential public facility at an existing location.

24 (c) The public facility has, or is generally perceived by the public to have,
significant adverse impacts that make it difficult to site.

25 (d) Use of the normal development review process would effectively
preclude the siting of an essential public facility.

1 (e) Development regulations require the proposed facility to use an
2 essential public facility siting process.

3 Appellant Parkwood argues that the project is difficult to site, claiming with circular
4 logic that because there is community opposition, it must be difficult to site. (Appellant
5 Parkwood Typing Appeal, p. 5.) Taking the language of the WAC literally, the claim may have
6 merit; however, this argument fails as a matter of law because community displeasure cannot be
7 the basis of a permit denial.¹⁷ *Maranatha Mining, Inc. v. Pierce Cty.*, 59 Wn. App. 795, 804
8 (1990); *Indian Trail Property Owner's Ass'n v. City of Spokane*, 76 Wn. App. 430, 439 (1994).
9 Similarly, community opposition cannot be the basis for deviating from standard procedures¹⁸.
10 *17 Wash. Prac. § 4.8, Denial of Equal Protection of Law, 2d Ed., May 2019 Update*. Applying
11 more than a cursory analysis of Parkwood's Typing Appeal reveals that its claims are without
12 merit because the project can, and is appropriately conditioned to, address and mitigate all
13 potential adverse impacts. *See, Moss v. City of Bellingham*, 109 Wn. App. 6, 15 (2001).

14
15 Here, the City has consistently processed medical clinics with the A-2 process for over
16 30 years. (Appellant Parkwood Typing Appeal, Ex. A, p. 3.) The mere fact that opposition has
17 developed around this particular medical clinic *due to the type of medication prescribed and*
18 *patients treated* does not render this clinic different from any other.¹⁹ Nonetheless, Appellant
19

20 _____
21 ¹⁷ To the extent Appellant Bilow makes the same or similar arguments regarding broad public interest, the City
22 incorporates its arguments and authorities here and applies them equally to Appellant Bilow's arguments.

23 ¹⁸ Equal protection in land-use regulations is that such regulations may not treat one owner less favorably than
24 other owners when no distinction that is relevant to the different treatment can be made between their situations.
25 *Citing, Ackerley Communications v. City of Seattle*, 92 Wn.2d 905 (1979); *State ex rel. Smilanich v. McCollum*, 62
Wn.2d 602 (1963).

¹⁹ Even if this project could be considered an Essential Public Facility, which as discussed, it cannot, WAC 365-
196-550(5)(d) requires the City to use the normal permitting process. "If an essential public facility does not
present siting difficulties and can be permitted through the normal development review process, project review
should be through the normal development review process otherwise applicable to facilities of its type."

1 Parkwood refuses to see the discriminatory nature of its arguments, asserting that the project is a
2 “psych hospital”. (E.g., Appellant Parkwood Typing Appeal, p. 3, ln. 20.²⁰) Indeed, its
3 arguments and opposition are strikingly similar to the Second Circuit’s characterization of a
4 similar medical/drug clinic in *Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d
5 37, 2d Cir. (1997).

6 There is little evidence in the record to support the [Zoning Board of
7 Appeal]’s decision on any ground other than the need to alleviate the
8 intense political pressure from the surrounding community brought on by
9 the prospect of drug- and alcohol-addicted neighbors. The public hearings
10 and submitted letters were replete with discriminatory comments about
11 drug- and alcohol-dependent persons based on stereotypes and general,
12 unsupported fears. Although the City certainly may consider legitimate
13 safety concerns in its zoning decisions, it may not base its decisions on the
14 perceived harm from such stereotypes and generalized fears. As the
15 district court found, a decision made in the context of strong,
16 discriminatory opposition becomes tainted with discriminatory intent even
17 if the decisionmakers personally have no strong views on the matter.

18 *Id.* at 49.

19 Thus, intense public outcry is insufficient to re-characterize a project and subject it to an
20 Essential Public Facilities analysis. Moreover, assuming without conceding that the intense
21 public outcry by certain individuals means the project is “difficult to site”, this provision would
22 not apply because the City would need to provide a reasonable accommodation as further
23 discussed in Section B(2). Consequently, Appellant Parkwood’s arguments fail.

24 Further, Appellant Parkwood’s claims that the proposed project requires “a specific type
25 of site” and “needs to be located near another public facility” are equally without merit.

(*Quoting*, Appellant Parkwood Typing Appeal, p. 6.) Appellant Parkwood appears to be arguing

²⁰ S.O.S. uses similar derogatory language, only in relation to substance dependencies, referring to the project as a
“detoxification center.” (Appellant S.O.S. Typing Appeal, p. 4 ln. 23.)

1 that because local patients will not have to travel as far for treatment and the Tribe is choosing
2 to consolidate services, that somehow transforms the project into an Essential Public Facility.
3 (*Id.*) Thus, Appellant Parkwood’s analysis requires one to cast commonsense aside and treat all
4 projects that consolidate services as an Essential Public Facility. Under its theory, if Wal-Mart
5 decided to open a doctor’s office next to its pharmacy to increase customer convenience, it
6 would then be transformed into an Essential Public Facility. Such a result is not the intent of the
7 Essential Public Facility statute and is absurd. Courts must avoid interpretations of law that lead
8 to absurd results. *Seattle Housing Authority, supra*, at 538-539. Therefore, Appellant
9 Parkwood’s arguments fail so its appeal must be dismissed.

10 *e. Appellant Parkwood’s argument that the project “fails to satisfy the necessary criteria”*
11 *for an Essential Public Facility is without merit and should be rejected because the*
12 *Tribe was not required to demonstrate compliance with such criteria. Thus, Appellant*
Parkwood’s SEPA Appeal should be dismissed.

13 Appellant Parkwood argues — again with circular logic — the proposed project fails to
14 satisfy the Essential Public Facility criteria. (Appellant Parkwood SEPA Appeal, Section B.)
15 The Hearing Examiner should reject that argument and refuse to consider it because it is
16 premature and without merit. The Tribe was not asked to provide the criteria needed to satisfy
17 the EPF elements because the project was not classified as an EPF and, as discussed in Section
18 B above, cannot be so classified. Therefore, the City asks the Hearing Examiner to reject this
19 argument and dismiss Appellant Parkwood’s SEPA Appeal.

20
21 2. Appellant Parkwood’s arguments fail because, contrary to its protests, the ADA
22 applies. ADA requires like uses to be treated similarly, and the City cannot
23 discriminate against the MAT Clinic merely because doctors will prescribe a certain
type of medication to patients. As such, Appellant Parkwood’s Typing and SEPA
Appeals must be dismissed.

24 Appellant Parkwood states as follows:
25

1 All but one of the cases cited in the Notice of Determination is persuasive
2 authority and not binding on this jurisdiction²¹, but even if the holdings
3 were mandatory authority here, they would not prevent the city (sic) from
4 applying the C-2 analysis for the purposes of evaluating this application.

5 (Appellant Parkwood Typing Appeal, p. 9, Ins. 10-12.)

6 The ADA prohibits discrimination by a public entity and prevents governmental entities
7 from discriminating against covered individuals through zoning. *Pacific Shores Properties, LLC*
8 *v. City of Newport*, 730 F.3d 1142, 1157 (2013). ADA protections extend to persons recovering
9 from drug or alcohol addiction. *Id.* Disparate treatment claims under the ADA are “typically
10 identical” as those under the Fair Housing Act (FHA), and the courts typically “interpret them
11 in tandem....” *Id.* Public agencies must make “reasonable accommodations to their policies,
12 practices, and procedures... when the modifications are necessary to avoid discrimination on
13 the basis of disability....” *Bay Area Addiction Research and Treatment, Inc., v. City of Antioch*,
14 179 F.3d 725, 734 (1999).

15 Federal case law has consistently held that people *and facilities* cannot be discriminated
16 against based upon the ailments they treat. *See, e.g., New Directions Treatment Services v. City*
17 *of Reading*, 490 F.3d 293 (3d Cir. 2007) (statute unlawfully singled out methadone clinics —
18 and thereby patients — for different treatment); *Comprehensive Addiction Treatment Services,*
19 *Inc., v. City and County of Denver*, 795 P.2d 271 (1989) (addiction treatment center was an
20 “office” under zoning ordinance like other medical offices and permit could not be denied on
21 theory that the “primary purpose” was dispensing methadone); *Village of Maywood v. Health,*
22 *Inc.*, 104 Ill. App. 3d 948, 60 Ill. Dec. 713, 433 N.E.2d 951 (1st Dist. 1982) (methadone clinic
23
24

25 ²¹ The Ninth Circuit decisions, such as those that follow, are binding on this jurisdiction. This footnote has been added by the City and did not appear in the quoted language.

1 has doctors, nurses, and other professional staff who treat people in the program; such a clinic
2 constitutes a professional office and is a permitted use without any special use permit).

3 The City’s Essential Public Facility process (SMC 18.56) is admittedly outdated and —
4 on its face — appears to require “alcoholism or drug treatment centers, detoxification centers”
5 to be processed as an Essential Public Facility. SMC 18.56.030(J). This provision of the City’s
6 code was enacted in 1997 and pre-dates important amendments to the ADA and the RA, as well
7 as a host of important federal court decisions addressing discrimination under the ADA and RA
8 and in zoning and land use permitting. Accordingly, City staff, under legal direction, have
9 properly disregarded this and other similar provisions in the City’s municipal code as they are
10 contrary to ADA/RA law and, if followed, subject the City to significant municipal liability.

11 *See, e.g., Pacific Shores Properties, supra* (city enforcement of ordinance that had the practical
12 effect of prohibiting group homes for recovering drug users and alcoholics as discriminatory);
13 *Bay Area Addiction Research and Treatment, supra* (ordinance preventing methadone clinic
14 from operating within 500 feet of residential areas as discriminatory and in violation of the
15 ADA/RA).

16
17 Moreover, Table 18.33.031 Business and Employment District Uses under the City’s
18 zoning code authorizes “[a]mbulatory and outpatient care services (physicians, outpatient
19 clinics, dentists)”; therefore, such uses are permitted outright. SMC 18.08.020 also defines a
20 “clinic” as “a building designed and used for the diagnosis and treatment of human outpatients
21 excluding overnight care facilities.” Appellant Parkwood has offered — and can offer — no
22 evidence that the MAT Clinic will be used in a contrary manner. (*Cf. generally, Appellant*
23 *Parkwood Typing and SEPA Appeals.*) Therefore, the proposed project is a permitted use
24 because it meets the definition of a clinic in the City’s zoning code.
25

1 Further, the City has consistently processed other medical clinic applications through the
2 A-2 process. (Appellant Parkwood Typing Appeal, Ex. A. p. 3.) Consequently, there is no
3 “conflict” or “question” within the City’s application of the code. Deviating from the City’s
4 standard process — the A-2 process — merely because the clinic will prescribe medication for
5 opioid treatment does not create a “conflict” within the intent of SMC 20.01.040. Indeed,
6 *doctors and nurses will be examining patients and providing medical treatment to patients in*
7 *the form of prescribing medication for specified purposes*, which fits precisely within the
8 definition of “clinic”. SMC 18.08.020. Appellant Parkwood’s attempts to characterize the MAT
9 Clinic as anything else is not supported by any evidence and — importantly — smacks of
10 blatant discrimination under the ADA/RA. (*See generally*, Appellant Parkwood Typing and
11 SEPA Appeals.)

12 Finally, even if the project could be considered under the Essential Public Facility
13 process, which it cannot, the City must provide reasonable modifications to the City’s code to
14 accommodate the Clinic under current ADA and RA law. *Bay Area Addiction Treatment at 733-*
15 *734*. As such, the City would be required to disregard the “type” of medication prescribed and
16 the patients treated, and process the project in exactly the same manner and process as other
17 “regular” medical clinics, which is precisely what the City has done.

18 Because Appellant Parkwood has no argument against ADA/RA law, it now seeks to
19 manufacture a “question” as to the appropriate process and demand that the City use a “C-2”
20 process, which is heard and decided by the City Council. (*See generally*, Appellant Parkwood
21 Typing and SEPA Appeals; SMC 20.01.030.) Still, this argument fails because the proposed
22 project is a permitted use under the City’s zoning code and is allowed outright. Because there is
23
24
25

1 no legitimate question as to the appropriate process for the MAT Clinic, Appellant Parkwood's
2 Typing and SEPA Appeals must be dismissed.

3 C. APPELLANT S.O.S. LACKS STANDING AND FAILS TO ARTICULATE WITH
4 ANY SPECIFICITY WHY THE CITY'S TYPING AND SEPA DECISIONS,
5 MITIGATIONS, AND ANALYSES ARE WRONG. THEREFORE, ITS APPEALS
6 SHOULD BE DISMISSED.

7 Appellant S.O.S. lacks standing for the same reasons as Appellants Bilow and
8 Parkwood, as set forth in Sections A(1) and (2) and B(1) and (2), and the City incorporates
9 those arguments and authorities as though fully set forth here. Appellant S.O.S. failed to
10 identify any of its members as an adjacent property owner and failed to establish specific and
11 perceptible harm as required under the law. (*Cf.*, Appellant S.O.S. Typing Appeal, p. 2, Ins. 23-
12 24 and SEPA Appeal, p. 2, In. 24 (proposed location is "inappropriate").) Therefore, Appellant
13 S.O.S. lacks standing because it is not an aggrieved party, as discussed above. As a result, its
14 Typing and SEPA Appeals should be dismissed.

15 In addition, Appellant S.O.S.'s Typing and SEPA Appeals appear to adopt some or all of
16 Appellant Bilow's and Parkwood's arguments that the "appropriate" process for reviewing the
17 Tribe's project is the C-2 process. (Appellant S.O.S. Typing Appeal, p. 3, Ins. 18-20 (City's
18 determination that the proposed project qualifies for the... A-2... process is inconsistent with
19 [Essential Public Facility] legislation and is therefore in error."); S.O.S. SEPA Appeal cover
20 letter pp. 1-2 ("S.O.S. believes the entire project is an 'essential public facility' ... and is the
21 substantive basis" for their appeals).)

22 [The determination] is... erroneous because it completely ignores the fact
23 that this project has been extremely controversial in the community, as
24 evidenced by the public outcry, a 2,600 signature petition against the
25 project, the existence of the Appellant and by the filing of this appeal.

(Appellant S.O.S. Typing Appeal, p. 6, Ins. 10-13.)

1 To the extent it does so, the City incorporates its arguments and authorities as set forth
2 in Sections A(3-5) and B(1), above. Appellant S.O.S.'s real issue, like that of Appellant
3 Parkwood, is with a hypothetical "Phase 2" and, perhaps even worse, the group's insistence that
4 the proposed project is an "alcoholism or drug rehabilitation center" or "detoxification center."
5 (Appellant S.O.S. Typing Appeal, p. 6, Ins. 19-2; Appellant S.O.S. SEPA Appeal, p. 5, Ins. 7-
6 10.)

7
8 To the extent Appellant S.O.S. incorporates Appellant Parkwood's claims regarding
9 EPFs, SEPA, and ADA/RA, the City incorporates its arguments and authorities set forth in
10 Section B as though fully set forth here. Finally, Appellant S.O.S. seems to join Appellant
11 Parkwood's claims that the proposed project cannot satisfy the Essential Public Facilities
12 criteria; therefore, the City incorporates its arguments and authorities in Section B(1)(e) as
13 though fully set forth here. Accordingly, for the reasons set forth above and those set forth
14 below, Appellant S.O.S.'s Typing and SEPA Appeals must be dismissed.

- 15
16 1. Claims that the project requires a conditional use permit²² because of the "childcare and
17 laboratory" services is at best a strained interpretation of the services that will be
18 provided and at worst blatantly discriminatory. Basic laboratory services are
19 commonplace in "traditional" medical clinics and the "child watch" area is not
20 "childcare services" within the meaning of the code. Therefore, there is no basis for this
21 claim and its Typing and SEPA Appeals must be dismissed.

22
23 Appellant S.O.S argues that the laboratory²³ and child "watch" areas in the proposed
24 project constitute conditional uses within the zone and, therefore, must be determined under the
25 C-2 process. As with other S.O.S arguments, this too fails.

22 ²² Appellant Parkwood also argues about conditional use permitting (Appellant Parkwood Typing Appeal, p. 7
23 Section B), however the City does not understand its argument. To the extent it mirrors Appellant S.O.S.'s
24 arguments, the City applies the same arguments and authorities to Appellant Parkwood.

25 ²³ Appellant Bilow appears to join S.O.S.'s argument regarding the laboratory. (See, Appellant Bilow Typing
Appeal, p. 4 ("If during the Title 20 Process (sic) the City should find that the facility will be used exclusively for

1 Under SMC 18.08.020 a “laboratory” is a use that involves more intensive research and
2 analysis than is typically found in “traditional” medical clinics. “Laboratory” is defined as
3 follows:

4 “Laboratories for research and testing” means a building or group of buildings in
5 which are located facilities for *scientific research, investigation, testing, or*
6 *experimentation*, but not facilities for the manufacture or sale of products, except
7 as incidental to the main purpose of the laboratory.

8 SMC 18.08.020, emphasis mine.

9 *If* the proposed project were a “laboratory” as defined above, the project would need a
10 conditional use permit; however, such is not the case here. Appellant S.O.S. ignores the fact that
11 the described services are ancillary to the primary purpose, which is described in the Tribe’s

12 SEPA Checklist:

13 ... medical clinic that will be made up of medication assisted treatment
14 program which offers FDA approved dosing, primary care services,
15 consulting services, dental health services and childcare services while
16 clients are seen.

17 SEPA Checklist (A)(11).

18 For example, “traditional” clinics often draw blood and sometimes they even produce
19 the results, such as when a person goes in for a routine medical blood draw or urinalysis. These
20 activities are ancillary to the primary function of the clinic, which is to diagnose, treat, and
21 prescribe appropriate medications to promote the patient’s health and well-being. *See*, SMC
22 20.01.020 definition for “clinic”. As described in Section B above, the City must treat MAT
23 clinics in the same manner as traditional medical clinics. If the City must review clinic projects

24 **Coronavirus research**, the facility would certainly be disallowed in the final analysis.” (emphasis in original)). As
25 discussed in Section A(5) above, this is a purely speculative use and outside of the City’s permitting authority as it
is not the primary intended use of the facility. Thus, the City’s arguments here are intended to address Appellant
Bilow’s arguments as well.

1 in this manner, then all medical clinics must go through the conditional use process, which
2 would be contrary to the City's zoning laws.

3 Similarly, "traditional" clinics often have child play areas. While the "child watch" area
4 may not be the same as a play area, it is similar enough to consider it as an ancillary use to the
5 primary use. The "child watch" is limited in duration and function, and only during the course
6 of the parent's appointment, unlike "day care" facilities where the intent is to drop children off
7 for extended periods of time for whatever purpose the parent may need. *See*, SEPA Checklist
8 (A)(11); SMC 20.01.020(D)²⁴. Again, accepting Appellant S.O.S's strained interpretation of the
9 law and ignoring what the Tribe has actually applied for, violates the intent and the spirit of the
10 ADA/RA and a substantial body of anti-discrimination law; hence, its Typing and SEPA
11 Appeals must be dismissed.

- 12
13 2. Appellant S.O.S. failed to adequately identify with any specificity its basis for alleging
14 that the City failed to properly assess the probable environmental impacts when it issued
15 its MDNS. Therefore, its SEPA appeal must be dismissed.

16 Appellant S.O.S. bears the burden of specifically identifying the reasons the City's
17 SEPA MDNS decision is wrong and proving why the City's decision is wrong. SMC
18 20.01.240(G)(3). Appellant S.O.S. fails on both accounts. (Appellant S.O.S. SEPA Appeal, p. 7,
19 Ins. 7-19.) Instead, Appellant concludes in its SEPA Appeal, and without factual or legal

20
21 ²⁴ "Day care facility" means an agency or person regularly providing care for a group of children for periods of
less than 24 hours. Includes the following subcategories as defined by Chapter 35.63 RCW:

22 1. "Family day care home" means a day care home for the care of 10 or fewer children located in the
23 family dwelling of the provider. The home will meet Washington State child day care licensing
requirements. For the purposes of this title, family day care homes will be considered a home business.

24 2. "Day care center" provides for the care of 13 or more children. If located in a private family residence,
25 the portion where the children have access must be separate from the family living quarters, or that portion
where the children have access must be exclusively used for their care during the hours that the child day
care is operating.

1 authority, that “the City... committed error by assuming that these conditions adequately
2 address the probable adverse environmental impacts....” (*Id.* at p. 7, Ins. 17-19.) This allegation
3 of “error” amounts to nothing more than a feeble attempt to fall within the appeal requirements
4 set forth in City code, and the Hearing Examiner should disregard this unsupported and
5 speculative argument in its entirety and dismiss Appellant S.O.S.’s SEPA Appeal.

6
7 **D. APPELLANTS’ REMAINING ARGUMENTS, IF ANY, FAIL BECAUSE**
8 **APPELLANTS BEAR THE BURDEN OF SPECIFYING AND PROVING THE**
9 **CITY’S ERROR(S). APPELLANTS DID NOT MEET THIS BURDEN AND ALL**
10 **THEIR APPEALS MUST BE DISMISSED.**

11 As set forth in Section C(2) above, appellants each bear the burden of identifying and
12 proving why the City’s decision(s) are wrong. SMC 20.01.240(G)(3). Appellants’ arguments
13 were unclear, convoluted, and at times incomprehensible. (*See generally*, Appellant Bilow
14 Typing Appeal; Appellant Parkwood’s Typing and SEPA Appeals; and Appellant S.O.S.’s
15 Typing and SEPA Appeals.) Because of this, the City has tried to identify all stated and
16 potential arguments raised or alluded to by Appellants and address them in this Motion to
17 Dismiss. Accordingly, the Hearing Examiner should reject any other arguments or assignments
18 of error to the extent they have not been raised in Appellants’ opening appeal briefs. SMC
19 20.01.240(G)(3); *Cowiche Canyon Conservancy v. Bosely*, 118 Wn.2d. 801, 809 (1992). The
20 City once again urges the Hearing Examiner to dismiss all Appellants’ appeals for lack of
21 clarity/vagueness, failing to satisfy Appellants’ burden to clearly identify and specify each
22 allegation of error, for being based on speculation and conjecture, or for assigning errors that do
23 not satisfy City code or federal or State law.

24 //

25 //

V. CONCLUSION

Appellants' Typing Decision and SEPA Appeals should be dismissed for one or more of the reasons set forth in this Motion. First, Appellants lack standing to pursue these appeals because they are not adjacent property owners, and/or they cannot articulate any specific, perceptible harm that would befall them as a result of the City's decisions. The Appellants' EPF arguments must also be dismissed because the Examiner would need to ignore SEPA's "rule of reason" to determine that the Tribe's project qualifies as an Essential Public Facility. Similarly, Appellants misconstrue the EPF process, which would require this Examiner to ignore clear, long-standing ADA/RA law to rule in their favor. The simple fact is that medical clinics are an allowed use under the City's code, and requiring the City to process such a use permit through any other process than the administrative process as required by City Code violates federal and Washington State laws and the Sequim Municipal Code.

For the above reasons, the City asks the Hearing Examiner to grant the City's Motion and to dismiss all Appellants' appeals in their entirety.

RESPECTFULLY SUBMITTED this 2nd day of September, 2020.



KRISTINA NELSON-GROSS WSBA#42487
City Attorney

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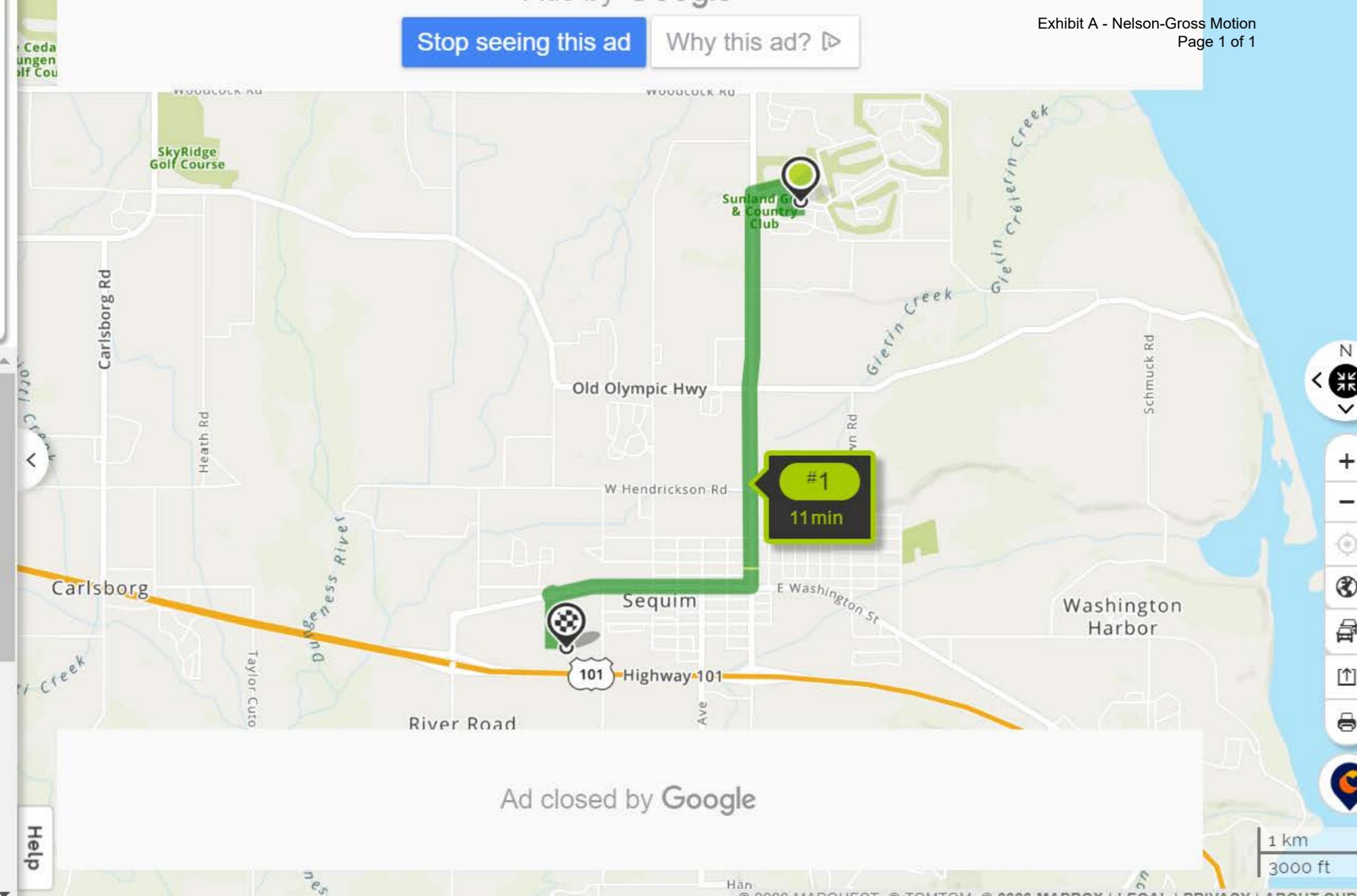
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