

From: [Robert Bilow](#)
To: [Phil Olbrechts](#)
Cc: [Andy Murphy](#); [Kristina Nelson-Gross](#); [LeAnne Bremer](#); [Michael McLaughlin](#); [Michael Spence](#); [Tellina Sandaine](#)
Subject: Motion for Subpoenas
Date: Wednesday, September 2, 2020 9:56:01 AM
Attachments: [MAT HE Witnesses.docx](#)

Mr. Hearing Examiner:

Your Pre-Hearing Order requires that all parties submit witness lists by September 18, 2020. I believe it is not prudent that I wait until that late date to confirm that certain witnesses I intend to call are available. Although Sequim Municipal Code 2.10.070 clearly grants you, as Hearing Examiner, the power to issue subpoenas to compel attendance by witnesses, no particular Rule in this matter describes the procedure for requesting that you issue such subpoenas; further, I am not aware of any procedural rules which I believe you were to develop per Exhibit A attached to your Hearing Examiner contract with the City of Sequim.

After researching this issue in other State of Washington jurisdictions, I have found that perhaps the most restrictive Hearing Examiner Rules require that such subpoenas are issued only following a Motion requesting the same. Accordingly, I am submitting my attached Motion requesting that you issue appropriate subpoenas for the individuals listed on the Exhibit attached to my Motion. I also wish to confirm that I believe my witness testimony will require approximately three hours, as I stated during the pre-hearing conference.

Respectfully,

Robert L. Bilow
Appellant

EXHIBIT A

W. Ron Allen 972 W. Hendrickson Rd., Sequim, WA 98382

Brent Simcosky 70 Day Ln., Sequim, WA 98382

Barry Berezowsky 301 Patricia Ln., Sequim, WA 98382 or
152 W. Cedar St., Sequim, WA 98382

Charlie Bush 152 W. Cedar St., Sequim, WA 98382

Kristina Nelson-Gross 152 w. Cedar St., Sequim, WA 98382

PHIL OLBRECHTS

Hearing Examiner

SUPPLEMENT TO MOTION FOR SUBPOENAS

Before explaining why I have requested the witness subpoenas, I shall first address the issue of this Appellant requesting to elicit testimony before the Hearing Examiner from an attorney representing a party to the proceeding.

In this preliminary explanation I am relying on a publication entitled "Public Law Ethics Primer (2010 Update)", copyrighted by the Washington State Association of Municipal Attorneys. Section V of that publication "THE ATTORNEY AS WITNESS" begins by citing Rule 3.7 of the Rules of Professional Conduct, Lawyer as Witness:

RULE 3.7 LAWYER AS WITNESS

- (a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless:
 - (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case;
 - (3) disqualification of the lawyer would work substantial hardship on the client; or
 - (4) the lawyer has been called by the opposing party and the court rules that the lawyer may continue to act as an advocate
(emphasis added)

If Ms. Nelson-Gross is objecting to giving testimony on the basis that she believes she may not be able to continue as an advocate for the City of Sequim, that certainly is not a valid concern under Rule 3.7 (4). I will explain hereinbelow the

fact that certain testimony I seek is available only from her and does not compromise a claim of privilege or work product in any way.

I will now detail the basis for my Appeal in this matter and the interrelated factors which necessitate the witness testimony I have requested in order that I may present my position fully to the Hearing Examiner.

PRESENCE OF "SUBSTANTIAL DISCRETION" REQUIRES A TYPE C-2 PROCESS

Director Berezowsky's 1/24/2020 Decision classifies the Jamestown S'Klallam Tribe MAT Clinic Building Permit as a "Type A-1 action" after proceeding through the following analysis:

1. The term "Building and other construction permit" is included as the first Type A-1 item in Table 2 under Sequim Municipal Code ("SMC") 20.01.030;
2. "Arguments have been made that the Tribe's proposed MAT clinic is an essential public facility and, therefore, should be processed according to the City's C-2 permitting process";
3. The referenced MAT clinic does not qualify as an essential public facility;
4. Municipalities are prohibited to treat [sic] drug treatment facilities (i.e. methadone clinics) any differently than "ordinary" medical clinics for zoning purposes, citing several prominent legal cases and the Americans With Disabilities Act ("ADA");
5. The "substantial discretion" element for Type C-2 processes is absent "due to the fact that the application consists of a building permit which is ministerial, design review which is not listed in the table of application types...and SEPA which...does not offer 'substantial discretion'"; and finally
6. "Frankly, the theory that the degree of "public interest" should be used to determine what type of process a permit should be subjected to falls apart when examined closer."

In my Appeal, I do **not** claim that the MAT Application should be classified as an essential public facility. I also do not contend that “broad public interest” should be determinative, although such broad interest certainly is present in the community. I do, however, contend that this Application should be classified as a Type C-2 process because of the issue of **SUBSTANTIAL DISCRETION**.

DIRECTOR’S CLASSIFICATION OVERLOOKS “SOVEREIGN IMMUNITY” OF TRIBE

In this action before the Hearing Examiner, the determinative issue which I am presenting is the **SOVEREIGN IMMUNITY** possessed by the Jamestown S’Klallam Tribe. Native American Indian Tribes have sovereign immunity, a status which protects any such Tribe from suits within United States Courts of Law. United States courts have repeatedly emphasized that only the United States Congress has the power to limit Indian tribal immunity, the most recent significant case being the United States Supreme Court decision in *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649 (2018). As a result, tribal sovereign immunity has become a seemingly boundless means of avoiding lawsuits and liability. Other than Congress, this immunity is absent only in instances where a Tribe itself has waived that immunity.

Accordingly, unless the Jamestown S’Klallam Tribe **waives** its sovereign immunity with respect to its operation of the MAT clinic, the City of Sequim has **NO ABILITY** to force compliance with City, County, or State Health Codes. Indeed, the City has **NO** ability to file **ANY** legal action in State or Federal Courts relating to operation of the MAT clinic.

The Jamestown S’Klallam Tribe clearly knows **how** to execute a limited waiver of sovereign immunity. I have attached (Exhibit RLB-1) the limited waiver which the Tribe signed in December of 2018 in order to obtain wastewater services from the City of Sequim under an Interlocal Agreement. Please note also that the limited waiver for the Interlocal Agreement explicitly extends **ONLY** to City of Sequim and

NOT to any other party! I have also attached (Exhibit RLB-2) a collection of “Frequently Asked Questions” which was posted on the Jamestown S’Klallam Tribe website, which states unequivocally “The Tribe must follow all Sequim City codes and building regulations. Furthermore, we must follow all Washington state and federal regulations regarding the operation of a medication-assisted treatment clinic.” These statements mean nothing whatsoever absent a proper limited waiver of sovereign immunity, without which those promises cannot be enforced by the City of Sequim, or any County, State, or Federal agency. I seek appropriate testimony regarding that posting.

I submit that the single issue of Sovereign Immunity demonstrates that substantial discretion is critical in this matter and mandates that Director Berezowsky should have classified the subject Application as a Type C-2 process; failing to do so was manifest error.

The significance of Sovereign Immunity is also my reason for requesting issuance of a subpoena to compel attendance by the Jamestown S’Klallam Tribe Chairman, W. Ron Allen primarily, and Brent Simcosky secondarily as the apparent Director of the proposed MAT clinic. Only through Mr. Allen’s testimony can the likelihood of a limited waiver of sovereign immunity be resolved.

This issue of sovereign immunity is also familiar to Director Berezowsky. Nearly a year ago Director Berezowsky asked me for an explanation of that immunity. I enclose a copy of our email exchange (Exhibit RLB-3), by which I also reminded him of the many references in the Jamestown S’Klallam Tribal Code to sovereign immunity. I have requested a subpoena to compel testimony from Director Berezowsky to explain why, in his analysis, he did not consider sovereign immunity to be a matter of substantial discretion forcing a classification of this Application as a Type C-2 process.

BEREZOWSKY CLASSIFICATION ANALYSIS ERRORS

I also wish to solicit testimony from Director Berezowsky regarding his six part analysis listed above on page 2, on the following items:

- (a) Director Berezowsky begins his analysis (pages 1-2) by noting that the term “building and other construction permits” is included as the first Type A-1 item in Table 2 under SMC 20.01.030. He also includes the SMC 18.010.020 definitions of the Type A-1 and Type A-2 processes in footnotes on page 2. Berezowsky does not, however, include the adjacent definition of the type C-2 process from SMC 18.010.020 which reads: “Type C-1, C-2, C-3 processes means processes which involve applications that require the exercise of substantial discretion and about which there is a broad public interest.”
- (b) By jumping immediately to the classification within that Table 2 of “Ambulatory and outpatient care services (physicians, outpatient clinics, dentists) as “permitted uses”, Director Berezowsky overlooks the classification three lines below in the same Table of a “Hospital” as a “conditional use”. (Exhibit RLB-4) Director Berezowsky omits to mention that at a Special Meeting of the Sequim City Council he attended held on July 29, 2019, City Manager Charlie Bush announced a recent meeting he had with Jamestown S’Klallam Tribe Chairman Ron Allen in which “The Tribe has stated that the phase 2 project is an inpatient behavioral health facility” and further “With this new information about possible additional development, their application may result in a process that involves a conditional use or special use permit.” (Exhibit RLB-5) Accordingly, this Application should have been placed in the “higher category” of conditional use in Table 2 to which Director Berezowsky referred. Direct testimony from both Director Berezowsky and City Manager Bush is clearly relevant and probative on this threshold issue.
- (c) Next, after summarily disposing of the “essential public facility” issue, Berezowsky’s Classification Decision launches into an explanation that the Americans With Disabilities Act (ADA) prohibits municipalities from treating drug treatment clinics any differently from “ordinary medical clinics” for zoning purposes. In this section of his Decision, Director

Berezowsky dissects several published appellate court decisions dealing with drug treatment facilities and zoning practices. In most of the cited cases, a municipality attempted to prevent the siting of drug treatment facilities by excluding them from the permissible zoning district. This discussion is meaningless since the Sequim Municipal Code does not prohibit such facilities at all. Due to the complex legal analysis contained in this portion of the Decision, I question whether Director Berezowsky authored this Decision, or whether City Attorney Nelson-Gross prepared the document. Under the SMC, the classification determination is to be made by the Director, not the City Attorney. The legal discussion largely mirrors the discussion presented at the Special City Council meeting held July 29, 2019 (Exhibit RLB-6). I wish to receive relevant testimony from Director Berezowsky and City Attorney Nelson-Gross as to whether the Director's Decision was produced in a valid manner. This inquiry should not impinge any form of attorney-client privilege, since I cannot visualize any circumstance wherein Director Berezowsky would be considered a "client" of the City Attorney requesting advice regarding his legal liability, nor would I ever ask any person "what advice" he or she received from his or her attorney.

(d) Director Berezowsky next suggests that "public interest" should not be used to determine the "Type of process" assigned to this Application. I agree with the Director. My consistent position is that this Application is inextricably tied to the use of "substantial discretion" by City Officials due to the enormous consideration of the Jamestown S'Klallam Tribe's SOVEREIGN IMMUNITY, and must be classified Type C-2.

DIRECTOR BEREZOWSKY ERRED IN FAILING TO CLASIFY THIS APPLICATION ACCORDING TO THE EXPLICIT DIRECTIONS IN THE SEQUIM MUNICIPAL CODE

Rather than beginning with SMC Title 20 and then immediately jumping to the "Permitted Use Table" in SMC Title 18, the proper application of the Code requires a step-by-step process identified in SMC 20.01.010 through SMC 20.01.040 (Exhibit RLB-7) as follows:

- (a) SMC 20.01.010 notes that the “integrated permit review process” is contained in SMC Title 20 (not Title 18 as Director Berezowsky used);
- (b) the process definitions used in SMC 20.01.020 and repeated in 20.01.030 are used to place the project within a category within Table 2 of 20.01.030;
- (c) the available “procedures” are: Type A-1, Type A-2, Type A-3, Type B, Type C-1, Type C-2, and Type C-3. If the Director has any question as to the appropriate type of procedure, he shall resolve that conflict in favor of the higher procedure type letter as defined in 20.01.030. This directive does not refer to any “placement” on a particular Table; rather, it refers to the higher alphabetic process enumeration;
- (d) the Director then proceeds to Title 18, to determine if the proposed “use” is compatible with the zoning area location.

In this matter, Director Berezowsky should have examined whether a “special use permit” is appropriate in the RREOA area. Instead, Berezowsky essentially ignored the classification definitions contained in SMC Title 20 and made his classification based on any possibly appropriate permitted use within the RREOA zone. In doing so, the Director failed to follow the plain language of SMC Title 20, and made possible a situation whereby a medical facility could be constructed and operated without the City of Sequim having any ability to control that medical facility due to the SOVEREIGN IMMUNITY of the Jamestown S’Klallam Tribe.

Allowing this process to proceed is a perversion of the “integrated permit review process” defined in Title 20 of the Sequim Municipal Code. I am requesting subpoenas to compel testimony by individuals involved in this permitting process to prevent unintended consequences. Perhaps Director Berezowsky “forgot” the critical concept of Sovereign Immunity despite my email exchange with him in 2019, and perhaps City Attorney Nelson-Gross “forgot” about the limited waiver of sovereign immunity which she thought was necessary for the Interlocal Agreement signed in December of 2018. Without the subpoenas I have

requested that you issue, I feel I am deprived of the opportunity to submit meaningful evidence to the Hearing Examiner. I do not believe any privilege is impinged by my request, and submit that all this testimony is relevant, probative, and will allow a more complete record upon which the Hearing Examiner can base his decision.

Respectfully submitted, September 4, 2020

A handwritten signature in blue ink, appearing to read "R. L. Bilow". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert L. Bilow

Appellant, pro se

fact that certain testimony I seek is available only from her and does not compromise a claim of privilege or work product in any way.

I will now detail the basis for my Appeal in this matter and the interrelated factors which necessitate the witness testimony I have requested in order that I may present my position fully to the Hearing Examiner.

PRESENCE OF "SUBSTANTIAL DISCRETION" REQUIRES A TYPE C-2 PROCESS

Director Berezowsky's 1/24/2020 Decision classifies the Jamestown S'Klallam Tribe MAT Clinic Building Permit as a "Type A-2 action" after proceeding through the following analysis:

1. The term "Building and other construction permit" is included as the first Type A-1 item in Table 2 under Sequim Municipal Code ("SMC") 20.01.030, and SEPA is a Type A-2 item in Table 2;
2. "Arguments have been made that the Tribe's proposed MAT clinic is an essential public facility and, therefore, should be processed according to the City's C-2 permitting process";
3. The referenced MAT clinic does not qualify as an essential public facility;
4. Municipalities are prohibited to treat [sic] drug treatment facilities (i.e. methadone clinics) any differently than "ordinary" medical clinics for zoning purposes, citing several prominent legal cases and the Americans With Disabilities Act ("ADA");
5. The "substantial discretion" element for Type C-2 processes is absent "due to the fact that the application consists of a building permit which is ministerial , design review which is not listed in the table of application types...and SEPA which...does not offer 'substantial discretion'"; and finally
6. "Frankly, the theory that the degree of "public interest" should be used to determine what type of process a permit should be subjected to falls apart when examined closer."



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

RESOLUTION #49-18

WHEREAS, the Jamestown S'Klallam Indian Tribe (herein after referred to as "the Tribe") was Federally acknowledged by the Secretary of the Interior of the United States of America on February 10, 1981; and

WHEREAS, the Jamestown S'Klallam Tribal Council ("Council") is the governing body of the Tribe, in accordance with its Constitution adopted on November 19, 1983, pursuant to the provisions of Part 81 of Title 25 of the Code of Federal Regulations, as such Constitution is amended from time-to-time; and

WHEREAS, the Council and City of Sequim ("City") entered into a Joint Memorandum of Agreement, dated February 26, 2015, stating their mutual interest in having the City provide, at its regional wastewater treatment facility, wastewater treatment services, in whole or in part, to the Tribe; and

WHEREAS, the parties agreed to work together to pursue a mutually satisfactory arrangement for such wastewater treatment; and

WHEREAS, the Tribe and City staff have worked over the past two years to develop an Interlocal Agreement ("ILA") which sets forth such a plan to provide long-term wastewater services to Tribal trust and reservation lands; and

WHEREAS, the City has requested, and the Tribe has agreed, as a condition for entering into the ILA, to grant a limited waiver of sovereign immunity, pursuant to the provisions of Title 22 of the Tribal Code;

NOW, THEREFORE, the Tribe expressly waives its right to sovereign immunity and its right to assert a sovereign immunity defense in Washington State courts for the limited purpose of: 1) any legal claim or complaint in the interpretation, validity, performance, and/or enforcement of the ILA, 2) any complaints or counterclaims for monetary damages or equitable relief for any breach of the ILA, and 3) for the enforcement of any final judgment by any Washington State court regarding such matters. This limited waiver of immunity is solely for the benefit of the City for the purposes stated herein, and the Tribe does not waive its sovereign immunity as to any party other than the City. The Tribe agrees not to invoke sovereign immunity as a defense up to the limits of its insurance policy in connection with the enforcement of the City's rights. The Tribe further waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative proceedings before proceeding with any dispute resolution or legal remedies described in the ILA; and

BE IT RESOLVED FURTHER, Tribe expressly consents to the jurisdiction of the Washington State Superior Court if either Party to the ILA deems it necessary to institute legal action or proceedings to enforce any right or obligation under the ILA. The Parties further agree that any such action or

proceedings shall be brought in Clallam County Superior Court situated in Clallam County, Washington. This waiver and consent is effective only during the term of the ILA, except it remains in force for such time after termination that is necessary to resolve the rights and obligations of either Party arising out of the ILA; and

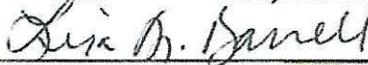
FINALLY, BE IT RESOLVED, the Council approves the ILA with the City for disposal of wastewater from all Tribal trust and reservation lands held now and in the future and directs the CEO of the Tribe, or his designee, to execute the ILA, substantially as set forth in Exhibit A to this resolution, on behalf of the Tribe.



W. Ron Allen, Chairman

Certification

I, Lisa M. Barrell, Secretary of the Jamestown S’Klallam Tribal Council of the Jamestown S’Klallam Tribe, do hereby certify that the resolution was adopted at a regularly scheduled meeting of the Jamestown S’Klallam Tribal Council at the Tribal Office in Blyn, Washington on November 28, 2018, with a quorum approving the resolution by a vote of 3 FOR and 0 AGAINST with 0 ABSTAINING.



Lisa M. Barrell, Tribal Council Secretary

Ex RLB-2



**The Jamestown S'Klallam
Healing Clinic**

(<https://jamestownhealingcampus.org>)

COMMUNITY RESPONSE PLAN
([HTTPS://JAMESTOWNHEALINGCAMPUS.ORG/WP-CONTENT/UPLOADS/2020/01/COMMUNITY-RESPONSE-PLAN-JAN-27-484218261-9569.PDF](https://jamestownhealingcampus.org/wp-content/uploads/2020/01/COMMUNITY-RESPONSE-PLAN-JAN-27-484218261-9569.PDF))

Frequently Asked Questions

1. What is medication-assisted treatment (MAT)?

MAT has been essential in not just saving lives, but in helping people manage the debilitating nature of addiction. This offers the best opportunity for sustained recovery, with a success rate of more than 75 percent.

MAT uses one of three medications, which reduces cravings, treats withdrawal, blocks effects of other opioids, and prevents overdoses.

Because of the damage that opioids cause in the brain and body, there is very little success in trying to eliminate an addiction without MAT. According to the U.S. Department of Health & Human Services:

A common misconception associated with MAT is that it substitutes one drug for another. Instead, these medications relieve the withdrawal symptoms and psychological cravings that cause chemical imbalances in the body. ...[R]esearch has shown that when provided at the proper dose, medications used in MAT have no adverse effects on a person's intelligence, mental capability, physical functioning, or employability ([source \(https://www.samhsa.gov/medication-assisted-treatment/treatment#medications-used-in-mat\)](https://www.samhsa.gov/medication-assisted-treatment/treatment#medications-used-in-mat)).

2. Aren't these services

No. Some Clallam County residents are traveling to other MAT clinics in Aberdeen, Everett, and Tacoma, but would rather receive care closer to home. Other patients in our area get medication-assisted treatment through their primary care providers, and that

already
available?



The Jamestown S'Klallam
Healing Clinic
(<https://jamestownhealingcampus.org>)

has helped meet part of our community's need. However, just like
diabetes or any other illness, different patients need different levels
of treatment. Some people need to have their medication
administered daily, and they need other services to support their
recovery. That is the work of the Healing Campus, and no one else is
doing it.

HEALING CLINIC DESIGN (/#DESIGN) LOCATION (/#LOCATION)
HEALING CLINIC PARTNERS (/#PARTNERS)
FAQS (HTTPS://JAMESTOWNHEALINGCAMPUS.ORG/FAQS)
COMMUNITY RESPONSE PLAN
HTTPS://JAMESTOWNHEALINGCAMPUS.ORG/WP-CONTENT/UPLOADS/2020/01/COMMUNITY-RESPONSE-PLAN-JAN-27-4842-8261-9569.PDF)

3. Who are the patients?

The average opioid use disorder patient is a white male between 25 and 55 years old. We expect our first group of patients will be self-referred, meaning they are already receiving treatment and would like to do so closer to home. The majority often have jobs and families they care for. Even after the two-year ramp-up period, we expect very few patients to have housing issues.

4. Why is this needed?

Our counties were especially affected by the national opioid crisis, with death and overdose rates far greater than other counties. Between 2012 and 2016, Clallam County had the second highest drug overdose death rate in the state, and overdoses were the leading cause of accidental deaths. While many patients are being successfully treated in primary care, we know that many others need more intense medical supervision to get well.

5. Does the Jamestown Tribe have to follow city, state, and federal regulations?

The Tribe must follow all Sequim City codes and building regulations. Furthermore, we must follow all Washington state and federal regulations regarding the operation of a medication-assisted treatment clinic. The MAT Clinic must also be inspected and certified by the Drug Enforcement Administration (DEA) prior to opening.

On Mon, Dec 23, 2019 at 8:17 AM Barry Berezowsky <bberezowsky@sequimwa.gov> wrote:

Ex RLB-3

Good Morning Mr. Bilow,

I'm glad I could be of assistance with your appeal question. The charts and language in the code makes the process seem more complicated than it actually is.

On a different note, I'm intrigued by your suggestion that the issue of sovereign immunity requires the City Council to be the review authority on this application. While I have a basic understanding of the concept of sovereign immunity, I've never had to deal with it in my planning career. Given my admitted lack of knowledge about sovereign immunity in general and how it impacts the land use application process in particular, I ask for any help you may be able to provide me so that this issue can be fully considered.

I thank you in advance for any information you may be able to provide.

Regards,

Barry Berezowsky

Robert Bilow <millrow26@gmail.com>

Mon, Dec 23, 2019 at 1:04 PM

To: Barry Berezowsky <bberezowsky@sequimwa.gov>

Cc: Kristina Nelson-Gross <knelson-gross@sequimwa.gov>, Charlie Bush <cbush@sequimwa.gov>, DG_All_CityCouncil <CityCouncil@sequimwa.gov>

Hello Director:

Responding to your morning email, the concept of "sovereign immunity" is an aspect of the common law maxim "The King Can Do No Wrong".

in our nation, the United States cannot be sued unless Congress has consented to such litigation. Congress did so in the Federal Tort Claims Act of 1946. Accordingly, a potential litigant must now file a claim under under the provisions of that Act prior to filing any action against the United States.

As explained in a current google article: "Indian Tribes, like the individual States, have immunity from suit pursuant to the federal law of each Tribe's sovereign status. While this immunity may be waived by a Tribe or Congress may abrogate it through clear and unequivocal legislative action, generally an American Indian Tribe may not be haled into court."

The Jamestown S'Klallam Tribe has repeatedly and assiduously asserted its sovereign immunity, and properly so. I have attached pertinent provisions of the Jamestown Tribal Code reflecting the Tribe's emphasis of sovereign immunity.

I notice that you copied the City Attorney on your email, and she should be your primary resource on this topic; I'm certain Kristina Nelson-Gross insisted that the Sequim/Jamestown wastewater agreement signed last December included a specific limited waiver of sovereign immunity by the Tribe. And I would expect that she has previously advised the Planning Commission that absent a waiver of Tribal sovereign immunity, any application submitted by the Tribe and approved by the City could **NOT** be enforced in Court by the City of Sequim.

Best regards,

Bob Bilow

JAMESTOWN S'KLALLAM TRIBAL CODE

Section 1.02.04 No Implied Waiver of Immunity; No Grant of Jurisdiction

Nothing in this Code shall be construed or implied to be a waiver of the sovereign immunity of the Tribe, nor any affiliated entity of the Tribe, nor shall anything herein be construed as a grant of jurisdiction to the United States of America, the State of Washington, or any political or governmental subdivision thereof, nor of any other state or any other federally recognized Indian tribe.

Section 22.01.01 Purpose

The Tribe, as an aspect of its sovereignty, is entitled to immunity from suit in all tribal, state and federal courts absent the clear, express and unequivocal consent of the Tribe or the clear, express and unequivocal consent of the United States Congress. The Tribe desires to make clear to all persons having or doing business or otherwise dealing with the Tribe, its subordinate economic and governmental units, its Tribal officials, employees and authorized agents, that the Tribe does not, under any circumstances, intend to voluntarily waive its entitlement to immunity from suit in tribal, state and federal courts under the doctrine of Tribal sovereign immunity absent strict and complete compliance with the procedures set forth in Section 22.01.02 of this Chapter which shall be the exclusive method for effecting a voluntary Tribal waiver of sovereign immunity.

Section 22.01.02 Waiver of Sovereign Immunity

Consent of the Tribe to waive its immunity from suit in any tribal, state or federal court may only be accomplished through the clear, express and unequivocal consent of the Tribe pursuant to a resolution duly enacted by the Tribal Council. Any such resolution purporting to waive sovereign immunity as to the Tribe, or any of its subordinate economic or governmental units or any of its Tribal officials, employees or authorized agents, shall specifically acknowledge that the Tribe is waiving its sovereign immunity on a limited basis and describe the purpose and extent to which such waiver applies. The failure of the Tribal Council resolution to contain such language shall render it ineffective to constitute a waiver of Tribal sovereign immunity. A Tribal Council resolution shall not waive sovereign immunity to allow a court or decision-making body (including an arbitration panel) other than the Jamestown Tribal Court to hear a dispute unless the resolution expressly and unequivocally allows such other body to hear a dispute and specifically names such decision-making body. There shall not be a waiver so as to allow monetary relief unless the resolution expressly and unequivocally so provides. A Tribal official, employee or contractor shall lack all authority, whether actual or apparent, to waive sovereign immunity beyond the express terms in a Tribal Council resolution. Any contract or agreement purporting to grant a limited waiver of sovereign immunity, which is not supported by a Tribal Council Resolution meeting the requirements of this Title, shall be null and void.

Ex RLB-4
development facilities, assembly, warehousing, distribution, professional services, corporate headquarters, medical facilities and complementary educational and recreational uses among others. Limited retail, business and support services that generally serve the needs of the districts' tenants and patrons as well as limited multifamily mixed residential/commercial uses are also allowed. All three districts are intended to expand and diversify the city's economic base and increase the number and range of living-wage jobs. (Ord. 2019-002 § 1 (Exh. A))

18.33.020 Purposes.

A. The Bell Creek economic opportunity area (BCEOA) district provides for business and professional offices, corporate headquarters, research and development facilities, light industry/manufacturing and complementary retail, commercial, educational, recreational and limited multifamily residential uses. The district is not intended to support the general commercial needs of the community.

B. The River Road economic opportunity area (RREOA) district is intended to enhance the city's economic base by providing for an integrated grouping of businesses and buildings of a larger size and scale than the BCEOA and HTLI districts may support. The RREOA district supports a variety of uses, such as light manufacturing, professional office buildings, retail, commercial, multifamily residential and warehousing and distribution.

C. The high tech light industrial (HTLI) district provides appropriate locations for combining light, clean industries, including industrial service, manufacturing, fabrication, assembly and production; business and technology research and development; and warehousing, distribution and storage activities. Uses are typically not reliant on unprocessed natural resources. Professional offices and sale of goods produced on site are subordinate to permitted activities. (Ord. 2019-002 § 1 (Exh. A))

18.33.030 Uses.

A. Types of Uses. For the purposes of this chapter, there are three kinds of uses:

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.

2. A conditional use (C) is a Type C-2 discretionary use reviewed through the process set forth in SMC 20.01.100 governing conditional uses.

3. A prohibited use (X) is one that is not permitted in the zoning district under any circumstances.

B. Recognizing that there may be certain uses not mentioned specifically in Table 18.33.031 because of changing businesses, technology advances, or other reasons, the DCD director is authorized to make similar use determinations, as set forth in SMC 18.20.015.

The following Table 18.33.031 is a list of uses for the three zoning districts:

Table 18.33.031 – Business and Employment District Uses

USE	BCEOA	RREOA	HTLI
Office and Professional Services			
All forms of corporate, professional, public, brokerage, administrative, financial, building trade, and research offices	P	P	X
Corporate headquarters and regional offices	P	P	X
Office-oriented service providers, such as communications services, photocopying, courier and messenger services, graphic design, printing, promotional products, and the like	P	P	X
Office equipment sales and services	P	P	X
Technology service and support, copy and connectivity centers, telework centers	P	P	X
Business/Technology Research and Development			
Biotechnology/medical laboratories	C	C	C
Computer technology	P	P	P
Electronic components and board systems engineering and development	P	P	P
Research and research industry-oriented service providers	P	P	P
Software engineering	P	P	P
Commercial Services and Retail			
Commercial convenience, personal services, and restaurant establishments (In existing and/or new structures 5,000 square feet or larger, commercial convenience, personal service uses, and restaurant eating/drinking establishments are allowed but are to be subordinate to the building's primary uses. All commercial uses located in the structure are limited to 25% of the building's gross square footage. No drive-through facilities are allowed.)	P	P	X
Commercial retail in conjunction with a primary use (Retail sales of products assembled, manufactured, etc., in the BCEOA, RREOA, HTLI zoning districts are allowed but are to be subordinate to the building's primary use. Retail sales use is limited to 25% of the building's gross square footage.)	P	P	P

USE	BCEOA	RREOA	HTLI
Wireless communication facilities	P	P	P
Co-location of wireless facilities on existing facility or structure	P	P	P
Other			
Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)	P	P	X
Child care centers	C (as a secondary use)	C	C (as a secondary use)
College, universities, technical, trade and other specialty schools	C	C	C
Grade schools (K – 12)	C	C	X
Hospital	C	C	X
Museums, historic and cultural exhibits	P	P	X
Privately owned amusement, sports or recreation establishments (retail sales limited to 25% of use's total square footage)	P	P	X
Churches, new freestanding/monument structures and existing building(s) 5,000 square feet or larger	C	C	X
Churches, under 5,000 square feet and within an existing building(s)	C	C	C
Sports arena or stadium	C	C	X
Veterinary clinics and hospitals (not including kennels)	P	P	X

(Ord. 2019-002 § 1 (Exh. A))

18.33.040 Development standards.

For development standards, see Table 18.33.042 below.

Table 18.33.042 – Business and Employment Districts Development Standards

Standard	Bell Creek EOA	River Road EOA	HTLI
Minimum/maximum lot area	None	None	None

MANAGER
BUSH

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Comments for July 29 City Council Meeting

Based upon conversations with the Jamestown S'Klallam Tribe, we have been expecting an application for phase 1, the Medically Assisted Treatment Center, at some point in the future.

In a meeting that I had last Thursday with Chairman Ron Allen to discuss John Wayne Marina, he mentioned that the Tribe was acquiring an option on land to the west of the land they already purchased. He stated the purpose was to provide street access to River Road. He also mentioned that housing could be included in their development plans. I followed up today with Brent Simcosky, Director of Health Services for the Tribe. Mr. Simcosky stated that the Tribe does not have plans to construct housing in that location and that Chairman Allen was speaking to the need for affordable housing generally in the community. He did confirm that the Tribe is working to secure an option on additional land next to the potential phase 1 and phase 2 projects for possible access to River Road. The Tribe has stated that the phase 2 project is an inpatient behavioral health facility.

In the spirit transparency, given that we are all here on this topic tonight, I thought it important to share this information with you. I encourage you to ask the Tribe questions at their meeting on August 8th, should you have them, about any further plans they may have at this site besides phases 1 and 2. City staff will be asking the same of the Tribe through the permitting process.

It is unusual for us to be discussing a process a project may follow prior to an application or even a pre-application meeting. We are all speculating at this point until something arrives in writing from an applicant. We had been expecting an application to follow an A1 or A2 process, based upon what the Tribe had previously told us about their project. With this new information about possible additional development, their application may result in a process that involves a conditional use or special use permit. We mentioned this possibility at the July 8th meeting. As we do in our normal development processes, we will have to wait until we have an application in writing to determine its exact path.

We want to hear from you tonight and will be answering your questions in writing regarding the permitting process and posting those answers on our website. We will also be submitting questions about the project to the Tribe. Thank you for being here tonight.

Questions from the July 29, 2019 Special City Council Meeting

Notes for Research:

Swinomish Tribal Clinic in Anacortes cited as a success for a small community.

Changes to Washington State Law through HB 1427 allow for secondary treatment to be treated as other prescription drugs as opposed to promoting abstinence programs.

Process:

1. How can we elevate the permit review process to a conditional use permit?

We can only process a proposal as it is put before us in an application. However, the City has an obligation to ensure that a project is properly defined. If there are additional phases, the project could be reviewed under the State Environmental Policy Act (SEPA) in its entirety. See Washington Administrative Code (WAC) 197-11-060(3).

As discussed at the July 29th meeting, City staff will be asking the Jamestown S’Klallam Tribe about the full scope of their plans to ensure compliance with WAC 197-11-060(3).

2. How would phase 2 and possible adjacent housing affect the SEPA process for the phase 1 MAT clinic?

It depends on the scope of the project and what is in the application. At a minimum, it would broaden the scope of SEPA review.

3. Will there be a study on the effects on the surrounding community? Can we include other meth clinics on reservations in the study?

As part of the SEPA review process a proposal’s compatibility with the surrounding area is evaluated, as are its potential impacts. The City is limited to reviewing “likely” direct and indirect impacts, not speculative. See WAC 197-11-060(4). If a project is subject to conditional use permit requirements, the impacts upon and compatibility with the surrounding neighborhood are also evaluated.

4. Can the City put a one-year moratorium on building in the EOAs with a C1 level permit review with SEPA?

Technically yes, the City could enact a moratorium. However, it is unlikely the moratorium would survive a legal challenge. Cities and counties have a legal obligation to treat similar land uses in similar ways, and a moratorium on only MAT clinics is unlikely to prevail in court.

Moratoriums are to be used sparingly for true emergency situations and must be narrow in scope and short in duration. It is unclear given the circumstances whether a moratorium could be defended given the facts of this particular case. The authority for enactment of moratoriums by a code city is at RCW 35A.63.220 and RCW 36.70A.390. Although these statutes do not specify the need for declaring an "emergency," the reasons for imposing a moratorium typically involve an "emergency" justifying its adoption without notice or prior hearing.

Cities and counties across the country have enacted moratoriums or other prohibitions for the specific purpose of preventing drug treatment centers from opening within specific communities or areas within the community. Those ordinances were typically found to be invalid and discriminatory under the Americans with Disabilities Act. Courts have held that methadone or other drug treatment clinics are similar to traditional medical clinics and other professional offices. *See, e.g., New Directions Treatment Services v. City of Reading*, 490 F.3d 293 (3d Cir. 2007) (statute singled out methadone clinics – and thereby patients – for different treatment); *Comprehensive Addiction Treatment Services, Inc., v. City and County of Denver*, 795 P.2d 271 (1989) (addiction treatment center was an “office” under zoning ordinance like other medical offices and permit could not be denied on theory that the “primary purpose” was dispensing methadone). A moratorium adopted by the City of Sequim would need to apply to all such offices and medical buildings, not just the MAT clinic.

Enacting such a moratorium would also be problematic. As discussed above, moratoriums are to be used sparingly for true emergency situations and must be narrow in scope and short in duration.

Moratoriums are intended to give a local jurisdiction time to address an onslaught of new development or inadequate or nonexistent ordinances. That is not the case in Sequim. The City has been permitting professional offices and medical buildings for many years, most recently the OMC Cancer Center expansion. Similarly, there is no justification for enacting a moratorium that only affects EOA permits with a C1 Level of permit review.

Finally, if the City were to impose a moratorium or change development rules on only MAT or similar facilities, it would likely be challenged in court by the Jamestown S’Klallam Tribe, and the Tribe would likely prevail in this scenario. Local jurisdictions that unlawfully enact moratoriums or otherwise disrupt the permit process often face significant damage awards and attorneys’ fees. Individuals – including council members – may also be personally liable for such behavior.

As a recent example, the City of SeaTac settled for over \$13 million dollars for its conduct in trying to prevent a landowner from developing a park-and-fly garage. In its effort to prevent the project, SeaTac enacted a moratorium and changed land development rules. The landowner filed suits against individual SeaTac officials and employees for their role, which caused SeaTac’s risk pools to file separate claims against the city seeking to avoid paying out for the city’s unlawful activity. SeaTac ultimately paid \$4.3 million out of its general fund to settle the case, with the risk pools covering the rest.

<https://www.westsideseattle.com/highline-times/2017/10/13/gerry-and-kathy-kingen-finally-win-city-seatac-authorizes-payment-more-13>

<http://www.seatacwa.gov/Home/ShowDocument?id=17687>

While the SeaTac case may be an extreme example, it serves as a reminder that when a local jurisdiction seeks to disrupt the development and permit process without appropriate cause, it does so with significant risk.

5. Request to strike the resolution from the record that removed the subarea plan requirement for the EOA. Why don't you restore the subarea plan?

Resolutions may be repealed by the City Council. The subarea planning requirement could be reinstated if the City so decided. Reinstating the subarea planning requirements would require an amendment to the City's Comprehensive Plan and Zoning Code. Amending the Comprehensive Plan and Zoning Code would likely take between 6-12 months.

6. Has there been an application made for the MAT?

No application has been submitted as of August 8, 2019.

7. Who do the City Manager and City Attorney work for? Are they the right people to be handling this?

The duties of the City Manager are as assigned by the City Council and as defined in RCW 35A.13.080 and other statutes. The City Manager works for the City Council.

It is the duty of the City Attorney to act as legal counsel for the City of Sequim and to advise City authorities and officers in all legal matters pertaining to the business of the City. The City Attorney will perform such other legal services as may be required on behalf of the City when ordered by the City Manager, City Council or as required by statute. The City Attorney works for the City Manager and is confirmed by the City Council.

The City Manager and City Attorney do not have any direct responsibility for reviewing and/or approving or denying this or any other submitted land use proposal.

8. Is a 15,000 square foot facility a clinic or is it a regional medical center? What is the definition of a clinic?

The size of the facility is irrelevant as a criterion for either approval or denial. A "Clinic" is defined as a building designed and used for the diagnosis and treatment of human outpatients excluding overnight care facilities. Please also refer to the discussion under question 4 above.

9. Was the zoning for the property made for this clinic?

The decision to remove the subarea planning requirement from the City's two Equal Opportunity Areas (EOAs) came from the recommendation contained in the Bell Creek EOA Planning Report, 2018 (commonly known as the Hovee report).

This report stated: *"The study concluded, "[a]t the outset, this Bell Creek EOA planning process was intended to meet the subarea plan requirement; however, as the process unfolded, it became clear that the requirement for a subarea plan places an unnecessary burden on property owners and could limit the flexibility needed for future development to respond to market conditions. In addition to the Bell Creek*

EOA, an EOA is designated in the western portion of the City, north of Highway 101, south of Washington Street, east of River Road, and west of North 7th Avenue. Unlike the Bell Creek EOA, which is currently under single ownership, the western EOA includes multiple property owners and the subarea plan requirement would be even more difficult to satisfy. The purpose of the EOA zone can be fulfilled without a full subarea plan. This can occur with use and development standards that assure non-employment uses will support and complement primary employment activity on the site and with design guidelines that protect ecological features and ensure a high-quality product design. Section 3.0 discusses recommended use and development standards and design guidelines. (Emphasis added) (Bell Creek EOA Planning Report, BergerABAM, May 1, 2018, pg. 3).

Therefore, this report was the catalyst to remove the subarea planning requirement from future EOA development. To do this, the City first needed to amend the comprehensive plan, which it did on October 22, 2018 (see Resolution R2018-24). The process to amend the comprehensive plan included the City Council putting the proposed amendments on the docket, issuing a notice of application, a threshold determination under SEPA and issuing public hearing notices in the *Peninsula Daily News* and on the City's website for public hearings scheduled before the Planning Commission on 10/2/18 and the City Council on 10/22/18.

The next step the City needed to take included developing zoning regulations to ensure development in the EOAs would be done in accordance with a variety of standards addressing, among other things, parking, landscaping, building mass and design.

On November 13, 2018 the Sequim City Council adopted Interim Ordinance No. 2018-12 adopting regulations to provide zoning for the City's two EOAs and consolidating said regulations with the High Technology and Light Industrial (HTLI) Zoning regulations, creating a new Business and Employment Zoning District. The City Council held a public hearing on the interim regulations on December 10, 2018.

The City's Planning Commission held a public hearing on the Interim Regulations on January 15, 2019 and the City Council adopted the interim regulations as permanent zoning regulations on February 11, 2019 via Ordinance 2019-01.

The first meeting staff had with representatives of the Tribe and OMC was on March 28, 2019. This meeting was fairly brief and focused on whether the River Road EOA zoning allowed medical clinics and hospitals.

Discussions to amend the City's plan and zoning code started in earnest in October 2018 and was based on recommendations contained in the Bell Creek CERB report issued in May, 2018, eleven (11) months before staff's contact with the Tribe or OMC regarding the possible development of this property.

Facility:

10. How will we know that the clinic won't lead to higher crime and have a huge impact on public service agencies?

There are many reasons why crime rates increase and some do relate to businesses. For example, with the opening of Walmart in Sequim our Police Department has seen a significant increase in calls related to theft. While we cannot know with any certainty whether a new land use will lead to increased crime, we look to other jurisdictions that have sited similar businesses for information about the impacts. No studies as to impacts on public service agencies will be conducted until such time as an application has been received.

11. What will be done to increase these services?

It is possible that a need for increased public services could constitute an adverse impact, which would need to be mitigated by the project proponent under the State Environmental Policy Act (SEPA).

12. What will happen when people are released on the street and their crime begins to escalate?

The City's response would be the same as it would be to any increase in crime, regardless of reason.

13. What will be done to keep the drug cartels out of Sequim?

The City of Sequim, in addition to having its own Police Department and enforcement/investigative services, participates in the regional drug task force known as the Olympic Peninsula Narcotics Enforcement Team (OPNET). Drug use and sales are a known factor in our community now. Continued devotion to drug investigative resources and ongoing evaluation of changing trends are part of local law enforcement's operational framework.

14. Where are the people with experience telling us that this type of facility will work?

The City is a regulator, not a medical provider and is not the applicant for or proponent of this project. It is a Jamestown S'Klallam Tribe (JST) venture and this question should be directed to them.

15. Has there been contact with state and local recovery leaders?

Please refer to question 14 above and direct this question to the JST.

16. Is there a need for this type of clinic? Are the current facilities in Clallam County at capacity?

Please refer to question 14 above; this question should be directed to the JST.

17. How can the tribe justify building a "healing" clinic when their casino supports gambling, smoking, and alcohol addiction and they are building a pot store?

Please refer to question 14 above; this question should be directed to the JST.

18. Who or what entity secured the \$7 million in grant funding?

Please refer to question 14 above; this question should be directed to the JST.

19. How will the risk to the adjacent farm be mitigated to ensure the property is secure, patients won't loiter and trash the property? Where will our animals go if we are no longer able to farm on our property?

All identified impacts will be mitigated to the fullest extent as allowed by law. All questions relating to management of the operation should be directed to the JST.

20. Are the tribe's statistics accurate on the level of opioid use or is it because we have an aging population that takes more pain medication?

Please refer to question 14 above; this question should be directed to the JST.

21. Is the clinic three times the size of clinics in Seattle?

There has been no application submitted as of the date of this posting. City staff will not know the size until a complete application is received.

22. What guarantees do we have that the people who will be treated are from here?

Please refer to question 14 above; this question should be directed to the JST.

23. Have you considered the unintended consequences of this facility? How will you keep our town, library and parks safe?

The City cannot make any determinations about any consequences without a complete application submitted that describes the project in detail. The public will have an opportunity to express concerns during the permit review process.

24. Where will the 50% of people who drop out of the program go?

Please refer to question 14 above; this question should be directed to the JST.

25. Whose pockets have been padded for this bad deal for Sequim?

No one's pockets are being "padded". City councilors, officials, and employees are prohibited under the law from using their position for personal gain. For additional information, please refer to the City of SeaTac case referenced in question 4 above.

26. What happens if patients miss the bus home? Where are they going to go?

Please refer to question 14 above; this question should be directed to the JST.

27. Is this right for Sequim? Is there a need? What is the social impact?

The City does not make determinations about the “need” for specific projects. If a project complies with zoning and other development regulations, the City has a legal obligation to issue a permit. The City does not know what the social impacts would be, if any. Once an application is received, the City will determine what additional information, if any, is necessary to address external impacts from the project.

28. How far behind Costco is the plot of land that has been bought?

It is immediately to the southeast of Costco.

29. Can we get funding to encourage the Jamestown tribe to use the grant money for research on what will actually help the addicts?

The City’s involvement with this proposal is strictly related to land use and building permit approval. Please refer to question 14 above; further questions should be directed to the JST.

30. What effect will the clinic have on our youth?

Please refer to question 14 above; this question should be directed to the JST.

31. Why can’t the tribe put the clinic on their property behind the casino?

Please refer to question 14 above; this question should be directed to the JST.

32. What is the difference between a MAT clinic and a Medical clinic?

From a land use perspective and according to federal law, there is no difference. Please also refer to question 4 above.

33. How would additional in-patients affect the process?

According to the Sequim Municipal Code (SMC) Chapter 18.08 “Hospitals and sanitariums” means any facility specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons, and licensed by state law to provide facilities and services in surgery, obstetrics, and general medical practice including overnight and extended stays.

Hospitals are listed as conditional uses in SMC Chapter 18.33 and are, therefore, subject to a higher level of review than uses that are permitted outright such as medical clinics. The Planning Commission is the review authority for conditional uses.

34. Through the process, will there be a study on the impacts to the surrounding neighborhood?

Probably, if the project is subject to environmental review and/or conditional use permit. However, the City cannot make any decision regarding whether this project's impacts justify the City requiring special studies until a complete application has been submitted.

35. Who secured the grant funds for this project?

Please refer to question 14 above; this question should be directed to the JST.

36. Has anything been submitted to the City?

No, the City has not received a formal permit application.

37. Is this project truly a "clinic" being that it's a regional service as opposed to local?

The City's definition of "clinic" does not consider whether patients will be "local" or "regional", which is consistent with the City's position with other medical clinics.

38. Are county officials involved in this process or will they be involved in the permit review process?

No, the County has no authority over City land use decisions, but would have an opportunity to comment under SEPA and/or the land use process.

39. Why aren't they (county) reviewing for impacts?

The County has no jurisdiction over projects within the City of Sequim.

40. Have you received an application?

No (see question #36).

41. What are the notice requirements?

See SMC 20.01.140 Application review – Notice of application – Referrals.

Questions surmised from comments:

42. Regional vs. Neighborhood services relative to permitted uses in the EOA zone?

The EOA zoning district accommodates many possible land uses regardless of whether they serve a local or regional population. Local and/or regional service of land use is not a relevant criterion for judging a proposed project.

43. Comment: "You should kill this proposal now!" My question: How do you propose we kill this project now?

The City's role is to process an application when submitted and review it in accordance with the rules and regulations in effect at that time. A project is either approved, approved with conditions, or denied depending on whether it meets applicable City, State and/or Federal regulations.

The City cannot provide legal advice. Please contact an attorney for an answer to your question.

44. Did the city zone/rezone the property for this project?

No. The City did not zone the property for this project. The subject property is located in one of two Economic Opportunity Areas (EOAs) identified in the City's Comprehensive Land Use Plan and Zoning Code and the most recently adopted zoning regulations provide for approximately 64 different land uses, of which medical clinics and hospitals are two. Please also refer to question #9.

45. Why doesn't the city review this project for social impacts?

The City cannot make any decisions regarding whether this project's impacts justify the City requiring special studies until a complete application has been submitted.

46. Where is the property?

The property is located immediately southeast of Costco.

47. Why don't you adopt a moratorium?

Please refer to question 4 above for discussion of this issue.

48. Why aren't you building a college instead of a meth clinic?

Please refer to question 14 above; this question should be directed to the JST.

49. From what cities will the patients be bussed?

Please refer to question 14 above; this question should be directed to the JST.

50. Wouldn't it be better if it was located closer to the PA hospital?

Please refer to question 14 above; this question should be directed to the JST.

51. What is the relapse percentage?

Please refer to question 14 above; this question should be directed to the JST.

52. If the tribe already offers this service, why is there need for another facility?

Please refer to question 14 above; this question should be directed to the JST.

53. If real concern is for the addict, why not operate it as a non-profit?

Please refer to question 14 above; this question should be directed to the JST.

20.01.170 Application review – Scope of review.

20.01.180 Application review – Integrated SEPA review.

Ex RLB-7

20.01.190 Notice of public hearing.

20.01.191 Notice of public meetings.

20.01.200 Procedures for public hearings.

20.01.201 Procedures for public meetings.

20.01.210 Reconsideration.

20.01.220 Remand.

20.01.230 Final decision.

20.01.240 Appeals.

20.01.010 Statutory authorization and purpose.

In enacting this title, the city council intends to establish an integrated permit review process, including environmental review, that implements the provisions of Chapter 36.70B RCW (the Regulatory Reform Act ESHB 1724) while ensuring compliance, conformity, and consistency of proposed projects with the city's adopted comprehensive plan and development regulations. (Ord. 2000-006 § 3)

20.01.020 Definitions.

The following definitions shall apply throughout this title:

A. "Adjacent landowners" means the owners of real property, as shown by the records of the county assessor, located within 300 feet of any portion of the boundary of the proposed subdivision.

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.

- C. "Appellant" means a person, organization, association or other similar group who files a complete and timely appeal of a city decision.
- D. "Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for land use permits.
- E. "Hearing examiner" means a position appointed and created pursuant to Chapter 2.10 SMC to hear and decide appeals of orders, decisions or determinations made by the staff and to authorize upon appeal in specific cases such variances from the provision of the zoning ordinance or other land use regulatory ordinances as the city may adopt.
- F. "City" means the city of Sequim, Washington.
- G. "City council" means the city of Sequim city council.
- H. "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.
- I. Days. All days shall be calendar days.
- J. "Department" means the department of community development.
- K. "Director" shall mean the director of the department of community development or his/her designee.
- L. Effective Date of Decisions. All preliminary and final decisions shall be effective on the date stated in SMC 20.02.010.
- M. Effective Date of Notices. All notices provided to applicants and any members of the public shall be effective on the date deposited in the mail and when first published or posted on properties.
- N. "Ministerial" means an action that allows for little description and requires adherence to previous decisions or adopted rules and regulations.
- O. "Open record hearing" means a hearing, conducted by a single hearing body or officer, that creates the record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record hearing has been held on the project permit.

P. "Parties of record" means the land use permit applicant, persons who have testified at an open record hearing, and any persons who have submitted written comments concerning the application that form part of the public record that is considered at the open record hearing (excluding persons who only signed petitions or mechanically produced form letters).

Q. "Project permit" or "project permit application" means any land use or environmental permit or license required from the city for a project action, including but not limited to subdivisions, planned unit developments, conditional uses, shoreline substantial development permits, permits or approvals required by Chapter 18.80 SMC, Critical and Environmentally Sensitive Areas Protection, as amended, site-specific rezones authorized by the Sequim comprehensive plan or a formally adopted subarea plan, but excluding the adoption or amendment of the Sequim comprehensive plan, a subarea plan, or development regulations except as otherwise specifically included in this subsection.

R. "Public workshop" or "public meeting" means an informal meeting or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to a decision. A public workshop may include, but is not limited to, a design review, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public workshop may be recorded and a report or recommendation may be included in the local government's project permit application file.

S. "Sequim Municipal Code" means Sequim Municipal Code as amended.

T. "Type A-1 process" means a process which involves an application that is subject to clear, objective and nondiscretionary standards that require the exercise of professional judgment about technical issues and therefore does not require public participation.

U. "Type A-2 process" means a process which involves an application that is subject to objective and subjective standards that require the exercise of limited discretion about non-technical issues and about which there may be a limited public interest.

V. "Type B process" means a process which involves an application that is subject to standards that require the exercise of certain discretion and about which there may be a considerable public interest.

W. "Type C-1, C-2, C-3 processes" means processes which involve applications that require the exercise of substantial discretion and about which there is a broad public interest. (Ord. 2019-004 (Exh. B); Ord. 2012-001 § 3 (Exh. B); Ord. 2011-017 §§ 1, 2; Ord. 2002-014; Ord. 2000-006 § 3)

20.01.030 Procedures for processing development project permits.

A. Project Permit Application Framework.

SMC 20.01.030

Table 1

Procedural Steps	Application Process					
	Type "A" Actions <i>Administrative</i>		Type "B" Actions <i>Hearing Examiner</i>	Type "C" Actions <i>Planning Commission and City Council</i>		
	Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3
Recommendations by:	N/A	N/A	Staff	Staff	Planning Commission	Staff
Notice of Application	No	Yes	Yes	Yes	Yes	No
Public Meeting/ Workshop	—	—	—	—	Planning Commission	—
Open Record Public Hearing	See Note ^a	See Note ^a	Yes Hearing Examiner	Yes Planning Commission	Yes City Council	No
Final Decision-making Body	Staff ^b	Staff ^b	Hearing Examiner ^b	Planning Commission	City Council	City Council
Appeal Authority	Hearing Examiner ^c City Council	City Council ^d	Clallam County Superior Court	City Council	Clallam County Superior Court	Clallam County Superior Court

^aPublic hearing only if administrative decision is appealed, open record hearing before hearing examiner.

^bDenials of permits, boundary line adjustments and variances must be reviewed by the city attorney for legality before becoming final.

^cAppeal authority for building and other construction permits; sign permits and boundary line adjustments. Subsequent appeals on these permits to Clallam County Superior Court.

^dSubsequent appeals on city council decisions to Clallam County Superior Court.

Table 2

Application Type					
Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3

Application Type						
Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3	
Building and other construction permit	SEPA determination	Variances	Major use permit	Comprehensive plan amendment	Final subdivision map	
Sign permit	Minor subdivision		Shoreline permit	Special use permit	Dedication of public easements and rights-of-way	
Boundary line adjustment	Minor conditional use permit					SMC land use related text amendment
Minor amendments to PRDs	ESA and wetland permits				Site-specific rezone	
Home occupation					Planned residential developments Major amendments	
Street use					Annexation	
ESA, shoreline and wetland exemptions					Street vacation	
	Preliminary major subdivisions					
					Preliminary binding site plan	

B. Types of Development Permit Applications. For the purpose of project permit processing, all development permit applications are subject to a Type A-1 and Type A-2 process (administrative), Type B process (hearing examiner), or Type C-1, Type C-2 and Type C-3 process (planning commission/city council) as defined in SMC 20.01.020. As defined in subsection A of this section, a Type A-1 is an administrative process which does not require public notice; a Type A-2 process is an administrative process which requires public notice; a Type B is a quasi-judicial process which requires a public hearing (the decision-making body for a Type B process is the hearing examiner); Type C-1 processes are quasi-judicial and require public hearings (the decision-making body for Type C-1 processes is the planning commission). Type C-2 are quasi-judicial or legislative and require

public hearings (the decision-making body is the city council). Type C-3 are largely ministerial and do not require a public hearing (the decision-making body for Type C-3 is the city council).

C. Exemptions from the requirements of project permit application processing as defined in this chapter are contained in SMC [20.01.070](#).

D. Burden of Proof. During “project permit” or “project permit application” (as defined in SMC [20.01.020\(Q\)](#)) processes as described in this title, the burden of proof is on the proponent or permit applicant. The proponent or applicant must provide convincing evidence to the decision makers that the application conforms to applicable law, including, but not limited to, the Growth Management Act, SEPA, the Sequim Municipal Code, all developmental regulations, and the city’s comprehensive plan. The proponent must also present convincing evidence that any significant adverse environmental impacts have been adequately mitigated. (Ord. 2019-004 (Exh. B); Ord. 2019-006 § 1 (Exh. C); Ord. 2010-006 § 1; Ord. 2005-022 § 10; Ord. 2004-015 § 11; Ord. 2002-014; Ord. 2000-006 § 3)

20.01.040 Determination of proper type of procedure.

A. Type of Application. The act of classifying an application shall be a Type A-1 action. Classification of an application shall be subject to reconsideration and appeal at the same time and in the same way as the merits of the application in question.

B. Determination of Director. The director shall determine the proper procedure for all development applications. If there is a question as to the appropriate type of procedure, the director shall resolve it in favor of the higher procedure type letter as defined in SMC [20.01.030](#). (Ord. 2000-006 § 3)

20.01.050 Projects requiring two or more permit applications.

A. Optional Consolidation. A project that involves two or more permit applications may be subject to a consolidated project permit review process as established in this chapter. The applicant may determine whether the applications shall be processed collectively or individually. If the applications are processed under the individual procedure option, the highest type procedure must be processed prior to the subsequent lower procedure.

B. Consolidated Permit Processing. When the project is reviewed under the consolidated procedure option, the highest procedure required for any part of the project application must be applied. All project permits being reviewed through the consolidated permit review process shall be included in the following:

1. Determination of completeness;
2. Notice of application;