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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation,

Respondent

File No. CDR20-01

PETITIONER SAVE OUR SEQUIM'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND FOR ORDER  
REMANDING APPLICATION

**INTRODUCTION**

Petitioner Save Our Sequim ("SOS") respectfully requests that the Examiner rule on partial summary judgment that the proposed project subject to this appeal be classified as an Essential Public Facility under RCW 36.70A.200(1) and WAC 365-196-550, and that as such, it is required to go through the City's quasi-judicial C-2 permitting process, rather than the administrative A-1 and A-2 processes proposed by the City. Alternatively, SOS requests an order of the Examiner declaring that the City Council has appellate jurisdiction on the A-2 process at issue in this appeal, as provided for in SMC 20.01.030(A), Table 1, Column B.

PETITIONER SAVE OUR SEQUIM'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT AND FOR  
ORDER REMANDING APPLICATION - 1

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**I. RELIEF REQUESTED**

1. An Order of the Examiner finding that the proposed project is an “Essential Public Facility” as defined in RCW 36.70A.200(1).
2. An Order of the Examiner finding that as an “Essential Public Facility”, the proposed project must be processed under the City’s C-2 permitting process.
3. An Order of the Examiner striking the Notice of Determination of Procedure Type for File No. CDR 20-001, dated January 24, 2020.
4. An Order of the Examiner remanding the application back to the City of Sequim for processing under the aforementioned C-2 permitting process.
5. Any other relief the Examiner deems just and equitable.

**II. STATEMENT OF FACTS**

The project at issue is a proposed drug rehabilitation/detoxification center located at 526 S. 9<sup>th</sup> Ave, Sequim, WA 98382, in Sequim’s River Road Economic Opportunity Area (“RREOA”) District. SOS does not oppose the siting of this facility in an appropriate location, provided the proper process is followed, which has not happened in this case.

In the 2019 Washington Legislative session, the applicant requested and received a grant for the construction of this facility. Almost immediately thereafter, the applicant purchased the subject property. They then began a public relations campaign. The following description appeared in the Peninsula Daily News in a July 22, 2019 Op-ed:

- “a clinic that addresses this (opioid) problem and serves the health care needs of the North Olympic Peninsula community ...”
- “the clinic will serve Clallam and Jefferson counties and will use a comprehensive treatment strategy that will include physical, mental and dental services”

- 1 • “includes a Phase I MAT Clinic to be operated by the Jamestown Tribe and Phase II (yet  
2 to be funded) a 16-bed inpatient evaluation and treatment psych hospital that will be  
3 managed by OMC”
- 4 • “the goal of the Phase I MAT Clinic is to decrease opioid overdoses and the illegal  
5 diversion of prescription drugs into the community”
- 6 • “the property ... is zoned for medical use”
- 7 • “The MAT clinic is not an inpatient facility. Strict Drug Enforcement Administration  
8 guidelines do not permit loitering at a MAT program facility”
- 9 • “The Healing Campus will offer the best opportunity for sustaining recovery by  
10 providing chemical dependency counseling, behavioral health, primary care and  
11 childcare assistance”
- 12 • “The MAT program will provide transportation to the facility for those who need it in  
13 Clallam and Jefferson counties. This service is not provided within the Olympic  
14 Peninsula counties.” (emphasis added)

15 As discussed in the applicant’s grant application, attached as Exhibit A, a “second phase”  
16 of the project will contain a 16-bed inpatient facility:

17 “In Phase 2, a licensed Residential Treatment Facility (RTF) providing Evaluation and  
18 Treatment (E & T) and involuntary involuntary admissions and an outpatient behavioral  
19 health clinic will be built and operated. The RTF is expected to serve more than 350  
20 individuals annually. The expected inpatient length of stay is anticipated to be in the 10  
21 to 14 day range.” (Exhibit A at 3)

22 Although the applicant states that funding has not been secured for this phase, a portion  
23 of the funds received for the first phase was used to plan for this phase, according to a budgetary  
24 document received in response to a public records request SOS filed with the Washington State  
25 legislature. A true and correct copy of this document is attached as Exhibit B. That document  
is undated, however it references Tribal representative Brent Simcosky, and it contains the  
following passage, presumably written by a representative of the Tribe:

**“ProjectInfo**

the Jamestown Behavioral Health Healing Campus (may not be the official name when  
completed) Will undertake a three phased project. Phase 1 includes the construction of a  
Medication Assisted Treatment (MAT) Outpatient Clinic that will also provide primary

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care, dental services, and wraparound services. Phase 2 is the construction of a 16 bed Evaluation and Treatment facility with co-located outpatient behavioral health services. Phase 3 is the construction of a small crisis stabilization centers in both Forks and Port Townsend. ...

**Phase 1 will include infrastructure work and site planning for all phases of the project....**

Phase 2 (which will need supplemental funding) Will include the construction of a 16 bed inpatient Residential Treatment Facility (RTF) that will provide Evaluation & Treatment (E & T) that will serve up to 350 individuals annually. If funding is secured in the supplemental budget, phase 2 work will begin in the summer of 2020. Collaborative partners in the Phase 2 project will also be seeking additional funding from other sources including foundations and federal grants. Completion of Phase 2 is targeted for first quarter of 2022.” (emphasis added)

Nothing on the record indicates that Phases 2 or 3 have been abandoned. Inpatient medical facilities are not listed as permitted or conditional uses in the RREOA District under SMC 18.33.030.

The project was initially marketed to the public as the “Jamestown S’Klallam MAT Clinic”, but was quickly rebranded as the “Jamestown S’Klallam Healing Campus” in response to public outcry. The project was then rebranded again as the “Jamestown S’Klallam Outpatient Clinic” after SOS and others pointed out that inpatient facilities are not allowed in the RREOA District. The City at various times refers to the facility as simply a “medical clinic”.

The application was filed on January 10, 2020. In the accompanying Environmental Checklist, attached as Exhibit C, the applicant described the project as follows:

“the project includes the construction of a 16,720 SF medical clinic that will be made up of medicated assisted treatment program which offers FDA approved dosing, primary care services, consulting services, dental health services and childcare services while clients are seen.” (Emphasis added)

1 On January 24, 2020, the City issued the Notice of Determination of Procedure Type for  
2 File No. CDR20-001, regarding the proposed Jamestown S’Klallam Tribe MAT Clinic Building  
3 Permit, SEPA and Design Review dated January 24, 2020, attached as Exhibit D (the  
4 “Procedural Determination”). In the Procedural Determination, the City concluded that:

5  
6 “After reviewing the Medical Assisted Treatment (MAT) clinic application and  
7 supporting material submitted by the Jamestown S’Klallam Tribe, I find that there is no  
8 question as to the appropriate type of procedure the application will be subjected to, and  
9 therefore I find the permit, as submitted, falls under the City’s A-2 permit process. The  
10 Jamestown S’Klallam Tribe is proposing to build a medical clinic in the River Road  
11 Economic Opportunity Area (RREOA). According to Table 18.33.031 Business and  
12 Employment District Uses (“ambulatory and outpatient care services physicians,  
13 outpatient clinics, dentists “are uses that are permitted outright. Therefore, the Tribe’s  
14 proposed Medically Assisted Treatment MAT) clinic is a permitted use because it meets  
15 the definition of a medical clinic in the City’s zoning code. My decision is based on a  
16 review of the City’s code, state and federal law and past practices.”

17 The Procedural Determination goes on to state:

18 “As discussed below, the subject application is not a special use or Essential Public  
19 Facility (EPF) because, first, the facility is not an “inpatient substance abuse facility”,  
20 second, it is not “difficult the site”, and third the courts have a long history of requiring  
21 local government to treat drug treatment clinics and offices as they treat other medical  
22 clinics and offices.”

23 The Procedural Determination further states that:

24 “According to the submitted application the proposed MAT clinic will not provide  
25 inpatient services, but instead will provide outpatient treatment typical of other types of  
26 medical clinics and or offices. The fact that the MAT clinic will treat recovering opioid  
27 addicts is irrelevant to whether the facility is an EPF under state or local law.”

28 Regarding the right to an appeal, the Procedural Determination states that:

29 “Appeals: Appeals of Administrative Interpretations and Decisions. Administrative  
30 interpretations and administrative Type A-1 and Type A-2 decisions may be appealed,  
31 by applicants or parties of record, to the hearing examiner per SMC 20.01.240(A).  
32 Appeals must be accompanied by the required appeal fee in the amount of \$600 (SMC  
33 3.68)

1 Public Records requests filed with the City reveal that the City knew that an illegal  
2 inpatient facility was part of this project a full ten months prior to the filing of the application.  
3 (Declaration of Michael Spence at 2).

4 On February 12, 2020, SOS timely appealed the Procedural Determination. A true and  
5 correct copy of the appeal is attached hereto as Exhibit "E" and incorporated herein by reference.

6 On May 15, 2020, the City approved the application via a "Staff Report and Director's  
7 Decision", attached as Exhibit F (the "Substantive Determination"). In this document, the  
8 project is described as the "Jamestown S'Klallam Tribe Outpatient Clinic". In the body of the  
9 document, the City states that:

10 "The medical clinic will provide medication assisted treatment program which offers  
11 FDA approved dosing, primary care services, consulting services, dental health services  
12 in childwatch services while clients are seen."

13 The proposed use is described as a:

14 "medical clinic" ... "Clinic" means a building designed and used for the diagnosis and  
15 treatment of human outpatients excluding overnight care facilities."

16 Regarding the right to an appeal, the Substantive Decision states as follows:

17 APPEALS: this decision may be appealed by filing an appeal consistent with SMC  
18 20.01.240 within twenty-one (21) days after the decision to the Dept. of Community  
19 Development, located at 152 W. Cedar St. All appeals of this decision must be filed by  
20 4:00 PM on June 5, 2020. There is a \$600 fee to appeal this determination."

21 "If a Type A-II decision is appealed, an open record public hearing will be held before  
22 the Hearing Examiner consistent with the requirements of SMC 20.01.200." (Emphasis  
23 added).

24 On June 4, 2020, SOS timely appealed the Substantive Decision to the Hearing Examiner  
25 in accordance with SMC 20.01.200. A copy of this appeal is attached as Exhibit G.

1 SMC 20.01.030(A), Table 1, Column B provides that the City Council has “Appeal  
2 authority for building and other construction permits; sign permits and boundary line  
3 adjustments ...”. Consistent with this authority, SOS also appealed the Substantive Decision to  
4 the City Council and included a \$600 check representing the appeal fee.  
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6 On June 10, 2020, the City rejected the City Council appeal and returned SOS’s \$600  
7 appeal fee. In the cover letter accompanying the refund, attached as Exhibit H, the City stated  
8 that:

9 “In reviewing your appeal, the City noted you included two appeal fees, presumably one  
10 for an appeal before the hearing examiner and the other for an appeal before the City  
11 Council. Your appeal to the City Council will not be heard by the Council and therefore,  
12 we are returning the associated fee.”

13 The City’s rationale for rejecting the appeal was that SMC 20.01.240(A) only applies to a  
14 Determination of Non-Significance. The letter did not mention that SMC 20.01.030(A), Table  
15 1, Column B, provides for the appeal of an A-2 decision to the City Council.

16 In a separate action, SOS and another party challenged the constitutionality of SMC  
17 20.01.030. That action was dismissed without prejudice on June 24, 2020. The Court’s decision  
18 stated in part that this action was “premature”, and that “LUPA contemplates a review of such  
19 claims as a violation of constitutional rights and whether the decision maker who made the  
20 decision acted unlawfully”. A copy of the Decision is attached as Exhibit I. SOS therefore  
21 intends to challenge the constitutionality of SMC 20.01.040(A), which requires an aggrieved  
22 party to wait until the substantive appeal to challenge the Procedural Determination, in this case  
23 made four months earlier, in this proceeding.  
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**V. AUTHORITY**

**A. The proposed project meets the definition of an “Essential Public Facility”.**

RCW 36.70(A)200(1), contains a non-exclusive definition of what constitutes “Essential Public Facilities”:

“... those facilities that are typically difficult to site, **such as** airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.RCW.” RCW 36.70A.200(1). (Emphasis added)

WAC 365-196-550 provides further guidance on what constitutes an Essential Public Facility, and it echoes the non-exclusive and expansive nature of RCW 36.70A.200(1):

**WAC 365-196-550**

**Essential public facilities.**

(1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with county-wide planning policies, counties and cities should create their own lists of "essential public facilities," to include **at a minimum** those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

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

...

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

...

1 (i) Identification of essential public facilities. When identifying essential public facilities,  
2 **counties and cities should take a broad view of what constitutes a public facility**,  
3 involving the full range of services to the public provided by the government,  
4 substantially funded by the government, contracted for by the government, or provided  
5 by private entities subject to public service obligations. (emphasis added)

6 Washington's Community Behavioral Health Services Act, codified as RCW 71.24.590,  
7 the law governing state licensing of opioid treatment programs, also contemplates that drug  
8 rehabilitation centers are considered Essential Public Facilities. RCW 71.24.590 (1)(b) directly  
9 refers to RCW 36.70A.200 in the context of these programs:

10 **RCW 71.24.590**

11 **Opioid treatment—Program licensing or certification by department, department  
12 duties—Use of medications by program—Definition.**

13 (1) When making a decision on an application for licensing or certification of a program,  
14 the department shall:

15 (a) Consult with the county legislative authorities in the area in which an applicant  
16 proposes to locate a program and the city legislative authority in any city in which an  
17 applicant proposes to locate a program;

18 (b) License or certify only programs that will be sited in accordance with the appropriate  
19 county or city land use ordinances. Counties and cities may require conditional use  
20 permits with reasonable conditions for the siting of programs. Pursuant to  
21 RCW 36.70A.200, no local comprehensive plan or development regulation may preclude  
22 the siting of essential public facilities; (emphasis added)

23 In addition, the City's own Essential Public Facilities Ordinance, codified as SMC 18.56,  
24 contemplates that facilities such as this qualify as Essential Public Facilities. Specifically, SMC  
25 18.56.030(J) speaks directly to drug treatment or detoxification centers, which is exactly what  
this project is. The ordinance also clarifies that these facilities can only be approved by the City  
Council. SMC 18.56.030 reads as follows:

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**18.56.030 Permitted uses.**

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

J. Group homes, alcoholism or drug treatment centers, detoxification centers, work release facilities for convicts or ex-convicts, or other housing serving as an alternative to incarceration with 12 or more residents. (emphasis added)

Despite the fact that the applicant itself describes this project as a “medically assisted treatment program which offers FDA approved dosing”, the City has chosen to ignore the specific reference to “drug treatment centers” or “detoxification centers” in SMC 18.56.030(J) in favor of the much more generic and general term “medical clinic”.

The legal issue is thus whether the more specific terms “drug treatment centers” and “detoxification centers” control over the more generic term “medical clinic”. “When a general and a specific ordinance cover the same subject matter, the specific controls over the general to the extent that the two conflict.” State ex rel. Lige & Wm. B. Dickson Co. v. Cty. of Pierce, 65 Wn. App. 614, 620 n.6, 829 P.2d 217 (1992). “In short, specific terms modify or restrict the application of general terms where both are used in sequence. ... Provisions in a statute are to be read in the context of the statute as a whole”. Malo v. Alaska Trawl Fisheries, Inc., 92 Wn. App 927, 930, 965 P. 2d 1124 (1998). The court must give effect to legislative intent determined “within the context of the entire statute.” State v. Elgin, 118 Wn.2d 551, 556, 825 P.2d 314 (1992). Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. Stone v. Chelan County Sheriffs Dep’t, 110 Wn.2d 806, 810, 756 P.2d 736 (1988); Tommy P. v. Board of County Comm’rs, 97 Wn.2d 385, 391, 645 P.2d 697 (1982). The meaning of a particular word in a statute “is not

1 gleaned from that word alone, because our purpose is to ascertain legislative intent of the statute  
2 as a whole.” State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). By way of illustration,  
3 we have noted that “[t]he ejusdem generis rule is generally applied to general and specific words  
4 clearly associated in the same sentence in a pattern such as [specific], [specific], or [general]’ or  
5 ‘[general], including[specific] and [specific].” Southwest Wash. Ch., Nat’l Elec. Contractors  
6 Ass’n v. Pierce County, 100 Wn.2d 109, 116, 667 P.2d 1092 (1983) (internal quotations  
7 omitted).

9 In the Procedural Determination, the City also claims that the project is not an Essential  
10 Public Facility because it; 1) is not difficult to site; and 2) does not “generate broad public  
11 interest”. Regarding the claim that it is “not difficult to site”, the proposed project contemplates  
12 an inpatient facility in Phase 2, a “child watch” facility, and a laboratory, none of which are  
13 permitted uses in the RREOA District. It follows logically therefore that this project is in fact  
14 “difficult to site”. Regarding the claim that the project does not “generate broad public interest”,  
15 SOS has received donations from hundreds, if not thousands, of Sequim citizens deeply  
16 concerned about the siting of this project. 2,600 people signed a petition opposing the project in  
17 its proposed location. (Declaration of Jodi Wilke at 2). According to an article in the February  
18 21, 2020 Peninsula Daily News, the City has received over 500 public comments on this project,  
19 and an August 21, 2019 article in the same publication notes that 1,300 people showed up at a  
20 public meeting on the project. The City’s claim that this project did not generate “broad public  
21 interest” is therefore patently false.  
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1           The applicant has consistently pointed to the success of the Didgwalic Center, an MAT  
2 facility constructed in Anacortes by the Swinomish Tribe in 2016, as the inspiration for the  
3 subject application. Notably, that project was processed as an Essential Public Facility, even  
4 though it was only an “outpatient substance use and primary care facility”. A true and correct  
5 copy of the Decision for that project is attached as Exhibit J. It was also intentionally located  
6 outside of the city limits, unlike the present proposal.  
7

8           **B. Essential Public Facilities can only be approved by the City Council.**

9           Since 1997, SMC 18.56.040 has required that Essential Public Facilities must obtain an  
10 “Essential Public Facilities and Special Property Use Permit”, which must be approved by the  
11 Sequim City Council. It provides as follows:  
12

13           **18.56.040 Permit required.**

14           Essential public facilities and special property uses shall be allowed within certain use  
15 zones after obtaining an essential public facilities and special property use permit granted  
16 by the city council. (Ord. 97-019 § 4, Exh. B) (emphasis added)

17           SMC 18.56.060 sets forth a rigorous and robust set of criteria that must be satisfied before  
18 the City Council can approve an Essential Public Facility. Those criteria are as follows:

19           A. There shall be a demonstrated need for the essential public facilities and/or special  
20 use within the community at large which shall not be contrary to the public interest.

21           B. The essential public facility and/or special use shall be consistent with the goals and  
22 policies of the comprehensive plan, and applicable ordinances of the city.

23           C. The council shall find that the essential public facility and/or special use shall be  
24 located, planned and developed in such a manner that the essential public facility and/or  
25 special use is not inconsistent with the health, safety, convenience or general welfare of  
persons residing or working in the city. The council’s findings shall address, but not be  
limited to the following:

1 1. The generation of noise, noxious or offensive emissions, or other nuisances  
2 which may be injurious or detrimental to a significant portion of the city.

3 2. The availability of public services which may be necessary or desirable for the  
4 support of the special use. These may include, but shall not be limited to,  
5 availability of utilities, transportation systems, including vehicular, pedestrian,  
6 and public transit systems, and education, police and fire facilities, and social and  
7 health services.

8 3. The adequacy of landscaping, screening, yard setbacks, open spaces or other  
9 development characteristics necessary to mitigate the impact of the special use  
10 upon neighboring properties. (emphasis added)

11 **C. The proposed rehabilitation facility is not a permitted use in Sequim's RREOA District.**

12 Prior to filing their applications, the applicant widely described the proposed project as  
13 the "Jamestown Healing Campus", a facility that "addresses this (opioid) problem and serves  
14 the health care needs of the North Olympic Peninsula community", the goal of which is to  
15 "decrease opioid overdoses and the illegal diversion of prescription drugs into the community"  
16 by "providing chemical dependency counseling, behavioral health, primary care and childcare  
17 assistance".

18 In the actual application, the Applicant describes the proposed project as:

19 "a 17,093 square foot outpatient clinic designed to provide a wide range of addiction  
20 treatment services to those in the local and surrounding Sequim community. The  
21 Building will also offer childcare and provide social services to patients to help facilitate  
22 their recovery."

23 Physically, the proposed building will feature three exam rooms, twelve counseling  
24 rooms, a pharmacy, three individual dosing rooms, four large group rooms that can open to the  
25 exterior and a conference room with administrative facilities. It will also feature three  
"operatories", a bariatric exam room, a "nurse station lab" and a "child watch" area.

1           The applicant’s reference to a “clinic designed to provide a wide range of addiction  
2 treatment services” confirms that the true intent is to construct a drug  
3 rehabilitation/detoxification facility in the RREOA District. And the presence of “dosing  
4 rooms” confirms this intent. As such, this project is a drug rehabilitation/detoxification facility  
5 that the Tribe and City are attempting to masquerade as a “medical clinic”. But the undisputable  
6 truth is that the project as described and designed is an “alcoholism or drug treatment center”,  
7 or a “detoxification center” as opposed to a simple “medical clinic”. Under SMC 18.56.030(J),  
8 these uses can only be permitted by the City Council.  
9

10           In addition, two of the proposed uses of the facility – operatories<sup>1</sup> and child care centers  
11 – are not permitted uses in the RREOA District – they are conditional uses under SMC  
12 18.33.031. As such, SMC 18.33.030(A)(2) requires that they be approved through the C-2 quasi-  
13 judicial process.  
14

15           What’s more, the project clearly includes a legally nonconforming and illegal inpatient  
16 facility in Phase II, for which “infrastructure and site planning” has already begun. (Exhibit B at  
17 7).  
18

19 **D. Even if the project is not considered an Essential Public Facility, the Sequim Municipal**  
20 **Code requires an appeal to the City Council.**

21           As set forth above, the Substantive Decision contains the following passage:

22           “If a Type A-II decision is appealed, an open record public hearing will be held before  
23 the Hearing Examiner consistent with the requirements of SMC 20.01.200.” (Emphasis  
24 added)  
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<sup>1</sup> Identified as “Biotechnolog/medical laboratories.”

1 This passage is clearly incorrect, as can plainly be seen in SMC 20.01.030(A), Table 1,  
2 Column B. Even a quick glance at this table shows that the City Council has appellate  
3 jurisdiction over a Type A-2 Decision, rather than the City Staff.  
4

5 For 20 years, Sequim has had a process to resolve a question as to which land use  
6 procedure applies in the event of a “question as to the appropriate procedure”. That process  
7 appears in SMC 20.01.040(B), and it requires the Director to resolve it in favor of the “higher  
8 procedure type letter”, which in this case would either be an appeal to the City Council as the  
9 “higher” authority than the City Staff under the A-2 process.

10 SMC 20.01.040(B) reads as follows:

11 **20.01.040 Determination of proper type of procedure.**  
12

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

17 In this case, there is a conflict between the Classification Decision, which is an  
18 administrative A-1 decision, the Substantive Decision, which the City believes is an A-2  
19 process, with an appeal to the Examiner, and the A-2 process called for in SMC 20.01.030(A),  
20 Table 1, Column B, which calls for an appeal to the City Council for “building and other  
21 construction permits”. Since the “higher” procedures require that the City Council serve as the  
22 final decision maker, SMC 20.01.040(A) alternatively requires that the City council serve as the  
23 “Final Decision-Making Body” as opposed to the staff.  
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SMC 20.01.030(A), Table 1 is reproduced below:

**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 <sup>a</sup>	See Note <sup>a</sup>	Yes Hearing Examiner	Yes Planning Commission	Yes City Council	No
Final Decision-making Body	Staff <sup>b</sup>	Staff <sup>b</sup>	Hearing Examiner <sup>b</sup>	Planning Commission	City Council	City Council
Appeal Authority	Hearing Examiner <sup>c</sup> City Council	City Council <sup>d</sup>	Clallam County Superior Court	City Council	Clallam County Superior Court	Clallam County Superior Court

<sup>a</sup>Public hearing only if administrative decision is appealed, open record hearing before hearing examiner.

<sup>b</sup>Denials of permits, boundary line adjustments and variances must be reviewed by the city attorney for legality before becoming final.

<sup>c</sup>Appeal authority for building and other construction permits: sign permits and boundary line adjustments. Subsequent appeals on these permits to Clallam County Superior Court.

<sup>d</sup>Subsequent appeals on city council decisions to Clallam County Superior Court.

Cognizant of this language in the Code, SOS filed a companion appeal to the City Council, which the City outright rejected without referring to this crystal-clear language and without an explanation as to why it may not apply. Stated more simply, the City appears to either not understand or is intentionally ignoring its own codes. However, SMC 20.01.030,

1 Table 2 is crystal-clear that the City Council has appellate jurisdiction for Type A-2 Decisions.  
2 And SMC 20.01.040 is also crystal-clear in stating that any question is resolved in favor of the  
3 higher procedure. SOS is therefore entitled to the requested relief under this authority, as well  
4 as the authority regarding Essential Public Facilities.  
5

## 6 7 VI. CONCLUSION

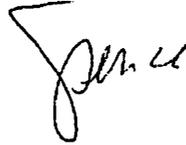
8  
9 The proposed project clearly qualifies as an Essential Public Facility. As such, SMC  
10 18.56.040 unequivocally requires that it be approved by the City Council sitting in quasi-  
11 judicial capacity, rather than administratively approved by the City Staff. Alternatively, SMC  
12 20.01.030(A), Table 1, clearly indicates that the City Council has appellate jurisdiction for an  
13 A-2 Decision. And SMC 20.01.040(B) clearly and unequivocally states that if there is a  
14 “question as to the appropriate procedure”, which there is here, the Director shall resolve it in  
15 favor of the higher letter procedure. In this case, that means that both the Substantive and  
16 Procedural Decisions should be remanded to the City, with instructions to process it under the  
17 C-2 permitting process. Alternatively, the Examiner should direct the City to follow SMC  
18 20.01.030(A), Table 1, providing that the City Council has appeal authority over this project.  
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DATED this 2nd day of September, 2020.

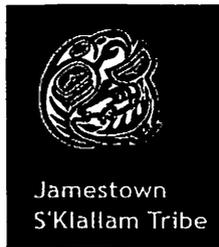
HELSELL FETTERMAN LLP



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Michael A. Spence  
WSBA No. 15885  
Attorney for Petitioner

# **Exhibit A**



**Olympic Peninsula Behavioral Health Campus  
2019 Washington State Legislature  
Capital Budget Request**

**Submitted by  
Jamestown S'Klallam Tribe, Clallam County Public  
Hospital District No. 2, & Jefferson County Public Hospital  
District No. 2**

**March 2019**

## 1. Overview of Project and Request:

Given the historic shortage in resources, access to mental illness and substance use disorder treatment has been a top policy priority for a number of years in the State. Despite improvements and new resources in many communities, rural Clallam and Jefferson Counties (the two counties comprising the Olympic Peninsula) remain at near crisis levels daily due to increasing demand for treatment and recovery support and the continued lack of resources. Compounding the problem is the fact that residents of the two counties are 60% more likely to experience a mental health/substance use problem than the average Washingtonian: fatal overdose rates, suicide rates, and opioid prescription rates are higher. Further, and due to the non-existence of inpatient behavioral health bed capacity in the region, residents requiring mental health treatment under the Involuntary Treatment Act (ITA) are also twice as likely than other Washington residents to remain in an acute care hospital awaiting transfer to treatment – a solution that is fragmented, temporary and ineffective<sup>1</sup>.

Trained manpower is also an issue on the Olympic Peninsula; the entirety of the region is a Health Profession Shortage Area, as designated by the Health Resources & Services Administration (HRSA), for mental health, and most of the two County area is also a primary care shortage area. The current care delivery model is expensive (high use of emergency rooms, rehospitalizations, doctor visits), fragmented, does not produce the desired outcomes, and has stressed the entirety of the care delivery system.

The Peninsula's providers have come together to plan a behavioral health campus that will support and treat patients in their mental health and/or addiction struggle by consolidating resources, providing education to both patients and the healthcare workforce, individualizing medical/preventative patient care, providing accessible, culturally-relevant chemical dependency and mental health inpatient and outpatient services, and offering comprehensive wraparound services such as assistance for employment, housing, education, and transportation. We also expect that it will be a magnet to recruit and retain trained providers because of the innovative solutions and state-of-the art facilities. The expected outcomes include: a reduction in fatal overdose and suicide rates; a reduction in opioid prescriptions and an increase in alternative treatments for pain management; increased and timely access to mental health, primary care and Substance Use Disorder (SUD) prevention, treatment and recovery services; and lower total costs of care.

The Consortium of Olympic Peninsula health care providers respectfully requests consideration of a nearly \$25 million request for capital funding from the State Capital Budget to create a behavioral health campus on the Olympic Peninsula. The campus will provide timely access to much needed behavioral health and substance/opioid abuse treatment and recovery services for the more than 106,000 residents of the two County (Clallam and Jefferson) region. Five of Washington State's 29 tribes are located within the two County region which include over 3,800 American Indian/Alaska Native (AI/AN) members. The proportion of AI/AN members in the region (3.7%) is over double the proportion within WA State (1.5%) making it one of the more concentrated areas for the AI/AN population in the State.

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<sup>1</sup> WA State Healthcare Authority – Single Bed Certification Quarterly Update October 2018. Rates per 100,000.

This project requests funds to undertake a three phased project. Phase 1 includes the construction of a Medication Assisted Treatment (MAT) Outpatient Clinic that will also provide primary care, dental services, and wraparound services. Phase 2 is the construction of a 16 bed Evaluation & Treatment facility with co-located outpatient behavioral health services. Phase 3 is the construction of small crisis stabilization centers in both Forks and Port Townsend.

Consistent with Capital budget requirements, the request is for capital funds to:

- Acquire land
- Undertake architectural planning and design;
- Construct new buildings;
- Perform utility, landscaping, and infrastructure work;
- Acquire and install the equipment necessary for operations; and
- Fund the administrative costs directly related to the capital project.

Specifically, on a to-be-acquired 20 acre parcel, located in Sequim, the Consortium proposes to construct a 34,000 square foot Medication Assisted Treatment (MAT) Outpatient Clinic that will also provide primary care, dental services, and wraparound services. This Clinic will be capable of supporting more than 300 adults (age 18+) annually and operate 6 days per week. The average length of treatment is expected to be about one year.

In Phase 2, a licensed Residential Treatment Facility (RTF) providing Evaluation and Treatment (E&T) and involuntary and voluntary admissions and an outpatient behavioral health clinic will be built and operated. The RTF is expected to serve more than 350 individuals annually. The expected inpatient length of stay is anticipated to be in the 10-14 day range.

In addition to the Sequim-based services, two small crisis stabilization programs are proposed for Port Townsend and Forks. These programs are expected to be voluntary-only and provide triage and stabilization and/or transfer to the E&T. A brief description of each component can be found in Table 1.

**Table 1. Project Components**

<b>Project Components</b>	<b>Description</b>
<b>1. MAT Clinic and Primary Care with Dental &amp; Wraparound Services in Sequim</b>	The MAT clinic will follow a daily dose model of care and will offer primary care and wraparound services, including group counseling, child care, transportation, and general support. It will also include open spaces supporting daily living activities.
<b>2. E&amp;T Center and Outpatient Behavioral Health Clinic in Sequim</b>	The E&T facility will be 16 beds. The outpatient behavioral health clinic will include intensive outpatient and general outpatient counseling.
<b>3. Crisis Stabilization Centers in Port Townsend and Forks &amp; Additional Campus Development</b>	The crisis stabilization centers will support patients remaining locally. The Consortium is still exploring best models, but envisions that the programs will be social worker-staffed and connect individuals with support services.

2. Lead Applicant(s):

The lead applicant is the Jamestown S’Klallam Tribe.

**Address:** 808 North 5<sup>th</sup> Avenue Sequim, WA 98362

**Contact Person Name:** Brent Simcosky

**Title:** Health Director

**Phone Number:** 360-582-4870

**E-mail:** bsimcosky@jamestowntribe.org

Each Consortium member is based in, and serves, Clallam and/or Jefferson County. Members include:

- **The Jamestown S’Klallam Tribe:** The Tribe received federal recognition in February 1981. Since that time, it has been active in economic and social and health service development. The Tribe is widely recognized as progressive and wholeheartedly rooted in the 21<sup>st</sup> century, but it retains a deep connection to traditional resources, history and culture, which inform the present and serve as the foundation of success. The Tribe offers many health programs to its members including primary care, dental care and community health and wellness programs. In addition, the Tribe also subsidizes health insurance, co-pays, co-insurance, deductibles and other medically necessary services for its Tribal citizens living in Clallam and Jefferson Counties. The Tribe includes approximately 570 enrolled members. Jamestown owns and operates the Jamestown Family Health Clinic in Clallam County serving 17,000 patients (of which over 95% are non-Native American) with approximately 50,000 patient visits a year. Jamestown also operates the Jamestown Dental Clinic and serves the largest population of Medicaid dental patients in both Clallam and Jefferson Counties.
- **Clallam County Public Hospital District No. 2, dba Olympic Medical Center (Olympic), Port Angeles.** Olympic has been in operation since 1951. It is federally-designated as a Sole Community Hospital based on rurality, size, or distance from other hospitals and is also a federally-designated Rural Referral Center based upon case-mix and discharge criteria. Olympic is a 67-bed, Level 3 trauma provider and provides care to more than 70,000 residents in Clallam County with locations in Port Angeles and Sequim. Along with inpatient, surgical, and 24/7 emergency services, Olympic’s outpatient services include; cardiac, imaging, physical therapy and rehabilitation, laboratory, nutrition and diabetes, surgical services, home health, primary care, a walk-in clinic, a sleep center, specialty physician services and a comprehensive regional cancer center. Olympic also directly supports Peninsula Behavioral Health, a local organization that provides a range of services to residents of Clallam and Jefferson counties via a multi-disciplinary staff of mental health and chemical dependency licensed psychiatric professionals. On any given day, Olympic serves more than 1,200 patients.
- **Jefferson County Public Hospital District No. 2, dba Jefferson Healthcare (Jefferson), Port Townsend.** Jefferson has been operated by the District since 1975. Jefferson is the only hospital and clinic provider serving the entirety of Jefferson County, and it is also the largest employer in the County. Jefferson received federal designation as a Critical Access Hospital based on its distance from the next closest hospital. Jefferson is a fully integrated health system that offers 24/7 emergency services, laboratory, acute and intensive units, a family birth center, the latest in digital imaging, and a comprehensive array of respiratory, physical,

speech and occupational rehabilitation therapies. Primary and specialty clinics are located near the hospital in Port Townsend and in the surrounding communities of Port Ludlow and Quilcene. Jefferson has experienced significant growth over the past three years – a more than 20% increase in total patients seen per day driven, in large part, to a 50% increase in outpatient visits – and now serves over 110 patients on any given day. Jefferson has developed a close relationship with the County’s mental health agency, Discovery Behavioral Health, such that, today they share some clinical staff and work closely to coordinate care.

In addition to the three founding members, the following community organizations and entities support the proposed Behavioral Health Campus:

- Clallam County Public Hospital District  
No. 1, Forks Community Hospital
  - Olympic Community of Health
  - Jefferson County Public Health
  -
- Jefferson County Sheriff Department
- Discovery Behavioral health
- Peninsula Behavioral Health
- Safe Harbor Recovery Center
- Clallam County Department of Health and Human Services
- Clallam County Law Enforcement and Corrections
  - Hoh Tribe
  - Lower Elwha Klallam Tribe
  - Makah Tribe
  - Quileute Tribe
  - City of Port Angeles
  - City of Port Townsend
  - City of Forks
  - City of Sequim

The Consortium’s mission and vision are:

**Vision**

A healthier Olympic Peninsula realized through sustained vigorous behavioral health and substance use prevention programming, a trained workforce and early, accessible, available and culturally appropriate treatment.

**Mission**

Reducing psychiatric crises and substance use and harm, including suicide and overdose and death rates by mitigating barriers to treatment.

### 3. Magnitude and Extent of Needs

#### A. Substance Use and Harm

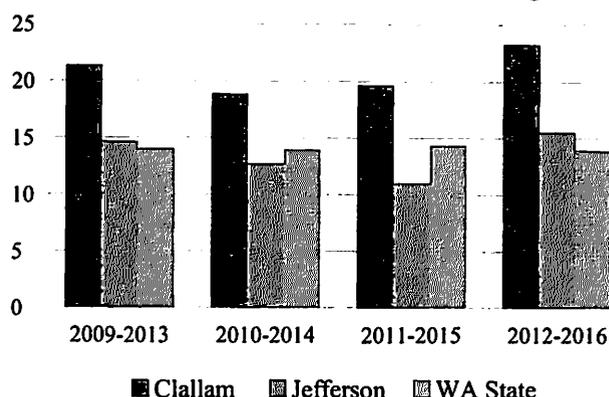
As seen in Figure 1, fatal overdose rates in both Jefferson and Clallam County were higher than State levels during the 2012-2016 period<sup>2</sup>.

Specifically, in Clallam County, where nearly 75% of all residents of the two county Peninsula region reside, Clallam County had the 2<sup>nd</sup> highest drug overdose death rate in the State and opioid overdose deaths are now the leading cause of accidental deaths in the County<sup>3</sup>.

Among ethnicities, American Indian and Alaska

Natives (AIAN) have the highest drug overdose death rates during the same period and typically have more than 3 times the risk for an overdose than non-Hispanic whites<sup>4</sup>.

Figure 1. Fatal Overdoses - All Drugs



The rate of opioid deaths in the two county Peninsula area is due in large part to the overuse of opioids to treat chronic pain. In 2017, opioid prescribing rates in Clallam County (101.8 per 100 persons) were 78% higher than State (57.2 per 100 persons) while Jefferson County (78.6 per 100 persons) was 37% higher than the State<sup>5</sup>.

#### B. Mental Health

Mental health is a serious public health problem in WA State – on average, three WA residents die by suicide every day or a rate of 15 per 100,000 residents. Both counties in the region have suicide rates higher than WA, with Clallam being ranked 3<sup>rd</sup> overall at a suicide rate of approximately 24 per 100,000 and Jefferson being ranked 17<sup>th</sup> at approximately 16 per 100,000<sup>6</sup>. In 2016, 12% of Washington residents self-reported experiencing poor mental health for 14 or more days during the month – with both counties in the region having similar rates. Most notably, AI/ANs had a higher prevalence of self-reported poor mental health among all ethnicities as did those with lower incomes and lower levels of educational attainment.

Access to local mental health treatment, both inpatient and outpatient has been identified as a top community priority by both Jefferson and Clallam County community health assessments<sup>7</sup>. On the inpatient side, the Department of Health uses an inpatient bed to population ratio of 27.3 per 100,000 from the National Report Card on the State of Emergency Medicine report. Applying that ratio to the region shows a need for nearly 30 inpatient psychiatric beds, of which the two County region currently has none<sup>8</sup>. Additionally, due to a lack of available E&T bed capacity, residents needing mental health treatment under the Involuntary Treatment Act within the region

<sup>2</sup> WA State Department of Health, Opioid Prescriptions and Drug Overdoses County Data, 2018

<sup>3</sup> WA State Department of Health, Death Data 2017

<sup>4</sup> WA State Department of Health, WA State Health Assessment, 2018

<sup>5</sup> Centers for Disease Control 2017

<sup>6</sup> WA State Department of Health, WA State Health Assessment, 2018

<sup>7</sup> Jefferson County Public Health, 2016 Community Health Improvement Plan & The Health of Clallam County 2017 Community Health Assessment

<sup>8</sup> National Report Card on the State of Emergency Medicine, Washington State Department of Health

must do so via a Single Bed Certification (SBC). An SBC allows a person to be detained, temporarily, to receive involuntary mental health treatment services from a licensed facility that is not currently licensed as an E&T. As mentioned previously, residents within the region are 2 times more likely than other Washingtonians to utilize SBC for treatment.

Compounding the lack of services, travel times throughout the Peninsula are challenging. U.S. Highway 101 provides the only main road around the Olympic National Park. Travel times from Forks to Bremerton (where the nearest E&T facility is) eclipse 2.5 hours under typical travel conditions. Any inclement weather further reduces travel times which are excessive even under typical conditions and reduce residents' access to care. In July of 2017, the National Park Service and Federal Highway Administration began a project to rehabilitate 12 miles of Highway 101 around Lake Crescent which is estimated to take approximately three years to complete and has increased travel delays.

#### 4. Operational Model

The design of the proposed campus follows this best practice and the State Opioid Response plan by creating a local community setting where complex co-occurring behavioral and psychosocial issues can be managed on a day-to-day basis during treatment. The proposed campus will follow person-centered, evidence-based recovery services through a combination of individual and group recovery/counseling services in addition the primary care and other wraparound services.

**A. MAT Clinic and Co-located Primary Care, Dental Services and Wraparound Services**  
Programs involving opioid treatment offer resources and expertise often not available in a typical office setting and are usually open throughout the week (6 to 7 days) to provide medication, counseling, and other wraparound services to patients<sup>9</sup>. There will be a primary care provider based in the clinic as well as wraparound service providers for housing, group counseling, child care, transportation, and general support.

**B. Evaluation & Treatment (E&T) and Outpatient Behavioral Health Clinic**  
E&T facilities are licensed solely for mental health treatment and cannot provide acute medical care. They are limited to 16 beds, per federal regulations, and may admit involuntary patients on a 72-hour hold or court-ordered 14-day commitment. Patients may also be admitted voluntarily. Outpatient counseling provides patients a support network of non-using peers and sponsors in addition to a safe, secure environment that offers the freedom to return home at the end of a program session thus offering an ability to maintain regular commitments (family, work etc.)<sup>10</sup>.

**C. Community Crisis Stabilization Centers**  
Crisis Stabilization Centers (also known as short-term crisis residential stabilization services, community-based behavioral health stabilization, crisis stabilization, and crisis stabilization facilities) are home-like environments that address behavioral health crisis in a community-based behavioral health or hospital setting<sup>11</sup>. They are bedded units available on a 24-hour basis and are

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<sup>9</sup> American Association for the Treatment of Opioid Dependence, Inc.: *"Integrated Service Delivery Models for Opioid Treatment Programs in an Era of Increasing Opioid Addiction, Health Reform, and Parity"* 2016

<sup>10</sup> Gifford, S. (2018). *"Differences Between Outpatient and Inpatient Treatment Programs."*

<sup>11</sup> Journal of Mental Health and Clinical Psychology: *"Behavioral Health Crisis Stabilization Centers: A New Normal"* 2018

staffed by licensed and unlicensed peer support as well as clinical and non-clinical professionals to address the client's immediate safety needs, develop resilience and create a plan to address the cyclical nature of behavioral health challenges and future behavioral health crisis. Services may consist of assessment, diagnosis, abbreviated treatment planning, observation, case management, individual and group counseling, skills training, prescribing and monitoring of psychotropic medication, referral, and linkage.

**Dissemination**

The Consortium will include robust data collection and analytics and will report outcomes. It will actively share data with the goal of other rural regions being able to replicate best practices and disseminate lessons learned. The Northwest Tribal Opiate Symposium held annually by the Muckleshoot Tribe in addition to the annual Olympic Community of Health Regional Opioid Summit are avenues in which the Consortium can collaborate across the region.

5. Capital Needs

The proposed capital ask will significantly increase community-based treatment including treatment and recovery. Table 2 outlines the preliminary capital budget for Phases 1 and 2 of the proposed campus.

**Table 2. Preliminary Budget**

Budget Item	Area SF	Cost/SF	Phase 1: MAT Facility & Campus Infrastructure	Area SF	Phase 2: 16 Bed Behavioral Health Facility	Project Grand Total
Site Development	40,000	\$10	\$400,000	30,000	\$300,000	\$700,000
MAT Facility	15,350	\$335	\$5,142,250			\$5,142,250
16 Bed Behavioral Health	17,515	\$350			\$6,130,250	\$6,130,250
Crisis Stabilization	TBD	TBD	TBD	TBD	TBD	TBD
Taxes WSST		8.80%	\$452,518.00	8.80%	\$539,462	\$991,980
Other Project Costs:						\$0
Fees: includes A&E and other consultants: arch, Interiors, Struct, civil), landscape, security, MEP, food service, acoustical, envelope, geotech, survey, attorney's		20%	\$1,028,450	18%	\$1,103,445	\$2,131,895
Permits		From City info.	\$24,000		\$30,000	\$54,000
Furniture/Art		10%	\$514,225	14%	\$858,235	\$1,372,460
Security		2%	\$102,845	4%	\$245,210	\$348,055
Impact Fees, Connection Fees,		4%	\$205,690	2%	\$122,605	\$328,295
Fixed/Moveable Equipment		5%	\$257,113	5%	\$306,513	\$563,626
<b>Subtotal</b>			<b>\$8,127,091</b>		<b>\$9,635,720</b>	<b>\$17,762,811</b>
Less Land – Sequim Parcel			\$1,500,000			\$1,500,000
Less Other Grants/Funds					\$1,500,000	\$1,500,000
<b>Project Phase Total</b>			<b>\$6,627,091</b>		<b>\$8,135,720</b>	<b>\$14,762,811</b>

# **Exhibit B**

<b>AmtProvided</b>	<b>Budget Title</b>	<b>IpPrjtName</b>	<b>IpPrjAddress</b>	<b>IpDist</b>	<b>IpCity</b>
\$ 7,250	Jamestown S'Klallam Tribe	Jamestown S'Klallam Tribe Healing Campus	526 and 521 S. 9th St.		Sequim

<b>IpCounty</b>	<b>IpLat</b>	<b>IpLong</b>	<b>IpContactName</b>	<b>IpContactTitle</b>	<b>IpOrganization</b>	<b>IpWebsite</b>
Clallam			Brent Simcosky	Director of Health Services	Jamestown S'Klallam Tribe	<a href="https://jamestowntribe.org/">https://jamestowntribe.org/</a>

<b>IpPhone</b>	<b>IpEmail</b>	<b>IpMailAddress</b>	<b>IpNonProfit</b>	<b>IP501c3</b>	<b>IpLocGovt</b>
360-582-4870	bsimcosky@jamestowntribe.org	808 N 5th St, Sequim, WA 98382	Tribal Government	Yes	Yes

<b>IpStart</b>	<b>IpComplete</b>	<b>IpLand</b>	<b>IpDemo</b>	<b>IpDesign</b>	<b>IpConst</b>	<b>IpReno</b>	<b>IpOther</b>
May/2019	May/2021	\$ -	\$ 350,000	\$ 700,000	\$ 5,100,000	\$ -	\$ 1,050,000

**IpOtherDesc**

•Sales Tax

\$435,000•Permits and Fees

\$75,000•Studies (Soils, Survey, Traffic, etc.)

\$

<b>LP Total</b>	<b>lpJointPrj</b>	<b>lpJointAgree</b>	<b>lpPartners</b>	<b>lpSite</b>	<b>lpUnderstand</b>	<b>lpFundCampaign</b>	<b>lpMatchingFunds</b>	<b>LP Fee</b>
\$ 7,250,000	No			Yes	Yes			50000

**ProjectInfo**

The Jamestown Behavioral Health Healing Campus (may not be the official name when completed) will undertake a three phased project. Phase 1 includes the construction of a Medication Assisted Treatment (MAT) Outpatient Clinic that will also provide primary care, dental services, and wraparound services. Phase 2 is the construction of a 16 bed Evaluation & Treatment facility with co-located outpatient behavioral health services. Phase 3 is the construction of small crisis stabilization centers in both Forks and Port Townsend.

The Phase I Medication Assisted Treatment (MAT) facility for Opioid disorders will be completed with this portion of the funding. A 15,000 square foot (approximation) outpatient facility will be designed and constructed that will provide daily dosing for up to 300 patients and provide the wrap-around services of primary care, dental, counseling, child care and transportation.

Phase I will include infrastructure work and site planning for all phases of the project.

Currently the Jamestown S'Klallam Tribe has purchased approximately 22 acres of land in Sequim, Washington that is zoned for health and hospital services. In addition, architects and a project manager have been selected and have begun preliminary meetings for the project, including visits to the Swinomish MAT facility in Anacortes. Final completion of Phase I is targeted for the second Quarter of 2021.

Phase II (which will need supplemental funding) will include the construction of a 16-bed inpatient Residential Treatment Facility (RTF) that will provide Evaluation & Treatment (E & T) that will serve up to 350 individuals annually. If funding is secured in the supplemental budget, Phase II work will begin in the summer of 2020. Collaborative partners in the Phase II project will also be seeking additional funding from other sources including foundations and federal grants. Completion of Phase II is targeted for first quarter of 2022.

Phase III the construction of small crisis stabilization centers in both Forks and Port Townsend does not currently having a funding source or targeted completion date but would be in 2022 or 2023.

Phase II (which will need supplemental funding) will include the construction of a 16-bed inpatient Residential Treatment Facility (RTF) that will provide Evaluation & Treatment (E & T) that will serve up to 350 individuals annually. If funding is secured in the supplemental budget, Phase II work will begin in the summer of 2020. Collaborative partners in the Phase II project will also be seeking additional funding from other sources including foundations and federal grants. Completion of Phase II is targeted for first quarter of 2022.

# **Exhibit C**

# **SEPA ENVIRONMENTAL CHECKLIST**

## ***Purpose of checklist:***

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

## ***Instructions for applicants:***

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

## ***Instructions for Lead Agencies:***

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

## ***Use of checklist for nonproject proposals:***

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

## ***A. Background*** [HELP]

1. Name of proposed project, if applicable:  
Jamestown S'Klallam Tribe Outpatient Clinic
2. Name of applicant:  
Jamestown S'Klallam Tribe Outpatient Clinic
3. Address and phone number of applicant and contact person:

Suzanne Pontecorvo  
Rice Fergus Miller  
275 Fifth Street, Suite 100, Bremerton WA 98337  
360-377-8773

**4. Date checklist prepared:**

1/10/2020

**5. Agency requesting checklist:**

City of Sequim

**6. Proposed timing or schedule (including phasing, if applicable):**

June 2020 to December 2021

**7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**

This project is a standalone development, although in the future facility expansion or additional services may be added to the residual site, if the needs arise. Currently, there are no plans to expand or seek future facilities.

**8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.**

Geotechnical Report

**9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.**

None known

**10. List any government approvals or permits that will be needed for your proposal, if known.**

City of Sequim Design Review, City of Sequim Building Permits, City of Sequim Public Works Permits

**11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)**

This project proposes to develop the northwest 3.3 acres of the 18.19-acre subject parcel. The project includes the construction of a 16,720 SF medical clinic that will be made up of medication assisted treatment program which offers FDA approved dosing, primary care services, consulting services, dental health services and childcare services while clients are seen.

**12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.**

The site consists of one parcel covering an area of approximately 18.19 acres. The site is located between South 7<sup>th</sup> Avenue and South 9<sup>th</sup> Avenue, immediately east of the proposed South 9<sup>th</sup> Avenue extension in Sequim, Washington. The property is currently cleared and undeveloped. The property is mainly vegetated with grasses and there is a row of trees that runs through the middle of the property, which border an existing open irrigation ditch. The

ditch is regulated by the Sequim Prairie Tri-Irrigation District. There is a small, abandoned outbuilding in the central northern portion of the property, about 4 feet x 4 feet in size. The site is bordered by scattered single family residences to the north, a residential development to the east, State Highway 101 to the south, and the proposed South 9<sup>th</sup> Avenue extension to the west with scattered single-family residences beyond.

## **B. Environmental Elements** [\[HELP\]](#)

### **1. Earth** [\[help\]](#)

#### **a. General description of the site:**

(circle one)  Flat,  rolling,  hilly,  steep slopes,  mountainous, other \_\_\_\_\_

#### **b. What is the steepest slope on the site (approximate percent slope)?**

The steepest slope is approximately 5%.

#### **c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.**

Per the Geotechnical Report, the site is made up of Carlsborg gravelly sandy loam.

Carlsborg gravelly sandy loam is classified by NRCS as Hydrologic Group A with low potential for erosion in a disturbed state.

#### **d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.**

No unstable soils are known to exist on the site.

#### **e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.**

The project area is approximately 3.3 acres with a cut of approximately 3,000 cyd and fill of approximately 11,500 cyd, for a NET FILL of 8,500 cyd. The purpose of the fill is generally to raise the grade at the building location for positive drainage away from the structure and form berms to screen the building from West Hammond Street (both visual and noise dampening). The source of the fill is unknown at this time but will likely be locally sourced and made up of clean fill dirt and topsoil.

#### **f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.**

Erosion could occur as a result of construction. To mitigate the impacts of erosion, erosion and sediment control will be implemented during construction.

**g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?**

Approximately 14.63% of the site will be covered with impervious surfaces after project construction.

**h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:**

In order to reduce and control erosion, the soil, foundation, and utility work requiring excavation will be phased to take place during the dry season (generally May through September), all site work will be completed and stabilized as quickly as possible, additional perimeter erosion and sediment control features may be used to reduce the possibility of sediment entering the surface water, and any runoff generated by dewatering discharge will be treated through appropriate filtration methods.

**2. Air [\[help\]](#)**

**a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.**

Air emissions are limited to minimal dust and automobile emissions from equipment during construction. Excessive emissions are not anticipated during the operation and maintenance of the project in the long term.

**b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.**

None known.

**c. Proposed measures to reduce or control emissions or other impacts to air, if any:**

The site will be stabilized during construction with watering exposed soils, as needed, in accordance with the SWPPP. Solid waste from the site will be removed and/or recycled as needed through the project.

**3. Water [\[help\]](#)**

**a. Surface Water: [\[help\]](#)**

**1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.**

There is a small irrigation ditch on the site. This ditch eventually flows into the Dungeness River after meandering through the City of Sequim.

**2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.**

The project will require work adjacent to and within the irrigation ditch. The irrigation ditch will be hard-piped and buried within the proposed easement, which will bisect the site.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

Not applicable

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

None anticipated.

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

The proposal does not lie within a 100-year floodplain.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

The proposal does not involve any discharges of waste materials to surface waters.

b. Ground Water: [\[help\]](#)

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

MP rotator type irrigation will be used. Irrigation quantities will be approximately 420,000 gallons from April-October, assuming medium water use plants.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

None

c. Water runoff (including stormwater):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Bioswales, filter strips, and onsite infiltration will be used to collect and dispose of runoff. Runoff will be treated on site and will not flow offsite. The downstream irrigation ditch will only be used for runoff in the event of an emergency overflow, in which case the water will eventually flow into the Dungeness River.

2) Could waste materials enter ground or surface waters? If so, generally describe.

None.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

There is no anticipated impact on drainage patterns in the vicinity of the site. Stormwater will be treated onsite, and emergency overflow will flow into the existing irrigation ditch, which

eventually flows into the Dungeness River.

**d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:**

Proposed measures to reduce surface, ground, and runoff water, and drainage pattern impacts are the use of bioswales and filter strips.

**4. Plants** [\[help\]](#)

**a. Check the types of vegetation found on the site:**

- deciduous tree:** alder, maple, aspen, other (approximately 40)
- evergreen tree:** fir, cedar, pine, other (less than 10)
- shrubs**
- grass** (predominant)
- pasture**
- crop or grain**
- Orchards, vineyards or other permanent crops.**
- wet soil plants:** cattail, buttercup, bullrush, skunk cabbage, other
- water plants:** water lily, eelgrass, milfoil, other
- other types of vegetation**

**b. What kind and amount of vegetation will be removed or altered?**

Vegetation to be removed is primarily meadow grass that has been managed as such long-term. It is likely a mix of native and non-native species. Trees will need to be removed for the construction of West Hammond Street and the relocation of the irrigation canal from the ditch to a pipe. The single Garry Oak and a few Douglas Firs will be retained along the canal but most of the Alders (most of which are in poor condition or multi-trunk suckers off of stumps) will be removed along the Himalayan blackberry understory. Approximately 5.3 acres of existing meadow will be disturbed as the site is developed.

**c. List threatened and endangered species known to be on or near the site.**

None known

**d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:**

Planting will include the use of both native species and regionally adapted species of trees, shrubs, groundcovers, perennials and grasses. A small amount of turf lawn (less than 0.2 acres) is proposed. Native species of trees and larger shrubs will enhance the a few trees that will be retained along the canal to provide screening of the neighborhood to the east. Landscape buffers on the north and west sides of the development, between the building or parking and the adjacent roads, will be a mix of coniferous and deciduous trees and large shrubs that will be both native and regionally adapted. Parking lot trees will be regionally adapted deciduous trees and the shrubs and ground covers will be a mix of native species

and regionally adapted species. The large open space to the south of the new building will consist of low shrubs, perennials and grasses (both native and ornamental) to preserve existing views to the Olympic Mountains to the south. Several acres of the existing meadow will be maintained as such. Street trees will be regionally adapted deciduous trees that are approved by City code as appropriate for streetscape conditions. Primarily native species of grasses and shrubs are proposed for rain gardens within the parking area that will be treating stormwater.

**e. List all noxious weeds and invasive species known to be on or near the site.**

Himalayan blackberry is growing along the existing canal running south to north through the site. This is proposed to be removed as part of this project.

**5. *Animals* [help]**

**a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.**

Examples include:

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other \_\_\_\_\_

Per the DOE, Northern Spotted Owl, Winter Steelhead, Coho, and Pink Salmon Odd Year inhabit the site. However, the irrigation ditch is used for irrigation purposes and does not have fish.

**b. List any threatened and endangered species known to be on or near the site.**

Northern Spotted Owl, Coho

**c. Is the site part of a migration route? If so, explain.**

The site is part of the migration route for the winter steelhead, coho, and pink salmon odd year.

**d. Proposed measures to preserve or enhance wildlife, if any:**

None, however, this project will only be developing a small portion of the land. The majority of the land will remain in its natural prairie state, undisturbed.

**e. List any invasive animal species known to be on or near the site.**

None known.

**6. *Energy and Natural Resources* [help]**

**a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.**

A propane powered backup generator will be used. It will be powered by an underground propane unit.

b. Would your project affect the potential use of solar energy by adjacent properties?

If so, generally describe.

No, the project does not limit solar use by adjacent properties.

c. What kinds of energy conservation features are included in the plans of this proposal?

List other proposed measures to reduce or control energy impacts, if any:

Energy efficient LED lighting will have daylight harvesting, occupancy/vacancy sensors, and timed controls to reduce energy consumption. Controlled receptacles will be installed in offices, work rooms, and break rooms to turn off devices when there is no occupant in room.

## **7. Environmental Health** [\[help\]](#)

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

1) Describe any known or possible contamination at the site from present or past uses.

None known.

2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

None known

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

There will be a medical storage room sized at approximately 23 square feet containing medical gas tanks. For dental use, there will be three Nitro Size J tanks and four Oxygen Size J tanks. Two of each tank type will be hooked up, and the rest will serve as backups. For medical use, it is anticipated that there will be one to two mobile oxygen 10 liter bottles and one small Nitro bottle less than ten liters.

4) Describe special emergency services that might be required.

None.

5) Proposed measures to reduce or control environmental health hazards, if any:

None known.

### **b. Noise**

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

No adverse noise is anticipated as a result of this project.

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

No adverse noise is anticipated in the long term. Noise common for construction can be anticipated in the short term with hours of construction Sequim requirements as determined during the preconstruction meeting.

**3) Proposed measures to reduce or control noise impacts, if any:**

During construction, equipment use will be limited to approved hours. No adverse long-term noise is anticipated.

**8. Land and Shoreline Use** [\[help\]](#)

**a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.**

The site is currently undeveloped. Adjacent properties consist of commercial properties and residential homes.

**b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?**

Past buildings on this property consist of a small single-family home (destroyed by fire) and a barn (demolished). Basic on historic aerial photos and records available, no evidence of working farmland has been found since (at least) 1994. Prior to 1994, the use of the land is unknown. There is no evidence that this parcel was used as working forest land. It is the applicants understanding that this property will have no impact to farmland or forest land considerations.

**1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:**

Not anticipated.

**c. Describe any structures on the site.**

There is a small outbuilding on the site.

**d. Will any structures be demolished? If so, what?**

Yes, the small outbuilding will be demolished.

**e. What is the current zoning classification of the site?**

The site is zoned as an Economic Opportunity Area.

**f. What is the current comprehensive plan designation of the site?**

Economic Opportunity Area

**g. If applicable, what is the current shoreline master program designation of the site?**

N/A

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

The site is classified as part of the Dungeness Water Rule Area.

i. Approximately how many people would reside or work in the completed project?

It is anticipated that the clinic will be operating at a full case load in approximately two years after opening. The project will employ 40 staff members and have a 200-250 patient case load.

j. Approximately how many people would the completed project displace?

Zero

k. Proposed measures to avoid or reduce displacement impacts, if any:

N/A

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

N/A

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

Converting the open irrigation ditch to a hard-pipe will help preserve irrigation waters from infiltrating into ground and will also provide more resources for farmlands downstream.

## 9. **Housing** [\[help\]](#)

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

Not applicable.

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

Not applicable.

c. Proposed measures to reduce or control housing impacts, if any:

Not applicable.

## 10. **Aesthetics** [\[help\]](#)

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

The tallest point of the proposed building is 27'0" from Level 1 finish floor. Principal exterior buildings include horizontal cedar siding and fiber cement panel.

b. What views in the immediate vicinity would be altered or obstructed?

The building takes advantage of the southern view corridor to the Olympic Mountains. Because of the lack of development on surrounding property the proposed building will NOT obstruct any views from neighboring properties.

b. **Proposed measures to reduce or control aesthetic impacts, if any:**

A neutral exterior material pallet and the integration of traditional tribal artwork allow the building to blend into its surroundings.

**11. Light and Glare** [\[help\]](#)

a. **What type of light or glare will the proposal produce? What time of day would it mainly occur?**

Exterior lighting will use LED lamps. Parking lot lighting will be Dark Sky Compliant. Lighting will mainly turn on at night via lighting control panel with timeclock and photocell.

b. **Could light or glare from the finished project be a safety hazard or interfere with views?**

Lighting should not be a safety hazard or interfere with views.

c. **What existing off-site sources of light or glare may affect your proposal?**

Existing sources of light should not affect proposal.

d. **Proposed measures to reduce or control light and glare impacts, if any:**

Reduce light spill to adjacent properties to below 0.3fc or lower. Parking lot pole mounted fixtures will be Dark Sky compliant and have reduced height to reduce potential glare angles.

**12. Recreation** [\[help\]](#)

a. **What designated and informal recreational opportunities are in the immediate vicinity?**

N/A

b. **Would the proposed project displace any existing recreational uses? If so, describe.**

N/A

c. **Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:**

N/A

**13. Historic and cultural preservation** [\[help\]](#)

a. **Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.**

No.

b. **Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts,**

or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.  
None known.

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.  
Methods used to assess the potential impacts to cultural and historic resources on the project site include representing the Jamestown S'Klallam Tribe and working closely with the Jamestown S'Klallam Tribe to incorporate elements of cultural significance into the project.
- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.  
N/A

#### **14. Transportation** [\[help\]](#)

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.  
The site is served by South 9<sup>th</sup> Avenue. State Highway US-101 runs adjacent to the south side of the site, but there is an existing berm to separate the sight visually and dampen noise. The project also includes an extension of South 9<sup>th</sup> Avenue to the project driveway and a new section of West Hammond Street along the north side of the property. Currently, there are no plans to connect the new portion of West Hammond Street with the existing portion, east of the site. Any future connection will be at the discretion of the City of Sequim.
- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?  
The affected geographic area is currently served by public transit. The closest bus stop is located approximately 2000 feet from the site, and services the 30 and 40 bus routes.
- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?  
The project will have 84 parking spaces. No parking spaces will be eliminated.
- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).  
It is not expected that the traffic generated by this project is considered significant enough to warrant upgrades to the surround roads or intersections. The project does propose to extend South 9<sup>th</sup> Avenue to the project driveway and build a full right-of-way along the northern portion of the site to access the back-of-house services.
- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.  
No.

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

The project is expecting 369 daily trips (this includes both arrival and departure), with 20 trips occurring during the AM peak hour and 15 trips during the PM peak hour. We are also considering the noon peak hour, which is estimated to introduce 25 trips during that time period. The clinic's peak volume is anticipated to be 48 trips from 2:00-3:00pm. The analysis consists of staff, patient, and small regional shuttles of group transport arrivals/departures, as well as mass transit users.

- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

Not anticipated.

- h. Proposed measures to reduce or control transportation impacts, if any:

The project proposes the use of shuttles, owned and operated by the Jamestown S'Klallam Tribe outpatient clinic, to transport patients to and from the facility. The shuttles will produce about 24 round trips daily, serving approximately 100 patients.

## 15. Public Services [\[help\]](#)

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

The project anticipates very little need from police, fire, and EMT services, no more than any other commercial or healthcare clinic provider would anticipate. There may be a small amount of staff or patients that would utilize public mass transit to travel to the site.

- b. Proposed measures to reduce or control direct impacts on public services, if any.

There will be a primary care provider onsite as well as full-time security on-site both in the building and on the property. In addition, there will be a comprehensive security camera system and monitoring room.

## 16. Utilities [\[help\]](#)

- a. Circle utilities currently available at the site:

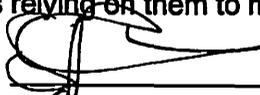
electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system,  
other Propane, irrigation water

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Proposed utilities include electricity, telephone, sanitary sewer, water, refuse service, and stormwater emergency overflow.

## C. Signature [\[HELP\]](#)

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

Name of signee SUZANNE PONTECORVO

Position and Agency/Organization PRINCIPAL/RICE FERGUS MULLER ARCHITECTS

Date Submitted: 1-10-2020

**D. Supplemental sheet for nonproject actions** [HELP]

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?  
Stormwater runoff will be treated and infiltrated on site. Emissions to air and noise are limited to temporary construction equipment, with minimal long-term vehicle emissions/noise common for this type of project. Toxic and hazardous substances are not anticipated.

Proposed measures to avoid or reduce such increases are:

Disposing of stormwater runoff 100% on site for frequent storms exceeded the WA DOE flow control requirements. The clinic will implement a small group shuttle service for patients that need transportation assistance, reducing the amount of vehicle emissions.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Very little to no effect on plants, animals, fish or marine life is expected. Much of the prairie lands will remain intact and invasive plant life will be removed from the site.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

Desirable, health trees will be preserved to the greatest extent feasible while invasive species will be cleared, helping desirable plant life to thrive. There is one Garry Oak tree identified within the project site, which will be protected and preserved.

3. How would the proposal be likely to deplete energy or natural resources?

None known.

**Proposed measures to protect or conserve energy and natural resources are:**

The existing open irrigation ditch is proposed to be hard-piped, protecting this resource from infiltrating as it passes through the subject site and retaining more irrigation resources for downstream use.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

N/A

**Proposed measures to protect such resources or to avoid or reduce impacts are:**

N/A

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The proposed project fits within the zoning code uses and the City's Master Plan.

**Proposed measures to avoid or reduce shoreline and land use impacts are:**

N/A

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposed clinic may be accessed by public mass transit, but it is anticipated that there will be a low number of users, given the closest transit stop is approximately a half-mile from the site. Public services (police, fire, EMT, etc.) are expected to be low, if any annually. The utility usage will be normal for a healthcare clinic of this size.

**Proposed measures to reduce or respond to such demand(s) are:**

A security guard will be stationed within the facility during hours of operation, reducing the need for police response. A clinic shuttle is planned to assist with patient transit.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

None known.

# **Exhibit D**



**NOTICE OF DETERMINATION OF PROCEDURE TYPE FOR  
FILE NO. CDR20-001  
JAMESTOWN S'KLALLAM TRIBE MAT CLINIC BUILDING PERMIT, SEPA  
& DESIGN REVIEW**

**DATE: 1/24/2020**

**Introduction:** According to the Sequim Municipal Code (SMC)20.01.040(B) "[t]he 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."

The act of classifying an application is a Type A-1<sup>1</sup> action and such permit classification "... shall be subject to reconsideration and appeal at the same time and in the same way as the merits of the application in question." (SMC 20.01.040(A))

**Decision:** After reviewing the Medical Assisted Treatment (MAT) clinic application and supporting materials submitted by the Jamestown S'Klallam Tribe, I find that there is no question as to the appropriate type of procedure the application will be subjected to, and therefore I find the permit, as submitted, falls under the City's A-2<sup>2</sup> permit process. The Jamestown S'Klallam Tribe is proposing to build a medical clinic in the River Road economic Opportunity Area (RREOA)<sup>3</sup> According to Table 18.33.031 Business and Employment District Uses "[a]mbulatory and outpatient care services (physicians, outpatient clinics, dentists" are uses that are permitted outright<sup>4</sup>. Therefore, the Tribes proposed Medically Assisted Treatment (MAT) clinic is a permitted use because it meets the definition of a medical clinic in the City's zoning code<sup>5</sup>. My decision is based on a review of the City's code, state and federal law and past practices.

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<sup>1</sup> A Type A-1 process is an administrative process that does not require public notice (SMC 20.01.030(B)).

<sup>2</sup> A Type A-2 process is an administrative process which requires public notice (SMC 20.01.030(B))

<sup>3</sup> The City's Economic Opportunity Areas were designated in 2015, well before the passage of President Trump's Tax and Jobs Act that created the process by which each State Governor could designate Economic Opportunity Zones. The RREOA provides no financial or tax incentive or benefit to developers or investors in the zoning district.

<sup>4</sup> 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

<sup>5</sup> "Clinic" means a building designed and used for the diagnosis and treatment of human outpatients excluding overnight care facilities (SMC 18.08.020).

**Discussion:** The Tribe's MAT clinic application consists of a building permit, design review and State Environmental Policy Act (SEPA). A building permit is a Type 1<sup>6</sup> application, SEPA review is considered a Type 2<sup>7</sup> application, therefore, the Type 2 process is used for the subject application.<sup>8</sup> The C-1, C-2 or C-3 permit types in Table 2 below do not contain a process within which the Tribes MAT clinic fits, unless one considers the application to be a "special use".<sup>9</sup> As discussed below, the subject application is not a special use or Essential Public Facility (EPF) because, first, the facility is not an "in-patient substance abuse facility"<sup>10</sup>, second, it is not "difficult to site", and third, the courts have a long history of requiring local government to treat drug treatment clinics and offices as they treat other medical clinics and offices.

**Table 2**

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	Acceptance of public improvement
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	

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. The theory is that the City's code lists "alcoholism or drug treatment centers" as uses "[t]he council may permit ... in districts from which they are now prohibited by this title".<sup>11</sup> Because the SMC does not include a definition of "drug treatment centers" one needs to look to the applicable sections of the Revised Code of

<sup>6</sup> SMC 20.010.020T. "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

<sup>7</sup> SMC 20.010.020U. "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.

<sup>8</sup> Design review is not a permit, but instead a process to provide guidance and standards for the site and structural development of commercial, industrial, mixed-use and multifamily projects ..." SMC 18.24.010

<sup>9</sup> Special uses are treated similarly to essential public facilities in SMC 18.56

<sup>10</sup> WAC 365-196-550viii lists "in-patient facilities, including substance abuse facilities as EPFs.

<sup>11</sup> SMC 18.56.030

Washington (RCW) and the Washington Administrative Code (WAC) for an understanding of what the legislation contemplated this type of essential public facility to be.

According to WAC 365-196-550(a) “[t]he term “essential public facilities” (EPF) refers to public facilities that are typically difficult to site.” WAC 365-196-550 lists the types of facilities that are considered essential public facilities in the state. The use most like the SMC referenced “drug treatment centers” is “[i]n-patient facilities, including substance abuse facilities;...”<sup>12</sup> (emphasis added). According to the submitted application the proposed MAT clinic will not provide in-patient services, but instead will provide outpatient treatment typical of other types of medical clinics and/or offices. The fact that the MAT clinic will treat recovering opioid addicts is irrelevant to whether the facility is an EPF under state or local law.

Furthermore, RCW 36.70.200(1) defines EPFs as “those facilities that are difficult to site,…” and it is difficult to conclude the siting a 16,700 square foot medical clinic is “difficult”. The City has approved a number of medical clinics over the past 30 years with no difficulty and, except for the outcry by some members of the public, there is no evidence that this drug treatment clinic is more difficult to site than any of the medical clinics previously approved by the City<sup>13</sup> or any other office or commercial building of a similar size, such as Rite Aid (17,272 sq. ft.) or Walgreens (14,470 sq. ft) or the much larger Jamestown Family Clinic<sup>14</sup> (~35,000 sq. ft.).

Finally, even if one could conclude that the proposed MAT clinic was actually an essential public facility subject to the City’s conditional use process, at best the City could only condition the approval of the project because state law prohibits local government from precluding the siting of essential public facilities<sup>15</sup> and/or imposing unreasonable conditions that make the project impracticable.<sup>16</sup>

Analysis of the city’s and state’s essential public facilities language leads me to conclude that the proposed 16,700 square foot MAT clinic does not meet the definition of an EPF and is, instead, only distinguished from any other clinic or office providing medical services by way of the nature of the patient’s medical condition and medical therapy.

To further illustrate, SMC 18.56.030(J), upon which some opponents rely states as follows, emphasis added:

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

J. Group homes, *alcoholism or drug treatment centers*, detoxification centers, work release facilities for convicts or ex-convicts, or other housing serving as an alternative to incarceration with 12 or more residents.

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<sup>12</sup> WAC 365-196-550(viii)

<sup>13</sup> File Reference number DRB16-001 (Design Review Application) & SEPA 16-006 (SEPA Checklist), Sequim Retina Properties, June 3, 2016; Notice of Environment Review, SEPA File# 09/001, Mitigated Determination of Non-Significance, Jamestown S’Klallam Tribe, 02/10/09; SEPA Checklist, Olympic Memorial Hospital, Sequim Outpatient Clinic, 1988.

<sup>14</sup> Interestingly, the Tribe has advised that this clinic has been using medically assisted treatment at this facility for at least the past 18 months and merely seeks to consolidate services.

<sup>15</sup> RCW 36.70A.200(5)

<sup>16</sup> Cascade Bicycle, 07-3-0010c, FDO at 17.

Notably absent from the opponents' analysis is the simple fact that the City, despite the language in its code, is prevented from enforcing such prohibitions because case law has made clear that jurisdictions cannot discriminate against medical facilities by virtue of what type of medication is prescribed.

For example, arguing that clinic's drug treatment services are distinguishable from diabetes or cancer clinics is a position contrary to well settled case law. As a result of multiple decisions over the past twenty-years, such as the Third Circuits decision in *New Directions*, municipalities are prohibited to treat drug treatment facility's (i.e. methadone clinics) any differently than "ordinary" medical clinics for zoning purposes.<sup>17</sup>

Other cases supporting equal treatment of medical clinics regardless of the actual "treatment" method being provided at the clinic demonstrates this fact.

*An addiction treatment center, which was licensed for detoxification, withdrawal, or maintenance of addicts, was permitted "office" under the zoning ordinance like other medical offices, in which dispensation of drugs was viewed as part of services provided, and the center could not be denied use permit on theory that its "primary purpose" was dispensation of methadone. Comprehensive Addiction Treatment Services, Inc. v. City and County of Denver, 795 P.2d 271 (Colo. Ct. App. 1989).*

*A methadone clinic is a valid use under the authorization for offices for professional persons. Since the methadone clinic has doctors, nurses, and other licensed professionals who assist in physical and mental treatment of the persons in the program, it constitutes a professional office. While excluded as a clinic due to the insufficient number of doctors, it is a permitted use without necessity of any special-use permit. A resolution by the council stating their interpretation of the zoning restriction is not binding by the court as an attempt to regulate judicial decisions. Village of Maywood v. Health, Inc., 104 Ill. App. 3d 948, 60 Ill. Dec. 713, 433 N.E.2d 951 (1st Dist. 1982).*

*A methadone maintenance treatment center for heroin addicts in a business district is proper as within the classification of professional offices. Where the treatment center operates only during restricted hours and for nonresident patients, it does not fall outside the classification by being a hospital and constitutes reasonable use within the personal services provisions. A resolution by the council against any treatment center is not effective. L & L Clinics, Inc. v. Town of Irvington, 189 N.J. Super. 332, 460 A.2d 152 (App. Div. 1983)<sup>18</sup>.*

Additionally, in Georgia, a court held that the Americans with Disabilities Act (ADA) prohibits local governments from administering licensing and zoning permit procedures in a manner that subjects persons with disabilities to discrimination based on their disability.<sup>19</sup>

In Maryland, Baltimore County's special methadone policy that required methadone programs to undergo a public hearing rather than locate as of right as a medical office was found to have a disproportional

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<sup>17</sup> *New Directions Treatment Services v. City of Reading*, 490 F.3d 293 (3<sup>rd</sup> Cir. 2007); *Bay Area Addiction Research and Treatment v. City of Antioch*, 179 F.3d 725 (9<sup>th</sup> Cir. 1999); *Comprehensive Addiction Treatment Services, Inc. v. City and County of Denver*, 795 P.2d 271 (Colo Ct. App. 1989); *Village of Maywood v. Health, Inc.*, 104 Ill. App. 3d 948, 60 Ill. Dec. 713, 433 N.E.2d 951 (1<sup>st</sup> Dist. 1982)

<sup>18</sup> WESTLAW, Ordinance Law Annotations, Narcotics: Illegal Substances, September 2018 Update

<sup>19</sup> *Pack v. Clayton County, Georgia*, 1993 WL 837007 (N.D. Ga. 1993)

burden on a protected class of individuals because no other medical facility was required to undergo such a process.<sup>20</sup>

In *THW Group LLC v. Zoning Board of Adjustment*, 86 A 3d. 330 (Pa. Commw. Ct. 2014) following the Third Circuit's holding in *New Directions*, the court acknowledged that, although the courts might sympathize with the concerns of the surrounding community, municipalities are not free to apply different zoning standards to methadone clinics than to other ordinary medical clinics.

Given the clear direction of the courts across the United States, local government cannot treat drug treatment clinics any differently than they treat other medical offices or clinics. When a government has rules or processes that treat drug treatment clinics and offices differently than other clinics, the courts are likely to find such rules and procedures to be facially discriminatory because they have no rational basis and are, therefore, *per se* violations of the ADA and, perhaps, Section 504 of the Rehabilitation Act of 1973. Additionally, because of current federal court decisions prohibiting local governments from treating drug treatment clinic differently than other medical clinics, it stands that, if the proposed MAT clinic is an EPF, then all medical clinics in the City are also EPFs. This, of course, would be an absurd interpretation of Washington State's EPF statute.

In addition to case law, the City of Sequim has historically reviewed medical clinics and offices under the A-2 administrative review process<sup>21</sup>. For the City to now divert from its historic permitting process to intentionally treat the proposed MAT clinic differently than other medical clinics could be viewed as intentional discrimination.

In *Innovation Health Systems v. City of White Plains*, in which an out-patient alcohol and drug treatment program claimed the city had engaged in intentional discrimination by denying it a building permit to locate in a business zone, the Second Circuit relied on evidence that the city had departed from both substantive and procedural norms in denying the building permit and affirmed the lower court's issuance of an injunction, concluding that Innovative Health Systems would prevail on the merits. This case cautions jurisdictions to not make land use decisions that are not based on the jurisdiction's zoning code. The City of White Plains denial of Innovative Health Systems' building permit was found by the Second Circuit to be based on "...little evidence in the record to support the decision on any ground other than the need to alleviate the intense political pressure from the surrounding community brought on by the proponent of the drug-and alcohol- addicted neighbors."<sup>22</sup> Similarly, a 1998 Washington State Supreme Court decision, *Mission Springs v. City of Spokane*, relying upon a Ninth Circuit court decision, held that denying any permit for which the applicant has met the relevant criteria places a jurisdiction and its individual councilors/commissioners at risk of liability for procedural and substantive equal protection violations.

Finally, it has been suggested that one sentence in SMC 20.01.020 should be the determining factor elevating the subject application from the A-2 process to the C-2 process. This position is based on an incorrect analysis and understanding of the land use process in general and the City's land use regulations in particular. The language cited from the definition section of SMC 20.01.030W states:

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<sup>20</sup> Smith-Berch, Inc. 68 F. Supp.2d at 621

<sup>21</sup> File Reference number DRB16-001 (Design Review Application) & SEPA 16-006 (SEPA Checklist), Sequim Retina Properties, June 3, 2016; Notice of Environment Review, SEPA File# 09/001, Mitigated Determination of Non-Significance, Jamestown S'Klallam Tribe, 02/10/09; SEPA Checklist, Olympic Memorial Hospital, Sequim Outpatient Clinic, 1988.

<sup>22</sup> *Innovative Health Systems v. City of White Plains*, 931 F. Supp. 222 at 49 (S.D.N.Y. 1996)

“[t]ype 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<sup>23</sup>(emphasis added). While there is no question that the subject project has generated “public interest”, the subject application also provides little opportunity to exercise “substantial discretion” 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, but nevertheless required, and SEPA which has its own procedural and substantive limitations and does not offer “substantial discretion. Therefore, how would this definition be applied? It appears some only want the “broad public interest” words to be considered while ignoring the “substantial discretion” language. 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. For example, there have been plenty of amendments to the comprehensive plan and/or zoning ordinance that generated little public interest, but still went before the City Council for a decision. Because these amendments did not generate public interest should they have been decided by some other decision-making body such as a hearings examiner or staff? The answer should be, of course not, but this example illustrates the fallacy of such an idea.

It is difficult to imagine the City being able render a decision that wasn't arbitrary and capricious if definitions are used to establish procedural or regulatory guidance and/or policy. How would definitions be calibrated to be consistent, predictable and fairly applied over time? One can only imagine the chaos that would occur when an application, that is being processed, suddenly faces a local groundswell against it. This type of chaos is not supported by Washington State land use law which “requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW36.70B.020(4),...”<sup>24</sup> to ensure local permitting procedures implement goal 7 of the Growth Management Act.<sup>25</sup> State law requires local governments to create land use permitting processes that achieve consistency and order in procedural requirements, something that is not possible if we relied on definitions instead of predetermined standards and procedures to guide our decision-making process as required by law.<sup>26</sup>

Although definitions are helpful to understand the meaning and intent of certain terms, definitions are not intended to serve in place of a jurisdiction's clear procedural policy. The City's procedural policy directing the “typing” of permit applications is found in SMC 20.01.040 and Table 2, SMC 20.01.030 and is consistent with WAC 365-196-845 by categorizing permits as: (i) Permits that do not require environmental review or public notice, and may be administratively approved; (ii) Permits that require environmental review, but do not require a public hearing; and (iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal. The permit “typing” process outlined in WAC 365-196-845 recognizes jurisdictions administer many different types of permits and these permits can generally be categorized into groups based on process. Each process is assumed to attract a certain level of public interest, although that is just an assumption and not a rule. The permit “typing” process required by the above referenced WAC does not suggest definitions should be used in the permit typing process.

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<sup>23</sup> SMC 20.01.030W

<sup>24</sup> WAC 365-196-845(1)

<sup>25</sup> RCW 36.70A.020(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability

<sup>26</sup> WAC 365-196-845 Local project review and development agreements sets forth the permit process requirements and contains no mention of using a jurisdiction's definitions in the permitting process.

Finally, isolating a portion of one definition from the statute and using it to base a procedural decision on is contrary to the canons of statutory interpretation which requires the reader to give meaning to every word and to consider all parts of the statute together.

**Conclusion:** Based on the above discussion, I find the Jamestown S'Klallam Tribe's MAT clinic application will follow the A-2 processing path per SMC 20.01.090, design review pursuant to SMC 18.24.033 and SEPA. This process is consistent with the City's past processing practices for other medical clinics and offices and compliant with the ADA and federal case law.

A decision on an A-2 permit application is made by the Director after the application has been reviewed by the City Engineer, Public Works Director, Police Chief and Fire District 3 for consistency with SMC 18.24.

**Appeals:** Appeal of Administrative Interpretations and Decisions. Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, to the hearing examiner per SMC 20.01.240(A). Appeals must be accompanied by the required appeal fee in the amount of \$600.00 (SMC 3.68)

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 (SM 20.01.040).

01/29/20  
Date

  
Barry Berezowsky, Community Development Director

# **Exhibit E**

**HELSELL  
FETTERMAN**

February 12, 2020

Michael A. Spence  
Attorney at Law  
EMAIL: [mspence@helsell.com](mailto:mspence@helsell.com)  
DIRECT DIAL: 206.689.2167

Barry Berezowsky, Community Development Director  
City of Sequim  
152 W. Cedar St.  
Sequim, WA 98382

**HAND DELIVERED**

**Re: Appeals of Notice of Determination of Procedure Type, dated January 24, 2020**

Dear Mr. Berezowsky:

As you know, this firm represents Save our Sequim (SOS), a large group of City residents who are deeply concerned about your decision to process the Jamestown S'Klallam Tribe's proposed drug rehabilitation facility using the A-2 process.

Enclosed please find a copy of the Notice of Appeal on behalf of SOS. Enclosed please also find a check for \$600.00 for the Hearing Examiner appeal fee, as directed in your January 24 determination. Per your instructions, this appeal is being filed under SMC 20.01.240(A) and other applicable authorities

We look forward to the full and timely cooperation of your department regarding the processing of this appeal.

I may be reached at [mspence@helsell.com](mailto:mspence@helsell.com) or at (206) 689-2167 with any questions or comments.

Very truly yours,

  
Michael A. Spence

MAS:lrh

Attachments

cc: William Armacost, Mayor, City of Sequim

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

**In re:**

**NOTICE OF DETERMINATION OF  
PROCEDURE TYPE FOR FILE NO. CDR20-  
001**

**JAMESTOWN S'KLALLAM TRIBE MAT  
CLINIC BUILDING PERMIT, SEPA AND  
DESIGN REVIEW**

**File No.: CDR 20-001**

**NOTICE OF APPEAL**

**This matter involves an appeal of the Notice of Determination of Procedure Type for City of Sequim Department of Community Development File No. CDR20-001, involving a proposed drug rehabilitation facility on real property commonly known as 526 S. 9<sup>th</sup> Ave., Sequim, WA 98382 (the "Determination"). This appeal is being filed pursuant to Sequim Municipal Code (SMC) Section 20.01.240(A), which provides in part that, "Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, to the hearing examiner". To the extent it applies, it is also being filed pursuant to SMC Section 20.01.040(A), which provides that "The act of classifying an application shall be a Type**

1 A-1 action. Classification of an application shall be subject to reconsideration and appeal at the  
2 same time and in the same way as the merits of the application in question.”  
3

4 **1. The Decision Being Appealed:**

5 Notice of Determination of Procedure Type for File No. CDR20-001, regarding the proposed  
6 Jamestown S’Klallam Tribe Mat Clinic Building Permit, SEPA and Design Review dated  
7 January 24, 2020. (the “Notice of Determination”). A copy of the Notice of Determination is  
8 attached as Exhibit “A” and incorporated herein by reference.  
9

10  
11 **2. Name and Mailing Address of Appellant and his/her interest(s) in the matter:**

12 **Save Our Sequim**  
13 c/o HELSELL FETTERMAN LLP  
14 1001 Fourth Ave., Suite 4200  
15 Seattle, WA 98154  
16 Att: Michael Spence

17 The Petitioner Save Our Sequim (“SOS”) is a 501(c)(4) corporation in good standing in the State  
18 of Washington. SOS is supported by over 2,500 residents of Sequim and the surrounding area  
19 and representatives have been heavily and intensely involved in the public process surrounding  
20 the proposed project since it was first announced on May 6, 2019. Representatives of SOS have  
21 provided significant and substantive oral and written testimony in public hearings of the Sequim  
22 City Council and have been engaged in significant advocacy outside of this setting. SOS is not  
23 categorically opposed to the siting of a drug rehabilitation facility serving the local community  
24 somewhere in the Sequim area, however SOS believes that the proposed location for a regional  
25 drug rehabilitation facility is inappropriate in this location for reasons that will be set forth in  
this appeal. All administrative remedies have been exhausted to date.

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**3. The specific reasons why the appellant believes the decision to be wrong.**

**A. The administrative A-2 permitting process is inappropriate for this application because the proposed project meets the definition of an Essential Public Facility, which can only be approved by the City Council.**

Essential Public facilities are defined in Washington’s Growth Management Act as:

“... those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.RCW.” RCW 36.70A.200(1).  
(Emphasis added)

SMC Chapter 18.56 governs the siting of essential public facilities within the City. SMC Section 18.56.040 requires an “essential public facilities and special property use permit” which is granted by the City Council before one can be sited in the City:

18.56.040 Permit required.  
Essential public facilities and special property uses shall be allowed within certain use zones after obtaining an essential public facilities and special property use permit granted by the city council. (Emphasis added)

The City’s determination that the proposed project qualifies for the administrative A-2 permitting process is inconsistent with this legislation and is therefore in error.

**B. The proposed project is not a permitted use in the RREOA District because it is more accurately described as an “alcohol or drug treatment center” and a “detoxification center”, as opposed to a facility providing “ambulatory and outpatient care services (physicians, outpatient clinics, dentists)”.**

1 Prior to filing their applications, the Applicant widely described the proposed project as the  
2 “Jamestown Healing Campus”, a facility that “addresses this (opioid) problem and serves the  
3 health care needs of the North Olympic Peninsula community”, the goal of which is to  
4 “decrease opioid overdoses and the illegal diversion of prescription drugs into the community”  
5 by “providing chemical dependency counseling, behavioral health, primary care and childcare  
6 assistance”.

8  
9 However, in response to community opposition by Appellant and others, the Applicant has  
10 attempted to rebrand the project as the “Jamestown S’Klallam Tribe Outpatient Clinic”. In the  
11 actual application, the Applicant describes the proposed project as “a 17,093 square foot  
12 outpatient clinic designed to provide a wide range of addiction treatment services to those  
13 in the local and surrounding Sequim community. The Building will also offer childcare  
14 and provide social services to patients to help facilitate their recovery.” Physically, the  
15 proposed building will feature three exam rooms, twelve counseling rooms, a pharmacy,  
16 three individual dosing rooms, four large group rooms that can open to the exterior and a  
17 conference room with administrative facilities. It will also feature three “operatories”, a  
18 bariatric exam room, a “nurse station lab” and a “child watch” area.

19  
20  
21 Appellants submit that the proposed project as described is an “alcoholism or drug treatment  
22 center”, or as a “detoxification center”. Under SMC 18.56.030(j), these uses can only be  
23 permitted by the City Council. In addition, two of the proposed uses of the facility -  
24 laboratories and child care centers - are listed as conditional uses in the RREOA District  
25

1 under SMC 18.33.031. As such, the City's determination that this project qualifies for the  
2 administrative A-2 permitting process is erroneous.

3  
4 **C. The City's conclusion that the proposed project is exclusively an 'outpatient treatment  
5 facility' is incorrect and not supported by the facts or the law.**

6 Prior to filing the applications, the Applicant widely promoted the concept that a 16-bed  
7 "inpatient evaluation and treatment psych hospital" will be included in a 'second phase' of the  
8 proposed project. This notion is consistent with the Applicant's state funding, which includes  
9 funds dedicated to this second phase of the project. The Applicant actually admits this fact in  
10 response to Question 7 in their Environmental Checklist, stating that "... In the future facility  
11 expansion or additional services may be added to the residual site, if the needs arise."  
12

13  
14 Despite this funding provision and despite this admission by the Applicant, the City believes  
15 that this project is exclusively an 'outpatient clinic'. This decision is erroneous because of the  
16 direct link between the first phase outpatient facility and the second phase inpatient facility.

17 Inpatient facilities are not a permitted use in the RREOA District under SMC 18.33.031.

18 Piecemeal review of land use decisions is impermissible where a series of interrelated steps  
19 constitutes an integrated plan. The City's conclusion that the proposed project is only an  
20 'outpatient facility' is therefore in error.  
21

22  
23 **D. The City's conclusion that the proposed project is not 'difficult to site' is incorrect and not  
24 supported by the facts or the law.**  
25

1 In its Determination, the City states that the proposed project does not qualify as an Essential  
2 Public Facility because it is not "difficult to site". In support of this proposition, the City  
3 claims that since it has approved other medical facilities without opposition or difficulty, this  
4 project is easy to site and therefore does not qualify as an Essential Public Facility. This  
5 position is erroneous because it assumes that this proposed facility is a medical clinic as  
6 opposed to an "alcoholism or drug treatment center", or a "detoxification center".  
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8  
9 Since this facility is more the latter than the former, this determination is erroneous. It is  
10 also erroneous because it completely ignores the fact that this project has been extremely  
11 controversial in the community, as evidenced by the public outcry, a 2,600 signature petition  
12 against the project, the existence of the Appellant and by the filing of this appeal.  
13

14  
15 E. The City's conclusion that the review of the proposed project does not involve 'substantial  
16 discretion' is incorrect and is not supported by the facts or the law.

17 The City also claims in its Determination that the C-2 permitting process is inappropriate  
18 because this project does not require 'substantial discretion' to approve. This position again  
19 assumes that the proposed project is a medical clinic as opposed to an "alcoholism or drug  
20 treatment center", or "detoxification center". Since alcoholism or drug treatment centers or  
21 detoxification centers require City Council approval under SMC 18.56.030(j), they are by  
22 their nature discretionary. In addition, the characterization of this project as a 'medical  
23 clinic', or an 'alcoholism or drug treatment center' or a 'detoxification center', or even as an  
24

25

1 'ambulatory or outpatient clinic', also involves substantial discretion. The City's conclusion  
2 that 'substantial discretion' is not involved is therefore erroneous.

3  
4 **F. Neither the Americans with Disabilities Act (ADA) nor the Rehabilitation Act of 1973 bind**  
5 **the City to approve the proposed project in the location contemplated by the Applicant.**

6 In its Determination, the City also claims that it is bound to approve this application under the  
7 A-2 permitting process by case law interpreting the Americans with Disabilities Act and the  
8 Rehabilitation Act of 1973. But none of that case law is applicable to the State of Washington,  
9 and none of it stands for the proposition that this project must be approved administratively  
10 under the A-2 process. This City's interpretation of the substantive law applicable to this  
11 project is also not relevant or applicable. As such, the City is not bound to approve this project  
12 administratively under this law and its Determination is erroneous in this regard.  
13

14  
15 **4. The Desired Outcome or changes to the Decision:**

16 Appellants therefore respectfully request the following relief:

- 17  
18 1. That the Examiner enter findings of fact that the proposed project is an Essential Public  
19 Facility, which requires City Council approval under the C-2 process or a comparable process.  
20  
21 2. That the Examiner enter findings of fact that the proposed project is not a permitted use in  
22 the RREOA District because it is more accurately described as an "alcohol or drug treatment  
23 center" and a "detoxification center", than as an "ambulatory and outpatient care services  
24 (physicians, outpatient clinics, dentists)".  
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- 3. That the Examiner enter finding of facts that the proposed project also includes a child care center, a laboratory and an inpatient facility, none of which are permitted uses in the RREOA District.
  
- 4. That the Examiner enter findings of fact and conclusions of law that the City is not bound to the A-2 permitting process or to the substantive administrative approval by the case law cited in the Determination.
  
- 5. That the Examiner remand the Determination back to the City with instructions to process this application under the C-2 permitting process, or under any other process that requires City Council approval.
  
- 6. Any other relief the Examiner deems to be just and equitable.

DATED this 12<sup>th</sup> day of February, 2020

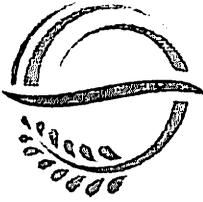
HELSELL FETTERMAN LLP



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Michael A. Spence, WSBA No. 15885  
Samuel Winninghoff, WSBA No. 46825  
David Tran, WSBA No. 50707  
Attorneys for Appellant

# **Exhibit F**



# CITY OF SEQUIM

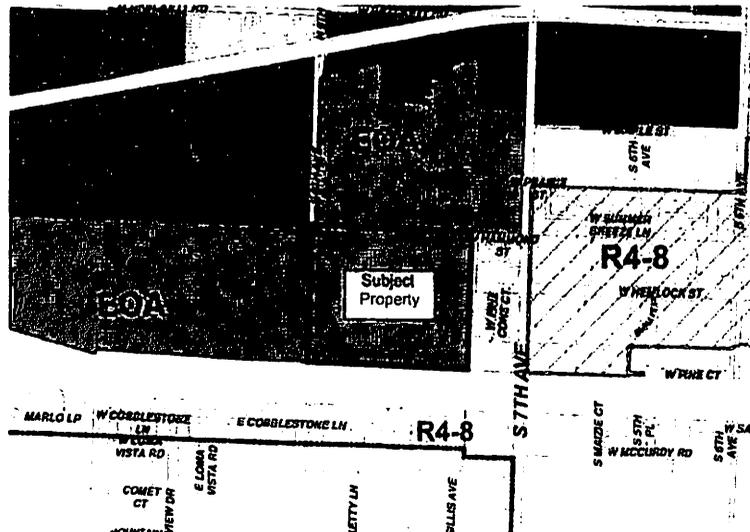
152 West Cedar Street Sequim, WA 98382  
City Hall (360) 683-4139 FAX (360) 681-3448  
Public Works (360) 683-4908 FAX (360) 681-0552

**CITY OF SEQUIM DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**STAFF REPORT AND DIRECTOR'S DECISION**  
**"Jamestown S'Klallam Tribe Outpatient Clinic" Design Review Application**  
**File No. CDR 20-001**

**Owner/Applicant:** Jamestown S'Klallam Tribe contact: Brent Simcosky  
808 N. 5<sup>th</sup> Avenue  
Sequim, WA 98382

**Project Representative:** Suzanne Pontecorvo  
275 Fifth Street, Suite 100  
Bremerton, WA 98337

**Project Description:** The Jamestown S'Klallam Tribe is proposing to build an approximately 16,806 square foot outpatient medical clinic on the northwest 3.3 acres of an 18.19-acre subject parcel located in the River Road Economic Opportunity Area (RREOA) located immediately southeast of Costco in Sequim, WA. (see Figure 1) Medical clinics are a permitted use within the RREOA. (SMC 18.33.031) The medical clinic will provide medication assisted treatment program which offers FDA approved dosing, primary care services, consulting services, dental health services and childwatch services while clients are seen. The use will be conducted within a single building and will be approximately twenty-six feet, eight inches high. The proposal includes ninety-six (96) off-street parking spaces within a parking lot landscaped to city standards.



**FIGURE 1 - SITE LOCATION/ZONING**

**Department of Community Development**

**Business Hours: 7:30AM – 4:00PM, M-F**

**(360) 683-4908**

**Website: sequimwa.gov**

**Proposed Use and process in the RREOA:** The proposed use is medical clinic that will provide a medication assisted treatment program (MAT) which offers FDA approved dosing, primary care services, consulting services, dental health services and childwatch services while patients receive medical treatment. Pursuant to the definitions provided in SMC 18.08.020, “Clinic” means a building designed and used for the diagnosis and treatment of human outpatients excluding overnight care facilities. The Use Table in SMC 18.33.031 provides that “Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)” are a *permitted* use.

A “permitted use” is defined in SMC 18.08-020 as “...*any use authorized or permitted alone or in conjunction with another use in a specified zoning district and subject to the limitations and regulations of that zoning district.*” As such, a permitted use is allowed outright without the need for any additional land use approvals such as a conditional use permit or special use permit. However, as required in SMC 18.24.031.A “[d]esign review is required for all new commercial, industrial, mixed use and residential structures with more than four dwelling units with common walls. No building permit shall be issued for any development or construction requiring design review until design approval has been granted.”

Therefore, although listed as a permitted use in the underlying RREOA zone, the building permit cannot be issued until such time as Design Review has been granted approval by the Community Development Director. The purpose of Design Review is not to evaluate the proposed use, which is otherwise permitted, but to provide guidance and standards for the site and structural development of the proposed project.

Due to triggering SEPA review, this project is subjected to a A-2 administrative permit review process (SMC 20.01.030, Table 2)<sup>1</sup>.

In accordance with SMC 20.01.030.B., a Type A-2 process is an administrative process that requires public notice. Pursuant to SMC 20.01.090 *Administrative approvals subject to notice (Type A-2) – Process overview*, the Director shall approve, approve with conditions, or deny (with or without prejudice) all Type A-2 permit applications, subject to the determination of completeness, the notice of application, the notice of decision and appeal requirements therein.

The administrative decision of the Director is final unless the applicant or any other party with standing files an appeal within 21-days from the date of the decision.

#### **1. Project History:**

On October 31, 2019, a pre-application Meeting was held in the Department of Community Development conference room as required by SMC 18.24.032.A. and SMC 20.01.110.B. Two application pre-submittal meetings were held at the request of the applicants to review application materials for completeness which were held on December 5, 2019 and January 7, 2020.

The applications for Building Permit and Design Review were submitted together on January 10, 2020 at a scheduled intake meeting and the applications were determined to be complete on January 27, 2020. Public notice was issued pursuant to SMC 20.01.140 effective February 2, 2020. The twenty-day comment period for this application ended on February 24, 2020 (The 20-day comment

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<sup>1</sup> See DCD Director’s Project Typing Memo, 1/24/2020

period pursuant to SMC 20.01.140(D) ended on a Saturday; therefore, comments were accepted until the close of business the following Monday).

A SEPA Mitigated Determination of Non-Significance (MDNS) was issued on March 25, 2020 with a fourteen-day comment period pursuant to WAC 197-11-340(2)(a) and comments were accepted until April 8, 2020. The MDNS was distributed and notice was issued on March 25, 2020 in accordance with WAC 197-11-340(2)(b) and SMC 20.01.140 and published in the Peninsula Daily News. The MDNS was transmitted to the SEPA Register on March 23, 2020. A modified SEPA MDNS was issued in conformance with WAC 197-11-340(2)(f) on May 8, 2020 following review of the comments submitted during the SEPA comment period and transmitted to agencies with jurisdiction and no further public comment period is required.

**2. Site Description:**



**FIGURE 2 - SUBJECT PROPERTY**

- a. **Location:** The project site consists of the northwest 3.3 acres of an 18.19-acre ownership of land located adjacent to the east side of the South 9th Avenue extension, situated in the Southeast ¼ of the Southwest ¼ of the Southwest ¼ of Section 19, Township 30 North, Range 3 West, W.M., Clallam County, Washington; Assessor's Parcel No. 033019-330000 and 033019-339010.
- b. **Size and Description:** The property consists of two (2) Assessor parcels covering approximately 18.19 acres and the project will encompass a 3.3. acre piece located at the northwest corner abutting S. 9th Avenue. The property is currently cleared and undeveloped and is mainly vegetated with grasses and a row of trees that run through the central portion of the property.
- c. **Access:** The property is currently accessed from the southern terminus of S. 9th Avenue approximately 1,020 feet south of the intersection of S. 9th Avenue with West Washington Street.
- d. **Comprehensive Plan/Zoning Designation:** The property is currently zoned *Economic Opportunity Area (EOA)*, which is consistent with the Comprehensive Plan's *Economic Opportunity Area (EOA)* land use designation.



- e. **Clallam County Sherriff's Department:** The Clallam County Sheriff's Department had no comments.
  - f. **Clallam County Department of Community Development:** The Clallam County Department of Community Development had no comments.
  - g. **City of Port Angeles:** The City of Port Angeles had no comments.
  - h. **Clallam Transit:** Clallam Transit had no comments.
  - i. **Washington State Department of Ecology:** The State Department of Ecology responded to the request for comment in their letter dated February 24, 2020 (*Agency Comments-Exhibit 3*).
  - j. **Washington State Department of Archaeology and Historic Preservation:** The State Department of Archaeology and Historic Preservation had no comments.
  - k. **Washington State Department of Health:** The State Department of Health had no comments.
  - l. **Washington State Department of Social and Health Services:** The State Department of Social and Health Services had no comments.
4. **Public Notice:** Public notice was issued by mail to adjacent property owners within 300 feet on January 30, 2020 and published in the Peninsula Daily News on February 2, 2020, and the notice of application sign was posted by the property owner at the site on February 2, 2020. An optional third public notice of application sign was posted on February 7, 2020 approximately 2,000 feet north of the property near the intersection of W. Washington Street and 9<sup>th</sup> Avenue. The twenty-day comment period for this application ended on February 24, 2020 (The 20-day comment period pursuant to SMC 20.01.140(D) ended on Saturday February 22, 2020; thus, comments were accepted until the close of business the following Monday, February 24, 2020). Public notice of the SEPA threshold determination of non-significance was mailed to property owners within 300' and agencies with jurisdiction on March 23, 2020, published in the Peninsula Daily News on March 25, 2020, and posted on the site on March 25, 2020.
5. **Public Comments:** A high volume of public comments were received within the twenty (20) day Notice of Application comment period. Many comments were simply an expression of approval or disapproval by the commenter. Many concerns raised through the public comments were social issues that are outside the purview of this land use matter. During the SEPA comment period, several the public comments raised concerns over land use issues such as traffic, stormwater, critical areas, aesthetics, fish and wildlife, and public safety. Staff considered all the public comments in their review of the application for Design Review and addressed the issues such that they satisfy the applicable standards and regulations of the City of Sequim Municipal Code and supporting policies (*Public Comments-Exhibit 4*).
6. **Applicable Criteria for Approval:** Design review is required for all new commercial, industrial, mixed use and residential structures with more than four dwelling units with common walls. No building permit shall be issued for any development or construction requiring design review until design approval has been granted. Review and City approval for a Design Review Permit requires consistency with the following:

1. SMC 18.24.037 Criteria for approval – Required findings.
2. SMC 18.24.031 Design approval required.
3. SMC 18.24.032 Design review application.
4. SMC 18.24.033 Design review procedure.
5. SMC 18.24.034 Administrative approval.
6. SMC 18.24.036 Design review approval expiration.
7. SMC 18.24.037 Criteria for approval – Required findings.

## ANALYSIS

### 1. SMC 18.24.037 Criteria for approval – Required findings.

**A. Minimum Criteria.** The city of Sequim department of community development shall review the site design for compliance with approved lot coverage, setbacks, height, mass and scale, parking, land use and other appropriate regulations in the Sequim Municipal Code. These minimum requirements must be met before further review takes place.

**B. General Review Criteria.**

1. The community development director or his/her designee will review the detailed architectural design with respect to materials and surface textures, colors, fenestration pattern, wall planes, roof form and pitch and expression of detailing.
2. The community development director or his/her designee will review the site design to determine how the proposed development melds into the existing environment, judging applications with respect to scale and proportion, orientation of buildings and other site features to streets and surrounding properties, and the placement and types of landscaping.

**C. Specific Review Criteria.** Specific review criteria will vary from project to project. Design standards established in this chapter shall be incorporated and used for detailed structure and site analysis.

**D. Required Findings.** The community development director or his/her designee must make the following findings before approval of any proposed development:

1. **Comprehensive Plan Compliance.** Find that the proposal complies with Sequim’s Comprehensive Plan and other adopted city policies.

**Staff comment:** As provided in the Comprehensive Plan, “*Economic Opportunity Areas*” ... are comprised of large, underdeveloped lands with good access to US 101 and other infrastructure as venues to expand and diversify the city’s economic base and increase living-wage employment opportunities [Land Use Policy LU 3.6.1 Economic Opportunity Areas]. The proposed use will employ forty staff members (*Environmental Checklist - Exhibit 7*) and occur on a large underdeveloped ownership of land situated adjacent to Highway 101 with available public infrastructure.

2. **Zoning Regulation Compliance.** Find that the proposal meets the requirements of the regulations for the appropriate zoning district.

**Staff Comment:** As described on page 2, the proposed medical clinic is a permitted use in the RREOA and is designed to comply with the zoning regulations of the district. Therefore, the proposed medical clinic is compliant with the district's zoning regulations.

**3. Design Review Compliance.** Find that the proposal, as approved or conditionally approved, satisfies the criteria and purposes of this chapter.

**Staff comment:** The proposed project complies the requirements of Chapter 18.24 SMC, Design Review as demonstrated by the following analysis.

**a. SMC 18.24.050 Facades, exterior walls and entryways.**

**Staff comment:** The facade providing primary access to the building will have a clearly defined, highly visible projecting glass entrance with a corniced portico. The building façade also has architectural details including tile work and moldings which are integrated into the building structure and design and there is no uninterrupted length of façade in excess of fifty feet. The proposal satisfies the standards for facades, exterior walls and entryways.



**ILLUSTRATION 1**

**b. SMC 18.24.060 Smaller structures in regional centers.**

**Staff comment:** The proposed project is the lone principal structure and there are no additional, separate structures which occupy less than 20,000 square feet of gross floor area; therefore, this standard does not apply to the subject proposal.

**c. SMC 18.24.070 Site planning and compatibility.**

**Staff comment:** The proposed development has been designed to be functional, visually coherent, and visually compatible with surrounding permitted uses and to provide a high-quality appearance.

The project site has one Garry Oak<sup>2</sup> that is located close to the irrigation ditch near the north boundary line. The project protects this Gary Oak with a 20-foot protection zone. In the event the Garry Oak does not survive the proponent will preplace the tree at a 3:1 ratio.

Therefore, the proposal satisfies the standards for site planning and compatibility.

**d. SMC 18.24.080 Detail features.**

**Staff comment:** The design of the proposed building employs color change, texture change, material module change, and wall plan change. Canopies are uniform and integrated into the building design (See Illustration 1 above).

Therefore, the proposal satisfies the standards for detail features.

**e. SMC 18.24.090 Roofs.**

**Staff comment:** There is no proposed rooftop HVAC equipment. Plumbing vents will be the only rooftop penetrations. Roof material will be standing-seam material and the proposed color will be dark gray. Rooflines vary in height and scale based on the various program functions of the building and to take advantage of the site conditions. Proposed rooflines do not exceed 80 feet in length and the roofline interruptions follow the shifts in the building footprint with a minimum a 5-foot transition in height from an adjacent roofline. Roof forms will be a true reflection of interior space and there are no proposed unusual or atypical roof forms.



**ILLUSTRATION 2**

Therefore, the proposal satisfies the standards for roofs.

**f. SMC 18.24.100 Materials.**

**Staff comment:** The exterior building materials consist of fiber cement panels, both thin and wide wood cladding, log columns, metal fascia, metal standing seam (roof), cedar panel soffit, wood carved art, and glulam beams. The proposed design provides generous amounts of windows that will create ground floors with a “transparent” quality that enhances the use of natural light and should reduce energy consumption. There are no proposed polished (mirrored) or highly reflective colored glass windows or doors (See Illustrations 1 and 2 above).

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<sup>2</sup> Gary Oaks are designated as historically important trees and are afforded special protections under SMC 17.24.070.B.2.

Therefore, the proposal satisfies the standards for materials.

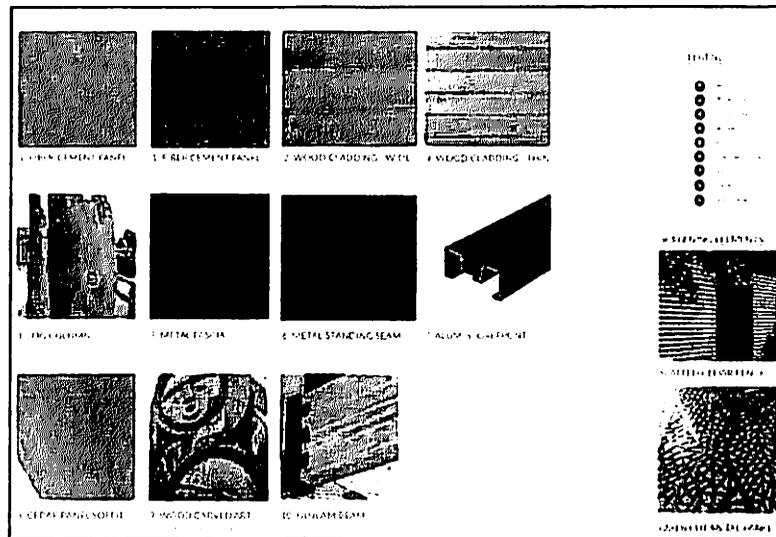
**g. SMC 18.24.110 Windows and doors.**

**Staff comment:** As provided above, there are no proposed polished or highly reflective colored glass windows or doors. Windows are well balanced and integrated into the building design in a manner that is harmonious with the other architectural features of the façade (reference Illustrations 1 and 2 above).

Therefore, the proposal satisfies the standards for windows and doors.

**h. SMC 18.24. 120 Colors.**

**Staff comment:** The project proponent has graphically submitted a proposed color palette along with the proposed materials for their project on page 4 of the plan set. The palette includes all the materials and colors proposed for the project. As shown on the plan set pages 5 and 6, there are no more than three distinct colors used on the proposed building (stained cedar, dark red, and dark gray). All colors will have low reflectivity and blend well with the surrounding environment (See Illustrations 1 and 2 above).



**ILLUSTRATION 3**

Therefore, the proposal satisfies the standards for colors.

**i. SMC 18.24.130 Landscaping and buffering.**

**Staff comment:** A landscaping plan has been submitted that successfully integrates stormwater management features and contributes to the visual quality and continuity within the project and between the proposal and surrounding land uses both existing and projected (i.e. those uses allowed in the underlying RREOA zone. Staff has reviewed the landscaping plan and finds that it adequately mitigates visual impact to surrounding properties, contains a mix of indigenous and native plants, provides a permanently installed irrigation system, and the parking lot includes the

provision of curbed and bioretention planting areas separating the parking spaces as required by city standards<sup>3</sup> (i.e., no more than 12 spaces abutting each other without a curbed or bioretention planting area dividing the spaces).

Ongoing future maintenance of landscaping will be in accordance with accepted maintenance practices and any landscape element that dies, or is otherwise removed, will be promptly replaced with the same, if not similar to, height, width and texture as originally approved.

As previously discussed, the plan design provides protection for the single Garry Oak tree on the site and with the condition to replace the tree at a 3:1 ratio in the event the tree does not survive whether related or not related to the project.

Therefore, the proposal satisfies the standards for landscaping and buffering.

**j. SMC 18.24.140 Fences.**

**Staff comment:** There are no proposed fences within or around the project site shown on the site plan for this proposal, although one of the SEPA mitigations requires the proponent to construct a fence off site acceptable to the Tribe and a neighboring property owner to mitigate visual impacts and protect a small farm to the north.

**k. SMC 18.24.150 Environmentally conscious development.**

**Staff comment:** The project includes the use of “green” materials in construction where practical and low impact development techniques are proposed for stormwater containment and treatment.

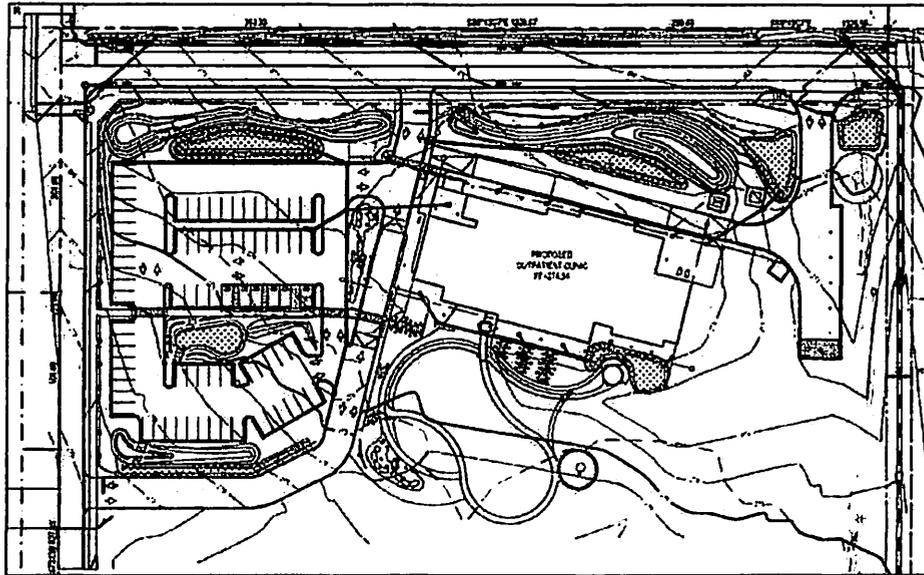
Therefore, the proposal satisfies this standard for environmentally conscious development.

**l. SMC Parking lot design and orientation.**

**Staff comment:** The design for the project’s off-street parking would minimize visual impact to streets and adjacent spaces/properties by providing landscaping and creative low impact stormwater management techniques. Parking areas are designed to have safe and efficient ingress and egress for vehicles and have been configured and designed to reduce the overall mass of paved surfaces. The off-street parking for 96 vehicles has been visually and functionally divided into smaller parking areas throughout the parking lot. Parking is setback no less than ten feet from abutting properties and rights-of-way with landscape buffers and no off-street parking is located forward of the front façade of the proposed building.

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<sup>3</sup> SMC 18.24.160.B.6.



**ILLUSTRATION 4-SITE PLAN WITH PARKING LOT LAYOUT**

Therefore, the proposal satisfies the standards for parking lot design and orientation.

**m. SMC 18.24.170 Lighting and glare.**

**Staff comment:** Staff has reviewed the photometric plan provided in the plan set submitted with the application for building permit and design review. Signage and exterior building lighting will be compatible with the architecture of the project and will not detract from the visibility of surrounding buildings. The plan includes landscape and architectural lighting which would illuminate building facades, building entrances, and courtyard spaces. Night lighting is proposed to be provided for all pedestrian walkways, curbs, ramps, and crosswalks.

Therefore, the proposal satisfies the standards for lighting and glare.

**n. SMC 18.24.180 Pedestrian flows.**

**Staff comment:** The project has been reviewed for, and will be inspected for, compliance with the city requirements for pedestrian flows, amenities, and standards. Pursuant to SMC 12.08.060 and SMC 18.24.180.B.1., walkways at least eight feet in width must be provided along all sides of the lot that abut a public street and will provide human-scale lighting. The internal pedestrian walkways are continuous and no less than eight feet in width and access the public right-of-way leading to the customer entrance of the proposed building. Walkways feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, groundcovers, and other such materials for no less than 50 percent of its length. The internal pedestrian crosswalks will be distinguished using durable, low maintenance surface materials such as pavers, bricks, stamped asphalt, or scored concrete to enhance pedestrian safety and comfort, and meet the ADA guidelines.

The project is conditioned to provide bicycle lanes, where appropriate, on ingress and egress routes, trash receptacles and bicycle racks as specified in the City of Sequim streetscape manual, and that all pedestrian amenities satisfy ADA guidelines.

Therefore, the proposal satisfies the standards for pedestrian flows.

**o. SMC 18.24.190 Outdoor storage, trash collection, recycle and loading areas.**

**Staff comment:** A trash enclosure is proposed to be located east of the proposed building, opposite of 9<sup>th</sup> Avenue, and approximately 130 feet from the W. Hammond Street right-of-way. There is no proposed outdoor storage or truck parking, and all outdoor features have been incorporated into the overall design of the building and landscaped setting so that the visual and acoustic impacts of these functions occur to the extent possible out of view from adjacent properties and public streets.

Therefore, the proposal satisfies the standards for outdoor storage, trash collection, recycle and loading areas.

**p. SMC 18.24.200 Central features and community spaces.**

**Staff comment:** The guidelines and standards of this section only apply when three or more buildings are planned in a development; therefore, the standards of this section do not apply to this proposal.

**q. SMC 18.24.230 Transportation consistency requirements.**

**Staff comment:** A traffic impact analysis (*Exhibit 1.n.*) was submitted by the applicant, reviewed by staff and peer reviewed (*Exhibit 6*). Staff found the expected traffic generation will be adequately mitigated through the assessment of Transportation Impact Fees paid for directly by the developer and collected by the City all in accordance with Sequim Municipal Code Title 22 – Impact Fees.

### **CONCLUSIONS**

1. The proposed project is to build a 16,806 square foot outpatient medical clinic on 3.3 acres of property within the underlying River Road Economic Opportunity Area (RREOA) zone. “Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)” are listed as a permitted use in the RREOA in Table 18.33.031 SMC.
2. This application for Design Review has been reviewed as a Type A-2 permit in accordance with SMC 20.01.090 (*Administrative approvals subject to notice (Type A-2) – Process overview*). A Type A-2 permit is subjected to an administrative review process that includes public notice and the decision authority is the Department of Community Development Director.
3. This application for Design Review has been reviewed for conformance and consistency with the City of Sequim’s Design Review standards and the General Review Criteria under Chapter 18.24 and has been found to comply with the intent, standards, and guidelines for non-residential buildings in the City of Sequim.
4. Public Notice was issued in accordance with the notice requirements of Chapter 20.01.140 SMC.
5. All comments received in response to the notice of application were duly considered.

6. This application for Design Review proposes development of a commercial structure greater than 4,000 square feet; therefore, this proposal exceeds the threshold established for categorical exemptions from environmental review under the State Environmental Policy Act [WAC 197-11-800(1)(b)(iv)]. A mitigated determination of non-significance (MDNS) was issued pursuant to WAC 197-11-350 and 197-11-340(2) on March 25, 2020.
7. All comments received during the SEPA comment period were duly considered, and a request for clarification was sent to the applicant for consideration based on some of the received comments. After receiving the applicant's clarifications, the City issued a revised MDNS on May 8, 2020, which was transmitted to agencies with jurisdiction.
8. The property subject to this request is not within 200 feet of the Dungeness River or its 100-year floodplains; therefore, the proposal is not within the jurisdiction of the City of Sequim Shoreline Master Program.
9. The Community Development Director or his/her designee has reviewed the architectural design with respect to materials and surface textures, colors, fenestration pattern, wall planes, roof form and pitch and expression of detailing. This review also included the site design to determine how the proposed development would blend into the existing environment with respect to scale and proportion, orientation of buildings and other site features to streets and surrounding properties, and the placement and types of landscaping. This project is found to be consistent with the standards for Design Review as set forth in SMC 18.24.
10. As conditioned, the submitted Design Review application has been reviewed for and found to be in conformance with the criteria for approval in SMC 18.24.037.

### **DECISION**

Following review of the subject Design Review permit application by the City's: Department of Community Development; Public Works Department; Engineering Department; Police Department and Fire District #3 for consistency with the City of Sequim's Comprehensive Plan, Zoning regulations, and the standards and guidelines for design review, application number CDR 20-001 is hereby granted **APPROVAL**, subject to the following Conditions of Approval & SEPA Mitigations:

#### **Conditions of Approval**

1. All construction and site development activities related to the design review will not commence until the decision becomes effective and until authorized by any subsequent required permits.
2. A site construction permit will be required prior to ground disturbing activities. Site construction drawings must demonstrate consistency with the 2014 Washington State Department of Ecology Stormwater Management Manual for Western Washington (SWMMWW) and include a Stormwater Design meeting minimum requirements 1 through 9.
3. In the event that any ground-disturbing activities or other project activities related to this development or in any future development uncover protected cultural material (e.g., bones, shell, antler, horn or stone tools), the applicant must follow the procedures outlined in the Inadvertent Archaeological and Historic Resources Discovery Plan for Sequim, Washington.

4. The proposed use will be developed in substantial conformance with the submitted site plans and elevations included with the application for Design Review permit as modified through this review process (*Exhibit I*).
5. Prior to construction activities the applicant must obtain an approved building permit from the City of Sequim and satisfy all other site construction permit requirements.
6. General Facilities Charges assessed for water and sewer based upon required water service size must be paid prior to building permit issuance. These fees are subject to change annually.
7. Transportation impact fees will be assessed, based upon a use of medical office, at the time of building permit issuance, at a rate of \$7.69 per square foot of gross floor area [*SMC 22.04.110*]. These fees will be paid prior to building permit issuance unless otherwise deferred.
8. Any proposed non-exempt signage will require a sign permit and corresponding building permit.
9. The proponent will satisfy the requirements for right-of-way frontage improvements in accordance with the City of Sequim street standards prior to final occupancy or bonded for in accordance with the bonding provisions of the Sequim Municipal Code.
10. Prior to building permit issuance, a Landscaping Plan in substantial conformance with the plans provided in the submitted plan set (*Exhibit 1.k*), must be submitted by the applicant and approved by the DCD. Prior to building permit issuance of the Certificate of Occupancy, the landscaping must be installed as approved.
11. A landscaping maintenance bond or other acceptable surety must be provided to serve as a warranty against defects in labor and material to warrant all required improvements, either installed or to be installed, against defects in labor and material for a period of 24 months after acceptance by the City. The surety will be submitted prior to final occupancy and must be 15 percent of the estimated value of the improvements, as determined by the Director. The maintenance bond or surety is in addition to any warranty or surety provided to guarantee the installation of required improvements. The City Attorney will approve the form, sufficiency and manner of execution of the maintenance bond, or other surety, prior to the issuance of final occupancy. Upon the termination of the warranty period, the Director will authorize the release of the maintenance bond by written notice to the person or entity posting the guarantee and to the surety.
12. The proponent will make every effort to ensure protection of existing Garry Oak tree during construction unless it is determined that the tree is sick, dying or dead by an ISA-certified arborist or in the way of required elements that cannot be avoided [*SMC 18.24.070.B.2.*]. In the event the Garry Oak does not survive the applicant must replace the tree at a 3:1 ratio with replacements being sited at a location most suitable for survival.
13. The landscape design plans must incorporate a mix of indigenous and native plants that are hardy and drought-tolerant and will include a minimum of 40 percent evergreen plantings (trees, shrubs, groundcovers, ornamental grasses, and evergreen herbs). Lavender plants must be a part of the landscape plan [*SMC 18.24.070.B.2c.*].
14. The landscape plan will include permanently installed irrigation systems [*SMC 18.24.130.B.2.c.*].

15. Where possible, pedestrians and vehicles will be separated through provision of a walkway. Where complete separation of pedestrians and vehicles is not feasible, hazards will be minimized by using landscaping, bollards, special paving, lighting and other means to clearly delineate pedestrian areas [SMC 18.24.070.B.2.j].
16. Approval for design review is valid for two years from the date of the notice of decision. The community development director or his/her designee may grant one extension of time not to exceed one year, upon the filing of a timely request for extension by the applicant. No extension will be granted if any local zoning or design review regulation has been amended in a manner that would have an impact upon the proposed development [SMC 18.24.036].
17. Where conditions do not specifically address an element of the proposed development, the content of the *findings* and *analysis* in this report shall be used together with the applicable Sequim Municipal Code provisions to determine what is required.

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**SEPA Mitigation:**

The following mitigation measures have been imposed by the Responsible Official to address and mitigate to a point of non-significance the identified potential environmental impacts.

1. To mitigate the potential for adverse impacts to air quality due to dust emissions during construction, the proponent shall employ the use of watering all dust generating surfaces a minimum of three times daily or more as needed during the construction phase of the project. Alternative non-chemical methods may be considered for approval by the City of Sequim.
2. To mitigate the potential for adverse environmental impacts to cultural resources, the proponent shall work with the Jamestown S'Klallam Tribe and the Washington State DAHP to determine the need for a cultural survey prior to site disturbing work. In any case, as required by the Sequim Municipal Code, the project proponent and/or their contractors shall stop work and immediately notify the City of Sequim, the Jamestown S'Klallam Tribe, and the Washington State Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during development.
3. To mitigate the potential for adverse environmental impacts to public services and land use, the proponent shall follow the procedures and recommendations of the submitted Jamestown S'Klallam Tribe Preliminary Medical Outpatient Clinic and Community Response Plan as conditions of operation for the proposed outpatient clinic.
4. To mitigate the potential for adverse impacts to environmental impacts to plants and animals, the proponent must contact the Washington State Department of Fish and Wildlife (WDFW) and verify the presence or absence of any threatened or endangered species. Prior to authorization of any site disturbing activities, the proponent must provide written verification from the WDFW that all concerns have been satisfied.
5. To mitigate the potential for adverse environmental impacts to public services the proponent must:
  - a. Prior to occupancy, a monitoring and evaluation program will be developed by a Community Advisory Committee (committee) made up of, but not limited to, health professionals, community-based organizations, elected leaders, and public safety officials as provided in the Jamestown S'Klallam Tribe Preliminary Medical Outpatient Clinic and Community Response

**Plan.** Committee membership to be determined by mutual agreement between City and Tribal representatives. The Committee will remain in place for the first three-years of the operation of the clinic. The Committee will meet monthly for the first year and then the committee can decide on a meeting schedule for subsequent years. Recommended committee size is no more than seven members.

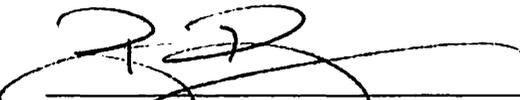
- b. Prior to occupancy, the “committee” will develop a contingency plan that identifies potential courses of action and any corrective measures to be taken when monitoring or evaluation indicates expectation and standards are not being met.
- c. Prior to occupancy, the Tribe must post a bond in the amount of \$250,000 to guarantee public safety services can be made immediately available if necessary (City Police, Fire District 3 EMT services, for example). This bond will be in effect for a term of 5-years and may be extended at the request of the City of Sequim and Fire District 3.
- d. Tribe agrees to reimburse City for all lost tax revenue if, and when, the property is taken off County tax roll. If it is determined that additional public safety staff, such as police, EMTs or fire officers, are needed due to activity resulting directly from the clinic’s operation. The Tribe agrees to fund these public safety (EMT, Fire & Police) positions for as long as they are necessary.
- e. Prior to occupancy, the Tribe will enter into a “Good Neighbor” agreement with the City (see attached example and be aware that some of these items would be included in that agreement, such as no loitering).
- f. Prior to occupancy, a Social Services Navigator will be funded by the Tribe to provide social service assistance to patients and other persons in need of Substance Use Disorder (SUD) and mental health assistance within the City of Sequim.
- g. Prior to occupancy, the Tribe will develop a plan acceptable to the City regarding ramping up patient care during the first year of the clinic’s operation.
- h. The Navigator will be notified when patients leave the program for possible intervention and/or assistance in transitioning to another program or returned to their place of residence or location where they spent the previous evening.
- i. Patients who chose to leave the clinic program and do not have personal or pre-arranged transportation will be provided transportation by the clinic to their place of residence or location where they spent the previous evening.
- j. Tribe agrees to notify the City 1-year prior to applying to place the land upon which the clinic is built into Tribal Trust land. The Tribe agrees to only place the developed portion of the subject property into trust by short platting out the undeveloped portion of the property.
- k. The Tribe agrees to execute & file with city limited waiver of sovereign immunity to allow enforcement of the City’s nuisance ordinance if any portion of the subject property is placed into Tribal Trust.
- l. All patients will be prescreened before treatment.

- m. All patients must be accommodated within the building, and there will be no outdoor line ups or congregating of patients outside of designated areas.
- n. The Tribe will strictly enforce a no loitering policy through on-site security.
- o. Prior to occupancy the tribe will secure fulltime on-site security to maintain order on-site. With neighboring property owner permission on-site clinic security will also make sweeps through neighboring commercial properties on a schedule determined cooperatively between the clinic and adjacent property owners. Sweeps of adjacent residential neighborhoods will also occur on a regularly scheduled basis.
- p. Prior to occupancy, the Tribe will distribute direct access information/complaint line provided to all adjacent property owners within 300 feet of the subject property.
- q. JST will ensure no graffiti on the JST Healing Center site, and JST will immediately report any such vandalism to the city if any occurs on nearby properties. JST will take steps to immediately remediate the graffiti on their property.
- r. The Tribe will prohibit camping, overnight sleeping or overnight parking on the property of the Healing Center.
- s. Prior to occupancy the Tribe will have installed a fence at a mutually agreeable location and out of mutually agreeable materials between the clinic property and the Shaw family farm.

**THEREFORE**, after project review by City Staff including the City's: Department of Community Development; Public Works Department; Police Department; Engineering Department and Fire District #3, the Director of Community Development finds the proposed medical clinic to be in conformance with the City of Sequim's zoning and regulatory requirements.

Design Review Application CDR20-01, as described above, is hereby **APPROVED** subject to the Conditions of Approval and SEPA Mitigations listed above. This approval may be deemed null and void by the Director as a result of failure to comply with the Conditions of Approval, SEPA Mitigations or to meet the requirements of applicable local, state and federal law.

SIGNED THIS 15 DAY OF May, 2020.

  
 \_\_\_\_\_  
 Barry Borzowsky, Director  
 Department of Community Development

**APPEALS:** This decision may be appealed by filing an appeal consistent with SMC 20.01.240 within twenty-one (21) days after the decision to the Dept. of Community Development, located at 152 W. Cedar St. All appeals of this decision must be filed by 4:00 P.M. on June 5, 2020. THERE IS A \$600.00 FEE TO APPEAL THIS DETERMINATION.

If a Type A-2 decision is appealed, an open record public hearing will be held before the Hearing Examiner consistent with the requirements of SMC 20.01.200.

If you have any questions or need additional information, please contact Tim Woolett at 360-681-3435 or at [twoolett@sequimwa.gov](mailto:twoolett@sequimwa.gov).

Attached:

1. Exhibit Log

**EXHIBIT LOG**  
**Jamestown S'Klallam Tribe**  
**Design Review Application No. CDR 20-001**

- 1 Complete Design Review Application received January 27, 2020; including the following:**
  - a. Application.
  - b. Assessor's Map.
  - c. Fill Quantities.
  - d. Legal Description.
  - e. Open Water Map.
  - f. Ownership Statement.
  - g. SEPA Checklist.
  - h. Architectural Drawings.
  - i. Civil Drawings.
  - j. Electrical Drawings.
  - k. Landscape Drawings.
  - l. Full Drawing Package.
  - m. Proposed MAT Facility Geotech Report (final).
  - n. JST Outpatient Clinic Traffic Impact Report [Analysis].
- 2. Notice of complete application issued January 27, 2020.**
- 3. Agency Comments.**
- 4 Public Comments.**
- 5. Correspondence**
- 6. 3<sup>rd</sup> Party Review Comments on the Traffic Impact Analysis and Utility Plans.**
- 7. SEPA Environmental Checklist & SEPA MDNS Review Packet.**
- 8. SEPA Comments.**
- 9 Revised MDNS issued May 8, 2020**
- 10 Legal Notices/Affidavits;**
- 11 DCD Director's Project Typing Memo issued January 24, 2020**
- 12 Pre-Application File No. PRE 19-016.**
- 13. Community Response Plan.**
- 14. Good Neighbor plan example.**

# **Exhibit G**

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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation,

Respondent

File No. CDR20-01

NOTICE OF APPEAL

This matter involves the appeal of a proposal to locate a drug rehabilitation facility on real property commonly known as 526 S. 9<sup>th</sup> Ave., Sequim, WA 98382. This appeal is being filed by Save Our Sequim, a 501(c)(4) corporation in good standing in the State of Washington (“SOS”). SOS is challenging the Director’s Report and Staff Decision dated May 15, 2020, in regards to the proposed “Jamestown S’Klallam Tribe Outpatient Clinic” Design Review Application, filed herewith as City of Sequim File No. CDR 20-001. SOS also appealed a companion determination entitled the “Notice of Determination of Procedure Type for File No

1 CDR20-001” on February 12, 2020. All facets of that appeal are incorporated herein by  
2 reference.

3 **1. The Decision Being Appealed:**

4 The Director’s Report and Staff Decision dated May 15, 2020, in regards to the proposed  
5 “Jamestown S’Klallam Tribe Outpatient Clinic” Design Review Application, filed herewith as  
6 City of Sequim File No. CDR 20-001, and all attachments thereto. (the “Substantive Decision”)  
7 SOS is also appealing the “Notice of Determination of Procedure Type for File No CDR20-001”  
8 on February 12, 2020 (the “Procedural Determination”).

9 **2. Name and Mailing Address of Appellant and his/her interest(s) in the matter:**

10 Save Our Sequim  
11 c/o HELSELL FETTERMAN LLP  
12 1001 Fourth Ave., Suite 4200  
13 Seattle, WA 98154  
14 Att: Michael Spence  
(206) 689-2167  
mspence@helsell.com

15  
16 Petitioner Save Our Sequim (“SOS”) is a 501(c)(4) corporation in good standing in the  
17 State of Washington. SOS is supported by over 2,500 residents of Sequim and the surrounding  
18 area and representatives have been heavily and intensely involved in the public process  
19 surrounding the proposed project since it was first announced on May 6, 2019. Representatives  
20 of SOS have provided significant and substantive oral and written testimony in public hearings  
21 of the Sequim City Council and have been engaged in extensive advocacy outside of this setting.  
22 SOS is not categorically opposed to the siting of a drug rehabilitation facility serving the local  
23 community somewhere in the Sequim area, however SOS believes that the proposed location  
24 for a regional drug rehabilitation facility is inappropriate in this location for reasons that will be  
25 set forth in this appeal. All administrative remedies have been exhausted to date.

1  
2 **3. The specific reasons why the appellant believes the decision to be wrong.**

3 **A. The proposed project does not qualify for Sequim's A2 permitting process.**

4           The City has committed error by classifying the proposed project as eligible for the  
5 City's A-2 administrative permitting process. In public statements prior to filing the  
6 application, the Applicant described the proposed project as a clinic that: (1) addresses Clallam  
7 County's opioid problem; (2) uses a comprehensive treatment strategy including physical,  
8 mental and dental services; (3) includes a MAT clinic and a 16-bed inpatient psych hospital;  
9 and (4) provides chemical dependency counseling, behavioral health, primary care and  
10 childcare assistance. Based on this description, the City <sup>1</sup> erroneously believes that the  
11 proposed project is a permitted use in Sequim's RREOA District, and that it qualifies for the  
12 Type A-2 permitting process, in which the City staff is the final decision-maker.

13           In the application, the project is described as:

14                           "a 17,093 square foot outpatient clinic designed to provide a wide range of  
15 addiction treatment services to those in the local and surrounding Sequim  
16 community. The Building will also offer childcare and provide social services  
17 to patients to help facilitate their recovery." (application permit set. P. 1)

18           Physically, the proposed facility will feature three exam rooms, twelve counseling  
19 rooms, four large group rooms that can open to the exterior, three operatories, a pharmacy,  
20 three dosing rooms, a "childwatch" area, a conference room and administrative facilities.<sup>2</sup>

21           Despite these features, the City simply described the project as a "medical clinic" in the  
22 Procedural Determination.

23  
24 \_\_\_\_\_  
25 <sup>1</sup> Representatives of the City's Department of Community Development have publicly taken this position even before the application was filed

<sup>2</sup> Child Care Centers and Medical Laboratories are conditional uses in the RREOA District.

**HELSELL  
FETTERMAN**

1 In the Substantive Decision, the City acknowledged that the project was much more than  
2 a “medical clinic”, expressly stating that the project contains the following features:

3 “a medication assisted treatment program which offers FDA-approved dosing, primary  
4 care services, consulting services, dental health services and childwatch services while  
5 clients are seen.” (Substantive Decision, p. 1)

6 Despite this wide array of services, some of which require highly specialized federal or  
7 state licenses, and which operate under specific, detailed and rigorous guidelines, the City has  
8 determined that this project is simply a “medical clinic”, which the City believes makes it eligible  
9 for the A-2 permitting process. SMC 20.01.020(U) describes this process as “a process which  
10 involves an application that is subject to objective and subjective standards that require the  
11 exercise of limited discretion about non-technical issues and about which there may be a limited  
12 public interest”. SMC 20.01.030(A), Table 1 provides that the City staff is the final decision-  
13 making body under this process.

14 The City of Sequim has committed error by considering the project as simply a “medical  
15 clinic” and by processing it under the A-2 permitting process, which is reserved for projects that  
16 require limited discretion about non-technical issues and which generate limited public interest.  
17 This is not that project.

18 The appropriate process for this project is the City’s C-2 permitting process, which  
19 applies to “applications that require the exercise of substantial discretion and about which there  
20 is a broad public interest” (SMC 20.01.020(W)). SMC 20.01.030 Table 1 provides that the City  
21 Council is the final decision-maker on C-2 projects.

22  
23 **2. The proposed rehabilitation facility is not a permitted use in Sequim’s RREOA District**

24 As pointed out above, the project will contain a “wide range of addiction treatment  
25 services”, including childcare, social services, exam rooms, counseling room, large group

1 rooms, operatories, a pharmacy, dosing rooms and a “childwatch” area. In addition, Phase 2 of  
2 the project, which is already partially funded by the State of Washington, includes a 16-bed  
3 inpatient facility. The City has known about this phase from the very beginning, but has  
4 chosen to completely ignore the fact that inpatient facilities are expressly prohibited in the  
5 RREOA District.  
6

7 As such, the project is much more than an outpatient medical clinic – it is a full-service  
8 drug rehabilitation/detoxification center, including social services, counseling rooms,  
9 operatories, a pharmacy, and a “childwatch” area, and which eventually will include an illegal  
10 inpatient facility. Drug rehabilitation or detoxification centers are not permitted uses in the  
11 RREOA District. The City of Sequim has committed error by considering this project as a  
12 “medical clinic” and assuming that as such, it is a permitted use in the RREOA District.  
13

14 **3. The project is an “Essential Public Facility”, which requires City Council approval of an**  
15 **Essential Public Facilities and Special Property Use Permit.**

16 As set forth above, the Applicant itself described the project as providing a “wide range  
17 of addiction treatment services”, including child care, social services and counseling to residents  
18 of Sequim and beyond, which the City acknowledged. A project of this scope and reach clearly  
19 meets the inclusive definition of an “essential public facility” contained in RCW  
20 36.70(A)200(1), which provides as follows:

21 “... those facilities that are typically difficult to site, ***such as*** airports, state  
22 education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined  
23 in RCW 81.112.020, state and local correctional facilities, solid waste  
24 handling facilities, and inpatient facilities including substance abuse  
25 facilities, mental health facilities, group homes, and secure community  
transition facilities as defined in RCW 71.09.020.RCW.” RCW  
36.70A.200(1). (Emphasis added)

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SMC 18.56.060 provides that Essential Public Facilities can only be approved after the applicant obtains an “Essential Public Facilities and Special Property Use Permit”, which must be approved by the Sequim City Council through the C-2 permitting process. The City of Sequim has committed error by failing to require an Essential Public Facilities and Special Property Use Permit for this project.

**4. The proposed project cannot satisfy the robust and rigorous permit criteria required to site Essential Public Facilities in the City of Sequim.**

SMC 18.56.060 imposes a rigorous and robust set of criteria that must be satisfied before the City Council can approve an Essential Public Facility. Those criteria are as follows:

- A. There shall be a demonstrated need for the essential public facilities and/or special use within the community at large which shall not be contrary to the public interest.
- B. The essential public facility and/or special use shall be consistent with the goals and policies of the comprehensive plan, and applicable ordinances of the city.
- C. The council shall find that the essential public facility and/or special use shall be located, planned and developed in such a manner that the essential public facility and/or special use is not inconsistent with the health, safety, convenience or general welfare of persons residing or working in the city. The council’s findings shall address, but not be limited to the following:
  - 1. The generation of noise, noxious or offensive emissions, or other nuisances which may be injurious or detrimental to a significant portion of the city.
  - 2. The availability of public services which may be necessary or desirable for the support of the special use. These may include, but shall not be limited to, availability of utilities, transportation systems, including vehicular, pedestrian, and public transit systems, and education, police and fire facilities, and social and health services.
  - 3. The adequacy of landscaping, screening, yard setbacks, open spaces or other development characteristics necessary to mitigate the impact of the special use upon neighboring properties.

1           The City has committed error by failing to demonstrate a need for the project within  
2 the community at large that it not contrary to the public interest. The City has further  
3 committed error by finding that the project is consistent with the Comprehensive Plan and  
4 applicable City ordinances. The City has committed additional error by finding that the  
5 project is not inconsistent with the health, safety, convenience or general welfare of persons  
6 residing or working in the city.

7  
8 5. The proposed MDNS conditions fail to address the probable significant environmental  
impacts to public services associated with the project.

9           As part of the Decision, the City, presumably in coordination with the Applicant,  
10 has imposed a series of MDNS conditions designed to address the impacts of the project  
11 on public services. These conditions include but are not limited to a monitoring and  
12 evaluation program, a “contingency plan”, a \$250,000 bond, an agreement to reimburse  
13 the City for lost tax revenue in the event the property is taken off of the tax rolls, a “good  
14 neighbor” agreement, a “social services navigator”, a ramp-up plan, a transition plan, a  
15 transportation plan, a limited waiver of sovereign immunity, a set of guidelines for patient  
16 conduct, on-site security, a complaint line, a plan to mitigate graffiti, a ban on on-site  
17 camping, and fencing. The City has committed error by assuming that these conditions  
18 adequately address the probable significant adverse environmental impacts of the project  
19 on public services in the Sequim area.

20 **4. The Desired Outcome or Changes to the Decision**

21           Petitioner SOS respectfully requests the following relief from the Examiner:

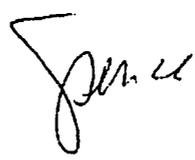
- 22           1. An Order striking the Procedural Determination and declaring it invalid and ultra  
23 vires.
- 24           2. An Order remanding the Procedural Determination back to the City, with  
25 instructions to process the application under the C-2 permitting process.

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3. An Order finding that the proposed project as described by the Applicant is much more than a simple “medical facility”, and that as such, the project fails to qualify as a permitted use in the RREOA District.
4. An Order finding that the proposed project as described by the Applicant is an Essential Public Facility as defined in RCW 36.70A.200(1).
5. An Order finding that as an Essential Public Facility, the project must obtain an “Essential Public Facilities and Special Property Use Permit” from the City Council under SMC 18.56.060.
6. An Order finding the project as described by the Applicant fails to satisfy the criteria under which an Essential Public Facility can be approved, as set forth in SMC 18.56.060.
7. An Order finding that the proposed MDNS conditions fail to satisfy the impacts of the project on public services.
8. Any other relief the Examiner deems just and equitable.

DATED this 4th day of June, 2020.

HELSELL FETTERMAN LLP



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Michael A. Spence  
WSBA No. 15885  
Attorney for Petitioner

# **Exhibit H**



152 West Cedar Street, Sequim, WA 98382  
City Hall (360) 683-4139 FAX (360) 681-3448  
Public Works (360) 683-4908 FAX (360) 681-9552

Kristina Nelson-Gross, City Attorney  
[knelson-gross@sequimwa.gov](mailto:knelson-gross@sequimwa.gov) Tel: 360-681-6611

June 10, 2020

Michael A Spence  
Helsell Fetterman LLP  
1001 Fourth Avenue, Suite 4200  
Seattle, WA 98154-1154

**Re: Jamestown S’Klallam Clinic – Your Notice of Appeal of CDR 20-001**

Dear Mr. Spence:

The City of Sequim is in receipt of your Notice of Appeal that was emailed to Barry Berezowsky, Tim Woolett, Charlie Bush, and me on June 4, 2020.

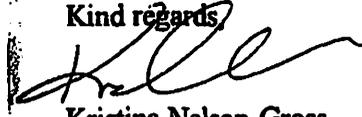
In reviewing your appeal, the City noted that you included two appeal fees, presumably one for an appeal before the hearing examiner and the other for an appeal before the City Council. Your appeal to the City Council will not be heard by the Council and therefore, we are returning the associated fee. SMC 20.01.240(A) provides as follows, emphasis mine:

**Appeal of Administrative Interpretations and Decisions. Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, to the hearing examiner. Determinations of nonsignificance may be appealed to the city council.**

As you are aware, the Director did not issue a “determination of nonsignificance” or DNS. This interpretation is consistent with SMC 20.01.030 Table 1, which identifies the City Council as the appeal authority. As you are also aware, code provisions are read harmoniously so as to avoid conflict.

**Appellants and all other parties of record will receive written notification of the hearing date when it is scheduled.**

Kind regards,

A handwritten signature in black ink, appearing to read 'Kristina Nelson-Gross', written over a vertical line.

**Kristina Nelson-Gross  
City Attorney**

**KNG:elh**

**Enc: refund check**

**cc: Miller Nash et al, Attorney for Jamestown S'Klallam Tribe  
legal file**

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19-10/1250

CITY OF SEQUIM  
152 W CEDAR  
SEQUIM, WA 98382-3317

~~2019~~ 6/10/2020

Pay to  
The order of Hetsell Fetterman LP  
Six hundred dollars & no/100

\$ 600.00

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**usbank.**

TREASURER

Connie Anderson



MP

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# **Exhibit I**

1 SUPERIOR COURT OF WASHINGTON  
2 COUNTY OF CLALLAM

3 SAVE OUR SEQUIM, a Washington 501(c)(4)  
4 Corporation; and

5 PARKWOOD MANUFACTURED HOUSING  
6 COMMUNITY, LLC, a Washington Limited  
7 Liability Company

8 Plaintiff

9 and

10 CITY OF SEQUIM, A Washington Municipal  
11 Corporation; and

12 JAMESTOWN S'KLALLAM TRIBE,

13 Defendant.

NO. 20-2-00304-05

MEMORANDUM OPINION

14 **I. Question Presented**

15 Should Plaintiffs' motion for a Temporary Restraining Order and Injunction be granted?

16 **II. Decision**

17 No.

18 **III. Facts**

19 Defendant Jamestown S'Klallam Tribe [Tribe] seeks approval for a building project  
20 within the City of Sequim. Defendant City of Sequim [City] has granted preliminary approval  
21 for the Tribe's project. Plaintiff Save Our Sequim and Plaintiff Parkwood Manufacturing  
22 Housing Community, LLC, [Plaintiffs] challenge the constitutionality and application of the  
23 municipal code provisions utilized by the City in the application process. The City's code  
24 includes provisions for Plaintiffs to appeal the City's decisions, and Plaintiffs affirm that they  
25 have appealed all decisions they believe are incorrect.

1 In addition to the municipal appellate process that they are pursuing, Plaintiffs filed the  
2 above captioned matter on May 5, 2020, seeking Declaratory, Injunctive, and Mandamus  
3 Relief. Further, On May 22, 2020, Plaintiffs filed an emergency motion for a temporary  
4 restraining order and injunction. It is that emergency motion which is before the court.<sup>1</sup>

#### 5 IV. Analysis

6 The issue before this court is not the merits of the Tribe's project. The issue is the  
7 proper method that should be employed to address the merits of the Tribe's application.<sup>2</sup>

8 Under RCW 7.40.020, a court may grant injunctive relieve when an applicant (1) has a  
9 clear, legal, or equitable right to relief; (2) has a well-grounded fear of immediate invasion of  
10 that right; and (3) has a basis to believe that the actions of the party against whom an injunction  
11 is sought are resulting in or will result in substantial damage to the applicant. *Port of Seattle v.*  
12 *Int'l Longshormen's & Warehousemen's Union*, 52 Wn. 2d 317, 319 (1958).

13 To the degree that the Plaintiffs' request seeks protections on behalf of others who  
14 might file a permit application with the City, the court denies that request. See *Whatcom Cty.*  
15 *v. Kane*, 31 Wn. App. 250, 253 (1981) (holding that a trial court should be careful not to issue a  
16 more comprehensive injunction than is necessary to remedy a proven abuse).  
17

18 Application of the requirements for an injunction, as it relates to Plaintiffs themselves,  
19 requires the court to consider the provisions of RCW 36.70C. This consideration leads to the  
20 conclusion that an injunction should be denied.

21 The Washington Legislature has enacted a very specific statutory scheme to be utilized  
22 to address complaints about the land use decisions of local jurisdictions. RCW 36.70C et seq.

23  
24 <sup>1</sup> The delay in handling this hearing was at the court's request for scheduling purposes. The court draws no  
inferences related to the merits of this motion based upon that continuance.

25 <sup>2</sup> It is unfortunate that such a large volume of material has been provided on extraneous issues.

1 Known as the Land Use Petition Act (LUPA), this law provides for “uniform, expedited appeal  
2 procedures and uniform criteria for reviewing [land use decisions] in order to provide  
3 consistent, predictable, and timely judicial review.” *Id.* at 010.

4 The phrase “land use decision” has two important aspects. *Id.* at 020(2). First, the  
5 statute describes the types of decisions that can become land use decisions. In relevant part, the  
6 statute defines qualifying decisions as those which relate to

7 (a) An application for a project permit or other governmental approval required  
8 by law before real property may be improved, developed, modified, sold,  
9 transferred, or used . . . ;

10 (b) An interpretative or declaratory decision regarding the application to a  
specific property of zoning or other ordinances or rules regulating the  
improvement, development, modification, maintenance, or use of real property;

11 Second, a decision does not become a “land use decision” until there has been “a final  
12 determination by a local jurisdiction's body or officer with the highest level of authority to  
13 make the determination.”

14 With limited exceptions that are not applicable here, following the provisions of LUPA  
15 is the exclusive means of obtaining judicial review of land use decisions. *Id.* at 030.

16 In applying these statutes, the court concludes that the decisions made by the City fall  
17 squarely within the types of decisions covered by LUPA. As such, judicial review at this time  
18 is premature because a final determination has not been made “by a local jurisdiction's body or  
19 officer with the highest level of authority to make the determination.”  
20

21 All parties agree that the City has hired a hearing examiner to review the Plaintiffs'  
22 challenges. In that administrative review process, the Plaintiffs will be able to present evidence  
23 and argue why they believe the decision is incorrect. During that process, the City and Tribe's  
24 actions are on hold until a final decision is made. Once a decision is made, either party may  
25

1 file a LUPA petition and seek court review. At that time, either party may seek a stay during  
2 the judicial review period. *Id.* at 100.

3 Because LUPA applies to this case, the court concludes that Plaintiffs do not have a  
4 clear legal and equitable right to an injunction at this stage of the proceedings. Their remedy is  
5 to pursue an appeal in accordance with the City's administrative review process and then  
6 appeal that final land use decision to the superior court if they are dissatisfied. Neither the  
7 party nor the courts should presume a decision will be adverse or favorable before the final  
8 decision is made.

9 Additionally, Plaintiffs do not have a well-grounded fear of immediate invasion of a  
10 right. It is somewhat unclear to the court what right is at risk other than Plaintiffs' assertion  
11 that various constitutional rights are not protected by the City's code, or more generally that  
12 they are entitled to a process which is fair. Following a final land use determination and  
13 subsequent LUPA petition, a reviewing court would consider whether the following occurred:  
14

- 15 (a) The body or officer that made the land use decision engaged in unlawful procedure  
or failed to follow a prescribed process, unless the error was harmless;
- 16 (b) The land use decision is an erroneous interpretation of the law, after allowing for  
such deference as is due the construction of a law by a local jurisdiction with  
17 expertise;
- 18 (c) The land use decision is not supported by evidence that is substantial when viewed  
in light of the whole record before the court;
- 19 (d) The land use decision is a clearly erroneous application of the law to the facts;
- 20 (e) The land use decision is outside the authority or jurisdiction of the body or officer  
making the decision; or
- (f) The land use decision violates the constitutional rights of the party seeking relief.

21 RCW 36.70C.130(1). In simple terms, LUPA contemplates a review of such claims as a  
22 violation of constitutional rights and whether the decision maker who made the decision acted  
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1 unlawfully. Accordingly, there is no immediate invasion of these rights given that they are  
2 subject to review.

3 The court will note that Plaintiffs raised a question regarding whether they are parties of  
4 record. Neither the City nor Tribe has raised that question. Given that the parties agree as to  
5 their status, the court's intervention on this point is unnecessary. More importantly, the motion  
6 before the court does not seek to determine party status.

7 Finally, there is no basis to believe that the actions of the City or Tribe are resulting in  
8 or will result in substantial damage to the applicant. Those actions, at this point, consist of  
9 seeking and granting permit approval, all subject to further review within the City's decision  
10 making process. This project is still in the application stage. That process must be allowed to  
11 be completed. Once completed, judicial review can be sought. LUPA is meant to avoid  
12 judicial review of uncompleted processes.

13 Although not argued by the parties, one exception to the requirements to file a LUPA  
14 petition is judicial review of applications for a writ of mandamus. *Id.* at 030(1)(b). Here, the  
15 Plaintiffs have styled their complaint, in part, as a mandamus action. They seek a writ which  
16 would prevent the City from continuing its application review process for the Tribe's project.

17 The provisions of LUPA cannot be avoided simply because the title attached to the  
18 action filed would, on its face, constitute a statutory exception. The court must look at the  
19 substance of the request to determine LUPA's application. The decisions that Plaintiffs seek to  
20 have reviewed fall within the definition of land use decisions. Even if the City had taken some  
21 illegal action the challenge must still occur under LUPA. *Asche v. Bloomquist*, 132 Wn. App.  
22 784, 795 (2006) (citations omitted).  
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1 Mandamus would likely be appropriate in some circumstances. For example, if the City  
2 refused to accept a land use permit, or once received, refused to act upon that permit, an order  
3 directing action could be sought. Similarly if the City refused to recognize an appropriate  
4 person or entity as a party of record, mandamus might be warranted. However, mandamus is  
5 not available to compel the City to stop its appeal process which, ultimately, will result in a  
6 decision reviewable under LUPA.

7 Finally, Plaintiffs cite RCW 7.24.190 as the authority for the court to grant injunctive  
8 relief in this matter. This statute provides that such relief may be granted in order to “secure  
9 the benefits and preserve and protect the rights of all parties” to a proceeding. This statutory  
10 provision is part of the Uniform Declaratory Judgment Act. Case law is clear that declaratory  
11 judgment actions are properly reviewed under LUPA. *Chelan City v. Nykreim*, 146 Wn.2d 904,  
12 929 (2002); *Grandmaster Sheng-Yen Lu v. King Cty.*, 110 Wn.App. 92, 98-99 (2002).

13  
14 V. Conclusion

15 For the above reasons, the court denies the Plaintiffs’ motion for injunctive relief. The  
16 court will not consider other requests without motions and affidavits being filed in support of  
17 such requests. Should other motions be filed, the parties may incorporate, by reference,  
18 previously filed pleadings.

19 DATED this 24 day of June, 2020.

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21 

22 BRENT BASDEN  
23 JUDGE

24  
25 BRENT BASDEN  
JUDGE  
Clallam County Superior Court  
223 E. 4<sup>th</sup> Street, Suite 8  
Port Angeles, WA 98362-3015

# **Exhibit J**



**CITY COUNCIL'S FINDINGS OF FACT, CONCLUSIONS  
OF LAW, & DECISION:**

**CLOSED-RECORD PUBLIC**

**HEARING DATE:** Monday, March 27, 2017, @ 6:00 PM

**OPEN-RECORD PUBLIC**

**HEARING DATE:** Wednesday, March 8, 2017, @ 6:00 PM

**FILE NUMBER:** CUP-2016-1005

**PROJECT LOCATION:** The site is addressed as 8212 South March Point Road, Anacortes, WA and is located within a portion of Section 04; Township 34 North; Range 02 East; Willamette Meridian.

**APPLICANT &  
LANDOWNER:** Swinomish Indian Tribal Community  
C/O: Rachel Sage, Tribal Attorney  
11404 Moorage Way  
La Conner, WA 98257

**PROJECT ARCHITECT:** Brooks Middleton, Architect  
2415 "T" Avenue, Suite 202  
Anacortes, WA 98221

**STAFF REPORT  
PREPARED BY:** Kevin Cricchio, AICP  
Associate Planner  
City of Anacortes  
904 6<sup>th</sup> Street  
Anacortes, WA 98221

**SUBJECT PROPOSAL:** The applicant has applied for a Conditional Use Permit /Essential Public Facility (EPF) to permit an outpatient substance use and primary care medical service type of land use within an existing office building. The project has been identified as a "Local" Essential Public Facility per AMC § 17.75.060(A)(2).

**SUBJECT PARCEL:** P19877

**EXISTING LAND USE:** An existing commercial building is located on the subject property that use to be used by Bayside Fitness. The building currently sits vacant.

**CURRENT ZONING & COMP.**

**PLAN DESIGNATION:** Light Manufacturing 1 Use (LM1) Zoning District

**SURROUNDING ZONING & LAND USES:**

Direction:	Zoning:	Present Land-Use:
<b>North:</b>	Heavy Manufacturing Use (HM) Zoning District	Skagit Transit Facility /Park & Ride, a Commercial Business, & Shell Puget Sound Refinery
<b>South:</b>	Light Manufacturing 1 Use (LM1) Zoning District	State Route Twenty (SR-20)
<b>East:</b>	Light Manufacturing 1 Use (LM1) Zoning District	Commercial Business & a Single Family Residence
<b>West:</b>	Light Manufacturing 1 Use (LM1) Zoning District	Single-family Residence

**SITE ACREAGE:** Net Acreage = 1.43 ± acres (According to Assessor's Records)

**FINDINGS OF FACT:**

**I. GENERAL BACKGROUND:**

1. The applicant wishes to permit an outpatient substance use and primary care medical service type of land use within an existing commercial office building located on site.
2. Essential Public Facilities shall be permitted in all zones via a Conditional Use Permit per AMC § 17.75.060(C).
3. On December 5, 2016, the applicant submitted the subject Conditional Use Permit /Essential Public Facility to the City of Anacortes' Planning, Community, & Economic Development Department.
4. The City of Anacortes' Planning Director classified the proposed use as a "Local" Essential Public Facility per Anacortes Municipal Code (AMC) § 17.75.060(A)(2).
5. On December 23, 2016, the subject application was deemed complete.
6. No appeals of the Planning Director's classification of the EPF as a local Essential Public Facility were received (AMC § 17.08.080).
7. A fourteen (14) day comment period for the subject application, ended at 5:00 PM on January 26, 2017, but comments were accepted up until the close of the of the open-record public hearing.

8. The Planning Commission conducted an open-record public hearing regarding the subject Conditional Use Permit on March 8, 2017.

**II. NOTICE OF APPLICATION (NOA) & NOTICE OF HEARING (NOH):**

1. Per AMC § 17.75.060(A)(4), a Notice of Determination that the subject EPF was classified as a "Local" Essential Public Facility was published in both the Skagit Valley Herald and Anacortes American Newspapers. This "Notice of Determination" was combined with the respective "Notice of Application." Publication of the Notice of Application and Determination of Local Essential Public Facility" occurred on January 11, 2017, in both the Skagit Valley Herald and Anacortes American Newspapers.
2. A "Notice of Hearing" was published on February 15, 2017, in both the Skagit Valley Herald and Anacortes American Newspapers.
3. Both the Notice of Application and Hearing were posted in two different locations on the subject property on December 4, 2016 and February 10, 2017, respectively.
4. Neighboring landowners located within 300 feet of the subject property were mailed the Notice of Application and Hearing on January 5, 2017, and February 10, 2017, respectively.
5. Agencies and departments of jurisdiction were solicited for comment on January 5, 2017.
6. Notice of Application and Hearing was posted at city hall, the library, the local USPS office, and on the City's website on January 4, 2017, and February 10, 2017, respectively.

**III. CRITICAL AREA / ENVIRONMENTALLY SENSITIVE AREA REVIEW:**

No critical areas are located either on the subject property or within three hundred (300) feet of it.

**IV. STATE ENVIRONMENTAL POLICY ACT:**

The subject proposal is exempt from SEPA environmental review as no construction is proposed. The subject proposal only involves a change of use to an existing commercial building.

**V. PUBLIC COMMENT:**

To date, no public comment has been received (**See Exhibit 04**).

**VI. AGENCY & DEPARTMENT COMMENT:**

Comments received from both agencies and departments of jurisdiction can be found in **Exhibit 05**.

**VII. ZONING ORDINANCE/CODE:**

1. An "office" type of land use was permitted on the subject property located in the LM1 Zone by an approved Conditional Use Permit, File #: 04-010. The associated commercial building permit is BLD-2005-0050. A 10,314 square foot commercial building was constructed on site.
2. Off-street parking required for the commercial building was based on the minimum number of stalls for "office" type land uses per AMC Chapter 17.46.
3. The applicant has applied for a Conditional Use Permit -Essential Public Facility (EPF) to permit an outpatient substance use and primary care medical service type of land use within an existing office building. The project has been identified as a "Local" Essential Public Facility per AMC § 17.75.060(A)(2).
4. According to AMC § 17.75.060(E), Type Two Local Essential Public Facilities shall be granted by the city only if the applicant can demonstrate the following:

**A) The proposal shall be consistent with the comprehensive plan and intent of the underlying zoning of the proposed site.**

**FINDING OF FACT**

The subject proposal will be consistent with the City of Anacortes's Comprehensive Plan as it will meet numerous policies that are listed in the Comprehensive Plan including but not limited to a balanced economy (ED-1), essential public facilities (CF-8), and healthy communities (LU-10) while providing high quality health and community services and economic opportunities in the City of Anacortes.

The subject property is located in the Light Manufacturing 1 Use Zoning District. Pursuant to AMC § 17.19.010, the Light Manufacturing 1 Zone (LM1) is the SR-20/March Point industrial zone. The purpose of the LM1 Zone is intended to accommodate industrial type uses that do not need water access or proximity to the central business district or to the Commercial Avenue corridor. The proposed use will be consistent with the LM1 Zoning District. Some non-industrial land uses are permitted in the LM1 Zone per AMC § 17.19.020 provided they are compatible with industrial uses.

Additionally, per AMC § 17.75.060(C)(1), essential public facilities (EPF) are allowed in all zoning districts as a conditional use permit. Furthermore, according to AMC § 17.75.020(B), essential public facilities are defined as "those facilities which are difficult to site, such as state and regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities (including substance abuse, mental health, and group home facilities). The Growth Management Act mandates that no local development regulation may preclude the siting of essential public facilities."

- B) The project applicant has demonstrated a need for the project, as supported by an analysis of the projected service population, an inventory of existing and planned comparable facilities, and the projected demand for the type of facility proposed.**

**FINDING OF FACT:**

The proposed outpatient substance use and primary care medical service will primarily serve greater Skagit County. The facility will have the capacity to serve 0-350 individuals within a given day. Although the facility primarily will serve Skagit County, it will not turn away individuals from other counties seeking help. There is an opioid epidemic in Washington State and the United States as a whole. Deaths in Washington State attributed to opioid overdose have increased dramatically in the last decade or more. There is definitely a need for this facility to serve Skagit County and surrounding areas. Additionally, the applicant has submitted an extensive analysis of the proposed use that discusses a need for the project, projected service population, an inventory of existing/comparable facilities, and projected demand for the proposed use (See Exhibit #01).

- C) If applicable, the project would serve a significant share of the City's population, and the proposed site will reasonably serve the project's overall service population.**

**FINDING OF FACT:**

The proposed outpatient substance use and primary care medical service will serve and benefit the City of Anacortes. Additionally, it is located within close proximity to State Route Twenty (SR-20). It is easily accessible by automobile, bus, and park and ride.

- D) The applicant has reasonably investigated alternative sites, as evidenced by a detailed explanation of site selection methodology.**

**FINDING OF FACT:**

The proposed use is within an existing commercial office building that use to be used a fitness center /gym. It sits vacant today. The proposed use will take place within this existing building with only interior remodeling proposed. It is easily accessible for those seeking treatment due to proximity to both SR-20, I-5, and Skagit Transit Facility/ park & ride.

- E) The project is consistent with the applicant's own long-range plans for facilities and operations.**

**FINDING OF FACT:**

The proposed project will be consistent with the applicant's long-range plans for facilities and operations. Swinomish Indian Tribal Community owns several properties in the near vicinity as well as the Casino and Lodge located a few miles to the east along SR-20.

**F) The project has fewer impacts in the particular geographic area in contrast with other available locations.**

**FINDING OF FACT**

The project will generate substantially fewer impacts to the geographic area in contrast to other possible locations as the proposed use is within an existing commercial office building that currently sits vacant. No new construction except for an interior remodel is proposed.

**G) The applicant has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the city code, and state or federal law.**

**FINDING OF FACT**

The applicant has provided an opportunity for public participation as it relates to the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the city code, and state or federal law. Swinomish Indian Tribal Community prepared a Community Relations Plans (See Exhibit #01) as part of the requirement for certification as an opiate treatment program with the Washington State Department of Behavioral Health and Recovery. As is discussed in the Community Relations Plan, there were several dates when public outreach occurred soliciting public input.

**H) The proposal complies with applicable requirements of all other applicable provisions of the City Code.**

**FINDING OF FACT**

The subject proposal will comply with all applicable local, state, and federal requirements /laws.

**I) The project site meets the facility's minimum physical site requirements, including project expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs.**

**FINDING OF FACT:**

The proposed use will be within an existing commercial office building, which involves only an interior remodel therein. No expansions are proposed or anticipated at this time.

- J) The proposal, as conditioned, adequately mitigates significant adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development, and other identified impacts.**

**FINDING OF FACT**

The City of Anacortes Department of Planning, Community, & Economic Development (PCED) received comment (verbal and/or written) from both the Police and Fire Departments concerning potential impacts by the proposed use. Following coordination with both the Fire and Police Departments, PCED added condition number eleven (11) below to address their concerns.

The project will implement a security plan that's designed to prevent any potential adverse impacts to the public. A full-time security staff and surveillance system will be used as part of this security plan. As conditioned below, the proposed security plan shall be submitted to the City of Anacortes Police Department for review and approval prior to Certificate of Occupancy being issued. Additionally, as conditioned below, down-shielded exterior lighting will be required both in the parking lot and around the existing building thereby increasing security to staff and clientele utilizing the services of the facility.

Economically speaking, the proposed use will have a positive impact on the economic development of the City of Anacortes as a result of approximately twenty (20) plus jobs being added by the business.

The project site is in within close proximity to both SR-20 and I-5. Additionally, a large paved parking lot will provide adequate off-street parking for clients of the outpatient substance use and primary care medical service. Skagit Transit Facility /park & ride is located across the street from the project site. Due to possible increased traffic (foot traffic and vehicular) to the business, a condition has been added below that a crosswalk be constructed across South March Point Road to provide safe passage for users of the Skagit Transit Facility /park & ride utilizing the services of the outpatient substance use and primary care medical service facility. The applicant also proposes the use of shuttles to pick-up and drop-off clients who are using the services of the facility.

No environmental impacts are anticipated by the subject proposal as the proposed use will occur within an existing commercial building. Only an interior remodel is proposed with no expansion to the building proposed or anticipated at this time.

- K) The proposal shall not have any probable significant adverse impact on critical areas or resource lands, except for lineal facilities, such as highways, where no feasible alternative exists.

**FINDING OF FACT:**

The proposed use will occur within an existing commercial office building. No adverse impacts will occur to either critical areas or resource lands within close proximity to the subject proposal.

- L) The proposal incorporates specific features to ensure it responds appropriately to the existing or planned character, appearance, quality of development, and physical characteristics of the site and surrounding property.

**FINDING OF FACT:**

The proposed use will occur within an existing commercial office building. Only an interior remodel /tenant improvement is proposed with no expansion proposed or anticipated.

- M) Major public facilities which generate substantial traffic should be sited near major transportation corridors.

**FINDING OF FACT:**

The subject proposal is located within close proximity to two major transportation corridors - SR-20 and I-5. The proposed project however is not anticipated to generate much traffic. Additionally, the Public Works Department did not require a traffic impact study /report associated with this project.

- N) The project sponsor has proposed mitigation measures that are consistent with the Uniform Relocation Act Chapter 8.26 RCW, 468-100 WAC, as now and hereafter amended when otherwise required by law.

**FINDING OF FACT:**

No mitigation measures are proposed by the applicant – the Swinomish Indian Tribal Community.

5. The subject proposal is consistent with the above development regulations and the proposed land use is permitted in the underlying zoning districts.

**VIII. CONCLUSIONS OF LAW:**

1. The public notice requirements of the Conditional-Use Permit /Essential Public Facility has been complied with.

2. The project is consistent with the general purposes of the City's Comprehensive Plan, the city's planning standards and specifications of the zoning ordinance, and other ordinances applicable to the proposal.
3. The City Council bases its Findings of Fact, Conclusions of Law & Decision on the entire record, including all testimony and exhibits. Any finding which would be deemed a Conclusion of Law, and any Conclusion of Law which should be deemed a finding is hereby adopted as such.

**IX. STAFF RECOMMENDATION:**

The Department of Planning, Community, and Economic Development recommends that City Council approve the subject Conditional Use Permit /Essential Public Facility subject to staff's suggested conditions of approval as listed below.

**X. PLANNING COMMISSION'S RECOMMENDATION**

The Planning Commission conducted an open-record on March 8, 2017, regarding the subject Conditional Use Permit. Following public testimony, the Planning Commission deliberated on the matter. A motion was made to approve the subject Conditional Use Permit subject to staff's suggested conditions of approval. The motion was seconded. The Planning Commission voted unanimously in favor of recommending approval to City Council.

**XI. APPEALS:**

No appeals of the Planning Commission's recommendation of approval to City Council were received.

**XII. DECISION:**

Based on the foregoing information and analysis, the environmental documents submitted by the applicant, and the City regulatory authority to implement the policies, standards, and the regulations of the Anacortes Municipal Code (AMC), the City Council approves the subject Conditional Use Permit /Essential Public Facility subject to staff's suggested conditions of approval listed below.

**XIII. CONDITIONS OF APPROVAL:**

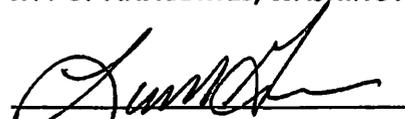
1. The applicant shall be responsible for reimbursement to the City for the cost of posting, mailing and publication of the public hearing for this proposal. Payment shall be made prior to building permit application submittal or issuance.
2. Prior to a certificate of occupancy (CO) being issued, a premise isolation reduced pressure backflow assembly (RPBA) shall be installed as required by the City of Anacortes' Water Department. Test results shall be given to the Water Department for review and approval.
3. Development shall comply with the Public Works Department including but not limited to:

- A. Restripe South March Point Road to incorporate two 11-foot driving lanes. This should leave one two-foot shoulder for separation between the bicycles and pedestrians on the south side of South March Point Road. Placement shall meet the requirements of the current MUTCD manual.
  - B. Delineate the existing multi-use facility with white chevron markings (hatchings) from the easterly boundary of the property to the westerly entrance to the Skagit Transit Facility/ Park & Ride.
  - C. A crosswalk shall be installed across South March Point Road on the east side of the Skagit Transit Facility /Park & Ride property. The crosswalk shall meet minimum city engineering /WSDOT standards. The crosswalk shall include thermoplastic markings with a pedestrian push button actuated LED rapid flashing beacons crosswalk lights.
  - D. Move bollards, mailboxes, and landscaping outside of walking/bike path.
4. All applicable permits shall be secured before any construction activities begin onsite.
  5. At time of building permit application submittal, a landscape plan shall be submitted to PCED for review that shows how compliance with AMC Chapter 17.41 and 17.46 is being met. The landscape plan shall include the following:
    - A. Plants native to Western Washington are preferred.
    - B. One tree is required for every one thousand (1,000) square feet of lot area per AMC Chapter 16.50.
    - C. Parking lot landscaping shall comply with AMC Chapters 17.41 & 17.46.
    - D. In the LM1 Zone, trees located along the street frontage shall be planted thirty (30) feet apart with ground cover and shrubs uses liberally.
  6. Prior to certificate of occupancy (CO) being issued, the applicant shall contact the City of Anacortes' Department of Planning, Community, and Economic Development for a site inspection to verify that the required landscaping required above is complete and in place.
  7. Prior to certificate of occupancy (CO) being issued, the applicant shall contact the City of Anacortes' Department of Planning, Community, and Economic Development for a site inspection to verify that wood enclosures surrounded by landscaping have been constructed for all dumpster and recycling locations on site. Please follow dumpster specifications as is required by the Solid Waste Department.
  8. Prior to certificate of occupancy (CO) being issued, exterior lighting shall be erected within the parking lot and on all sides of the building. All exterior lighting shall be down-shielded preventing light trespass.
  9. Prior to certificate of occupancy being issued, the applicant shall submit the facility's security plan to the City of Anacortes Police Department for review and approval.

10. Any new signage on the subject property or building will require a sign permit application submitted to PCED for review and approval that complies with AMC Chapter 17.40.
11. The applicant has provided information regarding its plan to prevent impacts to City of Anacortes fire protection, emergency medical services (EMS) and law enforcement by providing transportation shuttles, a 24-hour alarm and surveillance system, on-site security, and on-site medical personnel. Although no significant potential impacts have been identified to date, the facility owner will nevertheless meet and confer with the City of Anacortes after a period of one (1) year of the facility's operation to identify any adverse impacts that occurred in the preceding year on City of Anacortes fire protection, EMS and law enforcement that exceed average impact levels for facilities serving a similar number of people. If any such impacts are identified by the facility owner and City, the facility owner will develop a revised plan as necessary to address and reasonably mitigate such impacts, and submit such mitigation plan for approval by the Anacortes City Council.

**INTRODUCED, PASSED, AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ANACORTES on this 27<sup>th</sup> day of March 2017.**

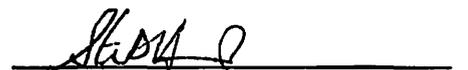
**CITY OF ANACORTES, WASHINGTON**

  
LAURIE M. GERE, MAYOR

Approved as to form and legality:

  
Darcy Swetnam, WSBA# 40530  
City Attorney

ATTEST:

  
Steve D. Hoglund, City Clerk Treasurer

**JUDICIAL APPEAL:**

AMC § 17.08.090 - Notice of appeal of any final action taken under this title must be filed with the Superior Court and served on the city attorney for the city within twenty-one (21) days of the date on which such final action was taken. For purpose of appeals from decisions of the Anacortes City Council, the "date of final action" shall mean the date on which the city council made its decision by vote taken at a regular or special public meeting.

## EXHIBITS:

EXHIBIT NUMBER:	NAME OF EXHIBIT:
Exhibit #01	Master Permit Application, Narrative, CUP /EPF Criteria of Approval, Inventory of Existing EPF in Skagit County/ Region, Community Relations Plan, & Letters in Support
Exhibit #02	Assessor's Info & City GIS Map
Exhibit #03	Notice of Application & Determination of Local Essential Public Facility & Notice of Hearing
Exhibit #04	Public Comments Received
Exhibit #05	Agency & Department Comments Received
Exhibit #06	Anacortes Municipal Code, Chapter 17.75 –Essential Public Facilities
Exhibit #07	Site Photos
Exhibit #08	Site Plan & Elevations
Exhibit #09	PCED's Presentation to Planning Commission
Exhibit #10	Applicant's Presentation to Planning Commission
Exhibit #11	Planning Commission's (Open Record Public Hearing) Minutes

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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation,

Respondent

File No. CDR20-01

DECLARATION OF MICHAEL SPENCE

Michael A. Spence, under penalty of perjury under the laws of the State of Washington declares that the following is true and correct:

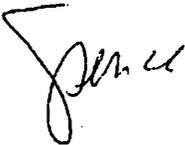
1. I am over the age of 18 years and have personal knowledge of the matters set forth herein.
2. I am the attorney for Petitioner Save our Sequim in this action.
3. Save Our Sequim is concerned that the City employees responsible for reviewing this Application are steering it into the administrative A-2 permitting process in which the final decision is made by the City staff, rather than the C-2 quasi-judicial permitting

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process, in which the City Council is the final decision-maker, for reasons that are unclear to us.

- 4. Attached as **Exhibit A** is a true and correct copy of a letter I sent to the City of Sequim on March 18, 2020. The letter references an email exchange between the applicant and representatives of the City in which the City confirms knowledge that the proposal contains an inpatient facility. This email exchange occurred ten months before the application was even filed. The referenced emails are attached to the letter and incorporated therein.

EXECUTED: September 2, 2020, at Seattle, Washington.



---

Michael A. Spence, Declarant

# **Exhibit A**

HELSELL  
FETTERMAN

March 18, 2020

Michael A. Spence  
Attorney at Law  
EMAIL: mspence@helsell.com  
DIRECT DIAL: 206.689.2167

Sequim City Council  
152 W. City Cedar St.  
Sequim, WA 98382

VIA REGULAR AND ELECTRONIC MAIL

**Re: Proposed Jamestown S'Klallam Drug Treatment/Detoxification Center**

Dear Councilmembers:

As you may remember, this firm represents Save Our Sequim, a large group of Sequim area residents opposed to the above-referenced drug detoxification center. Your response to a recent public records request filed by us and attorney Robert Bilow revealed internal and external communications between and among your senior staff members and representatives of the applicant that are troubling to us and others. Copies of the actual emails are attached to this letter, however a chronology of them is set forth below for your convenience:

On **March 27, 2019**, 40 days before the proposed project was even announced and 306 days before the application was filed, the Applicant's representative Brent Simcosky sent Planning Director Barry Berezowsky a copy of the Applicant's budget request to the State Legislature and referenced a 3:30 p.m. meeting the following day. Mr. Simcosky's email specifically states:

*"Hi Barry,*

*As promised, here is a copy of the capital budget request report we prepared for Representative Steve Tharinger. We will see you at your office tomorrow at 3:30 p.m."*

**Less than an hour later**, Mr. Berezowsky sent an email to City Manager Charlie Bush informing him that the Tribe purchased the subject property and notifying him of the upcoming meeting. Mr. Berezowsky's email stated specifically as follows:

*"Hi Charlie,*

*Not sure if you knew this received (sic) some funding in the state's budget and the tribe has purchased land behind Costco in the River Road EOA. As you can see I'm meeting with Eric and Brent tomorrow to discuss the project. According to Brent it's now public so I thought I better give you a head's up in case you hear from some Council members or ...."*

The land purchase was not mentioned in Mr. Simcosky's earlier email. Curiously, the land purchase in question did not close until May 10, 2019.

The meeting happened the next day, **March 28, 2019**.

The following day, **March 29, 2019**, Mr. Berezowsky sent Mr. Bush an email stating that:

*"I met with Eric and Brent yesterday and I don't see any major issues with the property or zoning. Although this is a super project that will bring a great deal of benefit to the community I suspect some neighbors might have some concerns which means how the project is rolled out to the public is important. Both Eric and Brent agreed and are working on a PR campaign"*

*According to both Eric and Brent they expect at least half of the funding to be included in the upcoming budget which will allow them to build the out patient facility with the inpatient hospital to come as a second phase (although plans could change). If this in fact happens they are expecting a public announcement as early as next week." (emphasis added)*

On **March 30, 2019**, Mr. Bush sent Mr. Berezowsky an email stating;

*"Awesome on both counts, thanks!"*

These communications are troubling on several levels:

1. **Inpatient Facility**: Mr. Berezowsky demonstrably knew that the project contained a second phase, which included an inpatient facility, which is not a permitted use in the RREOA District under SMC 18.33.031, yet he did not "see any major issues with the property or zoning", ten months before the application was filed. This indicates either

that he; 1) does not know the details of the zoning code he administers; or 2) willingly chose to ignore this important detail of the project.

2. **Prejudgment and Personal Bias:** Mr. Berezowsky's personal opinion 10 months before the application was even filed that this was a "super project" that will "bring a great deal of benefit to the community" is clear and convincing evidence of his prejudgment and personal bias towards this project. These statements constitute a violation of the following ethics policies contained in the City of Sequim's employment manual:

#### EMPLOYEE ETHICS

*The City's primary function is to serve the citizens of Sequim. A central tenet of achieving that goal relies on treating the public as its most valuable customer. Consistent with our core values, the City expects that all employees will serve our citizens in a professional manner that is professional, fair, courteous, effective, efficient, and helpful. The City trusts and expects that its employees' decisions and actions will be guided by sensible judgment, personal responsibility, and the following ethical principles:*

- *Tact and courtesy in all interactions, including members of the public, City officials, and fellow employees;*
- *Uphold the City's policies in a clear and consistent manner at all times;*
- *Make unbiased decisions and use authority fairly and responsibly;*
- *Avoid decisions or actions that might result in or give the impression of providing preferential treatment or privileged information to any person;*
- *Conduct City business in an impartial manner, disclosing all potential conflicts of interest;*
- *Advocate for an environment of public trust by upholding our core values;*
- *Be good stewards of the City's resources, grounds, facilities and equipment;*
- *Use position or City resources only for legitimate City business and not for personal gain; and*
- *Be mindful of how actions may be perceived by others.*

*Employees must also comply with all applicable requirements of RCW 42.20 (Misconduct of Public Officers) and 42.23 (Code of Ethics for Municipal Officers). No City employee may engage in any act which is in conflict with, or creates an appearance of conflict with, the performance of official duties (emphasis added)*

[Name]

[date]

Page 4

3. Coordinating with Applicant. Mr. Berezowsky clearly knew that the project would meet strong community opposition, yet 40 days before the project was publicly announced and 10 months before the application was filed, he “agreed” with the Applicant that “how the project is rolled out to the public is important”. In other words, Mr. Berezowsky was coordinating with the Applicant on a public relations strategy, despite knowing that it would meet significant community opposition and despite the fact that Phase II of the project is inconsistent with the zoning in the RREOA District.

SOS submits that these statements by Mr. Berezowsky and Mr. Bush easily rise to the level of a conflict of interest, which justifies his recusal from this project under the following process set forth in the Employment Manual:

*Conflicts of Interest*

*Employees who become aware of an actual or apparent conflict of interest regarding any matter in which they have decision-making authority must disclose the conflict to their immediate supervisor. If their supervisor agrees a conflict exists after consultation with the City Attorney or the Human Resources Department, employees must excuse themselves from decision making on the matter. The disclosure and steps taken to avoid the conflict will be documented in writing, dated and signed by the employee and supervisor.*

If Mr. Berezowsky or Mr. Bush were elected officials, their actions would clearly constitute a violation of Washington’s Appearance of Fairness Doctrine, which is codified in RCW 42.36 et. seq. The fact that they aren’t, however, does not excuse you as elected officials from alleged violations of RCW 42.36.110. That statute provides as follows:

**RCW 42.36.110**

***Right to fair hearing not impaired.***

*Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated.*

These emails and subsequent events lead clearly to the conclusion that Mr. Berezowsky and Mr. Bush; 1) were ‘in on’ the project 40 days (and possibly more) before the public knew about it and a full 10 months before the application was filed; 2) either misunderstood or intentionally ignored sections of the zoning code that did not support

[Name]

[date]

Page 5

the application; 3) coordinated with the applicant on a public relations strategy in advance of the project roll out; 4) stated publicly (and incorrectly) that the project was consistent with the applicable zoning; and 5) incorrectly and illegally classified the project as eligible for the A-2 permitting process, despite clear code language requiring them to "resolve" any question about process in favor of the "higher procedure type letter", in an attempt to make an "end run" around your potential opposition to this project. Individually and collectively, these actions and inactions impair the public's right to a fair hearing on this project, in violation of RCW 42.36.110, Washington's Appearance of Fairness Doctrine.

For these and more reasons, Save Our Sequim demands that you immediately suspend the application and conduct an investigation into the conduct of Mr. Berezowsky and Mr. Bush as detailed herein and take the actions contemplated in your Employment Manual, including the recusal of both from this proposed project. This situation, combined with the widespread shutdowns caused by the COVID-19 pandemic more than adequately justifies suspension of the 120-day rule under RCW 36.70B.080(1).

Thank you for reviewing this letter. I may be reached at [mspence@helsell.com](mailto:mspence@helsell.com) or at (206) 689-2167 with any questions or comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael A. Spence", written over a large, stylized checkmark or initial mark.

Michael A. Spence

MAS: lrb  
attachments  
cc: SOS

**From:** Barry Berezowsky  
**Sent:** Tuesday, August 6, 2019 3:44 PM  
**To:** Karen K. Kuznek-Reese  
**Subject:** FW: BH Campus  
**Attachments:** Capital Grant - Final.pdf

---

**From:** Barry Berezowsky  
**Sent:** Wednesday, March 27, 2019 2:42 PM  
**To:** Charlie Bush <cbush@sequimwa.gov>  
**Subject:** FW: BH Campus

Hi Charlie,

Not sure if you knew this received some funding in the State's budget and the tribe has purchased land behind Costco in the River Road EOA. As you can see I'm meeting with Eric and Brent tomorrow to discuss the project. According to Brent it's now public so I thought I better give you a head's up in case you hear from some Council members or .....

I'll keep you apprised while you are away.

BB

**From:** Brent D. Simcosky <bsimcosky@jamestowntribe.org>  
**Sent:** Wednesday, March 27, 2019 1:51 PM  
**To:** Barry Berezowsky <bberezowsky@sequimwa.gov>  
**Cc:** Eric Lewis <elewis@olympen.com>; Kyle E. Johnson <kjohnson@jamestowntribe.org>; michael@teammcaleer.com  
**Subject:** BH Campus

Hi Barry,

As promised, here is a copy of the capital budget request report we prepared for Representative Steve Tharinger. We will see you at your office tomorrow at 3:30 PM.

Thanks!!!

D. Brent Simcosky  
Director of Health Services

Jamestown S'Klallam Tribe

808 North 5<sup>th</sup> Ave  
Sequim, WA 98382

360-582-4870 (work)  
907-617-2564 (cell)

Email: [bsimcosky@jamestowntribe.org](mailto:bsimcosky@jamestowntribe.org)

**From:** Barry Berezowsky  
**Sent:** Tuesday, August 6, 2019 3:47 PM  
**To:** Karen K. Kuznek-Reese  
**Subject:** FW: Jamestown/OMC

---

**From:** Charlie Bush <cbush@sequimwa.gov>  
**Sent:** Monday, April 1, 2019 10:51 AM  
**To:** Barry Berezowsky <bberezowsky@sequimwa.gov>  
**Subject:** Re: Jamestown/OMC

Awesome on both counts, thanks!

Get Outlook for Android

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**From:** Barry Berezowsky  
**Sent:** Friday, March 29, 2019 10:48:08 AM  
**To:** Charlie Bush  
**Subject:** Jamestown/OMC

Hi Charlie,

Hope you are having a great time learning lots at conference.

I met with Eric and Brent yesterday and I don't see any major issues with the property or zoning. Although this is a super project that will bring a great deal of benefit to the community I suspect some neighbors might have some concerns which means how the project is rolled out to the public is important. Both Eric and Brent agreed and are working on a PR campaign.

According to both Eric and Brent they expect at least half of the funding to be included in the upcoming budget which will allow them to build the out patient facility with the inpatient hospital to come as a second phase (although plans could change). If this in fact happens they are expecting a public announcement as early as next week.

That's it for now,

BB

P.S. the SBA event is going great.

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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation,

Respondent

File No. CDR20-01

DECLARATION OF JODI WILKE

Jodi Wilke, under penalty of perjury under the laws of the State of Washington declares that the following is true and correct:

1. I am over the age of 18 years and have personal knowledge of the matters set forth herein.
2. I am a founding member of Save our Sequim, the Petitioner in this action.
3. Save Our Sequim is concerned that the City employees responsible for reviewing this Application are steering it into the administrative A-2 permitting process in which the final decision is made by the City staff, rather than the C-2 quasi-judicial permitting

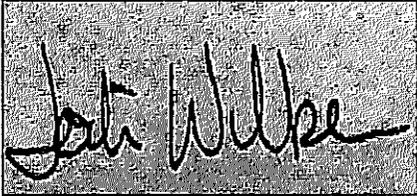
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process, in which the City Council is the final decision-maker, for reasons that are unclear to us.

- 4. Save our Sequim was formed shortly after the project was announced in May of 2019. Because of the controversial nature of this project, we have received a significant amount of support from the community. We have received donations from hundreds, if not thousands of people, most of whom have made donations of \$100.00 or less. We have had several events, including most recently a “shred fest”, in which cars lined up for blocks, many of whom donated to our cause. A petition we circulated received 2600 signatures, which we presented to the City Council. Our Facebook page has 2,500 followers.
- 5. Attached as **Exhibit A** is a true and correct printout of an article appearing in the August 11, 2019 edition of the Peninsula Daily News indicating that 1,300 people attended an August 9 public meeting on the proposed project, a majority of whom opposed the project.
- 6. Attached as **Exhibit B** is a true and correct printout of a February 21, 2020 printout of an article in the Peninsula Daily News stating that the City of Sequim has received more than 500 comments on the proposed project.
- 7. To say that this project has generated significant interest is the understatement of the Century.

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EXECUTED: September 2, 2020, at Port Townsend, Washington.



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Jodi Wilke, Declarant

# **Exhibit A**



Wendy Goldberg, a member of Save our Sequim, was first to speak when the Jamestown S’Klallam Tribe opened the meeting to questions and statements from the public Thursday. (Jesse Major/Peninsula Daily News)

# Medication-assisted treatment meeting draws 1,300 in Sequim

ADVERTISEMENT

Tribe: Facility moving forward

By Jesse Major

Sunday, August 11, 2019 1:30am | [NEWS](#) [CLALLAM COUNTY](#)

**SEQUIM** — Leaders of the Jamestown S’Klallam Tribe told the approximately 1,300 people who attended a public meeting that its planned medicine-assisted treatment center is moving forward.

People filled the Guy Cole Event Center far beyond capacity Thursday night — with overflow seating extending to the parking lot — as community members for and against the facility spoke their minds on the planned facility.

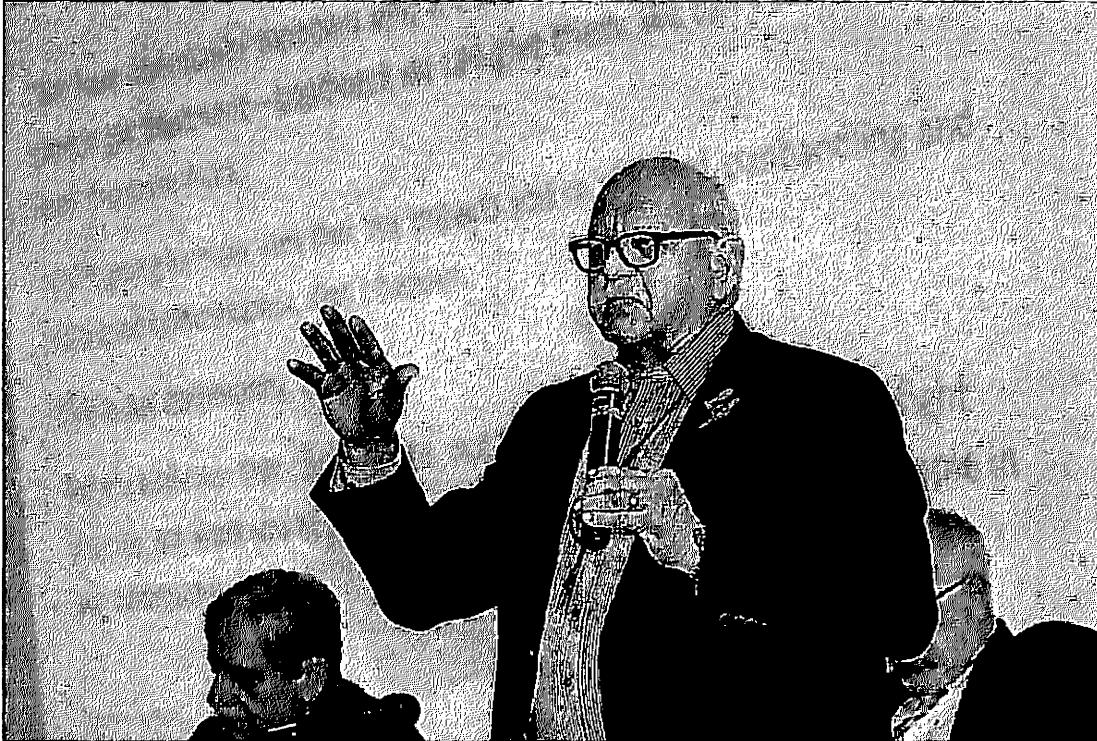
**“We have a location and resources we can use now,” said Ron Allen, chair and CEO of the Jamestown S’Klallam Tribe, which hosted the meeting.**

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**“We’ve made a substantial commitment to this project. We’re moving forward.”**



Jamestown S’Klallam Tribe Chair and CEO Ron Allen addresses a crowd of approximately 1,300 people during the tribe’s town hall meeting concerning its planned medication-assisted treatment facility. (Jesse Major/Peninsula Daily News)

He told the crowd the tribe will take people’s concerns about the project into consideration, but that he firmly believes the things people fear will not materialize.

The tribe heard from people concerned that treatment center, located on the west side of Sequim, is in the wrong place and that it will attract crime.

“My contention is that Sequim is the wrong location for a large MAT clinic,” said Wendy Goldberg of Sequim, a co-leader of Save our Sequim.

A sign that said “KEEP SEQUIM’S CHILDREN SAFE NO DRUG CLINIC” stood outside as people arrived at the meeting.

“It’s going to happen and at the end of the day it will be one classy place for the service,” Allen said. “It’s going to fill a void for health care. We’re not moving it, but we are going to be sensitive to the issues we’re hearing

about.”

The four-hour meeting was split into two sections. First, the tribe, health officials and law enforcement talked about plans for the Healing Campus. That was followed by a three-hour public comment period.

During public comment speakers were split into two lines: one “for” and one “against” the facility and speakers had two minutes each to speak their mind. When the meeting ended four hours later, there were about three more people in the “against” line.



Jodi Wilke, a co-leader of Save our Sequim, speaks during the Jamestown S’Klallam Tribe’s town hall meeting concerning its planned medicine-assisted treatment center in Sequim on Thursday. (Jesse Major/Peninsula Daily News)

## The treatment center

Tribal officials say the medication-assisted treatment facility will be unlike any other on the North Olympic Peninsula, where almost all medication-assisted treatment is provided by primary care providers.

The tribe purchased 20 acres of land zoned for health care on South Ninth Avenue, adjacent to U.S. Highway 101, where it will build a 15,000 square-foot medication-assisted treatment facility that will eventually treat approximately 250 patients. The hope is to open it in 2021.

The state provided the tribe with \$7.2 million in capital funding and the tribe expects to spend more than \$3 million of its own money on the project.

Patients at the outpatient facility will receive daily medications for their opioid-use disorder and receive wrap-around services of primary care, dental, individual and group counseling, childcare and transportation if needed.



Miranda Beck, who is in recovery from heroin addiction, talks about how she uses medication-assisted treatment in her recovery on Thursday. (Jesse Major/Peninsula Daily News)

In emails, officials familiar with MAT programs offered through primary care providers on the North Olympic Peninsula said those programs are at capacity.

Olympic Peninsula Health Services reported it is able to accept new patients the same day they seek help and BayMark Health Services is preparing to open a facility in Port Angeles that offers methadone.

The tribe's medication-assisted treatment facility is the first phase in developing the Jamestown Healing Campus and is expected to add about 70 jobs in Sequim.

The second phase involves adding a 16-bed psychiatric treatment hospital, operated by Olympic Medical Center staff, that is expected to open in 2022. Funding has not been secured.

Brent Simcosky, director of health services for the tribe, said Thursday that inpatient facilities have only a 4 percent success rate, while the success rate of MAT facilities with wrap-around services is closer to 80 percent.

“If you’re going to heal a person, you have to make sure their physical and mental well-being is in place,” Simcosky said. “Then we start to work with them so they can start to be a valuable person in the community again.”

Simcosky spoke about what the facility is and also emphasized what it isn’t.

The treatment center is not an inpatient facility, meaning no overnight stays. The tribe will not bus clients from outside the North Olympic Peninsula. It will serve only Clallam and Jefferson counties.

“We’re not a 600-bed inpatient facility,” he said. “Contrary to popular belief, we have not bought a bunch of school buses to get ready to head over to Seattle.”

Allen told the crowd that the majority of those participating in the program will drive themselves to the facility, a statement which many in the crowd greeted with shouting or laughing.

“Driving high on Suboxone?” some asked.

“That’s illegal,” said others.

When used in proper doses Suboxone does not make patients high and it is not illegal to drive having taken it, because patients are not impaired, officials said many times during the meeting.

Patients will be required to leave the facility the same way they arrived.

The clinic would be open 6 a.m. to 2 p.m., which would help accommodate patients’ work schedules, Simcosky said.

“Most of our patients will already have jobs,” Simcosky said, prompting some laughter in the crowd. “I know people don’t believe that, but we already have 400-500 people in MAT clinics throughout Clallam County and almost all of them have jobs.”

Simcosky said the tribe is dedicated to keeping the facility secure, and plans to contract with Security Services Northwest and have about 100 cameras.



Seating at a town hall meeting hosted by the Jamestown S’Klallam Tribe to discuss its planned medication-assisted treatment facility overflowed outside of the Guy Cole Event Center in Sequim on Thursday. (Jesse Major/Peninsula Daily News)

## Comments

After its presentation, the tribe allowed everyone who wanted to speak to do so. The meeting, which started at 5:45 p.m., ended at 10 p.m.

Some accused the tribe of promoting addictions to alcohol, gambling and marijuana while now wanting to treat opioid addiction. Some criticized the tribe for not involving the community in the decision, while others said people should have attended public meetings.

Many who spoke against the MAT facility said they want to see people with opioid-use disorder have access to treatment, but they didn’t want to see a facility of this scale in Sequim.

Goldberg, citing stats provided by Clallam County, said there were “only eight” overdoses in Sequim in 2016. Most overdoses were in Port Angeles, which had 64 percent of the county’s overdoses.

“I’d like to also suggest many people, addicts, will come on their own to the MAT clinic,” she said. “They have feet and as soon as they hear there are free services they will come rushing into Sequim.”

Jodi Wilke, a co-leader of Save our Sequim, told tribal leaders she had three pages of rebuttals to the information they presented.

She said during the public comment period that there has yet to be a venue in which those opposed to the project could present their point of view.

“This venue is such that only one side is represented in the meeting,” she said. “If we can’t be allowed in this public discussion today, outside our two- to three-minute snippets of information, we ask the city provide us an opportunity to do so.”

Wilke a Republican who unsuccessfully ran for state representative last year, is registered with the Public Disclosure Commission to run again next year, but said she is not planning to run for office.

Said Tim Wheeler, a Sequim High School graduate who has lived in Sequim for many years: “Our own neighbors, women and children are affected by this crisis and we must act on it.

“It’s up to us to act on it and take pride in the fact that we act on it. We should be proud this clinic is going to be in our community.”

Miranda Beck, who has been using Suboxone to treat her opioid-use disorder for more than 688 days, described how her life has changed over the last two years.

She said had been taking opioids for many years for pain management, but when her doctor retired she went to the streets to find drugs.

“I overdosed three times before I ever got clean,” Beck said. “When I overdosed for the last time and was saved — my mother, seeing her tears and hurting, I had to do something different.”

Beck told the crowd she is not homeless, she is not on the streets, she is not committing crimes and that she is part of the leadership at her church.

“I came here to show you people that what ... a MAT patient would look like is nothing like what you guys are interpreting,” she said to a cheering crowd.

Not one person who spoke at the meeting said their opinion had changed as a result of information presented by either side.

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Reporter Jesse Major can be reached at 360-452-2345, ext. 56250, or at [jmajor@peninsuladailynews.com](mailto:jmajor@peninsuladailynews.com).

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**Daily News**

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# **Exhibit B**

# City of Sequim receives hundreds of MAT clinic comments

Three appeals made on applications classification

By Matthew Nash

Friday, February 21, 2020 1:30am | **NEWS** **CLALLAM COUNTY**

**SEQUIM** — More than 500 comments on the Jamestown S’Klallam Tribe’s proposed medication-assisted treatment clinic application have been submitted to the city of Sequim as the deadline looms.

Sequim senior planner Tim Woolett said Wednesday he’s read 428 emails and hard copy comments from the public with at least 100 more to read and process.

“It’s important that people know their comments are being read,” he said.

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The comment timeline is by 4 p.m. Monday.

The proposed outpatient medication-assisted treatment (MAT) clinic would rest on 3.3 acres of an 18.19 parcel off South Ninth Avenue with a 16,720-square-foot clinic. Clinic staff would dispense daily doses of methadone, Suboxone and Vivitrol for opioid-use disorder and provide wrap-around services such as primary care, dental and childcare services for residents of Clallam and Jefferson counties who have voluntarily sought treatment.

A 20-day comment period on the application began when the “Notice of Application” went in the Peninsula Daily News, by the proposed site, on the city’s website and to neighbors within 300 feet of the South Ninth Avenue

property by mail. The comment timeline was extended because 20 days ends on a Saturday, city staff said.

Comments are accepted via drop-off at the Sequim Civic Center, 152 W. Cedar St.; by mail to “City of Sequim, Department of Community Development (DCD), c/o Tim Woollett, 152 W. Cedar St., Sequim, WA, 98382,” and/or via email: [twolett@sequimwa.gov](mailto:twolett@sequimwa.gov).

## Comments

City staff members said all comments will be posted online at some point during the application process. They provided no timeline given because of the large number of comments.

Woollett said they are analyzing comments relevant to the application, with about 90 percent indicating they are either for or against the project.

“The use is a decided issue,” he said. “This part of the process is about architecture and site planning (i.e. traffic, roof materials, etc.)”

Woollett said some people are commenting multiple times, with the most being one person submitting seven comments; those are all being read and considered, too, he said.

Barry Berezowsky, Sequim’s director of community development, will consider the project based on city staff’s recommendations under the city’s A-2 processing type. He has until May 26, or 120 days, to make a decision.

Berezowsky said he’s read the emails so far to “get a feeling for what people are saying and feeling” and he’s beginning to consider possible conditions and mitigation that might be necessary for the project.

Woollett’s report will be available once Berezowsky issues his decision.

From the decision date, the public has 21 days to file an appeal of any decision made.

During the application process and prior to a decision, the city will issue a State Environmental Policy Act (SEPA) Threshold Determination, on which the public can comment for 14 days.

A notification for that comment period will be posted on signs by the proposed site, in the newspaper and on the city’s website.

That decision can be appealed, too.

Updates regarding the application are posted online at [www.sequimwa.gov/471/Current-Projects](http://www.sequimwa.gov/471/Current-Projects).

Woolett said he's been focused on community comments at this juncture and once the comment period ends he'll begin creating his "detailed review."

### **Classification appeal**

The appeal timeline for Berezowsky's "Notice of Classification" ended on Feb. 14 to contest his decision that the application be reviewed under the A-2 classification process.

Three individuals/groups filed appeals that include paperwork and a \$600 fee for a hearing examiner. They include: MacMahon Law Group of Puyallup for homeowners of Parkwood Manufactured Housing Community, LLC.; Bob Bilow of Sequim, and attorney Michael Spence with Helsell and Fetterman of Seattle for the group Save Our Sequim.

The three appeals all ask for the project to be reviewed under the C-2 process and City Council review.

Woolett said all three appeals are deemed complete and will be considered by a hearing examiner after Berezowsky's decision on the project is made. The hearing examiner would be hired by the city to hear appeals about the classification, the SEPA threshold and the project decision itself.

All appeals require the same fee and paperwork.

Community members made their appeals public including Bilow and members of Save Our Sequim at Sequim city council meetings.

### **Appeal comments**

Under SOS's appeal, Spence wrote that the A-2 process is inappropriate because the project meets the "Essential Public Facility" designation under the state's Growth Management Act.

MacMahon Law Group wrote similar statements and they both say the facility is closer to an alcohol and/or drug treatment center than an outpatient care facility.

Spence wrote that the tribe rebranded its project from the “Jamestown Healing Campus” to the “Jamestown S’Klallam Tribe Outpatient Clinic” after it dropped plans for a second phase inpatient psychiatric evaluation and treatment facility.

He wrote, “the city believes that this project is exclusively an ‘outpatient clinic.’ This decision is erroneous because of the direct link between the first phase outpatient facility and the second phase inpatient facility.” He adds that inpatient facilities are not a permitted use in this project’s district.

Bilow wrote that the city should follow the C-2 status because it requires “substantial discretion and involves broad public interest.”

He writes, “only after classifying this application under SMC Title 20 as a Type C-2 process should the Director then proceed to examine whether the described use is a permitted, conditional, or other use described in SMC zoning Title 18. The director’s action is premature, as is his legal analysis of various interpretations of zoning laws.”

“There truly is no manner by which one can argue that this application has limited public interest as opposed to broad public interest,” Bilow writes.

MacMahon Law Group wrote that they aren’t asking for the project to be denied but review it in the correct process to evaluate “any potential impacts and taking the appropriate steps to minimize the impact on the health, safety and welfare of the public.”

They add that the C-2 process does not restrict the city from permitting the placement of the MAT clinic. To the contrary, they authorize the city to grant a special use permit for precisely such a use after undergoing the analysis to mitigate any impact on the health, safety, and welfare of the public.”

Spence writes that “SOS is not categorically opposed to the sitting of a drug rehabilitation facility serving the local community somewhere in the Sequim area, however SOS believes that the proposed location for a regional drug rehabilitation facility is in appropriate in this location ...”

For more information about the **MAT application**, contact the City of Sequim at 360-683-4908.

For more information about the **Jamestown S’Klallam Tribe’s project**, visit [www.jamestownhealingcampus.org](http://www.jamestownhealingcampus.org).

For more information about **arguments against the clinic**, visit [www.saveoursequim.org](http://www.saveoursequim.org).

For more information about **arguments for the clinic**, visit [www.facebook.com/groups/SequimStabilization](https://www.facebook.com/groups/SequimStabilization).

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Matthew Nash is a reporter with the Olympic Peninsula News Group, which is composed of Sound Publishing newspapers Peninsula Daily News, Sequim Gazette and Forks Forum. Reach him at [mnash@sequimgazette.com](mailto:mnash@sequimgazette.com).

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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation,

Respondent

File No. CDR20-01

ORDER  
(Proposed)

THIS MATTER, having come before the Examiner on the Motion of the Petitioner, and it appearing from the Motion and all attachments and exhibits thereto that the Petitioner is entitled to the relief requested, it is hereby ORDERED as follows:

1. The proposed project meets the definition of an "Essential Public Facility" as set forth in RCW 36.70A.200(1).

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2. The Notice of Determination of Procedure Type for File No. CDR 20-001, dated January 24, 2020 is hereby stricken and the proposed project is remanded to the City of Sequim be processed under the City's C-2 permitting process.

3. Alternatively, the City Council is conferred with appellate jurisdiction as set forth in SMC 20.01.030(A), Table 1.

4. \_\_\_\_\_  
\_\_\_\_\_

ORDERED this \_\_\_\_\_ day of September 2020

\_\_\_\_\_  
Phil A. Olbrechts  
WSBA 19146  
Hearing Examiner, City of Sequim

Submitted by:

HELSELL FETTERMAN LLP

\_\_\_\_\_  
Michael A. Spence  
WSBA No. 15885  
Attorney for Petitioner

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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation

Respondence.

File No.: CDR 20-001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 2, 2020, the following documents were sent for delivery on the following party in the manner indicated:

Petitioner Save Our Sequim’s Motion for Partial Summary Judgment and for Order Remanding Application;

this Certificate of service.

Kristina Nelson-Gross  
Sequim City Attorney  
152 W. Cedar Street  
Sequim, WA 98382  
[Knelson-gross@sequimwa.gov](mailto:Knelson-gross@sequimwa.gov)  
[tsandaine@dequimwa.gov](mailto:tsandaine@dequimwa.gov)  
[olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

- Via first class U. S. Mail
- Via Legal Messenger
- Via Facsimile
- Via Email

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- Via Legal Messenger
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- Via Email

Michael D. McLaughlin  
Michael D. McLaughlin, LLC  
4114 N. 10<sup>th</sup> Street  
Tacoma, WA 98406  
[michael@mdmwalaw.com](mailto:michael@mdmwalaw.com)

- Via first class U. S. Mail
- Via Legal Messenger
- Via Facsimile
- Via Email

DATED this 2<sup>nd</sup> day of September, 2020

  
Lisa Blakeney, Legal Assistant

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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation,

Respondent

File No. CDR20-01

PETITIONER SAVE OUR SEQUIM’S  
MOTION TO STAY PROCEEDING  
PENDING PUBLIC RECORDS ACT  
COMPLIANCE

**INTRODUCTION**

Petitioner Save Our Sequim (“SOS”) respectfully requests that the Examiner stay this proceeding until the City of Sequim complies with the requirements of the Washington Public Records Act, codified as RCW 42.56.

**I. RELIEF REQUESTED**

1. An Order of the Examiner staying this proceeding until the City of Sequim complies with the Washington Public Records Act, codified as RCW 42.56.
2. Any other relief the Examiner deems just and equitable.

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**II. STATEMENT OF FACTS**

On September 9, 2020, Petitioner Save our Sequim (SOS) filed Public Records Requests with various agencies in the City of Sequim. Copies of the requests are attached as Exhibit A. The requests specifically stated as follows:

This request includes, but is not limited to, all correspondence, letters, emails, documents, and records in the possession, custody, or control of the City of Sequim, the City Council (the “City”), or any department thereof. The terms “document” and “documents” as used herein have the same meaning as “writing” under RCW 42.56.010(4), and include emails, voicemails, telephonic text messages, and telephonic picture messages. Pursuant to this request, please provide any and all documents (including those in electronic or other format and archives) relating to or referencing the Jamestown S’Klallam Tribe and the following:

- Jamestown Medication Assisted Treatment Clinic (“MAT”);
- Jamestown S’Klallam Healing Campus;
- The pre-application process for the MAT;
- This request includes, but is not limited to, communications (emails, letters, audio recordings) and documents (preapplication, application, plans, contracts, permits, inspections) referencing the MAT.

The City’s responses came in installments, and contained a large number of documents. However, for the first time, the final installment contained a significant number of redactions. Accompanying these redactions was a privilege log. Some of the redacted responses and privilege log are attached as Exhibit B.

The privilege logs repeatedly reference RCW 42.56.290, governing the attorney-client privilege. No other information was provided in the privilege log as required by RCW 42.56.210(3) and the caselaw interpreting it.

**III. STATEMENT OF ISSUES**

1. Should this application be stayed until the City complies with RCW 42.56, the Washington Public Records Act? YES.

1 **IV. EVIDENCE RELIED UPON**

- 2 1. The documents of record and all exhibits and attachments thereto.

3 **V. AUTHORITY**

4 **A. The City failed to provide an adequate ‘statement of the specific exemption**  
5 **authorizing the withholding of the record and a brief explanation of how the exemption**  
6 **applies to the record withheld’.**

7 RCW 42.56.210(3) requires that an agency withholding public records must include a  
8 statement of the applicable exemption and a brief explanation of how it applies. The statute  
9 reads as follows:

10 **RCW 42.56.210**  
11 **Certain personal and other records exempt.**

12 (3) Agency responses refusing, in whole or in part, inspection of any public record shall  
13 include a statement of the specific exemption authorizing the withholding of the record  
14 (or part) and a brief explanation of how the exemption applies to the record withheld.

15 WAC 44-14-04004 (5)(b) expands on this obligation as follows:

16 **WAC 44-14-04004**  
17 **Responsibilities of agency in providing records.**

18 (b) **Brief explanation of withholding.** When an agency claims an exemption for an  
19 entire record or portion of one, it must inform the requestor of the statutory exemption  
20 and provide a brief explanation of how the exemption applies to the record or portion  
21 withheld. RCW 42.56.210(3). The brief explanation should cite the statute the agency  
22 claims grants an exemption from disclosure. The brief explanation should provide  
23 enough information for a requestor to make a threshold determination of whether the  
24 claimed exemption is proper. Nonspecific claims of exemption such as "proprietary" or  
25 "privacy" are insufficient.

One way to properly provide a brief explanation of the withheld record or redaction is  
for the agency to provide a withholding log, along with the statutory citation permitting  
withholding, and a description of how the exemption applies to the information withheld.  
The log identifies the type of record, its date and number of pages, and the author or

1 recipient of the record (unless their identity is exempt). The withholding log need not be  
2 elaborate but should allow a requestor to make a threshold determination of whether the  
3 agency has properly invoked the exemption.

4 Another way to properly provide a brief explanation is to use another format, such as a  
5 letter providing the required exemption citations, description of records, and brief  
6 explanations. Another way to properly provide a brief explanation is to have a code for  
7 each statutory exemption, place that code on the redacted information, and attach a list  
8 of codes and the brief explanations with the agency's response.

9 This statutory scheme was recently interpreted by the Washington Supreme Court in  
10 Rental Housing Ass'n v. City of Des Moines, 165 Wn. 2d 525 (Wash. 2009). In that case, the  
11 Court addressed the definition of when a public response to a Public Records Request is 'final'  
12 for purposes of triggering the one-year statute of limitations. This required the Court to analyze  
13 when a 'response is sufficient to trigger the limitation period', which in turn required an analysis  
14 of the privilege log claimed by the City. (id. at 1). In its analysis, the Supreme Court stated as  
15 follows, citing Progressive Animal Welfare Society v. University of Washington, 125 Wn. 2d  
16 243 (Wash. 1994) (PAWS II):

17 "The identifying information need not be elaborate, but should include the type of record,  
18 its date and number of pages, and, unless otherwise protected, the author and recipient,  
19 or if protected, other means of sufficiently identifying particular records without  
20 disclosing protected content. Where use of any identifying features whatever would  
21 reveal protected content, the agency may designate the records by a numbered sequence."  
(PAWS II, footnote 7)

22 The Rental Housing Association Court stated the purpose of RCW 42.56 succinctly as follows:

23 "The PRA's disclosure provisions must be liberally construed and its exemptions  
24 narrowly construed. RCW 42.56.030. The burden of proof is on the agency to establish  
25 that any refusal to permit public inspection and copying is in accordance with a statute  
that exempts or prohibits disclosure in whole or in part. RCW 42.56.550(1).  
Administrative inconvenience or difficulty does not excuse strict compliance with the  
PRA. *Zink v. City of Mesa*, 140 Wn. App. 328, 337, 166 P.3d 738 (2007).

1  
2 The PRA's mandate, not the requester's preference, controls when a claim of exemption  
3 is validly made. Without the information a privilege log provides, a public citizen and a  
4 reviewing court cannot know (1) what individual records are being withheld, (2) which  
5 exemptions are being claimed for individual records, and (3) whether there is a valid  
6 basis for a claimed exemption for an individual record. Failure to provide the sort of  
7 identifying information a detailed privilege log contains defeats the very purpose of the  
8 PRA to achieve broad public access to agency records. *See* RCW 42.56.030. In this  
9 regard, requiring a privilege log does not *add to* the statutory requirements, but rather  
10 effectuates them. *See* RCW 42.56.210(3), .550(6).”

11  
12 The City of Sequim’s privilege log completely fails to satisfy this test. The only  
13 information contained in it states:

14 “RCW 42.56.290. Communications between attorney and client that reveals  
15 opinions/impressions of attorney of information prepared/collected/assembled in  
16 litigation or anticipation of litigation or related to client advice is exempt.”

17 Completely missing is a description of the type of record, its date and number of pages,  
18 and the author and recipient, or if protected, other means of sufficiently identifying particular  
19 records without disclosing protected content.

20 As a highly contentious land use matter involving significant public interest, this matter  
21 is heavily dependent on what is contained in the public record. Without a satisfactory indication  
22 of what is being withheld, the Petitioner is severely prejudiced in preparing for this appeal. This  
23 being the case, the Examiner should stay this proceeding until the City prepares an adequate  
24 privilege log and the Petitioners are allowed to review it for compliance with RCW 42.56.210(3).  
25

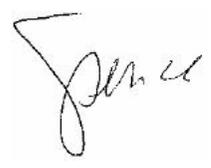
## VI. CONCLUSION

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The Petitioners are severely prejudiced by the City’s failure to comply with the requirements of RCW 42.56.210(3) as interpreted by the courts. As such, this proceeding should be stayed until such time as the City prepares a proper privilege log and the Petitioners are given adequate time to review it for compliance with the Washington Public Records Act.

DATED this 2nd day of September, 2020.

HELSELL FETTERMAN LLP



---

Michael A. Spence  
WSBA No. 15885  
Attorney for Petitioner

# **EXHIBIT A-1**

HELSELL  
FETTERMAN

September 20, 2019

Michael A. Spence  
Attorney At Law  
EMAIL: [mspence@helsell.com](mailto:mspence@helsell.com)  
DIRECT DIAL: 206-689-2167

David L. Tran  
Attorney At Law  
EMAIL: [dtran@helsell.com](mailto:dtran@helsell.com)  
DIRECT DIAL: 206-689-2161

Sequim City Council  
Attn: Public Disclosure Officer  
152 West Cedar Street  
Sequim, WA 98382

**Re: Public Records Act, Chap. 42.56 RCW**

Dear Records Coordinator:

This firm represents Save Our Sequim, a large group of citizens concerned about the proposed Jamestown S’Klallam Medication Assisted Treatment Clinic. Pursuant to the Public Records Act (PRA), ch. 42.56 RCW, we submit this request for public records.<sup>1</sup>

This request includes, but is not limited to, all correspondence, letters, emails, documents, and records in the possession, custody, or control of the City of Sequim, the City Council (the “City”), or any department thereof. The terms “document” and “documents” as used herein have the same meaning as “writing” under RCW 42.56.010(4)<sup>2</sup>, and include emails, voicemails, telephonic text messages, and telephonic picture messages. Pursuant to this request, please provide any and all documents (including those in electronic or other format and archives) relating to or referencing the Jamestown S’Klallam Tribe and the following:

- Jamestown Medication Assisted Treatment Clinic (“MAT”);
- Jamestown S’Klallam Healing Campus;
- The pre-application process for the MAT;

---

<sup>1</sup> " The term “public record” includes “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics...” RCW 42.56.010(3) (emphasis added).

<sup>2</sup> The PRA defines “writing” as: “handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.” RCW 42.56.010(4) (emphasis added).

- This request includes, but is not limited to, communications (emails, letters, audio recordings) and documents (preapplication, application, plans, contracts, permits, inspections) referencing the MAT.

If the City refuses to make available for inspection and copying any of the records requested above, please provide a statement of the specific exemption upon which the City relies to withhold each record (or part thereof), together with an explanation of how the exemption applies to the record withheld, as required by RCW 42.56.210(3).

We look forward to your prompt response. Please let me know by phone (206.689.2167) or email ([mspence@helsell.com](mailto:mspence@helsell.com)) if you have any questions about this request, or if you believe we may be able to simplify your task in responding to this request by clarifying any of the items above.

We will pay reasonable copying costs under RCW 42.56.120; however, if the number of pages of documents to be provided in response to this request exceeds one thousand, please let us know before you incur the expense of copying them, so that we can reconsider whether to request copies or, instead, make other arrangements to inspect them.

Very truly yours,

HELSELL FETTERMAN LLP



Michael A. Spence

MAS:byk

# **EXHIBIT A-2**

HELSELL  
FETTERMAN

September 20, 2019

Michael A. Spence  
Attorney At Law  
EMAIL: [mspence@helsell.com](mailto:mspence@helsell.com)  
DIRECT DIAL: 206-689-2167

David L. Tran  
Attorney At Law  
EMAIL: [dtran@helsell.com](mailto:dtran@helsell.com)  
DIRECT DIAL: 206-689-2161

Sequim Community Development  
Attn: Public Disclosure Officer  
152 West Cedar Street  
Sequim, WA 98382

**Re: Public Records Act, Chap. 42.56 RCW**

Dear Records Coordinator:

This firm represents Save Our Sequim, a large group of citizens concerned about the proposed Jamestown S’Klallam Medication Assisted Treatment Clinic. Pursuant to the Public Records Act (PRA), ch. 42.56 RCW, we submit this request for public records.<sup>1</sup>

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- Jamestown Medication Assisted Treatment Clinic (“MAT”);
- Jamestown S’Klallam Healing Campus;
- The pre-application process for the MAT;

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<sup>1</sup> " The term “public record” includes “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics....” RCW 42.56.010(3) (emphasis added).

<sup>2</sup> The PRA defines “writing” as: “handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.” RCW 42.56.010(4) (emphasis added).

- This request includes, but is not limited to, communications (emails, letters, audio recordings) and documents (preapplication, application, plans, contracts, permits, inspections) referencing the MAT.

If the City refuses to make available for inspection and copying any of the records requested above, please provide a statement of the specific exemption upon which the City relies to withhold each record (or part thereof), together with an explanation of how the exemption applies to the record withheld, as required by RCW 42.56.210(3).

We look forward to your prompt response. Please let me know by phone (206.689.2167) or email ([mspence@helsell.com](mailto:mspence@helsell.com)) if you have any questions about this request, or if you believe we may be able to simplify your task in responding to this request by clarifying any of the items above.

We will pay reasonable copying costs under RCW 42.56.120; however, if the number of pages of documents to be provided in response to this request exceeds one thousand, please let us know before you incur the expense of copying them, so that we can reconsider whether to request copies or, instead, make other arrangements to inspect them.

Very truly yours,

HELSELL FETTERMAN LLP



Michael A. Spence

MAS:byk

# **EXHIBIT A-3**

HELSELL  
FETTERMAN

September 20, 2019

Michael A. Spence  
*Attorney At Law*  
EMAIL: [mspence@helsell.com](mailto:mspence@helsell.com)  
DIRECT DIAL: 206-689-2167

David L. Tran  
*Attorney At Law*  
EMAIL: [dtran@helsell.com](mailto:dtran@helsell.com)  
DIRECT DIAL: 206-689-2161

**VIA EMAIL ONLY: [knelson-gross@sequimwa.gov](mailto:knelson-gross@sequimwa.gov)**

Sequim City Attorney  
Attn: Kristina Nelson-Gross  
152 West Cedar Street  
Sequim, WA 98382

***Re: Public Records Act, Chap. 42.56 RCW***

Dear Ms. Nelson-Gross:

This firm represents Save Our Sequim, a large group of citizens concerned about the proposed Jamestown S’Klallam Medication Assisted Treatment Clinic. Pursuant to the Public Records Act (PRA), ch. 42.56 RCW, we submit this request for public records.<sup>1</sup>

This request includes, but is not limited to, all correspondence, letters, emails, documents, and records in the possession, custody, or control of the City of Sequim, City Council (the “City”), or any department thereof. The terms “document” and “documents” as used herein have the same meaning as “writing” under RCW 42.56.010(4)<sup>2</sup>, and include emails, voicemails, telephonic text messages, and telephonic picture messages. Pursuant to this request, please provide any and all documents (including those in electronic or other format and archives) relating to or referencing the Jamestown S’Klallam Tribe and the following:

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- Jamestown S’Klallam Healing Campus;
- The pre-application process for the MAT;

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We look forward to your prompt response. Please let me know by phone (206.689.2167) or email ([mspence@helsell.com](mailto:mspence@helsell.com)) if you have any questions about this request, or if you believe we may be able to simplify your task in responding to this request by clarifying any of the items above.

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Very truly yours,

HELSELL FETTERMAN LLP



Michael A. Spence

MAS:byk

# **EXHIBIT A-4**

HELSELL  
FETTERMAN

September 20, 2019

Michael A. Spence  
Attorney At Law  
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David L. Tran  
Attorney At Law  
EMAIL: [dtran@helsell.com](mailto:dtran@helsell.com)  
DIRECT DIAL: 206-689-2161

**VIA EMAIL ONLY: [cbush@sequimwa.gov](mailto:cbush@sequimwa.gov)**

Sequim City Manager  
Attn: Charlie Bush  
152 W Cedar Street  
Sequim, WA 98382

***Re: Public Records Act, Chap. 42.56 RCW***

Dear Mr. Bush:

This firm represents Save Our Sequim, a large group of citizens concerned about the proposed Jamestown S’Klallam Medication Assisted Treatment Clinic. Pursuant to the Public Records Act (PRA), ch. 42.56 RCW, we submit this request for public records.<sup>1</sup>

This request includes, but is not limited to, all correspondence, letters, emails, documents, and records in the possession, custody, or control of the City of Sequim, City Council (the “City”), or any department thereof. The terms “document” and “documents” as used herein have the same meaning as “writing” under RCW 42.56.010(4)<sup>2</sup>, and include emails, voicemails, telephonic text messages, and telephonic picture messages. Pursuant to this request, please provide any and all documents (including those in electronic or other format and archives) relating to or referencing the Jamestown S’Klallam Tribe and the following:

- Jamestown Medication Assisted Treatment Clinic (“MAT”);
- Jamestown S’Klallam Healing Campus;
- The pre-application process for the MAT;

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<sup>1</sup> " The term “public record” includes “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics...” RCW 42.56.010(3) (emphasis added).

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We look forward to your prompt response. Please let me know by phone (206.689.2167) or email (mspence@helsell.com) if you have any questions about this request, or if you believe we may be able to simplify your task in responding to this request by clarifying any of the items above.

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Very truly yours,

HELSELL FETTERMAN LLP



Michael A. Spence

MAS:byk

# **EXHIBIT A-5**

HELSELL  
FETTERMAN

September 20, 2019

Michael A. Spence  
Attorney At Law  
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DIRECT DIAL: 206-689-2167

David L. Tran  
Attorney At Law  
EMAIL: [dtran@helsell.com](mailto:dtran@helsell.com)  
DIRECT DIAL: 206-689-2161

**VIA EMAIL ONLY: [bberezowsky@sequimwa.gov](mailto:bberezowsky@sequimwa.gov)**

Sequim Community Development  
Attn: Barry Berezowsky  
152 West Cedar Street  
Sequim, WA 98382

**Re: Public Records Act, Chap. 42.56 RCW**

Dear Mr. Berezowsky:

This firm represents Save Our Sequim, a large group of citizens concerned about the proposed Jamestown S’Klallam Medication Assisted Treatment Clinic. Pursuant to the Public Records Act (PRA), ch. 42.56 RCW, we submit this request for public records.<sup>1</sup>

This request includes, but is not limited to, all correspondence, letters, emails, documents, and records in the possession, custody, or control of the City of Sequim, City Council (the “City”), or any department thereof. The terms “document” and “documents” as used herein have the same meaning as “writing” under RCW 42.56.010(4)<sup>2</sup>, and include emails, voicemails, telephonic text messages, and telephonic picture messages. Pursuant to this request, please provide any and all documents (including those in electronic or other format and archives) relating to or referencing the Jamestown S’Klallam Tribe and the following:

- Jamestown Medication Assisted Treatment Clinic (“MAT”);
- Jamestown S’Klallam Healing Campus;
- The pre-application process for the MAT;

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<sup>1</sup> The term “public record” includes “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics....” RCW 42.56.010(3) (emphasis added).

<sup>2</sup> The PRA defines “writing” as: “handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.” RCW 42.56.010(4) (emphasis added).

- This request includes, but is not limited to, communications (emails, letters, audio recordings) and documents (preapplication, application, plans, contracts, permits, inspections) referencing the MAT.

If the City refuses to make available for inspection and copying any of the records requested above, please provide a statement of the specific exemption upon which the City relies to withhold each record (or part thereof), together with an explanation of how the exemption applies to the record withheld, as required by RCW 42.56.210(3).

We look forward to your prompt response. Please let me know by phone (206.689.2167) or email ([mspence@helsell.com](mailto:mspence@helsell.com)) if you have any questions about this request, or if you believe we may be able to simplify your task in responding to this request by clarifying any of the items above.

We will pay reasonable copying costs under RCW 42.56.120; however, if the number of pages of documents to be provided in response to this request exceeds one thousand, please let us know before you incur the expense of copying them, so that we can reconsider whether to request copies or, instead, make other arrangements to inspect them.

Very truly yours,

HELSELL FETTERMAN LLP

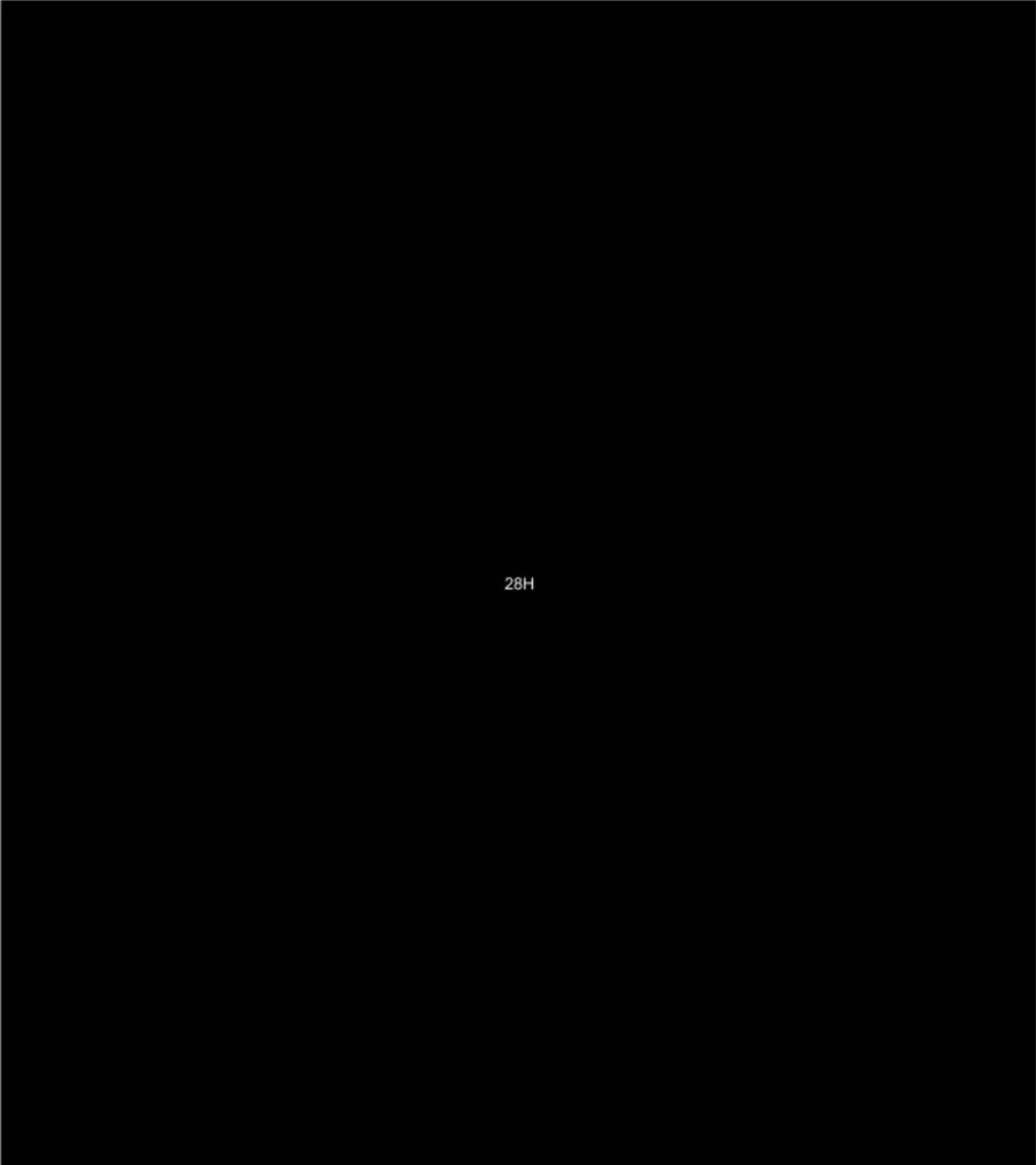


Michael A. Spence

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# **EXHIBIT B-1**

Attorney Client Privilege



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## Redaction Log

Total Number of Redactions in Document: 7

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
2	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
3	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
4	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
5	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
6	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
7	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1

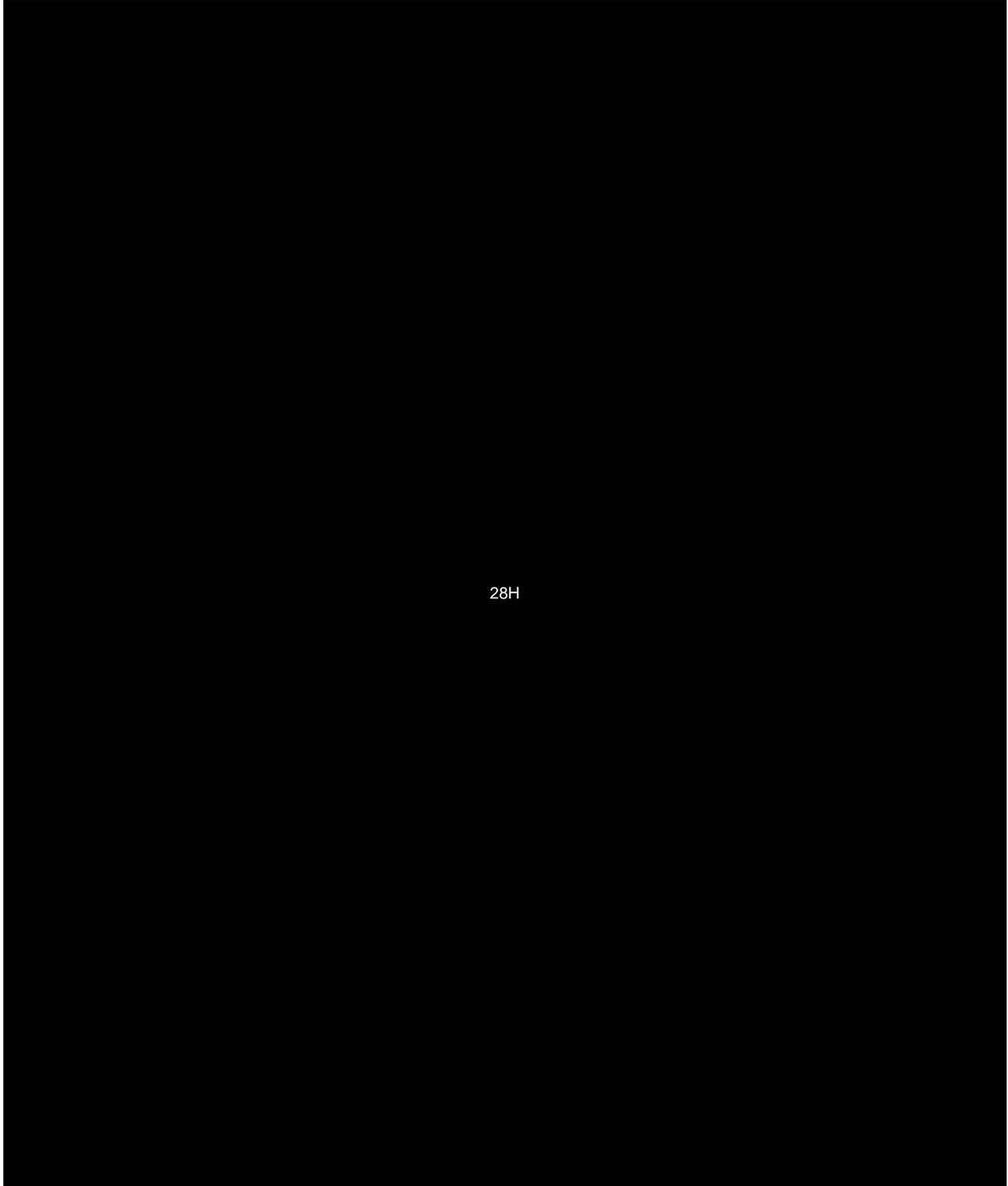
## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1(1) 2(1) 3(1) 4(1) 5(1) 6(1) 7(1)

# **EXHIBIT B-2**

Attorney Client Privilege







# Redaction Log

Total Number of Redactions in Document: 3

## Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
2	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1
3	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1

# Redaction Log

## Redaction Reasons by Exemption

Reason	Description	Pages (Count)
28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1(1) 2(1) 3(1)

# **EXHIBIT B-3**

**Sara McMillon**

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**Sent:** Sunday, January 19, 2020 8:31 AM  
**To:** Kristina Nelson-Gross  
**Subject:** Attorney Client Privilege  
**Attachments:** Typing memo Jamestown2.docx

Good Morning Kristina,

28H

BB

# Redaction Log

Total Number of Redactions in Document: 1

## Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1(1)

# **EXHIBIT B-4**

**Sara McMillon**

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**To:** Kristina Nelson-Gross  
**Cc:** Charlie Bush; Tim Woolett  
**Subject:** MAT Typing memo  
**Attachments:** Typing memo.docx

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# Redaction Log

Total Number of Redactions in Document: 1

## Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
28H	RCW 42.56.290. Communications between attorney and client that reveals opinions/impressions of attorney or information prepared/collected/assembled in litigation or anticipation of litigation or related to client advice is exempt.	1(1)

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

SAVE OUR SEQUIM, a Washington  
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal  
corporation

Respondence.

File No.: CDR 20-001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 2, 2020, the following documents were sent for delivery on the following party in the manner indicated:

Petitioner Save Our Sequim’s Motion to Stay Proceeding Pending Public Records Act Compliance;

Proposed Order;

this Certificate of service.

Kristina Nelson-Gross  
Sequim City Attorney  
152 W. Cedar Street  
Sequim, WA 98382  
[Knelson-gross@sequimwa.gov](mailto:Knelson-gross@sequimwa.gov)  
[tsandaine@dequimwa.gov](mailto:tsandaine@dequimwa.gov)  
[olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

- Via first class U. S. Mail
- Via Legal Messenger
- Via Facsimile
- Via Email

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FETTERMAN

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- Via Legal Messenger
- Via Facsimile
- Via Email

DATED this 2<sup>nd</sup> day of September, 2020

  
Lisa Blakeney, Legal Assistant