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DECLARATION OF SERVICE

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

Michael D. McLaughlin, Atty for Parkwood
michael@mdmwalaw.com

Michael Spence, Attorney for S.O.S.
mspence@helsell.com

Robert Bilow
Millrow26@gmail.com

Andy Murphy/LeAnne Bremer, Attys for Tribe
Andy.murphy@millernash.com
Leanne.bremer@millernash.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA this 14th day of September, 2020.

Erika Hamerquist, Secretary/Tellina Sandaine, Paralegal

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

RE: CDR20-001)
)
Consolidated Administrative Appeals)
of January 24, 2020 Notice of) File No. CDR20-001
Determination of Procedure Type:)
May 15, 2020 Director's Report and) DECLARATION OF KRISTINA NELSON-
Staff Decision; and May 11, 2020) GROSS, CITY ATTORNEY
MDNS for Jamestown S'Klallam Tribe)
Outpatient Clinic)
)
)

Under penalty of perjury under the laws of the State of Washington, Kristina Nelson-Gross hereby states that she is over 18 years of age and makes the following declarations from personal knowledge and belief:

1. I am the City Attorney for the City of Sequim.

1 2. As City Attorney I provide legal advice and representation to the governmental
2 entity of the City of Sequim (City) and to individual City staff members insofar as their actions
3 relate to City business.

4 3. On December 10, 2018, the City and the Jamestown S’Klallam Tribe (Tribe)
5 entered into an Interlocal Agreement for Wastewater Disposal (ILA) under which the Tribe
6 would connect its wastewater collection and transport system to the City’s Wastewater
7 Reclamation Facility. Under RCW 39.34, the Interlocal Cooperation Act, the City Council is
8 required to sign ILAs. As clearly described in Section 1.11.1, the ILA limits the Tribe’s sewer
9 connections to only Tribal lands in Trust or Reservation status because doing otherwise would
10 likely violate the Growth Management Act. A true and correct copy of the ILA is attached as
11 **Exhibit 1**. The Tribe’s wastewater collection and transport system is located on tribal trust
12 lands.

13 4. Attached and incorporated by reference are copies of the Declarations of Barry
14 Berezowsky, Director of the Sequim Department of Community Development, and Charles P.
15 Bush, City Manager of Sequim that were filed in the recent Superior Court litigation involving
16 Parkwood Manufactured Housing Community (Parkwood), Save Our Sequim (S.O.S.), and the
17 Tribe (all appellants in these administrative proceedings). See true and correct copy of
18 Berezowsky Declaration attached as **Exhibit 2** and true and correct copy of Bush Declaration
19 attached as **Exhibit 3**.

20 5. In my declaration supporting the City’s positions in the above-referenced
21 litigation, I provided context and numerous documents supporting the City’s version of facts
22 due to significant inaccuracies portrayed by then-Plaintiffs. Attached and incorporated by
23 reference as **Exhibit 4** are true and correct excerpts from that declaration (specifically paragraph
24 5) and its attached exhibit (specifically Exhibit E – Nelson-Gross Declaration, pages 1-9).

25 SIGNED under penalty of perjury under the laws of the State of Washington on the 14th
day of September, 2020, at Sequim, Washington.



KRISTINA NELSON-GROSS
City Attorney

2018-1373725
Page 1 of 49 Agreement
Sequim City Of
Clallam County Washington 12/17/2018 03:24:32 PM

Return Address:

City of Sequim
152 West Cedar Street
Sequim WA 98382

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

- 1. Interlocal Agreement for Wastewater Disposal 2. for the Jamestown S'Klallam Tribe
- 3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page N/A of document

Grantor(s) Exactly as name(s) appear on document

- 1. City of Sequim, _____
- 2. _____, _____

Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

- 1. Jamestown S'Klallam Indian Tribe, _____
- 2. _____, _____

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

N/A

Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number

Assessor Tax # not yet assigned

N/A

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

**INTERLOCAL AGREEMENT
FOR WASTEWATER DISPOSAL
FOR THE JAMESTOWN S'KLALLAM TRIBE**

Table of Contents

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- 9. Books, Records and Communications.....
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- 11. Term of Contract.....
- 12. Dispute Resolution.....
- 13. General Provisions.....

EXHIBITS:

- A. Map and Table Identifying Jamestown Transmission Route and Jamestown Transmission Percentages
- B. Examples Showing Calculation of O&M Charges
- C. Calculation of Capacity Charges and Explanation of Accrued Interest Factor
- D. Limited Waiver of Sovereign Immunity

This agreement ("Agreement") pursuant to RCW 39.34, the Interlocal Cooperation Act, is made by and between the City of Sequim, a Washington municipal corporation ("City"), and the Jamestown S'Klallam Tribe, a federally recognized Indian tribe ("Tribe") (individually a "Party" and collectively the "Parties"). In consideration of the terms and conditions set forth in this Agreement, the Parties agree as follows:

Section 1. Recitals

1.1 The City owns and operates a wastewater collection and treatment system ("City System"), including a Wastewater Reclamation Facility ("WRF"), and is authorized pursuant to RCW 35.67.020(1) to provide sewer service to customers and properties located both within and outside of the city limits.

1.2 The Tribe intends to construct a wastewater collection and transport system ("Jamestown System") which will be located between the Tribe's trust and reservation lands at the head of Sequim Bay in Blyn, Washington, and the City System.

1.3 The Tribe intends to enter into a separate, long-term agreement with the City to perform the operations and maintenance of the Jamestown System.

1.4 The City System currently has available capacity, and the City desires to accept wastewater flows from the Jamestown System if there is no financial subsidy by the City's ratepayers.

1.5 The Tribe has evaluated its options for treating and disposing of wastewater from the Jamestown System and finds that the most cost-effective method is to discharge the wastewater into the City System.

1.6 City and Tribe representatives have met and discussed the discharge of wastewater from the Jamestown System into the City System, including the charges that should be paid by the Tribe to the City for the right to discharge. Both parties agree that the charges, terms and conditions set forth in this Agreement are reasonable and equitable.

1.7 It is the purpose of this Agreement to provide for long-term wastewater disposal, planning and certainty for both the City and the Tribe.

1.8 The City is subject to certain laws and regulations, such as the Growth Management Act ("GMA") (RCW 36.70A), relating to providing urban services to areas outside of its municipal limits. Sewer services are considered urban services under the GMA, and generally should not extend outside city limits or outside the boundaries of an urban growth area.

1.9 The City also bases its sewer charges on a cost recovery system, required under law, to protect City ratepayers.

1.10 The City and the Tribe agree that due to these limitations, the City must make appropriate provisions for ensuring that the City retains adequate sewer capacity to meet its obligations under the GMA.

1.11

1.11.1 The Tribe and the City agree that connection to the City System shall apply only to Tribal lands in Trust and Reservation status except as provided in Section 1.11.2. No additional connections to the City System through the Jamestown System for non-Tribal lands shall be initiated except as provided for in RCW 36.70A.110(4).

1.11.2 The City currently provides sewer collection and transmission service to certain properties already connected to City service upstream of the Point of Delivery (as defined in Section 2.35, below). The Tribe and the City agree that it is mutually beneficial to allow the City to connect these properties to the Jamestown System.

1.11.2A The Tribe and the City agree that the City will be responsible for any and all non-Tribal sewer connections beginning at the pump station to be constructed at Sequim Bay State Park and ending at the Point of Delivery.

1.11.2B The City will be the sewer service provider to these connected properties and any new properties connected within the section of the Jamestown System described in Section 1.11.2A; the Tribe will not be the sewer service provider to these properties or any additional properties connected within this section of the Jamestown System or anywhere outside of the Jamestown Service Area (as defined in Section 2.29, below).

1.12 The Parties agree that the Tribe is not required to pay State or local taxes or fees; however, as additional inducement for the City to enter into this Agreement, the Tribe will pay consideration equal to the amount of any fees or taxes levied by or against the City because of its status as a utility. The Tribe also consents and agrees that because of the limitations described below, it will pay local taxes and fees identified in this Agreement, even though it is not required to under law.

1.13 The Tribe is a sovereign entity that is not subject to the personal or subject matter jurisdiction in Washington State courts. Federal court jurisdiction is limited to matters involving a federal question or diversity of citizenship, and federal court jurisdiction cannot be conferred by agreement. Without a limited waiver of tribal immunity, the City has no remedy if the Tribe violates the terms of this Agreement. In order to induce the City to enter in this Agreement, the Tribe is willing to agree to a limited waiver of sovereign immunity as to subject matter and personal jurisdiction over the Tribe, strictly limited to those actions arising from or relating to this Agreement and includes any judgment rendered by Washington State courts. The Tribe must pass a resolution in accordance with Tribal Code Section 22.01.02 – Waiver of Sovereign Immunity that reflects the spirit and intent of this Agreement and specifically includes allowing monetary relief. Such resolution will be attached to this Agreement and incorporated as “Exhibit D. Limited Waiver of Sovereign Immunity”.

1.14 The recitals made above are material representations to this Agreement. Based upon that understanding, the Parties now desire to enter into this Agreement, as an interlocal agreement pursuant to RCW 39.34, the Interlocal Cooperation Act, for the disposal of wastewater from the Jamestown System to the City System.

Section 2. Definitions

2.1 "Agreement" means this document.

2.2 "Average Jamestown Transmission Percentage" means the weighted average of the Jamestown Transmission Percentages, based on the length of each segment of pipe along the Jamestown Transmission Route (as defined in Section 2.34, below). The Average Jamestown Transmission Percentage set forth in Exhibit A is assumed, for the purposes of this Agreement, unless and until that percentage is updated pursuant to Section 5.1.2(c).

2.3 "Biochemical Oxygen Demand" or "BOD" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures during five (5) days at twenty (20) degrees Celsius/sixty-eight (68) degrees Fahrenheit, expressed as a loading in lbs./day.

2.4 "Blyn Pump Station" means a pump station, including a wet well containing submersible pumps, a valve vault, a meter vault, and an electrical seal-off vault through which Jamestown Flows shall exit the Jamestown service area.

2.5 "Capacity" means the maximum amount of wastewater the WRF is designed to treat in a given unit of time. It is typically measured in millions of gallons per day (MGD) (see definition of "Flow" in Section 2.20, below). Capacity will normally be greater than Flow.

2.6 "Capacity Charge" means an up-front payment by the Tribe to the City for the right to discharge a given amount of Wastewater, or a subsequent payment for a given incremental increase in the amount of Wastewater, into the City System.

2.7 "Capacity Percentage" means the Capacity Reservation divided by the total rated flow capacity of the WRF, measured as a percentage of maximum monthly flow. When determining the Capital Cost Share for capital projects that expand WRF flow capacity, Capacity Percentage means the Capacity Reservation after WRF expansion divided by the total rated flow capacity after WRF expansion.

2.8 "Capacity Reservation" means the maximum Jamestown Flows that may be discharged to the City System in a given Fiscal Year, as measured by Maximum Monthly Flow in gallons per day (gpd), as updated pursuant to Section 3.4.2, below. This will include an initial amount of reserved capacity and, if negotiated by the parties as an amendment to this Agreement, future amounts.

2.9 "Capital Cost Share" means a required payment from the Tribe to the City toward the cost of capital improvements to the WRF, the Jamestown Transmission Route, or the City Collection System as a whole, where the capital cost is incurred after December 31, 2017.

2.10 "City" means the City of Sequim, a Washington municipal corporation existing and operating pursuant to Title 35 Revised Code of Washington.

2.11 "City Collection System" means the entire City-owned sanitary sewer trunk lines, laterals in City right-of-way, lift stations, and force mains through which sewage flows to the WRF, including manholes and other appurtenances, but not including the WRF.

2.12 "City Service Area" means the current sewer service area boundary of the City, and as such boundary may be modified and amended in the future.

2.13 "City System" means the City Collection System plus the WRF.

2.14 "City Wastewater Source Control Program" means the regulations, policies and procedures adopted by the City for the pretreatment of wastewater discharged into the City System, currently set forth in Sequim Municipal Code in Title 13, Chapter 13.48, and as such regulations, policies and procedures may be modified, amended, repealed and superseded by the City.

2.15 "Collection System Operating Cost Basis" means the actual cost of operating and maintaining the City System minus the Treatment Operating Cost Basis, subject to the inclusions and exclusions set forth in Section 5.2.

2.16 "DOE" means the Washington State Department of Ecology.

2.17 "Domestic Wastewater" means water carrying human wastes, similar in character and volume to wastewater generated from single and multifamily residences and permanent mobile home courts.

2.18 "Eligible City Capital Costs" means, and shall include, the cost of construction, engineering fees, staff time spent directly on engineering or project management, major equipment acquisitions, legal fees, land acquisition costs, and other types of costs customarily paid for by the City from capital funding sources for a capital asset, provided that eligible City Capital Costs shall not include interest or other financing charges, except for accrued interest as set forth in Section 6.3.3, below. Eligible City Capital Costs shall be offset by grants specific to the capital project. Eligible City Capital Costs shall not be reduced by capital cost shares paid by other wholesale customers that the City may potentially have in the future, nor shall it be reduced by the City's use of its own connection charge income.

2.19 "Fiscal Year" means the calendar year for the City of Sequim.

2.20. "Flow(s)" means the actual amount of water being treated, moved or reused. It is normally expressed in millions of gallons per day (MGD) (see definition of "Capacity" in Section 2.5, above).

2.21 "FOG" means wastewater whose components of fats, oils and grease are subject to measurement by the methods described in Standard Methods of Examination of Water and Wastewater, 20th Edition, 1998, Section 5520, or the latest edition; the term "fats, oils and grease" shall include polar and non-polar fats, oils and grease.

2.22 "High Strength Waste" means any water or wastewater having a concentration of BOD or TSS in excess of 300 mg/L.

2.23 "Industrial Wastewater" means water or liquid-carried waste from any industry, manufacturing operation, trade, business, or commercial establishment and public use facilities which includes process wastewater, cooling water, contaminated stormwater, contaminated leachates, or other waters in some combination such that the combined effluent differs in some way from Domestic Wastewater, or is subject to regulation under Federal Categorical Pretreatment Standards ("Standards"), the State Waste Discharge Permit Program ("WDP Program"), as such Standards and WDP Program may be updated, modified or amended.

2.24 "Inflow and Infiltration" or "I&I" means water that enters the sewer system from the outside environment, not from domestic or industrial structures. "Inflow" means surface water that enters the wastewater system from yard, roof and footing drains, from cross-connections with storm drains, downspouts, and through holes in manhole covers; "infiltration" means infiltration of groundwater that is influenced by surface or sea water, that enters sewer pipes, interceptors, collectors, manholes, or side sewers through breaks, holes, joint failures, connection failures and other openings.

2.25 "Initial Capacity Charge" means the Capacity Charge to be paid when the Jamestown System is first connected to the City System. See also "Subsequent Capacity Charge" in Section 2.37, below.

2.26 "Initial Capacity Reservation" means the Capacity Reservation in effect upon initial connection of the Jamestown System to the City System and thereafter, until updated pursuant to the procedure set forth in Section 3.4.2, below. See also "Subsequent Capacity Reservation" in Section 2.38, below.

2.27 "Jamestown Flow" or "Jamestown Flows" mean the total actual continuous flow volume of Wastewater through the Sewer Meter, in gallons per minute (gpm), peak hourly minus the total actual flow from any City customers connected along the Jamestown System also flowing through the Sewer Meter.

2.28 "Jamestown System" means the sewerage system consisting of a sanitary sewer collection system, sewage trunk lines, sewer pumping stations, and appurtenances owned, operated, and maintained by the Tribe in the Jamestown Service Area, including a force main extending to the Point of Delivery.

2.29 "Jamestown Service Area" means the Jamestown trust and reservation lands as presently designated or as modified in the future.

2.30 "Jamestown Transmission Percentage" means the projected Jamestown Flow in gallons per minute (gpm), peak hourly, as a percentage of projected total Wastewater flow in Maximum Monthly Flow in gallons per day (gpd) through any given segment of pipe along the Jamestown Transmission Route. The Jamestown Transmission Percentages set forth in Exhibit A are assumed, for the purposes of this Agreement, unless and until those percentages are updated pursuant to Section 5.1.2(c).

2.31 "Jamestown Transmission Route" means the linear path of City Sewer pipes, including manholes and related facilities, through which Jamestown Flows are primarily conveyed from the Point of Delivery to the City WRF, as shown in Exhibit A.

2.32 "Maximum Monthly Flow" ("MMF") means the total flow of sewage in gallons divided by the total number of days in that month during which the greatest volume of flow occurs, in any given Fiscal Year, expressed in gallons per day (gpd). Design capacities and discharge permits for wastewater treatment facilities are commonly based on MMF.

2.33 "Net Book Value" means the original cost of a capital asset, less the portion of the cost funded by contributed capital such as grants, less accumulated depreciation on the non-contributed portion.

2.34 "O&M Markup" means an amount that is added to the cost basis for the two types of O&M charges set forth in Section 5.1, below, to account for the City Business & Occupation Tax and an out-of-City multiplier. The O&M Markup is equal to twenty-five (25%) of the cost basis. There is no similar markup for the Capacity Charge or Capital Cost Share.

2.35 "Point of Delivery" means the boundary at which wastewater originating in the Jamestown System is conveyed into the City System, located in proximity to the intersection of US 101 and Whitefeather Way within the City, as shown in Exhibit A. All sewer lines upstream of the Point of Delivery are the responsibility of the Tribe, except as otherwise provided in Section 11.11.2B, above.

2.36 "Sewage" or "Wastewater" means water-carried human wastes or a combination of water-carried wastes from residences, business buildings, institutions, industrial establishments and public use facilities, together with such I&I as may be present.

2.37 "Sewer" means any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source to the Wastewater Reclamation Facility.

2.38 "Sewer Meter" means a sewer flow meter, including a vault, sample port, and electronic equipment to allow remote meter reading, through which Jamestown Flows shall enter the City System.

2.39 "Subsequent Capacity Charge" means the capacity charge to be paid when the Jamestown System requests and is granted an increase in its Capacity Reservation pursuant to the provisions of Section 3.4.2, below. See "Initial Capacity Charge" in Section 2.25, above.

2.40 "Subsequent Capacity Reservation" means the revised Capacity Reservation in effect after an update to it pursuant to Section 3.4.2, below.

2.41 "Total Suspended Solids" or "TSS" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering, expressed as a loading in lbs./day.

2.42 "Treatment Operating Cost Basis" means the actual cost of operating and maintaining the WRF in a given year, subject to the inclusions and exclusions set forth in Section 5.2, below.

2.43 "Tribe" or "Tribal" means or refers to the Jamestown S'Klallam Tribe, a federally recognized Indian Tribe.

2.44 "Wastewater Reclamation Facility" or "WRF" means the City's wastewater treatment and reclamation plant located at 247 Schmuck Road, Sequim, Washington, along with its appurtenant headworks, marine outfall, and water recycling facilities.

Section 3. Delivery and Acceptance of Wastewater

3.1 **Wastewater Delivery.** The Tribe shall deliver to the City, not to exceed the Capacity Reservation for the Jamestown System, the Wastewater collected by the Jamestown System, and the City shall accept and treat the Jamestown Flows in accordance with the terms of this Agreement. The Tribe shall be responsible for all costs of design and construction of the Jamestown System. The Tribe shall also be responsible for design and construction costs necessary for connection of the Sequim Bay State Park and Sequim Bay Lodge sewage systems to the Jamestown System. The Tribe and the City agree that connection to the City's wastewater facility shall apply only to Tribal lands in Trust and Reservation status. No additional connections to the facility from non-Tribal lands shall be initiated except as provided for in RCW 36.70A.110(4).

3.2 **Wastewater Metering.** The Tribe shall deliver the Wastewater to the City at the Sewer Meter, which the Tribe shall construct at the Tribe's sole expense at the Point of Delivery. Upon completion of construction, the Tribe shall transfer to the City ownership of

the Sewer Meter, including any warranties or sureties, after which the City shall operate and maintain it at the City's sole expense.

3.3 Initial Capacity Reservation. The Initial Capacity Reservation is ninety four thousand seven hundred eighty six gpd (94,786 gallons per day) (Maximum Monthly Flow).

3.4 Future Updates to Capacity Reservation.

3.4.1 Planning Basis for Capacity Reservation. The intent of the Parties is that the Capacity Reservation be based on a long-term demand forecast for the Jamestown System, so that the Jamestown System has reserved capacity sufficient to accommodate between ten and twenty years of planned growth at any given time. The choice about how much treatment capacity to request is at the sole discretion of the Tribe, and the choice about whether to grant the requested level of capacity is at the sole discretion of the City. Both parties agree to be reasonable in exercising their discretion.

3.4.2 Process for Updating Capacity Reservation. At five-year intervals beginning in 2024, the Tribe shall assess the projected level of demand from the Jamestown System, and the City shall assess the total projected demand for the WRF. Based on the Jamestown System demand forecast, the Tribe shall determine whether the Jamestown System has sufficient reserved treatment capacity to accommodate its projected future growth. If the Tribe requests a change in the Capacity Reservation and the request is granted by the City, with approval from their respective legislative bodies, the incremental change and the revised Capacity Reservation shall be documented in a joint memorandum signed by the managers responsible for the Jamestown System and the City System, with such memorandum to be appended to the Agreement as an amendment. The Capacity Percentage shall thereby be updated to reflect the new percentage of WRF capacity committed to the Jamestown System, and the Tribe shall pay the appropriate Capacity Charge on the incremental Capacity reservation.

3.4.3 Plan for Maintaining Adequate Capacity Reservation. Even if it has been less than five years since the most recent demand forecast, if the Maximum Monthly Flow of the Jamestown System exceeds eighty-five percent (85%) of the Capacity Reservation, the Tribe shall update the Jamestown System demand forecast and submit a plan to the City for continuing to maintain adequate treatment capacity, potentially including a request for additional Capacity Reservation. For purposes of this section "adequate" means a minimum fifteen percent (15%) Capacity Reservation buffer at all times.

3.4.4 Reductions in Capacity Reservation. If the City requests a reduction in Capacity Reservation and the Tribe agrees, then the City shall pay the Tribe a Capacity Refund Payment. As illustrated in Exhibit C, attached and incorporated by this reference, the Capacity Refund Payment shall be based on the then-current Net Book Value of the capital assets previously funded by Capital Cost Shares and the then-current Net Book Value of the pre-2018 assets included in previously paid Capacity Charges, the sum divided by the then-

current WRF total capacity (in gpd) and then multiplied by the change in Capacity Reservation (in gpd).

3.5 High Strength Waste and Industrial Wastewater. The City agrees to accept and treat High Strength Waste and Industrial Wastewater from the Jamestown System; however, the City shall have the right to regulate and control the conditions through the City's Wastewater Source Control Program under which High Strength Waste and Industrial Wastewater is accepted into the City System.

3.5.1 Pretreatment Requirements for Jamestown System Customers. The Tribe shall adopt and implement a pretreatment program for the Jamestown System customers discharging High Strength Waste or Industrial Wastewater, with requirements at least as stringent as what the City Wastewater Source Control Program requires of City System customers. The Tribe's pretreatment program may include requirements to install on-site pretreatment facilities, adopt specified wastewater management practices, monitor wastewater flows from particular customers, be subject to inspections by Tribal or City pretreatment staff, and/or pay fees for retreatment program administration and lab testing. The Tribe shall not accept into the Jamestown System septage and other liquid hauled wastes as referenced in "Criteria for Sewage Works Design (T1-2 Septage and Other Liquid Hauled Wastes)" Washington State Department of Ecology.

3.5.2 Tribe Responsible for Jamestown System High Strength Waste and Industrial Wastewater. The City shall be responsible for testing at its own expense the BOD, TSS, FOG, and other regulated characteristics of the Jamestown Flows at the Blyn Pump Station. The Tribe shall be responsible for any violations of the City Wastewater Source Control Program or DOE permit requirements resulting from Jamestown Flows but only to the extent such violations result in Wastewater originating from the Jamestown Service Area and not originating from City customers connected to the Jamestown System. A pattern or practice of violations by the Tribe, but not by non-Tribal connections to the Jamestown System, of the City Wastewater Source Control Program or DOE permit requirements for high strength waste or industrial wastewater, may be considered grounds for the City to terminate the Agreement, with ten (10) years advance written notice. The City also retains the right to suspend the Tribe's service in accordance with Section 7.8, Suspension of Service for Non-Payment, below, for violations arising under this Section.

3.5.3 Surcharge for High Strength Wastewater Flows. The City Agrees to accept and treat High Strength Industrial Wastewater from the Jamestown System at a surcharge calculated on the cost of treating concentrations of BOD₅ or TSS in excess of 300 mg/L. High strength O&M surcharge rates are based on estimates of the O&M costs associated with treating each pound of BOD₅ and TSS. Annual O&M expenses at the Water Reclamation Facility have been analyzed and segregated into costs associated with treating flow, BOD₅ and TSS. The total annual costs to treat BOD₅ and TSS are then divided by the total pounds treated at the City's WRF to determine unit costs (\$/pound) to treat each pound of BOD₅ and TSS. The high strength O&M surcharge rate for BOD₅ based on 2017 WRF costs is estimated to be \$0.19 per pound of BOD₅ and \$0.20 per pound of TSS. The High Strength

Surcharge Rate shall be calculated each year in conjunction with the Treatment O&M Rate. High strength surcharges will be billed for BOD₅ or TSS concentration that represents an average strength concentration over the billing period in excess of 300mg/L as set forth in 5.1.2 below. The equations below will be used by the City to calculate high strength O&M surcharges.

- BOD₅ or TSS O&M Surcharge Rate (BOD₅ of \$0.19 and TSS of \$0.20) per pound
- "C" = BOD₅ or TSS concentration that represents the average strength concentration over the billing period
- The high strength customer's flow over the billing period in million gallons
- Conversion factor = 8.34 (lb/mgal)/(mg/L)

BOD₅ O&M Surcharge per Billing Period Bill Calculation

BOD₅ O&M Surcharge Rate: $(\$/lb) \times \text{Flow (mgal)} \times (C(\text{mg/L}) - 300 \text{ mg/L}) \times 8.34$

TSS O&M Surcharge per Billing Period Bill Calculation

TSS O&M Surcharge Rate: $(\$/lb) \times \text{Flow (mgal)} \times (C(\text{mg/L}) - 300 \text{ mg/L}) \times 8.34$

Examples of BOD₅ and TSS O&M Surcharge Billing Period Calculation charges are shown in Exhibit B, attached and incorporated by this reference.

3.6 Tribal Access to Reclaimed Water from Sequim Water Reclamation Facility.

3.6.1 Statement of Intent. Both parties recognize that the Tribe is contributing to the effluent flows at the WRF. The reclaimed water generated by the WRF offers a resource that is valuable to the region and may be of interest to the Tribe in the future. Nothing in this Agreement requires the City of Sequim to have reclaimed water that meets the standards or volumes needed for upland or aquifer recharge. The City shall have the choice of which wastewater treatment standard to apply and may base this decision on many factors, including but not limited to State regulations, discharge permit conditions, cost to produce reclaimed water, market demand for reclaimed water, WRF operating constraints, upset plant conditions, and/or distribution system constraints.

3.6.2 Tribal Right to Acquire Reclaimed Water. Prior to the City selling or committing reclaimed water to other customers or for mitigation projects, the Tribe will have a right of first refusal to purchase a quantity of reclaimed water equal to the amount of Jamestown Flows, as measured at the Sewer Meter. The Tribe will have ninety (90) calendar days to formally commit to such a purchase after being notified in writing by the City of its availability. The price charged to the Tribe for reclaimed water shall equal the price charged to in-City customers plus fifteen percent (15%), provided that if any part of the cost of creating reclaimed water is already included in the Tribe's wastewater treatment bill, that amount will be deducted from the cost of the reclaimed water purchase. If Tribe use of the reclaimed water requires special pumping or conveyance not otherwise provided to City

customers, the cost shall be borne by the Tribe. If the Tribe uses its purchased reclaimed water for water rights mitigation or other long-term commitments, it will do so solely at its own discretion, and the City will not be responsible for any guaranteed delivery of the reclaimed water beyond what is normal policy for all customers of the City.

3.7 **Pipe Capacity.** The Tribe shall design and operate the Jamestown System so as not to cause surcharging, as defined in the DOE *Criteria for Sewage Works Design* (Orange Book) latest edition, due to Jamestown Flows exceeding its share of pipe capacity. The City shall have the right to review and comment on the design and operating procedures for Jamestown System lift stations.

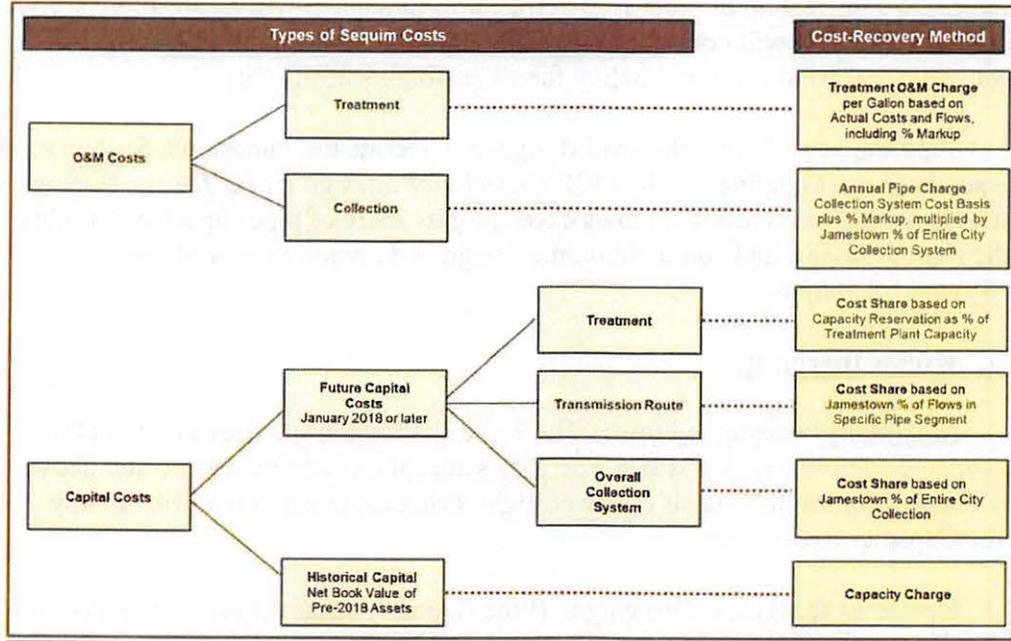
Section 4. Excess Discharge

4.1 **Maximum Jamestown Flows.** The Tribe shall not discharge more than the Capacity Reservation into the City System. The City's acceptance of any wastewater above the Capacity Reservation shall by itself create no right, title or interest in the Tribe in any increase in the Capacity Reservation.

4.2 **Remedies for Excess Discharge.** If the Capacity Reservation is exceeded in any given Fiscal Year, the City may, at its sole option, (a) require the Tribe to agree to an increased Capacity Reservation, (b) if the City determines it does not have sufficient WRF capacity to allow an increased capacity reservation, require the Tribe to impose a moratorium on new connections within the Jamestown System trust and reservation lands, and/or (c) terminate this Agreement and discontinue receiving Tribal Wastewater after at least ten (10) years prior written notice to the Tribe. Before imposing a remedy, the City shall consult with the Tribe to determine which remedy the Tribe considers to be the least burdensome and most realistic, provided, however, the City shall retain the right in its sole, reasonable discretion to impose the appropriate remedy.

Introductory Note to Sections 5 and 6. Figure 1 is a graphic depiction of the methods by which capital and operating costs related to the City WRF and Jamestown System Transmission Route are to be recovered from the Tribe by the City. Section 5 addresses the recovery of operating and maintenance ("O&M") costs; Section 6 addresses the recovery of capital costs.

Figure 1: Types of Costs and Cost Recovery Methods



Section 5. Operating & Maintenance Charges

5.1 Types of Operating and Maintenance Charges. The Tribe shall pay the City monthly two types of O&M Charges for the disposal of the Jamestown Flows: a Treatment O&M Charge based on a Treatment O&M Rate (see Section 5.1.1, below) per gallon multiplied by the number of gallons of Jamestown Flows in a given month, and an Annual Pipe Charge divided by twelve (12) months.

5.1.1 Calculation of Treatment O&M Rate. A Treatment O&M Rate per gallon shall be calculated each Fiscal Year based on the Treatment Operating Cost Basis plus the O&M Markup, the sum divided by the actual total gallons of influent to the WRF during that year.

5.1.2 High Strength Wastewater Flow Surcharge. The monthly surcharge for high strength wastewater shall be calculated as a lump sum according to the formulas referenced in paragraph 3.5.3 and added as a flat charge to the monthly utility bill for Treatment and Pipe Charge for each of the TSS and BOD loads.

5.1.3 Annual Pipe Charge. The Annual Pipe Charge shall be calculated each Fiscal Year based on the Collection System Operating Cost Basis plus the O&M Markup, the sum multiplied by the Jamestown Percentage of the entire City Collection System. The Annual Pipe Charge divided by twelve (12) shall be billed each month, beginning with the

date the Jamestown System is connected to the City System, with the first month pro-rated to the number of days of service during that month.

(a) The Jamestown percentage of the entire City Collection System results from the Average Jamestown Transmission Percentage being multiplied by the Jamestown Transmission Route lineal feet as a percentage of the total lineal feet in the entire City Collection System, as shown in Exhibit A. Until updated in the future, the Jamestown Percentage of the entire City Collection System will be one point nine per cent (1.90%)

Every five years beginning in 2024, the City shall update the Jamestown percentage of the entire City Collection System based on updated information about total lineal feet in the City Collection System. The updated number of total lineal feet in the City Collection System and resulting updated Jamestown percentage of the entire City Collection System shall be documented in a memorandum from the manager responsible for the City System, appended to the Agreement as an amendment, executed by both Parties, and used in subsequent calculations of the Annual Pipe Charge and Capital Cost Share.

(b) If both Parties agree in writing, with approval from their respective legislative bodies, to update the Jamestown Transmission Percentages, then an engineering analysis shall be performed to forecast the peak hourly flows (in gallons per minute, or gpd) of the Jamestown System and City System, respectively, through the shared pipes of the Jamestown Transmission Route. The time frame for the engineering analysis shall be fifteen (15) years, and the cost of the analysis shall be shared equally by both Parties. The updated Jamestown Transmission Percentages and Jamestown Percentage of the entire City System resulting from the analysis shall be documented in a joint memorandum signed by the respective managers responsible for the Jamestown System and the City System, to be appended to the Agreement, as an amendment, and shall supersede the percentages shown in Exhibit A and be used for subsequent calculations of the Annual Pipe Charge and Capital Cost Share.

5.2. Included and Excluded Costs.

5.2.1. Included Costs. The Treatment Operating Cost Basis and Collection System Operating Cost Basis shall include both direct and indirect costs of operating and maintaining the City System, subject to the exclusions set forth in Section 5.2.2, below. Indirect costs such as administrative, general, and insurance costs shall be allocated in proportion to the amount of direct costs with which they are associated.

5.2.2. Excluded Costs. The Treatment Operating Cost Basis and Collection System Operating Cost Basis shall exclude the following:

(a) Any capital-related costs, such as capital expenditures, debt service costs, or transfers for the purpose of funding capital reserves.

(b) The City Business & Occupation Tax.

(c) State public utility and B&O taxes not applicable on sales to governmental customers.

(d) The cost of services not received by the Jamestown System, such as stormwater service, sewage pumping, retail meter reading, or retail customer billing.

Exhibit B illustrates the calculation of the Treatment O&M Charge and Annual Pipe Charge.

5.3. Estimated O&M Charges and True-up Adjustment. In advance of a given Fiscal Year, the City shall create an estimated Treatment O&M Rate based on estimated costs and flows, and the estimated rate shall be applied to actual Jamestown Flows during that year. The City shall also create an estimated Annual Pipe Charge based on the estimated Collection System Operating Cost Basis. After Fiscal Year-end, the Treatment O&M Rate for the given year shall be re-calculated based on actual costs and flows and a corrected Treatment O&M Charge calculated. Also, after Fiscal Year-end a corrected Annual Pipe Charge shall be calculated based on the actual Collection System Operating Cost Basis. The difference between estimated and corrected amounts for both types of O&M charges shall be divided into twelve equal parts and added to or subtracted from the following twelve monthly bills to the Tribe. Exhibit B provides an example of a true-up adjustment after the end of a Fiscal Year.

Section 6. Capacity Charge and Capital Cost Share

6.1 Introduction to Section 6. In general, under the terms of this Agreement, Capacity Charges are used to recover a proportionate share of the Net Book Value of WRF and Jamestown Transmission Route assets built or acquired prior to December 31, 2017, including Construction Work in Progress as of December 31, 2017. For City capital costs incurred for WRF and Jamestown Transmission Route projects after December 31, 2017, a proportionate share of the City capital cost is recovered through a Capital Cost Share.

6.2 Capacity Charges.

6.2.1 Initial Capacity Charge. Ninety (90) calendar days after funding from USDA becomes available for distribution, the Tribe shall pay to the City an Initial Capacity Charge of One million, five hundred ninety one thousand, five hundred eighty Dollars (\$1,591,580.00), pursuant to calculations shown in Exhibit C. The Initial Capacity Charge is based on the Jamestown System share of the Net Book Value of pre-2018 WRF and Jamestown Transmission Route assets, assuming accumulated depreciation as of December 31, 2017, which is the projected date for the Jamestown System to be connected to the City System.

6.2.2 Subsequent Capacity Charges. If the Capacity Reservation is increased pursuant to Section 3.4.2, above, a subsequent Capacity Charge shall be paid by the Tribe to

the City. Subsequent Capacity Charges shall be calculated following the method illustrated in Exhibit C, based on the Net Book Value per gpd of pre-2018 treatment assets, multiplied by the increase in Capacity Reservation. The Net Book Value for subsequent Capacity Charges shall be net of year-end accumulated depreciation for the year immediately preceding the date the charge is payable. If the increase in Capacity Reservation occurs in conjunction with a WRF expansion project, post-expansion WRF capacity shall be used in calculating the subsequent Capacity Charge. Subsequent Capacity Charges shall be payable prior to the increase in Capacity Reservation taking effect.

6.3 Capital Cost Share. For capital expenditures to the City System incurred subsequent to December 31, 2017, the Tribe shall pay to the City a Capital Cost Share based on Eligible City Capital Costs and the applicable Capital Cost Share percentages.

6.3.1. Capital Cost Share Percentages. The Capital Cost Share shall be based on the percentages set forth below:

(a) Treatment Capital. For capital improvements to the WRF, the applicable Capital Cost Share percentage shall be the Capacity Percentage, except that if the capital improvements are triggered by the need to expand the capacity for BOD or TSS loadings, the cost of those treatment improvements shall be shared on the basis of each party's relative BOD or TSS loadings at the time the need for the expansion is triggered.

(b) Jamestown Transmission Route Capital. For capital improvements to the Jamestown Transmission Route, the applicable Capital Cost Share percentage shall be the Jamestown Transmission Percentage for the applicable segment of the Jamestown Transmission Route. If more than one segment is involved in a single capital improvement project, the project cost shall be allocated by segment so that the relevant Jamestown Transmission Percentage can be applied to each improved segment. If a City Collection System project improves sewer lines both on and off the Jamestown Transmission Route, the Capital Cost Share shall only apply to the portion on the Jamestown Transmission Route.

(c) Collection System-wide Capital. For capital improvements or acquisitions that benefit the City Collection System as a whole, without being geographically specific, the applicable Capital Cost Share percentage shall be the Jamestown Percentage of the entire City Collection System, as set forth in Section 5.1.2 (b), above. Examples of this type of project might include improved GIS mapping or the replacement of a Vector truck.

(d) City Collection System Projects Not on the Jamestown Transmission Route. For capital improvements to a geographically specific part of the City Collection System that is not on the Jamestown Transmission Route, there is no Capital Cost Share.

6.3.2. Eligible City Capital Costs. The Capital Cost Share shall be based on Eligible City Capital Costs actually incurred.

6.3.3 Annual Billing for Capital Cost Share. Beginning in 2019, the City shall bill the Tribe, prior to March 31 each year, for the Jamestown System Capital Cost Share relevant to the previous year's capital expenditures, and the Tribe shall make the required payment within thirty (30) calendar days, subject to the dispute resolution process outlined in Section 7.5 and Section 12, below. The City may add three-quarters of one percent (0.75%) to the Capital Cost Share as an approximation of accrued interest during the year in which capital expenditures are incurred. The accrued interest factor is further explained in Exhibit C.

6.3.4. No Markup or Out-of-City Multiplier. The Capital Cost Share shall not include a markup or an out-of-City multiplier.

Section 7. Billing and Payment

7.1 Billing and Payments for O&M Charges and Capital Cost Share. In consideration for the transmission, treatment and disposal of Wastewater received from the Jamestown System, the City shall bill the O&M Charges to the Tribe on a monthly basis for the Treatment O&M Charge and one-twelfth (1/12) of the Annual Pipe Charge. The City shall also bill the Tribe annually, as set forth in Section 6.3.3, above, for the Capital Cost Share. The Tribe shall make payments to the City based on the bill. Billing and payment are further described herein.

7.2 Billings. A bill that has been properly addressed and deposited in the United States mail, either to the address shown in Section 13.1, below, or to another address designated by the Tribe in writing, shall be deemed to be presented to the Tribe for payment. If both parties agree in writing, electronic billing may be used, in which case the billing date is the date the bill is sent electronically to the e-mail address designated in writing by the Tribe. The Tribe's payment in full of the monthly bill shall be due and payable at the City's Business Office twenty-five (25) days after the deposit of the City bill in the United States mail or the bill is sent electronically to the Tribe ("Due Date"). Any bill not paid by the Due Date shall be past due. The City may charge interest on any past due bill at the rate applied to other City customers, subject to RCW 35.67.210 or as such statute may be modified, amended or superseded, for every month or portion of a month that the past due amount remains unpaid.

7.3 Temporary Lapses in Sewer Meter Data. If metered sewage volume is incomplete or inaccurate for any period of time, the City may bill the Tribe for such period based on an estimated volume using any of the following methods: historical Jamestown Flows, historical relationship of Jamestown Flows to related metered water use, or surrogate Jamestown Flows agreed upon in writing by the Parties. The City shall provide the Tribe documentation of the basis for the estimated Jamestown Flows in any such instance.

7.4 Tribal Customers. The Tribe shall be solely responsible for billing and collecting for sewer service from customers connected to the Jamestown System, except for Sequim Bay State Park and the business currently operating as Sequim Bay Lodge. Sewage

volume from Sequim Bay State Park and Sequim Bay Lodge will be metered independently of and deducted from the Jamestown System metered volume for the purposes of billing.

7.5 Disputed Bills. If the Tribe believes that a bill from the City is in error, the Tribe shall notify the City and provide supporting documents within the thirty (30) calendar days after the City's transmittal of the bill to the Tribe. Notice of disputed bills shall include payment of undisputed amounts and fifty percent (50%) of disputed amounts. Within ten (10) business days thereafter, the City and Tribe shall meet to attempt to resolve the dispute. If the dispute cannot be resolved, then the Parties shall proceed with dispute resolution under Section 12, below.

7.6 Notice and Opportunity to Cure Payment Default. If a past due bill remains unpaid and no notice of dispute has been timely filed under Section 7.5, above, the City shall give written notice and opportunity to cure to the Tribe ("Notice to Cure"). Defaults other than payment defaults, are addressed in Section 13.6, below.

7.7 Default on Payment Obligations. If the Tribe does not pay the past due bill within fifteen (15) business days after the Notice to Cure is mailed by the City to the Tribe, the City shall have the right to collect the past due amount and impose a one-time penalty of ten percent (10%) of the amount of each past due bill. If the Tribe has provided notice to the City of a dispute concerning a bill pursuant to Section 7.5, above, no penalty will be added to the bill, but interest will still accrue on the unpaid due amount until the dispute has been resolved and the appropriate payment made, in which case interest shall only apply to the unpaid portion of the appropriate payment. If the dispute resolution process results in an appropriate payment that is less than what the Tribe has already remitted, the City shall refund the difference plus interest. Such interest, if any, accrues at the same rate the City charges other ratepayers. The City shall have the right to pursue all lawful means of pursuing debt collection from the Tribe. Subject to the dispute resolution process set forth in Section 12, below, failure of the Tribe to make payments required under this Agreement shall be considered grounds for the City to terminate this Agreement, on at least ten (10) years prior written notice to the Tribe.

7.8 Suspension of Service for Non-Payment. After the City's written notice required under Section 7.6, above, if any past due items remain unpaid, the City may suspend service to the Tribe until such payment has been received. The City will give the Tribe at least 48-hours prior written notice regarding the date and time the service will be suspended. The City is not responsible for any consequential damages the Tribe or its customers may incur because of suspension of service pursuant to this Section.

Section 8. Sewage Meter/Monitoring Vault

8.1 Access and Maintenance. The City and the Tribe shall have equal access to the Sewer Meter for the purpose of periodic reading of Tribe flows and to perform maintenance and operation functions.

8.2 **Meter Recalibration.** The Sewer Meter shall be re-calibrated upon the request of either Party. The cost of this recalibration shall be the responsibility of the requesting Party, except that the cost shall be the City's responsibility if a re-calibration has not been performed within the time frame recommended by the manufacturer of the meter. Representatives of each Party shall have the right to observe the recalibration. Should a meter recalibration reflect meter variation greater than five per cent (5%) of the measured meter reading, either Party may request a billing adjustment for the six (6) months previous to the recalibration using the meter variation percentage.

Section 9. Books, Records and Communications

9.1 **Books.** The City shall keep full and complete books of accounts showing all costs and expenses incurred in connection with the City System, including the maintenance and operations costs, capital costs, and any other costs or offsetting revenues used in calculating amounts payable by the Tribe under this Agreement.

9.2 **Inspection.** Each Party shall have the right to inspect and copy, during regular business hours, all reports and records maintained by the other Party that relate to this Agreement, including, but not limited to, maintenance and operations costs or any other matter affecting the Tribe's rates, flow records, wastewater quality reports, pretreatment monitoring records, connection records and reports, and reports to the DOE or other regulatory authorities, excepting public records maintained by either Party that (a) are exempt from disclosure pursuant to Chapter 42.56 RCW, the Public Records Act, (b) are privileged and confidential pursuant to Chapter 5.60 RCW, or (c) are otherwise not subject to public disclosure or production in civil litigation. Tribe specifically consents to abide by the Public Records Act (RCW 42.56) and Witnesses – Competency (RCW 5.60) for purposes of this section.

9.3. **Policy Notifications.** At least fifteen (15) business days in advance of adoption, the City and Tribe shall provide each other with copies of any policies, codes or ordinances related to City treatment capacity, Jamestown or City pretreatment requirements, or Jamestown System connection requirements. Each party shall endeavor to maintain communications with the other at the management level in order to be aware of the other party's interests while the proposed policies, codes or ordinances are being developed.

9.4 **Annual Report on Industrial or High Strength Customers.** The Tribe shall report to the City annually on individual customers who are permitted to discharge industrial or high strength wastewater into the Jamestown System. This report shall identify the relevant pretreatment requirements and monitoring results for each industrial or high strength customer.

Section 10. Indemnification and Insurance

10.1 **City.** The City shall indemnify, defend, and hold harmless the Tribe, its elected officials, officers, agents, and employees from and against all suits, claims, or

liabilities of any nature, including attorney fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the City, its agents or employees in connection with maintenance and operation of the City System or for breach of its duties under this Agreement. If suit in respect to the above is filed, the City shall defend the suit at the City's own cost and expense, and if judgment is rendered or settlement made requiring payment by the Tribe, its officers, agents or employees, the City shall pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, and their elected officials, officers, employees or agents, the City's liability hereunder shall only be to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

10.2 Tribe. The Tribe shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, and employees from and against all suits, claims, or liabilities of any nature, including attorney fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement. If suit in respect to the above is filed, the Tribe shall defend the suit at the Tribe's own cost and expense, and if judgment is rendered or settlement made requiring payment by the City, its officers, agents or employees, the Tribe shall pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, and their elected officials, officers, employees, or agents, the Tribe's liability hereunder shall only be to the extent of the Tribe's negligence.

10.3 Recovery of Cost of Regulatory Violations. If the City incurs fines, penalties, or remedial capital or cleanup costs for which the Tribe has been deemed by an independent investigation as partially or fully responsible, the City shall have the right to charge the Tribe for a proportionate share of any such fines, penalties and remedial capital or cleanup costs, and the Tribe agrees to pay such charges to the City. The City retains sole, reasonable discretion to select the independent investigator.

10.4 Insurance Requirements.

(a) The Tribe shall maintain insurance sufficient to pay any suits, claims, or liabilities of the City described in Section 10.2, above, and, in addition, the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System. The Tribe's current insurance limits are \$6,000,000 per occurrence. The City presumptively agrees that the Tribe's

coverage as of the date of this Agreement is sufficient to cover known risks as of that date. The Tribe agrees, at its own expense, to maintain this insurance coverage for all of its liability exposures for this Agreement. The Tribe agrees to provide the City with at least thirty (30) days prior written notice of any material change in the Tribe's insurance program. The Tribe agrees to add the City as an additional insured on such insurance and to provide the City with an endorsement confirming the City as an additional insured on such policy or policies. The maintenance of, or lack thereof, of insurance coverage shall not limit the liability of the Tribe to the City.

(b) The City shall maintain insurance sufficient to pay any suits, claims, or liabilities of the Tribe described in Section 10.2, above, and, in addition, the cost of remediation of environmental damage caused by any City discharge, such as the discharge into or transfer of toxic wastes from the City System into the Jamestown System. The City, a Washington State municipal corporation, maintains an insurance program through the Washington Cities Insurance Authority risk pool for the protection and handling of the City's liabilities including injuries to persons and damage to property. The City's current insurance limits are \$5,000,000 per occurrence. The Tribe presumptively agrees that the City's coverage as of the date of this Agreement is sufficient to cover known risks as of that date. The City agrees, at its own expense, to maintain this insurance coverage for all of its liability exposures for this Agreement. The City agrees to provide the Tribe with at least thirty (30) days prior written notice of any material change in the City's insurance program. The Tribe acknowledges and understands the City does not purchase Commercial General Liability ("CGL") insurance and therefore does not have the ability to add the Tribe as an additional insured under such insurance. Should the City elect to cease insurance through the risk pool and purchase CGL insurance, City agrees to add the Tribe as an additional insured on such insurance and to provide the Tribe with an endorsement confirming the Tribe as an additional insured on such policy or policies. The maintenance of, or lack thereof, of insurance coverage shall not limit the liability of the City to the Tribe.

10.5 **Survival**. The obligations of Section 10.4, above, shall survive the termination of this Agreement, except that insurance need not be maintained that covers events occurring after the termination of the Agreement. Without limiting the generality of this provision, the obligations to provide insurance and to indemnify survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters or actions begun within that period.

Section 11. Term of Contract

11.1 **Term**. The Contract shall commence on the Effective Date and continue until terminated in accordance with Section 11.2, below.

11.2 **Expiration and Termination.** In the absence of an agreement to the contrary, or termination as otherwise provided in this Agreement, this Agreement shall expire on December 31, 2058 ("Expiration Date"); provided, at least ten (10) years prior to the Expiration Date, either Party must notify the other Party in writing if the Party intends to (a) let the Agreement expire and terminate on the Expiration Date, or (b) negotiate changes in the terms and conditions of the Agreement and renew and extend the Agreement. If neither Party provides notice as provided in Section 11.2(a) or (b), above, the Agreement shall automatically be extended for an additional ten (10) year term on its existing terms and conditions commencing from the Expiration Date set forth above, subject to the ten (10) year notice provision prior to any new Expiration Date, and thereafter until the Agreement is terminated. Notwithstanding the foregoing, the Tribe may terminate this Agreement at any time on at least ten (10) years prior written notice to the City. In addition, the City may terminate this Agreement at any time for cause, only as provided in Section 3.5, Section 4.2, Section 7.7, above, or Section 13.6, below, of this Agreement, on at least ten (10) years prior written notice to the Tribe.

Section 12. Dispute Resolution

12.1 **Applicable Law.** This Agreement, including all matters of interpretation, validity, performance, and enforcement shall be governed and enforced in accordance with the laws of the State of Washington.

12.2 **Informal Resolution of Disputes.** Any dispute arising out of this Agreement, including without limitation issues relating to the validity or enforcement of the Agreement and billing disputes under Section 7.5, above, shall be referred to representatives of the Parties, who shall meet and make a good faith effort to resolve the dispute among themselves.

12.3 **Notice of Formal Dispute.** If the Parties have met to resolve the dispute informally and the dispute remains unresolved, then, within thirty (30) days of the informal dispute resolution meeting, the Party raising the issue in dispute may invoke formal dispute resolution by providing the other Party with written notice of the dispute, including a brief description of the nature of the dispute and the Party's proposed resolution of the dispute. Notice given by the Tribe of a billing dispute under Section 7.5, above, shall satisfy the notice requirement for billing disputes.

12.4 **Alternative Dispute Resolution.** Within fifteen (15) business days after notice is given under Section 12.3, above, the Parties shall meet to explore whether the dispute should be resolved by mediation or arbitration. By mutual agreement, the Parties may submit the dispute to non-binding mediation or to binding arbitration. If the Parties agree on arbitration, the arbitration shall be conducted in accordance with this subsection.

12.4.1 Any agreement to arbitrate shall be in writing signed by the Parties, shall conform to the requirements of this subsection, and shall specify the procedures governing the arbitration.

12.4.2 The arbitrator or arbitration panel selected shall have the power and authority to grant legal and equitable relief in accordance with Washington law and the provisions of this Agreement.

12.4.3 The decision of the arbitrator or of a majority of the arbitration panel members shall be final and binding. The costs of arbitration shall be borne equally by the Parties, unless the arbitrator or arbitration panel rules otherwise.

12.5 Litigation of Disputes. In the event that the dispute is not resolved informally or by mediation and the Parties do not agree to arbitration, either Party may commence a suit in Clallam County Superior Court on all claims related to the dispute.

12.6 Emergency Relief. Notwithstanding the other provisions of this Section 12, either Party may seek emergency or temporary equitable relief in Clallam County Superior Court concerning disputes governed by this Section 12 if imminent and irreparable harm to the Party will likely result if action is delayed until completion of the dispute resolution procedures. The Court may grant such temporary relief as may be required to preserve the status quo or otherwise prevent irreparable harm while the Parties pursue resolution of the dispute. The Court may require the Party requesting relief to give such security as the Court deems necessary for the payment of costs and damages that may be incurred by the other Party resulting from temporary relief wrongfully granted.

Section 13. General Provisions

13.1 Notice. Whenever written notice is required by this Agreement, except for notice to cure or notice to terminate, the notice may be given to the following representatives by actual delivery, by United States mail, or by electronic mail addressed to the respective Party at the following addresses or a different address hereafter designated in writing by the Party:

CITY
City Manager
152 W. Cedar Street
Sequim, WA 98382

TRIBE
Chief Executive Officer
1033 Old Blyn Hwy.,
Sequim, WA 98362

The date of notice shall be deemed to be the date of actual delivery in person or by electronic mail, or the postmarked date if notice is by United States mail. Notice to Cure or notice of termination must be accomplished by actual delivery or by both first-class mail and certified mail (with return receipt requested) deposited with the United States Postal Service. In these cases, the date of the notice shall be the date received. This section is not intended to apply to mailings for normal communications, which are commonly communicated by email or other less formal means. Such communications may be directed to the appropriate City or Tribal personnel.

13.2 Severability. The purpose of this Agreement is to provide for long-term wastewater disposal, planning and certainty for both Parties. It is the intent of the Parties that if any provision of this Agreement or its application is held by a court of competent jurisdiction to be illegal, invalid or void, the validity of the remaining provisions of the Agreement or its application shall not be affected. The remaining provisions shall continue in full force and effect, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular invalid provision; however, if the invalid provision or its application is found by a court of competent jurisdiction to be substantive and to render the performance of the remaining provisions unworkable and non-feasible, or is found to seriously affect the consideration and is inseparably connected to the remainder of the Agreement, the entire Agreement shall be null and void.

13.3 No Joint Venture - Individual Liability. This is not an agreement of joint venture or partnership, and no provisions of this Agreement shall be construed so as to make the City individually or collectively a partner or joint venturer with the Tribe. Neither Party is an agent of the other. Neither the City nor the Tribe shall be liable for the acts of the other in any representative capacity whatsoever.

13.4 Complete Agreement. This Agreement represents the entire agreement between the Parties concerning this subject matter. The Agreement may be amended as provided herein, or as otherwise agreed to by the legislative bodies of both Parties.

13.5 Venue, Jurisdiction and Specific Performance. In the event of litigation between the Parties, venue and jurisdiction shall lie with the Clallam County Superior Court of the State of Washington. The Parties shall be entitled to specific performance of the terms and conditions of this Agreement.

13.5.1 Waiver of Sovereign Immunity. The Tribe is a Sovereign Nation with all of immunities attendant thereto WITH THE FOLLOWING EXCEPTION AS SPECIFICALLY NEGOTIATED BY THE PARTIES:

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

B. Tribe expressly consents to the jurisdiction of the Washington State Superior Court if either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement. The Parties further agree that any such action or proceedings shall be brought in Clallam County Superior Court situated in Clallam County, Washington. This waiver and consent is effective only during the term of this Agreement, except it remains in force for such time after termination that is necessary to resolve the rights and obligations of either Party arising out of this Agreement.

13.6 Default Other Than Payment Default. In the event of a potential default other than on payment obligations addressed in Section 7, above, the non-defaulting Party shall issue written notice to the other Party setting forth the nature of the potential default. If the alleged defaulting Party does not dispute the potential default, it shall use its best efforts to cure the default within ninety (90) calendar days. If such default cannot be reasonably cured within such ninety (90) day period, the alleged defaulting party shall, upon written request prior to the expiration of the ninety (90) day period, be granted an additional sixty (60) calendar days to cure the default. If the alleged defaulting Party disputes the alleged non-payment default, it shall proceed with its dispute according to the provisions of Section 12, above.

13.7 Force Majeure. The time periods for the Parties' performances under any provisions of this Agreement shall be extended for a reasonable period of time during which the respective Party's performances are prevented, in good faith, due to fire, flood, earthquake, lockouts, strikes, embargoes, acts of God, war or civil disobedience. If this provision is invoked, the Parties agree to immediately take all reasonable steps to alleviate, cure, minimize or avoid the cause preventing such performances, at their respective sole cost and expense.

13.8 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, provided the Tribe shall not have the right to assign its rights and obligations in this Agreement without the City's prior written approval of any such proposed assignment, such approval not to be unreasonably withheld.

13.9 Recitals Incorporated by Reference. The Recitals set forth in Section 1, above, are hereby incorporated in this Agreement in full by this reference.

13.10 No Third Party Beneficiaries. Except as expressly set forth in this Agreement, nothing in this Agreement is intended to confer upon any person or entity, other than the Parties hereto, any rights, benefits, privileges or obligations. No such third-party shall have any right to enforce any of the terms of this Agreement unless expressly stated otherwise.

13.11 Waiver. A waiver by either Party of any terms or conditions of this Agreement shall not be deemed or construed to be a waiver of any other term or condition, nor shall the waiver of any breach or default by either Party under the Agreement be deemed or construed

to constitute a waiver of any subsequent breach or default, whether of the same or any other term or condition of this Agreement. Any waiver of a breach or default under this Agreement must be done in writing and signed by the representatives of the Parties.

13.12 Exhibits. Exhibits A, B, C, and D are attached and incorporated into this Agreement in full by this reference.

13.13 Effective Date. This Agreement and its terms and conditions shall be effective on the date by which the Agreement is signed by both Parties and the Limited Waiver of Sovereign Immunity resolution required under this Agreement is passed and signed by the Tribe and attached to this Agreement. ("Effective Date"). If for any reason, the Tribe fails to pass or sign the resolution or the resolution is not attached to this Agreement, the Agreement immediately becomes void regardless of whether signatures have been affixed.

13.14 Recording. This Agreement and all amendments shall be recorded with the Clallam County Auditor following its approval and execution by the Parties and the cost of such recordings shared equally by the Parties.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

CITY OF SEQUIM

By: Candace Pratt
Printed Name: Candace Pratt
Title: Mayor Deputy
Date: 12-10-2018

APPROVED AS TO FORM:

[Signature]
City Attorney

JAMESTOWN S'KLALLAM TRIBE

By: W. Ron Allen
Printed Name: W. Ron Allen
Title: Tribal Chairman/CEO

Date: 11/30/2018

EXHIBIT A

Map and Table Identifying the Jamestown System Transmission Route and Jamestown System Transmission Percentages



EXHIBIT A: Map and Table of Jamestown Transmission Route

Table Identifying the Jamestown Transmission Route and Jamestown Transmission Percentages

Exhibit A: Jamestown Percentage of Transmission Route Projected Flows									
From Manhole	To Manhole	Segment ID #	Direction of Flow	Direction & Nearest Street Alignment	Diameter (Inches)	Pipe Material	Length (lineal ft.)	Total Flow (gpm)	Jamestown Transmission Percentages
<i>Source: Gray & Osborn, Pipe Cost Estimates April 2018, with pipe lengths from City GIS. Assumes 177 gpm Peak Hour</i>									
<i>Jamestown Flow in 2030. City flows from City of Sequim General Sewer Plan, Table E-15 2032 Model Pipe Output</i>									
WF Way	28-1-08		North	Wash Harbor Loop	6	PVC	3,874	196.3	90.2%
28-1-08	28-1-07		West	Wash Harbor Loop	8	PVC	398	196.3	90.2%
28-1-07	28-1-06		West	Wash Harbor Loop	8	PVC	185	213.9	82.8%
28-1-06	28-1-05		West	Wash Harbor Loop	8	PVC	373	213.9	82.8%
28-1-05	28-1-04		West	Wash Harbor Loop	8	PVC	197	213.9	82.8%
28-1-04	28-1-03		NW	Wash Harbor Loop	8	PVC	173	301.3	58.8%
28-1-03	28-1-01		NW	Wash Harbor Loop	8	PVC	400	301.3	58.8%
28-1-01	21-4-04		North	Wash Harbor Loop	8	PVC	377	301.3	58.8%
21-4-04	21-4-03		North	Wash Harbor Loop	12	PVC	800	306.4	57.8%
21-4-03	21-4-01		North	Wash Harbor Loop	12	PVC	400	487.1	36.3%
21-4-01	21-3-12		West	West Sequim Bay	12	PVC	401	487.1	36.3%
21-3-12	21-3-17		West	West Sequim Bay	12	PVC	211	491.8	36.0%
21-3-17	21-3-11		West	West Sequim Bay	12	PVC	190	491.8	36.0%
21-3-11	21-3-31		West	West Sequim Bay	12	PVC	139	497.1	35.6%
21-3-31	21-3-10		West	West Sequim Bay	12	PVC	136	497.1	35.6%
21-3-10	21-3-05		North	West Sequim Bay	15	PVC	279	605.1	29.3%
21-3-05	21-3-04		NE	Private Property	15	PVC	510	613.0	28.9%
21-3-04	21-3-03		NE	Private Property	15	PVC	401	613.0	28.9%
21-3-03	21-3-02		NE	Private Property	15	PVC	273	613.0	28.9%
21-3-02	21-3-01		NE	Private Property	15	PVC	203	613.0	28.9%
21-3-01	21-2-11		North	Private Property	18	PVC	318	613.0	28.9%
21-2-11	21-2-10		North	Private Property	18	PVC	409	613.0	28.9%
21-2-10	21-2-09		North	Private Property	18	PVC	281	613.0	28.9%
21-2-09	21-2-08		North	Private Property	18	PVC	86	613.0	28.9%
21-2-08	21-2-07		North	Private Property	18	PVC	191	635.3	27.9%
21-2-07	21-1-10		NE	Private Property	18	PVC	102	635.3	27.9%
21-1-10	21-1-09		North	Private Property	18	PVC	400	691.0	25.6%
21-1-09	21-1-08		NE	Private Property	18	PVC	414	691.0	25.6%
21-1-08	21-1-07		NE	Private Property	18	PVC	307	691.0	25.6%
21-1-07	21-1-06		East	Private Property	18	PVC	350	691.0	25.6%
21-1-06	21-01-03		East	Private Property	18	PVC	50	691.0	25.6%
21-1-06	Headworks		East	Private and City	18	DI	389	3229.8	5.5%
Total							13,217		
Weighted Average Jamestown Percentage of Transmission Route									55.39%
Total Sequim Collection System (lineal feet)							385,440		
Transmission Route as % of Total Collection System									3.43%
Jamestown Percentage of Entire City Collection System									1.90%

EXHIBIT B: Examples Showing Calculation of O&M Charges

EXHIBIT B

Examples Showing Calculation of O&M Charges:

1. Treatment O&M Charge
2. High Strength Wastewater Flow Surcharge
3. Annual Pipe Charge
4. Estimated vs. Adjusted O&M Charges

EXHIBIT B: Examples Showing Calculation of O&M Charges

1. Treatment O&M Charge

Calculation of Treatment O&M Charge Example	City Expenditures	Exclude	Applicable City Expenditures
Sequim Treatment O&M Cost Basis			
Direct:			
City B&O Tax - Treatment		-	-
Salaries	306,483		306,483
OT	17,370		17,370
Call Wages	15,761		15,761
L&I Ins	10,791		10,791
FICA/Medicare	25,025		25,025
PERS	39,074		39,074
Health Ins	70,461		70,461
Other Benefits			-
Supplies/Chemicals	103,566		103,566
Fuel	30,168		30,168
Small Tools/Minor Equip	34,422		34,422
Prof Svcs	9,932		9,932
Travel & Meals	270		270
Utilities	101,774		101,774
Repair & Maint	18,879		18,879
Misc Svcs & Fees	11,398		11,398
State Utility Taxes	99,312	(99,312)	-
Reuse Prof Svcs	173,250		173,250
Subtotal	1,067,936	(99,312)	968,624
Share of Utility Mgr Salary	29,456		29,456
Total Treatment O&M Direct	1,097,392	(99,312)	998,080
Indirect:			
Transfer - Allocated Central Services	614,651		614,651
Capital Replacement Reserve (2017 equip is applicable)	31,420		31,420
Debt Svc	656,331	(656,331)	-
Total Indirect	1,302,402	(656,331)	646,071
Total Treatment O&M Cost Basis (annual \$)	2,399,794	(755,643)	1,644,151
O&M Markup Percentage			25.00%
O&M Markup - Treatment			411,038
Treatment O&M Cost Basis plus O&M Markup			2,055,189
Total Flow to WRF (gallons/year)			232,071,000
Treatment O&M Rate (\$/gallon, rounded off to four decimal places)			\$ 0.0089
Jamestown Actual Flows in example month (gal)			1,098,469
Treatment O&M Charge in example month (assumes 5.68%)			\$ 9,776
Jamestown Actual Flows in example year (gal)			13,181,633
Treatment O&M Charge in example year (assumes 5.68%)			\$ 117,317

EXHIBIT B: Examples Showing Calculation of O&M Charges

2. High Strength Wastewater Flow Surcharge Calculation

Calculation of Monthly High Strength Surcharge Example			
EXAMPLE - 450 mg/l BOD and TSS			
Surcharge for BOD (\$0.19/lb)			
Jamestown Actual Flows in example month (gal)	1,098,469		
Excess Strength (450 mg/L - 300 mg/L)	150		
\$/LB	0.19		
Conversion Factor (per mgal)	8.34		
		\$	261.10
Indirect Cost Percentage (Allocated Central Services/Total O&M Cost Basis)	37.4%	\$	97.61
	Subtotal	\$	358.70
O&M Markup Percentage	25%	\$	89.68
	Total Monthly BOD Surcharge	\$	448.38
Surcharge for TSS (\$0.20/lb)			
Jamestown Actual Flows in example month (gal)	1,098,469		
Excess Strength (450 mg/L - 300 mg/L)	150		
\$/LB	0.20		
Conversion Factor (per mgal)	8.34		
		\$	274.84
Indirect Cost Percentage (Allocated Central Services/Total O&M Cost Basis)	37.4%	\$	102.79
	Subtotal	\$	377.63
O&M Markup Percentage	25%	\$	94.41
	Total Monthly TSS Surcharge	\$	472.03

EXHIBIT B: Examples Showing Calculation of O&M Charges

3. Annual Pipe Charge

Calculation of Pipe Charge Example	City Expenditures	Exclude	Applicable City Expenditures
Sequim Collection System O&M Cost Basis			
Direct			
Billing Supplies	\$ 1,350	\$ (1,350)	\$ -
Admin Communications	12,188	(12,188)	-
Admin Repair & Maint	3,167		3,167
Admin Intergov Prof Svcs	13,423		13,423
City B&O tax - Admin	327,181	(327,181)	-
Trans Salaries	198,787		198,787
Trans OT	13,531		13,531
Trans Call Wages	9,838		9,838
Trans L&I Ins	8,081		8,081
Trans FIC/Medicare	16,106		16,106
Trans PERS	26,287		26,287
Trans Health Ins	55,273		55,273
Trans Supplies	43,463		43,463
Trans Inv for Sale (BFP)	2,767	(2,767)	-
Trans Tools & Minor Equip	36,537		36,537
Trans Prof Svcs	-		-
Trans Travel & Meals	1,327		1,327
Pump Station Utilities	13,184	(13,184)	-
Trans Repair & Maint	12,900		12,900
Trans Misc Svcs & Fees	6,841		6,841
State Utility Taxes	(77,122)	77,122	-
Subtotal	725,109	(279,548)	445,561
Share of Util Manager Salary	29,456		29,456
Total Sewer O&M Direct	754,565	(279,548)	475,017
Indirect			
Transfer - Allocated Central Services	426,864		426,864
Capital - Utility Repair	21,820		21,820
Capital Transfer to Stormwater	-	-	-
Operating Transfer to Stormwater	-	-	-
Capital Replacement Reserve	-	-	-
Total Indirect	448,684	-	448,684
Total Collection/Transmission Costs	1,203,249	(279,548)	923,701
Exclude:			
Pump Station Maintenance Labor	(21,224)		(21,224)
Sewer Share of Customer Service Labor	(45,972)		(45,972)
Total Collection System O&M Cost Basis (annual \$)	\$ 1,136,053	\$ (279,548)	\$ 856,505
O&M Markup Percentage			25.00%
O&M Markup - Collection System			214,126
Collection System O&M Cost Basis plus O&M Markup			\$ 1,070,631
Jamestown Percentage of Entire City Collection System:			
<i>As of May 2018</i>			
Total Sequim Collection System (lf)			385,440
Shared pipes along Jamestown transmission route (lf)			13,217
Shared pipes as % of total City collection system (rounded off)			3.43%
Average projected Jamestown % of flow in shared pipes (rounded off)			55.39%
Jamestown Percentage of Entire City Collection System (rounded off)			1.90%
Annual Pipe Charge for Example Year			\$ 20,342
Monthly Pipe Charge during Example Year			\$ 1,695

EXHIBIT B: Examples Showing Calculation of O&M Charges

4. Estimated vs. Adjusted O&M Charges

Estimated vs. Adjusted O&M Charge Example	Estimate	Actual/Corrected	Adjustment
Treatment O&M Charge			
Treatment O&M Cost Basis	1,600,000	1,644,151	
O&M Markup %	25.00%	25.00%	
O&M Markup	400,000	411,038	
Treatment O&M Basis plus O&M Markup	2,000,000	2,055,189	
Total Flow to WRF (gallons/year)	210,000,000	232,071,000	
Treatment O&M Rate (\$/gallon)	\$ 0.009524	\$ 0.008856	
Jameslown Flows (gallons/year)	13,181,633	13,181,633	
Treatment O&M Charge	\$ 125,539	\$ 116,735	\$ (8,805)
Annual Pipe Charge			
Collection System O&M Cost Basis	730,000	856,505	
O&M Markup %	25.00%	25.00%	
O&M Markup	182,500	214,126	
Collection System O&M Cost Basis plus O&M Markup	912,500	1,070,631	
Jameslown Pct of Entire City Collection System	1.90%	1.90%	
Annual Pipe Charge	\$ 17,338	\$ 20,342	\$ 3,004
Combined O&M Charges			
Total O&M Charges	\$ 142,877	\$ 137,077	\$ (5,800)
Monthly Adjustment for Next 12 Months			\$ (483)

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

EXHIBIT C

Calculation of Capacity Charges and Explanation of Accrued Interest Factor:

1. Calculation of Initial Capacity Charge for Jamestown System Transmission Route
2. Calculation of Initial Capacity Charge for Treatment Assets and Total Initial Capacity Charge
3. Hypothetical Calculation of Future Capacity Charges if Capacity Reservation is Increased
4. Hypothetical Calculation of Future Capacity Refund Payment if Capacity Reservation is Decreased
5. Explanation of Accrued Interest Factor

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

1. Calculation of Initial Capacity Charge for the Jamestown Transmission Route
Assumed Unit Replacement Costs by Pipe Size

Sanitary Sewer Pipe Cost Summary June 2018		
Pipe Size		Project Cost/Ft
4 or 6 Inch	\$	306
8 Inch	\$	329
12 Inch	\$	349
15 Inch	\$	379
18 Inch	\$	403

Source: Sequim Project Costs
Construction Cost includes 20% contingency
Project Cost includes 25% Engineering/Admin

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

Estimated Original Cost by Pipe Segment

Exhibit C - Transmission Route				Assumed	Assumed	2018	ENR	Estimated	
From	To	Direction	Direction & Nearest	Length	Year	Replacem	Replacem	Inflation	Original
Manhole	Manhole	of Flow	Street Alignment	(lineal ft.)	Installed	Cost/LF	Cost (\$)	Factor	Cost (\$)
<i>Source: City of Sequim GIS. 1998 installation costs calculated using ENR Construction Cost Index (CCI) 20 City average</i>									
WF Way	28-1-08	North	Wash Harbor Loop	3,874	1998	\$ 306	\$ 1,185,444	0.551	\$ 653,676
28-1-08	29-01-07	West	Wash Harbor Loop	398	1998	329	130,942	0.551	72,204
28-1-07	28-1-06	West	Wash Harbor Loop	185	1998	329	60,865	0.551	33,562
28-1-06	28-1-05	West	Wash Harbor Loop	373	1998	329	122,717	0.551	67,668
28-1-05	28-1-04	West	Wash Harbor Loop	197	1998	329	64,813	0.551	35,739
28-1-04	28-1-03	NW	Wash Harbor Loop	173	1998	329	56,917	0.551	31,385
28-1-03	28-1-01	NW	Wash Harbor Loop	400	1998	329	131,600	0.551	72,567
28-1-01	21-4-04	North	Wash Harbor Loop	377	1998	329	124,033	0.551	68,394
21-4-04	21-4-03	North	Wash Harbor Loop	800	1998	346	276,800	0.551	152,633
21-4-03	21-4-01	North	Wash Harbor Loop	400	1998	346	138,400	0.551	76,316
21-4-01	21-3-12	West	West Sequim Bay	401	1998	346	138,746	0.551	76,507
21-3-12	21-3-17	West	West Sequim Bay	211	1998	346	73,006	0.551	40,257
21-3-17	21-3-11	West	West Sequim Bay	190	1998	346	65,740	0.551	36,250
21-3-11	21-3-31	West	West Sequim Bay	139	1998	346	48,094	0.551	26,520
21-3-31	21-3-10	West	West Sequim Bay	136	1998	346	47,056	0.551	25,948
21-3-10	21-3-05	North	West Sequim Bay	279	1998	379	105,741	0.551	58,308
21-3-05	21-3-04	NE	Private Property	510	1998	379	193,290	0.551	106,584
21-3-04	21-3-03	NE	Private Property	401	1998	379	151,979	0.551	83,804
21-3-03	21-3-02	NE	Private Property	273	1998	379	103,467	0.551	57,054
21-3-02	21-3-01	NE	Private Property	203	1998	379	76,937	0.551	42,424
21-3-01	21-2-11	North	Private Property	318	1998	403	128,154	0.551	70,666
21-2-11	21-2-10	North	Private Property	409	1998	403	164,827	0.551	90,889
21-2-10	21-2-09	North	Private Property	281	1998	403	113,243	0.551	62,444
21-2-09	21-2-08	North	Private Property	86	1998	403	34,658	0.551	19,111
21-2-08	21-2-07	North	Private Property	191	1998	403	76,973	0.551	42,444
21-2-07	21-1-10	NE	Private Property	102	1998	403	41,106	0.551	22,667
21-1-10	21-1-09	North	Private Property	400	1998	403	161,200	0.551	88,889
21-1-09	21-1-08	NE	Private Property	414	1998	403	166,842	0.551	92,000
21-1-08	21-1-07	NE	Private Property	307	1998	403	123,721	0.551	68,222
21-1-07	21-1-06	East	Private Property	350	1998	403	141,050	0.551	77,778
21-1-06	21-1-03	East	Private Property	50	1998	403	20,150	0.551	11,111
21-1-06	Headworks	East	Private and City	389	1984	403	156,767	0.386	60,536
Total				13,217			\$ 4,625,278		\$ 2,524,556

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

1. Calculation of Initial Capacity Charge for Jamestown Transmission Route, continued
Jamestown Share of Net Book Value by Pipe Segment

Exhibit C - Transmission Route				Estimated	Assumed	Age	Net Book	Jamestown	Jamestown
From	To	Direction	Direction & Nearest	Original	Useful	in	Value as of	Transmission	Share of Net
Manhole	Manhole	of Flow	Street Alignment	Cost (\$)	Life	2018	2018	Percentages	Book Value
<i>Source: City of Sequim GIS. 1998 installation costs calculated using ENR Construction Cost Index (CCI) 20 City average</i>									
WF Way	28-1-08	North	Wash Harbor Loop	\$ 653,676	60	20	\$ 435,784	90.2%	\$ 392,930
28-1-08	28-01-07	West	Wash Harbor Loop	72,204	60	20	48,136	90.2%	43,402
28-1-07	28-1-06	West	Wash Harbor Loop	33,562	60	20	22,375	82.8%	18,517
28-1-06	28-1-05	West	Wash Harbor Loop	67,668	60	20	45,112	82.8%	37,334
28-1-05	28-1-04	West	Wash Harbor Loop	35,739	60	20	23,826	82.8%	19,718
28-1-04	28-1-03	NW	Wash Harbor Loop	31,385	60	20	20,923	58.8%	12,293
28-1-03	28-1-01	NW	Wash Harbor Loop	72,567	60	20	48,378	58.8%	28,422
28-1-01	21-4-04	North	Wash Harbor Loop	68,394	60	20	45,596	58.8%	26,788
21-4-04	21-4-03	North	Wash Harbor Loop	152,633	60	20	101,755	57.8%	58,782
21-4-03	21-4-01	North	Wash Harbor Loop	76,316	60	20	50,878	36.3%	18,487
21-4-01	21-3-12	West	West Sequim Bay	76,507	60	20	51,005	36.3%	18,533
21-3-12	21-3-17	West	West Sequim Bay	40,257	60	20	26,838	36.0%	9,659
21-3-17	21-3-11	West	West Sequim Bay	36,250	60	20	24,167	36.0%	8,697
21-3-11	21-3-31	West	West Sequim Bay	26,520	60	20	17,680	35.6%	6,295
21-3-31	21-3-10	West	West Sequim Bay	25,948	60	20	17,298	35.6%	6,159
21-3-10	21-3-05	North	West Sequim Bay	58,308	60	20	38,872	29.3%	11,371
21-3-05	21-3-04	NE	Private Property	106,584	60	20	71,056	28.9%	20,516
21-3-04	21-3-03	NE	Private Property	83,804	60	20	55,869	28.9%	16,131
21-3-03	21-3-02	NE	Private Property	57,054	60	20	38,036	28.9%	10,982
21-3-02	21-3-01	NE	Private Property	42,424	60	20	28,283	28.9%	8,166
21-3-01	21-2-11	North	Private Property	70,666	60	20	47,111	28.9%	13,603
21-2-11	21-2-10	North	Private Property	90,889	60	20	60,592	28.9%	17,495
21-2-10	21-2-09	North	Private Property	62,444	60	20	41,630	28.9%	12,020
21-2-09	21-2-08	North	Private Property	19,111	60	20	12,741	28.9%	3,679
21-2-08	21-2-07	North	Private Property	42,444	60	20	28,296	27.9%	7,884
21-2-07	21-1-10	NE	Private Property	22,667	60	20	15,111	27.9%	4,210
21-1-10	21-1-09	North	Private Property	88,889	60	20	59,259	25.6%	15,179
21-1-09	21-1-08	NE	Private Property	92,000	60	20	61,333	25.6%	15,710
21-1-08	21-1-07	NE	Private Property	68,222	60	20	45,481	25.6%	11,650
21-1-07	21-1-06	East	Private Property	77,778	60	20	51,852	25.6%	13,282
21-1-06	21-1-03	East	Private Property	11,111	60	20	7,407	25.6%	1,897
21-1-06	Headworks	East	Private and City	60,536	60	34	26,232	5.5%	1,438
Total				\$ 2,524,556			\$ 1,668,912		
Initial Capacity Charge for Transmission Route									\$ 891,229

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

2. Calculation of Initial Capacity Charge for Treatment Assets and Total Initial Capacity Charge

Janestown Initial Capacity Charge						
Pre-2018 Sequim Wastewater Treatment Assets						
Estimated Original Cost less Depreciation as of December 2017						
Pre-2018 Asset	Year Installed	Original Cost	Est. Useful Life	Annual Deprec %	Age in 2018	Net Book Value as of 2018
<i>Sources: Gray & Osborne November 2011 Technical Memo Appendix B, subsequent City accounting records.</i>						
Treatment Assets:						
1984 Plant Improvements:	1984	1,224,364	50	2.0%	34	391,796
New Headworks						
Secondary Splitter Box						
New Lab Building 2						
New Oxidation Ditch						
New Clarifier 1						
Waste Sludge Pump Building						
Tank Conversions						
Chlorine Tank						
Aerobic Digesters	1993	600,000	40	2.5%	25	225,000
Building Conversion	1993	150,000	50	2.0%	25	75,000
Clarifier #2	1993	620,000	50	2.0%	25	310,000
RAS Pumping Station	1993	60,000	40	2.5%	25	22,500
Other 1993 Projects	1993	897,000	40	2.5%	25	336,375
Flow Equalization Basin	1997	442,000	50	2.0%	21	256,360
Flow Diversion	1997	70,000	40	2.5%	21	33,250
Coagulation Facility	1997	676,000	40	2.5%	21	321,100
Holding Pond	1997	321,000	40	2.5%	21	152,475
Control Building	1997	233,000	50	2.0%	21	135,140
Backwash Basin	1997	42,000	50	2.0%	21	24,360
UV Basin	1997	207,000	40	2.5%	21	98,325
Other 1997 Projects	1997	319,000	40	2.5%	21	151,525
Biosolids Improvements	2003	1,107,165	30	3.3%	15	553,583
Phase 1A & 1B WRF Improvements	2010	9,755,000	30	3.3%	8	7,153,667
Filtration Basin Design 2011	2011	24,028	40	2.5%	7	19,823
Carlsborg Engineering	2011	17,985	30	3.3%	7	13,789
Miscellaneous Treatment Projects	2011	11,908	40	2.5%	7	9,824
General Sewer Plan	2012	88,150	6	16.7%	6	-
Filtration Basin Design 2012	2012	31,920	40	2.5%	6	27,132
Filtration Basin Construction 2012	2012	205,545	40	2.5%	6	174,713
WRF Server Room	2012	38,117	40	2.5%	6	32,399
Digester Engineering	2013	70,067	40	2.5%	5	61,309
Filtration Basin Construction 2013	2013	401,315	40	2.5%	5	351,151
Headworks Engineering	2014	59,929	40	2.5%	4	53,936
Headworks Mod #1/Digester Upgrade	2016	1,342,937	40	2.5%	2	1,275,790
Equalization Basin Aeration System	2017	48,541	40	2.5%	1	47,328
Industrial Pretreatment	2017	7,292	10	10.0%	1	6,562
Odor Control	2017	3,736	20	5.0%	1	3,549
Electric Vehicle	2017	22,605	20	5.0%	1	21,475
Total Pre-2018 Treatment Assets		\$ 19,097,604				\$ 12,339,235
Total Treatment Capacity (gpd)						1,670,000
Net Book Value of Pre-2018 Assets per gpd Capacity						\$ 7.39
Assumed Initial Capacity Reservation for Blyn (gpd)						94,786
<i>Assumes Max. Monthly Average Daily Flow (MMADF)</i>						
Initial Capacity Charge for Treatment Assets						\$ 700,351
Initial Capacity Percentage						5.68%
<i>Hypothetical Future Capacity Charges (applies to Treatment only):</i>						
Assumed WRF Treatment Capacity (gpd)						
Net Book Value of Pre-2018 Assets per gpd						
Assumed Blyn Capacity Reservation (gpd)						
Incremental Capacity Reservation						
<i>Hypothetical, for illustration only. Assumes 5,000 gpd increase every 10 years.</i>						
Hypothetical Future Capacity Charge						
Hypothetical Future Blyn Capacity Percentages						
Initial Capacity Charge for Transmission Route Assets						\$ 891,229
Total Initial Capacity Charge						\$ 1,591,580

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

3. Hypothetical Calculation of Subsequent Capacity Charges
if Capacity Reservation is Increased (applies to Treatment Assets only)

Treatment Assets											
Pre-2018 Asset	Year Installed	Original Cost	Est. Useful Life	Annual Deprec. %	2028	2033	2038	2043	2048	2053	2058
Sources: Gray & Osborne November 2011 Technical Memo Appendix B, subsequent City accounting records.											
Treatment Assets:											
1984 Plant Improvements:	1984	1,224,354	50	2.0%	146,924	24,487	-	-	-	-	-
New Headworks											
Secondary Splitter Box											
New Lab Building 2											
New Oxidation Ditch											
New Clarifier 1											
Waste Sludge Pump Building											
Tank Conversions											
Chlorine Tank											
Aerobic Digesters	1993	600,000	40	2.5%	75,000	-	-	-	-	-	-
Building Conversion	1993	150,000	50	2.0%	45,000	30,000	15,000	-	-	-	-
Clarifier #2	1993	620,000	50	2.0%	168,000	124,000	62,000	-	-	-	-
RAS Pumping Station	1993	80,000	40	2.5%	7,500	-	-	-	-	-	-
Other 1993 Projects	1993	897,000	40	2.5%	112,125	-	-	-	-	-	-
Flow Equalization Basin	1997	442,000	50	2.0%	167,960	123,760	79,560	35,360	-	-	-
Flow Diversion	1997	70,000	40	2.5%	15,750	7,000	-	-	-	-	-
Coagulation Facility	1997	676,000	40	2.5%	152,100	87,600	-	-	-	-	-
Holding Pond	1997	321,000	40	2.5%	72,225	32,100	-	-	-	-	-
Control Building	1997	233,000	50	2.0%	88,540	65,240	41,940	18,840	-	-	-
Backwash Basin	1997	42,000	50	2.0%	15,960	11,760	7,560	3,360	-	-	-
UV Basin	1997	207,000	40	2.5%	49,575	20,700	-	-	-	-	-
Other 1997 Projects	1997	319,000	40	2.5%	71,775	31,900	-	-	-	-	-
Biosolids Improvements	2003	1,107,165	30	3.3%	184,528	-	-	-	-	-	-
Phase 1A & 1B WRF Improvements	2010	9,755,000	30	3.3%	3,902,000	2,276,167	850,333	-	-	-	-
Filtration Basin Design 2011	2011	24,028	40	2.5%	13,818	10,813	7,809	4,806	1,802	-	-
Catsberg Engineering	2011	17,985	30	3.3%	7,784	4,796	1,799	-	-	-	-
Miscellaneous Treatment Projects	2011	11,908	40	2.5%	6,847	5,359	3,870	2,382	893	-	-
General Sewer Plan	2012	88,150	6	16.7%	-	-	-	-	-	-	-
Filtration Basin Design 2012	2012	31,920	40	2.5%	19,152	15,182	11,172	7,182	3,192	-	-
Filtration Basin Construction 2012	2012	205,545	40	2.5%	123,327	97,634	71,941	46,248	20,555	-	-
WRF Server Room	2012	38,117	40	2.5%	22,870	18,106	13,341	8,578	3,812	-	-
Digester Engineering	2013	70,067	40	2.5%	43,792	35,034	26,275	17,517	8,758	-	-
Filtration Basin Construction 2013	2013	401,315	40	2.5%	250,822	200,658	150,493	100,329	50,164	-	-
Headworks Engineering	2014	59,929	40	2.5%	38,954	31,483	23,972	16,480	8,989	1,498	-
Headworks Mod #1/Digester Upgrade	2016	1,342,937	40	2.5%	940,059	772,168	604,321	436,454	269,587	100,720	-
Equalization Basin Aeration System	2017	48,541	40	2.5%	35,192	29,125	23,057	18,989	10,922	4,854	-
Industrial Pretreatment	2017	7,292	10	10.0%	-	-	-	-	-	-	-
Odor Control	2017	3,736	20	5.0%	1,881	747	-	-	-	-	-
Electric Vehicle	2017	22,605	20	5.0%	10,172	4,521	-	-	-	-	-
Total Pre-2018 Treatment Assets		\$ 19,097,804			\$ 6,804,436	\$ 4,040,316	\$ 1,794,443	\$ 714,323	\$ 377,075	\$ 107,073	\$ -
Total Treatment Capacity (gpd)											
Net Book Value of Pre-2018 Assets per gpd Capacity											
Assumed Initial Capacity Reservation for Blyn (gpd)											
<i>Assumes Max. Monthly Average Daily Flow (MMADF)</i>											
Initial Capacity Charge for Treatment Assets											
Initial Capacity Percentage											
Hypothetical Future Capacity Charges (applies to Treatment only):											
Assumed WRF Treatment Capacity (gpd)					1,870,000	1,870,000	2,240,000	2,240,000	2,240,000	2,240,000	2,240,000
Net Book Value of Pre-2018 Assets per gpd					\$ 4.07	\$ 2.42	\$ 0.80	\$ 0.32	\$ 0.17	\$ 0.05	\$ -
Assumed Blyn Capacity Reservation (gpd)					99,786	99,786	104,786	104,786	109,786	109,786	114,786
Incremental Capacity Reservation					5,000	-	5,000	-	5,000	-	5,000
<i>Hypothetical, for illustration only. Assumes 5,000 gpd increase every 10 years.</i>											
Hypothetical Future Capacity Charge					\$ 20,373	\$ -	\$ 4,095	\$ -	\$ 843	\$ -	\$ -
Hypothetical Future Blyn Capacity Percentages					6.0%	6.0%	4.7%	4.7%	4.9%	4.9%	5.1%

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

**4. Hypothetical Calculation of Subsequent Capacity Refund Payment
if Capacity Reservation is Decreased (applies to Treatment Assets only)**

Treatment Assets	Year	Original	Est. Useful	Annual	Age in	Net Book
Pre-2018 Asset	Installed	Cost	Life	Deprec %	2018	Value as of 2028
Net Book Value of Pre-2018 Treatment Assets included in Capacity Charges:						
1984 Plant Improvements:	1984	1,224,364	50	2.0%	34	146,924
Aerobic Digesters	1993	600,000	40	2.5%	25	75,000
Building Conversion	1993	150,000	50	2.0%	25	45,000
Clarifier #2	1993	620,000	50	2.0%	25	186,000
RAS Pumping Station	1993	60,000	40	2.5%	25	7,500
Other 1993 Projects	1993	897,000	40	2.5%	25	112,125
Flow Equalization Basin	1997	442,000	50	2.0%	21	167,960
Flow Diversion	1997	70,000	40	2.5%	21	15,750
Coagulation Facility	1997	676,000	40	2.5%	21	152,100
Holding Pond	1997	321,000	40	2.5%	21	72,225
Control Building	1997	233,000	50	2.0%	21	88,540
Backwash Basin	1997	42,000	50	2.0%	21	15,960
UV Basin	1997	207,000	40	2.5%	21	46,575
Other 1997 Projects	1997	319,000	40	2.5%	21	71,775
Biosolids Improvements	2003	1,107,165	30	3.3%	15	184,528
Phase 1A & 1B WRF Improvements	2010	9,755,000	30	3.3%	8	3,902,000
Filtration Basin Design 2011	2011	24,028	40	2.5%	7	13,816
Carlsborg Engineering	2011	17,985	30	3.3%	7	7,794
Miscellaneous Treatment Projects	2011	11,908	40	2.5%	7	6,847
General Sewer Plan	2012	88,150	6	16.7%	6	-
Filtration Basin Design 2012	2012	31,920	40	2.5%	6	19,152
Filtration Basin Construction 2012	2012	205,545	40	2.5%	6	123,327
WRF Server Room	2012	38,117	40	2.5%	6	22,870
Digester Engineering	2013	70,067	40	2.5%	5	43,792
Filtration Basin Construction 2013	2013	401,315	40	2.5%	5	250,822
Headworks Engineering	2014	59,929	40	2.5%	4	38,954
Headworks Mod #1/Digester Upgrade	2016	1,342,937	40	2.5%	2	940,056
Equalization Basin Aeration System	2017	48,541	40	2.5%	1	35,192
Industrial Pretreatment	2017	7,292	10	10.0%	1	-
Odor Control	2017	3,736	20	5.0%	1	1,681
Electric Vehicle	2017	22,605	20	5.0%	1	10,172
Total Pre-2018 Treatment Assets		\$19,097,604				\$ 6,804,436

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

4. Hypothetical Calculation of Subsequent Capacity Refund Payment if Capacity Reservation is Decreased, continued

Net Book Value of Treatment Assets Funded by Capital Cost Shares:						
<i>Hypothetical capital expenditures from 2018 through 2028, for which Jamestown will have paid a 5.68% capital cost share based on a 94,786 gpd Capacity Reservation. Assume reduction of capacity reservation is effective at the end of 2028, so that Jamestown will still be responsible for 5.68% of the 2028 capital expenditures.</i>						
Biosolids Handling & Distrib Ctr	2018	1,320,000	40	2.5%	10	990,000
WRF Headworks Modifications #2	2019	350,000	40	2.5%	9	271,250
WRF Pumping System Reconfiguration	2019	660,000	40	2.5%	9	511,500
Outfall Pipeline Repair/Replacement	2023	1,450,000	40	2.5%	5	1,268,750
Rapid Infiltration Basin Improvements	2023	1,700,000	40	2.5%	5	1,487,500
High Pressure Zone Expansion	2028	1,550,000	40	2.5%	0	1,550,000
Total Treatment Assets Funded by Capital Cost Shares						\$ 6,079,000
Total Treatment Assets - Net Book Value 2028						12,883,436
Assumed Total Treatment Capacity (gpd)						1,670,000
Net Book Value of Treatment Assets per gpd Capacity						\$ 7.71
Initial Capacity Reservation (gpd)						94,786
Assumed Revised Capacity Reservation (gpd)						84,786
Reduction in Capacity Reservation (gpd)						10,000
Capacity Refund Payment						\$ 77,146
Revised Capacity Percentage						5.08%
<i>So in this scenario, for the Capital Cost Share for the year 2028, the City would bill Jamestown prior to March 31, 2029 as follows:</i>						
				Cost:	multiplied by:	
Capital Cost Share for 2028 capital expenditures		1,550,000		5.68%		\$ 88,040
Plus accrued interest		88,040		0.75%		660
Total payment for Jamestown share of 2028 capital						\$ 88,700
Less credit for Capacity Refund Payment (reducing Capacity Reservation to 84,786 gpd)						(77,146)
Net Jamestown capital payment to City in this scenario						\$ 11,554

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

5. Explanation of Accrued Interest Factor

Referred to in Section 6.3.3

Calculation of Accrued Interest Factor					
<i>Assumptions:</i>					
	Annual expenditure by City				\$ 1,000
	Annual interest rate				1.2%
	Quarterly interest rate				0.30%
Quarter	Quarterly Expenditure	Quarterly Interest	Number of Periods	Accrued Interest	
1Q	\$ 250	\$ 0.75	4	\$ 3.00	
2Q	\$ 250	\$ 0.75	3	\$ 2.25	
3Q	\$ 250	\$ 0.75	2	\$ 1.50	
4Q	\$ 250	\$ 0.75	1	\$ 0.75	
	<u>\$ 1,000</u>			<u>\$ 7.50</u>	
	Implied accrued interest rate				0.75%
<p>In other words, if we assume a level stream of capital expenditures by the City throughout the year, and if we assume an annual interest rate of 1.2% (representing the City's foregone interest earnings), and if we assume that the City completes its year-end project accounting and bills Jamestown by March 31 of the following year, then a 0.75% markup on the Capital Cost Share will approximately compensate the City for accrued interest.</p>					

EXHIBIT D - Limited Waiver of Sovereign Immunity



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

RESOLUTION #49-18

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

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

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

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

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

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

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

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

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

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



W. Ron Allen, Chairman

Certification

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



Lisa M. Barrell, Tribal Council Secretary



SOVEREIGN NATION COMMERCIAL INSURANCE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine your rights, duties, and what is and is not covered. Subject to its terms, conditions and exclusions, this policy is a commercial insurance policy and provides coverage only with respect to the conduct of your business.

Throughout this policy, the word "Hudson" refers to Hudson Insurance Company. Words and phrases that appear within quotation marks have, wherever they appear, the special meanings set forth in the Definitions.

Coverage is only provided under the Insuring Agreements contained in this policy for which a limit of insurance is shown in the Declarations.

GENERAL PROVISIONS

The provisions listed in this section are applicable to your entire policy.

A. ASSURED

It is agreed that "Assured", wherever used in this policy, includes the entity listed in Item 1. of the Declarations (the "Named Assured") and:

1. Any official, trustee, "employee" or volunteer of the "Named Assured" while acting within the scope of his duties as such, and any person, organization, trustee or estate to whom the "Named Assured" is obligated by virtue of a legally binding contract or agreement to provide insurance such as is afforded by this policy, but only with respect to the business operations performed by or on behalf of the "Named Assured";
2. Any person while using an "automobile" owned or hired by the "Named Assured" and any person or organization legally responsible for the use thereof, provided the actual use of such owned or hired "automobile" is by the "Named Assured" or with his permission, any official, trustee or "employee" of the "Named Assured" provided the use of the owned or hired "automobile" is in connection with the business of the "Named Assured".

However, with respect to any person or organization other than the "Named Assured", this policy does not apply:

- a. To any person or organization, or to any agent or employee thereof, operating an "automobile" sales agency, repair shop, service station, garage or public parking place, with respect to any accident arising out of the operation thereof; however, if Insuring Agreement G. of the policy Declarations indicates coverage is included for "garage keeper's and valet parking services", then this provision

does not apply to "employees" of the "Named Assured" while loading, unloading or parking an "automobile" for a guest of the "Named Assured";

- b. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of any "automobile" while being maintained or used in the business of such employer;
- c. With respect to any hired "automobile", to the owner or a lessee thereof, other than the "Named Assured", nor to any agent or employee of such owner or lessee; and/or
- d. With respect to any non-owned "automobile", except as excess insurance over any other valid or collectible insurance, to any official or employee if such "automobile" is owned by him or a member of the same household.

B. TERRITORY

This policy applies worldwide.

C. SERVICE ORGANIZATION

Hudson" designates Alliant Specialty Insurance Services, Inc. as "Hudson's" "Service Organization". This policy is issued to the "Named Assured" on the express condition that the "Named Assured" undertakes to utilize, at all times, the services of the "Service Organization". The "Service Organization" shall perform the following duties:

1. Supervise "claims" in accordance with accepted industry standards once notice of a "loss", "claim" or "occurrence" has been made to the "Service Organization";
2. Comply with the notice and reporting requirements of "Hudson" under the terms of this policy;
3. Maintain accurate records of all reported "claims" and incidents with details of "loss" and "expense" payments;
4. Furnish loss prevention and consulting services;
5. Recommend and implement controls and monitor loss prevention programs; and
6. Furnish monthly "claims" records on an approved form.

The acceptance of these services shall be a condition precedent to any liability which may attach to "Hudson" in accordance with the terms and conditions of this policy.

"Hudson" shall have the right and opportunity, but neither the duty nor obligation, to: (i) associate with the "Named Assured" or the "Service Organization" in the defense of any "claim"; or (ii) at "Hudson's" option, assume the control of the defense of any "claim". In such event:

- a. The "Named Assured" agrees to take the necessary legal measures to allow "Hudson's" counsel to associate with the "Named Assured" in, or assume the control of, the defense of any "claim" in which case the "Named Assured" and "Hudson" shall cooperate in all matters relating thereto;

during the "policy period" and up to the final resolution of all claims under this policy or three years after the end of the "policy period", whichever is later.

- F. **CANCELLATION/NON-RENEWAL:** In the event of non-payment of premium by the "Assured," "Hudson" will give ten (10) days' notice of cancellation, in writing, sent certified mail to the "Assured" and all coverage afforded by this policy will terminate ten (10) days after the mailing of such notice.

Notwithstanding the aforementioned, "Hudson" may elect to cancel this policy at any time upon ninety (90) days' written notice to the "Named Assured", otherwise this policy automatically expires at the end of the "policy period".

- G. If this policy is by canceled by "Hudson," for any reason other than non-payment of premium, Hudson will refund premium on a pro-rata basis. If the "Assured" cancels the policy, the refund will be on a short rate basis..**CURRENCY:** The premium, "losses" and/or "expenses" under this policy are payable in United States currency.
- H. **BANKRUPTCY AND INSOLVENCY:** In the event of the bankruptcy or insolvency of the "Named Assured" or any entity comprising the "Named Assured", "Hudson" shall not be relieved of the payment of any claims hereunder because of such bankruptcy or insolvency. The Bankruptcy or insolvency of the "Assured", or any refusal or inability of the "Assured" to satisfy its obligation pursuant to this Policy will not reduce the "retained limit" as set forth on the Declarations nor will it require "Hudson" to pay any amounts within the "retained limit".
- I. **OTHER INSURANCE:** If the "Assured" has other insurance, from an insurer other than "Hudson" or any other company within the Hudson Insurance Group, which provides coverage against "loss" and "expense" that is also covered by this policy, "Hudson" shall be liable, under the terms of this policy, only in excess of that coverage provided by such other insurance and no monies payable or collectible from such other insurance shall accrue to the "retained limit".

If the "Assured" has other insurance from "Hudson" or any other company within the Hudson Insurance Group which provides coverage against "loss" and "expense" that is also covered by this policy, "Hudson" shall be liable only under the terms of this policy. This provision does not apply to coverage which is specifically written as excess over coverage provided by this policy.

- J. **ADDITIONAL ASSURED CLAUSE:** The interest of any additional "Assured" with respect to liability covered hereunder is included as if a separate Insuring Agreement were attached hereto to the extent of their interest as of the date of loss subject to the limits of insurance set forth in this policy.
- K. **LOSS PAYMENTS:** When it has been determined by the "Service Organization" that "Hudson" is liable under this policy, "Hudson" shall thereafter promptly make payment(s) up to the applicable limit of insurance, as stated in Item 4. of the Declarations. The "Assured" will be responsible for reimbursement of the "retained limit" upon request from the "Service Organization". All adjusted claims shall be paid or made good to the "Assured" within thirty (30) days after the presentation to and acceptance by "Hudson" of satisfactory proof of interest and loss.
- L. **APPEALS:** In the event the "Assured" and "Hudson" are unable to agree as to the advisability of appealing a judgment, they may, as an alternative to arbitration (Condition S. -- Arbitration), appoint a disinterested attorney, mutually agreeable to "Hudson" and the "Assured", who shall be retained and directed to render a written opinion as to his recommendation concerning such appeal. Such written recommendation shall be binding on both the "Assured" and "Hudson".

Fees of such retained attorney shall be borne equally by both parties for the services of rendering his recommendation only. The "Assured's" portion of such fee shall not apply towards the "retained limit".

- M. **LITIGATION PROCEEDINGS:** No suit to recover under this policy shall be brought until ninety (90) days after the proof of loss shall have been furnished, nor at all unless commenced within twelve (12) months from the date upon which the "claim" is denied by "Hudson".
- N. **SUBROGATION:** "Hudson" shall be subrogated to all rights which the "Assured" may have against any person or other entity in respect to any "claim" or payment made under this policy and the "Assured" shall do everything necessary to secure these rights and do nothing to impair them. The "Assured" shall execute any papers required by "Hudson" and shall cooperate with "Hudson" to secure "Hudson's" rights. In the event of any reimbursement obtained or recovery made by the "Assured" or "Hudson" on account of any liability, "loss" and/or "expense" covered by this policy, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be applied in the following order:
1. To the amount of "loss" and "expense" which exceeds the applicable limit of insurance of this policy;
 2. To reduce "Hudson's" liability, "loss" and "expense" until "Hudson" is fully reimbursed; and
 3. To reduce the "Assured's" liability, "loss" and "expense".
- O. **WAIVER OF SUBROGATION:** This policy shall not be invalidated if the "Assured", by written agreement, has waived or shall waive its right of recovery from any party for "loss" and/or "expense" covered hereunder; provided that any such waiver is made prior to the happening of the "occurrence" giving rise to such "loss" and/or "expense".
- P. **ASSIGNMENT:** Assignment of interest under this policy by the "Assured" shall not bind "Hudson" unless and until "Hudson's" consent is endorsed hereon.
- Q. **CHANGES:** By acceptance of this policy, the "Assured" agrees that it embodies all agreements existing between the "Assured" and "Hudson" or any of their agents relating to this policy. None of the provisions, conditions or other terms of this policy shall be waived or altered except by endorsement; nor shall notice to any agent or knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this policy.
- R. **FRAUDULENT CLAIMS:** If the "Assured" shall make any "claim" knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and all "claims" hereunder shall be forfeited.
- S. **ARBITRATION:** All disputes which may arise between "Hudson" and the "Assured" out of or in relation to this policy (including disputes as to its validity, construction or enforceability), or for its breach, shall be finally settled by arbitration based, insofar as possible, upon the rules and procedures of the American Arbitration Association, by which "Hudson" and the "Assured" agree to be bound. In addition to the rules governing such arbitration, the parties shall have at their disposal the broadest pre-trial discovery rights as are then available under the laws and judicial rules of the jurisdiction in which the arbitration is to be held, provided that any dispute between the parties relating to discovery shall be submitted to the arbitration panel for resolution.

Unless the parties consent in writing to a lesser number, the arbitration panel shall consist of three (3) arbitrators, the first to be appointed by "Hudson", the second to be appointed by the "Assured" and the third by the two (2) arbitrators so appointed.

The arbitration proceedings shall take place in New York, NY, provided that the arbitration panel may, for the convenience of the parties and without changing the status of the arbitration proceeding, take evidence outside New York, NY.

The award of the arbitration panel may be, alternatively or cumulatively, for monetary damages, an order requiring the performance of the obligations under this policy, or any other appropriate order or remedy. The award shall assign



CERTIFICATE OF LIABILITY INSURANCE

6/29/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of Washington, Inc. 800 5th Ave Suite 2400 Seattle WA 98104	CONTACT NAME: Maureen Shiri-Wasto	
	PHONE (A/C. No. Ext): 206-676-8143	FAX (A/C. No): 206-956-9604
E-MAIL ADDRESS: mshiriwasto@bbseattle.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : HUDSON INSURANCE COMPANY		25054
INSURED Jamestown S' Klallam Tribe 1033 Old Blyn Highway Sequim WA 98382	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER: 838221810

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		NACL00196-14	7/1/2019	7/1/2022	EACH OCCURRENCE \$ 6,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 6,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 6,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Interlocal Agreement for Sanitary Services and Sanitary Sewer Collection System Maintenance Agreement.
 The City of Sequim is Additional Insured as required per the referenced written agreements/contracts between the City and Named Insured.

CERTIFICATE HOLDER**CANCELLATION**

Clerk's Office
 City of Sequim
 152 W Cedar Street
 P.O. Box 1087
 Sequim WA 98382

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



SOVEREIGN NATION COMMERCIAL INSURANCE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine your rights, duties, and what is and is not covered. Subject to its terms, conditions and exclusions, this policy is a commercial insurance policy and provides coverage only with respect to the conduct of your business.

Throughout this policy, the word "Hudson" refers to Hudson Insurance Company. Words and phrases that appear within quotation marks have, wherever they appear, the special meanings set forth in the Definitions.

Coverage is only provided under the Insuring Agreements contained in this policy for which a limit of insurance is shown in the Declarations.

GENERAL PROVISIONS

The provisions listed in this section are applicable to your entire policy.

A. ASSURED

It is agreed that "Assured", wherever used in this policy, includes the entity listed in Item 1. of the Declarations (the "Named Assured") and:

1. Any official, trustee, "employee" or volunteer of the "Named Assured" while acting within the scope of his duties as such, and any person, organization, trustee or estate to whom the "Named Assured" is obligated by virtue of a legally binding contract or agreement to provide insurance such as is afforded by this policy, but only with respect to the business operations performed by or on behalf of the "Named Assured";
2. Any person while using an "automobile" owned or hired by the "Named Assured" and any person or organization legally responsible for the use thereof, provided the actual use of such owned or hired "automobile" is by the "Named Assured" or with his permission, any official, trustee or "employee" of the "Named Assured" provided the use of the owned or hired "automobile" is in connection with the business of the "Named Assured".

However, with respect to any person or organization other than the "Named Assured", this policy does not apply:

- a. To any person or organization, or to any agent or employee thereof, operating an "automobile" sales agency, repair shop, service station, garage or public parking place, with respect to any accident arising out of the operation thereof; however, if Insuring Agreement G. of the policy Declarations indicates coverage is included for "garage keeper's and valet parking services", then this provision

does not apply to "employees" of the "Named Assured" while loading, unloading or parking an "automobile" for a guest of the "Named Assured";

- b. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of any "automobile" while being maintained or used in the business of such employer;
- c. With respect to any hired "automobile", to the owner or a lessee thereof, other than the "Named Assured", nor to any agent or employee of such owner or lessee; and/or
- d. With respect to any non-owned "automobile", except as excess insurance over any other valid or collectible insurance, to any official or employee if such "automobile" is owned by him or a member of the same household.

B. TERRITORY

This policy applies worldwide.

C. SERVICE ORGANIZATION

Hudson" designates Alliant Specialty Insurance Services, Inc. as "Hudson's" "Service Organization". This policy is issued to the "Named Assured" on the express condition that the "Named Assured" undertakes to utilize, at all times, the services of the "Service Organization". The "Service Organization" shall perform the following duties:

1. Supervise "claims" in accordance with accepted industry standards once notice of a "loss", "claim" or "occurrence" has been made to the "Service Organization";
2. Comply with the notice and reporting requirements of "Hudson" under the terms of this policy;
3. Maintain accurate records of all reported "claims" and incidents with details of "loss" and "expense" payments;
4. Furnish loss prevention and consulting services;
5. Recommend and implement controls and monitor loss prevention programs; and
6. Furnish monthly "claims" records on an approved form.

The acceptance of these services shall be a condition precedent to any liability which may attach to "Hudson" in accordance with the terms and conditions of this policy.

"Hudson" shall have the right and opportunity, but neither the duty nor obligation, to: (i) associate with the "Named Assured" or the "Service Organization" in the defense of any "claim"; or (ii) at "Hudson's" option, assume the control of the defense of any "claim". In such event:

- a. The "Named Assured" agrees to take the necessary legal measures to allow "Hudson's" counsel to associate with the "Named Assured" in, or assume the control of, the defense of any "claim" in which case the "Named Assured" and "Hudson" shall cooperate in all matters relating thereto;

during the "policy period" and up to the final resolution of all claims under this policy or three years after the end of the "policy period", whichever is later.

- F. **CANCELLATION/NON-RENEWAL:** In the event of non-payment of premium by the "Assured," "Hudson" will give ten (10) days' notice of cancellation, in writing, sent certified mail to the "Assured" and all coverage afforded by this policy will terminate ten (10) days after the mailing of such notice.

Notwithstanding the aforementioned, "Hudson" may elect to cancel this policy at any time upon ninety (90) days' written notice to the "Named Assured", otherwise this policy automatically expires at the end of the "policy period".

- G. If this policy is by canceled by "Hudson," for any reason other than non-payment of premium, Hudson will refund premium on a pro-rata basis. If the "Assured" cancels the policy, the refund will be on a short rate basis..**CURRENCY:** The premium, "losses" and/or "expenses" under this policy are payable in United States currency.
- H. **BANKRUPTCY AND INSOLVENCY:** In the event of the bankruptcy or insolvency of the "Named Assured" or any entity comprising the "Named Assured", "Hudson" shall not be relieved of the payment of any claims hereunder because of such bankruptcy or insolvency. The Bankruptcy or insolvency of the "Assured", or any refusal or inability of the "Assured" to satisfy its obligation pursuant to this Policy will not reduce the "retained limit" as set forth on the Declarations nor will it require "Hudson" to pay any amounts within the "retained limit".
- I. **OTHER INSURANCE:** If the "Assured" has other insurance, from an insurer other than "Hudson" or any other company within the Hudson Insurance Group, which provides coverage against "loss" and "expense" that is also covered by this policy, "Hudson" shall be liable, under the terms of this policy, only in excess of that coverage provided by such other insurance and no monies payable or collectible from such other insurance shall accrue to the "retained limit".

If the "Assured" has other insurance from "Hudson" or any other company within the Hudson Insurance Group which provides coverage against "loss" and "expense" that is also covered by this policy, "Hudson" shall be liable only under the terms of this policy. This provision does not apply to coverage which is specifically written as excess over coverage provided by this policy.

- J. **ADDITIONAL ASSURED CLAUSE:** The interest of any additional "Assured" with respect to liability covered hereunder is included as if a separate Insuring Agreement were attached hereto to the extent of their interest as of the date of loss subject to the limits of insurance set forth in this policy.
- K. **LOSS PAYMENTS:** When it has been determined by the "Service Organization" that "Hudson" is liable under this policy, "Hudson" shall thereafter promptly make payment(s) up to the applicable limit of insurance, as stated in Item 4. of the Declarations. The "Assured" will be responsible for reimbursement of the "retained limit" upon request from the "Service Organization". All adjusted claims shall be paid or made good to the "Assured" within thirty (30) days after the presentation to and acceptance by "Hudson" of satisfactory proof of interest and loss.
- L. **APPEALS:** In the event the "Assured" and "Hudson" are unable to agree as to the advisability of appealing a judgment, they may, as an alternative to arbitration (Condition S. -- Arbitration), appoint a disinterested attorney, mutually agreeable to "Hudson" and the "Assured", who shall be retained and directed to render a written opinion as to his recommendation concerning such appeal. Such written recommendation shall be binding on both the "Assured" and "Hudson".

Fees of such retained attorney shall be borne equally by both parties for the services of rendering his recommendation only. The "Assured's" portion of such fee shall not apply towards the "retained limit".

- M. LITIGATION PROCEEDINGS:** No suit to recover under this policy shall be brought until ninety (90) days after the proof of loss shall have been furnished, nor at all unless commenced within twelve (12) months from the date upon which the "claim" is denied by "Hudson".
- N. SUBROGATION:** "Hudson" shall be subrogated to all rights which the "Assured" may have against any person or other entity in respect to any "claim" or payment made under this policy and the "Assured" shall do everything necessary to secure these rights and do nothing to impair them. The "Assured" shall execute any papers required by "Hudson" and shall cooperate with "Hudson" to secure "Hudson's" rights. In the event of any reimbursement obtained or recovery made by the "Assured" or "Hudson" on account of any liability, "loss" and/or "expense" covered by this policy, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be applied in the following order:
1. To the amount of "loss" and "expense" which exceeds the applicable limit of insurance of this policy;
 2. To reduce "Hudson's" liability, "loss" and "expense" until "Hudson" is fully reimbursed; and
 3. To reduce the "Assured's" liability, "loss" and "expense".
- O. WAIVER OF SUBROGATION:** This policy shall not be invalidated if the "Assured", by written agreement, has waived or shall waive its right of recovery from any party for "loss" and/or "expense" covered hereunder; provided that any such waiver is made prior to the happening of the "occurrence" giving rise to such "loss" and/or "expense".
- P. ASSIGNMENT:** Assignment of interest under this policy by the "Assured" shall not bind "Hudson" unless and until "Hudson's" consent is endorsed hereon.
- Q. CHANGES:** By acceptance of this policy, the "Assured" agrees that it embodies all agreements existing between the "Assured" and "Hudson" or any of their agents relating to this policy. None of the provisions, conditions or other terms of this policy shall be waived or altered except by endorsement; nor shall notice to any agent or knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this policy.
- R. FRAUDULENT CLAIMS:** If the "Assured" shall make any "claim" knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and all "claims" hereunder shall be forfeited.
- S. ARBITRATION:** All disputes which may arise between "Hudson" and the "Assured" out of or in relation to this policy (including disputes as to its validity, construction or enforceability), or for its breach, shall be finally settled by arbitration based, insofar as possible, upon the rules and procedures of the American Arbitration Association, by which "Hudson" and the "Assured" agree to be bound. In addition to the rules governing such arbitration, the parties shall have at their disposal the broadest pre-trial discovery rights as are then available under the laws and judicial rules of the jurisdiction in which the arbitration is to be held, provided that any dispute between the parties relating to discovery shall be submitted to the arbitration panel for resolution.

Unless the parties consent in writing to a lesser number, the arbitration panel shall consist of three (3) arbitrators, the first to be appointed by "Hudson", the second to be appointed by the "Assured" and the third by the two (2) arbitrators so appointed.

The arbitration proceedings shall take place in New York, NY, provided that the arbitration panel may, for the convenience of the parties and without changing the status of the arbitration proceeding, take evidence outside New York, NY.

The award of the arbitration panel may be, alternatively or cumulatively, for monetary damages, an order requiring the performance of the obligations under this policy, or any other appropriate order or remedy. The award shall assign



TRIBAL PROPERTY INSURANCE PROGRAM
2020-2021 NAMED INSURED
AS OF 06/09/2020

Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim, WA 98382

NAMED INSURED:

Jamestown S'Klallam Tribe
Northwest Native Expressions
Jamestown Point Whitney Ventures, LLC
Jamestown Excavating, Inc.
Jamestown S'Klallam Association
Jamestown Properties, Inc.
JKT Development, Inc. dba Jamestown
Information Technologies
Jamestown SKlallam Tribe Economic
Development Authority
JKT Development, Inc.
Carlsborg Self Storage
River Center Board
The Dungeness River Audubon Center
Jamestown S'Klallam Tribe Economic
Development Authority DBA: Jamestown
Networks (JNET)
Jamestown Development, Inc. dba: Jamestown
Excavation

Erika Hamerquist

From: Erika Hamerquist
Sent: Thursday, July 2, 2020 11:09 AM
To: Maureen Shiri-Wasto
Subject: RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

Thank you for the list of the Tribe's entities covered by the policy; that is very helpful.

From your responses below, it appears you are agreeing that the coverage includes coverage for any environmental damage caused by the Tribe related to the system, or transfer of toxic discharge into the City system, etc. If that is accurate, I think we are happy with the Certificate and other documentation and will add it to each agreement.

Thank you very much for your prompt response. Please let me know if our interpretation above is *not* correct.

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

From: Maureen Shiri-Wasto <mshiriwasto@bbseattle.com>
Sent: Wednesday, July 1, 2020 10:04 AM
To: Erika Hamerquist <ehamerquist@sequimwa.gov>
Subject: RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

Good morning Erika,

Please see below and let me know if would like to talk over the phone.

Maureen

From: Erika Hamerquist <ehamerquist@sequimwa.gov>
Sent: Tuesday, June 30, 2020 1:40 PM
To: Maureen Shiri-Wasto <mshiriwasto@bbseattle.com>
Cc: Kristina Nelson-Gross <knelson-gross@sequimwa.gov>
Subject: RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

[External]

Hi Maureen:

Thank you for the updated certificate. It appears to be exactly the same as the one we received earlier, other than the new 2022 expiration. That is true also of the "blanket" document you sent.

The City still has all of the questions and concerns set out in our June 25th email, below. Are you able to respond to those or can we expect correspondence from someone else at your company?

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

From: Erika Hamerquist <ehamerquist@sequimwa.gov>
Sent: Thursday, June 25, 2020 9:10 AM
To: Ethan Olesen <eolesen@bbseattle.com>; Aaron Amaral <aamaral@bbseattle.com>
Cc: Erika Hamerquist <ehamerquist@sequimwa.gov>
Subject: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington
Importance: High

[External]

Greetings:

The City of Sequim has two agreements with your insured, the Jamestown S'Klallam Tribe:

- (1) an Interlocal Agreement for Wastewater Disposal executed in late 2018 ("ILA"), and
- (2) a Sanitary Sewer Collection System [Operations and] Maintenance Agreement executed in June 2020 ("OMA"). [Note that the Tribe owns the pipes and pump stations.]

We have previously received proof of the Tribe's insurance coverage in the form of a Certificate of Liability Insurance and excerpts from Hudson's "Sovereign Nation Commercial Insurance Coverage Form" (attached). We believe you will be providing updated insurance information soon, since the current Certificate expires on July 1, 2020. We are writing to make sure the City receives evidence that the insurance coverage fully covers both agreements. Specifically, we need to confirm the following:

- 1) On the Coverage Form, does the reference to "Named Assured" in General Provision A.1. mean the Jamestown S'Klallam tribal government as well as the Tribe's business arm? Please provide us with the policy language that defines "business operations" as referenced in this subparagraph. In the alternative, please include language in the Certificate's Description of Operations that makes clear that the policy covers *all* of the Jamestown S'Klallam Tribe's operations. **See attached named Assureds**
- 2) Is the Tribe's coverage adequate for it to meet its obligations under paragraphs 10.2 and 10.4 of the ILA [see complete excerpts below], that is, "injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement" *and* "the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System." **Yes, see blanket endorsement attached**

The City will accept a single Certificate and Endorsement/policy language if that is more convenient, so long as the Description of Operations describes both agreements and calls out the required coverages. For the Description box we would accept something similar to: "Re: (1) Interlocal Agreement for Sanitary Services and (2) Sanitary Sewer Collection System Maintenance Agreement. The City of Sequim is Additional Insured/Assured as required per the referenced written agreements/contracts between the City and Named Insured/Assured Jamestown S'Klallam Tribe." **See attached Certificate**

Pertinent excerpts from the ILA are below:

10.2 Tribe. The Tribe shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, and employees from and against all suits, claims, or liabilities of any nature, including attorney fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement. If suit in respect to the above is filed, the Tribe shall defend the suit at the Tribe's own cost and expense, and if judgment is rendered or settlement made requiring payment by the City, its officers, agents or employees, the Tribe shall pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, and their elected officials, officers, employees, or agents, the Tribe's liability hereunder shall only be to the extent of the Tribe's negligence.

10.4 Insurance Requirements.

(a) The Tribe shall maintain insurance sufficient to pay any suits, claims, or liabilities of the City described in Section 10.2, above, and, in addition, the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System. The Tribe's current insurance limits are \$6,000,000 per occurrence. The City presumptively agrees that the Tribe's

-21-

CONFIDENTIAL AND PROPRIETARY TO THE CITY OF JAMESTOWN. THIS DOCUMENT IS NOT TO BE DISCLOSED TO THE PUBLIC OR TO ANY OTHER ENTITY WITHOUT THE WRITTEN CONSENT OF THE CITY OF JAMESTOWN.

coverage as of the date of this Agreement is sufficient to cover known risks as of that date. The Tribe agrees, at its own expense, to maintain this insurance coverage for all of its liability exposures for this Agreement. The Tribe agrees to provide the City with at least thirty (30) days prior written notice of any material change in the Tribe's insurance program. The Tribe agrees to add the City as an additional insured on such insurance and to provide the City with an endorsement confirming the City as an additional insured on such policy or policies. The maintenance of, or lack thereof, of insurance coverage shall not limit the liability of the Tribe to the City.

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

Please remember that insurance coverage cannot be bound, amended or cancelled by leaving an electronic message or voice mail without confirmation from a licensed representative.

CONFIDENTIALITY NOTICE: Information contained in this communication, including attachments is privileged and confidential and is intended for the exclusive use of the addressee. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone at 206-956-1600 immediately. Thank you.

Please remember that insurance coverage cannot be bound, amended or cancelled by leaving an electronic message or voice mail without confirmation from a licensed representative.

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FILE 2020

THE HON. W. BRENT BASDEN, Superior Court Judge

Noted for Hearing: Friday, June 19, 2020 at 9:00 a.m.

DECLARATION OF SERVICE

On this day I served a copy of the document on which this declaration appears by

depositing in U.S. mail hand-delivery email upon:

* Michael A. Spence, Helsell Fetterman LLP
1001 Fourth Ave, Ste 4200, Seattle WA 98154
mspence@helsell.com

* Michael D. McLaughlin, McMahon Law Group, PLLC
1103 Shaw Road, Puyallup WA 98372
michael@mcmahonlawgroup.com

* LeAnne Bremer/Andy Murphy, Miller Nash et al
Pier 70 - 2801 Alaskan Way, Suite 300
Seattle WA 98121
Leanne.bremer@millernash.com;
andy.murphy@millernash.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA on June 17 2020.

Tellina Sandaine

Erika Hamerquist, Secretary/Tellina Sandaine, Paralegal

Bench

FILED
CLALLAM COUNTY

JUN 17 2020

NIKKI BOTNEN CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

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

PARKWOOD MANUFACTURED)
HOUSING COMMUNITY, LLC, a)
Washington Limited Liability Company,)

Plaintiffs,)

vs.)

CITY OF SEQUIM, a Washington)
Municipal Corporation,)

Defendant.)

No. 20-2-00304-05

**DECLARATION OF BARRY
BEREZOWSKY IN SUPPORT OF
DEFENDANT CITY OF SEQUIM'S
RESPONSE IN OPPOSITION TO
AND REQUEST FOR DISMISSAL
OF PLAINTIFFS' EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
INJUNCTION**

1 Under penalty of perjury under the laws of the State of Washington, Barry Berezowsky
2 hereby states that he is over the age of 18 and makes the following declaration based on personal
3 knowledge and belief:

4 1. I am the Director of the Department of Community Development¹ of the City of
5 Sequim, Defendant herein.

6 2. I have been employed by the City of Sequim since June of 2017 and have resided just
7 outside of the Sequim city limits for over 20 years.

8 3. I have two Masters' Degrees, one in Geography and Regional Development from the
9 University of Arizona, and one in Urban Planning and Design from the University of
10 Washington, from which I graduated with honors.

11 4. I have 30 years of planning experience that includes working for local and county
12 governments (Yakima and Jefferson Counties, the Cities of Poulsbo and Sequim) and the State
13 of Washington (WSDOT and Governor Gardner's Blue-Ribbon Growth Strategies Commission).
14 Therefore, my planning experience includes development review, comprehensive planning,
15 economic development, and statewide policy planning. Attached as **Exhibit A** is a true and
16 correct copy of my professional resume.
17
18
19

20 ¹ SMC 2.36.080 Department of community development and planning department, director.

21 The department of community development and its director shall perform all functions and duties of the planning department or
22 its director, respectively as well as those functions and duties specifically designated to be performed by the department of
23 community development or its director, respectively. (Ord. 2011-017 § 4 (Exh. A))

24 ¹ Code reviser's note: Ordinance 2011-017 provides as follows:

25 "Section 1. Whenever the term "Planning Department" is used in the Sequim Municipal Code or any ordinance or
26 resolution, it shall be in the future be referred to as the "Department of Community Development."

27 Section 2. Whenever the term "Planning Director" or "Director" or "Planner" is used in the Sequim Municipal Code or any
28 ordinance or resolution, it shall mean the "Director of the Department of Community Development," unless the context
29 clearly indicates a person other than the Planning Director is intended.

30 Section 3. The Director of Community Development shall have all powers of the Planning Director and the Department of
31 Community Development, hereby created, shall have all powers and functions of the Planning Department."

32 These name changes will be incorporated into the code as code sections are updated in the future.

1 5. Throughout my career, I have met with hundreds of developers to discuss potential
2 projects, some of which came to fruition and others that did not. Often these conversations were
3 confidential upon the developer's request. The purpose of these conversations was typically to
4 provide the developer with a sense of whether their project was compliant with code require-
5 ments. Professionally, I have reviewed many projects, and in my mind some were better than
6 others, but regardless of my personal opinion, the City's development code requirements and,
7 where applicable, State law requirements (such as the State Environmental Policy Act "SEPA")
8 are the only criteria I have used to assess land use applications. I have had substantial experience
9 in reviewing, applying, and interpreting city codes and other land use regulations as part of my
10 professional career overseeing and processing many different types of land use and development
11 applications.

12
13 6. On March 25, 2019, I was copied on an email from Kyle Johnson, EDA Director for
14 the Jamestown S'Klallam Tribe ("Tribe"), informing the Tribe's Health Services Director, Brent
15 Simcosky, that I would attend a meeting with him and Eric Lewis in place of City Manager
16 Charlie Bush, who was out of town at a conference. Prior to this meeting, I had never heard of,
17 nor met, Mr. Simcosky and only had a passing knowledge of Mr. Lewis due to his leadership
18 position at Olympic Medical Center ("OMC"). Attached as **Exhibit B** is a true and correct copy
19 of the above-referenced email.

20 7. On March 28, 2019, I met with Mr. Simcosky and Mr. Lewis to discuss whether a
21 medical clinic and/or hospital could be built in the City's River Road Economic Opportunity
22 Area ("RREOA"). I told them I thought so, but would need to check the Sequim Municipal
23 Code ("SMC"). Upon referencing the code, I told them that medical clinics were listed as
24 permitted uses in Table 18.33.031 and hospitals were listed as conditionally permitted. A
25

1 permitted use refers to a land use that is permitted in a zoning district with no special review or
2 oversight by local government. Another term for a permitted use is a “use by right”. On the
3 other hand, a “conditional” land use is a use that, while permitted in a zoning district, is held to a
4 higher level of review due to potential impacts such as traffic, hours of operation, or noise, and
5 can only be permitted as appropriately conditioned by a “conditional use permit” (“CUP”)
6 criteria within the City’s code. One of the critical features of a local government’s zoning
7 scheme is a table of land uses, some of which are permitted outright, others that are permitted
8 conditionally through a CUP, and others that are prohibited (SMC 18.33.030). The first thing
9 planning staff does when presented with a potential project is look at the land use tables in the
10 zoning code to determine whether the proposed use is permitted outright, conditionally, or not at
11 all. Attached as **Exhibit C** and **Exhibit D** are true and correct copies of the above-referenced
12 SMC Table 18.33.031 and SMC 18.33.030, respectively.

13
14 8. On March 29, 2019, I sent an email to City Manager Charlie Bush in which I briefly
15 remarked on my earlier meeting with Mr. Simcosky and Mr. Lewis. In that email I wrote: “*I met*
16 *with Eric and Brent yesterday and I don’t see any major issues with the property or zoning.*
17 *Although this is a super project that will bring a great deal of benefit to the community, I suspect*
18 *some neighbors might have some concerns which means how the project is rolled out to the*
19 *public is important. Both Eric and Brent agreed and are working on a PR campaign””. This
20 type of communication is common and expected in order to perform planning duties for the City.
21 Attached as **Exhibit E** is a true and correct copy of the above-referenced email.*

22
23 9. On or about July 6, 2019, I was involved in an email string in which Mayor Dennis
24 Smith and Deputy Mayor Ted Miller asked that staff prepare for a crowd at the upcoming
25 Council meeting, with Deputy Mayor Miller asking that staff address the project. City Manager

1 Charlie Bush coordinated with staff to be prepared to address items like the potential permitting
2 process for the project and other items related to the project that might arise, like the issue of
3 opioid addiction on the Olympic Peninsula. City Manager Bush asked me to reach out to the
4 Tribe to see if their staff could attend to address their proposed project specifically.
5 Unfortunately, the Tribe's staff were unavailable that evening and at that time City staff had
6 mainly conceptual information about the project so we could not speak to many of the specific
7 questions asked by the public. Attached as **Exhibit F** is a true and correct copy of the above-
8 referenced email.

9 10. At the July 8, 2019 meeting, I presented a brief overview of the City's permitting
10 process and suggested that this application would likely be subjected to administrative review
11 through the A-1 or A-2 permitting process due to the fact that medical clinics are listed as a
12 permitted use in Table 18.33.031 in SMC 18.33.030 Uses. Type A-1 and A-2 permits are
13 handled administratively, with the major distinguishing factor between the two being whether
14 SEPA applies; public hearings are not held during administrative reviews. I also mentioned that
15 it was possible that a C-2 process might be required, but unlikely, and nothing could be said
16 definitively until we saw something more detailed about the project from the Tribe.

17 18 11. On July 17, 2019, the City held a special meeting at the Guy Cole Event Center at
19 which time the City received comments and questions from the public about the potential
20 medical clinic. At the beginning of this meeting I once again provided a summary of the City's
21 permitting process and mentioned that while a C-2 process might be required, it was much more
22 likely that the project would be subjected to the A-2 process. However, without an application or
23 even a preapplication meeting I could not say definitively what the process would be. Attached
24 as **Exhibit G** is a true and correct copy of the notice for the above-referenced special meeting.
25

1 12. The Tribe hosted a community meeting some weeks later at the Guy Cole Event
2 Center.

3 13. On October 3, 2019, the Community Development Department received a letter from
4 the Tribe requesting a preapplication conference as required by Sequim Municipal Code. We met
5 on October 31, 2019 to discuss the proposed project, after which staff issued a letter dated
6 November 18, 2019 tentatively determining that the proposed project would go through the A-2
7 process. Attached as **Exhibit H** and **Exhibit I** are true and correct copies of the Tribe's letter
8 requesting the pre-application conference and staff's tentative determination, respectively.

9 14. Other than the pre-application conference, there was little communication between
10 me and representatives of the Tribe between the middle of July 2019 through January 10, 2020.
11 There was, however, a significant amount of postings and communications on the Save Our
12 Sequim ("S.O.S.") Facebook page about all of the harm the project will bring to the City and
13 why senior City staff should be fired for doing their job by following the City's codes. Attached
14 as **Exhibit J** is a true and correct copy of a sample post. See also Declaration of Kristina Nelson-
15 Gross, filed herewith, for further examples from the S.O.S. Facebook page.

16 15. The City received a formal application from the Tribe for its substance use disorder
17 treatment center project on January 10, 2020. Pursuant to RCW 36.70B.140, a decision on the
18 permit must be made within 120 days of application – here May 26, 2020. The first thing I did
19 was determine the project type, and, therefore, the process the application would be subjected to.
20 I did this by, among other things, carefully re-reviewing the applicable sections of the City Code,
21 analyzing the proposed project, and evaluating the legally appropriate process type under the
22 City Code for this project. On January 24, 2020, I issued my written determination that the
23
24
25

1 project would be subject to the A-2 process². Project “typing” or classifying has never
2 necessitated such a document in my entire career; however I prepared this written decision for a
3 number of reasons, some of which are described below. Project typing usually is nothing more
4 than a notation on the SEPA checklist or in the preapplication summary letter. However, given
5 the fact that an attorney representing S.O.S., Mr. Michael Spence, had written the City a number
6 of letters claiming that the clinic should be treated differently than any other medical clinic
7 would be, and should be processed under the City and State’s essential public facilities
8 regulations (which the City Attorney and I disagreed with) I decided to explain my reasoning in
9 detail. I also decided to memorialize this normally informal decision because of the intense
10 public scrutiny the Tribe’s project was subjected to, the controversy surrounding the project, and
11 to “show my work” to the public in explaining the applicable code sections and the reasoning
12 behind my decision. In addition to code requirements, I was compelled to take into
13 consideration the many federal court decisions throughout the country addressing community
14 opposition to substance use disorder medical facilities. The courts consistently found that the
15 Americans with Disabilities Act (“ADA”) prohibits local government from treating such medical
16 facilities differently through their permitting process than any other medical clinic or office.
17 Therefore, the somewhat lengthy explanation in my typing memo is not the result of the City’s
18 code being confusing or antiquated, but instead the result of hoping to educate some of the
19
20
21

22 ² **20.01.040 Determination of proper type of procedure.**

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

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

1 project's detractors and, perhaps, their advocates, and the general public. Attached as **Exhibit K**
2 is a true and correct copy of the above-referenced typing memo.

3 16. My typing memo did nothing to persuade those opposed to the project that the A-2
4 process was the correct permit review process, and three appeals of my determination were
5 timely filed with the City. These appeals are currently pending before the City's Hearing
6 examiner and will be addressed in conjunction with the appeals of the actual permit decisions
7 that were timely received more recently (on or before the June 5th deadline); all will be heard in
8 the near future. One of the primary themes of the appeals was that this project had generated
9 broad public interest and therefore must be reviewed through either a C-1 or C-2 process, in
10 which the City Council would be the decisionmaker. Throughout this process there have been
11 aggressive ongoing efforts to somehow get this project in front of the City Council and out of
12 staff's hands. The only reason for these efforts is that the Plaintiffs believed they had a better
13 chance of having the Council bow to their wishes and to stop, derail, or substantially delay this
14 project than they had with professional staff. Although Plaintiffs argued that "broad public
15 interest" required me to classify the permit as a Type C permit, contrary to Plaintiffs' opinion the
16 City cannot type or classify a permit application based on public sentiment. Instead, State law
17 provides the criteria and components of the permit review process in WAC 365-196-845, Local
18 project review and development agreements. In my professional opinion and experience, the
19 City's project review process is consistent with this WAC. Attached as **Exhibit L** is a true and
20 correct copy of the above-referenced WAC.
21

22 17. Once I "typed" the project, staff circulated the actual project application materials,
23 consisting of a building permit, design review application, and a SEPA checklist to the review
24 team and posted the materials on the City website. All of these documents were and have been
25

1 available for public review since January 10, 2020. Staff issued a determination of completeness
2 per SMC 20.01.130 on January 27, 2020 and a notice of application (“NOA”) per SMC
3 20.01.140 on February 2, 2020.

4 18. A 20-day³ comment period started upon issuance of the NOA and ended on February
5 24, 2020. The City received over 1,000 comment letters, many of which stated general
6 disapproval or dislike of the proposed project; few provided substantive comments. Fewer than
7 100 of these 1,000-plus comments could be verified with an address within the Sequim city
8 limits.

9 19. On March 25, 2020, the City issued a Mitigated Determination of Non-Significance
10 (“MDNS”) under SEPA which started a 14-day comment period which ended April 8, 2020. The
11 City received 79 comments during the SEPA comment period of which 5 were able to be verified
12 as coming from an address within the City limits. The geography of the comments was noted by
13 staff and only a very small number could be connected to a Sequim city address. Regardless of
14 this geography, staff carefully and fully reviewed and evaluated all of these comments.
15 Ultimately, the City took several of the comments received during the SEPA comment period
16 into consideration and issued a revised MDNS⁴ on May 11, 2020.

17 20. The staff report provides a detailed discussion of how the Tribe’s project complies
18 with SMC 18.24 Design Standards and, therefore, must be approved. Regardless of the
19 decisionmaker, whether it be staff, the City Council, or a hearing examiner, there is no discretion
20 to deny a project that complies with City code. Attached as **Exhibit M** is a true and correct copy
21 of the above-referenced staff report.
22
23
24

25 ³ SMC 20.01.140(D) provides in relevant part: Comment period on all other types of applications shall be at least 20 days.

⁴ Mitigation measures included in the revised MDNS are found in the staff report in Exhibit M, at pages 15-17.

1 21. I issued a decision for the design review permit for the project on May 15, 2020,
2 which started the 21-day appeal period for the SEPA threshold decision (i.e., MDNS) and the
3 project.

4 22. The City's permitting process includes an appeal process consistent with RCW
5 36.70B.060. This codified appeal process specifically provides for an appeal and review by the
6 hearing examiner of the typing decision that Plaintiffs challenge in this lawsuit and is the subject
7 of their request for a Temporary Restraining Order ("TRO") and Injunction. State law allows
8 only one consolidated open record appeal hearing if a jurisdiction chooses to allow for an appeal
9 of a project permit and a threshold determination under SEPA, which the City does. It is my
10 professional opinion that the City's appeal process is consistent with this State law requirement,
11 and therefore, because the Plaintiffs had filed three appeals challenging my typing decision for
12 the permit, no hearing could be held on those appeals until after the appeal period ended for the
13 SEPA threshold determination and the project approval. Attached as **Exhibit N** is a true and
14 correct copy of the above-referenced RCW. The appeal period for the SEPA threshold
15 determination and the project approval ended on June 5, 2020 – the same date as Plaintiffs'
16 motion for TRO and Injunction was originally set to be heard. That hearing has been continued
17 to June 19, 2020. The City received more appeals on or before the appeal period ended on June
18 5th, including from Plaintiffs (discussed below).

19
20 23. SMC 20.01.240(A) allows applicants and parties of record to appeal A-1 and A-2
21 decisions and such appeals must be heard by a hearing examiner. Attached as **Exhibit O** is a true
22 and correct copy of SMC 20.01.240(A).

23
24 24. On June 4, 2020, Michael A. Spence timely filed a Notice of Appeal to the hearing
25 examiner on behalf of S.O.S that described the Decision Being Appealed as follows:

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

7 Attached as **Exhibit P** is a true and correct copy of the Cover Letter that accompanied the
8 Notice of Appeal filed on behalf of S.O.S.

9 25. On June 5, 2020, Michael D. McLaughlin timely filed a Notice of Appeal to the
10 hearing examiner on behalf of Parkwood Manufactured Housing Community, LLC
11 ("Parkwood") that described the Decision Being Appealed as follows:

12 ... the Director of Community Development's "Staff Report and
13 Director's Decision" dated May 15, 2020, concerning the "Jamestown
14 S'Klallam Tribe Outpatient Clinic" Design Review Application filed
15 under City of Sequim File No. CDR 20.001, including all attachments
16 therein ("Director's Decision"). Parkwood has also appealed the
17 Notice of Determination of Procedure Type for File No. CDR20-001
18 Jamestown S'Klallam Tribe MAT Clinic Building Permit, SEPA &
19 Design Review, dated January 24, 2020.

20 Attached as **Exhibit Q** is a true and correct copy of the Cover Letter that accompanied the
21 Notice of Appeal filed on behalf of Parkwood.

22 26. If Plaintiffs are granted the relief they request in this lawsuit and in the motion
23 currently before the Court, this action would violate the City's appeal process, essentially
24 eviscerate the City Council's adopted appeal process, and be inconsistent with other jurisdictions
25 across the State. In addition, if the Plaintiffs are determined to be correct in their position that the
City's land use regulations and procedures are unconstitutional, then every other planning
department in not only the State of Washington, but throughout the entire country, has been
operating unconstitutionally for the past 50 plus years. Obviously, it is almost unfathomable to
believe that the entire planning profession across this country has gotten it wrong for all these
years.

1 27. A summary of the application process applicable to the Tribe's project is as follows:

2 **Application Timeline**

- 3 a. Pre-Application meeting October 31, 2019.
- 4 b. Application Intake meeting January 10, 2020.
- 5 c. Determination of Completeness January 27, 2020.
- 6 d. Notice of Application February 2, 2020.
- 7 20-day comment period started with the Notice of Application and
8 closed February 24, 2020. *Note:* The 20-day comment period ended on
9 a Saturday; therefore, comments were accepted until the close of
business the following Monday.
- 10 e. SEPA MDNS issued March 25, 2020.
- 11 f. 14-day SEPA comment period closed April 8, 2020.
- 12 g. Revised MDNS issued May 11, 2020. *Note:* There is no comment
13 period on a Revised MDNS.
- 14 h. Notice of Decision issued May 15, 2020.
- 15 i. 21-Day Appeal period ended June 5, 2020.
- 16 j. Michael A. Spence, on behalf of S.O.S, filed a Notice of Appeal to the
17 hearing examiner on June 4, 2020.
- 18 k. Michael D. McLaughlin, on behalf of Parkwood, filed a Notice of
19 Appeal to the hearing examiner on June 5, 2020.
- 20 l. The City's Answer inadvertently indicated that the building permit has
21 issued, but it has not as of the date of this declaration.

22 28. I have read the pleadings and materials submitted by the Plaintiffs. I disagree with
23 their characterizations of not only the City's permitting process and code, but also their
24 characterizations of me, City Manager Charlie Bush, and City Attorney Kristina Nelson-Gross.
25

1 City staff have gone to extreme lengths over the past 11 months to ensure this project was
2 processed in the same manner as any other similar project, notwithstanding the immense pressure
3 put on me and my colleagues by Plaintiffs and others, and a barrage of very derogatory,
4 insulting, and false comments about me, Mr. Bush, and Ms. Nelson-Gross. As a group, S.O.S.'s
5 comments have consisted of threats, conspiracy theories, unfounded accusations and slanderous
6 and demeaning comments with no apparent guidance or oversight by their Chairperson, Board,
7 or legal counsel. The nature of these comments can only be interpreted as having the intention
8 to intimidate staff to capitulate and support S.O.S.'s effort to stop this project regardless of the
9 legal risk to the City. Some examples of S.O.S. comments are attached to the Declaration of
10 Kristina Nelson-Gross; see also Exhibit J to this Declaration. I have been mystified for the past
11 11 months by accusations that I and other senior staff are "conspiring" with the Tribe to "push"
12 this project through when, in fact, the project meets all of the City's code requirements and has
13 taken longer to review and process than any other similar project I have been involved with in my
14 career. Therefore, both allegations fail when the facts are actually acknowledged. S.O.S.'s legal
15 counsel has also participated in this unsavory behavior, which has been most recently evidenced
16 by Mr. Spence's statement at line 14 on page 4 of his Declaration dated May 22, filed with
17 Plaintiffs' Motion, clarifying that the attacks on staff are not meant to be "personal" in nature but
18 instead, only on a "professional" level. Regardless of Mr. Spence's clarification, his remarks and
19 those of his client have, in my opinion, been personal (*see* Exhibit J, attached to this Declaration,
20 and Exhibit F attached to the Declaration of Kristina Nelson-Gross, filed herewith).

21
22 29. Finally, if the Court grants the Plaintiffs the relief they request, the following other
23 projects unrelated to the Tribe's project are likely to be impacted:

- 24
25
- VanRomer Short Plat (SHP 19-002).

- 1 • Caswell Short Plat (SHP 20-001).
- 2 • Goff Short Plat (SHP 20-002).
- 3 • Hendrickson Final Plat.
- 4 • Lavender Meadows BSP (200+ manufactured homes).
- 5 • Nelson Design Review (2 office buildings and 101 parking spaces on 1.7 acres).
- 6 • Hines Design Review (Mixed use-office/multi-family building with 26 parking
- 7 spaces).
- 8 • Trinity United Methodist Church CUP (Church addition).
- 9 • Shipley Annex Design Review (Senior Center addition).
- 10 • Numerous building and other smaller construction permits.
- 11

12 30. Any decision by the court on Plaintiffs' TRO and injunction requests will likely
13 impact these and possibly other development projects, which prejudices applicants who are not
14 parties to this lawsuit or otherwise invested in this litigation. This is because in their Motion for
15 TRO and Injunction, Plaintiffs ask the court to enjoin and restrain the City from further
16 proceeding on the Tribe's applications AND "*all other applications processed under SMC Title*
17 *20 until the constitutionality of the applicable code provisions are properly adjudicated and the*
18 *language is revised, removed, or replaced with constitutional language that provides for the*
19 *objective processing of land use applications received by the City of Sequim.*" *Pl. Motion*, p. 9,
20 lines 3-9; [*proposed*] *Order*, p. 2, lines 1-2 (emphasis added). I do not know if any of the
21 applicants for the above projects are even aware of Plaintiffs' lawsuit.

22
23 31. On June 16, 2020, the North Peninsula Building Association ("NPBA") sent a letter
24 to the City Manager, City Attorney, and me expressing dismay and disappointment over the legal
25 action filed by the Plaintiffs. NPBA is concerned about the potential stoppage of building permit

1 processing and the continued hardship the building community will experience if Plaintiffs'
2 requested TRO and injunction are granted. A true and correct copy of NPBA's letter is attached
3 as **Exhibit R**.

4 SIGNED under penalty of perjury under the laws of the State of Washington on the

5 14 day of June, 2020 at Sequim, Washington.

6
7 

8 **BARRY BEREZOWSKY**

9 Director, Department of Community Development

*Barry Berezowsky
301 Patricia Lane
Sequim, WA 98382
(360) 593-6201 cell*

CAREER SUMMARY

Over 25 years of professional planning experience representing both public and private interests. Knowledgeable about, and experienced in all aspects of the planning profession, ranging from downtown revitalization to comprehensive planning. Grant proposal writing and grant monitoring experience. Strong organizational and presentation skills. Past President of the Peninsula Section, Washington Chapter of the American Planning Association. Awarded the Puget Sound Regional Council's Vision 2040 Award and the Governor's Smart Communities Award for Poulsbo's 2009 Comprehensive Plan Update.

EDUCATION

M.U.P., University of Washington, Department of Urban Design and Planning, Seattle, WA, 1992.

M.A., University of Arizona, Department of Geography and Regional Development, Tucson, AZ, 1984.

B.A., Simon Fraser University, Burnaby, B.C. Major: Geography. Concentration: Historical Cultural Geography, 1981

PROFESSIONAL EXPERIENCE

June 12, 2017 to present: Director of Community Development, City of Sequim.

January 2004 to August 2016: Director of Planning & Economic Development, City of Poulsbo Planning and Building Department, Poulsbo, WA. Manage the day-to-day affairs of the department, including budget preparation and oversight. Represent the city and county on regional planning issues. Manage the update of the city's comprehensive land use plan. Oversee update to city's development regulations and new critical areas ordinance (CAO) incorporating the State's best available science requirement. Authored "adoption document" supporting the city's approach to protecting critical areas. Initiated hearing examiner system for the City. Initiated City's first economic development program.

July 2003 to December 2003: Interim Planning Director, City of Poulsbo Planning Department, Poulsbo, WA. Involved in a variety of current and long range planning activities. Process Comprehensive Plan Amendments, Process land use permits applications, coordinate with regional planning agencies, managing the daily activities of the department. Budget preparation and oversight.

April 2001 to July 2003: Senior Planner, City of Poulsbo Planning Department, Poulsbo, WA. Process land use applications and annual comprehensive plan amendments. Assist Planning Director manage

budget, staff and day-to-day activities of the City's Planning Department.

March 1999 to April 2001: Associate Planner, City of Poulsbo Planning Department, Poulsbo, WA. Involved in a variety of current and long range planning activities. Process Comprehensive Plan Amendments. Process land use permit applications. Drafted sub area plan for Poulsbo's UGA and coordinated Planning Commission review.

Sept. 1996 to March 1999: Associate Planner, Long Range Planning Division, Jefferson County, WA. Primarily responsible for overseeing the activities of the Long Range Planning Division. Provide oversight and guidance to staff. Present data, information, analysis, options and recommendations to the Board of County Commissioners and Planning Commission. Managed completion of the County's Comprehensive.

Oct. 1992 to Sept. 1996: Executive Director, Port Angeles Downtown Association, Port Angeles, WA. Managed the activities of this private non-profit business organization committed to revitalizing the economic, cultural and social environment of the central business district. Coordinated downtown planning and development projects with all levels of government and local business organizations.

Aug. 1991 to Oct. 1992: Long Range Planner, Department of Planning, Yakima County, WA. Worked in a team environment on a variety of comprehensive planning, transportation and economic development projects. Trained in WSDOT T-Model II Transportation modeling software.

Sept. 1990 to Aug. 1991: Staff Planning Assistant, Washington State Growth Strategies Commission, Seattle, WA. Conducted primary research and analyses of growth management issues and presented findings to the Commission. Represented the Commission and presented the Commission's findings to the press and the general public.

Oct. 1989 to Sept. 1990: Planning Tech. I, Washington State Department of Transportation, Seattle, WA. Provided staff support, research and analysis to the Washington State Legislative Land Use Subcommittee. Co-authored the Land Use Element of the 1990 Washington State Transportation Policy Plan.

ACADEMIC ACHIEVEMENTS

1992, University of Washington: Graduated Tau Sigma Delta, Honor Society of Architecture and Allied Arts

AWARDS

2009, City of Poulsbo awarded VISION 2040 Award for Poulsbo's Comprehensive Plan Update

2011, City of Poulsbo awarded The State of Washington Governor's 2011 Smart Communities Award for Comprehensive Planning

PROFESSIONAL BOARDS/ASSOCIATIONS

Past Member, Puget Sound Regional Council Technical Staff Advisory Committee

Past President, Peninsula Section, Washington State Chapter, American Planning Association

American Planning Association (APA)

Washington State Planning Association

Washington State Association of City Planning Directors

International Economic Development Council (IEDC)

PROFESSIONAL TRAINING

January 2015: International Economic Development Council (IEDC), Training Course, Strategic Planning, New Orleans, LA

June 2006: FEMA, National Emergency Training Center, United States Fire Administration, Emergency Management Institute, Emmitsburg, MD

June 2006: FEMA, Emergency Management Institute, IS-00100, Introduction to the Incident Command System, (ICS 100), Bremerton, WA

June 2006: FEMA, Emergency Management Institute, IS-00700, National Incident Management System (NIMS) an Introduction, Bremerton WA

1992-1996: Washington State Mainstreet Downtown Revitalization Program

1991: T-Model II, Washington State Department of Transportation

From: [Kyle E. Johnson](#)
To: [Brent D. Simcosky](#)
Cc: [Eric Lewis](#); [Barry Berezowsky](#); [Charlie Bush](#)
Subject: Meeting this Thursday
Date: Monday, March 25, 2019 5:01:06 PM

Hello Brent,

I spoke with Charlie Bush about setting up a meeting for this Thursday afternoon. Charlie is at a conference, but Barry Berezowsky (Community Development Director) will be able to meet with you and Eric. Please let us know what time/location works best. Thanks.

Barry's Office #: 360.681.3435

Kyle E. Johnson
Executive Director

Jamestown S'Klallam Tribe Economic Development Authority
257 Business Park Loop Sequim WA 98382
Office: 360-582-5791 | Email: kjohnson@jamestowntribe.org
Cell: 360-775-5159 | Fax: 360-683-9583

Table 18.33.031 – Business and Employment District Uses

USE	BCEOA	RREOA	HTLI
Office and Professional Services			
All forms of corporate, professional, public, brokerage, administrative, financial, building trade, and research offices	P	P	X
Corporate headquarters and regional offices	P	P	X
Office-oriented service providers, such as communications services, photocopying, courier and messenger services, graphic design, printing, promotional products, and the like	P	P	X
Office equipment sales and services	P	P	X
Technology service and support, copy and connectivity centers, telework centers	P	P	X
Business/Technology Research and Development			
Biotechnology/medical laboratories	C	C	C
Computer technology	P	P	P
Electronic components and board systems engineering and development	P	P	P
Research and research industry-oriented service providers	P	P	P
Software engineering	P	P	P
Commercial Services and Retail			
Commercial convenience, personal services, and restaurant establishments (In existing and/or new structures 5,000 square feet or larger, commercial convenience, personal service uses, and restaurant eating/drinking establishments are allowed but are to be subordinate to the building's primary uses. All commercial uses located in the structure are limited to 25% of the building's gross square footage. No drive-through facilities are allowed.)	P	P	X
Commercial retail in conjunction with a primary use (Retail sales of products assembled, manufactured, etc., in the BCEOA, RREOA, HTLI zoning districts are allowed but are to be subordinate to the building's primary use. Retail sales use is limited to 25% of the building's gross square footage.)	P	P	P
Food service contractor/caterer	P	P	P
Food and drink where manufactured and sold on premises (on-premises tasting room, restaurant, and/or retail sales limited to 25% of gross square footage)	C	C	C
Nursery/landscaping materials retail sales	C	P	X
Wholesale product showrooms	P	P	C
Light Industrial			
Equipment rental	X	X	C
Industrial laundry and upholstery services	X	C	P
Resource recycling and recovery (not including recycling drop-off facilities)	X	X	C

Table 18.33.031 – Business and Employment District Uses

USE	BCEOA	RREOA	HTLI
Manufacturing			
Beverage products	C	P	P
Cabinet shop or carpenter shop	X	C	P
Electrical and electronic equipment manufacture	P	P	P
Electrical component assembly, including assembly of computer products, office equipment, and related components	P	P	P
Metal, wood and other materials fabrication and assembly in an enclosed building	C	C	P
Food and kindred products, manufacture, processing and packaging (excluding animal slaughtering and processing)	C	C	P
Furniture and fixtures manufacture and assembly	C	P	P
Handcrafted products, crafts or other art-related items	P	P	P
Measuring, analyzing and control instruments	P	P	P
Medical equipment and supplies	P	P	P
Miscellaneous light fabrication and assembly not otherwise named	C	C	P
Perfumes, cosmetics and similar preparations	C	C	P
Photographic, medical, audio and optical equipment	P	P	P
Printing, publishing and allied products	C	P	P
Products made from light stone, clay and glass	P	P	P
Textiles, apparel and leather goods	P	C	C
Warehousing, Distribution and Storage			
Equipment/materials outdoor storage as a primary use (including building trade and landscaping)			
a. Storage yards occupying less than 10,000 square feet	X	C	P
b. Storage yards occupying more than 10,000 square feet	X	C	C
Mail order or direct selling and distribution	P	P	P
Packing, crating and convention and trade show services	P	P	P
Processing and/or packaging previously prepared materials	P	P	P
Self-serve mini-storage	X	X	X
Truck and freight transportation services	X	X	X
Warehousing, product distribution, and wholesale trade	X	C	P
Residential			
Dwelling units above nonresidential uses (mixed use structures) (Nonresidential uses must be located on ground level or first floor if ground level is parking)	P	P	X

Table 18.33.031 – Business and Employment District Uses

USE	BCEOA	RREOA	HTLI
Employee/security units in conjunction with manufacturing, distribution or storage uses	P	P	P
Existing residential use without increase in density (subject to nonconforming regulations)	P	P	P
Live/work units	P	P	X
Public and Quasi-Public			
Essential public facilities, state and regional	P	P	P
Essential public facilities, local	C	C	C
Government maintenance shops and fleet vehicle storage	C	C	P
Public administration office and services	P	P	P
Public parks	P	P	P
Solid waste transfer facilities	X	X	C
Recycling drop-off facilities	X	X	C
Utility facilities and utility system	P	P	P
Transit facilities, including park and ride lots and transfer centers	C	C	C
Wireless communication facilities	P	P	P
Co-location of wireless facilities on existing facility or structure	P	P	P
Other			
Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)	P	P	X
Child care centers	C (as a secondary use)	C	C (as a secondary use)
College, universities, technical, trade and other specialty schools	C	C	C
Grade schools (K – 12)	C	C	X
Hospital	C	C	X
Museums, historic and cultural exhibits	P	P	X
Privately owned amusement, sports or recreation establishments (retail sales limited to 25% of use's total square footage)	P	P	X
Churches, new freestanding/monument structures and existing building(s) 5,000 square feet or larger	C	C	X
Churches, under 5,000 square feet and within an existing building(s)	C	C	C
Sports arena or stadium	C	C	X
Veterinary clinics and hospitals (not including kennels)	P	P	X

(Ord. 2019-002 § 1 (Exh. A))

18.33.030 Uses.

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

1. A permitted (P) use is one that is permitted outright, subject to all the applicable provisions of this title and relevant portions of the Sequim Municipal Code.
2. A conditional use (C) is a Type C-2 discretionary use reviewed through the process set forth in SMC [20.01.100](#) governing conditional uses.
3. A prohibited use (X) is one that is not permitted in the zoning district under any circumstances.

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

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

Table 18.33.031 – Business and Employment District Uses

USE	BCEOA	RREOA	HTLI
Office and Professional Services			
All forms of corporate, professional, public, brokerage, administrative, financial, building trade, and research offices	P	P	X
Corporate headquarters and regional offices	P	P	X
Office-oriented service providers, such as communications services, photocopying, courier and messenger services, graphic design, printing, promotional products, and the like	P	P	X
Office equipment sales and services	P	P	X
Technology service and support, copy and connectivity centers, telework centers	P	P	X
Business/Technology Research and Development			
Biotechnology/medical laboratories	C	C	C
Computer technology	P	P	P
Electronic components and board systems engineering and development	P	P	P
Research and research industry-oriented service providers	P	P	P
Software engineering	P	P	P
Commercial Services and Retail			
Commercial convenience, personal services, and restaurant establishments (In existing and/or new structures 5,000 square feet or larger, commercial convenience, personal service uses, and restaurant eating/drinking establishments are allowed but are to be subordinate to the building's	P	P	X

Table 18.33.031 – Business and Employment District Uses

USE	BCEOA	RREOA	HTLI
primary uses. All commercial uses located in the structure are limited to 25% of the building's gross square footage. No drive-through facilities are allowed.)			
Commercial retail in conjunction with a primary use (Retail sales of products assembled, manufactured, etc., in the BCEOA, RREOA, HTLI zoning districts are allowed but are to be subordinate to the building's primary use. Retail sales use is limited to 25% of the building's gross square footage.)	P	P	P
Food service contractor/caterer	P	P	P
Food and drink where manufactured and sold on premises (on-premises tasting room, restaurant, and/or retail sales limited to 25% of gross square footage)	C	C	C
Nursery/landscaping materials retail sales	C	P	X
Wholesale product showrooms	P	P	C
Light Industrial			
Equipment rental	X	X	C
Industrial laundry and upholstery services	X	C	P
Resource recycling and recovery (not including recycling drop-off facilities)	X	X	C
Manufacturing			
Beverage products	C	P	P
Cabinet shop or carpenter shop	X	C	P
Electrical and electronic equipment manufacture	P	P	P
Electrical component assembly, including assembly of computer products, office equipment, and related components	P	P	P
Metal, wood and other materials fabrication and assembly in an enclosed building	C	C	P
Food and kindred products, manufacture, processing and packaging (excluding animal slaughtering and processing)	C	C	P
Furniture and fixtures manufacture and assembly	C	P	P
Handcrafted products, crafts or other art-related items	P	P	P
Measuring, analyzing and control instruments	P	P	P
Medical equipment and supplies	P	P	P
Miscellaneous light fabrication and assembly not otherwise named	C	C	P
Perfumes, cosmetics and similar preparations	C	C	P
Photographic, medical, audio and optical equipment	P	P	P
Printing, publishing and allied products	C	P	P
Products made from light stone, clay and glass	P	P	P
Textiles, apparel and leather goods	P	C	C

Table 18.33.031 – Business and Employment District Uses

USE	BCEOA	RREOA	HTLI
Warehousing, Distribution and Storage			
Equipment/materials outdoor storage as a primary use (including building trade and landscaping)			
a. Storage yards occupying less than 10,000 square feet	X	C	P
b. Storage yards occupying more than 10,000 square feet	X	C	C
Mail order or direct selling and distribution	P	P	P
Packing, crating and convention and trade show services	P	P	P
Processing and/or packaging previously prepared materials	P	P	P
Self-serve mini-storage	X	X	X
Truck and freight transportation services	X	X	X
Warehousing, product distribution, and wholesale trade	X	C	P
Residential			
Dwelling units above nonresidential uses (mixed use structures) (Nonresidential uses must be located on ground level or first floor if ground level is parking)	P	P	X
Employee/security units in conjunction with manufacturing, distribution or storage uses	P	P	P
Existing residential use without increase in density (subject to nonconforming regulations)	P	P	P
Live/work units	P	P	X
Public and Quasi-Public			
Essential public facilities, state and regional	P	P	P
Essential public facilities, local	C	C	C
Government maintenance shops and fleet vehicle storage	C	C	P
Public administration office and services	P	P	P
Public parks	P	P	P
Solid waste transfer facilities	X	X	C
Recycling drop-off facilities	X	X	C
Utility facilities and utility system	P	P	P
Transit facilities, including park and ride lots and transfer centers	C	C	C
Wireless communication facilities	P	P	P
Co-location of wireless facilities on existing facility or structure	P	P	P
Other			
Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)	P	P	X

Table 18.33.031 – Business and Employment District Uses

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

(Ord. 2019-002 § 1 (Exh. A))

From: [Barry Berezowsky](#)
To: [Charlie Bush](#)
Subject: Jamestown/OMC
Date: Friday, March 29, 2019 7:48:00 AM

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.

From: [Charlie Bush](#)
To: [Charisse Deschenes](#); [Barry Berezowsky](#); [Sheri Crain](#)
Cc: [Kristina Nelson-Gross](#)
Subject: Fwd: MAT questions and concerns
Date: Monday, July 8, 2019 5:03:10 AM

All, please be ready for this tonight. Charisse, please share what you sent to Dennis with the rest of the Council. Barry, please contact the applicant, give them a heads up, and see if they can come to the meeting. Sheri, please be prepared to talk about substance use disorder in Sequim, from a factual perspective. I'm anticipating that we will have a crowd tonight at public comment on this issue. I'm happy to chat with any or all of you with follow-up questions during the day today.

Thanks,

Charlie

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From: Charlie Bush
Sent: Monday, July 8, 2019 4:59:51 AM
To: Dennis Smith; Ted Miller
Subject: Re: MAT questions and concerns

We will see what we can pull together for tonight. I would prefer to have the applicant describe their project, if they are available on short notice. We can talk about the permitting process (including public comment), zoning, and address the reality of substance use disorder present in our community, with the help of the Police Department. There is not a policy question in front of the Council at this time, nor do we expect phase 1 to involve any policymaking. We will also share the information that we provided to you Dennis with the rest of the Council.

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From: Dennis Smith
Sent: Monday, July 8, 2019 4:48:34 AM
To: Ted Miller; Charlie Bush
Subject: Re: MAT questions and concerns

Charlie,

I agree with Ted. I believe there is a movement just getting organized against this facility in the Sequim area. Note that I got an e-mail about this same subject from a lady in Sunland. I did respond to her.

It appears that this movement is operating with limited accurate information which I have no idea where it is coming from. My response to the lady last week did suggest that she refer her questions about the operation of the facility to OMC and/or Jamestown Tribe.

I also received an e-mail (this morning) that was sent yesterday afternoon; inviting me to a meeting last night at the Big Elk restaurant regarding this subject. I did not receive the e-mail

in time to attend that meeting and I would not have attended anyway.
Needless to say, I believe we should take action ASAP to deter this movement which seems to be based on inaccurate information.

Thank you
Dennis

From: Ted Miller
Sent: Sunday, July 7, 2019 11:11 AM
To: Charlie Bush
Cc: Dennis Smith
Subject: Fw: MAT questions and concerns
400 beds?? Can you address this Monday?

-- Ted

From: DB <dcbbbooks@gmail.com>
Sent: Saturday, July 6, 2019 4:49 PM
To: Ted Miller
Subject: MAT questions and concerns

Dear Mr, Miller,

Please take action to relocate the planned 400-bed meth-opioid rehab facility currently in progress for downtown Sequim.

The heavily populated location of this Klallam Tribe-OMC joint venture is raising concerns among many Sequim residents.

Will law local enforcement be reinforced, and who will pay for that? As of now we are told by the Sheriffs dept that there are only 2 squad cars on the beat between Sequim and PA. Last year there was suspicious activity at night in my community east of downtown and the concerned resident was told they would have better luck with a patrol car response if they called after 7am!

Please help our community to plan well or our sleepy retirement town will be overwhelmed with many unfavorable consequences from a lack of planning and forward-thinking.

Along with local law enforcement (Sequim PD, Clallam County Sheriff) will you please do your best to investigate the plan in progress and advocate for the wellbeing of your constituency?

Many realize that a rehab facility can help those addicted who are motivated to be helped. It can do nothing for those in a drug habit that do not wish to escape it. But a location in downtown Sequim? How will this affect tourism? Families? Schools? Local small business?

A local real estate agent, Karen Willcutt, who is also a recovered addict that has described having a prior \$100k per year drug addiction, says that addicts follow other addicts. No one wants to be addicted and alone. She says it will draw an addict presence to Sequim, including those who have no intention to seek rehab. Ms. Willcutt also says that dealers follow addicts. As of yet there is no clientele in Sequim, but with the rehab facility, there will be. And, she says that relapsed patients will quickly accrue a drug bill with dealers that they cannot pay, which will coerce them into crime and drug drops in exchange for their due bill and drug habit.

Moreover, as the Mayor pointed out, there will be no overnight patients, and the PDN reports there will be no loitering on the 19.5 acre property. So, between fixes, where will the patients be located? Will the city of Sequim taxpayers, OMC, or Klallam tribe be required to provide low income housing for patients?

Surely those who are not within local distance will not live the main part of their day on roads (or buses) commuting to and from for treatment.

What is to guarantee that any patient arriving on public transit for treatment will return to the public transit to depart once more? Many could likely live on the streets.

What is the likelihood that the MAT patient program will be successful? How can we protect the community from a migration of dealers who will drive more addicts into our area to grow their own business?

Please help. Your urgent action is required.

Thank you.



152 W. Cedar Street, Sequim, WA 98382
PH (360) 683-4139 FAX (360) 681-3448

City of Sequim News Release

Contact:

Charlie Bush (360) 681-3440
City Manager

For Immediate Release:

July 17, 2019

Barry Berezowsky (360) 68-3435
Department of Community Development Director

Sequim City Council to Hold Special Meeting on Permitting Process for the Potential Medication-Assisted Treatment Center

SEQUIM—The Sequim City Council invites the public to attend a special City Council meeting on Monday, July 29 at 6:00 p.m. at the Guy Cole Event Center located at Carrie Blake Park, 202 N. Blake Avenue, to learn more about the City’s role in the permitting process for the potential Medication-Assisted Treatment Center (MAT).

The Council will be prepared to take public comment from the audience. During the public comment period, each individual has three minutes to address the Council.

The potential development of the MAT is part of a larger plan to build a behavioral health center that will be jointly operated by the Jamestown S’Klallam Tribe, Olympic Medical Center, and Jefferson Healthcare Hospital. At this time, no permit or pre-application has been filed with the City. When an application is filed for development, there is a state-mandated process for review. It is anticipated that the MAT permit will fall within the A-1 process, because the proposed property is zoned for the intended use:

- 1) Developer confirms that the property is zoned for the intended use. This often occurs in an informal inquiry to City staff.
- 2) Pre-application (if required) or permit application is submitted to the City.

- continued -

**Sequim City Council to Listen to Public Input on the Medication-Assisted Treatment Center
at Next Meeting – page 2**

- 3) State Environmental Policy Act (SEPA) Review (if required) – Applies when the project meets specific perimeters, such as building size and number of parking spaces. May require public notice and public comment if there are mitigating conditions.
 - a. Building and construction plan review
 - b. Design review (zoning standards)
- 4) Site Construction Permit review and approval (process can be concurrent with building permit review and must be completed prior to building permit issuance).
- 5) A-1 Permit decision is determined by staff (Department of Community Development Director).
- 6) Appeals are made to an independent Hearing Examiner.
- 7) Hearing Examiner decision is appealable to the Clallam County Superior Court.

The typical timeframe for a permit decision without an appeal is 30 – 60 days without SEPA. It is unknown at this time whether the MAT project will require a SEPA review.

If a project requires a conditional use permit (C1 process), the City is required to notify the public of the permit application, an open record public hearing is required, the application is reviewed and a determination is made by the Planning Commission. Appeals to the decision are made to the Sequim City Council and then to the Clallam County Superior Court.

The City's Comprehensive Plan defines the various land use designations within the City and the Zoning Code contains the various regulations applicable to the various zoning districts in the City. The land proposed for the MAT facility is zoned for commercial use, which includes medical clinics.

For more information, please contact the Department of Community Development at (360) 683-4908.

###

Attachment: A1 Process Flow Chart



LeAnne M. Bremer, P.C.
leanne.bremer@millernash.com
360.619.7002 direct line



OFFICE 360.699.4771
FAX 360.694.6413

October 3, 2019

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

Subject: Request for Pre-Application Conference re Jamestown S'Klallam Healing Campus

Dear Director Berezowsky:

On behalf of the applicant, Miller Nash Graham & Dunn LLP submits this letter to accompany the Request for Pre-Application Conference regarding the Jamestown S'Klallam Tribe's proposed project to build an outpatient clinic at 526 South 9th Avenue, Sequim, Washington 98382. As you can see in the enclosed form, this project is "An outpatient clinic that provides medical services to patients with a medical condition that provides and is licensed through SAMHSA as an (OTP) Opiate Treatment Program." The property for the project is zoned as an Economic Opportunity Area district ("EOA"). Because outpatient clinics¹ are permitted uses outright in the EOA, this application is subject to an administrative review. SMC 18.33.031.

We recognize the SOS group has actively opposed this important project that will serve Clallam and Jefferson Counties. We believe their opposition to this project is rooted in misinformation and misunderstandings, which we have worked to correct. Nevertheless, the SOS group has made known its preference that the application for this project receive a more onerous review than the administrative review that the Sequim Municipal Code prescribes.

¹ Specifically, "Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)" are permitted uses in the EOA zones. Table 18.33.031 SMC.

Barry Berezowsky
October 3, 2019
Page 2

The code requires the City to process this application through an administrative review, and not any other kind. SMC 18.33.030.A.1. There is no basis to subject this application to any kind of conditional or special use review that SOS apparently seeks.

We trust the City will apply its code as written and treat this project and applicant fairly. We look forward to working with you and your department as it processes this application through the appropriate administrative review.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'LAMBRE', with a long horizontal flourish extending to the right.

LeAnne M. Bremer, P.C.



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

TO: Brent Simcosky, Representative
Jamestown S'Klallam Tribe, Owner

FROM:  Tim Woolett, Senior Planner
Department of Community Development

DATE: November 18, 2019

SUBJECT: PRE19-016
Proposed New Outpatient Clinic
Project Address: 526 S. 9th Avenue
Parcel Number: 033019-330000

The following comments are intended to provide you with a summary of the requirements of the Sequim Municipal Code as they apply to your proposal, thus help guide you through to a complete application and a successful project. The purpose of this review is to provide you with the following:

1. A form which lists the requirements for a completed application;
2. A general summary of the procedures to be used to process the application;
3. The references to the relevant code provisions or development standards which may apply to the approval of the application;
4. Information on all applicable application fees in effect at the time.

We are also providing you with agency comments as applicable to the proposed development.

Project Background: A request for pre-application review of a proposal to develop "An outpatient clinic that provides medical services to patients with a medical condition that provides and is licensed through SAMHSA as an (OTP) Opiate Treatment Program." The proposal includes a parking lot with seventy-nine parking spaces, six of which are ADA accessible, and is accessed at two points off the north boundary abutting right-of-way and one point off the S. 9th Avenue right-of-way alignment. Although no building size is provided on the pre-application forms or drawings, a building size between 15,000 and 17,000 square feet was discussed at the pre-application meeting.

Meeting Attendees:

Applicant Representatives:

1. Brent Simcosky, Director of Health Services, Jamestown
2. Cindy Lowe, Deputy Director of Health Services, Jamestown
3. Vicki Wallner, Executive Assistant, Jamestown
4. Dr. Paul Cunningham, Chief Medical Officer, Jamestown
5. Greg Belding, architect, Rice Ferguson Miller

6. Suzanne Pontecorvo, architect, Rice Fergus Miller
7. Sam Tomlinson, Rice Fergus Miller
8. Allison Hazen, Coffman Engineers
9. Wendy McHugh, Coffman Engineers

City Staff:

1. Barry Berezowsky, DCD Director
2. David Garlington, Public Works Director
3. Dave Nakagawara, Public Works Project Engineer
4. Joel Dressel, Building Inspector/Plans Examiner
5. Tim Woolett, Senior Planner
6. Ben Andrews, Fire District 3
7. Dan Orr, Fire District 3
8. Steve Jackson, Fire District 3

Planning Comments:

PROCESS:

The submitted pre-application describes the proposal as "An outpatient clinic that provides medical services to patients with a medical condition that provides and is licensed through SAMHSA as an (OTP) Opiate Treatment Program." The project site is in the River Road Economic Opportunity Area (EOA) zone where "Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)" is listed as a permitted use. As such, the proposal will only be subject to the Design Review process pursuant to SMC 18.24. The Design Review permit application will be reviewed in conjunction with the required building permit. The Design Review permit process is a Type A-2 process subject to administrative review with public notice, and final decision by staff which is appealable to the City Council [SMC 20.01.030].

As noted under the project description and discussed in the preapplication meeting, the proposal includes the construction of a building between approximately 15,000 and 17,000 square feet and the provision of seventy-nine (79) parking spaces. The threshold for exemptions under the State Environmental Policy Act (SEPA) is "the construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet in gross floor area, and with associated parking facilities designed for twenty automobiles [WAC 197-11-800(1)(b)(iv)]; therefore, a completed environmental checklist will need to be submitted with the application for Design Review. An environmental checklist form can be accessed on the City's website (see "Application submittal" below).

Briefly stated, the process will commence with submittal of the application, after which, the city must make a determination of completeness within 28 days of submittal. If it is determined that the application is incomplete, the city must notify the applicant of what additional information is needed to make the application complete. Once complete, a notice of application will be issued within fourteen (14) days of the date the application was determined complete. Notice of the application and SEPA review will be issued in the form of mailers to property owners within 300 feet of the project site, a sign posted on the property, and publication in a local newspaper. The project will also be included on the City's website. City staff provides the notice board template to applicants for them to have the sign prepared.

FINAL DECISION:

The final decision on a development proposal subject to the Type A-2, process must be made within 120 days from the date of the determination of completeness, barring the occurrence of any exclusions enumerated in *SMC 20.01.230*. Upon issuance of the final decision, the department shall mail or hand-deliver a copy of the final decision along with the Notice of Decision to the applicant, any persons who have filed a written request for a copy of the decision, and to all persons who submitted substantive written comments on the application. The notice of decision will include a statement of the SEPA threshold determination and the procedures for an appeal (if any) of the permit decision [*SMC 20.01.230 A-D*].

DEVELOPMENT STANDARDS AND REQUIREMENTS:

Notwithstanding other applicable provisions of the Sequim Municipal Code, the primary standards applicable to your proposed development are provided in *Chapters 18.22 SMC* (Development Standards) and *18.24 SMC* (Design Review).

The purpose of the Design Standards in *Chapter 18.24 SMC* is to provide guidance and standards for the site and structural development of uses such as this proposed commercial project so that it furthers the vision of the rural heritage of the City of Sequim. The following is a list of the key sections within the design standards applicable to your development. Although we are providing you with a summary, the guidelines and standards are provided in their entirety as Attachment A to this review.

- Facades, exterior walls and entryways (architectural), *SMC 18.24.050*;
 - Site Planning *SMC 18.24.070*;
 - Detail features *SMC 18.24.080*;
 - Roofs, *SMC 18.24.090*;
 - Materials, *SMC 18.24.100*;
 - Windows and doors, *SMC 18.24.110*;
 - Colors, *SMC 18.24.120*;
 - Landscaping and Buffering *SMC 18.24.130*;
 - Parking Lot Design and Orientation *SMC 18.24.160*;
 - Lighting and glare, *SMC 18.24.170*;
 - Pedestrian flows, *SMC 18.24.180*;
 - Outdoor storage, trash collection, recycle and loading areas, *SMC 18.24.190*;
 - Parking lot location, construction and design, *SMC 18.48.080*;
 - Access and driveway approach regulations from streets and alleys, *SMC 18.48.090*.
1. Your Design Review application will need to include a site plan and elevations meeting the provisions of *SMC 18.24.050*, *SMC 18.24.080*, *SMC 18.24.090*, *SMC 18.24.100*, and *SMC 18.24.110*. Please reference these code sections provided as an attachment for further guidance and contact us with any questions that may arise.
 2. As a condition of design review, you will be required to obtain approval of the proposed building's exterior color(s). The standards for colors are provided in *SMC 18.24.120* which are also provided in *Attachment A* to this summary.
 3. The general layout of your site plan is principally consistent with the design standards for site planning. Your site planning should consider that any area used for outdoor storage, truck parking, trash collection or compaction, recycling areas, cargo containers, loading, or other such uses cannot be visible from abutting streets or properties and will need to be

screened, recessed or enclosed. If these areas are enclosed and insulated, the enclosures should conform to those used by the predominant materials and colors of your building. Additionally, areas for outdoor storage, trash collection or compaction, loading, or other such uses cannot be located within 20 feet of any public street or public walkway [ref. Attachment A, SMC 18.24.190].

4. Your landscaping and buffering plan should also contribute to visual quality and continuity within and between the abutting properties as well as the surrounding development. It should provide screening and mitigation of potential conflicts between site elements and be utilized to reduce erosion and stormwater runoff.
5. The landscape areas will need to include all areas on the site that are not covered by buildings, structures, or necessary paved or impervious surface. Secondary design elements such as low walls, planter boxes, stairs or plaza surfaces that incorporate materials used on the building's exterior will need to be incorporated into the landscape design around the building's perimeter to visually anchor and transition the building to the site.
6. Landscaping that incorporates low impact development strategies for stormwater management should be considered as a way to meet the policies of the city of Sequim's adopted stormwater requirements.
7. Together with the landscaping, off-street parking should be designed to minimize visual impact to streets and adjacent properties. Your site plan should include landscaping between the parking lot and adjacent rights-of-way which appears to be absent from the site plan submitted for pre-application review.
8. You may also consider a design layout that would maximize opportunities for creative low impact stormwater management techniques. Whenever possible, permeable paving systems should be evaluated and utilized (especially for employee parking areas). One method to reduce impervious surfaces is the utilization of one-way drive aisles which are encouraged in the Municipal Code [ref. Attachment A, SMC 18.24.160].
9. Examples of effective low impact development (LID) techniques that could be utilized for your proposed parking lots might include end-of-island bioretention cell(s) with underdrain(s) and landscaping; bioretention cells or biofiltration swales located around the parking perimeter or breached curb drainage inlets (or curb cuts) in the end-of-island bioretention cells and along the bioretention strips to collect runoff; and bioretention cells installed between lines of parking stalls to increase the total treatment surface area.
10. The number of spaces required for a medical office pursuant to SMC 15.48.050(2)(d) is one space per 200 net square feet. A parking space must be nine feet wide by nineteen feet deep, compact must be eight feet wide by nineteen feet deep; and, ADA accessible van spaces must be eight feet wide by nineteen feet deep plus an eight-foot wide unloading area, and ADA accessible car must be eight feet wide by nineteen feet deep with a five foot wide unloading area.
11. Compact spaces can make up twenty percent of the total parking spaces and there is one ADA space required for every twenty-five spaces or the latest state standard, whichever is greater.

12. Parking areas should provide safe and efficient ingress and egress for vehicles and public transit. Ultimately, the site plan for your proposed development should ensure that the parking, lighting, circulation and landscaping aspects are well-designed with regard to safety, efficiency and convenience for vehicles, bicycles, pedestrians and transit, both within the development and to and from surrounding areas. The parking lot location, construction, and design requirements are provided in *Attachment A, Section 18.48.080 SMC and Section 18.48.090 A-B SMC*.

Public Works/Engineering Department Comments (provided as an attachment):

1. All of the following issues must be adequately addressed, prior to issuance of a building or site permit. Construction plans shall include a civil site plan showing frontage improvements, site improvements, water, sewer, streetlighting and stormwater. Civil plans shall be prepared and stamped by a licensed professional Civil Engineer.
2. Frontage improvements (half-street paving (20 ft), sidewalk (6 ft), landscaping (4 ft), curb and gutter and pedestrian scale street lighting) will be required for frontages along 9th Avenue and Hammond Street.
3. Provide sufficient right-of-way dedications to accommodate the above requirement.
4. Street improvement (Engineering) plans, submitted with the building permit application shall address safety and continuity and necessary transitions to adjoining and connecting rights-of-way.
5. Water is available to serve the property at the following points: a) east property line at Hammond Street, Hemlock Street, and Pine Cone Ct, and b) 9th Avenue and the Hammond Street alignment.
6. Water pressure and flow deficiencies are suspected in the vicinity of the proposed. Based upon a hydraulic analysis to be performed by the City, the developer may be responsible for extending an 8" water line from the northwest corner of the property to the east property line to connect with existing lines on both ends, or provide an equivalent means of system looping.
7. Fire Flow shall be provided in accordance with Appendix B of the 2015 International Fire Code per SMC 17.48.040.
8. Sewer is located in the alley between Hammond and Hemlock streets. Sewer is also available north of the property in 9th Avenue. In your construction drawings, please show the engineering, legal easements and sewer main extensions required to provide sewer service to the property.
9. Review of the construction drawings will include modeling/analysis of the existing sewer system to assure capacity to serve the proposed development.
10. General Facilities Charges will be assessed and charged for water and sewer based upon required water service size. These fees are subject to change annually.
11. A traffic impact analysis (TIA) will be required for this project. Intersection safety for pedestrians and vehicles, including but not limited to intersection sight distances and pedestrian connectivity shall be evaluated as part of the TIA.
12. Transportation impact fees will also 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.

Fire District 3 Comments

There are no written Fire District 3 comments at this time.

APPLICATION SUBMITTAL

Your next step would be to review the comments and standards provided with this summary, revise your site plans in a manner consistent with the standards provided in Attachment A, then complete and submit the Design Review application form along with a completed environmental checklist with the required fees in the amount provided on each respective form. The forms can be accessed at the city's website at the following:

Design Review Application:

<https://www.sequimwa.gov/DocumentCenter/View/1206/Commercial-Design-Review-Application?bidId=>

Environmental Checklist:

<https://www.sequimwa.gov/453/Forms>

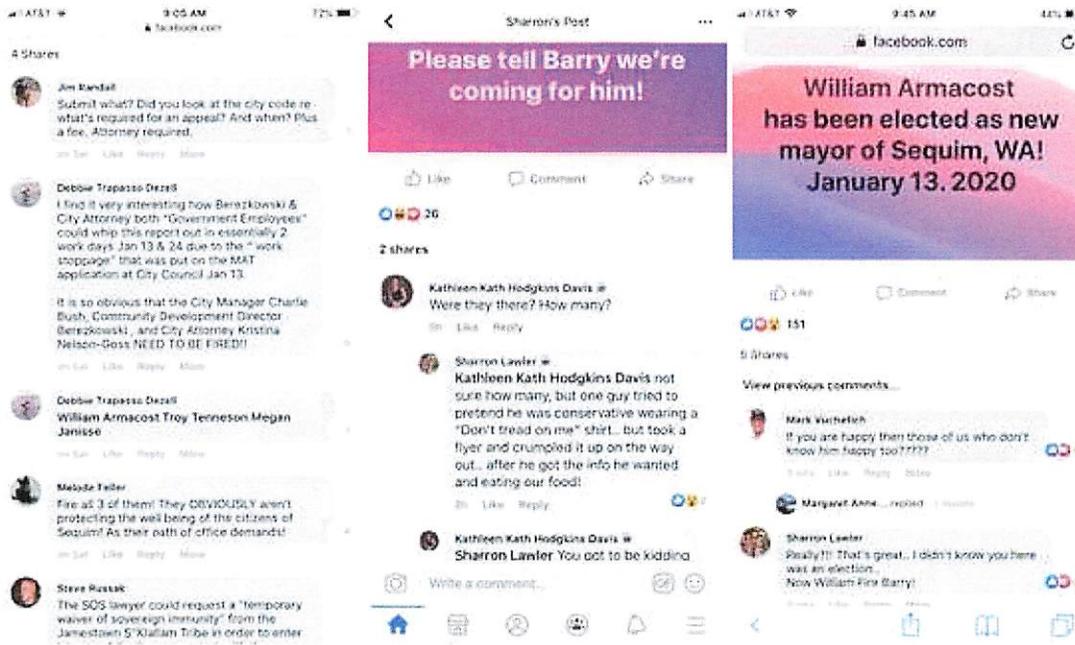
Once you have completed the forms and are ready to submit, please call and schedule an application intake appointment where we can schedule a brief timeslot to review your complete application materials and information and determine completeness. If the application can be determined complete, the process as described herein would commence. If the application is incomplete, it will not be accepted at that time; however, we will identify what is required to complete the application and you will be asked to return with a complete application.

If you have any questions regarding the matter, please feel free to call.

NOTE: These comments are preliminary in nature and are subject to change upon discovery or receipt of new information. This review is to determine whether a use is allowable on a specific property, the standards by which it would be evaluated, and to provide the proponents and/or their agent with the process review requirements of City of Sequim. This review does not provide the scope of outside agency involvement. The content of this review should in no way be construed and an approval or an intent to approve or deny, but merely provides the means by which a proponent may apply for review of a specific proposal and the standards on which a decision would be based.

c. Barry Berezowsky, Community Development Director
Dave Nakagawara, Project Engineer
Steve Jackson, Clallam County Fire District #3

Encl: Attachment A.
Building Application Intake Form; New Construction
Public Works Department comments dated 11-8-19





152 W. Cedar Street, Sequim, WA 98382
PH (360) 683-4908 FAX (360) 681-0552

**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-1¹ 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-2² permit process. The Jamestown S'Klallam Tribe is proposing to build a medical clinic in the River Road economic Opportunity Area (RREOA)³ 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 outright⁴. 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 code⁵. My decision is based on a review of the City's code, state and federal law and past practices.

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

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

³ 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.

⁴ 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

⁵ "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 1⁶ application, SEPA review is considered a Type 2⁷ application, therefore, the Type 2 process is used for the subject application.⁸ 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”.⁹ 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”¹⁰, 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”.¹¹ 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

⁶ 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

⁷ 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.

⁸ 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

⁹ Special uses are treated similarly to essential public facilities in SMC 18.56

¹⁰ WAC 365-196-550viii lists “in-patient facilities, including substance abuse facilities as EPFs.

¹¹ 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;...”¹² (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 City¹³ 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 Clinic¹⁴ (~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 facilities¹⁵ and/or imposing unreasonable conditions that make the project impracticable.¹⁶

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 EFP 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.

¹² WAC 365-196-550(viii)

¹³ 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.

¹⁴ 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.

¹⁵ RCW 36.70A.200(5)

¹⁶ 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.¹⁷

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)¹⁸.

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.¹⁹

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

¹⁷ *New Directions Treatment Services v. City of Reading*, 490 F.3d. 293 (3rd Cir. 2007); *Bay Area Addiction Research and Treatment v. City of Antioch*, 179 F.3d 725 (9th 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 (1st Dist. 1982)

¹⁸ WESTLAW, Ordinance Law Annotations, Narcotics: Illegal Substances, September 2018 Update

¹⁹ *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.²⁰

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 process²¹. 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."²² 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:

²⁰ Smith-Berch, Inc. 68 F. Supp.2d at 621

²¹ 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.

²² 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"²³(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),..."²⁴ to ensure local permitting procedures implement goal 7 of the Growth Management Act.²⁵ 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.²⁶

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.

²³ SMC 20.01.030W

²⁴ WAC 365-196-845(1)

²⁵ 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

²⁶ 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).

01/24/20
Date


Barry Berezowsky, Community Development Director

WAC 365-196-845 Local project review and development agreements.

(1) The local Project Review Act (chapter 36.70B RCW) requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as building permits, subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.

(2) Consolidated permit review process.

(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action. The permit review process must provide for the following:

(i) A consolidated project coordinator for a consolidated project permit application;

(ii) A consolidated determination of completeness;

(iii) A consolidated notice of application;

(iv) A consolidated set of hearings; and

(v) A consolidated notice of final decision that includes all project permits being reviewed through the consolidated permit review process.

(b) Counties and cities administer many different types of permits, which can generally be grouped into categories. The following are examples of project permit categories:

(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.

(c) Local project review procedures should address, at a minimum, the following for each category of permit:

(i) What is required for a complete application;

(ii) How the county or city will provide notice of application;

(iii) Who makes the final decision;

(iv) How long local project review is likely to take;

(v) What fees and charges will apply, and when an applicant must pay fees and charges;

(vi) How to appeal the decision;

(vii) Whether a preapplication conference is required;

(viii) A determination of consistency; and

(ix) Requirements for provision of notice of decision.

(d) A project permit applicant may apply for individual permits separately.

(3) Project permits that may be excluded from consolidated permit review procedures. A local government may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:

(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;

(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or

(c) Other project permits that the local government has determined present special circumstances.

(4) RCW 36.70A.470 prohibits using project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals, to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text amendment to the development regulations, even if proposed along with a project permit application.

(5) Consolidated project coordinator.

(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.

(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.

(6) Determination of complete application.

(a) A project permit application is complete for the purposes of this section when it meets the county's or city's procedural submission requirements and is sufficient for continued processing, even if additional information is required, or the project is subsequently modified.

(b) The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.

(c) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.

(d) Within twenty-eight days of receiving a project permit application, counties and cities must provide to the applicant a written determination of completeness or request for more information stating either:

(i) The application is complete; or

(ii) The application is incomplete and what is necessary to make the application complete.

(e) A determination of completeness or request for more information is required within fourteen days of the applicant providing additional requested information.

(f) The application is deemed complete if the county and city does not provide the applicant with a determination of completeness or request for more information within the twenty-eight days of receiving the application.

(g) The determination of completeness may include a preliminary determination of consistency and a preliminary determination of development regulations that will be used for project mitigation.

(h) Counties and cities may require project applicants to provide additional information or studies, either at the time of the notice of completeness or if the county or city requires new information during the course of continued review, at the request of reviewing agencies, or if the proposed action substantially changes.

(7) Identification of permits from other agencies. To the extent known, the county or city must identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application. However, the applicant is solely responsible

for knowing of, and obtaining any permits necessary for, a project action.

(8) Notice of project permit application. Notice of a project permit application must be provided to the public and the departments and agencies with jurisdiction over the project permit application. It may be combined with the notice of complete application.

(a) What the notice of application must include:

(i) The date of application, the date of the notice of completion, and the date of the notice of application;

(ii) A description of the proposed project action and a list of the project permits included in the application and a list of any required studies;

(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;

(iv) The identification of existing environmental documents that evaluate the proposed project;

(v) The location where the application and any studies can be reviewed;

(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;

(vii) Any other information determined appropriate by the local government;

(viii) A statement of the public comment period. The statement must explain the following:

(A) How to comment on the application;

(B) How to receive notice of and participate in any hearings on the application;

(C) How to obtain a copy of the decision once made; and

(D) Any rights to appeal the decision.

(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of notice of application, the notice must specify the date, time, place, and type of any hearings required for the project.

(b) When the notice of application must be provided. Notice of application must be provided within fourteen days of determining an application is complete. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least fifteen days before the open record hearing.

(c) How to provide notice of application. A county or city may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Cities and counties may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4) (a) and (b). Examples of reasonable methods of providing notice are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists,

either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the local government;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice by posting the application and other documentation using electronic media such as an email and a web site.

(9) The application comment period. The comment period must be at least fourteen days and no more than thirty days from the date of notice of application. A county or city may accept public comments any time before the record closes for an open record predecision hearing. If no open record predecision hearing is provided, a county or city may accept public comments any time before the decision on the project permit.

(10) Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encouraged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system wide infrastructure improvements.

(11) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required for state, federal or other permits hearings provided that the hearing is held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.

(12) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.

(13) Notice of decision.

(a) The notice of decision must include the following:

(i) A statement of any SEPA threshold determination;

(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and

(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

(b) Notice of decision should also include:

- (i) Any findings on which the final decision was based;
- (ii) Any conditions of permit approval conditions or required mitigation; and
- (iii) The permit expiration date, where applicable.

(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.

(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:

- (i) Posting the property for site-specific proposals;
- (ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the county or city;
- (iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (iv) Notifying the news media;
- (v) Mailing to neighboring property owners; or
- (vi) Providing notice and posting the application and other documentation using electronic media such as email and a web site.

(e) Cities and counties must provide a notice of decision to the following:

- (i) The project applicant;
- (ii) Any person who requested notice of decision;
- (iii) Any person who submitted substantive comments on the application; and
- (iv) The county assessor's office of the county or counties in which the property is situated.

(14) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed within fourteen days after the notice of final decision and may be extended to twenty-one days to allow for appeals filed under chapter 43.21C RCW.

(15) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.

(16) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations. For example, procedures should specify who provides an interpretation related to a specific project, and where a record of such code interpretations are kept so that subsequent interpretations are consistent. Code interpretation procedures help ensure a consistent and predictable interpretation of development regulations.

(17) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to

govern the development of land and the issuance of project permits. These are referred to as development agreements.

(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.

(i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of its police power with the exercise of its power to enter contracts.

(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.

(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.

(b) Parties to the development agreement. The development agreement must include as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may also include others, including other agencies with permitting authority or service providers. Cities and counties may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.

(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:

(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;

(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(v) Affordable housing;

(vi) Parks and open space preservation;

(vii) Phasing;

(viii) Review procedures and standards of implementing decisions;

(ix) A build-out or vesting period for applicable standards; and

(x) Any other appropriate development requirement or procedure.

(d) The effect of development agreements. Development agreements may exercise a county's or city's authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area

covering the property covered by the development agreement. The agreement grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to the comprehensive plan, development regulations or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.

(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(f) Procedures.

(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;

(ii) Only the county or city legislative authority may approve a development agreement;

(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and

(iv) A development agreement must be recorded in the county where the property is located.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-845, filed 1/19/10, effective 2/19/10.]

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)¹.

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

¹ 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 11, 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 $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ 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.

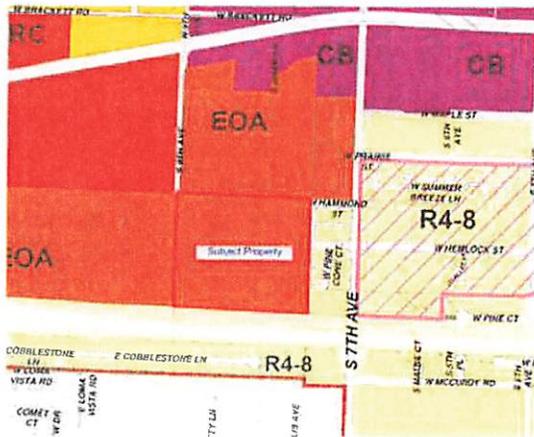


Figure 3 - ZONING MAP

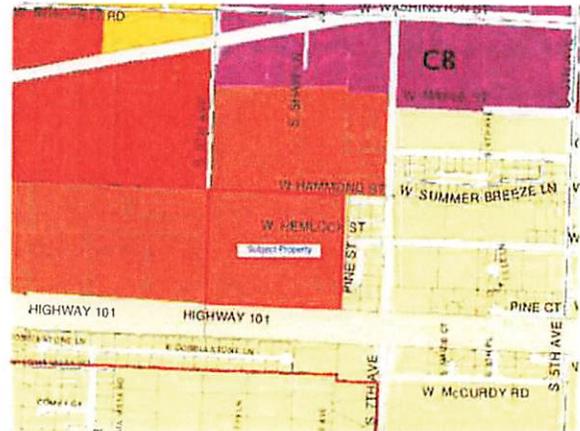


Figure 4 - COMPREHENSIVE PLAN MAP

- e. Existing Development: The abandoned barn and house (Photo 1 & 2) below) were demolished following issuance of Building [demolition] Permit number CBP19-028 on July 25, 2019 which was finalized on September 9, 2019. The property currently is currently undeveloped.

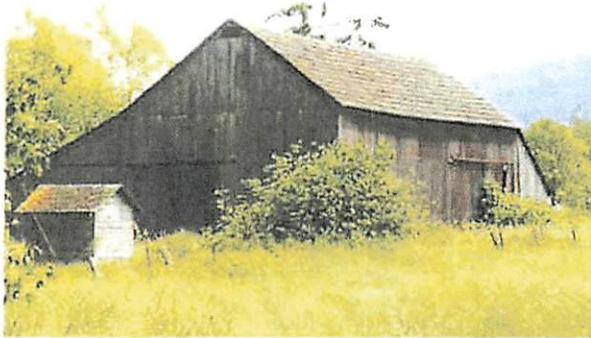


Photo 1



Photo 2

- f. Critical Areas: The property is not located within any known or mapped critical areas.
- g. Flood Zone: The subject property is not located within any mapped floodway or 100-year floodplain.
3. Agency Comments: A request for comment was distributed to the parties listed below on February 3, 2020 (*Agency Comments-Exhibit 3*).
- a. Building Department: The Building Department had no comments.
 - b. Public Works Department/City Engineer: The Public Works Department responded to the request for comments and the SEPA MDNS in their memo dated April 1, 2020 (*Agency Comments-Exhibit 3*).
 - c. Fire District 3: The Fire District had no comments.
 - d. City of Sequim Police Department: The Police Dept. provided a response to the request for comment, which was received March 4, 2020 (*Agency Comments-Exhibit 3*).

- 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 9th 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 Oak² 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).

² 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).

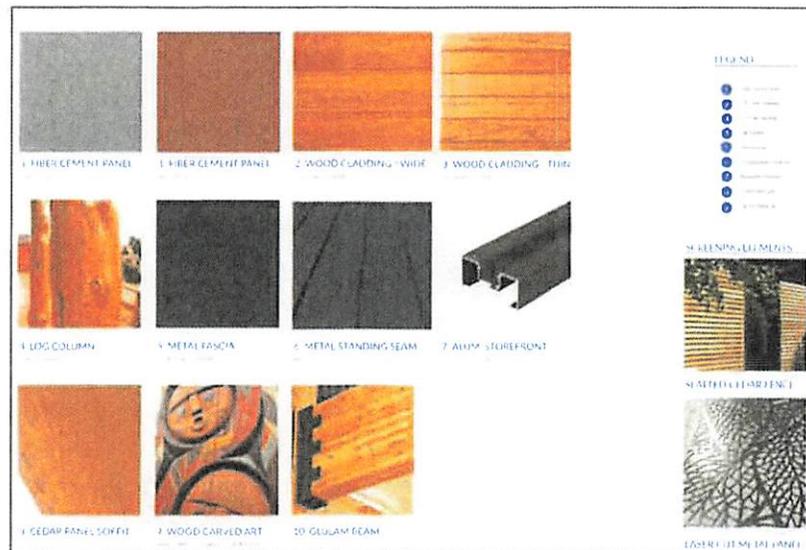


ILLUSTRATION 3

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 standards³ (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.

³ SMC 18.24.160.B.6.

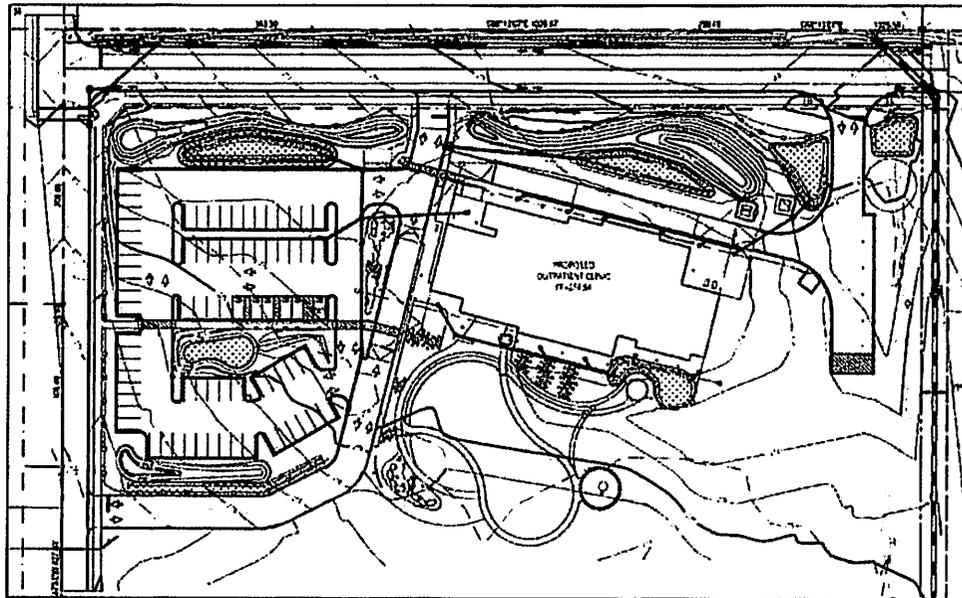


ILLUSTRATION 4-SITE PLAN WITH PARKING LOT LAYOUT

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 9th 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 11, 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 1*).
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.2.c.*].
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.

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.

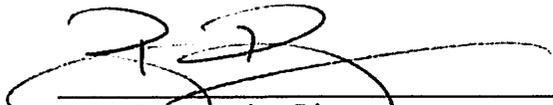
- b. Prior to occupancy, the “committee” will develop a contingency plan that identifies potential courses of action and any corrective measures to be taken when monitoring or evaluation indicates expectation and standards are not being met.
- c. Prior to occupancy, the Tribe must post a bond in the 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 Berezowsky, 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.

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. 3rd 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.**

RCW [36.70B.060](#)

Local governments planning under the growth management act to establish integrated and consolidated project permit process—Required elements.

Not later than March 31, 1996, each local government planning under RCW [36.70A.040](#) shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations. In addition to the elements required by RCW [36.70B.050](#), the process shall include the following elements:

- (1) A determination of completeness to the applicant as required by RCW [36.70B.070](#);
- (2) A notice of application to the public and agencies with jurisdiction as required by RCW [36.70B.110](#);
- (3) Except as provided in RCW [36.70B.140](#), an optional consolidated project permit review process as provided in RCW [36.70B.120](#). The review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing;
- (4) Provision allowing for any public meeting or required open record hearing to be combined with any public meeting or open record hearing that may be held on the project by another local, state, regional, federal, or other agency, in accordance with provisions of RCW * [36.70B.090](#) and [36.70B.110](#);
- (5) A single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW [43.21C.060](#). The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination;
- (6) Except for the appeal of a determination of significance as provided in RCW [43.21C.075](#), if a local government elects to provide an appeal of its threshold determinations or project permit decisions, the local government shall provide for no more than one consolidated open record hearing on such appeal. The local government need not provide for any further appeal and may provide an appeal for some but not all project permit decisions. If an appeal is provided after the open record hearing, it shall be a closed record appeal before a single decision-making body or officer;
- (7) A notice of decision as required by RCW [36.70B.130](#) and issued within the time period provided in RCW [36.70B.080](#) and * [36.70B.090](#);

(8) Completion of project review by the local government, including environmental review and public review and any appeals to the local government, within any applicable time periods under *RCW [36.70B.090](#); and

(9) Any other provisions not inconsistent with the requirements of this chapter or chapter [43.21C](#) RCW.

[[1995 c 347 § 407.](#)]

NOTES:

*Reviser's note: RCW [36.70B.090](#) expired June 30, 2000, pursuant to [1998 c 286 § 8.](#)

20.01.240 Appeals.

A. 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. An appeal of a determination of significance must follow Chapter [43.21C](#) RCW and Chapter [197-11](#) WAC.

Received by City of Sequim
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06/04/2020
2:50 PM

HELSELL
FETTERMAN

June 4, 2020

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

Phil Olbrechts
Hearing Examiner
City of Sequim
152 W. City Cedar St.
Sequim, WA 98382

VIA REGULAR MAIL AND HAND DELIVERY

**Re: Jamestown S'Klallam Drug Treatment/Detoxification Center
Director's Report and Staff Decision/Notice of Determination of Procedure Type
Your file No. CDR 20-01**

Dear Mr. Olbrechts:

Enclosed please find Notice of Appeal regarding the above-referenced matters, which is being filed on behalf of Save Our Sequim, a large group of Sequim area residents. This appeal is being filed with both the City Council and the Hearing Examiner because of conflicting and inconsistent language in SMC 20.01.030.

On February 12 2020, SOS timely appealed the Notice of Determination of Procedure Type referenced above. Under SMC 20.01.040(A), the act of classifying an application is a Type A-1 action. Under SMC 20.01.030(A) Table 1, the appeal authority for A-1 actions rests with the Hearing Examiner for "building and other construction permits", and with the City Council for all other actions. Since the code is not clear on whether a classification decision constitutes a "building or other construction permit", we are appealing this determination to your office and to the City Council to ensure that we have exhausted all administrative remedies potentially available to us.

However, SOS is also appealing the project's Revised Determination of Non-Significance, which is an A-2 decision under SMC 20.01.030(A), Table 2. Under SMC 20.01.030(A), Table 1, the appeal authority for this determination rests with the City Council, with a subsequent appeal to the Clallam County Superior Court.

SMC 20.01.040(B) provides that, "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." (emphasis added). SOS believes that the entire project

Law Offices

1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154

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Page 2

constitutes an “essential public facility”, which requires an “essential public facilities and special property use permit” under SMC 18.56.040, which is the substantive basis for both appeals, as well as Clallam County Superior Court Cause No. 20-2-00304-05, in which we are challenging the constitutionality of SMC 20.01.040(A), which requires an appellant to wait until the substantive permitting decision to challenge the procedural classification, and which we believe constitutes an unconstitutional delegation of authority to your administrative personnel.

Because one section of the Code directs us to appeal these decisions to the Hearing Examiner, and another section directs us to appeal them to the City Council, we are filing two appeals, one with your office and one with the Council. Enclosed please find two checks for \$600.00 each, representing the appeal fee for both appeals.

Thank you for reviewing this letter. I may be reached at mspence@helsell.com or at (206) 689-2167 with any questions or comments. We look forward to a proper and timely appeal process as called for in SMC 20.01.240(H).

Very truly yours,



Michael A. Spence

MAS: Irb
attachments
cc: SOS
Kristina Nelson-Gross, City Attorney

Document Received by City of Sequim

DCD / PUBLIC WORKS

06/05/2020 10:58 AM

Family Law • Real Estate

Personal Injury • Probate



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OFFICE ADMINISTRATIVE ASSISTANT
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PARALEGAL
CATHERINE CARVER
PARALEGAL
LISA KNESAL
CLIENT LIAISON

June 5, 2020

SENT BY REGULAR FIRST-CLASS MAIL AND HAND DELIVERY

Mr. Phil Olbrechts
Hearing Examiner
City of Sequim
152 W. City Cedar St.
Sequim, WA 98382

**Re: City of Sequim Project File No. CDR20-001
Notice of Appeal of Staff Report and Director's Decision and Determination
of Procedure Type for "Jamestown S'Klallam Tribe Outpatient Clinic"**

Dear Mr. Olbrechts:

This office represents Parkwood Manufactured Housing Community, LLC, a Washington Limited Liability Company in good standing and housing provider to a 55+ local residential community. Enclosed, please find Parkwood's Notice of Appeal for File No. CDR20-001. This appeal is being filed with your office and the City Council because of the ambiguous and inconsistent direction in SMC 20.01.030.

On February 7 2020, Parkwood timely appealed the Notice of Determination of Procedure Type filed by the Director in this matter on January 24, 2020. Under SMC 20.01.040(A), the act of classifying an application is a Type A-1 action. Under SMC 20.01.030(A) Table 1, the appeal authority for A-1 actions rests with the Hearing Examiner for "building and other construction permits, sign permits, and boundary line adjustments." The City Council is listed as the "Appeal Authority" for all other actions. Since the code is ambiguous on whether a classification decision constitutes a "building or other construction permit," we are appealing this determination to your office and to the City Council to ensure that we have exhausted all administrative remedies potentially available to us and to preserve Parkwood's right to appeal these decisions.

Parkwood is also appealing the project's Revised Determination of Non-Significance, which is an A-2 decision under SMC 20.01.030(A), Table 2. Under SMC 20.01.030(A), Table 1, the appeal

Notice of Appeal – File No. CDR 20-001
June 5, 2020
Page - 2

authority for this determination rests with the City Council, with a subsequent appeal to the Clallam County Superior Court. Parkwood previously submitted timely written comments to the City on the Mitigated Determination of Non-Significance on April 7, 2020.

Due to the conflicting language in the Sequim Municipal Code, this appeal is being filed twice as explained above. Accordingly, enclosed are two separate checks in the amount of \$600.00 each that constitute the fee to file both appeals.

Thank you for your consideration.

Very truly yours,

McMAHON LAW GROUP, PLLC



Michael D. McLaughlin

w/encl.
cc: Parkwood



31 MY WAY, SEQUIM, WA 98382
PH: 360.452.8160 FAX: 360.452.8197

City of Sequim Officials:

Charlie Bush City Manager

Kristina Nelson-Gross City Attorney

Barry Berezowsky Community Development Director

Lady and Gentlemen,

I am writing this letter on behalf of the building community in Clallam County and those companies that serve the City of Sequim. The purpose of this letter is to express our dismay and disappointment in a legal action that has been filed asking that the City suspend accepting, processing or taking any other type of action with regards to the issuance of building permits. We, the North Peninsula Building Association, take no position on the matter of the "Healing Clinic" yet have a concern on the potential stoppage of building permit processing and issuance. The action filed by the Save our Sequim organization and Parkwood Manufacturing Housing does not represent the building community and we sincerely hope that the City of Sequim will prevail in court and be allowed to continue to process and issue building permits.

In light of the recent and continuing Covid - 19 issues that have slowed and or halted building in the City of Sequim we find that any action to stop or halt building will continue the hardship our community is experiencing and further delay our ability to provide housing in the City of Sequim.

We collectively do not find fault in the way that the City currently conducts its permitting processes and are in disagreement with this action. If we can offer any other help please do not hesitate to contact me.

Thank you,

Kevin Russell

NPBA

COPY

THE HON. W. BRENT BASDEN, Superior Court Judge
Noted for Hearing: **Friday, June 19, 2020 at 9:00 a.m.**

DECLARATION OF SERVICE

On this day I served a copy of the document on which this declaration appears by

depositing in U.S. mail hand-delivery email upon:

- * Michael A. Spence, Helsell Fetterman LLP
1001 Fourth Ave, Ste 4200, Seattle WA 98154
mspence@helsell.com
- * Michael D. McLaughlin, McMahon Law Group, PLLC
1103 Shaw Road, Puyallup WA 98372
michael@mcmahonlawgroup.com
- * LeAnne Bremer/Andy Murphy, Miller Nash et al
Pier 70 - 2801 Alaskan Way, Suite 300
Seattle WA 98121
Leanne.bremer@millernash.com;
andy.murphy@millernash.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA on June 17 2020.

Tellina Sandaine

Erika Hamerquist, Secretary/Tellina Sandaine, Paralegal
 Bench

FILED
CLALLAM COUNTY
JUN 17 2020
NIKKI BOTNEN CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

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

PARKWOOD MANUFACTURED)
HOUSING COMMUNITY, LLC, a)
Washington Limited Liability Company,)

Plaintiffs,)

vs.)

CITY OF SEQUIM, a Washington)
Municipal Corporation,)

Defendant.)

No. 20-2-00304-05

DECLARATION OF CHARLES P. BUSH IN SUPPORT OF DEFENDANT CITY OF SEQUIM'S RESPONSE IN OPPOSITION TO AND REQUEST FOR DISMISSAL OF PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

1 Under penalty of perjury under the laws of the State of Washington, Charles P. Bush
2 hereby states that he is over 18 years of age and makes the following declaration from personal
3 knowledge and belief:

- 4 1. I am the City Manager of the City of Sequim, the Defendant herein. I have been
5 employed by the City of Sequim since August 2015 and I have 21 years of city
6 government experience serving 6 cities. My credentials include a Master's Degree in
7 Public Administration and a Bachelor's Degree in Political Science. My experience
8 includes 8 years as a City Manager or Administrator, one year of serving in the role
9 of Development Services Director for the City of Issaquah, Washington, and 4 years
10 as Planning Director of the City of Prosser, Washington while also serving as a City
11 Administrator. I also have three years of full-time economic development experience
12 with the City of Phoenix, Arizona, where I worked in the Community and Economic
13 Development Department's Business Development and Small Business Divisions in
14 the areas of business attraction and business retention/expansion.
- 15 2. During my work with the cities and jurisdictions described above, I worked with
16 hundreds of companies. Confidentiality regarding potential development projects was
17 critically important until the developer announced their project publicly or applied for
18 permits. This was a common practice not only in Phoenix, but also in the other 5
19 cities where I have served. Throughout my career, it has been common for developers
20 considering development in a city to have informal contact with city staff well ahead
21 of their application for permits to determine the initial feasibility of their development
22 concept in the location(s) they are considering.
23
24
25

- 1 3. I have reviewed the Plaintiffs' pleadings, including their Emergency Motion for
2 Temporary Restraining Order and Injunction.
- 3 4. I have reviewed the City's Response in Opposition to and Request for Dismissal of
4 Plaintiff's Motion for Temporary Restraining Order and Injunction.
- 5 5. Attached as **Exhibit A** is a true and correct copy of the email that I was copied on
6 dated September 27, 2018 from Kyle Johnson, the Executive Director of the
7 Jamestown S'Klallam Tribe's Economic Development Authority to City Attorney
8 Kristina Nelson-Gross. Ms. Nelson-Gross was a part of the City of Sequim's human
9 services team. The team was working on a human services summit. The email was in
10 response to an inquiry about whether the Jamestown S'Klallam Tribe had an interest
11 in participating in the summit, which sought to develop new collaborative service
12 delivery models for Sequim's residents. I had attended a meeting with the Jamestown
13 S'Klallam Tribe that morning to discuss John Wayne Marina. One of the areas
14 identified in the Clallam County Health Assessment at that time was substance use
15 disorder. It was to be one focus area of the summit. Mr. Johnson virtually introduced
16 Ms. Nelson-Gross to Mr. Brent Simcosky and mentioned a project related to opioid
17 treatment Mr. Simcosky was developing. Mr. Simcosky did not attend the summit
18 and I heard nothing more of the Jamestown S'Klallam Tribe project at that time, but
19 this was the first I heard of a project.
- 20
21 6. On or about February 2019, I talked with Mr. Johnson on the phone. We had been
22 working together on the Emerald Coast Opportunity Zone, the evaluation of John
23 Wayne Marina by the Jamestown S'Klallam Tribe and the City of Sequim, and other
24 topics related to the Clallam County Economic Development Council. He mentioned
25

1 that this project may receive funding from the Legislature and that the Jamestown
2 S’Klallam Tribe was considering sites for development of a potential substance use
3 treatment facility, should it receive funding. He asked if Sequim might be a location
4 for it. I asked him to speak with our Community Development Director Barry
5 Berezowsky and stated that the project, as he described it, was consistent with our
6 adopted policies and that there were probably locations in our community that would
7 be appropriate for it. I could not think of anything that would prohibit such a project
8 in Sequim, but it is the role of the Community Development Department to make
9 those ultimate determinations. I did not keep any records of the conversation. I recall
10 that it was a small portion of a larger conversation on another of several different
11 topics.

- 12
- 13 7. Attached as **Exhibit B** is a true and correct copy of the email dated April 1, 2019 from
14 Community Development Director Barry Berezowsky regarding his meeting with
15 Jamestown S’Klallam Tribe and Olympic Medical Center to discuss the project. I was
16 attending a conference at the time of this meeting and could not attend. Mr.
17 Berezowsky was providing a summary of the meeting to me. He was positive in his
18 remarks about the project and the Jamestown S’Klallam Tribe’s plans to hire a public
19 relations firm. I responded positively to these points from Mr. Berezowsky.
- 20
- 21 8. Regarding Mr. Berezowsky’s positive feelings on the Tribe’s proposed project, I was
22 expressing my sentiment that if he was happy, I was happy as well by responding
23 “awesome”. It is common for a supervisor to reflect the positive sentiments of
24 employees and I trust Mr. Berezowsky’s initial evaluation of the project, given his
25 extensive technical expertise and decades of experience in the planning field. I

1 viewed his statement as an early indication that the project was possible at that
2 location and that it would likely fit the city's adopted vision and regulations for the
3 area. Public employees enjoy helping communities realize their visions. I understood
4 Mr. Berezowsky's sentiments for this project as beginning to realize the community's
5 vision for it, as reflected in the City's Comprehensive Plan and the Sequim Municipal
6 Code. From my experience overall, and in working with Mr. Berezowsky on previous
7 projects, I knew that the project would go through appropriate processes as it received
8 consideration for permitting and that it would be objectively and professionally
9 handled by City staff through those processes.

10 9. On or about May 2019, prior to the article mentioned in the next paragraph and after a
11 meeting of the North Olympic Development Council (NODC), then Sequim City
12 Councilor Jennifer States, the City of Sequim's representative to the NODC,
13 mentioned the project to me after the Jamestown S'Klallam Tribe talked about it at
14 the NODC meeting.

15 10. I received a phone call from *Peninsula Daily News* Reporter Paul Gottlieb on or
16 around Thursday, May 30, 2019. The next day, May 31, 2019, the *Peninsula Daily*
17 *News* printed an article headlined, "Joint Olympic Medical-Jefferson opioid clinic
18 planned in Sequim." A true and correct copy of the *Peninsula Daily News* article is
19 attached as **Exhibit C**. Mr. Gottlieb had questions about the permitting process for
20 the project. Mr. Berezowsky was out of the United States at the time and unavailable
21 for consultation. I talked with the City of Sequim's Senior Planner Tim Woolett about
22 what he knew about the project, his view of it from a planning perspective, and what
23 Mr. Berezowsky had shared with each of us. In responding to Mr. Gottlieb and in the
24
25

1 interest of transparency for the public about the likely process for such a project, I
2 told Mr. Gottlieb that the land where the project for phase one might be built appears
3 to be zoned for that use and if that is true, there would not be a required public
4 hearing for that phase according to the provisions of our city code.

5 11. On July 8, 2019, I returned from vacation to an email about people planning to attend
6 the City Council meeting that evening concerned about the proposed project
7 mentioned in the *Peninsula Daily News* article. A true and correct copy of the email
8 dated July 8, 2019 is attached as **Exhibit D**. Mayor Dennis Smith and Deputy Mayor
9 Ted Miller asked that staff prepare for a crowd at the meeting, with Deputy Mayor
10 Miller asking that staff address the project. I coordinated with staff to be prepared to
11 address items like the potential permitting process for the project and other items
12 related to the project that might arise, like the issue of opioid addiction on the
13 Olympic Peninsula. A true and correct copy of email communication with staff and
14 City Councilmembers dated July 6, 2019 is attached as **Exhibit E**. I also asked Mr.
15 Berezowsky to reach out to the Jamestown S’Klallam Tribe to see if Tribe staff could
16 attend to address their project specifically. Unfortunately, Jamestown S’Klallam
17 Tribe staff were unavailable that evening. At that time, city staff had mainly
18 conceptual information about the project and could not speak to many of the specific
19 questions asked by the public, nor would it have been appropriate for staff to
20 represent a potential applicant’s project details even if staff had the answers. The
21 Jamestown S’Klallam Tribe hosted a separate public meeting several weeks later to
22 address more specifics about the project.
23
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- 1 12. On August 12, 2019 former Councilor Ted Miller proposed a three-month
2 moratorium on all land use permit applications within the Economic Opportunity
3 Area (EOA). After considerable discussion, the moratorium failed 4-3. A true and
4 correct copy of the August 12, 2019 minutes are attached as **Exhibit F**.
- 5 13. On January 10, 2020 the City Council experienced some turnover with two new
6 councilors and one previously appointed councilor, all of whom were sworn in at that
7 meeting.
- 8 14. From the July 8, 2019 City Council meeting forward until the Governor's Stay Home,
9 Stay Healthy Order required City Council meetings to become virtual in 2020, people
10 attended most Council meetings to address their sentiments for, against, or generally
11 about the Tribe's project. This occurred whether there were any items on the agenda
12 pertaining to the project or not. Throughout this time, I received many of the same
13 threats and negative comments via email, social media, and in meetings as Mr.
14 Berezowsky and Ms. Nelson-Gross did from people in opposition to the project. Mr.
15 Berezowsky and Ms. Nelson-Gross have provided declarations to the court that
16 include just a small sampling of these negative comments and even some threats.
- 17 15. In part due to the adverse impacts of this permit process on me personally, I resigned
18 my position as City Manager of Sequim on February 10, 2020, effective April 17,
19 2020. At that time, I intended to hike the Appalachian Trail. When COVID-19
20 became a pandemic and things began to close, I cancelled my hike and offered to
21 return to my position to assist Sequim through the COVID-19 pandemic. The City
22 Council restored my employment contract on March 23, 2020.
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SIGNED under penalty of perjury under the laws of the State of Washington on the

2 day of June, 2020, at Sequim, Washington.



CHARLES P. BUSH, City Manager

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From: [Kyle E. Johnson](#)
To: [Kristina Nelson-Gross](#); [Brent D. Simcosky](#)
Cc: [W Ron. Allen](#); [Charlie Bush](#)
Subject: Opioid Solutions
Date: Thursday, September 27, 2018 10:17:57 AM

Hi Kristina,

Per our conversation, I wanted to connect you to Brent Simcosky. Brent is the Executive Director for the Jamestown Health Department and is taking preliminary steps to address the need for an opioid clinic in the area.

@Brent- Kristina is the City Attorney for Sequim and is working with her staff to discuss this very same thing. Given the conversation we had today when Ron met with City leadership, we wanted to help make this connection as we seem to be talking about some of the same things.

Good luck and please let me know if there is anything I can do on my part to help move this conversation forward.

Kyle E. Johnson
Executive Director

Jamestown S'Klallam Tribe Economic Development Authority
257 Business Park Loop Sequim WA 98382
Office: 360-582-5791 | Email: kjohnson@jamestowntribe.org
Cell: 360-775-5159 | Fax: 360-683-9583

From: [Charlie Bush](#)
To: [Barry Berezowsky](#)
Subject: Re: Jamestown/OMC
Date: Monday, April 1, 2019 10:51:03 AM

Awesome on both counts, thanks!

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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

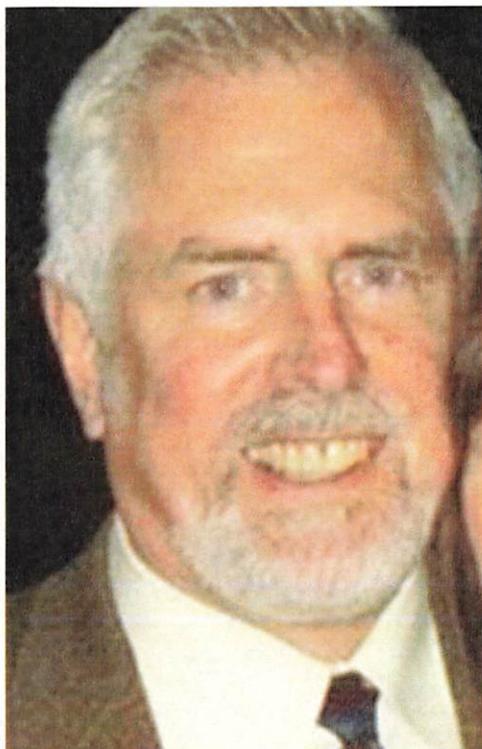
P.S. the SBA event is going great.

Joint Olympic Medical-Jefferson opioid clinic planned in Sequim

By Paul Gottlieb

Friday, May 31, 2019 10:19am | [NEWS](#) [CLALLAM COUNTY](#)

[JEFFERSON COUNTY](#)



Brent Simcosky

SEQUIM — The Jamestown S’Klallam Tribe is purchasing 19.5 acres southeast of Costco in Sequim for a medically-assisted addiction treatment facility for opioid addicts.

The \$20 million behavioral health center is being planned in collaboration with Olympic Medical Center and Jefferson Healthcare hospital.

Most of the grassy parcel off Ninth Street just west of downtown Sequim was purchased May 21 for \$900,000, with sale of the remaining \$275,000 lot, less than 1 acre, signed for but not finalized, tribal Health Services Director Brent Simcosky said Thursday.

The sellers of the finalized parcels at 526 and 521 S. Ninth Ave., were Norman Dawley and E.L. Frankfurth of Bainbridge Island, according to the county Assessor’s Office.

Simcosky said the tribe's \$1.2 million purchase is a major first step toward developing Phase 1 of what tribal officials for now are calling a healing campus that eventually will include an inpatient psychiatric facility.

Construction of the \$7.2 million medication-assisted addiction treatment (MAT) facility will begin in spring 2020 and completed by March 2021 he said.

Phase 2 will consist of a 16-bed inpatient psychiatric evaluation and treatment facility that is expected to be built beginning in 2021 with completion anticipated in mid-2022.

MAT clinic funding was approved during the 2019 state legislative session under a joint capital budget application submitted by the tribe, OMC and Jefferson Healthcare.

The MAT facility, built and operated by the tribe, will dispense daily doses of methadone, Suboxone and Vivitrol in a closed, secure setting, initially in a 15,000-square-foot building that Simcosky said would grow to about 25,000 square feet.

Rice Fergus Miller Inc. of Bremerton, the Bremerton architectural firm that designed the tribe's 7 Cedars Casino hotel, which is under construction, has been hired to draw up plans for the MAT facility to accommodate the larger footprint, Simcosky said. The company has designed inpatient medical facilities, he said.

The smaller facility will serve 200 to 300 clients from Clallam and Jefferson counties and the larger facility, which will cost an additional \$8 million, about 400 clients. Simcosky hopes that funding will be appropriated in the 2020 legislative session.

The facility "will follow a daily-dose model of care and wraparound services, including group counseling, child care, transportation and general support," according to the 2019 capital budget application.

"We know there are about 600 Suboxone patients in Clallam County with opioid disorders from anywhere from pain pills to heroin," Simcosky said.

“A lot of people don’t want to be addicted to heroin but just can’t find a solution to get off of it.”

MAT treatment is covered by Medicaid, which Simcosky expects will cover 75 percent to 80 percent of the clients.

The tribe has higher reimbursement rates, which allows the tribe to provide add-on services other centers cannot afford, he said.

“It’s a long-term solution we’re trying to look at,” Simcosky said.

“If we treat 300 or 400 people, we are probably impacting a few thousand in the community just because of the negative impact they have on the groups they are associated with, such as their family.”

Clients will not be allowed to loiter on the premises, and methadone will be stored in a safe, and be measured and accounted for, per federal Drug Enforcement Administration regulations, he said.

“In most places, people do not violate the rules because they want to be in the program,” he added.

Tribal funds were used for the property purchase, and about \$500,000 in tribal funds also will be spent on vans and buses to transport clients to and from the facility.

Plans include a management agreement with Olympic Medical Center to operate the psychiatric facility and potential agreements to collaborate with Jefferson Healthcare, Forks Community Hospital and Peninsula Behavioral health.

Jefferson Healthcare CEO Mike Glenn lauded the effort Thursday in an email.

“This is a great thing,” he said.

“The three major players have worked closely to identify necessary services for our region.

“We will continue to collaborate as the development of Phase II moves forward.”

Eric Lewis, Olympic Medical Center CEO, said Thursday the behavioral health center serves two big needs, opioid and heroin addiction treatment and inpatient psychiatric treatment.

“Jamestown is leading the way with Phase 1,” he said.

“Phase 2 will be the inpatient evaluation and psychiatric treatment facility that will include Jefferson Healthcare, which will be part of the team, and Forks Community Hospital and Peninsula Behavioral Health and, of course, OMC and Jamestown.

“We are going to come together and add a service that not only Clallam County needs but Jefferson County needs.

“For me, it’s a transformational project.”

The property is zoned for the MAT, and the use does not require public hearings, City Manager Charlie Bush said Thursday.

Senior Staff Writer Paul Gottlieb can be reached at 360-452-2345, ext. 55650, or at pgottlieb@peninsuladailynews.com.

From: [Mary Bell](#)
To: [Charlie Bush](#)
Cc: [Tim Woolett](#); [Kristina Nelson-Gross](#); [Sheri Crain](#); [Sean Madison](#)
Subject: Re: MAT facility (opioid center)
Date: Monday, July 8, 2019 3:23:44 PM
Attachments: [image001.jpg](#)

Meeting at the Big Elk last nite, overcrowded, looking for a larger meeting site, Sr. center turned them down, don't do controversial issues. Seems Jamestown could set up their own opioid site in their Blyn location. and pay for costs generated that impact Sequim. Doesn't look good. Mary Bell

On Mon, Jul 8, 2019 at 1:45 PM Charlie Bush <cbush@sequimwa.gov> wrote:

Thanks for letting us know Mary.

Charlie Bush

City Manager



152 W. Cedar Street

Sequim, WA 98382

(360) 681-3440 office

(360) 565-6415 cell

www.sequimwa.gov

From: Mary Bell <marylubell@gmail.com>

Sent: Monday, July 8, 2019 10:14 AM

To: Charlie Bush <cbush@sequimwa.gov>; Tim Woolett <twoolett@sequimwa.gov>;
Kristina Nelson-Gross <knelson-gross@sequimwa.gov>; Sheri Crain
<scrain@sequimwa.gov>; Sean Madison <smadison@sequimwa.gov>

Subject: MAT facility (opioid center)

Dear folks, I have no idea how bad this proposed site is and will cause, but I did learn that a group of whoever will be at the city council meeting tonite about this issue. They are also doing meetings at various sites in town. Mary Bell

From: [Charlie Bush](#)
To: [Charisse Deschenes](#); [Barry Berezowsky](#); [Sheri Crain](#)
Cc: [Kristina Nelson-Gross](#)
Subject: Fwd: MAT questions and concerns
Date: Monday, July 8, 2019 5:03:10 AM

All, please be ready for this tonight. Charisse, please share what you sent to Dennis with the rest of the Council. Barry, please contact the applicant, give them a heads up, and see if they can come to the meeting. Sheri, please be prepared to talk about substance use disorder in Sequim, from a factual perspective. I'm anticipating that we will have a crowd tonight at public comment on this issue. I'm happy to chat with any or all of you with follow-up questions during the day today.

Thanks,

Charlie

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From: Charlie Bush
Sent: Monday, July 8, 2019 4:59:51 AM
To: Dennis Smith; Ted Miller
Subject: Re: MAT questions and concerns

We will see what we can pull together for tonight. I would prefer to have the applicant describe their project, if they are available on short notice. We can talk about the permitting process (including public comment), zoning, and address the reality of substance use disorder present in our community, with the help of the Police Department. There is not a policy question in front of the Council at this time, nor do we expect phase 1 to involve any policymaking. We will also share the information that we provided to you Dennis with the rest of the Council.

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From: Dennis Smith
Sent: Monday, July 8, 2019 4:48:34 AM
To: Ted Miller; Charlie Bush
Subject: Re: MAT questions and concerns

Charlie,

I agree with Ted. I believe there is a movement just getting organized against this facility in the Sequim area. Note that I got an e-mail about this same subject from a lady in Sunland. I did respond to her.

It appears that this movement is operating with limited accurate information which I have no idea where it is coming from. My response to the lady last week did suggest that she refer her questions about the operation of the facility to OMC and/or Jamestown Tribe.

I also received an e-mail (this morning) that was sent yesterday afternoon; inviting me to a meeting last night at the Big Elk restaurant regarding this subject. I did not receive the e-mail

in time to attend that meeting and I would not have attended anyway.
Needless to say, I believe we should take action ASAP to deter this movement which seems to be based on inaccurate information.

Thank you
Dennis

From: Ted Miller
Sent: Sunday, July 7, 2019 11:11 AM
To: Charlie Bush
Cc: Dennis Smith
Subject: Fw: MAT questions and concerns
400 beds?? Can you address this Monday?

-- Ted

From: DB <dcbbbooks@gmail.com>
Sent: Saturday, July 6, 2019 4:49 PM
To: Ted Miller
Subject: MAT questions and concerns

Dear Mr, Miller,

Please take action to relocate the planned 400-bed meth-opioid rehab facility currently in progress for downtown Sequim.

The heavily populated location of this Klallam Tribe-OMC joint venture is raising concerns among many Sequim residents.

Will law local enforcement be reinforced, and who will pay for that? As of now we are told by the Sheriffs dept that there are only 2 squad cars on the best between Sequim and PA. Last year there was suspicious activity at night in my community east of downtown and the concerned resident was told they would have better luck with a patrol car response if they called after 7am!

Please help our community to plan well or our sleepy retirement town will be overwhelmed with many unfavorable consequences from a lack of planning and forward-thinking.

Along with local law enforcement (Sequim PD, Clallam County Sheriff) will you please do your best to investigate the plan in progress and advocate for the wellbeing of your constituency?

Many realize that a rehab facility can help those addicted who are motivated to be helped. It can do nothing for those in a drug habit that do not wish to escape it. But a location in downtown Sequim? How will this affect tourism? Families? Schools? Local small business?

A local real estate agent, Karen Willcutt, who is also a recovered addict that has described having a prior \$100k per year drug addiction, says that addicts follow other addicts. No one wants to be addicted and alone. She says it will draw an addict presence to Sequim, including those who have no intention to seek rehab. Ms. Willcutt also says that dealers follow addicts. As of yet there is no clientele in Sequim, but with the rehab facility, there will be. And, she says that relapsed patients will quickly accrue a drug bill with dealers that they cannot pay, which will coerce them into crime and drug drops in exchange for their due bill and drug habit.

Moreover, as the Mayor pointed out, there will be no overnight patients, and the PDN reports there will be no loitering on the 19.5 acre property. So, between fixes, where will the patients be located? Will the city of Sequim taxpayers, OMC, or Klallam tribe be required to provide low income housing for patients?

Surely those who are not within local distance will not live the main part of their day on roads (or buses) commuting to and from for treatment.

What is to guarantee that any patient arriving on public transit for treatment will return to the public transit to depart once more? Many could likely live on the streets.

What is the likelihood that the MAT patient program will be successful? How can we protect the community from a migration of dealers who will drive more addicts into our area to grow their own business?

Please help. Your urgent action is required.

Thank you.

**CITY OF SEQUIM
CITY COUNCIL MINUTES
SEQUIM CIVIC CENTER
152 WEST CEDAR STREET
SEQUIM, WA
AUGUST 12, 2019**

WORK SESSION

1. Medication-Assisted Treatment (MAT) Facility Discussion

Miller stated that the public has difficulty understanding why Council has almost no say or involvement regarding the permitting of a MAT clinic, and that for argument purposes he would like to propose a temporary moratorium on Economic Opportunity Area (EOA) zone activity, to find out whether there is support for it on the Council.

MOTION for a three-month moratorium on all permit activity and construction activity in the Economic Opportunity Area (EOA) zones; moved by Miller seconded by Armacost.

Discussion:

States stated that, with financing opportunities available for all types of projects, she hesitates to go forward with a moratorium; it sends a signal to the State that Sequim doesn't want development. Pratt agreed, and stated that it would set a dangerous precedent. Nelson-Gross stated that there are significant liability concerns; a land use case resulted in the City of Seatac getting saddled with a \$13 million settlement after they got hit with an \$18 million jury verdict from Superior Court; in a case against Burien there was a \$10 million verdict; the Newport Beach City Council passed an ordinance prohibiting sober living facilities then endured 7 years of litigation and paid \$4 million in attorney fees, and still had to pay \$5 million in settlements and allow the facilities; and, before acting on a moratorium the risk pool must be notified. Berezowsky stated that an emergency must be declared to enact a moratorium, and asked, with a number of those land uses allowed elsewhere, how would it be justified? Lake asked what would happen if there was a moratorium, and Miller stated that Council would then review allowed uses to determine if changes were wanted. Nelson-Gross stated that moratoriums have been held to be a regulatory taking, and there is liability. Armacost stated that he has heard concerns from people about lack of transparency; he had no idea it was coming; and, MAT is not a solution to addiction. Pratt read information provided by the Tribe regarding the services planned including primary care, dental care, counseling, child care, and transportation if needed. Pratt stated that Dr. Locke spoke about how opioid use causes a brain disorder which is unlike other forms of addiction, these medications are state-of-the-art treatment, opioid addicts cannot function without something to block the disorder caused by brain damage, and treatment has helped many to become functional. Armacost stated that counseling, dental care, and health care are a blessing, but the size and scope of the clinic exceeds the need; and, a lot of the statistical opioid use in Sequim

is use by hospice patients. States stated that she has spoken with many constituents who need these services.

MOTION for a vote to determine City Council support for a three-month moratorium on all EOA development; moved by Miller seconded by Armacost.

YES: Armacost, Miller, Janisse

NO: Lake, States, Pratt, Smith

ABSTAIN: None

The vote Failed.

2. Proposed Ordinance No. 2019-013 Adopting New Sequim Municipal Code Chapter - Code Enforcement

Nelson-Gross presented, stating that the City has been working to develop a consistent process; the Nuisance Code has been updated; the Building Department has processes for Stop Work Orders; a one-stop place in the code is needed for enforcement processes; the proposed code authorizes staff to deny new permits where there is an active code enforcement case, adds administrative penalties intended to remove financial incentives to violating the code, and sets the process for appeals; and, fees for appeals would be set in the code.

Miller stated that Section 1.13.070 line 2, "must be accomplished in strict conformity with the Constitution...", the adjective "strict" could leave us liable; Section 1.13.030D "if there is conflict between this chapter and any other provision of SMC...the more specific applies" may be too gray; and asked if Section 1.12 would need to be repealed or amended. Nelson-Gross stated that she believes Section 1.12 was changed to General Criminal Penalty, and that as we go through the code scrub we do need to cut out certain references and refer them back to this Chapter.

Pratt stated that Section 1.13.030A says "it is a violation for any person to initiate, maintain, or cause to be initiated or maintained the use of any structure", and she would like to see that defined better. Nelson-Gross clarified that the verbiage refers to maintaining the *use* of the structure; and, that she could be ready to present the code to Council September 9th.

3. Ordinance No. 2019-004 Providing for Appointment of Hearing Examiner

Nelson-Gross presented, stating that this ordinance sets how we implement the Hearings Examiner, provides a mechanism for appointment and removal, rules of procedure, default, decision and consideration procedures, and annual reporting for City Council.

Pratt suggested changing verbiage regarding how the Hearing Examiner's decision is sent to include sending decisions electronically, and Nelson-Gross stated that she would revise it to say the decision would be sent in accordance with the applicable RCWs. States asked why day cares and wireless facilities are Type B applications, and Nelson-Gross

stated that she cannot speak to day cares, but typically wireless facilities have federal laws to be dealt with.

4. Vacation Housing Market

Langevin presented research on vacation rentals, stating that the recent Housing Study raised a question as to whether short-term rentals negatively impact the ability to find a long-term rental; there are about 20 vacation rentals in City limits, and another 46 nearby; Clallam County does not have regulations beyond what a home normally has, and defaults to the State if the entity is managing three or more properties as "transient rentals"; Leavenworth banned vacation rentals, but has difficulty with enforcement; Chelan embraces vacation rentals, has proposed new regulations to re-allocate zones where it is allowed, and regulates tenants' behavior; Port Townsend has a large number of vacation rentals, defines them as "tourist homes", and the owner maintains occupancy.

Staff suggests three options for consideration:

Option 1: Implement a permitting process for vacation rentals without specific zoning, and generate an official list to monitor growth. This option creates workload due to permitting and enforcement.

Option 2: Assign a taskforce to determine what zones vacation rentals should be allowed in, and implement a permitting process for vacation rentals within specific zones.

Option 3: Maintain informal monitoring of the vacation rental market. There aren't many vacation rentals in Sequim, and this requires little staff time.

Miller stated that he supports option 3. States stated that she has a vacation rental, for the record. Lake asked how the number of vacation rentals were determined, and Langevin said he researched sites such as AirBnB where rentals are advertised.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Mayor Dennis Smith, Bob Lake, Ted Miller, Candace Pratt, Jennifer States, William Armacost, Brandon Janisse

CHANGES TO THE AGENDA

CEREMONIAL

PUBLIC COMMENTS

Pertaining to a potential medically-assisted treatment (MAT) clinic:

Janet Fowler stated that she sees that the Council's hands are tied; people will not get help until they have treatment and want to go; she is concerned that problems would be

brought into Sequim by clients of MAT, and worries about how the Police Department will handle it; is concerned about what would happen at night with cartels; and, parents in Port Angeles have to clean needles out of the baseball field dugouts.

Wendy Goldberg stated that data shows that patients of MAT have twice the odds of being in an injurious traffic accident; some clients would be transported by van but many would drive themselves; and, www.saveoursequim.org posted studies regarding the effectiveness of medically-assisted drug treatment where placebos and suboxone were used.

Karen Wilcutt stated that the value of her home in Seal Beach depreciated when a MAT opened in Long Beach; the City should get an attorney who will fight for Sequim; she is a realtor and has gotten listings from SOS members who want to move; the Tribe says a MAT clinic would lower crime, but then say their patients are working class people that are not committing crimes; asked, how does a dental clinic reduce crime?; if you are at a stage in your drug use where you need corrective dental you are not a working, productive person; and, statistics come from studies about people that can be tracked, not real junkies.

Jodi Wilke stated that Karen spoke about statistics related to people they can track, and one organization has cured many people but their members are anonymous; division in the community is due to a lack of transparency and concern; beyond the surface of studies we see the effects on communities from this type of treatment; we will schedule a public information session and invite everyone from both sides; we need to evaluate this in a non-biased way; and, we need to know why municipalities decided we are the place to offload addicts and homeless people from urban areas.

Inga Able stated that the Clallam County Health Official talked about 16 opioid deaths in 2016, but more recent data shows there were 2 opioid deaths in Clallam County in 2018, and 31 suicides; the opioid crisis in Clallam County peaked in 2015 and 2016, and has declined since; we do not have new prescription data because they are sitting on it; we lack mental health care and treatment for other addictions; on a State level we have higher death rates from crystal meth; asked, why is one small branch of behavioral health seeing all this funding? It's because 4 or 5 years ago there was an outcry, and now federal funding is trickling in; with the addition of this clinic, there will be 930 treatment spots with only 2 opioid deaths; and, you cannot get treatment for a troubled kid until they are 18 and taking heroin.

Kim McBride stated that the Tribe published a fact sheet stating that when people come to the clinic they will make sure they get back in the car; judges told her that they cannot force people back into the vehicle unless they are in police custody; studies quoted were done 30 years ago in Australia; and, they say people are drug free after treatment, but don't point out that they are in jail.

Cheryl Cuccia read information written by a person she did not name. The writer stated that (he or she) worked in drug enforcement and was widely recognized for (his or her)

work; saw failing treatment centers; saw that extra doses were sold for profit by the same people that give the meds; saw a large influx of people in makeshift shelters and committing crimes in Forks, and some were seen by mental health councilors; over half said that they were told Forks was the place to go for free drugs, housing and food; some rode the bus between Port Angeles and Forks; we should treat those who need and want it, but sacrificing the safety and well-being of those in Sequim is not prudent; and, a location in Port Angeles near OMC would be better suited.

Brody Broker stated that he had worked with two companies that wanted to provide services here, but decided against it because there was not enough need; he is in favor of drug treatment but does not know if MAT is the right kind; wondered if the MAT in Port Angeles is making a difference; visited a treatment center in Swinomish that was well run; and, had close to 1,000 calls from former clients and only 3 wanted MAT.

Karen Wilcutt stated that at the Tribe's meeting, the former addicts who stood up that were clean had gotten help from facilities already in place.

Mary Bell stated that in 2 months Ron Allen will apply, and when the application is deemed complete the public can make comments.

Josh asked the Council what they think the likelihood of the Tribe suing Sequim is, and how it would affect them economically, and stated that it would be suicide for them to do that; he is not for this; it seems like about 20% want this; and asked, is there some way everyone can win, that can we do this in a way the larger community agrees with?

PUBLIC HEARINGS (Quasi-Judicial)

5. Legacy Ridge Preliminary Major Subdivision Application (SUB15-001)

Woolett presented, stating that drainage facilities will be linked by easement; the location is designated SFR in the Comprehensive Plan and zoned R4-8; the property is 38.5 acres; many Garry Oaks will be preserved; 7th Avenue will be built by the developer to curve out around the wetland buffer; plans meet zoning requirements; 97 lots are proposed; plans meet SMC 17.20.040 Approval Criteria A – L; and, no phasing is proposed.

Miller asked whether GFC fees will be collected, and Klontz confirmed that water GFCs will go to PUD; PUD has infrastructure and will upgrade it to provide service to City standards; and, sewer will be provided by the City.

Armacost asked, regarding item I, about missing data sheets and the criteria for wetlands having a 5-year window, and Woolett stated that the plan was updated December 21, 2018.

Steve Calhoun, representing the applicant, stated that the second neighborhood meeting was held; the proposal is consistent with code; a builder has not been identified; about 25

homes will have views to the northwest; many parcels back onto wetlands or buffers; the site will be graded with the lay of the land; daylight basements are possible; there will be two points of entry to the development; and, development will cover about 60% of the property and remaining areas are wetlands or "green areas".

Pratt asked if there will be paths to access wetlands, and Calhoun stated there will not be paths, there will be no fence preventing access, but generally intrusion is limited being that it is a critical area.

Phil Cheeseman, representing the applicant, stated that no deviations or variances are applied for; all homes are proposed to be connected to Highland Irrigation; and, the storm drain system is designed to the Washington State Department of Ecology standards as adopted by the City.

Armacost stated that eleven letters were received from the community with concerns about surface water flows, and asked if flows will be handled by the stormwater system, and Cheeseman confirmed that they would. Woolett stated that the Boyd family owns the land where stormwater facilities will be located.

Public Comments

Liann Finnerty stated that she is against the proposal; owns a parcel nearby; the watercourse drains north toward the lots below Road A; that Klontz stated they would have to contain that stormwater, but it is important that it flows to the pond; and, asked about potential archeological discoveries. Woolett stated that the proponent has requirements related to archeological discoveries, and proponents have looked at the stormwater flows in depth.

William Miano, President of Cherry Blossom Estates, stated that he is neutral regarding the proposal; that regulations state no development may occur that causes flooding, yet the last development causes flooding and nothing has been done; two homes experience crawlspace flooding; and, danger to pedestrian traffic will increase with added homes.

Mike East stated that he is neutral regarding the proposal; the creek flooded down to Silberhorn and his daylight basement was flooded; the property has heavy clay soils; he added a curtain drain around his house; and, he hates to see it turn into a subdivision and hopes it is a nice one, and not one with affordable housing.

Joyce Volmut stated that she is against the proposal; there are five wetlands and three streams there; the City adopted minimal model ordinances, but could enhance ordinances if they wanted to; the handbook talks about monitoring habitat; and asked, who will monitor?

Carolyn Dudley stated that to get to Highway 101 you must take Reservoir Road or Silberhorn Road; Reservoir Road has lots of children; the developer said they would

extend 7th Avenue for construction traffic; a dump truck puts divots in the road; and asked, why not put in a road to River Road, so construction traffic can use that?

Further Discussion

Steve Calhoun, representing the applicant, stated that, regarding the wetland which is would be circumvented by 7th Avenue, the biologist met with Rick Mars of the Department of Ecology and determined how this wetland needs to be mapped to maintain hydrology.

Woolett stated that he is considering having the applicant extend the plat boundary around the ponds to the west so they would be recorded as part of the plat rather than referenced by easement, and that it would still satisfy net density requirements. Nelson-Gross stated that so long as there are appropriate conditions that speak to having an easement that is executed on or about the same time as this plat, and the applicant has the ability to grant that easement, she does not have concerns; and, in terms of whether the applicant wants to do a boundary line adjustment, that is for the applicant to speak to. Calhoun stated he believes that it is sufficient the way it is, and his initial thought would be to leave it as an easement.

Miller asked whether other mitigation can be done regarding stormwater concerns. Klontz described the history of stormwater concerns in the area, stating that a curtain drain was added at the foot of the bluff; breaches in the irrigation system have been repaired; when it floods Highland Irrigation says it's not their water, its stormwater; water flows toward Highway 101 and then to a pond, but before that it used to flood into the City; the City, in partnership with FEMA, is pursuing grant to send the water to the off-channel reservoir; and, stormwater handling for this development has been designed with an added safety factor. Regarding traffic, Klontz stated that the developer will complete a gap in 7th, build sidewalks throughout the development; and, the Traffic Study has been well reviewed. Armacost asked about a crushed culvert at Silberhorn, and Klontz stated that Public Works is working the problem.

Nelson-Gross stated that developers must address stormwater related to their development; and, we cannot hold a developer responsible for other stormwater issues.

Pratt stated that it is wise to listen to old timers, because they know where the water has been running.

Garlington stated that the stormwater engineering has been reviewed multiple times; the stormwater is not currently being handled the way it will be after this development; and, he was not aware of the crushed culvert and will look into it.

Armacost stated that all developments in Sequim, except Jennies Meadow, have developed into a foreclosure scenario, and he worries about that with the size and scale of this development and clay soils.

MOTION to approve the Legacy Ridge Preliminary Major Subdivision subject to the conditions of approval and mitigation measures as set forth in the staff report, and subject to all City regulations, standards and requirements whether articulated or not in the staff report, and to adopt the Planning Commission's Findings of Fact and Conclusions of Law in support of the Council's approval; moved by Miller seconded by Lake.

YES: Smith, Miller, Lake, States, Pratt, Janisse

NO: Armacost

ABSTAIN: None

The vote Passed.

6. Clallam County PUD #1 Special Use Permit (SUP19-001)

Woolett presented, stating that solar panels will be mounted two feet above the ground at a 30-degree angle, facing south; existing landscaping is well maintained; the proposal meets zoning code; and, this is an Essential Public Facility, listed as a Special Use.

Miller stated that he is embarrassed that DCD had to waste their time on this Special Use permit because any solar array or structure should only require a building permit, and he hopes they can change that.

Kevin Black of Clallam County PUD #1 stated that the proposal is for a 30-kw solar array providing AC power to the grid; the system will not initially have batteries; customers can buy into the project; there will be 4 inverters and 96 panels, 325 watts each; and, the project offsets the use of fossil fuels.

States asked about the cost per kw/hour, and Black stated that he does not have that information. Lake suggested adding a car charger, and stated that if an inverter that can provide power when other power sources are down is used, emergency backup power would be feasible. Black stated that PUD is considering adding batteries in the future in order to enable backup power to the communication system.

States stated that she applauds PUD in moving forward, although she would like to encourage the use of solar as part of overall power generation as opposed to doing it as a community project.

MOTION to approve the Clallam County PUD #1 Special Use Permit (SUP19-001) subject to the conditions of approval set forth in the staff report, and subject to all City regulations, standards and requirements whether articulated or not in the staff report, and to adopt the Planning Commission's Findings of Fact and Conclusions of Law in support of the Council's approval; moved by States; seconded by Miller.

Carried Unanimously.

PUBLIC HEARINGS (Legislative)

7. Resolution R2019-02 Adopting the Six-Year Transportation Improvement Program (TIP) for 2020-2025

Klontz presented, stating that this is the second touch on this topic; the TIP is a planning document, and is used when applying for grants; the City's TIP coordinates with regional and State TIPs; when this was last discussed States mentioned that the US 101/East Sequim Corridor Improvement (interchange) project should be added, and it has been; and, last week Sequim was awarded \$350,000 of federal funding.

MOTION to approve Resolution R2019-02 adopting the 2020-2025 Transportation Improvement Program by Miller; seconded by States.

Carried Unanimously.

8. Resolution R2019-03 Adopting the Six-Year Capital Improvement Program for 2020-2025

Klontz presented, stating that year 2020 is intended to go into the budget; this is the 3rd touch on this topic; the Dungeness off-channel project discussed previously has been added to the stormwater section; the City is in position to get a grant; the east Sequim corridor project has been added now that funding has been obtained; the City received a Safe Route to Schools grant to add sidewalk on north Sequim Avenue and add crossings to the roundabout, design work to begin in 2020 and construction to begin in 2021; and, the Fir Street project is going well. Pratt asked about a solar power project at Guy Cole, and Garlington stated that there will be a presentation soon. Klontz stated that next year a new system will be used to develop the CIP.

Public Comment

Charles Haygood stated that there are opportunities to improve traffic flow in conjunction with the proposed Lavender Meadows development, and he has asked that the traffic engineer walk the area with him.

MOTION to approve Resolution R2019-03 adopting the 6-year Capital Improvement Program for 2020-2025 by Lake; seconded by Pratt.

Carried Unanimously.

CONSENT AGENDA

9. Claim Voucher Recap Dated August 12, 2019 Total Payments \$1,548,924.60
10. On-Call Agreements with Construction Inspection Services, LLC, and Northwestern Territories, Inc. for Materials Testing Services

MOTION to approve the Consent Agenda; moved by Pratt; seconded by Janisse.
Carried Unanimously.

OTHER

11. Ordinance No. 2019-014 Removing Transit Center and Picnic Shelter from Rental Facilities

Deschenes presented, stating that plans include using the Transit Center as a dedicated location for the Emergency Operation Center and removing it, and the Carrie Blake Park picnic shelter, from the inventory of facility rentals handled by the City; a hired cleaning service is used for facility rentals; and, the cleaning fee depends on the number of attendees. Pratt asked why we charge cleaning fees for the Burkett Conference Room even when there is no food, and stated that she would like to see that changed.

MOTION to adopt Ordinance 2019-014 amending the City of Sequim Rates and Fees; moved by Miller; seconded by Pratt.
Carried Unanimously.

INFORMATION

Committee, Board and Liaison Summary Reports

Presiding Officer

Smith stated that on August 8th he attended the Chamber of Commerce and Shiso Sister City meetings; and, the student exchange is going well.

Garlington spoke about the Pavement Preservation Program and showed photos of problems in the Olympic Crest and Oak Tree neighborhoods, including roads that were not properly compacted and problems with sidewalks. Garlington stated that these problems will be fixed at a cost of \$450,000 - \$500,000; and, the City has advertised but if Council does not approve then the ad will be pulled down.

Hagener provided a preview of 2020 FTE requests, including a request for a part-time non-benefitted Emergency Management Coordinator. City Manager Charlie Bush stated that there will be an active shooter drill this fall, and an earthquake drill in 2022; the Emergency Operation Center is being renovated; and, this position was previously funded, but was cut due to the recession. Hagener stated that there will be increases in salary and benefits over the coming years; and, the budget has been balanced. Bush stated that, by design, the City's budgeting process includes determining what resources are needed to accomplish goals and objectives, and working toward that in a free thinking manner.

Nelson-Gross stated that she is participating in a program in Kettering, Ohio at no cost to the City, on the "Road Island" project, to address public road/private road/public road

situations, starting with the stretch of road from Spyglass through to Sequim Bay Road, and hopes to have a proposal to Council by the end of the year.

City Manager

GOOD OF THE ORDER

Lake stated that he suggests using a Hearing Examiner to address MAT; that there is public input included in that process; and, it would be hard to describe the effect the MAT issue has had. Smith agreed.

Pratt suggested that the Council consider strengthening the stormwater ordinance, and stated that Clallam Transit is offering free rides to the fair.

EXECUTIVE SESSION – Potential Litigation RCW 42.30.110(i)(iii)

9:35 – 9:42 pm

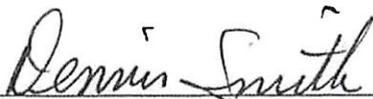
ADJOURNMENT

9:45 pm

Respectfully submitted,



Alisa Hasbrouck
DCD Specialist for City Clerk



Dennis Smith
Mayor

Minutes approved at a regular Council meeting held on September 9, 2019.

1 on its website and through other means. Attached as **Exhibit C** are true and correct
2 copies of examples taken from the S.O.S. Facebook page.

3 4. Parkwood Manufactured Housing Community, LLC (“Parkwood”), the other
4 (second) plaintiff in this case, is a manufactured home community for residents aged
5 55 years or older and located approximately three miles outside of Sequim’s city
6 limits and outside of the City’s urban growth area. **Exhibit D** is a true and correct
7 copy of a Google map showing the location of Parkwood in relation to the City of
8 Sequim and a Clallam County map showing the location of the City’s Urban Growth
9 Area.

10 5. Since July 2019, Mr. Bush, Mr. Berezowsky, and I have been the subject of repeated
11 harassment and calls for the City Council to fire us over the Tribe’s project. This
12 harassment continues and is the “basis” for Plaintiffs’ assertions of wrongdoing by
13 City staff. The attached **Exhibit E** is a true and correct copy of an article by retired
14 attorney and appellant in the pending administrative appeal, Robert Bilow,
15 demonstrating just one example of this harassment.
16

17 6. S.O.S., through its retained counsel Michael Spence, its President Jodi Wilke, and
18 other various officers and members, have participated in harassing City staff.
19 Attached as **Exhibit F** are true and correct copies of the harassment received. S.O.S.
20 officers, members, and likeminded community members have also routinely made
21 racist and derogatory comments about the Tribe, addicts, and homeless individuals.
22 Attached as **Exhibit G** are true and correct copies of some of these racist and
23 derogatory comments posted on the S.O.S. Facebook page.
24
25

4/10/2020

Commentary: In Support of Armacost, Tenneson and others, Citizen Review Online

TRENDING TOPICS: COVID-19, SEQUIM CITY COUNCIL, SEQUIM TRIBES

f t i SEARCH

Exhibit E - Nelson-Gross Declaration
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Citizen Review

HOME LOCAL NEWS STATE NEWS EDUCATION OPINION ARCHIVED STORIES

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Commentary: In Support of Armacost, Tenneson and others

Apr 2, 2020 | Guest Commentary, Local News | 0 | ★★★★★

Opinion by Bob Bilow

April 2, 2020

I wish to state my opinion regarding what I have been informed is a current decline in public confidence within the Sequim community for City Council members Troy Tenneson and William Armacost. And this is with specific reference to the very public debate over the Medication Assisted Treatment facility (MAT clinic) proposed by the Jamestown S'Klallam Tribe.

It appears to me that the generalized "public" is disappointed that those two Council members have not "done enough" to slow down the process within the City of Sequim which will determine whether that MAT facility is approved, approved with conditions, or disallowed. To the extent anyone feels that way, I believe that his or her feelings are totally misdirected.

From an overall perspective, I begin by complimenting recently elected Councilman Tom Ferrell for his focused and analytical participation in the most recent City Council meeting, as well as his active involvement in each Council meeting this year. At his first Council meeting, he expressed disappointment that three members ran unopposed for the opportunity to serve on the City Council. During the March 23 meeting Councilman Ferrell raised the critical issue of whether the MAT proposal should be delayed while the City dealt with the COVID-19 crisis; he led a very insightful discussion by describing his background of crisis control and referred to his instructions in the event the B-52 bomber he was flying suddenly caught fire during flight. His rule was to "get the plane down to the ground, period"; he

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SEARCH ...

RECENT POSTS

Open Letter re:
Sequim SEPA Review
for proposed MAT
project

**Commentary: In
Support of Armacost,
Tenneson and others**

Sequim retired
attorney reveals
documents in letter to
City Council

Former write-in
candidate seeks
appointed City Council
position

4/10/2020

Commentary: In Support of Armacost, Tenneson and others, Citizen Review Online

suggested the Council consider following a similar approach to the MAT application and "slow this process down." He then seconded the Tenneson motion for a 90-day delay of most pending applications, but that motion was "withdrawn" as I will discuss below.

Councilmen Ted Miller and Brandon Janisse have also sought more active participation by the Council in City affairs, whether policy or other matters, but have been frustrated in those attempts, which I will mention later.

After attending nearly every City Council meeting since October of 2019, reading most of the City Council Agendas/Minutes back to mid-2018, and reviewing thousands of pages received under my Public Records request, I feel that all curious actions by the 2019 and 2020 City Councils can be traced to three City Officials and one current City Councilman/previous Sequim Mayor.

The City officials are City Manager Charlie Bush, City Attorney Kristina Nelson-Gross, and Director of Community Development Barry Berezowsky. For the most part, Bush and Berezowsky have barged ahead with the MAT project in concert with the Tribe since at least March of 2019, but since last summer have been increasingly reliant on legal misdirection, bullying, or double-talking from the City Attorney. Nelson-Gross often confuses issues by raising imaginary "quasi-judicial and quasi-legislative conflicts", or by abruptly rushing the Council into improper Executive Sessions.

On March 27, 2019, Berezowsky received from Tribal representative Brent Simcosky a copy of the Tribe's capital budget request prepared for Representative Tharinger, and passed it on to City Manager Bush together with notice that the Tribe had purchased property behind Costco. Since Bush was out of town, Berezowsky alone then met the following day with the Tribe's Brent Simcosky and Eric Lewis (CEO of Olympic Medical Center), reporting to Bush by email:

"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...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."

The Tribe's intention to build the MAT clinic became public in May, 2019 and in the first Peninsula Daily News article (5/31/2019), Bush stated "The property is zoned for the MAT, and the use does not require public hearings." The topic next arose one day prior to the July 8, 2019 City Council meeting when Councilman Ted Miller informed

Sue Forde announces
candidacy for State
Representative
Exhibit E - Nelson-Gross Declaration
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RECENT
COMMENTS

ARCHIVES

- April 2020
- March 2020
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- October 2018

CATEGORIES

Commentary

Editorial

Education

Current

4/10/2020

Commentary: In Support of Armacost, Tenneson and others, Citizen Review Online

Mayor Dennis Smith of a letter from a concerned citizen. Smith responded by alerting City Manager Bush via email very early the next morning (4:48 am):

“Charlie: I believe there is a movement just getting organized against this facility in the Sequim area...It appears that this movement is operating with limited accurate information which I have no idea where it is coming from...Needless to say, I believe we should take action ASAP to deter this movement which seems to be based on inaccurate information.”

Bush responded immediately by notifying City Attorney Nelson-Gross, Director Berezowsky, and two staff members:

“All, please be ready for this tonight. Charisse, please share what you sent to Dennis [Smith] with the rest of the Council. Barry, please contact the applicant [Tribe], give them a heads up, and see if they can come to the meeting. Sheri, please be prepared to talk about substance use disorder in Sequim, from a factual perspective...I’m happy to chat with any or all of you with follow-up questions during the day today.” (emphasis added)

The City Council meeting that evening was quite well attended, and the Bush/ Berezowsky/Nelson-Gross group banded about confusing comments regarding the potential MAT clinic review process. Bush first stated that the decision-making body for such a project “could be” the Planning Commission. Berezowsky agreed, stating that a design review would be done under a C-1 process and the Planning Commission would be the decision-making body. Next, according to the City Minutes,

“Nelson-Gross asked Berezowsky if there is any scenario where the City Council could be the decision-maker for such a project, because if so, that would be a quasi-judicial process. [Note the City Attorney is asking the Director of Community Development for legal advice!] Berezowsky stated that if a project required a Special Use permit the Council would be hearing it, and if a project was heard by the Planning Commission then the Council would be the appeal authority.”

When a member of the audience asked the City Council members for their opinions, both Bush and Nelson-Gross advised against any response from Council members due to the “possibility that this could become a quasi-judicial matter before the Council in the future”. Notably, when asked about the zoning code, “Nelson-Gross stated that the City has an obligation under the law to allow for siting of those types of facilities.”

General

Guest Commentary
Exhibit E - Nelson-Gross Declaration
Page 3 of 9

Letters to the Editor

Local News

Media or Propaganda?

National News

Opinion

Political News

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4/10/2020

Commentary: In Support of Armacost, Tenneson and others, Citizen Review Online

Emails reveal that two days later Bush, Berezowsky, Nelson-Gross, and Mayor Smith were discussing the issue of whether the property near Costco would become "sovereign tribal land" with any resulting land-use implications.

Exhibit E - Nelson-Gross Declaration
Page 4 of 9

Prior to the July 22, 2019 Council meeting, Councilman Ted Miller was frustrated by the Bush/ Berezowsky/Nelson-Gross trio in his attempt to understand why the MAT process anticipated by the trio did not require approval by the City Council. On July 17 he asked "Kristina... Why do you automatically exclude us?" City Attorney Nelson-Gross replied the same day (with copies to Bush and Berezowsky) by referring to the vague footnotes in Sequim Municipal Code (SMC) 20.01.030 and stating:

"Based on what Barry and Charlie have learned from the Tribe, they plan to submit a building permit and site construction permit, which is why we outlined the process the way we did."

That final sentence appears to me to indicate that the Bush/ Berezowsky/Nelson-Gross group had some prior role in drafting the footnotes mentioned. In any event, Councilman Miller persisted in his attempt to find that the process should go before the Council, emailing Nelson-Gross the next day:

"Kristina, If your construction is correct, can you give me an example of an A-1 appeal that would go to the city council instead of the hearings examiner? Surely you agree that the code language and table could be clearer."

Nelson-Gross responded immediately, with copies to Bush and Berezowsky:

"Yes, the code can be clearer and it is marked up for the code scrub. **Barry**—can you please answer Ted's question below?"(emphasis in original)

By the date of the "Special Sequim City Council Meeting" held July 29, 2019 to receive public comments, the Bush/Berezowsky/Nelson-Gross trio had convinced at least Mayor Smith that the MAT clinic permitting was a "done deal under the law"; the mayor stated as he opened the meeting:

"We initially called this meeting to give you the opportunity to learn more about the City's role and responsibility in the A1/A2 permitting process so that you understand the perimeters (sic) we are required

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by Washington State law to follow as it pertains to the proposed Medical Assisted Treatment Center.” (emphasis added)

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City Manager Bush then followed by stating, before opening for comments:

“Based upon conversations with the Jamestown S’Klallam Tribe, we have been expecting an application for phase 1, the Medically Assisted Treatment Center, at some point in the future...The Tribe has stated that the phase 2 project is an inpatient behavioral health facility” (emphasis added)

Why has this INPATIENT phase 2 of the MAT clinic been ignored?

Before moving along to the September 23, 2019 Council meeting, I should add one comment regarding the Council meeting held September 9. A presentation was made by attorney Jeffrey Myers which described the process to be followed by a City under a Hearing Examiner System. His presentation included:

- Cities authorized to use Hearing Examiners by RCW 35A.63.170.
- Takes place of Planning Commission in Quasi-Judicial decision-making.
- Eliminates need for Board of Adjustment to hear variances.

RCW 35A.63.170(2): EFFECT OF HEARING EXAMINER DECISIONS

Decisions may be designated as either:

- Recommendations to City Council.
 - Council must consider and takes final action.
- Final Decision
 - Appealable to City Council.
 - Council reviews after closed record hearing.

The question Councilman Miller asked City Attorney Nelson-Gross on July 17 is answered in this September 9 presentation. Yet the City Attorney has apparently continued to mislead the City Council members with her footnote nonsense.

By the time of the September 23 Council meeting, Nelson-Gross also appears to have convinced Councilman Miller that the MAT clinic was a “permitted use” as an “outpatient clinic” under SMC Table 18.33.031.

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During that meeting, Councilman Miller emphatically repeated the legal position which had been "sold" to him by Nelson-Gross:

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"The MAT proposal has two components—a legal component and a social/political one. The legal component answers the question, "CAN we build it?" The answer is "YES". There are currently no legal obstacles to doing so. Any change to that status would require court action or legal changes at the state or federal level, none of which appear likely."

Rather than yielding to the Nelson-Gross analysis, Councilman Miller should have maintained his previous position of July 17 that the MAT item should ultimately come before the City Council. However, I recognize that the City of Sequim employs a city attorney in order to give legal advice to the City, including members of the City Council. Accordingly, it should take a very unusual circumstance for a City Council member to question legal advice from the City Attorney.

And THAT is the point of this, my Opinion. I believe the City Attorney gives very questionable advice. Her advice to Councilman Miller is but one example. If Councilman Miller had given more thought to the Nelson-Gross advice, I do not believe he would have made the September 23 statements referenced above. He could have considered what types of issues "might arise" at a City Council hearing on the Tribe's MAT application. For instance, an opponent might argue that the 18.33.031 zoning Table appears in Title 18 of the SMC, and Title 18 must comply with, or is subject to, SMC Title 20 which is titled "LAND USE AND DEVELOPMENT".

The definitions of an A-2 process as one involving "limited public interest", and the C-2 process as one involving "broad public interest" are found in Title 20, NOT Title 18. This issue could at least have been examined before the City Council had Councilman Miller not been misled by the Nelson-Gross advice.

Similarly, the enormous issue of sovereign immunity could have been considered by Councilman Miller had he questioned the advice from Nelson-Gross. Absolute immunity was established for recognized Tribes by the United States Supreme Court decision *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998), wherein the Court stated:

"Indian tribes enjoy sovereign immunity from civil suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off the reservation. As a matter of federal law, a tribe is subject to suit only where

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Congress has authorized the suit or the tribe has waived its immunity."

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If the MAT clinic is approved without an express waiver of sovereign immunity, the City cannot proceed into any Court to enforce anything whatsoever the Tribe might do with the clinic. Incidentally, when I mentioned sovereign immunity to Director Berezowsky in an email December 23, 2019, he asked in a return email for my explanation of "...how it (sovereign immunity) impacts the land use process in particular..." While it was proper for Councilman Miller to rely on the Nelson-Gross advice in making his September 23 statement, I suggest that he and the other Council members hesitate in the future before following advice from this City Attorney.

The most recent example of legal arrogance and maneuvering by City Attorney Nelson-Gross occurred during the "virtual" City Council meeting on March 23. After the excellent discussion and analysis prompted by Councilman Ferrell mentioned above, Councilman Tenneson moved that all pending project reviews other than single-family residences be delayed for 90 days, due primarily to the COVID-19 crisis, which received a second from Councilman Ferrell. The City Attorney had already suggested that the Council move into "Executive Session" while the terms of the motion were being articulated. Then, when the motion received a second, Nelson-Gross again urged "Can we look at going to an Executive Session!"

Upon an unidentified staff member's suggestion, the Tenneson motion was "left on the table for discussion later" and the Council moved into Executive Session. That Executive Session was improper under RCW 42.30.110 which specifies the 15 bases upon which an Executive Session may be called—primarily relating to personnel issues and/or threatened litigation. This Executive Session was clearly called to discuss the pending Tenneson motion and second which was before the Council, since that motion was withdrawn with unanimous consent immediately following the conclusion of the Executive Session. Considering the 15 items specified in RCW 42.30.110, that was not a proper reason for holding an Executive Session. The City Attorney had somehow convinced the Council members during the Executive Session that the motion must be withdrawn. Perhaps Nelson-Gross claimed that "constitutional rights" were involved, which would be absurd. Or perhaps she convinced the members that they or the City would be exposed somehow to costly litigation if the motion passed, which would be equally absurd. In any event, the Bush/Berezowsky/Nelson-Gross objective of moving forward with the MAT clinic was the result. I do not know how City Attorney Nelson-

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Gross, Manager Bush, or Director Berezowsky convinced the City Council to unanimously allow Councilman Tenneson's seconded motion to be withdrawn. Executive Sessions are confidential, which is appropriate when such a Session is properly called; this was not a proper Executive Session, so perhaps someone will let the Sequim public know the reason the motion was withdrawn.

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In addition, paragraph (2) of RCW 42.30.110 was violated, which states: "Before convening in executive session, the presiding officer...shall publicly announce the purpose for excluding the public...". No such announcement regarding the Tenneson motion was made by Mayor Armacost at the time, and all Councilmen agreed to the Executive Session. William Armacost is in my opinion a polite gentleman who is attempting to act in the best interests of the City of Sequim. Like the example of Councilman Miller mentioned above, I believe Mayor Armacost acted innocently in following the advice of the City Attorney when proceeding into Executive Session. The fault is with the City Attorney, not Mayor Armacost.

In this Opinion item, I also wish compliment Councilman Brandon Janisse for his positive attitude and attention to detail while serving on the Council despite often being treated by staff in a manner I would term "dismissively". When Councilman Janisse asserts his fiscal attention to detail by questioning staff regarding FTEs, which is a personnel head-count term for "Full Time Equivalent", he receives only shallow responses in the Public Record materials I have reviewed. In February of 2019 Councilman Janisse was inquiring why the sensitive issue of "Church homeless camps" was assigned to the Planning Commission and, when he appeared to receive a bland answer, stated:

"I just am wondering if this council or some previous one made this call or if Charlie and Kristina decided a major policy question was better off decided by them and not elected officials."

As a conclusion to this Opinion, I believe the City of Sequim is currently operating primarily as dictated by the group of Bush, Berezowsky, and Nelson-Gross plus their associated staffs. For the most part, Resolutions and Ordinances are suggested and drafted by this group and then presented to the City Council for expected approval. Rather than following policy or other directions by the Council, Bush, Berezowsky, and Nelson-Gross generally follow directions given by the City's risk pool insurer, the Washington Cities Insurance Authority (WCIA). When the WCIA anticipates any possibility of liability, the Bush/Berezowsky/Nelson-Gross group moves into a

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protective mode. Ordinances drawn for City Council consideration are frequently pulled from WCIA recommendations. WCIA also conducts annual audits of the City, the extent and results of which I do not believe are being subject to critical review for the City Council.

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I feel Councilmen Troy Tenneson and Tom Ferrell have been outstanding additions to the Council and should be celebrated. Councilmembers Ted Miller and Brandon Janisse also render valuable and honorable service, although Councilman Miller should exercise independent judgment when dealing with this City Attorney. Mayor William Armacost represents the City with distinction and, as mentioned above, I believe is a polite individual who has received neither loyalty nor appreciation and support from the Bush/Berezowsky/Nelson-Gross clique of insiders. I hope the City Council can succeed in its mission despite the activities of entrenched individuals. The MAT clinic deserves a fair assessment by the Council, which I do not believe will be possible while the City continues to employ Charlie Bush, Barry Berezowsky, and Kristina Nelson-Gross.

However, as a final examination into the ability and integrity of Charlie Bush, Barry Berezowsky, and Kristina Nelson-Gross, and to ensure a fair review of the MAT application, I suggest that the City Counsel assign that group the task of preparing an Ordinance for submission to the Council. That Ordinance must amend SMC 2.10.090 (Hearing Examiner Appeal), and SMC 20.01.240 (Appeals, including Hearing Examiner) to clarify that all appeals must proceed before the City Council prior to any appeal to the Clallam County Superior Court. That Ordinance must also amend (a) SMC 20.01.030 Table 1 (Application Process) to reflect the amendments above to SMC 2.10.090 and 20.01.240, and (b) SMC 20.01.030 Table 2 (Application Type) by adding a final item to the identified Type C-2 list of actions, specifically "Any unusual project selected by the City Council." This Ordinance will eliminate the confusing "footnotes" and clarify the entire appellate process.

Respectfully, and just my personal opinion,

Bob Bilow

(Bob (Robert) Bilow is a Sequim resident and retired attorney.)