DECLARATION OF SERVICE

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

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA this 16th day of September, 2020.

Tellina Sandaine

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 Determination of Procedure Type: May 15, 2020 Director's Report and Staff Decision; and May 11, 2020 MDNS for Jamestown S'Klallam Tribe Outpatient Clinic	File No. CDR20-001 CITY'S CONSOLIDATED REPLY TO APPELLANT BILOW'S RESPONSE TO CITY MOTION TO DISMISS; APPELLANT PARKWOOD'S CONSOLIDATED RESPONSE; AND PETITIONER [SIC] SAVE OUR SEQUIM'S RESPONSE TO CITY OF SEQUIM'S MOTION TO DISMISS

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I. INTRODUCTION AND RELIEF REQUESTED

The City of Sequim (City or Sequim) submits this Consolidated Reply, in its continued effort to promote judicial economy and a clean and clear record, to the following responses filed by Appellants Robert L. Bilow (Bilow), Parkwood Manufactured Housing Community, LLC (Parkwood), and Save Our Sequim (S.O.S.):

(1) Appellant Bilow's Response to City Motion to Dismiss (Appellant Bilow's Response);

(2) Appellant Parkwood's Consolidated Response (Appellant Parkwood's Response); and

(3) Appellant S.O.S.'s Response to City of Sequim's Motion to Dismiss (Appellant S.O.S.'s Response), collectively (Appellants' Responses).

Consistent with what has been the City's practice in this matter, this Reply is organized by Party, rather than by issue, to be as efficient and clear as possible. Further, in addition to the arguments and authorities raised in the City's Motion to Dismiss and other pleadings filed in this matter, the City incorporates the arguments, authorities, and supporting documents from its Consolidated Response to Appellants' Motions and the Tribe's Motion for Summary Judgment and Response to Dispositive Motions as though fully set forth here.

Appellants' Responses make clear that the issues before the Hearing Examiner are legal issues and thus ripe for adjudication. Appellants have consistently failed to make any cohesive arguments supporting their position other than they think that the City is not following its own code. (*See generally,* Appellants' Responses.) Case law makes clear that demanding that a jurisdiction "follow its code" is insufficient to provide standing. Appellants ask the Hearing Examiner to impute harm, just as Washington courts have rejected in *Chelan Cty. v. Nykriem,*

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146 Wn.2d 904, 935 (2002) and *Thompson v. City of Mercer Island,* 193 Wn. App. 653, 664 (2016) amended in denial of reconsideration, *rev. denied,* 186 Wn.2d 1013). The City's Motion to Dismiss speaks for itself, and the City also supports the Tribe's Motion for Summary Judgment, both of which should be granted.

A. APPELLANT BILOW ADMITS HIS SOLE INTEREST IN THIS MATTER RELATES TO SOVEREIGN IMMUNITY. HE LACKS STANDING AND HIS APPEAL MUST BE DISMISSED.

The City stands by its standing analysis of Appellant Bilow's arguments and also adopts and incorporates the arguments and authorities in the Tribe's Motion for Summary Judgment pp. 15-17 and its Response to Dispositive Motions, pp. 4-5 as though fully set forth here. In addition, Appellant Bilow asserts that he is not arguing for an Essential Public Facilities (EPF) and concedes that the City's analysis regarding the Americans with Disabilities Act (ADA)/ Rehabilitation Act (RA) is correct. (Appellant Bilow Response, pp. 2-3.) Finally, Appellant Bilow has not shown standing under the City's code, and his appeal should be dismissed.

1. Appellant Bilow still lacks standing under SMC 20.01.080(A), so his appeal must be dismissed.

Appellant Bilow correctly notes that the term "aggrieved party" only appears in relation to A-2 decisions. (Appellant Bilow Response, p. 11.) He goes on to state correctly that he has only appealed the Typing Decision, which is an A-1 process. (*Id.*; City's Mot. to Dismiss, p. 3, ln. 13.) Nevertheless, even if the standing analysis applied to only A-1 decisions, he still does not have standing because the City's code says only the applicant may appeal A-1 decisions. SMC 20.01.080(C). So again, Appellant Bilow has no standing and his appeal should be dismissed.

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Also, Appellant Bilow is incorrect when he says that the City's code does not use the word "aggrieved[1]". Provision SMC 20.01.020(B) defines "aggrieved party", which was clearly outlined in the City's Motion to Dismiss. (p. 4, lns. 10-14.) Appellant Bilow fails to recognize the difference between a "party of record" and an "aggrieved person" under the City's code. The City has not and does not dispute that Appellant Bilow is a party of record as defined under SMC 20.01.020(P); however, he is not and cannot be the applicant as required for A-1 appeals nor can he be an "aggrieved party" for A-2 appeals as required under SMC 20.01.020(B) as set forth in the City's Motion to Dismiss. Appellant Bilow also failed to appeal the MDNS or the building permit. (City's Mot. to Dismiss, p. 3, ln. 13; Tribe's Mot. for Summ. J., p. 1, lns. 16-17.) Even if he did, Appellant Bilow cannot demonstrate any harm resulting from the decision, which means that a decision in his favor cannot redress his harm, nor is his concern among those the City is required to consider. (*See generally,* Appellant Bilow Typing Appeal and Response.) Appellant Bilow's Appeal lacks standing, and therefore his Appeal should be summarily dismissed.

2. Appellant Bilow still lacks standing because even if City staff had the ability to "clear" standing, which they do not, any such statements were made well before the actual appeal periods. Appellant Bilow bears the responsibility to ensure he has standing. He did not, and therefore his Appeal must be dismissed.

Contrary to Appellant Bilow's assertion, the City did not "clear" his ability to appeal or otherwise guarantee standing. (Appellant Bilow Response, p. 11.) In Appellant Bilow's Response, he appears to argue that the City's Community Development Director ("Director") somehow guaranteed him standing. (Appellant Bilow's Response, pp. 11-12.) Yet upon closer

[1] Appellant Bilow refers to the term "aggravated party", which of course is not referenced in the SMC. (Appellant Bilow Response, p. 11.)

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review, it is readily apparent from the Director's response that he was providing Appellant Bilow *direction* on how to appeal. (Ex. RLB-13.) The Director's email did say that by submitting written comment, Appellant Bilow would be a party of record and the City stands by that statement, but of course merely being a "party of record" is insufficient to acquire standing to appeal an A-2 process under the City's code. SMC 20.01.090(E). Even if City staff could "clear" his ability to appeal, which they cannot, such "clearance" is irrelevant because this email exchange occurred in December 2019, well before the appropriate appeal timelines. (Ex. RLB-13; *see also,* Application Status Summary, CDR20-001. SMC 20.01.240(F).

Appellant Bilow admits he provided written comments during the State Environmental Policy Act (SEPA) process, which makes him a party of record. (Ex. RLB-14.) But he failed to appeal the SEPA decision. (City Mot. to Dismiss, p. 3, ln. 13.) It is his responsibility alone to ensure he has standing in any appeal process and it is his responsibility to perfect his standing under the law. SMC 20.01.240. As such, he lacks standing for all the reasons set forth in the City's Motion to Dismiss and his appeal should be dismissed.

3. Appellant Bilow's Response makes clear that his sole issue relates to sovereign immunity and the City's alleged inability to enforce its laws. Such "harms" do not meet standing requirements under City code or Land Use Petition Act (LUPA) laws, so his Appeal should be dismissed.

Appellant Bilow solidified the City's assertion that he lacks standing by providing his Response: "THE CLEAR FOUNDATION OF MY APPEAL IS THE SOVEREIGN IMMUNITY AFFORDED THE JAMESTOWN S'KLALLAM TRIBE." (Appellant Bilow Response, p. 3, (emphasis in original); *id.* "determinative" issue is sovereign immunity.) As such, expressing his concerns about sovereign immunity — absent any real harm — have no place in a land use permit application process. Instead, he should direct his concerns to his

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Congressional Representatives who are the ones who 1) establish the parameters of sovereign immunity, and 2) are the only ones who can add, modify, or terminate that immunity. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 759 (1998) ("Tribal immunity is a matter of federal law. Although the Court has taken the lead in drawing the bounds of tribal immunity, Congress, subject to constitutional limitations, can alter its limits through explicit legislation.", *internal citations omitted*). Because Appellant Bilow makes clear that his sole interest in the matter is sovereign immunity, the Hearing Examiner must dismiss his Appeal.

B. APPELLANT PARKWOOD'S ONLY INTEREST IS THAT THE CITY FOLLOW ITS OWN CODE, WHICH IS INSUFFICIENT TO SUPPORT STANDING, AND ITS REMAINING ARGUMENTS ARE WITHOUT MERIT. BOTH OF ITS APPEALS SHOULD BE DISMISSED.

Appellant Parkwood offers nothing new or substantive to prevent dismissal in its Response, and as such the Hearing Examiner should dismiss its Typing Decision and MDNS Appeals for the reasons stated in the City's Motion to Dismiss. Moreover, the City adopts and incorporates the Tribe's arguments and authorities in its Motion for Summary Judgment, pp. 15-17, and p. 26, and its Response to Dispositive Motions, pp. 4-17 as though fully set forth here. The City also notes that Appellant Parkwood conflates and misrepresents the City's arguments and offers its "supporting arguments" in the form of circular logic. (*See, e.g.*, Appellant Parkwood's Response, p. 4, lns. 19-21 ("Parkwood as a party of record also satisfies the second prong of the 'Aggrieved party' test. Its written appeals were among those the City was required to consider when making a final land use decision….").) Thus, the Hearing Examiner should reject Appellant Parkwood's arguments in their entirety and dismiss its Typing Decision and SEPA Appeals.

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1. Appellant Parkwood is a party of record but not an *aggrieved party of record* as required under City Code. Therefore, Appellant Parkwood's Typing Decision and SEPA Appeals must be dismissed for lack of standing.

Appellant Parkwood seems to suffer from the same confusion as Appellant Bilow regarding the difference between a "party of record" and an "aggrieved party". As such, the City incorporates its arguments and authorities in Section A(1) above as though fully set forth here.[2]

Appellant Parkwood's interest is only in having the City "follow its own code". (Appellant Parkwood Consolidated Resp., p. 8, lns. 11-25 ("Parkwood asks that the City follow its own code…. That is all Parkwood has asked the City to do…. Had the City chosen to [apply the C-2 process] Parkwood would not have appealed any decisions in this matter….").) Again, this is insufficient to meet standing requirements for all the reasons set forth in the City's Motion to Dismiss and Consolidated Response, as well as the Tribe's Motion to Dismiss and its Response to Dispositive Motions.

The City explained how one acquired standing as an "aggrieved party" in its Motion to Dismiss. (City's Mot. to Dismiss, pp. 4-7, 15-16.) As with Appellant Bilow, Appellant Parkwood cannot demonstrate it is an aggrieved party as required under SMC 20.01.090(E). In an effort to avoid dismissal, Appellant Parkwood misconstrues the language in the trial court's ruling as indicating that Appellants Parkwood and S.O.S. had "standing" as determined by the court, and now the Hearing Examiner — and the City and Tribe — are somehow bound to that. (Appellant Parkwood Response, p. 5, lns. 15-26, p. 16, lns. 1-9.) The actual language contained in the trial court's opinion provides as follows:

[2] Appellant Parkwood, like Appellant Bilow, also appealed the City's typing Decision, which as argued in Section A(1) above, is limited to the applicant. Appellant Parkwood, like Appellant Bilow, is not and cannot be the applicant and thus lacks standing.

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> The court will note that Plaintiffs [Appellants Parkwood and S.O.S.] raised a question regarding whether they are parties of record. Neither the City nor the Tribe has raised that question. Given that the parties agree as to their status, the court's intervention on this point is unnecessary. ***More importantly, the motion before the court does not seek to determine party status.***

(Decl. M. Spence, Ex. I, p. 5, lns. 3-6, (emphasis added).)

Because the trial court did **not** determine party status — and could not determine party status because such determination lies within a LUPA proceeding — the Hearing Examiner should disregard Appellant Parkwood's argument in its entirety and dismiss its Typing Decision and SEPA Appeals.

Finally, vague references to its duties as a landlord are insufficient to satisfy standing requirements under City Code and LUPA. (*See generally,* City's Mot. to Dismiss, pp. 4-7.) Appellant Parkwood cannot demonstrate standing and therefore its Typing Decision and SEPA Appeals must be dismissed.

2. Appellant Parkwood's remaining arguments are irrelevant, repetitive, and circular; they should be rejected by the Hearing Examiner and both of its Appeals must be dismissed.

Appellant Parkwood continues to rely on outdated and unsupported[3] references to subsequent phases that are not the subject of the Tribe's application. (*See generally,* Appellants' Appeals, Motions, and Responses.) Appellant Parkwood seems to be applying the age-old argument, "I'm right because I said I'm right", while ignoring the analysis in the City's Motion to Dismiss and the Tribe's Motion for Summary Judgment. (*See generally,* Appellant Parkwood's Response, pp. 6-16.) In addition, the City incorporates its arguments and authorities as set forth in its Consolidated Response to Appellants' Motions and the Tribe's Motion for

[3] The mere fact that the Tribe had discussed additional phases at some point in the future are irrelevant as described in the City's Motion to Dismiss, pp. 15-30.

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Summary Judgment and Response to Dispositive Motions as though fully set forth here. Appellant Parkwood's arguments and/or allegations regarding SEPA piecemealing ADA/RA constraints, other jurisdictions' handling of similar projects, conditional uses, "conflict" within the City's Code, and EPF criteria should be disregarded and its Typing Decision and SEPA Appeals should be dismissed.

C. APPELLANT S.O.S.'S ARGUMENTS SHOULD BE REJECTED AND BOTH ITS APPEALS DISMISSED BECAUSE THEIR ARGUMENTS ARE CIRCULAR, UNSUPPORTED, AND MERTILESS.

Appellant S.O.S. engages in the same gamesmanship as Appellant Parkwood: material facts are omitted, legal analysis is incomplete or misconstrued, and circular logic is the crux of its arguments. Appellant S.O.S., like Appellant Parkwood, has offered nothing new or substantive to support its arguments. Thus, the City incorporates its arguments and authorities as set forth in Sections A(1) and B above as though fully set forth here.

1. Appellant S.O.S., like the other Appellants, lacks standing because their arguments are merely that the City must follow its own code, and thus lack harm. Thus, both its Appeals must be dismissed.

With respect to Appellant S.O.S.'s standing[4], Appellant S.O.S. mischaracterizes the City's arguments regarding adjacent landowners. (Appellant S.O.S.'s Response to City of Sequim's Mot. to Dismiss, pp. 2-5.) It argues, without legal support, that merely because City Code and SEPA require postcard notices to be sent to property owners within 300 feet, that somehow gives Appellant S.O.S. standing. (Appellant S.O.S. Response to City's Mot. to Dismiss, pp. 2-3.) Appellant S.O.S. cites no authority for this argument, so it should be rejected.

[4] Appellant S.O.S. also appealed the City's Typing Decision, which is an A-1 decision under the City's code and can only be appealed by the applicant. (Sections A(1) and B above.)

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Regardless, Appellant S.O.S. still has an obligation to perfect its own standing and to identify any harm that can be redressed by a decision in its favor. (City's Mot. to Dismiss, pp. 4-7, pp. 30-31; Tribe's Mot. for Summary J., pp. 15-17, and Tribe's Resp. to Dispositive Mots., pp. 4-5.) Appellant S.O.S. did not meet this obligation and therefore lacks standing.

Moreover, it is irrelevant what was allegedly "stated" by the City in previous litigation for the reasons set forth in Section B. That issue was not before the court, and thus carries no weight. (City's Reply to Appellants' Resps., p. 7, lns. 7-20.) A review of the plain language of the quoted section says nothing about standing; it merely says that the City agreed Appellants can raise those same arguments before a hearing examiner, which provides Appellant S.O.S. with the opportunity to have their day in court. (Appellant S.O.S. Resp. to City's Mot. to Dismiss, p. 5, 7-13.) It is not the City's responsibility to ensure Appellant S.O.S. has standing — or to ignore clear law that says Appellant S.O.S. lacks standing. (City's Mot. to Dismiss, pp. 4-7, 30-31.) Appellant S.O.S. has not met this burden and therefore lacks standing, so both its Appeals must be dismissed.

2. Like Appellant Parkwood, Appellant S.O.S.'s remaining arguments should be rejected, and both of its Appeals should be dismissed.

As with Appellant Parkwood, Appellant S.O.S. insists that outdated information (and unsupported by the Tribe's actual applications) demands that the Hearing Examiner determine that the Tribe's project is "impermissible piecemealing". (Appellant S.O.S. Resp. to City of Sequim's Mot. to Dismiss, pp. 5-11.) The City has addressed these arguments — and others — in its Motion to Dismiss and in its Consolidated Response to Appellants' Motions, and to the extent those arguments and authorities are not already incorporated, the City does so now as though fully set forth here. (City's Mot. to Dismiss, pp. 8-34; City's Consolidated Resp. to

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Appellants' Mots., pp. 11-21.) With respect to Appellant S.O.S.'s assertion that the City "decided[5]" to ignore its code, that is a gross misrepresentation, as the City has said that it must also consider ADA/RA laws and subsequent cases that have passed since the City's adoption of SMC 18.56. Appellant S.O.S. **still** has not provided any analysis or authority as to how the City can disregard well-established federal law. (City's Mot. to Dismiss, pp. 26-30.) Appellant S.O.S. offers nothing new or substantive to change the City's analysis. The Hearing Examiner should reject Appellant S.O.S.'s claims and dismiss both of Appellant S.O.S.'s Appeals.

II. CONCLUSION

Appellants lack standing, and they have offered nothing to demonstrate otherwise. They cannot point to any harm that would befall them other than vague generalizations that relate solely to the City's alleged inability to follow its own Code. Appellant Bilow's sole concern relates to sovereign immunity and he appealed only an A-1 decision, which is limited to the applicant. Appellant Bilow is not the applicant. Appellant Parkwood's insistence that it would suffer harm is nothing more than vague generalizations about landlord-tenant duties of care, which are irrelevant here. Even if the Hearing Examiner found that Appellants Parkwood or S.O.S. had standing, which it should not, Appellants' arguments fail because they rely on an unsupported EPF analysis and a nonexistent[6] ADA/RA analysis.

Moreover, Appellants' insistence that the City violated SEPA and that the project is an EPF is based solely on future, hypothetical phases, which are not and cannot be the subject of

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[5] (Appellant S.O.S. Resp. to City's Mot. to Dismiss, p. 9, n. 4 ("The City has decided that this section of the code should be "disregarded under legal direction".).)

[6] Only Appellant Parkwood addressed the City's ADA/RA issue, and its analysis seems to consist of the following: "None of these holdings offer any guidance to the present situation because Parkwood is not asking the City to discriminate against drug treatment centers or for the City to enact any new code provisions that would make them more difficult to site." (Appellant Parkwood Consolidated Resp., p. 8, lns. 8-10.) Appellant S.O.S's only apparent reference is in complaining that the City express code language "declaring this project an EPF". (Appellant S.O.S. Resp. to City's Mot. to Dismiss, p. 10, lns. 8-19.)

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these Appeals. Appellant Parkwood tries to manufacture conflicts within the City's code to "prove" its point, though with circular logic and legal and factual omissions. Appellant S.O.S. engages in similar analyses.

The City urges the Hearing Examiner to reject these arguments for all the reasons stated above, in the City's Motion to Dismiss and Consolidated Response to Appellants' Motions, and the Tribe's Motion for Summary Judgment and Response to Dispositive Motions. The City asks the Hearing Examiner to grant the City's Motion to Dismiss and/or the Tribe's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED this 16th day of September, 2020.

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