THE HEARING EXAMINER OF 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	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

Overview

The Stipulated Settlement executed between the Jamestown S'Klallam Tribe ("Tribe") and City of Sequim ("City") is adopted in lieu of the original conditions of the mitigated determination of non-significance ("MDNS") under appeal, with revisions. The most significant revision to the Stipulated Settlement is requiring that the monitoring program originally adopted by the MDNS be retained with added procedural safeguards for the Tribe.

This is the Final Decision on five consolidated appeals challenging permits approved and State Environmental Policy Act ("SEPA") review for a medication-assisted treatment clinic ("MAT clinic). Four of the five appeals were dismissed by interlocutory order on October 8, 2020 due to lack of standing. The remaining appeal, addressed by this Final Decision, was filed by the Tribe and challenges the MDNS as imposing more conditions than necessary or lawful for mitigating MAT impacts. Since filing its appeal, the Tribe and City entered into a Stipulated Agreement that resolved the differences between City and Tribe by agreement upon less onerous conditions. The central focus of this appeal

has been whether the MDNS conditions were necessary to mitigate project impacts and, if such impacts do exist, whether the MDNS conditions as revised by the Settlement Agreement adequately mitigated those impacts.

Evidence pertinent to clinic impacts were almost entirely presented by Sequim Police Chief Crain on behalf of the City and Wendy Goldberg on behalf of project opponents. A balanced and thorough analysis of project impacts would not have been possible without the exemplary efforts of both individuals. However, through extensive internet research Ms. Goldberg was able to demonstrate that public concern over MAT clinics in general are not based upon remote or speculative impacts. Ms. Goldberg was able to give examples of MAT clinics throughout the country that have generated a surrounding "crime culture" of illegal drug activity, loitering, littering and other petty, nonviolent crime.

In contrast to Ms. Goldberg's efforts to find negative materials on MAT clinics, Chief Crain took a more balanced approach. Chief Crain did not go out looking for positive or negative information on MAT clinics. Rather, she selected five of what she believed to be comparable rural cities in Washington in addition to the MAT clinic currently operated by the Tribe in Sequim to assess MAT clinic impacts. She interviewed the police chiefs from each of the five cities in addition to other persons involved with the clinics and found unanimous consent amongst the police chiefs and all of her other witnesses that MAT clinics did not generate any increases in crime in their respective communities. She also reported that three of the chiefs told her that the MAT clinics of their communities did not increase the local homeless population. Chief Crain did not identify whether she had spoken to the other two chiefs about this issue.

The focus in this Decision upon the evidence presented by Wendy Goldberg and Chief Crain is not intended to discount the importance of the testimony from Tribal witnesses, in particular Mr. Simcosky and Dr. Cunningham. Mr. Simcosky and Dr. Cunningham presented valuable insight as to the operations of the proposed clinic and the efforts of the Tribe to minimize impacts to the community. Mr. Simcosky and Dr. Cunningham succeeded in instilling a high degree of confidence that the clinic would be well run in a manner sensitive to community impacts. As outlined in this Decision, how a clinic is run is one of the most important factors in what impacts it has on a community.

For anyone who sat through the five days of hearings, it should be apparent that the Tribe does not intend on cramming as many patients as it can into its facility to make as much money as it can with complete disregard to impacts on the Sequim community. The Tribe's existing drug treatment facility on 5th avenue is an example of a well-run clinic. It has not generated any significant new calls for service or any discernable increases in

homeless population, nuisance or "crime culture" associated with more poorly run facilities in other parts of the country. However, there are no guarantees that individuals of the same caliber and community sensitivity as Mr. Simcosky and Dr. Cunningham will always be running the clinic. The testimony presented by Ms. Goldberg and Chief Crain was most pertinent to what impacts can be expected of the proposed MAT clinic regardless of who runs it.

Although the Tribe has made a convincing case that it will act responsibly and will work with the Sequim community to mitigate impacts, there are too many unknowns associated with locating a MAT clinic at its proposed location to confidently conclude that the Stipulated Agreement as presented will effectively mitigate all impacts. The proposed MAT clinic is not a large facility when compared to other facilities throughout the nation, but it is large for Sequim and for that reason could disproportionately impact police and emergency services.

The potential disproportionate impacts are evident from the statistics provided by Chief Crain and Ms. Goldberg. As testified by Chief Crain, she expects about 3-5% of the Sequim population to "*cause problems*," which for Sequim's 7,500 population translates to approximately 225-375 people. She also testified that Sequim has a homeless population of 15-30 people. According to studies presented by Ms. Goldberg, of the projected 250 yearly patients for the proposed MAT clinic, 13% will have some involvement with criminal justice and approximately half will be "housing insecure" during treatment. Further, Goldberg statistics also show that 7 of 8 MAT patients have opioids in their systems within three months of completing treatment.

If just a small percentage of the proposed clinic's 250 patients per year decide to make Sequim their home, the numbers of persons engaged in crime and the total number of homeless can increase substantially over time over Sequim's modest baseline conditions. In contrast, the cities used for comparison purposes by Chief Crain are significantly larger and proportionate impacts to baseline conditions presumably significantly less. Also of significance is the fact that unlike the Anacortes facility and potentially other cities studied by Chief Crain, the proposed MAT facility is fairly close to downtown Sequim, making the surrounding area a more attractive place to loiter and create the "crime culture" that the Goldberg materials reveal is at least sometimes instigated by MAT clinics.

Unfortunately, it is not possible to estimate from the record how many patients, if any, will transfer residency to Sequim or whether the proximity to downtown businesses and services will create the critical mass that spurs the creation of crime culture that is sometimes associated with MAT clinics. It is entirely plausible, however, that numerous

MAT patients will choose to transfer residency to Sequim while acquiring treatment. A significant mitigation measure volunteered by the Tribe is providing shuttle service to patients who don't have their own transportation, which will help reduce the transfer of residencies to Sequim. However, even having to deal with regular shuttle service may be too burdensome for some. Over 60% of MAT patients are unemployed and as noted previously about half are "housing insecure." Without stable housing or employment to anchor themselves in any particular area, persons committed to recovery may not have much reason to stay in their current location. They may find it more appealing to live in the rain shadow of Sequim rather than soggier areas such as Forks.

To exacerbate matters, the Tribe has declined to make adherence to its community response plan a condition of approval. It is understandable that the Tribe does not wish to have its business plan locked in concrete. However, the community response plan was the only document that limited the proposed clinic patient load to 250 patients per year. In the absence of that maximum limit, the Tribe could conceivably be overrun with patients, which is what appears to be a major cause of the "crime culture" Ms. Goldberg's materials identified in other jurisdictions.

The SEPA rules require a "worst case" analysis if project impacts do not qualify as remote or speculative and there is insufficient information to accurately make choices between alternatives. In this case the choice of alternatives involves selecting amongst potential mitigation measures or requiring an environmental impact statement. There is insufficient information in the record on how many patients, if any, can be expected to contribute to police and medical service demand in the Sequim community. It is difficult to even speculate at what a worst case scenario would be for Sequim. Even if just a third of the "housing insecure" decide to move to Sequim from a patient load of 250 patients (which would be 40 patients) and 13% are engaged with the criminal justice system, that likely would add to both police demand and homeless populations over time, which in turn under the substantial weight that must be accorded to the MDNS would likely create a significant increase in demand upon other emergency services.

Rather than attempt to engage in an arbitrary worst case analysis, a more precise and effective solution would be to simply adopt an enforceable monitoring plan of the type that was originally contemplated in the MDNS. With a right of administrative appeal added to that condition, the Tribe would be assured that any additional mitigation would directly and proportionately address the impacts of the proposal in a manner that is consistent with its statutory and constitutional property rights and the anti-discrimination provisions of the Americans with Disabilities Act. That is how this Decision resolves the Tribe's appeal.

Exhibits

The following exhibits were admitted into the record during the November 16-November 24, 2020 hearing. Additional exhibits were entered after the hearing to allow the public to respond to comments made within the Question and Answer function of the Zoom Virtual Meeting software. Documents cited in this Decision from exhibit lists will be identified by their numbering in the exhibit lists, e.g. Ex. 5 of the City's exhibit list will be referenced as "City Ex. 5."

1. City Exhibit List
2. Tribe Exhibit List
3. All exhibits posted on the City MAT website on November 16, 2002: https://www.sequimwa.gov/964/MAT-Clinic-Appeals
    a. City and Tribe witness/exhibit lists and rebuttal lists
    b. 11/3/20 Goldberg requests for cross-examination, testimony and intervention
    c. Staeger and Wilke request for testimony
    d. Summary judgement motions, briefings and rulings from SOS, Parkwood, Tribe and City
    e. Bilow request for subpoenas
    f. Briefing/objections to emergency council meeting amending process requirements
    g. Appeals of Bilow, SPS, Parkwood and Tribe
    h. Prehearing Orders/Rules of Procedure
4. Emails between all parties to appeal and examiner excluding public written comment submitted after 11/9/20[1] except as authorized by Examiner and any other exhibits/documents excluded by Examiner ruling.
5. Goldberg redacted comments dated November 20, 2020.
6. Wilke Letter 11/9/20 regarding MAT impacts/providing expert testimony
7. Staeger 11/9/20 email with attachments – experience, testimony, settlement agreement revisions to MDNS
8. Public Comment on Questions and Answers
    a. Email dated November 25, 2020 from Marsha Maguire
    b. Email with attachments dated November 20, 2020 from Rebecca Horst
    c. Email dated November 29, 2020 from Jeffrey McAllister,

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[1] As required by the Appearance of Fairness doctrine, RCW 42.36.060, the Examiner did not read or consider any emails that were not admitted into the record.

d. Email dated November 29, 2020 from Kathy Trainor, excluding attached spreadsheet.
e. Email dated November 29, 2020 from Tom Cox
f. Email dated November 28, 2020 from Jon and Donna Harrison

9. Revised Monitoring Committee Condition
10. Q&A comments submitted during hearing.
11. City and Tribe objections to Q&A response emails[2].
12. Email dated November 27, 2020 from Gayle Baker.[3]

The exhibits above were those considered for issuing this Final Decision. The October 8, 2020 Interlocutory Order dismissing the four SOS and Parkwood appeals and the November 6, 2020 Order Denying Reconsideration of those dismissals was based upon the motions, responses and replies (with all accompanying exhibits and declarations) to the dispositive motions filed by the City, Tribe, SOS and Parkwood. The Order Denying Reconsideration erroneously omitted Mr. Bilow's reply in its "Evidence Relied Upon" section. His reply with attachments should be considered part of the record considered for the Order Denying Reconsideration.

Testimony

A summary of testimony was prepared to assist the Examiner in locating testimony in the video and audio recordings of the appeal hearing. That summary is not to be considered a part of this decision, but has been made available to the City for those who could use the summary for the same purpose.

Findings of Fact

Procedural:

1. Appellants. The Appellant is the Jamestown S'Klallam Tribe

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[2] Both City and Tribe objected to the Trainor spreadsheet, Ex. 8d, noting that it was not a spreadsheet prepared by Chief Crain. That objection is sustained and the spreadsheet is excluded, as Chief Crain's analysis was clearly limited to a smaller number of cities as outlined in her report attached to the MDNS under appeal. As requested by the Tribe, only emails responsive to the Q&A comments were admitted after close of the hearing as determined by an Examiner alternate (to avoid ex parte contact by Examiner).
[3] The email simply is a written version of Mr. Baker's testimony during the hearing. The Examiner authorized Mr. Baker to submit a written version of his comments during the hearing.

2. Hearing/Procedural History**.** The hearing was opened on November 16, 2020 and was held over five days through November 24, 2020. The hearing was then left open through November 28, 2020 to give the opportunity for the public to respond to information that had been submitted to the Examiner via the Zoom Q&A chat function. The Examiner had limited use of the Q&A line to questions to forward to witnesses. Nonetheless some members of the public used the Zoom feature to express opinions about the content of testimony. The Examiner was obliged to give the public an opportunity to respond to these ex parte contacts.

Prior to the hearing, by Revised Prehearing Order dated October 20, 2020, the Examiner set the procedures for public participation in the hearing. The order set a deadline of November 9, 2020 for public written comments. See Ex. 3h. This written deadline was also included in the public notice published for the hearing. See Ex. 3. Ex. 5-7 comprise the written comments submitted by the public prior to the hearing. The Goldberg comments were accepted after the deadline. Ms. Goldberg had originally submitted her comments on time as an expert witness, agreeing to be subject to cross-examination. Her written comments were a mix of internet research and expert opinion based upon that research. Ms. Goldberg subsequently decided she did not want to be subject to cross-examination. When she changed her mind and chose to not present as an expert, she was allowed to present her written materials with her expert opinion redacted.

3. Appeal/Proposal Description. The Jamestown S'Klallam Tribe filed its appeal on June 1, 2020, contesting the May 11, 2020 MDNS issued for the Jamestown S'Klallam MAT clinic. See City Ex. 7. The appeal asserted that the MDNS, City Ex. 2, erroneously imposed mitigation measures in the absence of any probable significant adverse impacts.

The Tribe's appeal was one of five consolidated appeals filed over the MAT clinics. Save Our Sequim ("SOS") appealed the project classification for the proposal, the design review decision and the associated MDNS. Parkwood appealed the same decisions as SOS. All four appeals were dismissed for lack of standing on October 8, 2020.

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

4. Stipulated Agreement. On September 18, 2020, the City and Tribe submitted a stipulated settlement ("Stipulated Agreement") of the Tribe's MDNS appeal. Ex. T1. The settlement provided as follows:

As a settlement of the Tribe's appeal, the City of Sequim and the Tribe jointly request the Hearing Examiner replace the mitigating conditions in the MDNS with the conditions set forth in Exhibit A. Accordingly, the conditions set forth in Exhibit A should replace the MDNS conditions incorporated in associated City approvals for the Project, including the design review approval dated May 15, 2020.

5. Impacts to Police Services. As mitigated, the proposal will not create any probable significant adverse impacts to Sequim police services.

Overall, the evidence establishes that MAT clinics can be the source of non-violent drug activity, such as illegal drug transactions, loitering and littering. These types of impacts in large part appear to be dependent upon how a MAT clinic is run and operates. As noted in an article submitted by Wendy Goldberg, quoting an Arizona state senator who was studying proposed MAT legislation, MAT clinics are "*like sober living homes – if they are properly run, you don't even know they are there*.[4]" In this case the evidence is compelling that the clinic will be "*properly run*." Coupled with the SEPA mitigation measures adopted by this condition, significant adverse impacts to police services are not found to be likely.

The MDNS under appeal recognizes that the MAT clinic will adversely affect police services and adopts a host of measures to mitigate them. The revised MDNS, City Ex. 2, concludes that the Sequim Municipal Code does not have adequate standards to mitigate against the "*potential for adverse environmental impact to public services due to the possibility of increased law enforcement.*" Several mitigation measures are designed to specifically address added demand upon law enforcement. As shall be discussed, some of these measures were subsequently made less restrictive or eliminated entirely as part of the Stipulated Agreement between City and Tribe (see Finding of Fact No. 4). As shall be further discussed, the conditions of the Stipulated Agreement are still sufficient to address impacts to police services, with some moderate modifications, the most notable of which is to reinstate the enforceable monitoring program adopted in the MDNS.

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[4] *Can A Methadone Clinic Benefit A Community?*, September 2018, North Central News (Phoenix on-line paper)

A. SEPA Responsible Official Testimony Does Not Overcome Substantial Weight due to His Original Determinations that Clinic Will Create Probable Significant Adverse Environmental Impacts that Necessitate Mitigation.

Mr. Berezowsky, as Sequim's SEPA responsible official, testified in favor of revising the MDNS he issued to support the Stipulated Settlement. In discounting the need to impose the conditions of the MDNS as originally proposed, Mr. Berezowsky's testimony could arguably undercut the substantial weight accorded to that MDNS by the SEPA rules. It is determined that with a couple exceptions addressed below, the Stipulated Settlement revisions to the MDNS still accomplish the mitigation objectives of the MDNS and/or are necessary to comply with applicable law. In this regard, it is determined that Mr. Berezowsky's testimony does not undercut the substantial weight that is required to be given to Mr. Berezowsky's MDNS determinations that the project will create probable significant adverse impacts to police and emergency services and that mitigation along the lines adopted in the MDNS are necessary to mitigate those impacts.

As noted in Conclusion of Law No. 5, substantial weight must be given to the SEPA responsible official's determination that, as mitigated in the MDNS, the proposal will not create probable significant adverse environmental impacts. As further concluded in COL No. 5, substantial weight is also given to the responsible official's finding that the MDNS conditions are necessary to mitigate the project impacts. It is clear, however, that substantial deference does not mean unequivocal acceptance in the face of any contrary evidence. In this regard, the testimony of the responsible official can be very compelling if the official is advocating a revision to the threshold determination. The person most knowledgeable about the basis for issuance of the MDNS is the responsible official. If the responsible official provides a plausible reason for revisions, that testimony can overcome the deference due the original issuance.

With a couple exceptions, Mr. Berezowsky's reasons for supporting the Stipulated Agreement were compelling enough to justifying the Stipulated Agreement revisions to the MDNS despite the substantial deference accorded to it. As outlined in his response to cross-examination from Mr. Spence, conditions were revised either because Mr. Berezowsky didn't believe they were legally enforceable, or the revisions created less of a hardship on the Tribe without a significant corresponding reduction in mitigation. With some modest exceptions, Mr. Berezowsky's position on the revisions is found to be adequately supported by the record.

Mr. Berezowsky's opinion that some conditions were not legally enforceable are addressed in COL No. 3 and 4 for Conditions 5c, 5d, 5j and 5k[5]. As to his factual conclusions, all of the conditions revised for non-legal reasons are found to maintain a roughly equivalent degree of protection to the original mitigation measures with exceptions as discussed below.

As to Condition No. 3, requiring adherence to a community response plan, Mr. Berezowsky correctly noted that the portions of the plan related to community impacts, such as shuttle transportation and number of patients, is already covered to the extent necessary as part of the proposal description (to which the Applicant is bound) or in the conditions of approval. A large portion of the response plan deals with clinic operations that do not have an effect on the community and it would be unduly burdensome to lock the applicant into such a business plan. The one exception is a statement at page 3 of the response plan that provides that the clinic will "*treat no more than 250 patients per day*." As identified in FOF No. 5B1c, one of the reasons that some drug treatment centers have problems is because they overwhelmed with patients. Indeed, one of the reasons Chief Crain concluded that police impacts of the MAT clinic would be negligible was that the proposed clinic would not be overwhelmed with patients as has occurred in other clinics located in more urban settings. See City Ex. 5. Ultimately, the enhanced monitoring program imposed by this Decision is found to adequately mitigate for the lack of a patient cap.

Striking Condition 5e was appropriate. Condition 5e required the execution of a good neighbor agreement. An example of a good neighbor agreement, executed by the City of Renton, is attached to the MDNS. See Murphy Dec. Ex. D to Tribe's Summary Judgment Motion. Mr. Berezowsky accurately testified that the terms of the example agreement are all covered by the Stipulated Agreement conditions, including restrictions against loitering, graffiti, camping and government/neighbor communications (covered by the monitoring committee of Condition 5A of the MDNS). The only material missing item is requiring patients to sign a code of conduct. During the hearing, Mr. Simcosky often cited the code of conduct as one of the reasons impacts would be minimal. Overall, the record is still unclear as to how effective or necessary such a patient contract would be. The enhanced monitoring imposed by this Decision adequate covers the absence of this requirement

[5] Condition 5h on its face was necessarily revised to comply with the law, as it essentially provides that the original condition shall apply to the extent consistent with HIPAA. As such, no further analysis in the conclusions of law is necessary.

– the monitoring committee will have the option of requiring the contract if the contract is later found to be necessary and effective.

Striking Condition 5g was also appropriate. The condition requires City approval of how the Applicant intends to "ramp up" patient care during the first year of operation. As testified by Mr. Berezowsky, the condition is unnecessarily intrusive into clinic operations. There is also no apparent material benefit to the community in requiring a "ramp up" plan, even with substantial weight afforded the original determination that the condition is necessary.

As testified by Mr. Berezowsky, modifications to Conditions 5f, 5i, 5n, 5o, 5p and 5q are all acceptable modest revisions that make the provisions less burdensome on the Applicant and/or provide more clear direction with no corresponding material reduction in effectiveness.

Mr. Berezowsky also testified that the modifications to 5m do not significantly reduce its mitigation. Condition 5m requires that "*there will be no unauthorized outdoor line-ups or congregating of patients outside of designated areas*." However, as outlined in the evidence addressed below, one of the impacts associated with MAT clinics is excessive queuing and loitering as patients wait to enter the clinics. To avoid this impact upon public spaces such as sidewalks and roads, Condition 5m is clarified to provide that the designated spaces must be located on the clinic property.

The one point of disagreement with Mr. Berezowsky's support of the Stipulated Agreement are the revisions to the monitoring program required by Conditions 5A and 5B. Condition 5A requires the formation of a committee composed of stakeholders with an interest in the impacts of the MAT clinic. Condition 5A tasks the committee with formulating a monitoring and evaluation program prior to occupancy. Condition 5B requires the committee to also form a contingency plan that identifies corrective action for deficiencies found from implementation of the monitoring plan. The Stipulated Agreement changes the role of the committee from adopting an enforceable monitoring plan to providing nonbinding advisory input to the Tribe.

At hearing, during direct examination by the Tribe's attorney, Mr. Berezowsky testified that Condition 5A was simply modified to provide additional detail and that

Condition 5B achieves the same result in its modified form[6]. This is incorrect. The revisions to Conditions 5A and 5B are highly significant. In their original form the conditions authorized the committee, which was not run or governed by the Tribe, to evaluate on-going impacts and impose corrective action as necessary. The revised conditions deprived the committee of all authority to require any monitoring or corrective action and expressly revised their authority to an advisory capacity only. As outlined in COL No. 5, substantial weight must be given to the MDNS determination that the committee, empowered to impose monitoring and corrective action, was necessary to mitigate project impacts. Mr. Berezowsky provided no compelling testimony to nullify this conclusion. Consequently, substantial weight is still accorded to his original determination that a committee with authority to require monitoring and corrective action is necessary to mitigate project impacts.

With retention of an enforceable monitoring program, Mr. Berezowsky's testimony established that the Stipulated Agreement serves as an adequate and appropriate substitute for the original MDNS conditions. The Stipulated Agreement revisions either serve as adequate and comparably effective replacements and/or cannot legally imposed. Beyond this, his testimony did not reduce or override the substantial weight due the determination that police and emergency service impacts needed to be mitigated to avoid probable significant adverse impacts. Mr. Berezowsky did a couple times testify that he didn't find the proposal to create any probable significant adverse impacts, but it was unclear whether he considered it to have no impacts either before or after the MDNS mitigation. Further, even if he does now believe that no mitigation is necessary to remove significant impacts, his understanding of project impacts was based upon an evaluation of the environmental checklist, much of which was based upon the presumption that numerous mitigation measures would be implemented, including the proposed shuttle transportation, on-site security, a social services navigator and other implementation of the Tribe's community response plan[7].

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[6] During cross-examination by Mr. Spence, Mr. Berezowsky stated he had stricken 5B on advice of the City Attorney. This conflicts with his prior testimony that the revision resulted in no material change and undermines the credibility of this particular testimony. In any event, for the reasons identified in COL No. 7, the revision was not necessary for legal reasons. In the face of incomplete information and worst case scenario analysis, the Applicant has the choice of doing an environmental impact statement if it does not wish to comply with the requirements of a binding monitoring and corrective action plan.

[7] Mr. Berezowsky testified that his analysis of police impacts was based on input from the police department. Chief Crane based her conclusion of negligible impacts in part upon the presence of on-site

In sum, Mr. Berezowsky's testimony did not serve to override the substantial weight due to his original determination that MDNS mitigation was necessary to eliminate probable significant adverse environmental impacts. However, his testimony was compelling enough to establish that the substituted mitigation of the Stipulated Agreement was an adequate substitute, as modified by this Decision.

B. Police Impacts Not Remote or Speculative.

As a preliminary matter, it is determined that demand upon police services is associated with MAT clinics in general, and hence potential impacts to those services by the proposal do not qualify as remote or speculative. Wendy Goldberg, Ex. 5, provided the most compelling and arguably only credible evidence in the record on the existence of criminal and nuisance impacts associated with MAT clinics. She identified numerous newspaper articles, studies and some City Council minutes[8] evidencing these types of impacts in other communities.

1. Impacts on Cities.

Ms. Goldberg's materials show a significant impact on police services in a number of cities. Her most pertinent articles are summarized below:

a. **Shoreline, WA**. Ms. Goldberg presented city council minutes dated January 27, 2014 from Shoreline, Washington, where Shoreline police reported to the City Council that a methadone clinic in Shoreline had instigated a number of complaints from business owners, homeowners and

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security, shuttle transportation, and implementation of the community response plan, which as noted previously includes many of the conditions imposed by the MDNS. See City Ex. No. 5.

[8] Ms. Goldberg's materials also included some quotes of a City of Forks police chief who had some strong opinions about the criminality and homelessness attracted to MAT clinics. However, the chief was not present for cross-examination and there was insufficient foundation to evaluate the relevancy of his claims. Most important, it's unknown whether Forks even has a MAT clinic within its jurisdiction, or whether the police chiefs' comments were based upon his experience as a narcotics officer in other jurisdictions. Ms. Goldberg's submission of what appears to be a blog entry from Adam Rasmussen, an engineering technician and "*non-aspiring musician*" is equally unavailing, as Mr. Rasmussen attributes the closing of businesses (acknowledging "*perhaps indirectly, but there's no denying it's a factor*") and other fairly speculative conclusions drawn from his patronage of a drug treatment clinic in Oshawa, Ontario. Since the Forks and Rasmussen had little probative value, they were not included in the summary of Ms. Goldberg's materials.

other citizens who did not feel safe in the area. A police detective played video case studies for the Council that showed illegal activity. He noted that many of those involved in the activity did not reside in Shoreline or north Seattle. He further reported that clinic patrons were linked to criminal activity such as larcenies, vandalism, and auto theft[9].

b. **Baltimore, MD**. A member of a Baltimore citizen's task force studying the impacts of an oversaturation of MAT clinics in her community wrote a piece in the *Baltimore Post Examiner* as follows:

> *…the correlation is conclusively high between high treatment density and an after-treatment open air drug market surrounding the clinics' OTP's [Opioid Treatment Programs].*
>
> *…over 90 percent of the drug arrests in the CVCBD (Charles Village Community Benefits District) area originated near the OTPs. What's more, only 20 percent of those arrestees lived within the 21218 zip code. This is further proof that individuals are coming to an area of OTP saturation to buy and sell drugs.*[10]

c. **Phoenix, AZ**. According to an article in the North Central News, which appears to be a newspaper for the "*north central Phoenix community*," the opening of a new MAT clinic in Phoenix, Arizona created a "*huge influx of new clients*" that "*not only overwhelmed the clinic but impacted the adjacent neighborhood as well*." The article noted that a task force was formed to address the impacts of the clinic, which included

> "*[c]omplaints of loitering, trash, people dealing drugs on their property, Veyo drivers using other businesses' parking lots, jaywalking, and more. But it's the flow of patients that begins at 4:30 a.m. that had grown to a breaking point for the clinic and the adjacent community*." One nearby business owner was

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[9] City of Shoreline, Shoreline City Council Summary Minutes of Special Meeting Monday, January 27, 2014.

[10] *Opioid Treatment: Research shows saturation of treatment centers increases crime*, by Robert Emmet Mara, Baltimore Post Examiner, February 25, 2015

quoted as saying that "*I've watched my community turn into a cesspool of addicts, crime, halfway houses, and prostitution…. I know firsthand that crime has increased, as I witness it daily. I don't want any of your clinics in my neighborhood." [11]*

d. **New York, NY**. Another webpage from a site called "dnainfo" stated in an article for its New York edition that the patients of a relocated methadone clinic to Queens, New York "*often litter the sidewalk, behave in a noisy way, argue, and hang out for hours in front of local businesses and at nearby Major Mark Park intimidating residents.*" An owner of a nearby White Castle restaurant, complaining about the clinic at a community council meeting, stated that the clinic had been creating severe problems, including the sale of pills in the area. A deli clerk noted that patrons were hanging out in his deli and stealing candy. The commanding officer of the local precinct testified that prescription drugs "*seem*" to be sold illegally in the area, but there hadn't been a large increase in measurable crime, such as robbery, grand larceny or car break-ins. [12]

e. **Unspecified Location**. Author Rachel Greene Baldino, MSW, in her 2001 book "*Welcome to Methadonia: A Social Worker's Candid Account of Life In A Methadone Clinic*," gives an insiders perspective on what occurs in methadone clinics:

Methadone advocates argue that methadone cuts down on heroin related crime, and this may be true. From what I observed in my year at a methadone clinic, however, a whole crime culture blossoms around methadone clinics, a culture founded upon the illegal sale of take-home doses, urine samples, pills, cocaine, marijuana and of course, heroin. But it should come as no surprise that drug dealers flock to the areas around methadone clinics; they understand only too well that they have a built-in customer base in these neighborhoods….

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[11] *Can a methadone clinic benefit a community*?, North Central News, Phoenix, AZ, September 2018, http://northcentralnews.net/2018/features/sunnyslope-methadone-clinic/?fbclid=IwAR00vW1jrHhS-OjcRNPnqfJyJV6cyqhtMCZn6njOkiBEj1jQjvy65W-KnsA.

[12] *Methadone Clinic Makes Jamaica Corner 'Very Sketchy,' Locals Say*, Ewa Kern-Jedrychowska | May 9, 2017, https://www.dnainfo.com/new-york/20170509/jamaica/methadone-clinic-175-20-hillside-ave-joe-moretti-clean-up-jamaica-queens-103rd-precinct

> *Methadone clinics often serve as centralized locations for addicts to get together to deal drugs, get high, turn tricks, buy and sell take home doses and clean urine samples, and the like. As I already pointed out, methadone clients are nothing if not entrepreneurial. Clearly, not all methadone patients stop engaging in addictive and criminal behavior just because they are in treatment, in part because they trigger one another to continue abusing drugs. In addition, some clients pick up more drug habits at methadone clinics than they had before entering treatment. I have often wondered what the policymakers who created methadone clinics could have been thinking when they decided to assemble hundreds of addicts in a central location.*

f. **Boston, MA**. A 2007 article about a methadone clinic in Boston, MA noted that since a methadone clinic opened across from a city park, people started using the children's wading pool to wash their laundry.[13]

g. **Seattle, WA**. A KOMO news webpage quoted a MAT clinic patient and resident of Seattle's longest running homeless camp that "*[t]his is a convenient place because the little local methadone clinic Evergreen is why we are at this particular location*,"[14]

2. Conclusions on Goldberg Materials.

Ms. Goldberg's analysis hardly meets the rigor or detail of a sociological study analyzing the effects of MAT clinics on communities. However, her materials are sufficient to show that concerns over impacts to police services are not remote or speculative. As is clear from the materials about MAT clinics in the five cities above, there is some crime associated with MAT clinics. As detailed in the Rachel Baldino book, methadone clinics can serve as the locale for instigation of a "crime culture." Drug dealing appears to have been prevalent in many of the cities identified in the Goldberg materials, as is loitering, littering and some prostitution.

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[13] *Corktown: The panic in needle park*, by Melissa Whetsone, March 17, 2007, Boston Globe and Mail; https://www.theglobeandmail.com/news/national/corktown-the-panic-in-needle-park/article681351/

[14] https://komonews.com/news/local/woman-her-4-kids-among-those-forced-out-jose-rizal-park

Only one community, Shoreline, identified any linkage to more serious crimes such as vandalism and auto theft, while in Phoenix the police commander noted there "seems" to be drug activity going on but not any measurable in increase in other types of crimes. Experiences in Seattle and Boston suggest that MAT clinics may attract the homeless into nearby areas, which in turn could also result in more crime.

The crime associated with MAT clinics in the Goldberg materials is consistent with the individual crime statistics associated with MAT patrons. The evidence is very compelling that patrons of MAT clinics engage in a high frequency of criminal conduct. In a tapering study of 516 MAT suboxone patients in 11 clinics in 10 US cities, 13% had "criminal justice" involvement at intake and 12% after six months.[15] Another study compared arrest rates between addicts who received MAT treatment and those who did not. The study was based upon a literature review of 1,411 articles, yielding 30 randomized control trials and 10 observational studies. Nine of the studies assessed arrest rates six months and a year after MAT treatment and compared them to addicts who hadn't received treatment. The rates were the same for both groups of individuals, 36%. [16] These arrest rates are certainly high, but it is uncertain from the study how many of the studies were based upon populations of former prison inmates. At least one of the studies was identified as based upon former inmate populations. As such, they are of questionable relevance to the proposed MAT clinic. The 13% criminal justice involvement identified in the tapering study, however, does corroborate the finding that criminal activity amongst MAT patients is significantly higher than that of the Sequim population, as Chief Crain testified that only 3-5% of the Sequim population causes problems.

Although crime and other nuisance activities are undeniably associated with at least some types of drug treatment clinics, the Goldberg materials do not conclusively establish on their own that such impacts are likely to occur for the

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[15] *Buprenorphine tapering schedule and illicit opioid use*, Addiction, 2009 Feb; 104(2): 256–265, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3150159/.

[16] *Effects of medication assisted treatment (MAT) for opioid use disorder on functional outcomes: A systematic review*, Journal of Substance Abuse and Treatment, 2018 Jun;89:28-51.

proposed MAT clinic. As exemplified in the discussion of the Phoenix clinic, at least some of the criminal activity is attributable to clinics that are overrun with demand. Of particular importance is that it's unknown how many of the facilities assessed in the Goldberg materials qualify as what Chief Crain identified as "dose-and-go type facilities" in urban areas such as Seattle, where large numbers of patients go to a treatment site overwhelming the site and staff causing lines to form outside the building, causing disturbances to the surrounding neighborhood. The proposed MAT clinic, limited to 250 patients[17], many of whom will be shuttled to and from the facility, will likely not have this type of patient flow. It's also unclear how many of these clinics, if any, had the full "wrap-around" services proposed by the Applicant, which according to Mr. Simcosky makes a material difference in treatment success rates.

C. Chief Crain Analysis Largely Supports Her Conclusion that the Proposal will Have Negligible Impacts on Police Services.

Chief Crain conducted an exemplary investigation of MAT clinics in comparable Washington State cities to reach the conclusion that the proposed MAT clinic's impacts to Sequim police services would be "*negligible*."

Chief Crane's investigation was based upon interviews with police chiefs and others working in six rural communities similar to Sequim that had MAT clinics. She assessed the impacts of the clinic currently operated by the Tribe in Sequim and clinics in Anacortes, Kelso, Hoquiam, Arlington, and East Wenatchee. Chief Crain interviewed the police chiefs of each of these communities to inquire about impacts on police services. Chief Crane focused special attention on the Anacortes facility, run by the Swinomish Tribe, because its clinic is very similar to the clinic under appeal. The Tribe's proposed floor plans and operational plan provide for similar security, similar process flow of patients and similar interior accommodations to that of the Anacortes facility. She also interviewed the Regional Administrator for the Substance Abuse & Mental Health Services Administration ("SAMHSA") to discuss

[17] As previously noted, the Tribe has declined to limit its operations to 250 patients, but its initial plans are focused on this number. The enhanced monitoring plan is designed to address impacts of a greater number of patients, if that occurs.

the Anacortes clinic and also interviewed the Anacortes police department's imbedded social worker. Chief Crain also did a site visit to the Anacortes facility.

Significantly, none of the police chiefs from any of the communities investigated by Chief Crain found any appreciable increase in criminal activity. From her own department, Chief Crain found that calls for service from the existing Tribe's facility on 5th Avenue only increased from a yearly average of 23 calls since it was constructed in 2010 to 25 calls once the clinic started providing opioid treatment in 2017. It's unknown if the total number of patients accessing the clinic increased as a result of the added opioid treatment program.

From her discussions with the SAMSHA Regional Administrator, Chief Crain learned that what distinguishes a MAT clinic with negative impacts to those that do not is good site location, good building and site, the development of good relationships with neighbors and a good model of implementation.

The Chief's findings are supported by a study conducted on violent crime impacts of MAT clinics in Baltimore, Maryland. The study used 2011 crime statistics for the 78 publicly funded drug treatment centers in the Baltimore. See Tribe Ex. 14.[18] The study found that there was more violent crime committed in proximity to liquor and corner stores and about the same amount of violent crime in proximity to convenience stores.

D. Crain, Goldberg and Baltimore Violence Study Establish No Violent Criminal Conduct but Are Incomplete on Nonviolent Crime.

Overall, the Crain analysis is significantly more compelling than the Goldberg materials. The evidence is fairly clear that the proposal will not result in any increase in violent crime. However, there is insufficient information to assess whether the MAT clinic will create a significant increase in nonviolent crime associated with the "crime culture" referenced in the Rachel Greene Baldino book (*see* Finding of Fact No. 5B1e).

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[18] C.D. Furr-Holden et al., *Not In My Back Yard: A Comparative Analysis Of Crime Around Publicly Funded Drug Treatment Centers, Liquor Stores, Convenience Stores, And Corner Stores In One Mid-Atlantic City*, 77 J Stud Alcohol Drugs 17-24 (2016).

Whereas Ms. Goldberg likely sought out all the negative materials she could find for instances extending back to 2007 throughout the county, Chief Crain selected her MAT cities based upon similarity to Sequim and then investigated whether the MAT clinics created any police service impacts. Chief Crain had no reason to skew her results in any particular direction. Indeed, if she were, one would expect that it would be to exaggerate public safety impacts, so that she could secure funding or other mitigation for her department. Significantly, many of the Goldberg materials were based upon highly urbanized areas where MAT clinics could be inundated with patients. The cities selected by Chief Crain, by contrast were in comparable rural areas where many patrons had to drive or be transported in from other areas. The Goldberg materials also fail to differentiate between dose and go facilities on the one hand and wrap around care facilities with self-referred patients and patient contracts on the other. Chief Crain opined that there very different operational impacts between these two types of facilities.

The record is fairly conclusive that the proposal will not result in any material increases in violent crime. The unanimous findings of the six police chiefs to all six communities investigated by Chief Crain, in addition to Chief Crain's own findings for the Tribe's 5th Avenue facility, were that there were negligible impacts to police services. The Baltimore violent crime study, Tribe Ex. 14, is the only rigorous sociological study submitted into the record that directly addresses community impacts of MAT clinics and its statistical analysis leaves little doubt that MAT clinics do not generate material increases in violent crime.

Although the Crain analysis and Baltimore violent crime study establish nominal increases in violent crime, the Goldberg materials still leave open the issue of nonviolent crime associated with so-called crime cultures created by MAT clinics. For the most part the Goldberg materials identifying nonviolent crime cultures associated with MAT clinics is fairly compelling. As identified in her statistics, a numerically significant number of MAT patrons are still using illegal drugs while undergoing treatment. The Rachel Greene Baldino book she cites provides a compelling argument that drug dealers are attracted to these concentrations of recovering addicts for that very reason. From this evidence it appears that the "crime culture" referenced by Ms. Baldino can develop if site conditions and clinic operations facilitate that type of development. This observation is consistent with the comments of the SAMHSA administrator, who as noted previously told Chief Crain

that the difference between a clinic associated with problems and one that does not include site location.

The impacts of site location remain a large unanswered question in the analysis prepared by Chief Crane. As pointed out by Mr. Spence during the hearing, favorable comparisons to the Anacortes facility are not merited because the Anacortes facility is three miles from downtown Anacortes. Under these circumstances it would be difficult for MAT patrons to loiter about the Anacortes facility, because there isn't anything else within walking distance to support that activity, such as public restrooms, convenience stores, grocery stores and restaurants. The Crain analysis also didn't identify the location characteristics of the other MAT clinics, so it's not possible to ascertain whether those clinics are also isolated in a similar fashion to the Anacortes facility, which logically would have a large impact on whether a drug culture arising from loitering activity would be reasonably likely to occur.

The climate and isolation of Sequim may also be features that attract a disproportionate share of MAT patients to make Sequim their home. Rather than having to deal with getting to the shuttle on time on a regular basis, patients without jobs and a secure place to live may find it easier to just transfer residency to Sequim. This option may be particularly attractive to the homeless living in rain-soaked areas such as the rain forest of the Forks area when the rain shadow climate of Sequim presents a much more viable option. One of the Goldberg studies bears this out. A study completed in collaboration with the Washington State Department of Social and Health Sciences found that approximately half of MAT patients in a study sample of 422 MAT patients in Washington State were housing insecure both at intake and six months later. Employment was increased from 29% at intake to 38% on six month follow up.[19] These statistics show that a large percentage of MAT patients are not anchored to their current living arrangements by employment or secure residency. The convenience of living close to a MAT clinic was evidenced by a quote from a KOMO webpage news story in the Goldberg materials, where a resident Seattle's longest running homeless encampment was quoted as stating that "*[t]his is a*

[19] Washington State Medication Assisted Treatment – Prescription Drug and Opioid Addiction Project; Preliminary Outcomes through Year Two, p. 7; https://www.dshs.wa.gov/sites/default/files/rda/reports/research-4-102.pdf

convenient place because the little local methadone clinic Evergreen is why we are at this particular location".

The Goldberg materials on this subject are again eclipsed somewhat by the more project specific analysis of Chief Crain. In her interviews of the police chiefs of comparable cities, she reported on asking three of them, Hoquiam, Anacortes and Arlington, if the chiefs had seen any increases in homelessness as a result of their MAT clinics. All responded they had not. However, at the same time, as noted in a Goldberg newspaper article, the Anacortes facility provides tents, sleeping bags and hygiene kits to their patients, because half of the 229 patients are homeless.[20] The tribe operating that facility is now planning to build an affordable housing complex.

The public safety impacts of any transfers in residency may be further impacted by the high recidivism rate of MAT clinic patients. A clinical study of 516 suboxone patients (the drug of the MAT clinic under appeal) found that after three months of completion of treatment, only 1 in 8 participants were opioid free.[21]

The statistics above are further exacerbated by the modest size of the Sequim community, which amplifies any impacts created by the clinic. Chief Crain testified testimony that the homeless population in Sequim is a stable 15-30 people with some being resident and others transient. If half of the projected 250 patients projected for the proposed MAT clinic are housing insecure as found in the DSHS study and just 10% of those patients decide to move to Sequim, the homeless population could expand several fold over several years of accumulated treatments.

Given the statistics above, Chief Crain's conversations about increases in homelessness with three police chiefs and increases in crime with six is not enough to overcome the substantial weight due to the responsible official's determination in his MDNS that the proposed clinic will create probable significant adverse impacts to police services and that an enforceable monitoring program is necessary to fully mitigate impacts. Even with the mitigation of the stipulated settlement agreement,

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[20] https://www.goskagit.com/news/local_news/swinomish-wellness-center-shares-successes-challenges/article_ed1469ae-f730-542e-bfd0-8d1db2db66b0.html

[21] *Buprenorphine tapering schedule and illicit opioid use*, Addiction, 2009 Feb; 104(2): 256–265, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3150159/.

the location, isolation and placement of such a facility of this size in such a small community cannot confidently lead to the conclusion that all impacts are adequately addressed.

E. The Proposed MAT Clinic will not Create Probable Significant Adverse Police Service Impacts with Monitoring as Originally Required in the MDNS.

As proposed, the project will create probable significant adverse impacts due to the potential of creating a "crime culture" in the surrounding area. These impacts can be fully mitigated with re-imposition of the monitoring program initially required in the MDNS. With this monitoring plan, the proposal will create no significant adverse impacts to police services.

The only pertinent evidence on project impacts submitted into the record was the analysis provided by Ms. Goldberg and Chief Crain. As outlined in Finding of Fact No. 5D above, there is insufficient information in the record to assess whether the MAT clinic will instigate a crime culture in the area surrounding the clinic. As noted in Conclusion of Law No. 7, in the face of incomplete information, environmental documents must employ a worst-case scenario to address impacts. The worst-case scenario for the proposed MAT clinic is that in the absence of any limitations on number of patients treated, the MAT clinic will attract large numbers of patients, some of whom on a cumulative basis will transfer residency to Sequim. Given the small size of the Sequim community, increases in the homeless population and others attracted to the surrounding "criminal culture" identified in the Rachel Greene Baldino book could be material. The proximity of the proposed MAT clinic to the downtown Sequim area coupled with its rain shadow location could incentivize patients to loiter in the surrounding area. The resulting crime culture in turn, could lead to a high demand on police services.

The concern over increases in nonviolent crime is further reinforced by the substantial weight due to the responsible official's original determination that a more binding monitoring plan is necessary to mitigate impacts. The monitoring plan served as recognition that it is difficult to assess the potential for project impacts given the impacts associated with some MAT clinics and the unique circumstances of Sequim. The responsible official felt it necessary to impose binding monitoring despite the numerous mitigation measures he already imposed. This was after the SEPA responsible official had the considered the evaluation of Chief Crain, the only

pertinent evidence in the record supporting less mitigation other than the Baltimore violent crime study.

It is also pertinent that the SEPA responsible official had determined that several mitigation measures found necessary in the MDNS under appeal are being eliminated because they cannot be legally required as outlined in Conclusion of Law No. 3 and 4. The most pertinent are Conditions 5c and 5d, which require the Tribe to fund any added demand created for police and emergency services. Substantial weight must be given to the responsible official's determination that funding will be necessary for those services, as there is insufficient information to conclude otherwise and it must be presumed such services will be necessary under a worst-case analysis.

Conditions 5j and 5k, limiting the Tribe's ability to waive sovereign immunity, presents a difficult issue. The Tribe's ability to invoke sovereign immunity can undeniably lead to significant adverse impacts, since that authority could[22] enable the Tribe to evade compliance with any mitigation imposed by this Decision or any nuisance action the City may contemplate in the future to address impacts not mitigated by this decision. Arguably, if sovereign immunity is not waived, it would have to be determined that the proposal will create probable significant adverse impacts and for that reason an environmental impact statement would have to be required. Such a detailed analysis would be appropriate, since City decision makers should know what would happen to its community should the Tribe decide to not comply with any mitigation or laws imposed by the City. However, as outlined in COL No. 2, requiring an EIS would be beyond the scope of this appeal. The most that could be required under the limitations imposed by the scope of appeal is to retain the requirements for waiver, which, as concluded in COL No. 3, cannot be done.

As noted above, removing the sovereign immunity conditions arguably requires an environmental impact statement. Ultimately, however, it is reasonable to

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[22] The Tribe's application for Sequim development permits and its filing of the subject appeal may have been sufficient to subject the Tribe to the City's permitting authority and enforcement of permit conditions. That issue need not be resolved for this Decision.

determine that more likely than not the Tribe will not invoke sovereign immunity and hence retaining that authority will not create probable significant adverse impacts. There are several reasons for this determination. First and foremost, the Tribe hasn't invoked sovereign immunity to avoid applying for City development permits and filing this appeal. The Tribe has also operated its existing Sequim clinic in conformity to City laws and has done so without creating any nuisances or high calls for service. As testified by Mr. Simcosky, the Tribe has invested funds into the Sequim community that far exceeds what the City would get from tax revenues of the existing clinic or future clinic. Mr. Simcosky also testified that a condition of one of the grants that funds the clinic provides that the clinic property cannot be moved into Tribal Trust for ten years. The Tribe's willingness to spend several hundred thousand dollars on a social service navigator, initially unsolicited from the City, evidences the Tribe's willingness to mitigate its impacts and to contribute to the Sequim community even when not required to do so. Throughout this review process, the Tribe has worked closely with City decision makers and the Sequim community to maintain a good working relationship. For all these reasons, as a question of fact, it is determined that the Tribe will likely not invoke sovereign immunity to bypass its responsibility to mitigate the impacts of its clinic to the Sequim community.

Reinstating the enforceability of the original monitoring plan will directly address any shortcomings created by the revisions to conditions in the Stipulated Agreement. Most important, reinstating the monitoring plan will directly enable the City to mitigate impacts for which there is insufficient information to evaluate at this time, as contemplated by the responsible official when he required the monitoring plan in the MDNS under appeal. Reinstating the plan will also address the loss of protection caused by elimination of the funding conditions, Conditions 5c and 5d. Reimbursement for added funding demand would be one of the more obvious corrective measures required in implementing a monitoring plan, to the extent consistent with applicable law.

At hearing, the Tribe argued that retaining the monitoring conditions would be discriminatory, because patrons of other types of businesses would not be subject to this type of scrutiny. That is incorrect. The Goldberg materials establish that MAT clinics can and do generate significant adverse impacts to the surrounding community that are not typically associated with other types of clinics and the patients served by them. The impacts subject to monitoring by this Decision were

not singled out due to stereotypes or disabilities, but rather due to impacts demonstrated to occur in other communities.

Although not expressly raised by the Tribe, given the Tribe's willingness to mitigate its impacts it is presumed that a major issue it has with the monitoring conditions is that it is being subject to open ended requirements that are at this stage undefined and beyond its control. For this reasons, safeguards have been added by this Decision to the original monitoring conditions to ensure that the any corrective actions imposed by the monitoring process are lawful and subject to judicial review. The revised conditions require the City to adopt the findings of the monitoring committee as conditions of approval to the extent the City finds those measures consistent with applicable law. That adoption in turn will have to be treated as an administrative determination, which will provide the Tribe an avenue for appeal as an administrative interpretation pursuant to SMC 20.01.240.

6. Impacts to Emergency Services.

As mitigated, the proposal will not create any probable significant adverse impacts to Sequim emergency services.

There is considerable overlap between the need for police services and overall emergency services as law enforcement is often the first contact with the community in the range of public services offered in an emergency circumstance. Unlike demand for police services, the Goldberg materials do not provide any statistics or anecdotes of a high incidence of need for emergency services. However, it is reasonable to conclude that the potential increases in homeless population and creation of a crime culture identified in Finding of Fact No. 5 could result in significant additional demand upon non-police emergency services, especially considering the high relapse rate of former MAT patients. This conclusion is not remote or speculative given the multiple examples of criminal drug activity and high relapse rates identified in the Goldberg materials and the locational characteristics of the City of Sequim site.

Also, as in the police impact analysis, given the unique characteristics of the Sequim site there is insufficient information to make an accurate assessment of the likelihood of impacts to nonpolice emergency services. As for police services, substantial weight is due the SEPA responsible official determination that unmitigated impacts to nonpolice emergency services are significant and that an enforceable monitoring program is necessary to mitigate those impacts because there is insufficient information to fully assess those impacts. As for police services, in the face of incomplete information a worst-

case analysis must be conducted. In that worst case analysis, substantial increases in homeless populations of lapsed MAT patients along with a thriving drug culture surrounding the MAT clinic could very plausibly result in a need for greater medical and other nonpolice emergency services.

Ultimately, an enforceable monitoring plan should successfully mitigate all impacts to nonpolice emergency services. The monitoring program adopted by this Decision creates a "wait and see" mitigation strategy that enables the City to identify precisely what impacts do occur and then tailoring the mitigation necessary to address them.

Conclusions of Law

1. Authority. Sequim Ordinance No. 2020-009 authorizes the hearing examiner to conduct hearings and issue final decisions on consolidated appeals of Type A-2 decisions. As outlined in Finding of Fact No. 3, the appeal under consideration is a consolidation of Type A-1 and A-2 decisions. MDNS appeals are Type 2 decisions and the consolidated appeals have been properly heard and resolved by the Hearing Examiner.

2. Scope of Appeal Limited to Revisions of Stipulated Agreement. The scope of the Tribe's appeal is limited to the grounds for appeal identified in the Tribe's written appeal, City Ex. 7. SMC 20.01.240G3 required the Tribe to identify the specific grounds for filing its appeal. The purpose of this requirement is to provide notice to hearing participants of what will be addressed in the appeal proceeding. This notice provision would be undermined if the Tribe or any other party to the proceeding were allowed to raise issues beyond those identified in the Tribe's written appeal.

The Tribe's written appeal asserted that the conditions of the MDNS were erroneously imposed because the proposed MAT clinic did not create any probable significant adverse impacts that necessitated them. The scope of this appeal is limited to whether probable significant impacts to police and emergency services exist as determined by the SEPA responsible official and whether the conditions imposed by the MDNS are necessary to mitigate them. As a consequence, arguments that an environmental impact statement should have been prepared or that MDNS conditions were not restrictive are beyond the scope of the Tribe's appeal, since those types of issues were not included in the grounds of the Tribe's written appeal.

3. Mandatory Sovereign Immunity Waivers and Notice Conditions Properly Omitted from Stipulated Agreement. It appears that the City has correctly concluded that it cannot mandate sovereign immunity waivers or require advance notice of the Tribe's

election to designate its MAT clinic property Tribal trust land. The City has appropriately not included MDNS Conditions 5j and 5k in its Stipulated Agreement.

Surprisingly, there is no case law in Washington and from all appearances no case law anywhere else in the nation that directly addresses the authority of local government to require waivers of Native American sovereign immunity as a condition of permit approval. The City Attorney testified that she could find no court opinion that authorized cities to impose such conditions and this is consistent with the examiner's research that no case even addresses the issue.

In the absence of any case law directly on point, an argument made by the Tribe during the hearing is the most compelling, specifically that mandatory sovereign immunity waivers in permit review would be a de facto abrogation of that immunity. This type of reasoning was adopted by Washington courts in a reverse situation in *Condo. Ass'n v. Apartment Sales Corp*., 146 Wn. 2d 194 (2002). In the *Condo* case, the City of Seattle imposed a condition requiring the applicant to record a covenant exculpating the City from any liability resulting from soil movement, which was a concern for that particular development. After recording of the covenant and completion of the development project, the condominiums became uninhabitable due to precipitous soil movement during winter storm events. The owners of the condominiums sought to have the covenant invalidated in an effort to seek damages from the City of Seattle.

In attempting to invalidate the covenant, the homeowners argued that the covenant was a local attempt to reinstate sovereign immunity for local government, which had been abolished by state statute in 1967. *See* RCW 4.96.010. The court agreed in part, noting in as follows:

> *….blanket grants of immunity secured routinely for performance of public functions do not differ meaningfully from ordinances immunizing local governments for their own negligence, and will be invalidated…*

Id. at 201.

In the *Condo* case the court ultimately concluded that the covenant qualified as an arms-length bargained for agreement to mitigate the unique circumstances of the project and was valid. However, the broader reasoning of the court as quoted above directly supports the position taken by the Tribe during the hearing. Just as routinely issued permit conditions requiring liability waivers can create sovereign immunity that's been abolished as feared by the *Condo* court, so too can routinely issued permit conditions requiring waiver of sovereign immunity serve as a de facto abolition of the sovereign immunity

granted to Native Americans by the federal government. The logic and the consequences of both sets of circumstances are equivalent. If government decision makers are authorized to routinely compel waiver of sovereign immunity for all actions necessitating government approval, then sovereign immunity is essentially abrogated for any action requiring such approval. Unlike the *Condo* case, there are no unique circumstances related to the property or proposed operations that necessitate a waiver of immunity. Some of the impacts of MAT clinics are uncertain, but those impacts are fully addressed by the mitigation measures adopted by this decision. The City properly agreed to not include the sovereign immunity waiver in its Stipulated Agreement.

The City also properly agreed to remove Condition 5j from its Stipulated Agreement, the condition requiring one-year notice to the City prior to placing the MAT clinic property in trust. At first glance, the condition appears to be reasonable as it simply gives the City an opportunity to contest any placement of the MAT property into trust land. However, as testified by Mr. Berezowsky, the federal government regulates the trust land designation process. Imposing a one-year notice requirement can add a one-year delay to the trust designation process beyond the time limits already set by federal trust designation procedures. In this regard, condition 5j is an attempt by the City to add timing requirements to the federally regulated trust land designated process. Seen in this light the condition is likely preempted by the federal regulations. Even if it were not, for the reasons identified in Finding of Fact No. 5E, the potential for invoking sovereign immunity does not qualify as a probable significant environmental impact because it is not likely that the Tribe would attempt such a maneuver.

4. Mandatory Funding Provisions Properly Omitted from Stipulated Agreement. The City and Tribe properly omitted Conditions 5c and 5d from their Stipulated Agreement, which require public safety funding reimbursement if the MAT property is designated trust land (5d) and also requires a bond to cover the costs of any additional public safety staffing attributable to the project (5c).

Unless Conditions 5c and 5d are interpreted in a highly contorted manner, the conditions likely would not withstand a challenge as violative of RCW 82.02.020. RCW 82.02.020 requires that for any monetary exactions imposed upon a development, the City must be able to establish that the exaction is "*reasonably necessary as a direct result of the proposed development or plat*." The challenge for requiring reimbursement for basic public services such as police and fire is that the proposed development will already be funding those services via property taxes and other taxes assessed upon the future operations and occupants and patrons of the project site. At the very least, the City would have to be able to establish that the taxes and fees recouped from the development and its operations over time would not be sufficient to pay for the added demand upon public

services. The City would also have to establish that its fees are assessed in a manner that is consistent with how other clinics are mitigated in order to avoid discriminatory practices prohibited by the American with Disabilities Act ("ADA"). This could be challenging, as Mr. Berezowsky testified that this type of condition has not been imposed before.

Another problem with Conditions 5c and 5d is that they enable the City staff to assess what could be significant fees without any expressly assigned administrative appeals provision. The courts have ruled that, at least in the code enforcement context, procedural due process dictates that any assessment of fines must be subject to an administrative appeals process. *See Post v. City of Tacoma*, 167 Wn. 2d 300 (2009). The Applicant's property interest in fees such as the ones imposed by Conditions 5c and 5d are just as much if not more than the $140,000 in fees evaluated in the *Post* case. In the absence of any administrative appeals process, Conditions 5c and 5d are vulnerable to a due process challenge under *Post*.

Through some highly creative and arguably strained interpretation, both Conditions 5c and 5d could have been interpreted to incorporate the requirements of *Post*, RCW 82.02.020 and the ADA. However, a more direct approach is simply to strike both provisions and allow public safety cost impacts to be addressed through the monitoring program originally imposed by the MDNS, enhanced with an express administrative appeals process. The monitoring program as modified by this decision enables the imposition of mitigation measures consistent with all applicable law and subject to an administrative appeal process. The Stipulated Agreement strikes Condition 5d (trust land tax reimbursement) and modifies Condition 5c (public safety bond) to more directly incorporate the requirements of the ADA and RCW 82.02.020. At the same time, however, 5c only requires the Tribe to acquire the bond if it is "*available in the market on commercially reasonable terms*." It is highly dubious that any surety would be willing to risk $250,000 for a MAT clinic for any reasonable amount of money. In any event, the condition isn't necessary in light of the enhanced monitoring program required by this decision. Out of deference to the voluntary nature of the Stipulated Agreement executed by the City and Tribe, the modified bonding condition will be retained with an added administrative appeal process and the Tribe will have the option to use funds otherwise required for the bond to pay for the costs of any studies necessary for the monitoring of project impacts.

5. Deference Due MDNS. Substantial deference is due to the MDNS under appeal, not the Stipulated Agreement.

In assessing the validity of a DNS, the determination made by the City's SEPA responsible official shall be entitled to substantial weight. WAC 197-11-680(3)(a)(viii). As outlined in FOF No. 4, the City and Tribe agreed to a Stipulated Agreement where they requested that the Examiner substitute the conditions of MDNS conditions under appeal with those agreed upon in the stipulated settlement. At hearing, the Tribe asserted that substantial deference was due to the Stipulated Agreement as opposed to the MDNS under appeal, since the SEPA responsible official had testified that he found the MDNS conditions under appeal to exceed the lawful authority of the City of Sequim.

The MDNS is due substantial weight under both SEPA statute and SEPA regulation. RCW 43.21C.090 requires as follows:

> *In any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a "detailed statement", the decision of the governmental agency shall be accorded substantial weight.*

By its plain terms, RCW 43.21C.090 compels deference to be afforded to the MDNS, not its stipulated revisions. RCW 43.21C.090 addresses proceedings involving "*an attack on a determination*." The "attack" in this case is the Tribe's appeal and the "determination" is the MDNS under appeal. The last clause of RCW 43.21C.090 provides that "the decision" shall be accorded substantial weight. There is only one decision otherwise identified in RCW 43.21.090, and that is the decision referenced in the "attack on a determination," which for this proceeding is the MDNS under appeal. Consequently, RCW 43.21C.090 clearly requires deference to the MDNS under appeal.

A similar result arises from application of one of the SEPA regulations that implements RCW 43.21C.090, specifically WAC 197-11-680(3)(a)(viii), which provides that agencies "*shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight*." Under this regulation, the pertinent legal issue is whether the SEPA responsible official's testimony recommending the stipulated settlement qualifies as a "procedural determination" under WAC 197-11-680(3)(a)(viii) that is due substantial weight, or whether the procedural determination remains the MDNS. The SEPA regulations do not define "procedural determination." The most illuminating reference to the term in the SEPA regulations is in the definition of "lead agency," WAC 197-11-758, as follows:

> *Depending on the agency and the type of proposal, for example, there may be a difference between the lead agency's responsible official, who is at a minimum responsible for procedural determinations (such as WAC 197-*

11-330, 197-11-455, 197-11-460) and its decision maker, who is at a minimum responsible for substantive determinations (such as WAC 197-11-448, 197-11-655, and 197-11-660).

The three listed examples for procedural determinations, WAC 197-11-330, 197-11-455, 197-11-460, refer to the regulations specifying the process for issuing a threshold determination, the issuance of a DEIS and the issuance of an FEIS. These are all procedural processes specifically recognized, authorized and required by SEPA. In contrast, the SEPA responsible official's recommendation against his own threshold determination does not follow any process delineated in the SEPA regulations beyond the right of the official to testify during the appeal hearing. In point of fact, SEPA has procedural processes in place to address changes in MDNS conditions that were not followed by Mr. Berezowsky for this appeal– if changes are warranted due to substantial new information or misrepresentation, the threshold determination must be withdrawn and re-issued. See WAC 197-11-340(3). Changes to the information provided in an MDNS can also be effectuated without a new threshold determination by issuance of an addendum, if the revised/added information does not substantially change the analysis of significant impacts and alternatives in the existing environmental document. WAC 197-11-600(4)(C).

An overriding consideration in the interpretation of WAC 197-11-600(4)(c) is the appeal rights of the public. Since judicial review of a SEPA administrative appeal is in most cases limited to the local administrative record, it is imperative that the public get notice of precisely what threshold determination has been issued by the SEPA responsible official. In this case, the public did not have an opportunity to appeal the Stipulated Agreement. The only threshold determination presented to the public as a final staff decision was the MDNS under appeal. Some project opponents may very well have not appealed the MDNS because they were satisfied with the conditions and/or didn't feel they had a reasonable chance of prevailing given the substantial weight accorded to issuance of those conditions. The calculus involved in the merits of filing such an appeal could have easily changed had the Stipulated Settlement been presented as the threshold determination, with substantial deference due to it as opposed to the original MDNS.

Given that the recommendation made by the Responsible Official does not qualify as to what would be commonly understood to be a "determination," that the SEPA responsible official's recommendation did not follow any explicit procedural process in the SEPA rules and the fact that WAC 197-11-680(3)(a)(viii) should be interpreted consistently with RCW 43.21C.090, it is concluded that WAC 197-11-680(3)(a)(viii) requires substantial weight to be given the issuance of the MDNS, not the Stipulated Agreement.

Entitling the MDNS threshold determination of this appeal to "substantial weight" involves two pertinent components for the assessment of evidence in this proceeding, specifically (1) that as mitigated the proposal will not create probable significant adverse impact, and (2) that the conditions are necessary to mitigate project impacts. The SEPA responsible official was required by SEPA regulations and state law to make those two separate determinations in order to properly issue the MDNS. As to probable significant adverse impacts, that is the standard for issuance of an MDNS, as outlined in Conclusion of Law No. 3 below. As to the necessity for the mitigation, the only mitigation authorized by SEPA regulations is mitigation necessary to mitigate adverse impacts created by a proposal. See WAC 197-11-660(1) (project impacts "*may be conditioned or denied under SEPA to mitigate the environmental impact*…" provided that the conditions "*shall be reasonable and capable of being accomplished*."). As a result of these SEPA requirements, substantial weight is accorded to the SEPA responsible official as to both the existence of probable significant adverse impacts and the necessity of the MDNS conditions to mitigate them.

6. SEPA Review Criteria. The relevant inquiry for purposes of assessing whether the City responsible official staff correctly issued a DNS is whether the project as proposed has a probable significant environmental impact. *See* WAC 197-11-330(1)(b)[23]. WAC 197-11-782 defines "probable" as follows:

> *'Probable' means likely or reasonably likely to occur, as in 'a reasonable probability of more than a moderate effect on the quality of the environment' (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring but are remote or speculative. This is not meant as a strict statistical probability test.*

If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there are no probable significant adverse environmental impacts. In the alternative, an environmental impact statement would be required for the project.

7. Effective Monitoring Required. Due to a complex interplay of SEPA regulations and the unique facts of this appeal, more effective monitoring than that stipulated in the Stipulated Agreement is required.

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[23] All sections of Chapter 197-11 WAC referenced in this Conclusion of Law are adopted by reference into Chapter 16.04 SMC.

As determined in Finding of Fact No. 5, it is clear that nuisance type criminality and potentially homelessness is associated with some MAT clinics. The mitigation measures of the Stipulated Agreement coupled arguably leads to the conclusion that this situation is not likely to occur for the proposed MAT clinic. However, the information in the record is not complete enough to rule out those impacts as unlikely or remote and speculative. The scale of the operating conditions and locations of the MAT clinics in the Goldberg materials and those assessed by Chief Crain is not sufficiently detailed to correlate which MAT clinics are comparable to the proposed MAT clinic and which are not.

Under the SEPA rules, a "*worst case*" analysis must be used when dealing with incomplete information. WAC 197-11-080 provides that if "*information relevant to adverse impacts is essential to a reasoned choice among alternatives, but is not known, and the costs of obtaining it are exorbitant*," then if the agency decides to proceed in the case of uncertainty it shall evaluate impacts under a "*worst case*" analysis.

In this appeal, the costs of acquiring additional information would have to be considered "exorbitant." Acquiring more detailed information on the MAT clinics compared by Goldberg and Crane would require either a remand or an environmental impact statement. The appeal has already involved five days of hearing and multiple, complex prehearing motions. The time and money expended on this project is already significantly more than would be typically associated with a medical clinic of the proposed size. Further, in addition to necessitating more information on the clinics subject to comparison, a more accurate study would likely require a much larger sampling size than that presented. Goldberg and Crane only evaluated about a half dozen clinics each.

Application of the "worst case" WAC 197-11-080 requirement to threshold determinations arguably conflicts with the requirement of WAC 197-11-330(1)(b) that the responsible official must make a determination of whether or not an impact is "probable" to trigger a DS. WAC 197-11-080 bypasses that finding in its "worst case scenario" requirement by essentially mandating that adverse impacts that could occur be assessed as if they will occur. This conflicts with the WAC 197-11-782 definition that impacts only qualify as probable if they're likely to happen. Given that the focus of environmental review is informed decision making, such a result is not contrary to the objectives of SEPA for informed decision making. A worst case analysis is only required in cases of incomplete information. The ultimate result of applying the worst-case analysis principle is that a project will more likely result in a finding that an EIS is necessary, which is precisely what is needed for a project with incomplete information.

Having WAC 197-11-080 supersede the "likely" element of the probable definition is also consistent with the statutory rule of construction that the specific override the general – the "likely" term generally applies to all SEPA proposals while the "worst case" requirement only applies in circumstances of incomplete information. *See Allen v. Dan & Bill's RV Park*, 428 P.3d 376, 383-384 (2018).

The SEPA regulations provide added safeguards to ensure that project applicants are not unreasonably subject to burdensome and unnecessary mitigation measures imposed to mitigate impacts premised upon incomplete information. The most important as pertains to this project is the definition of "probable," WAC 197-11-782, which provides that remote and speculative impacts do not qualify as probable. Consequently, although the "worst case" requirement serves as a bypass to the requirement that "probable" impacts be likely, it does not need to serve as an end run on the "remote and speculative" limitation as well. Requiring remote and speculative impacts to be evaluated and mitigated would enable project opponents to subject an applicant to unlimited conditions for every conceivable impact lacking accessible information. Such a result would not survive constitutional takings and due process challenges. The "*remote and speculative*" limitation prevents project opponents from manufacturing potential impacts whole cloth with no basis in evidence or logic.

A second safeguard to application of the "worst case" scenario requirement are SEPA, statutory and constitutional requirements of reasonableness, nexus and proportionality to project mitigation. WAC 197-11-660(1)(c) requires that "*[m]itigation measures shall be reasonable and capable of being accomplished*." WAC 197-11-660(1)(d) provides that *"[r]esponsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal*." RCW 82.02.020 provides that local government can only require money or land dedication as mitigation if it can establish that the mitigation "*is reasonably necessary as a direct result of the proposed development.*" Constitutional takings cases put the burden on government to establish that any exactions required of projects are necessary to mitigate impacts (legally defined as having "nexus") and that the mitigation is roughly proportional to the impact created. *See, e.g., Burton v. Clark County*, 91 Wn. App. 505, 520-24 (1998).

The regulatory and constitutional reasonableness requirements that adhere to project mitigation can sometimes work a dilemma in SEPA cases when "worst case" analysis is employed. By definition, in a worst-case situation local government doesn't have enough information to assess project impacts. Yet at the same time, under the statutory and constitutional restraints described above the government has the burden of proving that any required mitigation is necessary to mitigate impacts, that it is

proportionate to impacts created and that it is otherwise reasonable. However, at the same time, if all impacts identified in the "worst case" analysis are not mitigated, the local government will have to require an environmental impact statement. In practical terms, this leaves the applicant with the choice of either agreeing to mitigation that the government cannot prove is reasonable or proportionate or in the alternative preparing an environmental impact statement. A third option, which will be employed for this project as discussed below, is to impose a monitoring program that defers project mitigation to the point where there is sufficient information to assess impacts, if any.

Applying the principles above, it is fairly clear at the outset that as outlined in Finding of Fact No. 5, a worst case analysis for this project is that probable significant impacts would involve drug dealers attracted to patrons of the MAT clinic, that both clinic drop outs and current patrons will add to the homeless population, that former and current patrons will find one or more places to congregate in the vicinity of the MAT clinic and that current and former patrons will take, sell and purchase illegal drugs on the City's streets and engage in other nonviolent crime. In a worst case scenario, as outlined in Finding of Fact No. 5 and the overview section of this Decision, there would be a significant added demand upon police and other emergency services.

The conditions of approval in the Stipulated Agreement go a long way in addressing many of these impacts. Condition 5i in particular, which requires the transport of clinic patrons to and from their places of residences if they don't have their own transportation, will substantially help in reducing the number of people who would otherwise loiter at or near the clinic. Conditions 5m, 5n and 5o will also help reduce the formation of outdoor drug cultures by their requirements for on-site security, prohibition of outdoor unauthorized line-ups and loitering. However, it cannot be said that these conditions are enough given the unique characteristics of Sequim.

As noted in the findings of fact, Sequim is a small community with a corresponding small homeless population. In a worst-case analysis, bringing in a MAT clinic that serves two counties, the impacts of the introduction of 125 homeless/housing insecure recovering and partially recovering drug addicts could still create significant impacts upon police and emergency services, even with the conditions of the Stipulated Agreement. The impacts are simply too unpredictable given Sequim's circumstances to be able to make the necessary finding that the proposal will not create any probable significant adverse impacts.

The original MDNS imposed an enforceable monitoring program that compelled additional "corrective action" if found necessary to mitigate impacts found as a result of the monitoring process. The monitoring process was based upon the implicit finding by

the SEPA responsible official that information was too incomplete to issue a DNS without such a monitoring program. Substantial weight is due that determination and an enforceable monitoring program, as originally contemplated in the MDNS, is required by this Decision. As modified with an enforceable monitoring program, the proposal will create no probable significant adverse impacts and a DNS is appropriate for this project.

Decision

The Stipulated Agreement between the City and Tribe dated September 8, 2020, City Ex. 8, is approved as a substitute for the MDNS under appeal, subject to the following revisions:

1. Condition 5a is revised as follows:

   Prior to occupancy, a monitoring and evaluation program will be developed by a Community Advisory Committee (the "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 will 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 eight members~~ composition is inclusive of (1) the Director of Health Services for the Jamestown S'Klallam Tribe (the "Tribe"), (2) the City Manager, (3) the City's Director of the Department for Community Development, (4) the Clallam County Sheriff, (5) the Chief of the Sequim Police Department, (6) a Councilmember for the Tribe, (7) a Councilmember for the City of Sequim, ~~and~~ (8) a member of the health field with experience in treating Opioid Use Disorder, and (9) a Sequim resident who applies to join the Committee and is selected by preceding Committee members. ~~The Committee's authority does not extend beyond an advisory capacity~~

2. Condition 5b of the Stipulated Agreement is stricken and replaced with the following:

   A. Prior to occupancy, the "committee" will develop a contingency plan that fully identifies potential courses of action and any corrective measures to be taken when monitoring or evaluation indicates expectations and standards are not being met.

B. The costs of preparing any monitoring and evaluation program or contingency plan shall be borne by the Tribe as directed by the City in conformance with applicable law.

C. Corrective action shall be limited to addressing impacts to public services due to the possibility of increased law enforcement and other emergency services.

D. The City will adopt the portions of the monitoring and evaluation program and contingency plan that it finds to be consistent with applicable law as an added condition of approval. Consideration shall be given to the requirements of RCW 82.02.020 and the American with Disabilities act.

E. The adopted condition(s) shall be issued as and qualify as an administrative determination, subject to appeal as governed by SMC 20.01.240, as now or hereafter amended. The adopted conditions shall be the only requirements developed by the Committee that are binding upon the Tribe.

3. The following shall be added to Condition 5c of the Stipulated Agreement:

   Any demands placed upon the bond by the City shall be subject to administrative appeal as an administrative determination subject to the appeal provisions of SMC 20.01.240, as now or hereafter amended. In lieu of paying for a bond, the Tribe may use the money instead to fund any studies or corrective action required by Condition 5b.

4. The following shall be added to Condition 5f of the Stipulated Agreement:

   In lieu of paying for all or a portion of the costs of Social Services Navigator position, the Tribe may transfer those funds to pay for the studies and corrective action required by Condition 5b.

5. Condition 5m is modified as follows:

   All patients must be accommodated within the clinic building, and there will be no unauthorized outdoor line-ups or congregating of patients outside of designated areas located on clinic property.

ORDERED this 18th day of December 2020.

Phil A. Olbrechts
Sequim Hearing Examiner

Appeal Right and Valuation Notices

This Final Decision constitutes a final land use decision of the City of Sequim, appealable to superior court as governed by the Land Use Petition Act ("LUPA"), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict service requirements. Persons wishing to file LUPA appeals should consult with an attorney to ensure that LUPA appeal requirements are correctly followed.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.