

Submitted To:

Barry A. Berezowsky
SEPA Responsible Official
City of Sequim

Tim Woolett
Senior Planner
Department of Community Development
City of Sequim

William Armacost
Mayor
City of Sequim

Subject: Comments on the Mitigated Determination of Nonsignificance (MDNS) - WAC 197-11-970, Jamestown S'Klallam Tribe Outpatient Clinic Application (File No. CDR 20-001)

Comments submitted by:

Bill Staeger
Bill.staeger@gmail.com

I reviewed the Mitigated Determination of Nonsignificance (MDNS) prepared by the City of Sequim for the Jamestown S'Klallam Tribe Outpatient Clinic Application (File No. CDR 20-001). As described below, it is clear that this document does not meet the Department of Ecology's SEPA requirements to fully and accurately assess the potential adverse and positive impacts of a proposed project. The city prepared the MDNS based on the applicant's completed checklist which does not provide sufficient information to assess impacts and includes inconsistent and inaccurate information. At best, the MDNS presents a cursory review of potential adverse impacts, often simply states the city agrees with the information in the completed SEPA checklist, and provides no justification for its findings of no significant impacts.

My comments on the MDNS are presented as (1) my overall concerns regarding the MDNS in comparison to questions presented in the Department of Ecology's "Guide to commenting on SEPA documents" section of its SEPA Guidance web page, and (2) comments on the determinations the city reached on specific elements of the environment, particularly elements of the environment that were not accurately or adequately addressed in the SEPA checklist prepared by the applicant's contractor, yet were accepted as adequate by the city.

In addition, the city did not include a distribution list for the MDNS in its cover letter. As a result, it is not possible to determine if the city met its SEPA requirements to send the MDNS to the Department of Ecology, all agencies with jurisdiction (federal, state, and local), affected tribes, all local agencies or political subdivisions whose public services would be affected by the proposal, property owners within 300 feet of the subject property, and to all parties of record.

It is important that the city consult with agencies with expertise regarding the potential impacts of the proposed project and provide those agencies with a copy of the MDNS. It is also important that the public knows which agencies were consulted and received the document. For example, as described in more detail below, the applicant stated in its completed checklist that the Department of Ecology indicated the northern spotted owl inhabits the site. **This is a threatened and endangered species that could be affected by implementation of the proposed project.** However, it is apparent that neither the city nor the applicant consulted with the U.S. Fish and Wildlife Service (USFWS) regarding this species as required by the Endangered Species Act. Because the city did not provide a distribution list, it is not possible to determine whether or not the city sent the MDNS to the USFWS as required.

As described throughout this comment letter, to comply with SEPA requirements, the city should at a minimum prepare and issue a revised MDNS. However, because implementation of the proposed project could result in many impacts that are not identified in the MDNS and that meet the SEPA definition of “significant impacts,” the city should prepare and issue a draft environmental impact statement (EIS) that fully and accurately evaluates the potential impacts associated with implementation of the proposed project.

OVERALL CONCERNS REGARDING THE MDNS

Key Questions for the SEPA Review

The comments in this section address the Department of Ecology’s adequacy questions on its web page entitled “Guide to Commenting on SEPA Documents” located at <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Review-commenting>. My more detailed comments on specific elements of the environment are included in the section below entitled “Comments on Environmental Elements.”

- *Are the SEPA documents complete and accurate?*

The completed SEPA checklist includes inaccurate statements that were not corrected by the city or identified as incorrect by the city. Neither the completed checklist nor the MDNS provide sufficient project-related information needed to fully and accurately evaluate the potential for adverse impacts due to implementation of the proposed project.

- *Do they provide enough information to analyze likely environmental impacts?*

Key portions of the completed SEPA checklist and the resultant MDNS are missing the level of detail needed to reasonably assess potential impacts. In addition, the potential impacts to many elements of the environment are not addressed at all in the MDNS.

- *Do they identify mitigation measures to avoid adverse impacts?*

The MDNS does not include mitigation measures for several elements of the environment that could experience significant impacts.

- *Is the evaluation and Determination of Significance supported by findings and conclusions?*

The MDNS does not provide the information needed to reasonably assess the potential for adverse impacts to several elements of the environment. Further, for most elements of the environment, the Determination of Significance does not describe the city's analyses of the information presented in the completed SEPA checklist. Instead, the MDNS simply states "Staff concurs with the checklist description," even where there is missing information, contradictory information, and/or no environmental impact evaluation in the checklist.

- *Are there alternatives that address the proposal's purpose and need?*

The first page of the MDNS includes the following statement:

"Comments on the MDNS for this proposal will be accepted no later than April 8, 2020 and shall be as specific as possible and may address either the adequacy of the environmental document **or the merits of the alternatives discussed** (*emphasis mine*) or both."

However, **the MDNS does not even mention alternatives** (or the purpose of and need for the proposed project), nor does the completed SEPA checklist. There is substantial evidence that (1) the proposed project is not needed, and (2) there is at least one reasonable alternative to the proposed project. Without a discussion of the purpose and need for the proposed project and without a discussion of reasonable alternatives, the MDNS does not present a full and accurate analysis of the potential impacts of the proposed project.

Need for a Revised MDNS or a Draft Environmental Impact Statement

As a result of these shortcomings and the major issues described below, the MDNS falls short of the Department of Ecology's requirements to fully and accurately assess the potential adverse and positive impacts of the proposed project. The MDNS appears to have been prepared by staff members without environmental expertise and without awareness of the applicable environmental regulations. For example, the MDNS assumes that: (1) wetland species are not present on the proposed site although a wetland survey was not conducted, (2) threatened and endangered plant species are not present on the proposed site although a T&E plant survey was not conducted, and (3) implementation of the proposed project would not have an impact on the threatened and endangered northern spotted owl, which the checklist states inhabits the site, without consulting with the USFWS.

As the city well knows, this is a highly controversial project. As such, preparing an MDNS that relies only on the items in the SEPA checklist means that the environmental review does not address several key concerns:

- Purpose and Need for the Project,
- Alternatives to the Proposed Project, and
- Socioeconomic Impacts (an area of major concern to the public).

Without addressing these issues, and without an accurate description of the environment and a detailed analysis of potential impacts, it is not possible to determine whether or not implementation of the project would result in significant adverse impacts. As a result of the deficiencies noted above and the deficiencies described in the remainder of this comment letter, the city should conduct a more thorough environmental review and present the results in a draft EIS that fully and accurately evaluates the potential impacts of implementation of the proposed project.

COMMENTS ON ENVIRONMENTAL ELEMENTS

My comments on the MDNS are presented below for specific elements of the environment which I believe require (1) corrections due to inaccuracies or lack of sufficient information in the completed SPEA checklist, (2) additional information to fully understand the potential for adverse impacts, and (3) additional environmental analysis to fully and accurately assess the potential adverse impacts. These comments are organized by element of the environment using the numbering system presented in Section III of the MDNS.

2. Air

The checklist question asks that the applicant “generally describe [types of emissions to the air] and give approximate quantities if known.” The applicant’s response is simply that “Air emissions are limited to minimal dust and automobile emissions from equipment during construction.” The MDNS provides an adequate mitigation for minimization of the impact of construction dust. However, it does not address emissions from construction equipment. Those emissions should be calculated from manufacturers emissions information for the construction equipment to be used for the project to determine whether or not the impacts to air quality would be significant.

3. Water

Sections 3a (Surface Water) and 3c (Water Runoff)

In these sections of the MDNS, the city states “Staff concurs with the checklist description.” However, the checklist does not address potential impacts, which means the city has not provided an environmental review for surface water and water runoff. Under SEPA, the city is tasked with using information in the checklist and other relevant information to evaluate the potential for adverse impacts and report the findings in the MDNS. Unfortunately, the MDNS does not include those evaluations and there is not sufficient information in the checklist to evaluate the potential impacts to surface or water runoff.

To conduct a full evaluation, the city needs additional information from the applicant to assess the surface flows across the developed property. The analysis should consider the proposed type of surface of the driveway and parking area (e.g., gravel, asphalt, or concrete), the calculated volume of runoff/infiltration, the capacity of “filter strips,” and other key data. With 84 parking spaces and a driveway that will experience an estimated 370 trips per day, there would be a

potential for petrochemical contaminants in the runoff. The city should include its analysis of how effective the proposed treatment methods would be based on the calculated increase in surface water flows from the proposed project and the anticipated contaminants in the runoff.

Section 3c of the checklist states the following:

“The downstream irrigation ditch will only be used for runoff in the event of an emergency overflow, in which case the water will eventually flow into the Dungeness River.”

Section 3.c3) of the checklist includes the following statement:

“Stormwater will be treated onsite, and emergency overflow will flow into the existing irrigation ditch, which eventually flows into the Dungeness River.”

The draft EIS should describe what is meant by “emergency flow.” The document should state what the flow rate of an “emergency flow” would be and identify the origin of the flow (For example, is the applicant referring to an emergency in the facility that results in an unanticipated release from the facility? Is it from the rainfall of the 100-year storm?).

Equally import, the document should describe how the “emergency flow” would be directed to the downstream and offsite irrigation ditch since the entire ditch on the proposed site would be piped (as presented in drawing C3.0 in the “Technical Information Report, Jamestown S’SKallam Tribe, Outpatient Clinic” dated January 10, 2020, prepared by Coffman Engineers, Inc). The draft EIS should describe whatever treatment methods would be used for the “emergency flow” before it is introduced into the downstream irrigation ditch. Further, the environmental document should address the potential impacts of contaminants in the “emergency flow” that could reach the downstream irrigation ditch and may reach the Dungeness River during and after an emergency flow condition.

The draft EIS should also address the potential impacts to the property owner adjacent to and downstream of the release point of the emergency flow of surface water. Without knowing anything about the potential volume or constituents of the discharge of the “emergency flow,” it is not possible to evaluate the legality of releasing the flow directly to the adjacent property.

Section 3b (Groundwater)

If groundwater is to be withdrawn from a well, Section 3b of the checklist asks the applicant to provide “a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.” In response, the applicant stated that “Irrigation quantities will be approximately 420,000 gallons from April-October, assuming medium water use plants.”

That answer is not responsive to the question in the checklist. The city should determine the source of the water (for example, would it be a new or existing groundwater well, or water from the irrigation district?) and determine what the impact of water withdrawal would be to existing users of the proposed source and what legal limitations there are on using the proposed source. The checklist answer is inadequate, and therefore the city’s statement in the MDNS (“Staff

concur with the checklist description.”) is inadequate and does not address the potential adverse impacts of withdrawing water (which may or may not be groundwater) for irrigation purposes.

4. Plants

Wetlands

Section 4.a of the completed checklist indicates that the proposed site does not have any “wet soil plants.” However, there is no indication in the MDNS or in the checklist that a wetland survey was conducted. Simply looking at the site and not seeing a swamp is not an acceptable method of evaluating whether or not hydric soils or wetland species are present. Since an irrigation ditch extends through the entire site and has presumably been functioning for many years, it is quite possible that both hydric soils and wetland species are present on the site.

By stating “Staff concurs with the checklist description” without referring to a wetland survey, the city is not fulfilling its SEPA obligations and the MDNS is substantially deficient. The city should require a wetland survey of the site and include the results of the survey in a draft EIS along with the potential impacts identified and mitigation measures to eliminate or minimize potential wetland impacts. If hydric soils or wetland species are present, the applicant would have to comply with the requirements of Section 404 of the Clean Water Act or the requirements of the Department of Ecology. That would require initially consulting with the U.S. Army Corps of Engineers to determine whether or not the wetlands are jurisdictional under federal regulations. If a wetland is present and is not federally regulated, the applicant would have to consult with the Department of Ecology to obtain an Administrative Order under the state Water Pollution Control Act (Chapter 90.48 RCW) if implementation of the proposed project would modify the wetland.

Threatened and Endangered Plant Species

Section 4.c of the completed checklist states that there are no known threatened and endangered (T&E) plant species on or near the site. The city has again simply stated in the MDNS “Staff concurs with the checklist description” without questioning whether or not a T&E species survey was conducted. As noted above for wetland issues, it is not possible to casually look across the site and decree that T&E plant species are not present. The city should require that the applicant conduct a T&E plant survey and include the results of the survey, reports of consultation with the USFWS and other agencies, potential effects on the species, and mitigation measures designed to eliminate or minimize effects as directed by USFS.

5. Animals

The city needs to resolve the issue of the following diametrically opposed statements in the completed checklist:

- Section 5a of the completed checklist states the following:

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

- Section 5c of the completed checklist states the following:

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

The MDNS does not call the polar opposite statements into question and simply states that “Staff concurs with the checklist description.” If the site is part of migration routes of the winter steelhead, coho, and pink salmon, the city should consult with the Department of Fish and Wildlife and address potential adverse impacts that implementation of the proposed project would have on these fish species in a more detailed analysis. If there are potential impacts, the city needs to require mitigation measures that would avoid or minimize impacts to those species. Impacts on the winter steelhead, coho, or pink salmon have the potential for being significant and therefore would require issuance of a draft EIS.

More importantly, the checklist states that the Department of Ecology identified the site as part of the habitat of the northern spotted owl. However, the city has not required any mitigation measures for this T&E species. That is a major deficiency in the environmental review. Further, **there is no evidence in the checklist or the MDNS that either the city or the applicant consulted with USFWS regarding this T&E species as required by the Endangered Species Act.** If the northern spotted owl uses the habitat of the site, the city and the applicant are required to consult with USFWS to determine the effect of implementation of the proposed project and any applicable mitigation measures to avoid or minimize the effect. That information should be incorporated into a draft EIS to comply with SEPA requirements. If the proposed project is implemented without such consultation, both the applicant and the city would violate the requirements of the Endangered Species Act.

The city has not complied with SEPA requirements for the species discussed above. If the city determines that the three fish species do not migrate through the site and the northern spotted owl does not use the habitat of the site, the city should state in a draft EIS that the checklist was inaccurate and that the species would not be affected by implementation of the proposed project.

In summary, the simple statement in the MDNS that “Staff concurs with the checklist description” is wholly inadequate for a full and accurate assessment of impacts to animals.

6. Energy and Natural Resources

In the completed checklist, the applicant did not answer the question of “what kinds of energy would be used to meet the completed project’s energy needs” and did not “Describe whether it will be used for heating, manufacturing, etc.” The response only addressed backup power generation. It is not clear why the city stated the usual “Staff concurs with the checklist description” since the response is clearly deficient.

The environmental review should consider whether or not solar panels would help to reduce the need for electric power generated by fossil fuel plants as a means of reducing greenhouse gas emissions. If only electrical power from the PUD is to be used, **it is likely that the provision of electrical power and the associated improvements and modifications to the distribution system would be a connected action under SEPA rules.** As a result, the city should determine what improvements or modifications the PUD would have to make to its system to provide the required power. This could include installation of new power poles and/or expansion of a

substation. As a part of the environmental review, the city should identify the route of new power lines to the facility from a starting point identified by the PUD and address the associated potential impacts of installing those and other new or modified facilities required to provide electrical power to the proposed project.

I also address this issue in my comments on Section 16 (Utilities).

7. Environmental Health

Section 7a.1) of the completed checklist states that there is no known or possible contamination at the site from present or past uses. However, there is no indication in the MDNS or in the checklist that historical records were checked for possible sources of contamination or that soil contamination surveys were conducted. Although the applicant contracted with Krazan & Associates, Inc. to conduct geotechnical studies, the contracted scope of work apparently did not include a soil contamination survey since there is no mention of contaminated soils in the Krazan report that is appended to the MDNS (“Geotechnical Engineering Investigation Proposed Medical Addiction Treatment (MAT) Facility Apns: 03301933000 And 033019339010, Sequim, Washington” dated October 24, 2019). Again, the city’s standard “Staff concurs with the checklist description” is insufficient for a full and accurate environmental evaluation.

To ensure the health and safety of workers during construction and to ensure that soil contaminants are not released into the groundwater or surface water during or after construction, the city should require that the applicant conduct a contaminated soil survey. The results of the survey should be included in a draft EIS along with an evaluation of potential impacts and mitigation measures if contaminated soil is present on the proposed site.

Section 7.a.4) of the completed checklist asks to the applicant to “Describe special emergency services that might be required.” In response, the applicant stated “none.” This is not a defensible response since it is likely that there will be occasional needs for services from the police and fire departments. However, the mitigation presented in the MDNS for public services appears to be adequate to avoid or minimize the potential adverse impacts to the city’s public services.

14. Transportation

As stated by the city in the MDNS, potential transportation impacts are addressed in the Traffic Impact Analysis (TIA) dated January 9, 2021 (sic) and prepared by Transportation Engineering NorthWest. However, the analysis presented in the Project Trip Generation Summary (Appendix C of the TIA) needs clarification to fully understand the potential impacts of implementation of the proposed project.

The TIA does not provide information on the *basis* for the selected number of vehicle trips other than stating that “Based on information provided by the applicant, the proposed Jamestown Clinic is estimated to generate a total of 370 daily trips” There is no information regarding how many employees or patients were assumed to be in each type of vehicle to determine whether or not the analysis examined the worst-case traffic condition (that is, the maximum number of vehicles that would be used to transport vehicles and employees).

The worst-case analysis for employee and patient vehicle trips would be having only 1 person per vehicle trips (see the columns for the employee and patient categories in the TIA Appendix C

table, Trip Generation Estimate – Average Weekday). This would provide transportation for 161 people out of the maximum total of 290 people (40 employees and a maximum of 250 patients per day for Phase I of the project (Section 8i of the checklist states there would be 200 to 250 patients during Phase I of the proposed project, with 250 used here for the worst-case analysis). That would leave 129 patients to be transported in the minivans each day, or an average of 5.4 people per van per day (24 minivans arriving and departing the facility according to the estimates in Appendix C of the TIA). However, in Section 14h of the checklist, the applicant states the following: “The shuttles will produce about 24 round trips daily, serving approximately 100 patients.” (Presumably the “shuttles” referred to in that statement and the “Minivan” column in Appendix C of the TIA are identical.) The city should clarify the assumptions made in the analysis to determine if a worst-cast analysis was conducted.

The data in the column for “Patient Trips - Jamestown Minivan” in the Trip Generation Estimate – Average Weekday table indicates that there would be multiple minivan trips within some of the one-half hour periods. For example, the table lists three minivan “entries” to the facility between 8:00 and 8:30 am. The city should determine whether or not the applicant has a fleet of minivans that would provide this level of service to the patients. If the applicant would not have sufficient vehicles to have three minivans arrive at the facility within the period of time listed in the table, the number of trips in the table will need to be revised along with the impact analysis in the TIA and in the city’s environmental document. In addition, if three minivans with an average of 5 patients arrive between 8:30 and 9:00, along with 5 patient vehicle trips, it is possible that the clinic would be able to accommodate 20 patients arriving during that time period. This is further evidence that the city should evaluate the premises of the transportation study to determine if the results are reasonable.

16. Utilities

The SEPA checklist question regarding utilities asks the applicant to “Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.” The applicant did not provide the information required beyond stating which utilities would be used during operation. Without knowing what the specific utility improvements would be required for the proposed project or the general construction activities and their locations, it is not possible for the city to evaluate the potential impacts of the improvements and modifications. As a result, the city’s statement that in the MDNS that “The checklist adequately addresses the issues of this section” is inadequate and does not provide a full and accurate assessment of potential impacts on many elements of the environment that could be affected by these construction activities.

Substantial construction of utilities required to provide service to the facility and any associated improvements and modifications to the utility systems would be connected actions under SEPA rules. The environmental review should identify the planned locations of new utilities, the general construction activities required to install the utilities, the potential environmental impacts associated with construction and operation of these connected actions, and mitigation measures designed to eliminate or minimize adverse environmental impacts. This information should be included in a draft EIS.