

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Shoreline Substantial Development ) FINDINGS, CONCLUSIONS,  
Conditional Use Permit Application by ) AND DECISION  
the City of Spokane for a project )  
located within the current right-of-way )  
of Upriver Drive between Freya Street )  
and Frederick Avenue. ) FILE NO. Z1100009-SCUP

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The City of Spokane Engineering Services Department seeks a shoreline substantial development conditional use permit in order to construct approximately 7,300 linear feet of sewer main within the current right-of-way of Upriver Drive between Freya Street and Frederick Avenue. A portion of the project is located in Spokane County, from Havana Street to Buckeye Avenue. The project includes a lift station, in Spokane County and a combined sewer overflow (CSO) storage facility, for water basin #41. The CSO facility will be installed west of the Rebecca intersection and parallel to the new sewer line.

**Decision:** Approval, subject to conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant:** Dave Daly  
City of Spokane, Department of Engineering Services  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Property Address:** Not assigned.

**Property Location:** The entire project is located in the Upriver Drive right-of-way north of the Spokane River between Freya Street and Frederick Avenue.

**Legal Description:** The project is to be located entirely within City of Spokane and Spokane County right-of-ways known as Upriver Drive.

**Zoning:** The existing zoning along the right-of-way is RSF (Residential Single Family).

**Comprehensive Plan Map Designation:** The property along the right-of-way is designated Conservation Open Space, Residential 4-10 and Residential 15-30 in portions of the Spokane County section.

**Site Description:** As stated, the project will be completely in the Upriver Drive right-of-way from Freya Street to Frederick Avenue.

**Surrounding Conditions:** The surrounding zoning within the City is all Residential Single Family with Multifamily in the Spokane County portions. The adjacent land use is a mix of residential uses. The Upriver Dam is located to the southeast of the project as well. Much of the land is designated Conservation Open Space and portions of this area are used for the Centennial Trail along the Spokane River.

**Project Description:** The City of Spokane Engineering Services department plans to remove pavement on Upriver Drive between Freya Street and Frederick Avenue. They plan to install 7,300 linear feet of sewer main within that right-of-way. Approximately 1,000 linear feet of the main will be sewer force main and will be accompanied by the construction of a lift station within Spokane County. The lift station is to be approximately 25 feet x 40 feet and made of concrete masonry. In addition to the sewer main project, a CSO storage facility for storm water basin #41 will be installed west of the Rebecca Street intersection and parallel to the new sewer line within the City limits. This concrete storage vault will be approximately 35 feet wide by 250 feet long and will be situated below the surface at Rebecca Street and Upriver Drive and then will be paved over.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code Sections 17E.060, SMC , 17G.060, and 17G.060.170.

**Hearing Date:** May 26, 2011

**Notices:** Mailed: February 17<sup>th</sup> and April 1, 2011  
Posted: February 18<sup>th</sup> and April 8, 2011

**Site Visit:** None made.

**SEPA:** A Determination of Nonsignificance was issued by the City on February 21, 2011.

**Testimony:**

Tami Palmquist  
City of Spokane, Current Planning  
808 West Spokane Boulevard  
Spokane, WA 99201

Steve Hansen  
City of Spokane, Engineering Services  
808 West Spokane Boulevard  
Spokane, WA 99201

**Exhibits:**

1. Planning Services Staff Reports
2. Application, including:
  - 2A General application
  - 2B Conditional use application including shoreline application
  - 2C Notification Map application
  - 2D Site Plan
  - 2E Critical Areas Assessment checklist
  - 2F Counter complete checklist
3. Fire Department comments
4. Engineering Services comments
5. Avista comments
6. Spokane Tribe of Indians comments
7. Northwest Pipeline comments
8. Notice map with parcel and address listing
9. Notices
10. Affidavit of 02-17 and 04-01-11
11. Affidavit of 02-18 and 04-08-11
12. SEPA Determination of Nonsignificance
13. Environmental checklist
14. Community Meeting sign in sheet
15. Community Meeting proposal and presentation
16. Hearing File Preparation Checklist
17. Letter dated 03-10-11 to Interested Parties from Tami Palmquist  
re: requesting comments
18. Letter dated 03-29-11 to David Daly from Tami Palmquist  
re: notice of application/public meeting instructions
- A. Material received at hearing from the applicant
  - A-1 Copy of presentation by applicant

**FINDINGS AND CONCLUSIONS**

To be approved, the proposed shoreline conditional use permit must comply with the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing

Examiner has reviewed the proposed conditional use permit application and the evidence of record with regard to this section and makes the following findings and conclusions:

1. The proposal is allowed under the provisions of the land use code.

Utility control and collection facilities are allowed in the shoreline residential environment as long as the utility company obtains a Type III Shoreline Conditional Use Permit which is what the Engineering Services Department is doing here. Also, basic utilities are allowed in residential zones with a Type III Conditional Use Permit if they are over 1,500 square feet. Therefore, this proposal is allowed under the land use codes with a conditional use permit.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings as set forth in the Planning Services Staff report Exhibit #1, Page 3 and 4.

3. The proposal meets the concurrency requirements of Chapter 17D.010.

The proposal was circulated amongst all City departments and agencies with jurisdiction over land development. It is not the type of facility that requires a lot of public service support. All of the proposed utilities will be located in an existing public right-of-way which then will be paved over so there will be no structures on site which would use the City's water, sewer or have to comply with fire codes. No adverse comments were received by any departments or agencies regarding inadequate services in the area.

4. If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to: size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water, and the existence of natural, historic, or cultural features.

There is a site plan in the record as Exhibit #2D. It shows how the components of the project will be contained entirely within City owned right-of-way and will be located underground. No evidence was submitted to show that the site is unsuitable for development because of physical characteristics or soil types. The project will be required to revegetate the site if any vegetation is removed or disturbed during construction.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary, conditions can be placed on the proposal to avoid significant effect or interference with the use or neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The City issued a Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA) on February 21, 2011. The project was circulated amongst all agencies and City departments with jurisdiction and no significant adverse impacts were noted in the environmental documents. Further, the purpose of the project is to improve environmental conditions for the Spokane River and provide additional sewer services. Therefore, the Hearing Examiner finds that this criterion has been met.

6. For shoreline conditional use permits the following additional criteria apply:

a. The proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;

The project was circulated amongst all relevant agencies and departments and no agencies found inconsistencies with RCW 90.58.020 or the Shoreline Master Program. Therefore this criteria has been met.

b. The proposed use will not unreasonably interfere with the normal public use of public shorelines;

This proposal will be located in the existing right-of-way and will not change public access or views of the Spokane River. There will be temporary impacts during the construction process, but that is to be expected with a project such as this.

c. The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program;

If additional conditional use permits allowing the construction of utilities are proposed they tend to improve the quality of the environment for the Spokane River and therefore would not preclude achieving the goals of the Shoreline Master Program.

d. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with the uses planned for the area under the comprehensive plan and the Shoreline Master Program;

Please see Hearing Examiner findings under Criteria 5 above.

e. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying the physical and visual access suffers no substantial detrimental effect.

See Criterion 5 and 6b above.

## DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed shoreline conditional use permit, subject to the following conditions:

1. Approval is for a shoreline substantial development conditional use permit to allow the construction of this project including sewer lines, a CSO facility and other utilities and facilities within the Upriver Drive right-of-way between Freya Street and Frederick Avenue. The project will be constructed substantially in accordance with the application and the site plan on file as Exhibits # 2A through 2E. If changes are sought to this approval, the applicant shall submit those changes to Planning Services for review and approval. If Planning Services finds that the changes are substantial, then they shall be submitted to the Hearing Examiner for review and approval.
2. This project lies within the Riparian Habitat Zone 1 of The Spokane River as defined in Spokane Municipal Code, 17E.020.050. In compliance with Spokane Municipal Code 17E.020.050, Fish and Wildlife Conservation Areas – Regulated Activities, all activities shall be undertaken using best management practices; the applicant shall maintain records documenting compliance with best management practices. The Shoreline Master Program, SMC 17E.060 and SMC 17E.020 require the replacement of any lost habitat functions that result from the proposal.
3. The applicant shall notify the Spokane Fire Department when access to any properties is restricted in order to allow the department to revise their response plans during construction.
4. Public access to the Spokane River and river views shall be required as part of the Shoreline Masters Program and SMC 17E.060.
5. All SCAPCA requirements must be met.
6. Compliance with SMC 17D.060 “Storm-water Facilities” for storm-water will be reviewed when the stormwater report is submitted during the Construction Permit Review process. An erosion and sediment control plan will also be required with the construction plans.
7. If any artifacts or human remains are found on site, the Spokane Tribe of Indians shall be immediately notified and work in the immediate area shall cease.
8. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development.

9. Spokane Municipal Code 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.

10. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office:

### COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

11. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 7th day of June 2011.

  
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Greg Smith  
City of Spokane Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions of the Hearing Examiner regarding shoreline conditional use permits are reviewed by the Washington State Department of Ecology. After review, they may be appealed to the Washington State Shoreline Hearings Board. **All appeals must be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date of the Ecology decision.**