

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit) FINDINGS, CONCLUSIONS,
Application by the Yellowstone Pipe Line) AND DECISION
Company to allow the construction of a)
petroleum pipeline under the Spokane) FILE NO. Z16-048SCUP
River)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Yellow Stone Pipe Line Company seeks a shoreline conditional use permit in order to allow the construction of pipeline for petroleum products. The Applicant seeks approval of a permit to install 848 linear feet of 10-inch diameter, steel pipeline under the bed of the Spokane River. The new pipeline will replace an existing petroleum pipeline at the same site.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Yellowstone Pipe Line Company
Attn: Mike Miller
2626 Lillian Avenue
Billings, MT 59101

Agent: Terracon Consultants, Inc.
Attn: Jean Ramer
2110 Overland Avenue, Suite 124
Billings, MT 59102

Owner: City of Spokane
Attn: Elizabeth Schoedel
808 West Spokane Falls Boulevard
Spokane, WA 99201

Property Location: The Spokane River cuts through the site. On the north side of the Spokane River, the site is located near the intersection of Upriver Drive and Carnahan Road. On the south side of the Spokane River, the site is near the end of North Waterworks Street, approximately 1,100 feet downstream from the Upriver Dam.

Legal Description: The parcel numbers for the site and the legal descriptions of the parcels are found in the General Application, included in the record as Exhibit 2A.

Zoning: The project site spans multiple zones and is located in both the City of Spokane and the County of Spokane. The portions of the site located in the City of Spokane are zoned Residential Single-Family (RSF) and Light Industrial (LI). The portions of the site located in the County of Spokane are zoned MDR (Medium Density Residential) and HDR (High Density Residential).

Shoreline Designations: Urban Conservancy Environment; Shoreline Residential Environment; 150-foot and 200-foot Shoreline Buffer; Upriver Shoreline District.

Environmental Overlays: Habitat and Species, Riparian Habitat 1

Comprehensive Plan Map Designation: City designations: Light Industrial and Conservation Open Space. County designation: Residential 15-30.

Site Description: The site is approximately 5 acres in size, and includes areas located both on the north side and the south side of the Spokane River. Existing structures on the site include a pipeline under the river, block valves, access roads, and power lines. The banks of the river include steep slopes to the water. The areas near the bank are hilly. Beyond the banks, the site is generally flat.

Surrounding Conditions and Uses: The Spokane River cuts through the middle of the site. The site is located in an area already developed with residential and light industrial uses. Along the north bank of the river is the Centennial Trail and Upriver Drive. North of the site is a residential area developed with homes and apartments. To the south of the site is city-owned property, the Felts Field Airport, North Waterworks Street, and Upriver Dam.

Project Description: The Yellowstone Pipe Line Company is proposing to install a new section of 10-inch diameter refined petroleum products pipeline under the Spokane River. The Applicant proposes to use a horizontal directional drill to install the pipeline approximately 22 to 37 feet under the river. The new pipeline will replace an existing pipeline under the river. The existing pipeline will be abandoned in place after the new section of pipeline is connected to the system. The existing block valves will be removed. New valves will be constructed in the pipeline right of way. One valve will be installed 250 feet away from the south bank and another valve will be constructed 450 feet away from the north bank. The river bed will not be disturbed. Some clearing of small trees and shrubs will take place to ensure a clear area 15 feet on each side of the new pipeline centerline. This clearing will allow regular aerial monitoring consistent with state and federal pipeline safety regulations.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17E.060, Shoreline Regulations; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: November 3, 2015
Posted: November 11-12, 2015

Notice of Application/Public Hearing: Mailed: May 10, 2016
Posted: May 17, 2016

Community Meeting: December 1, 2015

Public Hearing Date: June 30, 2016

Site Visit: June 21, 2016

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Engineering Department on June 15, 2016. No appeal of the DNS was filed.

Testimony:

Tami Palmquist, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Dan Kegley, Director of Water Department
City of Spokane, Water Department
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Carrie Wildin
Phillips 66
2626 Lillian Avenue
Billings, MT 59101

Elizabeth Schoedel, Assistant City Attorney
City of Spokane, City Attorney's Office
808 West Spokane Falls Boulevard
Spokane, WA 99201

Jean Ramer
Terracon Consultants, Inc.
2110 Overland Avenue, Suite 124
Billings, MT 59102

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Shoreline permit application
 - 2C Shoreline/Critical Areas Checklist
 - 2D Notification Map application
 - 2E Site Plans
 - 2F Historical Aerial Photos (1938 – 2011)
 - 2G Reclamation plan for removal of block valves
 - 2H Plan for new block valves
 - 2I Conditional Use Permit Application Addendum
 - 2I-A Site Maps
 - 2I-B BMP Detail
 - 2I-C Correspondence (None)
 - 2I-D Site Inspection Form
 - 2I-E Construction Stormwater General Permit (CSWGP)
 - 2J Revised Geotechnical Report, dated 01-09-15
 - 2K Revegetation Requirements, dated 04-04-16
 - 2L Archaeological Survey Report, dated 04-30-16
3. Developer Services comments, dated 02-09-16
4. Wastewater Management comments, dated 02-09-16
5. Design Review comments
 - 5A dated 02-05-16
 - 3B dated 05-17-16
6. Public Works, Spokane County comments, dated 05-23-16
7. Washington Department of Fish and Wildlife comments, dated 02-11-16
8. Spokane Tribe of Indians comments

- 8A dated 02-02-16
- 8B dated 05-09-16
- 9. Notice map
- 10. Address listing
- 11. Parcel listing
- 12. Notice of Community Meeting
- 13. Notice of Application, SEPA Review and Public Hearing
- 14. Affidavit of mailings
 - 14A Community Meeting dated 11-03-15
 - 14B Application, SEPA Review and Public Hearing dated 05-10-16
- 15. Affidavit of postings:
 - 15A Community Meeting dated 11-11 and 11-12-15
 - 15B Application, SEPA Review and Public Hearing dated 05-17-16
- 16. Affidavit of sign removal dated 12-03-15
- 17. SEPA Determination of Nonsignificance dated 06-15-16
- 18. Environmental checklist dated 01-12-16
- 19. Community Meeting sign in sheet
- 20. Community Meeting minutes
- 21. Community Meeting presentation
- 22. Additional meeting notes dated:
 - 22A 03-19-15
 - 22B 10-13-15
- 23. Letter dated 10-26-15 to Mike Miller from Tami Palmquist
 - re: community meeting instructions
- 24. Letter dated 01-26-16 to Interested Parties from Tami Palmquist
 - re: requesting comments
- 25. Letter dated 02-12-16 to Jean Ramer from Tami Palmquist
 - re: corrections required technically incomplete
- 26. Emails dated 03-01-16 to/from Jean Ramer and Tami Palmquist
 - re: response to letter dated 02-16-16 and request for 60 day extension
- 27. Letter dated 04-15-16 to Tami Palmquist from Agnes Castronuevo
 - re: results of cultural survey
- 28. Emails dated 04-20/04-22-16 to/from Jean Ramer and Tami Palmquist
 - re: attending meeting and documentation
- 29. Letter dated 04-27-16 to Interested Parties from Tami Palmquist
 - re: 2nd request for comments
- 30. Emails dated 04-28/04-29-16 to/from Mary May and Julie Neff
 - re: project processes
- 31. Letter dated 05-03-16 to Jean Ramer from Tami Palmquist
 - re: notice of application and notice of hearing instructions
- 32. Emails dated 05-23/25-16 to/from Marianne Barrentine/Jean Ramer/Mary May and Tami Palmquist
 - re: project permitting and follow up
- 33. Yellowstone Pipeline PowerPoint presentation
 - A. Material received at hearing:
 - A-1 Hardcopy of Staff's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed Shoreline Conditional Use Permit ("SCUP") must comply with the criteria set forth in SMC 17G.060.170 and SMC 17E.060, the shoreline regulations. The Hearing Examiner has reviewed the proposed SCUP and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The project site spans multiple zones, shoreline designations, and jurisdictions¹. See Exhibit 1, p. 4. The portion of the site within the city includes property that is zoned Residential Single Family ("RSF") and Light Industrial ("LI"). The project site is also within the Urban Conservancy Environment ("UCE") and the Shoreline Residential Environment ("SRE") pursuant to the shoreline regulations. To be allowed in the shoreline jurisdiction, a use must be permitted in both the shoreline jurisdiction and in accordance with the applicable zoning of the property. See SMC 17E.060.690(C).

The Hearing Examiner agrees with the Staff that that proposed pipeline constitutes a "Utility Corridor" under the municipal code. See Exhibit 1, p. 4. A "Utility Corridor" includes public or private passageways, including easements, for the purpose of transporting oil and gas on a regional level. See SMC 17C.190.560. The question, then, is whether Utility Corridors are allowed on the project site, given the applicable zoning and shoreline designations.

The proposed use is allowed under the applicable zoning. Utility Corridors are allowed as a conditional use in the RSF zone. See Table 17C.110-1, Residential Zone Primary Uses. Utility Corridors are allowed outright in the LI zone. See Table 17C.130-1, Industrial Zone Primary Uses.

The proposed use is also allowed pursuant to the applicable shoreline designations. Underwater utility crossings are allowed as a conditional use under the shoreline regulations. See Table 17E-060-04. This is true for properties designated UCE or SRE. See *id.* However, it should be noted that new construction or expansion of existing utilities or facilities that are Non-Water Oriented shall not be allowed in the shoreline jurisdiction unless it can be demonstrated that feasible alternatives are not available. See SMC 17E.060.700(2).

The Hearing Examiner is persuaded that the proposed location is the one feasible option. There is already an existing pipeline in that location, under the bed of the river. The existing pipeline will be thoroughly cleaned out, sealed, and abandoned in place, in order to avoid disturbing the river bed. *Testimony of C. Wildin.* In this way, the old pipeline can naturally decay over time, without materially affecting the ecology of the river. The new pipeline will be installed in the same general location, but at a greater depth, to guard against any impacts to the river. It is possible to cross the river overhead, but that will create visual impacts to the shoreline environment and makes the pipeline vulnerable to vandalism, among other risks. *Testimony of C. Wildin.* In addition, the requirement to permit shoreline use only when there are no feasible alternatives is designed to avoid unnecessarily developing otherwise pristine shoreline areas.

¹ Part of the site is in the City of Spokane, and part of the site is in the County of Spokane. The portion of the site in Spokane County includes property zoned Medium Density Residential ("MDR") and High Density Residential ("HDR"). The Hearing Examiner does not have jurisdiction over property in Spokane County. If county approvals are required for this project, the Applicant will have to seek such approvals directly from the county.

There is already a pipeline in that location. Placing the pipeline elsewhere would seem to create new or additional impacts that can be avoided by keeping the pipeline crossing in the same place.

Under both the zoning code and the shoreline regulations, this project is allowed as a conditional use. The Hearing Examiner concludes that, provided the requirements for a shoreline conditional use are satisfied, the project is allowed at this site. Therefore, this criterion for approval is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The project area is designated as Light Industrial and Conservation Open Space under the comprehensive plan. Various provisions in the comprehensive plan support the proposed use, in light of the existing designations.

The first goal of the Land Use element of the comprehensive plan memorializes the objective of providing coordinated, efficient, and cost effective public facilities and utility services. See Comprehensive Plan ("CP"), Goal LU 1, Citywide Land Use. Policy 1.12 of the Land Use element recognizes that adequate public facilities and services systems must exist to accommodate proposed development, and must exist before development is permitted to occur. See CP, Policy LU 1.12, Public Facilities and Services. The Land Use element also contemplates that public facilities will be properly distributed throughout the city. See CP, Goal LU 6, Adequate Public Lands and Facilities. The Capital Facilities element also calls for the city to provide and maintain adequate public facilities and utility services. See CP, Goal CFU 1, Adequate Public Facilities and Services (also noting that such investments ensure adequate levels of service).

The project is specifically supported by Policy CFU 4.3. This policy states that that city should require that utility lines be installed underground unless it is not physically feasible. See CP, Policy CFU 4.3, Underground Utilities. Similarly, shoreline policies provide that new utilities and facilities should be built underground if feasible, and use low-impact, low profile designs and construction methods. See SMP 2.3, Underground Placement. Installing the pipeline under the bed of the river not only fulfills these explicit objectives, it also ensures compatibility with surrounding uses, protects environmental quality, and guards against impacts to shoreline habitat, consistent with Policies LU 5.2, Environmental Quality Enhancement, and LU 5.4, Natural Features and Habitat Protection. Installing the pipeline under the river bed also follows the admonition for the careful siting of utilities, pursuant to Goal CFU 5. See CP, Goal CFU 5, Environmental Concerns.

The project, as designed and conditioned, provides adequate provisions to protect water quality, views, and archaeological sites, as well as guarding against pollutants entering the river, among other things. See SMP 5.4, Provisions for Shoreline Protection. Given the location, the design of the project, and the preexisting use, the project does not create any loss of shoreline ecological functions. See SMP 1.3, No Net Loss of Ecological Functions. "No net loss" will be achieved, in part, because the pipeline will be underground, avoiding most impacts to the shoreline and riverbed. See Exhibit 2B. In addition, the block valves, currently in the shoreline, will be removed and those locations will be planted with native vegetation. See *id.* This will result in an improvement to the shoreline. See *id.* In addition, project impacts will be offset, in part, by landscaping with native plants. See Policy 10.3, Landscaping with Native Plants. Finally, the project is being processed as a conditional use, in fulfillment of Policy SMP 2.8. See SMP 2.8, Conditions on Construction or Expansion.

The Hearing Examiner finds that the project is consistent with the goals and policies of the comprehensive plan, and therefore this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions (such as a shoreline conditional use permit) mandate that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on March 25, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 24. In addition, on April 27, 2016, a 2nd Request for Comments was circulated to the same parties. See Exhibit 29.

The city received several comments on this project. See e.g. Exhibits 3, 4, 5A, 5B, 6, 7, 8A & 8B. However, City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 5. A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied. The proposal, by its nature, does not place substantive demands on public infrastructure.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the shoreline conditional use permit is met.

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. See SMC 17G.060.170(C)(4).*

The Hearing Examiner concludes that the property is suitable for the proposed use, given its physical characteristics. The Hearing Examiner agrees with the Staff in this regard. See Exhibit 1, p. 6.

The proposed pipeline will be installed in the same general location as the existing pipeline, albeit at a greater depth. Thus, the location has proven suitable, from a historical perspective, for this type of utility. There is nothing about the size, shape, location, or topography of the project area that makes the proposal problematic or infeasible. The underground conditions are difficult, but the technology for horizontal directional drilling has advanced to the point where projects like this are now feasible. *Testimony of C. Wildin.*

The pipeline will be underneath the banks and bed of the river. The entry and exit points for the pipeline will be located in upland areas. See Exhibit 2J, p. 8. At the proposed depths, the pipeline will not disturb the river bed. See *id.* The only above ground structures are the block valves. However, the block valves will be installed in relatively flat areas above the banks of the river. In addition, the valves will be installed some distance from the river. One valve will be installed 250 feet away from the south bank and the other valve will be constructed 450 feet away from the north bank.

In February 2016, the Spokane Tribe of Indians contended that the project could have an adverse effect on as many as six cultural sites. See Exhibit 8A. However, the Tribe did not specifically identify those sites, describe their specific locations, or submit any other details. See *id.* The Tribe recommended that a cultural survey and subsurface testing be completed. See *id.* Consistent with the Spokane Tribe's comment, the Applicant completed an archaeological survey and investigation regarding the project site. See Exhibit 2L. That survey and investigation was completed in March-April 2016. See *id.*

In the investigation of the part of the project site on the south of the Spokane River, the Applicant's consultant discovered a chunk of red brick and mortar which was classified as an "historic period isolate." See *id.* This object was found in close proximity to modern trash and debris, such as Styrofoam fragments and beer bottles. See *id.* The consultant did not suggest that project conditions were needed based upon this discovery, however. See *id.*

The Applicant's consultant also found, in another area of the southern part of the property, an old sewage catch basin. See *id.* It was later learned that the structure was part of a septic pumping station/facility prior to the mid-seventies. See *id.* The consultant determined that the structure should be classified as an "historic period archaeological site." See *id.*

At the conclusion of its investigation, the Applicant's consultant concluded that the proposed project will have "no adverse effect." See *id.* However, the consultant recommended that the "historic period archaeological site" be flagged and avoided during all project activities. See *id.*

In May 2016, the Tribe recommended monitoring on all ground disturbing activities. See Exhibit 8B. The Tribe did not reference or further discuss potential impacts on cultural sites. See *id.* Thus, the Tribe appears to have modified its comments based upon more recent information, and based upon its consultations with the Applicant. See Exhibit 1, p. 6. The Spokane Tribe has advised that it is in consultation with the Applicant in order to arrange for monitoring during the removal of the block valves. *Testimony of T. Palmquist.* In addition, the project was subject to design review by the Urban Design Staff, which recommended a number of conditions for the project. See *id.*

The Hearing Examiner concludes that the best available information establishes that the project will have no adverse effect on historic, cultural, or archaeological resources. Project conditions can address any lingering concerns, by ensuring that the "historic period archaeological site" is not disturbed, and by including the requirement that the project sponsor follow the required protocol in the event something significant is discovered during construction.

Based upon the foregoing, the Hearing Examiner concludes that this criterion for project approval is satisfied.

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 of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The City issued a Determination of Nonsignificance ("DNS") for this project on June 15, 2016. See Exhibit 17. The comment/appeal period on this DNS expired on or about June 29, 2016. See *id.* The DNS was not appealed. About six months before the issuance of the DNS,

on January 12, 2016, the Applicant prepared an environmental checklist for the project, detailing the specifics of the project and commenting on the potential impacts.

The checklist supports the conclusion that no significant environmental impacts will arise from this project. For example, no threatened or endangered species were identified on the project site. See Exhibit 18, (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). No waste materials will be discharged into ground or surface waters as a result of this project, although some mud may enter the groundwater during drilling operations. See Exhibit 18 (Environmental Checklist ¶¶ B(3)(b)(2), B(3)(a)(6) & B(3)(c)(2)). No wetlands will be affected by the project. See Exhibit 2J, p. 8.

There are certain risks inherent in the construction and operation of petroleum pipelines. See Exhibit 18 (Environmental Checklist ¶ B(7)(a)). However, the new pipeline controls those risks through current safety standards as well as by placing the new pipeline at a greater depth to protect the river and associated habitat. See *id.* Other than noise and odor generated during construction, the project will result in no significant noise or odor impacts on a long-term basis. See Exhibit 18 (Environmental Checklist ¶ B(7)(b)(2)).

The only above-ground structures are the block valves and surrounding fencing, which are only ten feet high. See Exhibit 18 (Environmental Checklist ¶ B(10)(a)-(b)). Those structures are relatively small, and will be constructed outside of the shoreline zone. The rest of the improvements are underground. Thus, the project will not impact views. See *id.* The project will not produce any light or glare. See Exhibit 18 (Environmental Checklist ¶ B(11)(a)).

The applicant will be required to implement on-site controls for storm water and surface drainage generated from the project. See SMC 17D.060.010 *et seq.* However, this project does not result in the construction of impervious surfaces. See Exhibit 18 (Environmental Checklist ¶ B(3)(c)(1)). Erosion control measures will be implemented during the construction work to guard against runoff. See Exhibit 18 (Environmental Checklist ¶ B(1)(h)).

There was no substantive evidence that this project should be denied due to environmental concerns. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. A DNS was issued for the project and no one appealed that determination. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment, which cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. *The proposed use is consistent with the policies of RCW 90.58.020 and the shoreline master program. See SMC 17G.060.170(D)(2)(a)(i).*

The site is designated as Urban Conservancy Environment (“UCE”) under the Shoreline Master Program. See Exhibit 1, p. 7. The UCE designation is intended to protect and restore ecological functions of open space, flood plains, and other sensitive areas when found in urban areas. See *id.* The designation also allows a variety of uses. See *id.*

In this specific case, the development site is being used for a petroleum pipeline and associated equipment. The pipeline will be installed under the bank and beds of the Spokane River. This will require the use of sophisticated drilling techniques. Although there will be some

impacts during construction, when the project is completed, only the block valves and associated fencing will be visible. There are two block valves, one on each side of the river, and these will be located some distance away from the river. The impact on views will be nonexistent, since the pipeline will be located underground and well under the bed of the river. The Applicant will be planting native vegetation during site restoration, to mitigate the impacts of construction. Further, the project will not preclude future development near the site. *See id.*

Finally, the Hearing Examiner has already concluded that the proposal is consistent with the goals and policies of the Shoreline Master Program. There are further comments on this issue in Paragraph 2 above.

The project is consistent with the policies of the Shoreline Management Act and the Shoreline Master Program. As a result, this criterion is satisfied.

7. *The proposed use will not unreasonably interfere with the normal use of public shorelines. See SMC 17G.060.170(D)(2)(a)(ii).*

The proposed pipeline will be installed underground. All new facilities within the shoreline will be subsurface. *See Exhibit 2B.* The existing block valves, which are within the shoreline, will be removed. *See id.* The new block valves will be constructed outside the shoreline zone. *See id.* Existing public access and views of the river will not change as a result of this project. *See Exhibit 1, p. 8.* This project will not create any additional restrictions to the use of the property or the use of the Upriver Dam. *See id.* There will be temporary impacts due to construction. However, the site will be restored at the conclusion of the construction project. *See id.* The Hearing Examiner concludes that this criterion for approval is satisfied.

8. *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. See SMC 17G.060.170(D)(2)(a)(iii).*

There are no known conditional use permits in the vicinity of the site for the proposed pipeline. *See Exhibit 1, p. 8.* As a result, there will be no cumulative impact arising from the approval of the requested shoreline conditional use permit. This criterion is therefore satisfied.

9. *The proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the shoreline master program. See SMC 17G.060.170(D)(2)(a)(iv).*

The site is currently the location of an underground pipeline. The current use has not proven to be incompatible with any nearby uses. As the Applicant noted: "There is no conflict with current uses now, and none are anticipated in the future." *See Exhibit 2B.* Similarly, it is difficult to see how the replacement pipeline would be incompatible with other uses in the vicinity. There are no proposed or planned uses that would be impacted by this project, to the knowledge of the Hearing Examiner. As a result, the Hearing Examiner concludes that this criterion is met.

10. *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 physical and visual access suffers no substantial detrimental effect. See SMC 17G.060.170(D)(2)(a)(v).*

The project will not cause any significant adverse effects on the shoreline environment. The existing pipeline will be cleaned out, sealed, and abandoned in place. "In-place

abandonment was determined to be the most viable alternative as removal would likely involve considerable disturbance to the river bed and banks with downstream sedimentation and would require closing this section of the river during the in-stream removal activities.” See Exhibit 2J, pp. 8-9. The old pipeline will be allowed to naturally decay. *Testimony of C. Wildin*; See also Exhibit 2J, p. 9. The replacement pipeline will be installed at a greater depth, under the banks and bed of the river, in order to better protect river and associated habitat. The environmental checklist does not reveal significant impacts from this project. Following agency review, a DNS was issued for this project, which was not appealed.

With the exception of the block valves, the project will be installed underground. As has been stated previously, there will be no obstruction of the views to the river. Physical and visual access to the river will be the same after as before the project. Since there will be no substantial, detrimental effects, the Hearing Examiner concludes that this criterion is satisfied.

DECISION

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

1. Approval is for a Shoreline Conditional Use Permit to allow the Applicant, Yellowstone Pipe Line Company, to install a pipeline for petroleum products under the bed of the Spokane River. The site shall be developed in substantial compliance with the plans submitted with the revised application addendum, dated April 26, 2016.
2. This approval does not waive the applicant’s obligation to comply with all of the requirements of the Spokane Municipal Code including the International Codes (as adopted in this jurisdiction), as well as requirements of City Departments and outside agencies with jurisdiction over land development.
3. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.
4. The project shall comply with Shoreline Master Program, SMC 17E.060 and SMC 17E.020, which provide that a project shall not result in a net loss of shoreline ecological functions. Pursuant to Section 17E.060.020, the Applicant shall engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts resulting from this proposal.
5. The site will be revegetated with native shrubs, trees, and upland seed mix per the approved Vegetation Replacement Plan in the Conditional Use Permit Application Addendum dated April 26, 2016.
6. The contractor is required to have a Construction Stormwater Pollution Prevention Plan (SWPPP) in place prior to and during construction in order to prevent sediment-laden stormwater run-off or other pollutants from entering the Spokane River.
7. The project shall adhere to the recommendation of the Archaeological Survey Report included in the record as Exhibit 2L, which provides that the newly recorded historic period archaeological site, YP03-ARCH-1, shall be flagged and avoided during all project activities.

8. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.

9. The Applicant shall finalize the easement with the City of Spokane prior to ground disturbance activities.

10. Spokane Municipal Code section 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.

DATED this 11th day of July, 2016.



Brian T. McGinn
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.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.