

**CITY OF SPOKANE HEARING EXAMINER**

Re: Shoreline Conditional Use Permit ) REVISÉ FINDINGS,  
Application by the City of Spokane - ) CONCLUSIONS, AND  
Wastewater Treatment Facility to allow ) DECISION  
ongoing improvements )  
 ) FILE NO. Z16-1081SCUP

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The City of Spokane - Wastewater Treatment Facility seeks a shoreline conditional use permit in order to allow ongoing improvements at the Wastewater Treatment Facility through 2027. The City of Spokane is required by its NPDES permit (WA-002447-3) to install a "Next Level Treatment" at the Wastewater Treatment Facility and has chosen to install membrane filtration to achieve regulatory compliance. The City currently anticipates that the facility will be in operation by 2020.

**Decision:** Approved, with conditions.

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

**Applicant:** Attn: P. Mike Taylor, P.E.  
City of Spokane - Wastewater Treatment Facility  
4401 N. Aubrey Parkway  
Spokane, WA 99205

**Owner:** City of Spokane and State of Washington Parks and Recreation Dept.  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Property Location:** The project site is at the current Wastewater Treatment Facility, located on the south side of Aubrey L. White Parkway, and abutting the Spokane River. The address for the site is 4401 N. Aubrey L. White Parkway, Spokane, WA, 99205.

**Legal Description:** The parcel numbers for the site are found in the General Application, which is included in the record as Exhibit 2A.

**Zoning:** Residential Single-Family (RSF)

**Shoreline Designations:** North of the Spokane River; Wastewater Treatment Plant Environment ("WTPE") Designation; 50-foot buffer; Downriver District.

**Environmental Overlays:** Fish & Wildlife Habitat Area (RHA-4)

**Comprehensive Plan Map Designation:** Institutional

**Site Description:** The City of Spokane Wastewater Treatment Facility has been located at the project site since 1958. The Wastewater Treatment Facility is a major process facility which includes a large number of structures. There are also many below-grade utility tunnels and pipelines. The site consists of four parcels, and includes an undeveloped area on the northwest corner that is designated as a habitat conservation area. The site slopes moderately from the road down to the river. The project area is approximately 3 acres in size. The overall site is approximately 35.77 acres.

**Surrounding Conditions and Uses:** The property surrounding the site on all sides is zoned Residential Single Family (RSF). Adjacent on the northeast is a steep bluff which is designated in the Comprehensive Plan as "Conservation Open Space." On top of the bluff there are single family residences. Park areas are located to the southeast and northwest and across the Spokane River. To the southeast is the Downriver Golf Course, and to the northwest is the Bowl and Pitcher portion of Riverside State Park, which includes camping and picnicking areas.

**Project Description:** The City has operated the Wastewater Treatment Plant on this site for 59 years. Since the facility opened, there have been many substantial upgrades in order to comply with Washington State Department of Ecology's water quality standards. The most recent Shoreline Conditional Use/Variance application was approved in 2002 and was valid for 15 years of upgrades to the site. The application will soon expire. As a result, the City is seeking approval of another Shoreline Conditional Use Permit for the continuing upgrades to the site. The city is requesting that the application be valid for ten years (expiring in 2027). The site plan provided with the application shows where the upgrades and expansion is planned. The Shoreline Variance is necessary because some of the upgrades will exceed the 35 foot height limit. Upgrades will not be within the 50' shoreline buffer, but there are upgrades that will be within the Shoreline Jurisdiction.

### **PROCEDURAL INFORMATION**

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

**Notice of Community Meeting:** Mailed: October 3, 2016  
Posted: October 3, 2016

**Notice of Application/Public Hearing:** Mailed: January 27, 2017  
Posted: January 27, 2017

**Community Meeting:** October 7, 2016

**Public Hearing Date:** March 23, 2017

**Site Visit:** March 20, 2017

**SEPA:** A Determination of Nonsignificance ("DNS") was issued by the City of Spokane Engineering Department on March 7, 2017. No appeal of the DNS was filed.

**Testimony:**

Donna deBit, Assistant Planner  
City of Spokane Planning & Development  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Lars Hendron, P.E.  
City of Spokane Wastewater Mgmt.  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

P. Mike Taylor, P.E.  
City of Spokane Wastewater Mgmt.  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**Exhibits:**

1. Planning Services Staff Report
2. Applications for Next Level of Treatment at the Wastewater Treatment Facility (WTF):
  - 2A General application
  - 2B Shoreline Conditional Use Permit application
  - 2C Shoreline Critical Areas Checklist
  - 2D Notification Map application
  - 2E Site Plan
  - 2F List of Projects to be Included
  - 2G Introduction/Summary of Project
  - 2H Habitat Management Plan
3. Urban Design Section of Planning Department comments
4. Spokane Tribe of Indians comments dated 02-08-17
5. Department of Ecology comments dated:
  - 5A 02-09-17
  - 5B 03-07-17
6. Notice map
7. Parcel listing
8. Notice of Community Meeting
9. Notice of Application and Public Hearing
10. Affidavit of mailings
  - 10A Community Meeting dated 10-03-16
  - 10B Application and Public Hearing dated 01-27-17
11. Affidavit of postings:
  - 11A Community Meeting dated 10-03-16
  - 11B Application and Public Hearing dated 07-27-17
12. Affidavit of Sign Removal dated 10-11-16
13. SEPA Determination of Nonsignificance dated 03-07-17
14. Environmental checklist dated
15. Community Meeting sign in sheet
16. Letter dated 09-02-16 to Mike Taylor from Donna deBit  
re: community meeting instructions
17. Letter dated 01-27-17 to Interested Parties from Donna deBit  
re: requesting comments

18. Letter dated 02-10-17 to Mike Taylor from Donna deBit  
re: notice of application and notice of hearing instructions
19. Public Comments:
  - 19A Letter dated 03-22-17 from Northwest Neighborhood Council, supporting project
- A. Material received at hearing:
  - A-1 Hardcopy of Applicant's PowerPoint presentation
  - A-2 Copy of presentation made by applicant to neighborhood on 03-16-17

### **FINDINGS AND CONCLUSIONS**

To be approved, the proposed Shoreline Conditional Use Permit ("SCUP") and Variance application 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 Variance and the evidence of record with regard to the application and makes the following findings and conclusions:

#### ***Shoreline Conditional Use Permit***

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

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 property is zoned RSF. The Staff classified the Waste Treatment Facility as an "Essential Public Facility." See Exhibit 1, p. 3; see also SMC 17C.190.530. Essential Public Facilities are allowed in the RSF zone as a conditional use. See Table 17C.110-1.

Under the shoreline regulations, the property is designated Wastewater Treatment Plant Environment ("WTPE"). Within WTPE shoreline environments, expansions or upgrades of existing wastewater treatment plant facilities and accessory uses are allowed as a conditional use. See Table 17E.060-4.

The Hearing Examiner concludes that the project is allowed as a conditional use pursuant to both the zoning regulations and the shoreline regulations. 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 proposal, in essence, seeks to authorize the city to continue with the long-planned upgrades to the Wastewater Treatment Facility. *Testimony of M. Taylor.* The facility upgrades are necessary not only to account for the growth of the city, but also to satisfy increasingly stringent standards related to water quality. See *id.* These proposed improvements are consistent with many goals and policies addressed in the comprehensive plan.

Goal 1 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.

Similarly, the Capital Facilities element calls for the city to provide and maintain adequate public facilities and utility services. See CP, Goal CFU 1, Adequate Public Facilities and Services. Policy CFU 1.2 of the Capital Facilities Element further provides as follows:

*Require the development of capital improvement projects that either improve the city's operational efficiency or reduce costs by increasing the capacity, use, and/or life expectancy of existing facilities.*

See CP, Policy CFU 1.2, p. 10. Likewise, Policy CFU 1.3 requires the maintenance, rehabilitation, and renovation of existing capital facilities. See CP, Policy CFU 1.3, p. 11.

CFU 2, Concurrency, seeks to ensure that public services and facilities are available when the service demands of development occur, while maintaining adequate levels of service. See CP, Goal CFU 2, Chapter 5, p. 12; see also CP, Policy CFU 2.2, p. 12-13. The Hearing Examiner agrees with the Staff that this project promotes this goal. The Staff noted:

*The proposal will provide additional capacity to the plant as well as meet DOE mandates to reduce the amount of residual pollutants that are released into the Spokane River. The projected improvements are included as a part of this Conditional Use Permit and are intended to meet the concurrency requirements as well as decrease the need for continuous permitting as the facility continues to be improved over the next ten years.*

See Exhibit 1, p. 4.

The project is part of a substantial, ongoing effort to upgrade the Wastewater Treatment Facility in order to protect and improve the water quality of the Spokane River. The City is required to ensure that "the plant is meeting all applicable federal, state, and local standards for emissions and pollutants." See CP, Chapter 14, p. 20. As the Staff states:

*The proposed improvements to the facility will lessen impacts to the environment by reducing residual pollutant release to the River and by decreasing the odors associated with the treatment plant.*

See Exhibit 1, p. 4. In this regard, the proposal fulfills the intent of Goal CFU 5 of the Capital Facilities Element, which seeks to minimize impacts to the environment, public health and safety through the timely and careful development and use of capital facilities and utilities. See CP, Goal CFU 5, Environmental Concerns.

The proposal also fulfills the goals and policies of the Shoreline Master Program. The areas disturbed by the improvements will be landscaped with native and ornamental trees and shrubs to be compatible with the other landscaping at the facility. See Exhibit 2B. Trees will be replaced at the perimeter of the project area. See *id.* A landscaped buffer will be maintained between the Membrane Facility and the river. See *id.* In addition, in accordance with the Habitat Management Plan, the city has established a wildlife habitat conservation area on undeveloped city property to the west. See *id.* The site of the facility has already been developed and the proposed upgrades do not change the existing uses. See *id.* Given the nature of the proposal, and the planned mitigation measures, the proposal will not result in a net loss of ecological function. See SMP 1.3, No Net Loss of Ecological Functions.

The city will use best management practices to guard against erosion during construction. See *id.* All storm water will be retained and disposed of on-site. See *id.* The project will also result in a substantial reduction in the discharge of phosphates and sediments into the Spokane River. See *id.* And the structures are designed in a way that minimizes the impacts to river views. *Testimony of M. Taylor & L. Hendron.* In these respects, the proposal fulfills Policy SMP 5.4, which seeks to protect water quality and views as well as guarding against pollutants entering the river, among other things. See SMP 5.4, Provisions for Shoreline Protection.

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 a Type III decision (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 January 27, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 17.

The city received several comments on this project. See *e.g.* Exhibits 3, 4, 5A, & 5B. 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. The project does not result in an increased demand for public services. See Exhibit 14 (Environmental Checklist ¶B(15)(a)). In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

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 and historic uses. The Wastewater Treatment Facility has been operated at this site for almost sixty years. See Exhibit 1, p. 5. There is no reason to suspect, at this point in the facility's history, that the site does not have the appropriate size, shape, topography, soils, slopes or drainage characteristics. The property has already proven to be an appropriate location for the facility.

The site does not have any significant historic or cultural features. See Exhibit 14 (Environmental Checklist ¶ B(13)(a)). There are no landmarks or other evidence of Indian or historic use or occupation of the site. See Exhibit 14 (Environmental Checklist ¶ B(13)(b)). Prior archaeological surveys were completed and no areas of historic or cultural significance were discovered. See Exhibit 14 (Environmental Checklist ¶ B(13)(c)).

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 March 7, 2017. See Exhibit 13. The DNS was not appealed. About two weeks before the issuance of the DNS, on January 24, 2017, 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<sup>1</sup> were identified on the project site. See Exhibit 14 (Environmental Checklist ¶ B(4)(c) & B(5)(b)). No waste materials will be discharged into ground waters as a result of this project. See Exhibit 14 (Environmental Checklist ¶ B(3)(b)(2)). Storm water will be conveyed, retained, and treated on-site, and then pumped to the facility headworks for full treatment. See Exhibit 14 (Environmental Checklist ¶¶ A(14)(b)(2) & B(3)(c)(1)). Drainage from the facility will be reduced or unchanged by the proposed improvements. See *id.*

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<sup>1</sup> Although no impacts to species are anticipated, it should be noted that there are state protected animal species in the Spokane River corridor or in proximity to the site. See Exhibit 14 (Environmental Checklist ¶ B(5)(b)).

Temporary, minor erosion could occur during construction. See Exhibit 14 (Environmental Checklist ¶ A(14)(b)(2)). However, erosion and sediment control plans must be approved prior to the commencement of construction. See *id.* Runoff will be directed to drainage swales and geotextiles will be used if appropriate. See Exhibit 14 (Environmental Checklist ¶ B(1)(h)). Additional vegetation will also be a part of the landscape mitigation. See Exhibit 14 (Environmental Checklist ¶ B(1)(h)).

The improvements will be designed to minimize visual impacts and the site will be landscaped to better blend with its surroundings. See Exhibit 14 (Environmental Checklist ¶ B(8)(l)). Only views from the facility site and the road adjacent to the site will be impacted by the project. See Exhibit 14 (Environmental Checklist ¶ B(10)(b)). This is true even though the site improvements include structures that exceed the 35-foot height limitation. *Testimony of M. Taylor.* Even taller structures on the site do not elevate above the surface of the adjacent road. See *id.*

Lighting will be consistent with the lighting currently on the site and will be controlled to minimize visual glare at night. See Exhibit 14 (Environmental Checklist ¶ B(11)(a)). Lighting systems will direct light downward only and will have controls to reduce light in areas where light is not needed. See Exhibit 14 (Environmental Checklist ¶ B(11)(d)).

The proposed improvements will not result in new or increased odors emanating from the site. On the contrary, the discharge of odorous air will be significantly reduced as a result of the proposed upgrades. See Exhibit 14 (Environmental Checklist ¶¶ B(2)(c) & Supplemental Sheet ¶ 1).

The proposed upgrades, if anything, will result in a significant, net benefit to the environment. The Wastewater Treatment Facility regularly discharges treated effluent into the Spokane River, in accordance with its Clean Water Act permit. However, the proposed upgrades will result in significant reductions in the discharge of sediments and phosphates. See Exhibit 14 (Supplemental Sheet ¶ 1). For example, the additional filtration which will be added to the treatment process will increase total phosphorous removal from 90% to approximately 99%. See Exhibit 14 (Environmental Checklist ¶ B(3)(a)(6)). Discharge volumes will remain the same, but water quality will be substantially enhanced. See *id.* A significant benefit of this filtration is reduced downstream exposures to algae blooms in Long Lake. See Exhibit 14 (Environmental Checklist ¶ B(12)(c)).

The project does give rise to some noise impacts. The ventilation systems for new buildings and odor control may become a source of noise. See Exhibit 14 (Environmental Checklist ¶ B(7)(b)(2)). However, the ventilation systems will also be designed to minimize noise. See Exhibit 14 (Environmental Checklist ¶ B(7)(b)(3)). The "backflush cycle of the membrane system produces significant noise within the building, but the building will contain a majority of the noise". See Exhibit 14 (Environmental Checklist ¶ B(7)(b)(2)-(3)). Finally, the project will also result in typical construction noise. See Exhibit 14 (Environmental Checklist ¶ B(7)(b)(2)). However, those noise impacts will be temporary, and only during certain hours of the day. See *id.* While there are some impacts from noise, those impacts are adequately addressed. The City will be required to comply with noise regulations in any case.

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).*

As was discussed in paragraph 1 above, the property is designated Wastewater Treatment Plant Environment ("WTPE") under the Shoreline Master Program. The WTPE designation "focuses on providing this essential public facility while at the same time addressing the concerns of mitigation measures, aesthetic enhancements, location, and restoration opportunities." See CP, Chapter 14, p. 20.

The Wastewater Treatment Facility has been operating in this location for decades. The property is clearly an appropriate site for this operation, and is being used consistently with its WTPE designation. In this specific instance, the city is seeking to upgrade its facilities, with the ultimate objective of better protecting the water quality of the Spokane River. Thus, while there are impacts from the construction of new infrastructure, the project is ultimately designed to improve environmental conditions, in particular in the Spokane River and Long Lake. In addition, the design of the project has given consideration to aesthetics and views, as was discussed previously. Finally, it should be noted that the proposal is consistent with the policies of the Shoreline Master Program, as explained in Paragraph 2 above.

The Hearing Examiner concludes that this 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).*

This project cannot be said to "unreasonably interfere" with the normal use of public shorelines, given the unique characteristics of this particular use. As the Staff explained: "Due to operational safety reasons, there has never been public shoreline access directly from the facility site." This only makes sense given the nature of the facility. Since the use of the shoreline adjacent to the plant is not "normal," this criterion has limited, if any, application to this case. In addition, there is nothing in this record that suggests that the project reduces access to parts of the shoreline that are available for public use. 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).*

The only other conditional use permits in the area are the ones previously obtained for the Wastewater Treatment Facility. See Exhibit 1, p. 6. As a result, there is no basis for a cumulative impact analysis. This criterion is 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 Wastewater Treatment Plant was constructed at this site because the property was the right location for this type of facility. It has been operating in this location for decades. A treatment plant would not normally be considered compatible with residential uses and open spaces. See Exhibit 1, p. 7. However, the plant is an essential public facility with unique requirements and characteristics. See *id.* In addition, the plant makes the other uses possible. See *id.* As already stated elsewhere in this decision, the plant and the proposed upgrades are consistent with the comprehensive plan and shoreline policies and regulations. In fact, the use is specifically authorized in the Comprehensive Plan. See *id.* 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).*

As explained in Paragraph 5 above, no significant impacts to the shoreline environment are anticipated from this project. In reality, once the project is completed, substantial environmental benefits will result in the form of cleaner effluent and cleaner water. The project will have no effect on the public's physical access to the shoreline. As noted in Paragraph 7, the public does not and will not have physical access to the shoreline immediately adjacent to the plant. The construction of the facilities on the site will have some effect on the visual access to the water, but only to a very limited degree. The new structures are designed in a way that minimizes the impacts to river views. *Testimony of M. Taylor & L. Hendron.* Since there will be no substantial, detrimental effects from this project, the Hearing Examiner concludes that this criterion is satisfied.

### **Shoreline Variance Application**

11. *The strict application of the bulk, dimensional, or performance standards set forth in the shoreline master program regulations precludes, or significantly interferes with, reasonable use of the property. See SMC 17G.060.170(D)(3)(i).*

The Hearing Examiner concludes that strict application of the height restriction precludes or significantly interferes with the reasonable use of the property. There are several factors that led the city to request a variance from the height restrictions in the zoning code.

The applicant is planning to excavate to the greatest depth possible without breaching the water table. *Testimony of M. Taylor & L. Hendron.* The Membrane Facility, for example, is three stories tall, in order to accommodate the necessary equipment and systems. *Testimony of M. Taylor.* Two of the stories will be underground and will already be at the maximum depth. *See id.* In addition, the facilities themselves must be constructed to a sufficient height to ensure that the systems function properly and as intended. *Testimony of M. Taylor & L. Hendron.* The Staff report notes, for example, that the Membrane Facility and the Chemical Storage Facility may need to be up to 48 feet tall in order to function as intended. *See Exhibit 1, p. 7.* Similarly, Digester No. 2 will have to be constructed in excess of the height restriction. *Testimony of L. Hendron.* That being said, the engineers testifying at the hearing estimated that the structures would not likely exceed 45 feet. *Testimony of M. Taylor & L. Hendron.*

There are other factors that are driving the need to construct higher than the maximum in the residential zone. The equipment must be located to work in conjunction with other facilities. *Testimony of L. Hendron.* However, the space available is limited due to the presence of the existing structures. *See id.* For example, the Membrane Facility must be developed vertically, not horizontally. There is no room for that facility to “spread out” at the site. *See id.* In addition, the facilities must be positioned at a level which ensures that gravity flows are maintained. *Testimony of M. Taylor & L. Hendron.*

Taking these three factors together, the only reasonable choice is to construct the facilities higher than 35 feet, the maximum under the zoning and shoreline regulations. *See id.* The variance in this case is justified by not only the conditions on the ground, but also by the need to account for the existing infrastructure. The Hearing Examiner concludes that this criterion is satisfied.

12. *The hardship described in SMC 17V.060.170(D)(3)(i) is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the shoreline master program regulations, and not, for example, from deed restrictions or the applicant's own actions. See SMC 17G.060.170(D)(3)(ii).*

As stated in Paragraph 11, the need for a variance in this case arises from physical conditions on the ground as well as the infrastructure that has developed on the site over time. In addition, the proposed improvements cannot function optimally without relaxing the dimensional restrictions of the code. In short, the need for the variance is specifically related to the property and the unique conditions that exist. As a result, the applicant has demonstrated that this criterion is fulfilled.

13. *The 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 SMP regulations and will not cause adverse impacts to the shoreline environment. See SMC 17G.060.170(D)(3)(iii).*

The site has been used for wastewater treatment for decades. Undoubtedly, the somewhat isolated location of the facility was chosen for a reason. There is open, park area in three directions from the site. To the northeast, on the top of a steep bluff, there are single-family residences. Those residences are protected, to a degree, by the bluff separating the site from the residential neighborhood. In any case, the plant has coexisted with the nearby residences for many years, and the project will not change that reality.

The proposal will result in upgrades and improvements to the existing campus—it does not create new impacts to nearby uses, in the Hearing Examiner’s opinion. Ultimately, the Hearing Examiner agrees with the Staff’s conclusion that there “are no other uses in the near vicinity that would be impacted by the variance being requested.” See Exhibit 1, p. 8. Therefore, this criterion is met.

14. *The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area. See SMC 17G.060.170(D)(3)(iv).*

The Hearing Examiner agrees with the Staff that, in order to apply this criterion, there would need to be other essential public facilities in the vicinity. See Exhibit 1, p. 8. There are no similarly situated facilities in the area. See *id.* As a result, no meaningful comparisons can be made. See *id.* The Hearing Examiner concludes that this criterion is not material to this application.

15. *The variance requested is the minimum necessary to afford relief. See SMC 17G.060.170(D)(3)(v).*

The applicant only requested additional height to the extent necessary to ensure that the new facilities and upgrades function properly. See Exhibit 1, p. 8; *Testimony of M. Taylor and L. Hendron.* The proposed deviations from the dimensional standards do not go beyond what is necessary for the project. As a result, the Hearing Examiner concludes that this criterion is satisfied.

16. *The public interest in enjoying physical and visual access to the shorelines will suffer no substantial detrimental effect. See SMC 17G.060.170(D)(3)(vi).*

The Hearing Examiner has already concluded that the project does not result in substantial detrimental effects on physical or visual access to the shorelines. This issue is addressed above, specifically in Paragraphs 2, 5, 7, and 10. This criterion is satisfied.

17. *Good cause exists, based on the requirements and circumstances of the project and consistent with the master program and the applicable rules, to make this approval effective for a period of ten years. See WAC 173-27-090.*

The Wastewater Treatment Facility is an essential public facility that consists of a collection of buildings and structures which receive and treat the wastewater for the entire city. The treatment plant is an essential public facility that is unique in many respects. This project is one element in a series of long-term improvements and upgrades to the facility. The immediately preceding conditional use permit, for example, was approved in 2002 and was effective for a period of fifteen years. The proposed improvements represent significant upgrades to the facility, including the implementation of a tertiary treatment system. The project represents a massive investment, in the sum of approximately \$189 million, to ensure legal compliance, sufficient capacity, and the long-term viability of the operation. It may take an extended period of time to construct, test, and transition the upgraded facilities to full operation. It is anticipated that the project will take place over a period of approximately ten years. Based upon these factors, the Hearing Examiner finds that good cause exists to extend the period of time for the effectiveness of this approval. The Hearing Examiner finds that the effective period of this approval should be ten years.

The Hearing Examiner concludes that he has authority to adopt different time limits for this approval pursuant to the terms of WAC 173-27-090, adopted by reference in Table 17G.060-3. That provision permits a different time period to be established based upon a finding of good cause, so long as the project is consistent with the master plan and applicable regulations. The Hearing Examiner concludes that these standards are satisfied, given the circumstances of this case.

### **DECISION**

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed project subject to the conditions set forth below. The proposed improvements will be ongoing and may take place over an extended period of time. For good cause shown, in accordance with Table 17G.060-3 and WAC 173-27-090, this approval is for a period of ten (10) years and has an expiration date of April 5, 2027.

1. Approval is for a Shoreline Conditional Use Permit and Variance to allow the Applicant, City of Spokane-Wastewater Treatment Facility, to make ongoing improvements at the Wastewater Treatment Facility. The improvements shall be completed in substantial compliance with the plans submitted with the application on file with the Planning Department.
2. The Variance is granted from the height restrictions applicable to the property. Specifically, the applicant is authorized to construct the Membrane Facility, the Chemical Storage Facility, and Digester No. 2 to a height which exceeds the 35-foot height limitation. The applicant is only authorized to exceed the height limitation to the extent necessary to facilitate the proper location, design, and function of these facilities. The applicant shall not exceed the height limitation any more than is necessary to accommodate these improvements.
3. Except to the extent specifically permitted pursuant to the approved variance, 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), the shoreline regulations and other development standards, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
4. 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. This project shall conform to the requirements of any additional agency permits.
5. 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.

6. 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.

7. 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.

8. 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 4<sup>th</sup> day of April, 2017.



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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.