

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit) FINDINGS, CONCLUSIONS,
Application by City of Spokane Parks) AND DECISION
and Recreation Department for the)
redevelopment of Riverfront Park) FILE NO. Z16-667SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: City of Spokane Parks and Recreation Department (the "Parks Department") has applied for a shoreline conditional use permit for the redevelopment of Riverfront Park, which includes construction and operations to replace or repair park bridges, construct new park facilities, construct landscape improvements, conduct utility work, and related park improvement activities.

Decision: Approval, subject to conditions.

**FINDINGS OF FACT
BACKGROUND INFORMATION**

Applicant/ City of Spokane Parks and Recreation Department
Owner: 808 West Spokane Falls Boulevard
Spokane, WA 99201

Property Location: The project area is generally bound by Post Street to the west, Spokane Falls Boulevard to the south, Washington Street to the east, and Cataldo Avenue to the north. The development site includes Tax Parcel Nos. 35185.0041; 35185.0076; 35183.0065; 35185.0077; 35181.0032; 35181.4406; and 35181.4409.

Legal Description: The project is located in Section 18, Township 25 North, Range 43 East, W.M. The full legal description for the site is provided in Exhibit 2A.

Zoning: DTG-70, 100, & 150 (Downtown General).

Comprehensive Plan Map Designation: Open Space

Shoreline Designations: North and South of the Spokane River; Intensive Urban Environment (IUE); 50-foot buffer; Downtown Design District.

Environmental Overlays: Fish & Wildlife Habitat Area (RHA-2)

Site Description: The redevelopment will take place in a large open area, i.e. Riverfront Park, in the middle of downtown Spokane. Riverfront Park is approximately 36 acres in size and is currently used for recreational purposes as a public park. The redevelopment

work will take place throughout the park. The Spokane River divides the park with north, middle, and south channels. The topography of Riverfront Park varies from flat to sloping with gently rolling hills. The park is a combination of lawns and forested land, basalt outcroppings, and river channels. The majority of the park is either paved or landscaped over imported fill material. Most of the park is within the Shoreline Jurisdiction and therefore is governed by the Shoreline Master Program policies and associated shoreline regulations. Portions of the site are also located within the 100-year floodplain.

Project Description: This proposal continues the ongoing redevelopment of Riverfront Park that began with the Howard Street South Channel Bridge Replacement Project (Z16-050SDET) and the new Recreational Rink and Skyride Facility (Z16-149SCUP). This proposal includes construction and operations throughout the entire park to replace or repair park bridges, construct new park facilities, conduct landscaping improvements, and make related park improvements. The project will may include, depending on the funding, the Loof Carousel, Rotary Fountain, North Bank maintenance facility, U.S. Pavilion/Central Plaza Event Center, Havermale Island, Pedestrian Bridges, Canada Island and a variety of park amenities and improvements.

Surrounding Conditions: A mixture of uses, predominantly commercial, exists in all directions from Riverfront Park. There are also multifamily residential buildings in the vicinity. To the south of the park is River Park Square, the INB Performing Arts Center and the Convention Center, and other commercial properties. To the west, and south of the Post Street Bridge, is City Hall and the historic Washington Water Power (WWP) substation. To the west, and north of the Post Street Bridge, is Anthony's restaurant and other commercial buildings. To the north are commercial properties such as the Flour Mill, Broadway Dairy, and the Red Lion Inn at the Park. To the east is the Division Street Bridge.

Surrounding Zoning: Riverfront Park is zoned Downtown General-150, a designation that allows a wide range of uses, including recreational parks. The land to the south is zoned Downtown Central-100. The area immediately to the west is zoned Downtown General-70. Farther to west is an area zoned Community Business-150. To the north is zoned Downtown General. To the east and southeast is an area zoned Downtown General-100.

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: March 31, 2016
Posted: April 4, 2016

Notice of Application/Public Hearing: Mailed: September 12, 2016
Posted: September 12, 2016

Hearing Date: November 3, 2016

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City on October 13, 2016. The DNS was not appealed.

Testimony:

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

Michelle Anderson
14234 N. Tormey Road
Nine Mile Falls, WA 99026

Berry Ellison
City of Spokane Parks and Recreation
Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, for Recreational Rink, Skyride and Central Meadow Event Location including:
 - 2A General application
 - 2B Shoreline Conditional Use Permit application
 - 2C Shoreline Critical Areas Checklist
 - 2D Notification Map application
 - 2E Photos of Riverfront Park facilities
 - 2F Vicinity and Location Map with Redevelopment Project Boundaries outlined
 - 2G Project Sequencing Map with Boundaries and Redevelopment Phases outlined
 - 2H Redevelopment Site Plans
 - 2I Loeff Carrousel Redevelopment Plans
 - 2J Replanting Plan
 - 2K Utility Guidelines
 - 2L IPaC Trust Resources Report
 - 2M Habitat Management Plan
3. Pre-Development Conference Notes including:
 - 3A Letter from Spokane Regional Health District regarding Loeff Carrousel Facility
4. Development Services comments
5. Design Review comments dated:
 - 5A 03-29-16, Update Memorandum from Berger to Design Review Board including illustrations
 - 5B 03-31-16, re Loeff Carrousel, Staff Report for Collaborative Workshop on 04-13-16
 - 5C 04-13-16, re Riverfront Park Master Plan, Program Review/Collaborative Workshop
 - 5D 04-13-16, re Loeff Carrousel Building, Program Review/Collaborative Workshop

- 5E 08-22-16, re Loeff Carrousel, Recommendation Meeting
- 5F 08-30-16, request from Berry Ellison for departure from Downtown Design Standards
- 5G 09-14-16, Loeff Carrousel Building, Recommendation Meeting
- 5H 10-27-16, Riverfront Park Master Plan, Recommendation Meeting
- 6. Spokane Tribe of Indians comments dated:
 - 6A 12-22-15
 - 6B 09-13-16
- 7. Department of Ecology comments
- 8. Notice map
- 9. Address listing
- 10. Notice of Community Meeting
- 11. Notice of Application, SEPA Review and Public Hearing
- 12. Affidavit of mailings
 - 12A Community Meeting dated 03-31-16
 - 12B Application and Public Hearing dated 09-12-16
- 13. Affidavit of postings:
 - 13A Community Meeting dated 04-04-16
 - 13B Application and Public Hearing dated 09-12-16
- 14. Affidavit of Sign Removal dated 04-24-16
- 15. SEPA Determination of Nonsignificance dated 10-13-16
- 16. Environmental checklist dated 08-05-16
 - 16A Amendment dated 09-01-16
- 17. Community Meeting notes
- 18. Community Meeting sign in sheet
- 19. Community Meeting presentation
- 20. Letter dated 03-28-16 to Berry Ellison from Tami Palmquist
 - re: community meeting instructions
- 21. Letter dated 08-12-16 to Interested Parties from Tami Palmquist
 - re: requesting comments
- 22. Letter dated 09-06-16 to Berry Ellison from Tami Palmquist
 - re: notice of application and notice of hearing instructions
- A. Material received at hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation
 - A-2 Hardcopy of Applicant's PowerPoint presentation

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.*

To be allowed, a use must be permitted in both the shoreline jurisdiction and in accordance with the zoning applicable to the property. See SMC 17E.060.360(A); see also SMC 17E.060.690(C). The development site is zoned Downtown General (DTG), and lies within the Intensive Urban Environment (IUE). See Exhibit 1, pp. 1 & 6.

The use of the park, with attractions such as the Gondola, Pavilion Event Center, and the Carousel, are categorized by the Planning Department as Entertainment Oriented Retail Sales and Service. See Exhibit 1, p. 6. Entertainment Oriented Retail Sales and Service uses are allowed outright in the Downtown zones. See Table 17C.124-1.

The Red Wagon, the North Bank, Havermale Island, Canada Island and various meadows are all categorized as Parks and Open Space. See Exhibit 1, p. 6. Parks and Open Space are also allowed outright in the Downtown Zones. See Table 17C.124-1.

The use of property as a “park” is considered a “water-enjoyment use” under the shoreline regulations. See SMC 17E.060.360(D); see also Exhibit 1, p. 6. A project that qualifies as either Water Enjoyment Recreation or Water Enjoyment Commercial is allowed as a conditional use on IUE-designated property. See Table 17E.060-04. The proposed uses fit these classifications. See Exhibit 1, p. 6. Thus, the proposed uses are allowed, provided a shoreline conditional use permit is obtained. See SMC 17E.060.310; see *id.*

Under both the zoning and shoreline designations, the proposal is allowed, provided the application satisfies the development standards and, when applicable, the standards for conditional uses. Therefore, this criterion is satisfied.

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

The Comprehensive Plan designates Riverfront Park as Open Space. See Exhibit 1, p. 6. Open Space specifically includes major parks and open space areas. See *id.* The Applicant seeks to make improvements to the park, which is clearly consistent with a myriad of comprehensive plan policies and objectives listed in the Staff Report. See *id.*

The project is an extensive and impressive redevelopment of Riverfront Park, and the design accomplishes its objectives with the comprehensive plan policies in mind. See Exhibit A-2. The project “revitalizes Riverfront Park and provides vitality to the downtown area by providing diverse activities and a mix of uses to people of different socio-economic backgrounds.” See Exhibit 2B. The improvements will attract more people to the Park and downtown area, resulting in economic benefits. See Exhibit 2B. Thus, the project develops urban open space amenities that enhance the local economy. See CP, Chapter 12, Parks, Policy PRS 2.3, p. 9. In addition, the project improves the appearance of the park, enhancing the surrounding natural and urban environment, while also encouraging social interaction. See CP, Chapter 3, Land Use, Goal LU 2 and Policy LU 2.1, p. 16.

The project promotes visual and physical access to the shorelines, while also minimizing the impacts to the shoreline. See CP, Chapter 14, Shorelines, Policy SMP 11.35, p. 35. As the applicant explained:

The proposal provides pathways and interconnections for improved and easy access between public and private places. The new park facilities, amenities and landscaping will attract visitors and be an asset to the urban

environment, and at the same time, provide connectivity with the natural environment.

See Exhibit 2B.

The project is well designed to complete the construction in a manner that is sensitive to the significant natural features. See CP, Chapter 3, Land Use, Policy LU 5.4, p. 24. The proposal will result in the removal of vegetation, including trees, shrubs, and grassy areas. See Exhibit 2B. However, vegetation removal is carefully identified and that vegetation is being replaced to ensure there is no net loss of ecological function, consistent with the Shoreline Master Program. See *id.*; see also CP, Chapter 14, Shorelines, Policy SMP 1.3, p. 22. A “vegetation replacement plan will be prepared in coordination with the City’s urban forester” and the requirements of a Habitat Management Plan. See Exhibit 2B. In this way, the project seeks to maintain and restore native plant communities within the shoreline jurisdiction. See CP, Chapter 14, Shorelines, SMP 10.2 & 10.3, p. 34.

For these reasons, and based upon other policies set forth in the Staff Report, the Hearing Examiner concludes that this criterion is satisfied.

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

The decision criteria for Type III decisions (such as a shoreline conditional use permit) require that these types of applications satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on August 12, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 21.

The city received various comments regarding the proposal. See *e.g.* Exhibits 4, 5A-5H, 6A-6B, & 7. The comments of responding entities, such as the Spokane Tribe of Indians and the Department of Ecology, were addressed in the proposed conditions of approval. See Exhibit 1, p. 8. In any event, none of the commenting departments or agencies contended that concurrency could not be achieved. See *id.* Finally, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied. The Hearing Examiner concludes that the project satisfies the concurrency requirements of the municipal code.

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.

The site plans for the project is included in the record as Exhibits 2F-2I. These documents generally show the location, size, and shape of the property. They also include information about the physical characteristics of the site and extensive details about the proposed project.

The plans demonstrate that the proposed improvements are well designed to fit the site. The proposed redevelopment properly accounts for the size, shape, and

topography of the park, for example. However, there are some development challenges at this site, above and beyond protecting the shoreline ecology and the natural features of the park. Specifically, geotechnical investigations have revealed that contaminants exist at the site. See Exhibit 1, p. 9. As a result, the Planning Department emphasized that the project will need to comply with the requirements of the Model Toxics Control Act. See Exhibit 1, p. 9. This recommendation will be incorporated as a condition of the project, per the Staff's suggestion.

There was no evidence introduced at the hearing, or apparent in the record, suggesting that the soils or drainage characteristics were problematic. In any case, the project will be required to install stormwater facilities that satisfy the standards outlined in SMC 17D.060. See *id.* Further, Staff noted:

The project is required to meet the standards outlined in SMC Section 17E.060.810 Standards and Guidelines Specific to the Downtown, Campus, and Great Gorge Districts and SMC 17E.060.820 Standards and Guidelines Specific to the Downtown District, specifically as these relate to stormwater management, [Low Impact Development], and the requirement for the use of impervious surfaces.

See *id.*

In accordance with SMC 17E.060.200, the project must be developed in a manner that results in no net loss of shoreline ecological functions. See Exhibit 1, p. 9. The Applicant will achieve this objective, in part, by employing low impact development techniques, including site assessment, planning and design, vegetation conservation, site preparation, retrofitting, and management techniques. See *id.*; see also Paragraph 2 above. In addition, the "no net loss" requirement is incorporated as a condition of approval for the project.

There are many historic or potentially historic resources at Riverfront Park, many of which are related to Expo '74. See Exhibit 16, Environmental Checklist ¶ B(13)(a). There are potential archaeological resources as well. See *id.* For these reasons, an historic inventory and a park-wide archaeological assessment of the park was completed. See *id.* To address the potential for uncovering or impacting any such resources during this project, the City is working closely with the Spokane Tribe. See Exhibit 16, Environmental Checklist ¶ B(13)(b). The Spokane Tribe is "conducting archaeological reviews, surveys, evaluations, and preparing reports for all excavation activities in the park." See Exhibit 16, Environmental Checklist ¶ B(13)(c). This should adequately address the concerns raised by the Spokane Tribe. See Exhibits 6A & 6B. The City is also working with the Department of Archaeological and Historic Preservation (DAHP) and the United States Army Corp of Engineers (USACE) to mitigate potential impacts to historic resources. See *id.* Moreover, an inadvertent discovery plan will be followed. See *id.* Finally, the usual protocols under State law apply to this project, as is reflected in the conditions of approval.

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.*

The City issued a Determination of Nonsignificance (“DNS”) on October 13, 2016. See Exhibit 15. The deadline to appeal the DNS expired on October 27, 2016. See *id.* The DNS was not appealed.

Approximately two months before the issuance of the DNS, on August 5, 2016, the Applicant prepared an environmental checklist for the project. The checklist supports the conclusion that no significant environmental impacts will arise from this project.

The majority of the park is within the shoreline jurisdiction. See Exhibit 16, Environmental Checklist ¶ B(3)(a)(2). As a result, the City of Spokane’s shoreline regulations govern the entire project. See *id.* In addition, work will occur over and in the Spokane River, including installation of mitigation plantings, bridge reconstruction and maintenance, and other activities in the plans and described at the hearing. See *id.*; *Testimony of B. Ellison*. Nonetheless, the project is consistent with the SMP policies and the criteria for conditional use of the shoreline for park purposes. See Paragraph 2 above & Paragraph 6 below.

The soils at the site do not appear to pose any significant obstacles for the proposed redevelopment. The majority of the park is either paved or landscaped over imported fill material. See Exhibit 16, Environmental Checklist ¶ B(1)(c). The landscaped areas have soils sufficient to support plants. See *id.* There are no surface indications or a history of unstable soils in the immediate vicinity. See Exhibit 16, Environmental Checklist ¶ B(1)(d).

There are no state-listed priority species of plants or animals at the project site. See Exhibit 16, Environmental Checklist ¶ B(4)(c) & B(5)(b). However, the City of Spokane has designated Bald Eagle, Osprey, and red-Tailed Hawk for protection. See Exhibit 16, Environmental Checklist ¶ B(5)(b). To mitigate against potential impacts to these species, removal of native vegetation will be minimized and vegetation will be replaced to comply with shoreline regulations and an approved vegetation plan. See Exhibit 16, Environmental Checklist ¶ B(5)(d).

There is one federally-listed plant species in the area, namely Water Howellia. See Exhibit 16, Environmental Checklist ¶ B(4)(c). However, that plant generally occurs in seasonal ponding and wetlands which are not found in the project area. See *id.* There are also two species of federally listed animals which may be in the area, specifically bull trout and yellow-billed cuckoo. See Exhibit 16, Environmental Checklist ¶ B(5)(b). However, there is no suitable habitat for yellow-billed cuckoo in the area. See *id.* Similarly, Bull Trout do not occur in the project area. See *id.*

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.* The Applicant has recognized this requirement. See *e.g.* Exhibit 16, Environmental Checklist ¶¶ A(14)(a)(1), B(3)(b)(1), B(3)(c)(1), & B(3)(d).

The other potential impacts of this project are those typical of construction projects, such as erosion, dust, and vehicle exhaust. See Exhibit 16, Environmental Checklist ¶¶ B(1)(f) & (2)(a). However, mitigation measures imposed at the time of permitting, such as dust control measures and BMPs to combat erosion, can control such impacts. See e.g. Exhibit 16, Environmental Checklist ¶¶ B(1)(f) & (h) & 2(c). Construction work will result in the noise typically associated with that activity. See Exhibit 16 Environmental Checklist ¶ B(7)(b)(2). There will also be several demolition projects undertaken in this redevelopment. See Exhibit 16, Environmental Checklist ¶ B(8)(d). However, the hours for construction activity will be limited to 7 AM to 5 PM, Monday through Friday, and the noise levels will comply with the City's noise ordinance. See *id.* In addition, the impacts from construction, including noise, will be temporary.

As noted in Paragraph 4 above, evidence of contamination at the site was discovered. As a result, the Applicant will need to demonstrate that construction activities are in accordance with the Model Toxics Control Act. See Exhibit 1, p. 9. There was no evidence that such compliance could not be achieved. In addition, Soils Management Plan was prepared to identify the risks of encountering hazardous materials or contaminated soils in the park, a likely occurrence given the historic uses of the park property. See Exhibit 16, Environmental Checklist ¶ B(7)(a). The plan includes recommendations for soil handling and disposal, and those recommendations will be followed during construction and maintenance activities. See *id.*

There was no substantive evidence that environmental impacts make the project infeasible or materially problematic. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS. 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. *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 Hearing Examiner agrees with Staff's conclusion that this proposal is consistent with the policies of the Shoreline Master Program. See Exhibit 1, p. 10. In particular, the Staff noted as follows:

This proposal recognizes the interest of the public while enhancing the natural character of the shoreline, results in long term benefit, increase public access both visual and physical to the shoreline, and increases passive recreational opportunities for the public in the shoreline.

See *id.* In addition, the proposal is consistent with the adopted shoreline policies, as is discussed in some detail in Paragraph 2 above.

The site is designated in the Shoreline Master Program as Intensive Urban Environment and as part of the Downtown Design District. The “intensive urban” environment is intended to support a variety of uses, including high-intensity water-oriented urban, residential, commercial, office, and industrial land uses. See *id.* The density and intensity of these uses is balanced with a mix of open space and recreational and cultural facilities. See *id.* The proposed use fits well within that mix.

The project will provide new recreational opportunities in the park. See Exhibit 2B ¶ 8. The project will also enhance public access to the park’s interior by providing bike/pedestrian pathways that connect to primary park circulation routes. See *id.* The project creates new recreational areas that encourage a variety of recreational activities year-round. See *id.* These benefits are also in furtherance of the goals and policies of the Shoreline Master Program.

The Hearing Examiner concludes that the project is consistent with the policies of state law and the Shoreline Master Program. Therefore, this criterion for approval is satisfied.

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

The Hearing Examiner concludes that this project does not affect “normal public use” of the shorelines by the public. Existing public access and views will not substantially change as a result of this project. See Exhibit 1, p. 10-11. There will be temporary disruptions of use due to the planned construction. However, those impediments are temporary. Ultimately, the proposed projects are part of the Riverfront Park Master Plan and are designed to enhance existing features, views and access to the shoreline, as well as park amenities, in order to draw more people to the park. See Exhibit 2B ¶ 7. The projects enhance aesthetic enjoyment of the park and create a variety of recreational opportunities. See *id.* Overall access to the Spokane River will be enhanced, rather than diminished, by the myriad of improvements planned for the park. See Exhibit 1, p. 11. The Hearing Examiner concludes that this criterion is met.

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;

A number of conditional use permits have been issued for projects near Riverfront Park and the Spokane River. See Exhibit 1, p. 11. Avista added in-water weirs to the Spokane River as part of an aesthetic spill project. See *id.* Huntington Park was renovated and a gathering place was added outside City Hall. See *id.* And the Convention Center completed a major expansion and shoreline restoration along the Centennial Trail. See *id.* The Staff concluded that all of these projects work together to improve the Spokane River shoreline experience and implement the goals and policies of the Shoreline Master Program. See *id.* The Hearing Examiner has no reason to conclude

otherwise. The various projects serve differing purposes and all appear to be beneficial to the shoreline environment.

In addition, two shoreline conditional use permits were granted to expand the City's Combined Sewer Overflow system. CSO tanks were authorized on the Bosch lot, north of City Hall on the north bank of the Spokane River and at Spokane Falls Boulevard, just west of City Hall on the south bank of the Spokane River. These projects, however, are designed to reduce the discharges of untreated wastewater into the Spokane River, and thereby improve the health of the river and the surrounding environment. The cumulative impact of projects such as these are clearly positive.

There is no evidence that the proposed project, when considered in light of other permits granted in recent times, will result in cumulative impacts that undermine the goals of the Shoreline Master Program. On the contrary, the project appears to be another enhancement to the park and associated shoreline. As a result, the Hearing Examiner concludes that this criterion for approval is satisfied.

- 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;*

The project is part of a broader plan to make significant improvements to Riverfront Park. As one piece of a well-planned puzzle, the project is clearly compatible with the intended uses of Riverfront Park.

The city is participating in the design review process for the overall plan to redevelop Riverfront Park. See Exhibit 1, p. 11. The Design Review Board has determined that the plan will result in improvements that are visually compatible with existing development in the vicinity. See *id.* The Design Review Board also approved a design deviation for glazing and ground level details for the new, proposed Loof Carrousel building. See *id.* Thus, the only potential incompatibility was carefully vetted before, and approved by, the Board. See *id.*

There is nothing about the project that strikes the Hearing Examiner as incompatible with surrounding uses. To conclude otherwise would be to suggest that the park itself is an incompatible use. Riverfront Park is a community gathering place in the center of the city. The proposed improvements will enhance the park experience and encourage greater public use and enjoyment of the resource. Finally, the Hearing Examiner has already concluded that the project is consistent with the policies of the Comprehensive Plan and Shoreline Master Program. See Paragraph 2 above. The Hearing Examiner concludes that this criterion is satisfied.

- 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.*

The discussion in paragraphs 5 and 6b demonstrates that the proposed use will not have significant adverse effects on the shoreline environment or public access to the shorelines. On the contrary, the redevelopment project will open up new views and vistas

for public access and enjoyment of the shoreline. See Exhibit 1, p. 12. While it is true that construction will create impacts on access and views, those impacts will be temporary. See *id.* In addition, the city will be mitigating those impacts in the interim through signage and maps to inform the public about closures, detours, and the like. See *id.* 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 approve¹ the Shoreline Conditional Use Permit for the redevelopment of Riverfront Park, along with a Design Departure for Section 17C.124.510, Windows—Building Design, regarding the Looff Carrousel Building, subject to the following conditions:

1. The site shall be developed in substantial compliance with the plans and application on file as of the date of this decision.
2. The Shoreline Conditional Use Permit is subject to the compliance of this proposal with all applicable codes and requirements including shoreline regulations, public access, building height, bulk, setbacks, and site coverage.
3. The Shoreline Master Program, SMC 17E.060 and SMC 17E.020 require no net loss of shoreline ecological functions that could result from the proposal. Pursuant to Section 17E.060.220, the Applicant shall engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts resulting from this proposal. With each phase of the development, Current Planning Staff will be given an updated inventory of vegetation both being removed and replaced according to the replacement ratios outlined in SMC 17E.060-1.
4. The contractor is required to have a Construction Stormwater Pollution Prevent 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.
5. The Applicant is required to work with the appropriate departments and agencies to demonstrate construction activities are in accordance with the Model Toxics Control Act (MTCA). Each construction plan shall clearly indicate where any stockpiling activities will take place on the site, maintaining their locations outside the Shoreline Buffer.
6. A Habitat Management Plan (HMP) was prepared by Geo Engineers for the Spokane Parks and Recreation. A Habitat Management Plan and Vegetation Replacement Plan are required to be reviewed and approved prior to any activity being permitted on the project site. As the entire redevelopment of Riverfront Park will be a multi-year phased project, it was been agreed upon in advance that addendums to the Draft HMP will be prepared on a phased basis to be reviewed and approved by agencies with jurisdiction.

¹ Staff also requested that the Hearing Examiner approve an extension of the Shoreline Substantial Development Permit for the Sister Cities CUP (File No. Z1400017-SSDP). See Exhibit 1, pp. 4 & 12. However, the decision whether or not to grant an extension of an SSDP is reserved to the Planning Director. See SMC 17G.060.240(D). The Planning Director will have to make that decision. The Hearing Examiner does not have jurisdiction to consider the request.

7. Design review will be required for each new and substantially renovated structure prior to building permit submittal.
8. The Applicant will respond to the recommendations of the Design Review Board ("DRB") when they submit for building permits and continue to present each phase to the DRB for review and recommendations.
9. Per the recommendation of the DRB on September 14, 2016, the Applicant shall provide additional information about four elements (projecting sills, large windows, pedestrian scale designs, and canopies) listed in SMC 17C. 124.550, Ground Level Details—Building Design, at the time of permit application.
10. The Spokane Tribe will be responsible for conducting archaeological reviews, surveys, monitoring, evaluations and reports for all subsurface activities as part of the Riverfront Park Redevelopment project.
11. 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.
12. 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. The project shall conform to the requirements of any additional agency permits.
13. 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.
14. 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.
15. 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.

16. 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 15th day of November, 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.