

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit) FINDINGS, CONCLUSIONS,
Application by the City of Spokane) AND DECISION
Engineering Department to allow the)
construction of water, sewer, and)
storm water mains; a Combined)
Sewer Overflow (CSO) storage tank;)
and a new trail, in Peaceful Valley) FILE NO. Z17-256SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: The City of Spokane Engineering Department seeks a shoreline conditional use permit in order to allow the construction of new water, sewer, and stormwater mains and swales; the new Peaceful Valley Trail; a Combined Sewer Overflow (CSO) storage tank; and the replacement of existing water, sewer, and storm water mains and swales. The work will span from Glover Field to People’s Park in Peaceful Valley.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: City of Spokane Engineering Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

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

Agent: Dan Buller, P.E.
City of Spokane, Engineering Design
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Property Location: The project site is adjacent to the Spokane River and along Main Avenue, Cedar Street, Water Avenue, Ash Street, and Clarke Avenue. The site spans from Glover Field (Parcel No. 35183.2101) to People’s Park (Parcel No. 25242.1201) in Peaceful Valley. There are many city parcels involved in the project, as well as work in the adjacent right-of-way.

Zoning: The property is zoned DTG (Downtown General); RMF (Residential Multi Family); RSF (Residential Single Family), RHD-35 (Residential High Density, with a height limit of 35 feet).

Shoreline Designations: Urban Conservation Environment Designation; 150-foot Shoreline Buffer, 75-foot Shoreline Buffer, and 200-foot Shoreline Buffer; Great Gorge Park Shoreline District.

Environmental Overlays: Habitat and Species, Riparian Habitat Area 2.

Comprehensive Plan Map Designation: R 15-30, Institutional, R 15+, R 4-10, and Conservation Open Space.

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 13, 2017
Posted: March 15, 2017

Notice of Application/Public Hearing: Mailed: April 28, 2017
Posted: April 28, 2017

Community Meeting: March 29, 2017

Public Hearing Date: June 8, 2017

Site Visit: June 6, 2017

SEPA: A Determination of Nonsignificance (“DNS”) for the CSO tank and related work was issued by the City of Spokane, Department of Integrated Capital Management, on October 7, 2016. A DNS for the trail work was issued by the City of Spokane, Department of Engineering Services, on April 5, 2017. No appeals of the threshold determinations were filed.

Testimony:

Ali Brast, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Dan Buller, P.E.
City of Spokane Wastewater Department
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Charlie Greenwood
2404 W. Bennett
Spokane, WA 99201

Warren Heylman
W. 1224 Riverside, Apt. 1003
Spokane, WA 99201

John L. Lawson
1701 W. Main
Spokane, WA 99201

Bill Forman
2017 W. Clarke Ave.
Spokane, WA 99201

Jan Loux
1944 W. Clarke Ave.
Spokane, WA 99201

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 Overall Site Plan
 - 2F CSO Basin and piping Plan
 - 2G Trail and Roadway Work Plan
3. Design Review comments
4. Historic Preservation comments
5. Department of Ecology comments
6. US ARMY Corps of Engineers comments
7. Spokane Tribe of Indian comments
8. Avista's Comments
9. Spokane Transit comments
10. Notice map
11. Parcel listing
12. Notice of Community Meeting
13. Notice of Application and Public Hearing
14. Affidavit of mailings
 - 14A Community Meeting dated 03-13-17
 - 14B Application and Public Hearing dated 04-28-17
15. Affidavit of postings:
 - 15A Community Meeting dated 03-15-17
 - 15B Application and Public Hearing dated 04-28-17
16. Affidavit of sign postings:
 - 16A Community Meeting dated 03-15-17
 - 16B Application and Public Hearing dated 04-28-17
17. SEPA Determination of Nonsignificance CSO Basin 25 Improvements dated 10-05-16
18. SEPA Determination of Nonsignificance Peaceful Valley Trail and Clark Ave Water and Pavement Replacement, dated 05-05-17
19. Environmental checklist for CSO Basin 25 Improvements dated 10-05-16
20. Environmental checklist for Peaceful Valley Trail & Clark Ave. Water and pavement replacement dated 04-04-17
21. Community Meeting sign in sheet
22. Community Meeting summary
23. Community Meeting handout
24. Community Meeting hardcopy of PowerPoint presentation
25. Letter dated 03-07-17- to Dan Buller from Ali Brast
re: community meeting instructions

26. Letter dated 04-06-17 to Interested Parties from Ali Brast
re: requesting comments
 27. Letter dated 04-21-17 to Dan Buller from Ali Brast
re: notice of application and notice of hearing instructions
 28. Emails dated 05-14 and 05-16-17 to/from Jan Yoder and Dan Buller
re: dry stacked rock wall and street issues
 29. Email dated 05-29-17 to Ali Brast from Karna Lawson
re: dry stacked rock wall and street improvements
 30. Email dated 05-29-17 to Ali Brast from John J. Lawson
re: dry stacked rock wall and street improvements
- A. Material received at hearing:
- A-1 Hardcopy of Staff's PowerPoint presentation
 - A-2 Submittals by Charlie Greenwood
 - A-2a Living Street
 - A-2b Eliminating Curbs and Gutters
 - A-2c Eliminating Curbs and Gutters and Living Street
 - A-2d Street comments
 - A-3 Pictorial of stairs submitted by Warren Heylman
 - A-4 Comments from Spokane Transit Authority (submitted by staff)
 - A-5 Request for comments dated 04-06-17 (submitted by staff)
 - A-6 Overlay of project with areas not in project identified (submitted by staff)

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 RCW 90.58.020. 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 CSO tank and associated infrastructure will be installed on a site that spans multiple zoning categories. The site is partially Residential Single Family (RSF), partially Downtown General (DTG), and partially Residential Multi Family (RMF). Therefore, to satisfy the decision criteria, the project must be allowed within each of these three zoning classifications.

The CSO tank and related infrastructure are properly identified as "Basic Utilities." See Exhibit 1, p. 4. "Basic Utilities" include water and sewer pump stations, sewage disposal and conveyance systems, water towers and reservoirs, water quality and flow control facilities, water conveyance systems, and stormwater facilities and conveyance systems. See SMC 17C.190.400(C).

The uses allowed in the downtown zones are shown on Table 17C.124-1. The table states that "Basic Utilities" are permitted in the DTG zone. See *id.* Thus, the project is permitted outright in the DTG zone.

The project is also permitted in the RSF and RMF zones, but as a conditional use. According to Table 17C.110-1, Basic Utilities are a limited ("L") use in both RSF and RMF zones, rather than a conditional use ("CU"). However, the use category for "Basic Utilities" is modified by the bracketed number "[3]", suggesting that additional terms apply. The footnotes to Table 17C.110-1 state: "Standards that correspond to the bracketed numbers [] are stated in SMC 17C.110.110." See Table 17C.110-1. The pertinent portion of SMC 17C.110.110 confirms that its provisions apply to all parts of the table that have a note [3], and further states:

New buildings or larger additions require a conditional use permit and are processed as a Type III application. ...

See SMC 17C.110.110(A)(3). As a result, the project requires a conditional use permit.

The tables governing the allowed uses do not specifically reference trails. However, "Parks and Open Areas" are permitted outright in all of the above-referenced zones. See Tables 17C.124-1 & 17C.110-1. Not surprisingly, "recreational trails" are listed as an example of "Parks and Open Areas." See 17C.190.460(C).

Under both the land use codes, this project is permitted, but only 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 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 the 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. As pertinent here, the City is in the process of installing CSO tanks in multiple locations throughout the city, all as part of a comprehensive effort to protect the Spokane River from overflow events.

The Capital Facilities element calls for the city to provide and maintain adequate public facilities and utility services, as well as to ensure reliable funding is in place to protect the public's investment in this infrastructure. See CP, Goal CFU 1, Adequate Public Facilities and Services (also noting that such investments ensure adequate levels of service). In furtherance of this goal, Policy CFU 1.6 calls for the continuous evaluation of the effect of changes in state and federal regulations, in part to ensure appropriate levels of service. In this case, the project is intended to address Department of Ecology requirements, and thus appears to directly advance this policy.

The project is designed to control the overflow of untreated stormwater and sewage into the Spokane River during storm events, consistent with the mandates of the Department of Ecology. While the project does have some environmental impact, from a broader perspective the project serves to protect the environment, in particular the Spokane River. In this fashion, the project protects and preserves a river corridor for the health and enjoyment of the public. See CP, Policy PRS 1.2, River Corridors. This fulfills the intent of Goal CFU 5 of the Capital Facilities Element, which states as follows:

Minimize impacts to the environment, public health, and safety through the timely and careful siting and use of capital facilities and utilities.

See CP, Goal CFU 5, Environmental Concerns.

The policies underlying this goal also demonstrate that the project fulfills the intent of the comprehensive plan by controlling the impacts of runoff and overflows. Policy CFU 5.3, Stormwater, provides: "Implement a Stormwater Management Plan to reduce impacts from urban runoff." In the discussion of that policy, the following objective is stated: "...the City of Spokane should work continuously toward the reduction of existing combined sewer overflows wherever technically, economically, and environmentally appropriate." See CP, Policy CFU 5.3, Stormwater.

The project also includes the construction of the Peaceful Valley Trail, an amenity that will provide opportunities for the public to use and enjoy the shoreline. In addition, the trail construction directly advances Policy LU 2.1, which seeks to improve the appearance of development, encourage social interaction, and enhance the surrounding urban and natural environment. See CP, Policy LU 2.1, Public Realm Features. Moreover, trails are encouraged throughout the comprehensive plan, across multiple land use categories.

Finally, the project, as designed and conditioned, provides adequate provisions to protect water quality, views, and archaeological sites, as well as guarding against erosion, 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.

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). In addition, under the concurrency standards, facilities for public wastewater (sewer and stormwater) must be evaluated for concurrency. See SMC 17D.010.010(I). Accordingly, on April 6, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction.

The city received comments various agencies and departments about the project. See e.g. Exhibits 3-9. 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 or services. See Exhibit 20 (Environmental Checklist ¶ B(15)). If anything, the proposal improves public facilities by increasing the city's capacity to handle wastewater.

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 "site plan" for the project is included in the record as Exhibits 2E-2G. The site plan, along with other documents in the record, describes the location, size, shape, and topography of the property. These documents also include information about the physical characteristics of the site and details about the proposed project. A review of this documentation confirms that the project site is suitable for the proposed use. See Exhibits 2E-2G; see also Exhibit 1, p. 5. In addition, City departments and other agencies reviewed the environmental checklist for the physical characteristics of the property. See Exhibit 1, p. 5. None reported that the site was not suitable for the proposed utility.

There are potentially historic and cultural features of the site. The dry-stack rock retaining wall at the intersection of Main and Cedar may have historic significance. See Exhibit 19 (Environmental Checklist ¶ B(13)(b)). The City has devised a plan to place piping under the wall, requiring a portion of the wall to be disassembled, and then re-stacked as a veneer on a new retaining wall. See Exhibit 4. This plan has been considered and approved by the Historic Preservation Officer. See *id.* The plan is also consistent with the comments of the Design Review Board, which recommended that the City devise the means to preserve the wall, if possible. See Exhibit 3.

In addition, Peaceful Valley was occupied by the Spokane Indians prior to settlement by people of European descent. See Exhibit 20 (Environmental Checklist ¶ B(13)(b)). The area has been used by the Spokane Tribe as a home, for fishing on the shores of the Spokane River. See *id.* As a result of these factors, the Spokane Tribe was brought in during the earliest stages of the project for consultation purposes. See Exhibit 20 (Environmental Checklist ¶ B(13)(c)). In addition, the City hired a Cultural Resources consultant to prepare an archaeological report on the affected area. See *id.* The project will be completed consistent with the report recommendations and in a

manner that preserves any identified resources. See Exhibit 20 (Environmental Checklist ¶ B(13)(d)). These measures are consistent with the comments of the Spokane Tribe. See Exhibit 7.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion 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 the CSO tank and related work on October 7, 2016. The City issued a DNS for the trail work on April 5, 2017. Prior to making each threshold determination, the City prepared an Environmental Checklist for each of these components of the project. See Exhibit 19 & 20. These checklists confirm that the threshold determinations were correct, i.e. this project will not have significant, adverse affects on the environment. A review of the content of those checklists verifies this conclusion.

Although the site is adjacent to the Spokane River, there are no wetlands, surface waters, or other limiting features on the development site itself. See Exhibit 19 (Environmental Checklist ¶ B(3)(a)(1)); see also Exhibit 20 (Environmental Checklist ¶ B(3)(a)(1)). No threatened or endangered species were identified on the site. See Exhibit 19, (Environmental Checklist ¶ B(4)(c) & B(5)(b)); see also Exhibit 20, (Environmental Checklist ¶ B(4)(c) & B(5)(b)). 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 20 (Environmental Checklist ¶ B(7)(b)(2)).

No above-ground structures are proposed for this project. Thus, the project will not impact views. See Exhibit 19 (Environmental Checklist ¶ B(10)); see also Exhibit 20 (Environmental Checklist ¶ B(10)). Although there could be some impact to views if trail lights are installed, that light will be shielded downward and should not produce significant light or glare. See Exhibit 19 (Environmental Checklist ¶ B(11)(a)-(b)); see also Exhibit 19 (Environmental Checklist ¶ B(11)(a)-(b)).

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 19 (Environmental Checklist ¶¶ B(3)(c)(1) & B(3)(d)); see also Exhibit 20 (Environmental Checklist ¶¶ B(3)(c)(1) & B(3)(d)). The other potential impacts of this project are those typical of construction projects, such as dust and vehicle exhaust. See Exhibit 19 (Environmental Checklist ¶ B(2)(a)); see also Exhibit 20 (Environmental Checklist ¶ B(2)(a)). However, mitigation measures imposed at the time of permitting, such as watering for dust control, can control such impacts. See e.g. Exhibit 19 (Environmental Checklist ¶¶ B(2)(c)).

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 each component of the project and no one appealed those determinations. 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 proposed CSO tank, associated infrastructure, and trail, are consistent with the policies of the Shoreline Management Act and the Shoreline Master Program.

The project site is within the Urban Conservancy Environment (“UCE”) under the shoreline regulations. See Exhibit 1, p. 6. In the UCE, new utilities (water, sewer, and storm water) located within the shoreline jurisdiction are allowed pursuant to a shoreline conditional use permit. See Table 17E.060-04. New utilities are considered a “Non-Water Oriented Use.” See Exhibit 1, p. 6 (citing SMC 17E.060.360). Pursuant to Table 17E.060-04, a “Non-Water Oriented Use” is a Limited or Conditional Use (“L(2)/CU”) on property designated as UCE. See Table 17E.060-04. The portion of the new trail located within the shoreline jurisdiction is permitted through a shoreline permit. See Table 17E.060-04. And the replacement or maintenance of existing utilities in the shoreline jurisdiction is also permitted. See *id.*

The construction of the CSO tank in this location is also consistent with SMC 17E.060.700(2), which precludes utilities from being installed in the shoreline unless there are no feasible alternatives. Finding appropriate locations for CSO tanks is very challenging because the tanks must be situated near a connection to the collection system and close to where an existing river overflow is located. The tanks generally take up a large area, and the available locations are relatively rare. The City has been endeavoring to find suitable and available locations throughout the city, and is operating under restrictive timelines to satisfy the requirements of the Department of Ecology. The Hearing Examiner concludes that the requirements of SMC 17E.060.700(2) are satisfied.

Based upon the foregoing and the record in this case, the Hearing Examiner concludes that the project is consistent with the requirements of the shoreline master program. Therefore, 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).*

There is no evidence in this record that normal use of the public shorelines will be negatively affected by this proposal. The CSO tank and other utilities will be installed underground. There will be no impact to access or views of the shorelines arising from

these improvements. The proposed trail, meanwhile, will create new opportunities for public access, use, and enjoyment of the shoreline. Thus, public access and views of the shoreline will actually be increased by this project. See Exhibit 1, p. 6. 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 CSO tank. See Exhibit 1, p. 7. The Parks Department may be applying for a SCUP in the next year for a non-motorized boat launch at Grover Field. See *id.* However, that application is not pending and there is no evidence that such an application, if made, would have significant impacts (alone or cumulatively) such that the goals of the shoreline master program would be jeopardized. Based upon this record, the Hearing Examiner concludes that this criterion for approval has been 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).*

There is no evidence in this record that the project will be incompatible with other authorized uses in the area or with uses planned for the area. The proposed CSO tank and other utilities will be underground. Both the utilities and the proposed trail are compatible with the surrounding residential uses and with the uses planned under the comprehensive plan and shoreline master program. See Exhibit 1, p. 7. The design fits well into the site and does not have any features that would apparently interfere with any adjoining properties or uses. 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, for various reasons. The project is landward of the ordinary high water mark. See Exhibit 1, p. 7. The City will be mitigating all adverse impacts on the shoreline area, its values or functions. See *id.* A habitat management plan will be required before any ground disturbing activities. See *id.* In addition, the project will ultimately have a positive effect on the environment. The project will result in a significantly lower number of raw sewage discharges into the Spokane River, undoubtedly improving the shoreline environment. See *id.* Finally, as explained above, this project will actually improve public access, use, and enjoyment of the shorelines. See *id.* The Hearing Examiner agrees with Staff that this criterion for approval is satisfied.

11. *The Hearing Examiner concludes that the application should be approved despite some of the concerns raised about the project.*

During the hearing, there were some criticisms of the proposal. One neighborhood resident contended that the trail will cause more problems than it solves, and that the existing sidewalks and roads were adequate. *Testimony of C. Greenwood.* There was also a concern that the trail would encroach on private property and eliminate needed parking. *See id.* With respect to the planned road improvements, the same resident objected to the narrowing of Clarke and the installation of a "dangerous curb." *See id.* In support of the argument, some materials regarding street design and the elimination of curbs and gutters were submitted into the record. *See Exhibits A-2a through A-2d.*

The Hearing Examiner does not agree that the installation of the trail would be detrimental. On the contrary, the Hearing Examiner believes the trail would be a community asset, improving connectivity through the area as well providing additional opportunities for use, access, and enjoyment of the shoreline of the Spokane River. There does not appear to be specific evidence demonstrating that the trail will cause encroachments or other problems. Other residents testifying at the hearing agreed that the trail project would be beneficial to the neighborhood. *Testimony of W. Heylman, B. Forman, & J. Loux.*

The Hearing Examiner also disagrees with the contention that road improvements would be detrimental, including the installation of curbs. It may be that the use of alternative types of street design can have certain benefits. The Hearing Examiner is not convinced, however, that the standard designs proposed here are detrimental, or that this project should be conditioned to use alternative designs. Other neighborhood residents appeared to agree that the proposed road design would be preferable, in particular the installation of a sidewalk and curb. *Testimony of B. Forman & Jan Loux.* The Hearing Examiner agrees the road designs are appropriate.

There were other comments, questions, and suggestions about the design of the project, such as possible methods to preserve an existing staircase, to provide adequate parking, to replace the Jersey Barriers along Main. *Testimony of W. Heylman, J. Lawson, J. Loux, and B. Forman.* These comments and suggestions will certainly be considered by the City as the project moves forward. However, the Hearing Examiner does not believe the project should be conditioned to implement specific design elements that were discussed at the hearing. The project will be better served by allowing the City the flexibility to implement the best solutions as the development proceeds.

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 City of Spokane Engineering Department to construct new water, sewer, and stormwater mains and swales; to construct the new Peaceful Valley Trail; to construct a Combined Sewer Overflow (CSO) storage tank; and to replace existing water, sewer, and stormwater mains and swales.

2. The site shall be developed in substantial compliance with the plans submitted with the application dated April 5, 2017.

3. 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.

4. A Habitat Management Plan is required to be submitted prior to any ground disturbance.

5. Per comments received by Historic Preservation on June 2, 2017, adhere to the agreed to plan for the careful dismantling of the basalt rock wall on Main Street and during reconstruction the basalt is required to be restacked as a veneer on the exterior surface of the newly constructed retaining wall. If mortar is needed, it should be done to simulate the dry stacked basalt of the rest of the existing wall. Any leftover basalt should be used within Glover Field or as part of the trail.

6. Per comments offered by the Spokane Tribe on April 17, 2017, the applicant will prepare a cultural survey prior to any ground disturbance and provide access for Tribe monitoring of all ground disturbing activity.

7. The City shall install ADA compliant concrete landing pads at the locations on Main and Clarke which are marked "OK" on the aerial photo/map included in the record as Exhibit A-6. This map identifies the STA stops that were within the project area. The Applicant is not obligated to make improvements to STA stops outside the project area.

8. Per comments provided by the Army Corps of Engineers on April 10, 2017, if the project will impact any wetland or place any material below the Ordinary High Water Mark of the River, a U.S. Army Corps permit will be required.

9. The Applicant shall adhere to Department of Ecology water quality regulations, as identified in the Department of Ecology's comment letter dated April 18, 2017, and included in the record as Exhibit 5.

10. 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.

11. 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.

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.

13. 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.

14. 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 22nd day of June, 2017.



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.