

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Shoreline Conditional Use Permit ) FINDINGS, CONCLUSIONS,  
Application by The Falls, LLC for a ) AND DECISION  
mixed-use project at 829 W. Broadway )  
to be known as The Falls ) FILE NO. Z17-418SCUP

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The Falls, LLC, has applied for a shoreline conditional use permit for a mixed use project comprised of three buildings over below-grade parking. The proposal includes approximately 126 for-rent apartments, 26 for-sale condominiums, a hotel with approximately 124 keys, 20,000 to 30,000 square feet of office, and 20,000 to 27,000 square feet of retail, comprised mostly of food and beverage uses. The project will include below grade parking in three levels (approximately 400 stalls) as well as limited surface parking (approximately 15-20 stalls).

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

**FINDINGS OF FACT  
BACKGROUND INFORMATION**

**Agent:** Collins Woerman c/o Joe Workman  
71 Second Street, Suite 1400  
Seattle, WA 98104

**Applicant/  
Owner:** The Falls, LLC c/o LB Stone Properties  
2800 E. Main Ave.  
Spokane, WA 99220

**Property Location:** The project is located at 829 W. Broadway, Spokane, WA, 99201.

**Legal Description:** The legal description for the site is provided in Exhibit 2A.

**Zoning:** DTG (Downtown General).

**Comprehensive Plan Map Designation:** Downtown

**Shoreline Designations:** North 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 development site is located on the southeast corner of Lincoln Street and Broadway Avenue. The site has an irregular shape and is approximately 2.25 acres in size. There is a series of connected buildings on the north portion of the site. The south portion of the site is primarily asphalt-paved parking. The Spokane River traverses along the southerly border of the site. The site shares a property line to the east with Riverfront Park. This adjoining site is the access point for the pedestrian suspension bridge to Riverfront Park. The site has a unique and scenic view of the Monroe Street Bridge, the Spokane River Gorge, and the upper falls.

**Surrounding Zoning and Uses:** The properties surrounding the site in all directions are zoned DTG. Directly north of the site, across the street on W. Broadway Avenue, is the Wonderbread Building, which is currently vacant but planned for redevelopment. To the west, across N. Lincoln Street, is a historic building occupied by North by Northwest, a film company. Directly to the south is the Anthony's Restaurant and the Post Street Bridge. To the west are various commercial buildings and parking areas.

### **PROCEDURAL INFORMATION**

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

**Notice of Community Meeting:** Mailed: June 22, 2017  
Posted: June 28, 2017

**Notice of Application/Public Hearing:** Mailed: August 24, 2017  
Posted: August 25, 2017

**Hearing Date:** October 19, 2017

**SEPA:** A Determination of Nonsignificance ("DNS") was issued by the City on September 28, 2017. The DNS was not appealed.

**Testimony:**

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

Lawrence Stone  
P.O. Box 3949  
Spokane, WA 99220

Lawrence Stone  
The Falls, LLC  
2800 East Main Avenue  
Spokane, WA 99202

## Exhibits:

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B Shoreline permit application
  - 2C Shoreline/Critical Areas Checklist
  - 2D Notification Map application
  - 2E Site Plan
  - 2F Existing Site Survey
  - 2G Design Narrative
  - 2H Trip Generation & Distribution Letter dated 07-06-17
  - 2I Shoreline and Habitat Management Plan dated 07-10-17
  - 2J Phase 1 Environmental Site Assessment Report dated 02-03-10
  - 2K Geotechnical Engineering Evaluation dated 12-05-05
3. Pre-Development Conference Notes
4. Fire Department comments
5. Integrated Capital Management comments
6. Sewer/Stormwater comments
7. Wastewater Management comments
8. Spokane Tribe of Indians comments
9. Department of Ecology 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 06-22-17
  - 14B Application and Public Hearing dated 08-24-17
15. Affidavit of postings:
  - 15A Community Meeting dated 06-28-17
  - 15B Application and Public Hearing dated 08-25-17
16. Affidavit of sign removal dated 07-14-17
17. SEPA Determination of Nonsignificance dated 09-28-17
18. Environmental checklist dated 07-12-17
  - 18A SEPA Comments correction dated 08-02-17
19. Community Meeting sign in sheet
20. Letter dated 06-16-17 to Steve Wilson from Tami Palmquist  
re: community meeting instructions
21. Letter dated 07-20-17 to Interested Parties from Tami Palmquist  
re: requesting comments
22. Email dated 07-19-17 to Tami Palmquist from Stephen Berde  
re: supporting project
23. Emails dated 08-14 to 08-28-17 to/from Steve Wilson and Tami Palmquist  
re: submittal of affidavits and hearing date
24. Letter dated 08-15 -17 to Joe Workman from Tami Palmquist  
re: notice of application and notice of hearing instructions
25. Pre-Demolition Regulated & Hazardous Materials Assessment dated 03-27-17

- A. Material received at hearing:
- A-1 Hardcopy of Staff's PowerPoint presentation
  - A-2 Design Review Board, The Falls, Program Review/Collaborative Workshop
  - A-3 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.*

The Falls is a mixed use project with residential, retail, hotel and office uses. See Exhibit 1. The project site is zoned Downtown General ("DTG"), a downtown zoning category. See *id.*

The DTG zone is characterized as a mixed-use category. See SMC 17C.124.030(B). A wide range of uses are allowed in this zone. See *id.* In particular, retail, residential, and office uses are encouraged, especially as part of a mixed-use building. See *id.*

The uses specifically allowed in the downtown zones are shown on Table 17C.124-1. Pursuant to that table, Residential Household Living and Office uses are permitted outright in the DTG zone. See Table 17C.124-1. The term Residential Household Living includes uses such as apartments and condominiums. See SMC 17C.190.110. Hotels are not considered a residential use. Rather, that use is characterized as Retail Sales and Service. See SMC 17C.190.110(D)(1). The project also includes restaurants and other retail services. Those uses also fall into the category of Retail Sales and Service. See Exhibit 1, p. 4. Retail Sales and Service is also allowed, but with certain limitations. See SMC 17C.124.110(A)(6).

Under the DTG zoning, the proposed uses are allowed. However, that does not end the inquiry. A determination must be made whether the proposal is allowed under the shoreline regulations. Pursuant to the shoreline standards, restaurants and other improvements facilitating public access to the shorelines are considered "Water-enjoyment Uses." See SMC 17E.060.360(D)(3). Water-enjoyment Uses are a conditional use in the Intensive Urban Environment. See Table 17E.060-04. In addition, multifamily residences of four or more dwelling units are categorized as a "conditional use." See *id.* As a result, the apartments and condominiums included in the project may be allowed as a conditional use. Parking which is accessory to a permitted use is also permitted in the IUE. See *id.* Other components of this mixed-use project, such as hotels and offices, are not specifically referenced on the Table of primary uses. Uses that are not listed on the table must be reviewed as a shoreline conditional use. See SMC 17E.060.310(B).

Under both the zoning and shoreline designations, the proposal is allowed, provided the application satisfies the development standards and the criteria for a conditional use. 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 the site as "Downtown." This designation is intended to encourage a diversity of activities and a mix of uses. See CP, Chapter 3, Land Use, p. 33. A variety of goods and services should be available. See *id.* Downtown serves as the primary economic and cultural center of the region. See *id.*

The site is also designated as Intensive Urban Environment under the Shoreline Master Program. The IUE designation contemplates an intensive public utilization of the shoreline. See CP, Chapter 14, Shorelines, p. 19. Development in the IUE should be managed so that it enhances and maintains the shorelines for a variety of urban uses, including residential, commercial, and office uses. See *id.* Priority is a given to public access to the shoreline, both physical and visual. See *id.*

The proposal includes a mixture of uses, including apartments, condominiums, a hotel, an office, and a number of retail uses. This mixture of uses, along with a design intended to enhance the public use and access to the shoreline, is clearly consistent with the designations for the property. The mixture of uses included in the project are also well-supported by several comprehensive plan goals and policies.

For example, Policy ED 2.4 calls for the support of mixed-use development that brings employment, shopping, and residential activities to shared locations that stimulate economic activity. See CP, Chapter 7, Economic Development, p. 13. Similarly, Policy LU 1.9 promotes a diversity of activities and a variety of uses in the Downtown area. See CP, Chapter 3, Land Use, p. 13. That mixture of uses includes residential, office, entertainment, and retail. See *id.* Policy N 1.1, entitled "Downtown Development," encourages the development of a variety of housing, recreation, and daily service activities in the downtown area. See CP, Chapter 11, Neighborhoods, p. 9. This promotes downtown as a primary economic and cultural center of the region. See *id.*

The project is a sophisticated, mixed use project, and creates new housing and working opportunities. The project will certainly add to the vitality of the downtown area in furtherance of plan goals. Goal DP 5, for example, seeks to create a vital, livable downtown. See CP, Chapter 8, Urban Design, p. 19. The project will create a vibrant atmosphere on a site that sees little activity currently. See Exhibit 2B. Policy DP 5.1 specifically supports investments and the creation of opportunities to increase the number of residents and workers in downtown Spokane. See *id.* The proposal will create high-density housing on the site along with approximately 305 jobs. See Exhibit 2B.

As the Applicant contends, the project will replace derelict buildings and surface parking with a vibrant mixed-used center. See Exhibit 2B. "The project will open the site to new uses and provide the residents, tenants, and the public with the opportunity to experience The Falls by providing views, restaurants, lodging, work space, and pedestrian connections to the falls, Riverfront Park and the surrounding neighborhoods." See *id.* The

project is very well designed to achieve these objectives. The buildings on the site set back from the shoreline. See Exhibit A-3. There is an open plaza between the buildings which opens up into an easily accessed viewing area along the shoreline. See *id.*; *Testimony of L. Stone*. These qualities are certainly consistent with the intent of Policy LU 2.1, which encourages features that promote social interaction and enhance the surrounding urban and natural environment. See CP, Chapter 3, Land Use, p. 16. In addition, the project furthers the objectives of Policy N 7.1, which seeks to increase the number of gathering places within its neighborhoods. See CP, Chapter 11, Neighborhoods, p. 15.

The project design creates a new, public place to view the river and falls from the site. See Exhibit 2B. There will be access from the Streets through the site. See *id.* The plans connect the open spaces to Riverfront Park at the access point at the northeast end of the site. See *id.* A pedestrian connection at the south end of the site is also available. See *id.* These features promote goals and policies designed to ensure a network of pedestrian trails that are linked to the shoreline and other natural amenities. For example, Policy NE 15.2 seeks to link local nature views, natural aesthetics, and historic sites with the trail and path system of the city. See CP, Chapter 9, Natural Environment, p. 20. Policy PRS 2.3 seeks to continue to develop urban open space amenities that enhance the local economy. See Chapter 12, Parks, p. 9. Urban open space amenities include trails, plant materials, public squares, viewpoints, and other beneficial spaces. See Exhibit 1, p. 5. And Policy N 5.3 seeks to link neighborhoods with an open greenbelt system of pedestrian and bicycle paths. See CP, Chapter 11, Neighborhoods, p. 14.

The project also addresses the policies which specifically relate to shorelines. For example, the proposed conditions of the project require the Applicant to engage in restoration, rehabilitation, and enhancement of the shoreline in order to offset the impacts of the proposal. See Exhibit 1, p. 8. A Habitat Management Plan was prepared to insure there would be no adverse impacts from the project. See Exhibit 2I. Under that plan, historically degraded areas of the shoreline will be rehabilitated, in furtherance of the policy requiring that there be no net loss of ecological functions. See *id.* The Habitat Management Plan also prescribes noxious weed control, the removal of ornamental/non-native plants, the planting of native grasses, and the replacement of evergreen and deciduous trees, shrubs, and groundcover to exceed the replacement ratios specified by the City Code. See *id.*; see also Exhibit 2B.

The proposed conditions and mitigation measures fulfill Policy SMP 1.3, which provides that developers must ensure that there is no net loss of ecological functions of the shoreline. See Policy SMP 1.3, CP, Chapter 14, Shorelines, p. 22. Planting with native species also promotes Policy SMP 4.5, which encourages landscaping with native plant communities as new development occurs. See Policy SMP 4.5, CP, Chapter 14, Shorelines, p. 28. They also further the objectives of Policy SMP 5.4. That policy states that new development should include adequate provisions for the protection of water quality, erosion control, landscaping, aesthetic characteristics, habitat, normal public use of the water, and other matters. See CP, Chapter 14, Shorelines, p. 28.

The project plans connect the sidewalks at the street to the public spaces on the site. See Exhibit 2B. The spaces are also connected to the trail system in Riverfront Park at the northeast end of the site. See *id.* As a result, the plans allow for a public access through the site and along the shoreline. See *id.* Through such features, the project is designed to improve access to publicly owned areas of the shorelines pursuant to SMP 8.1. See CP, Chapter 14, Shorelines, p. 32. The project also incorporates new public spaces such as a new central courtyard for both car and pedestrian access. See Exhibit 2B. A series of terraces leading to the shoreline will better connect the site with the falls and views of the river. See *id.* These features are consistent with Policy SMP 8.3, which encourages the enhancement of public access to the river in the Central Business District in the form of plazas, vistas, pedestrian ways, and other means. See CP, Chapter 14, Shorelines, p. 32.

Because the project is consistent with the designations, goals, and policies of the Comprehensive Plan, the Hearing Examiner finds that his criterion has been 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 July 20, 2017, 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 4-9. None of the commenting departments or agencies reported that concurrency could not be achieved. See Exhibit 1, p. 6. 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 2E-2F. These documents generally show the location, size, and shape of the property. They also include information about the physical characteristics of the site and other 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 site, for example. In addition, City departments and other agencies reviewed the application and did not contend that the site was unsuitable for the proposed development. See Exhibit 1, p. 6.

However, there are certainly development challenges for this site. For example, “[o]ne hundred percent of the project will be constructed on existing or replaced fill material.” See Exhibit 2B. However, this condition has been taken into account. The

subsurface conditions have previously been investigated. The geotechnical report is part of the record for this proposal. See Exhibit 2K. In addition, the southerly third (approximately) of the site is located in the shoreline jurisdiction. To address concerns about the potential impact to the shoreline and the Spokane River, a Habitat Management Plan was prepared to support the project. See Exhibit 2I. Thus, in the Hearing Examiner's view, the more challenging aspects of the development have been addressed by the Applicant.

There was no evidence introduced at the hearing, or that is apparent in the record, suggesting that soils or drainage characteristics are problematic. Similarly, there is no evidence that groundwater poses obstacles to development of the site. Certainly, the proximity of the site to the Spokane River requires that great care be taken when developing this site, including guarding against significant impacts on the shoreline environment. However, the development site is on the top of the slopes along the Spokane River and was previously fully developed. There is no surface water on the development area itself, although the plans do call for heavy excavation for the underground supports and parking. The Hearing Examiner concludes that to the extent the developer faces challenges in developing the site the conditions of approval adequately address those concerns.

The site does not have any significant historic or cultural features. There are no buildings or objects that are listed on or proposed to be listed on the national, state or local registers. See Exhibit 18 (Environmental Checklist ¶¶ B(13)(a)). There is no evidence, to the Applicant's knowledge, that anything of archaeological or scientific significance is situated on or adjacent to the site. See Exhibit 18 (Environmental Checklist ¶¶ B(13)(b)). There are no City-designated landmarks or buildings potentially eligible for designation due to historical or cultural importance. See *id.* No evidence was introduced at the hearing to demonstrate that there were historic or cultural features that needed protection. The Spokane Tribe of Indians did comment that the site "potentially contains archaeological resources." See Exhibit 8. However, the basis for this contention is not evident in the record. Irrespective of that, the Applicant is in consultation with the Tribe and the Tribe has not requested any additional conditions for this project. *Testimony of T. Palmquist.* The usual protocols under State law apply to this project, as is reflected in the conditions of approval. The Hearing Examiner concludes that this condition is sufficient to address any concern.

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 September 28, 2017. See Exhibit 17. The deadline to appeal the DNS expired on October 12, 2017. See *id.* The DNS was not appealed.



Approximately two months before the issuance of the DNS, on July 12, 2017, the Applicant prepared an environmental checklist for the project. The checklist supports the conclusion that no significant environmental impacts will arise from this project. For example, although the site is near the Spokane River, there are no wetlands, surface waters, or other limiting features on the development site. See Exhibit 18, Environmental Checklist ¶ B(3)(a)(1). No threatened or endangered species were identified on the site. See Exhibit 18, (Environmental Checklist ¶ B(4)(c) & B(5)(b)). In addition, the potential impact on species has been carefully considered, as reflected in the analysis in the Environmental Checklist. See Exhibit 18, (Environmental Checklist ¶ B(5)(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 18, Environmental Checklist ¶¶ A(14)(a)(1), B(3)(b)(1), B(3)(c)(1), & B(3)(d). The project will not discharge material into the ground. See Exhibit 18 (Environmental Checklist ¶ B(3)(b)(2)). Any waste materials from the site will be captured and routed to stormwater swales for treatment prior to any further release. See Exhibit 18 (Environmental Checklist ¶ B(3)(c)(2)).

It should be acknowledged that there are hazardous materials on the site which pose some risks to the environment. See Exhibit 25; see *also* Exhibit 18 (Environmental Checklist ¶ B(7)(a)). This includes asbestos, lead, PCBs from lighting ballasts, mercury, waste oil, and dry sulfuric acid. See Exhibit 18 (Environmental Checklist ¶ B(7)(a)). However, those materials will be removed and properly disposed of prior to demolition. See *id.* In addition, any hazardous materials that are encountered during demolition will be removed by a qualified abatement contractor. See *id.*

Primarily, the potential impacts of this project are those typical of construction projects, such as erosion, dust, and vehicle exhaust. See Exhibit 18, Environmental Checklist ¶¶ B(1)(f) & (2)(a). Construction work will result in the noise typically associated with that activity. See Exhibit 18 Environmental Checklist ¶ B(7)(b)(2). All existing structures on the site will also be demolished. See Exhibit 18, Environmental Checklist ¶ B(8)(d). However, mitigation measures imposed at the time of permitting can control such impacts. See *e.g.* Exhibit 18, Environmental Checklist ¶¶ B(1)(f) & (h) & 2(c). In addition, the hours for construction activity will be limited to comply with the City's noise ordinance. See Exhibit 18 Environmental Checklist ¶ B(7)(b)(3). Finally, the impacts from construction, including noise, will be temporary.

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. 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. 7. 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 higher-intensity urban, residential, commercial, and office 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 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. The existing public access provided by the pathway north of Anthony's will remain in place. See Exhibit 1, p. 7. In addition, public access will be enhanced by the additional pathways and plaza that will be installed as part of this project. *See id.* Current public access to the site is quite limited. See Exhibit 2B. The proposed design will create new opportunities to experience the shoreline area and the falls. *See id.* "The site is also adjacent to the northeast entrance to Riverfront Park. Overall public access to the Spokane River will be improved as Riverfront Park is redeveloped over the next few years." See Exhibit 1, p. 7. There will be disruptions of use due to the planned construction. However, those impediments are temporary. 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. 7. 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 Spokane 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;*

As has been discussed above, the project is well-designed to fit the site and the surrounding neighborhood. Ultimately, the Hearing Examiner agrees with the Staff's comment on this issue:

*This project is suitable for residential and commercial development and will improve public access to the Spokane River. The preliminary elevations show that the applicant is taking cues from the surrounding properties and is mindful of the context in which this site is located. The applicant will be required to complete the Design Review Process prior to any site disturbance permits being applied for.*

See Exhibit 1, p. 8. For these reasons, and for the reasons discussed elsewhere in this decision, 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 Spokane River, Downtown, and Riverfront Park. See Exhibit 1, p. 8. While it is true that construction will create impacts on access and views in the short-term, the long-term effect of the project will be positive. 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 approve the Shoreline Conditional Use Permit for the mixed use project known as The Falls, subject to the following conditions:

1. The site shall be developed in substantial compliance with the plans and application on file dated July 14, 2017.
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.
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. Fire Department shall have the right to review and approve all access design and water supply locations.
6. Public access to the Spokane River and river views shall be required as part of the Shoreline Master Program and SMC 17E.060.280.
7. The applicant is required to hold a Recommendation Meeting with the Design Review Board ("DRB") prior to submittal of any site development permits.
8. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State

Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 1<sup>st</sup> day of November 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.