

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit) FINDINGS, CONCLUSIONS,
Application by the City of Spokane -) AND DECISION
Wastewater Treatment Facility to)
allow an access road, laydown area,)
and riverbank flood protection) FILE NO. Z17-438SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: The City of Spokane's Wastewater Treatment Facility seeks a shoreline conditional use permit in order to allow the construction of a new access road, laydown area, and riverbank protection on the east side of the Treatment Facility site. This project is associated with the ongoing upgrades at the Treatment Facility.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

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

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

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

Zoning: Residential Single-Family (RSF)

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

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

Comprehensive Plan Map Designation: Institutional

Site Description: The City of Spokane Wastewater Treatment Facility has been located at the project site since 1958. The Wastewater Treatment Facility is a major process facility which includes a large number of structures. There are also many below-grade utility tunnels and pipelines. The area of the proposed work is located on the far east side of the site, and contains a little over 4 acres of land. From N. Aubrey L. White Parkway,

the site consistently slopes down to the Spokane River. The site contains existing filtration membranes and forested areas.

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

Project Description: The City of Spokane is required to remove enhanced levels of phosphorous at the Wastewater Treatment Facility by March 2021. A Shoreline Conditional Use Permit (File No. Z16-1081SCUP) was approved on March 21, 2017 to continue construction at the site through 2027 to achieve this requirement. The future construction of the membrane facility located on the east side of the Wastewater Treatment Facility will begin next year. Due to construction challenges and site restrictions, the scope of work needs to include an access road and laydown area on the Plant's eastern-most parcel (25023.0602). Upon completion of the Membrane Facility, the area will be reforested to replace any tree loss during construction and the parcel will have a reinforced soil slope and armored riverbank.

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: July 2, 2017
Posted: July 10, 2017

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

Community Meeting: July 19, 2017

Public Hearing Date: October 5, 2017

SEPA: A Determination of Nonsignificance ("DNS") was issued by the City of Spokane Engineering Department on September 13, 2017. No appeal of the DNS was filed.

Testimony:

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

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

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

Exhibits:

1. Planning Services Staff Report
2. Applications for Next Level of Treatment at the Wastewater Treatment Facility:
 - 2A General application
 - 2B Shoreline Conditional Use Permit application
 - 2C Notification Map application
 - 2D Site Plan
 - 2E East Access Road with laydown area and riverbank protection
3. ch2m groundwater elevation comments
4. Department of Ecology, Wetlands/Shorelands comments:
 - 4A dated 08-03-17
 - 4B dated 08-16-17
 - 4C Habitat Management Plan update, dated 08-2017
5. Department of Ecology, Statewide Flood Engineer comments dated 08-08-17
6. Department of Ecology comments dated 08-15-17
7. Archaeologist comments 08-03-17
 - 7A Historical Research Associates, Inc., memorandum dated 08-02-17
8. Notice map
9. Parcel listing
10. Notice of Community Meeting
11. Notice of Application and Public Hearing
12. Affidavit of mailings
 - 12A Community Meeting dated 07-02-17
 - 12B Application and Public Hearing dated 08-25-17
13. Affidavit of postings:
 - 13A Community Meeting dated 07-10-17
 - 13B Application and Public Hearing dated 08-25-17
14. SEPA Determination of Nonsignificance dated 09-13-17
15. Environmental checklist dated 07-20-17
16. Community Meeting sign in sheet
17. Notes from Community Meeting
18. Letter dated 06-19-17 to Mike Taylor from Donna deBit
re: community meeting instructions
19. Letter dated 08-02-17 to Interested Parties from Donna deBit
re: requesting comments

20. Letter dated 08-23-17 to Mike Taylor from Donna deBit
re: notice of application and notice of hearing instructions
- A. Material received at hearing:
- A-1 Hardcopy of Applicant's PowerPoint presentation
 - A-2 Annual RPWRF Removal Efficiencies 2016
 - A-3 Appendix E, pg E-6, Table 3 and 4 from Cost per unit pollutant removed for next level of treatment alternatives in the integrated plan – Revised Final

FINDINGS AND CONCLUSIONS

To be approved, the proposed Shoreline Conditional Use Permit ("SCUP") application must comply with the criteria set forth in SMC 17G.060.170 and SMC 17E.060, the shoreline regulations. The Hearing Examiner has reviewed the proposed SCUP and 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).*

To be allowed in the shoreline jurisdiction, a use must be permitted in both the shoreline jurisdiction and in accordance with the applicable zoning of the property. See SMC 17E.060.690(C).

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

Under the shoreline regulations, the property is designated Wastewater Treatment Plant Environment ("WTPE"). Within WTPE shoreline environments, expansions or upgrades of existing wastewater treatment plant facilities and accessory uses are allowed as a conditional use. See Table 17E.060-4. Shoreline stabilization and armoring is also permitted through a conditional use permit. See Table 17E.060-3.

The Hearing Examiner concludes that the project is allowed as a conditional use pursuant to both the zoning regulations and the shoreline regulations. Therefore, this criterion for approval is satisfied.

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

The City proposes to construct a new access road and laydown area on the site of the Wastewater Treatment Facility. The City also proposes to construct additional riverbank protections on the east side of the Treatment Facility site. These improvements are part of the City's extensive and ongoing upgrades to the facility. The larger upgrade projects were approved in March 2017. The Hearing Examiner already concluded that the long-term facility upgrades were consistent with the Comprehensive Plan and Shoreline Management Plan. That prior analysis applies to this project as well, in particular given that this proposal is a relatively minor change to the scope of the work at the facility.

The proposed access road, laydown area, and riverbank protections are all consistent with the goal to provide coordinated, efficient, and cost effective public facilities and utility services. See Comprehensive Plan ("CP"), Goal LU 1, Citywide Land Use. Further, making these kinds of improvements ensures that public facilities are adequate to accommodate future growth and development. See CP, Policy LU 1.12, Public Facilities and Services.

For similar reasons, the proposed improvements are consistent with the concurrency goal of the Comprehensive Plan. See CP, Goal CFU 2, Chapter 5, p. 12. The Staff noted that the proposed improvements are "intended to meet the concurrency requirements as well as decrease the need for continuous permitting as the facility continues to be improved over the next ten years." See Exhibit 1, p. 4.

The additional improvements proposed by the City are a necessary part of the ongoing upgrades to the facility. *Testimony of P. Mike Taylor*. Thus, the project is consistent with the capital facility policies of the Comprehensive Plan. For example, Policy CFU 1.2 of the Capital Facilities Element further provides as follows:

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

See CP, Policy CFU 1.2, p. 10. Likewise, Policy CFU 1.3 requires the maintenance, rehabilitation, and renovation of existing capital facilities. See CP, Policy CFU 1.3, p. 11. Other policies contain similar objectives. See CP, Policy CFU 1.6, p. 11.

The proposal fulfills the intent of Goal CFU 5 of the Capital Facilities Element, which seeks to minimize impacts to the environment, public health and safety through the timely and careful development and use of capital facilities and utilities. See CP, Goal CFU 5, Environmental Concerns. The project is part of an ongoing effort to upgrade the Wastewater Treatment Facility in order to protect and improve the water quality of the Spokane River. The City is required to ensure that "the plant is meeting all applicable federal, state, and local standards for emissions and pollutants." See CP, Chapter 14, p. 20.

The proposal also fulfills the goals and policies of the Shoreline Master Program. The site of the additional work is already part of the institutional campus. See Exhibit 2B. In addition, the area disturbed by the new construction will be landscaped consistent with the Aesthetic Master Plan. See *id.* Tree replacement will be coordinated with the City's Urban Forester and landscaping will be guided by the Aesthetic Master Plan. See *id.* Best Management Practices will minimize erosion during construction. See *id.* As a result of such measures, no net loss of shoreline ecological function is anticipated from the additional proposed work. See *id.* This fulfills the objectives of the Shoreline Management Plan. See SMP 1.3, No Net Loss of Ecological Functions.

Moreover, the additional work is a part of the overall project to protect and enhance the water quality of the Spokane River. In this regard, the project also promotes various goals and policies of the Shoreline Management Plan. For example, Policy SMP 5.4 seeks to protect water quality and views as well as guarding against

pollutants entering the river, among other things. See SMP 5.4, Provisions for Shoreline Protection.

Finally, the project is being processed as a conditional use, in fulfillment of Policy SMP 2.8. See SMP 2.8, Conditions on Construction or Expansion.

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

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

The decision criteria for a Type III decision (such as a shoreline conditional use permit) mandate that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on August 2, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 19.

The primary comments on the project were received from the Department of Ecology. See e.g. Exhibits 4-6. However, City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 5. In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

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

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

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

The site does not have any significant historic or cultural features. See Exhibit 15 (Environmental Checklist ¶ B(13)(a)). There are no landmarks or other evidence of Indian or historic use or occupation of the site. See Exhibit 15 (Environmental Checklist ¶ B(13)(b)). Prior archaeological surveys were completed and no areas of historic or cultural significance were discovered. See Exhibit 15 (Environmental Checklist ¶ B(13)(c)).

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

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The City issued a Determination of Nonsignificance (“DNS”) for this project on September 13, 2017. See Exhibit 14. The DNS was not appealed. About two months before the issuance of the DNS, on July 20, 2017, the Applicant prepared an environmental checklist for the project, detailing the specifics of the project and commenting on the potential impacts.

The checklist supports the conclusion that no significant environmental impacts will arise from this project. For example, no threatened or endangered species¹ were identified on the project site. See Exhibit 15 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). No waste materials will be discharged into ground waters as a result of this project. See Exhibit 15 (Environmental Checklist ¶ B(3)(b)(2)). Storm water will be relatively unchanged by this proposal. See Exhibit 15 (Environmental Checklist ¶¶ A(14)(b)(2) & B(3)(c)(1)).

Temporary, minor erosion could occur during construction. However, erosion and sediment control plans must be approved prior to the commencement of construction. See Exhibit 15 (Environmental Checklist ¶ B(1)(h)). Best Management Practices will be utilized to minimize erosion. See *id.* Surface restoration will also be implemented, including tree-planting which will be coordinated with the City's Urban Forester. See *id.*

The additional work proposed will not produce any light or glare. See Exhibit 15 (Environmental Checklist ¶ B(11)(a)). Other than short-term construction noise, the project will not create any noise beyond what currently exists at the facility. See Exhibit 15 (Environmental Checklist ¶ B(7)(b)(2)).

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.

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

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

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

The Wastewater Treatment Facility has been operating in this location for decades. The property is clearly an appropriate site for this operation, and is being used consistently with its WTPE designation. In this specific instance, the city is seeking to add an unpaved access road, a laydown area for the storage of materials, and to make additional improvements to protect the riverbank. These projects are related to ongoing efforts to upgrade and improve the wastewater facility. Those improvements serve to improve water quality of the Spokane River, an objective that is clearly consistent with the goals and policies of the Shoreline Management Plan. Finally, the proposal is consistent with the Shoreline Management Plan for the specific reasons discussed in Paragraph 2 above.

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

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

There is existing trail access to the shoreline on the far east parcel. See Exhibit 1, p. 7. The project will cause this trail access to become more limited in some areas and inaccessible in others. See *id.* However, the existing trail will be replaced by a pedestrian trail. See *id.* The new pedestrian trail will be located at the midpoint of the new access road. See *id.* According to the City, the new pedestrian trail will provide a “gentler” and “more stable” public access to the shoreline. See *id.* Therefore, although some changes to the access are anticipated, public access to the shoreline will likely be better than it was before the project was completed. In any case, the project properly accounts for public access to the shoreline. As a result, the Hearing Examiner concludes that this criterion for approval is satisfied.

8. *The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the shoreline master program. See SMC 17G.060.170(D)(2)(a)(iii).*

The only other conditional use permits in the area are the ones previously obtained for the Wastewater Treatment Facility. See Exhibit 1, p. 7. As a result, there is no basis for a cumulative impact analysis. This criterion is satisfied.

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

The Wastewater Treatment Plant was constructed at this site because the property was the right location for this type of facility. It has been operating in this location for decades. A treatment plant would not normally be considered compatible with residential uses and open spaces. See Exhibit 1, p. 7. However, the plant is an essential public facility with unique requirements and characteristics. See *id.* Ultimately, this facility makes other uses, such as the surrounding residences, possible. The proposed access road, laydown area, and shoreline armoring are necessary for the functioning and ongoing upgrades of the facility. *Testimony of P. Mike Taylor.* The Hearing Examiner concludes that this criterion is met.

10. *The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying physical and visual access suffers no substantial detrimental effect. See SMC 17G.060.170(D)(2)(a)(v).*

As explained in Paragraph 5 above, no significant impacts to the shoreline environment are anticipated from this project. The project will result in changes to public access to a part of the shoreline. However, the project includes a pedestrian trail that is intended to replace the existing trail. The project includes an unpaved access road, a laydown area, and shoreline armoring. None of these improvements will have significant, adverse effects. There will be substantial tree removal, but those impacts are being thoroughly mitigated by both on-site and off-site measures. Since there will be no substantial, detrimental effects to the shoreline environment, the Hearing Examiner concludes that this criterion is satisfied.

DECISION

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

1. Approval is for a Shoreline Conditional Use Permit to allow the Applicant, City of Spokane-Wastewater Treatment Facility, to construct an access road, to create a laydown area, and to install riverbank flood protection at the Treatment Facility site. The improvements shall be completed in substantial compliance with the plans submitted with the application on file with the Planning Department.
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. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.

4. The project shall comply with Shoreline Master Program, SMC 17E.060 and SMC 17E.020, which provide that a project shall not result in a net loss of shoreline ecological functions. Pursuant to Section 17E.060.020, the Applicant shall engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts resulting from this proposal.
5. This project shall comply with the 2017 update to the Habitat Management Plan submitted with this application.
6. The project shall conform to the requirements of any additional agency permits.
7. All City of Spokane development standards from the various departments shall be met.
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. 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. The expiration of Shoreline Conditional Use Permits is specifically governed by WAC 173-27-90.
10. 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.

11. 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 17th day of October, 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.