

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Shoreline Conditional Use Permit ) FINDINGS, CONCLUSIONS,  
Application by Gonzaga University to ) AND DECISION  
allow the construction of a new )  
Integrated Science and Engineering )  
Facility on the Gonzaga University )  
Campus ) FILE NO. Z17-782SCUP

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** Gonzaga seeks a shoreline conditional use permit in order to permit the construction of a new, Integrated Science and Engineering Facility in a Residential High Density (RHD-55) zone. A shoreline conditional use permit is required because the proposed development is partially within the Shoreline Jurisdiction.

**Decision:** Approved, with conditions.

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

**Applicant/ Agent:** Corporation of Gonzaga University  
Attn: Kenneth Sammons  
502 E. Boone Avenue  
Spokane, WA 99258

**Owner:** Same as Applicant.

**Property Location:** The property to be used for this development consists of two parcels located northeast of Arthur Lake, on the Gonzaga University Campus. The site is designated as Tax Parcel Nos. 35175.2710 and Parcel No. 35175.2708. The site address is 428 E. Cataldo Avenue, Spokane, Washington.

**Zoning:** Residential High Density-55 (RHD-55).

**Comprehensive Plan Map Designation:** The property is designated as Institutional.

**Shoreline Designations:** Limited Urban Environment (LUE); 75-foot Shoreline Buffer; Campus/U-District.

**Site Description:** The site is a part of the Gonzaga University Campus. The proposed science and engineering facility will be constructed to the south of the Jesuit House, Hughes Hall and Herak Center. A building was demolished to make room for the new facility. Extensive excavation has been undertaken to investigate the existing conditions and the suitability of the site for the foundation of the proposed structure. The development site consists of an excavated area and an open, sloping grass area adjacent to Arthur Lake. Arthur Lake and the Spokane River are to the south of the site.

**Surrounding Conditions and Uses:** Residential High Density (RHD-55) property surrounds the entire project site. The project site is inside the Gonzaga University Campus. Thus, the land uses to the north, south, east, and west are designated as Institutional.

**Project Description:** The proposed Integrated Science and Engineering Building is 78,000 square feet (with a footprint of 31,700 square feet), 3 stories, and will be connected the existing Paccar Center as well as to Hughes Hall via an elevated sidewalk. The facility will provide office, classroom, lab, and research space for projects that integrate multiple disciplines including engineering, mathematics, psychology, biology, chemistry, computer engineering, and environmental engineering. A portion of the project is within the shoreline jurisdiction, requiring the Applicant to obtain a shoreline conditional use permit.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code (“SMC”) 17C.110, Residential Zones; SMC 17C.110.510, Institutional Design Standards; SMC 17E.060, Shoreline Regulations; and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: October 3 & 4, 2017  
Posted: October 4, 2017

**Notice of Application/Public Hearing:** Mailed: January 12 & 16, 2018  
Posted: January 12 & 15, 2018

**Community Meeting:** October 17, 2017

**Public Hearing Date:** February 15, 2018

**Site Visit:** February 13, 2018

**SEPA:** A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Planning Department on January 31, 2018. The appeal period for the DNS ended on February 14, 2018. The DNS was not appealed.

#### **Testimony:**

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

Kenneth Sammons  
Corporation of Gonzaga University  
502 E. Boone Avenue  
Spokane, WA 99258

Tom Barsler  
GVD Commercial  
1425 E. South Ridge Ct.  
Spokane, WA 99223

Sean Tharp  
Integrus Architects  
10 S. Cedar St.  
Spokane, WA 99201

**Exhibits:**

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B Shoreline Application and Shoreline Critical Areas Checklist
  - 2C Notification Map Application
  - 2D Site Plan
  - 2E Conceptual drawing
3. Design Review Board comments
4. Spokane Tribe of Indians comments
5. Department of Ecology comments
6. Notice map
7. Parcel listing
8. Notice of Community Meeting
9. Notice of Application and Public Hearing
10. Affidavit of mailings
  - 10A Community Meeting 10-3 & 4-17
  - 10B Combined Application and Hearing dated 01-12 & 16-18
11. Affidavit of posting
  - 11A Community Meeting dated 10-04-17
    - 11A-1 amended and submitted on 02-15-18
  - 11B Combined Application and Hearing dated 01-12 & 15-18
    - 11B-1 amended and submitted on 02-15-18
12. Removal of Public Sign dated 10-18-17
13. Determination of Nonsignificance (DNS) issued on 09-14-17
14. Environmental Checklist dated 07-07-16
15. Community Meeting report dated 10-19-17
16. Letter dated 09-29-17 to Ken Sammons from Donna deBit  
re: community meeting instructions
17. Letter dated 12-06-17 to Interested Parties from Donna deBit  
re: requesting comments
18. Letter dated 01-12-18 to Ken Sammons from Donna deBit  
re: Notice of Application and Public Hearing Instructions.
- A Exhibits received at the hearing:
  - A-1 Hardcopy of Planning's PowerPoint presentation

**FINDINGS AND CONCLUSIONS**

To be approved, the proposed shoreline conditional use permit must comply with the criteria set forth in Section 17G.060.170 of the Spokane Municipal Code. The Hearing Examiner has reviewed the application for a rezone and shoreline conditional use permit 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 project site is zoned Residential High Density-55 ("RHD-55"), a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17.110T.001. In accordance with the table, "Colleges" and "Religious Institutions," for example, are permitted in the RHD zone. See Table 17C.110-1. The Hearing Examiner agrees with Staff that "colleges and associated uses are allowed outright" under the current zoning. See Exhibit 1, p. 3. However, the Applicant proposes to construct a building that is partially within the 200' Shoreline Jurisdiction, which triggers the requirement to obtain a shoreline conditional use permit. Such a proposal is processed as a Type III Application which requires a public hearing and review by the Hearing Examiner. See *id.*

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).*

Gonzaga University has proposed to construct an Integrated Science and Engineering Facility on its campus. The proposed structure will be connected to an existing building, the Paccar building, to the east. It will also be connected by elevated walkway to the Hughes Hall, immediately north of the site. The proposed facility is entirely within the campus and is well-designed to blend into its setting. The proposed facility will be three stories tall, well below the 55' maximum allowed in the zone. The facility will be a center for multidisciplinary education, integrating a range of subject matters, including psychology, biology, chemistry, and computer science, to describe some of the pursuits.

Given the foregoing, the Hearing Examiner agrees with the Staff that the proposal is specifically supported by Goal LU 5, which promotes development "...in a manner that is attractive, complementary, and compatible with other land uses." See CP, Goal LU 5, Chapter 3, p. 23. Similarly, Policy LU 5.5 seeks to ensure that "...infill and redevelopment projects are well-designed and compatible with surrounding uses and building types." See CP, Policy LU 5.5, Chapter 3, p. 24.

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. This objective can be achieved, at least in part, by maintaining and restoring native plant communities. See Policy SMP 10.2, CP, Chapter 14, Shorelines, p. 34. 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.

The proposed conditions 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. Consistent with this policy, the conditions require the applicant to engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset

project impacts. The applicant will be required to update the Habitat Management Plan for Arthur Lake and its surroundings. *Testimony of D. deBit & K. Sammons.* The Applicant will also be required to obtain approval for a Vegetation Replacement Plan.

Policy SMP 11.35 promotes, whenever feasible, provisions for visual and physical public access to the shorelines. See SMP 11.35, CP, Chapter 14, Shorelines, p. 39. As a corollary, that same policy seeks to avoid, minimize, or mitigate negative impacts to the shoreline. See *id.* The proposed building will provide a new place to enjoy the views of Arthur Lake and the Spokane River. In this respect, visual access to the shoreline will be enhanced. The project will not impact physical access to the shoreline. There is already an easement providing public access to the shoreline area.

The structure is well designed to fit the site and to be compatible with the surrounding area, as well as being a complementary element of the campus itself. The project conditions ensure that the shoreline environmental will be protected and in some cases enhanced through the development process. As such, the proposal is consistent with the goals and policies of the comprehensive plan. Therefore, this criterion is satisfied.

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

The decision criteria for Type III decisions (such as a shoreline conditional use permit) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on December 6, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 17.

The city received limited responses to its request for comments. See *e.g.* Exhibits 3-5. City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 4. 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 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 finds that the property is suitable for the proposed use given its physical characteristics. The area to be developed consists of an excavated area and open space. The excavation that has taken place is part of an investigation into the suitability of the site for the proposed development. *Testimony of K. Sammons.* The exploration has revealed development challenges and limitations, but the design of

the project takes those matters into consideration. *See id.*

The open space gently slopes down toward Arthur Lake and the Spokane River. The topography is not especially challenging. The size and shape of the property do not create any significant obstacles to the proposed development. The project is well designed to fit the site, the campus, and the surrounding area. There is also no evidence that ground or surface waters are present or will be impacted by the project. It is true that a small portion of the development will encroach into the setback from the buffer. However, those encroachments involve improvements such as a drainage swale and a fire lane. *Testimony of K. Sammons & S. Tharp.* These kinds of improvements are allowed in the buffer setback. *Testimony of D. deBit.* The proposed building will not encroach into the buffer setback. *See id.*

There are no known natural, historic or cultural features on the development site itself. *See Exhibit 14 (Environmental Checklist ¶ B(13)).* Nonetheless, the Spokane Tribe requested that ground-disturbing activities be monitored for cultural or historic resources. *See Exhibit 4.* However, the Spokane Tribe did not submit any specific evidence to support its proposed mitigation measures. *See id.* The Hearing Examiner concludes that the more typical project conditions will address the concerns raised by the Spokane Tribe. The Hearing Examiner will include a condition stating that should anything be discovered during the construction process, the work must cease and the protocols required by state law must be followed.

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 environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about September 14, 2017, Gonzaga University prepared an environmental checklist, pursuant to the State Environmental Policy Act, for the proposed science and engineering facility. *See Exhibit 14 (Environmental Checklist).* The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties.

There are no wetlands or streams on the land to be developed, although Arthur Lake and the Spokane River are adjacent to or visible from the site. *See Exhibit 14 (Environmental Checklist ¶ B(3)(a)(1)).* The south wall of the proposed building will be approximately 100' from the ordinary high-water mark of Arthur Lake. *See Exhibit 14 (Environmental Checklist ¶ B(3)(a)(2)).* The property does not lie within a 100-year

floodplain. See Exhibit 14 (Environmental Checklist ¶ B(3)(a)(5)). No threatened or endangered species were identified on the site. See Exhibit 14 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The project is not anticipated to create any significant noise or light. See Exhibit 14 (Environmental Checklist ¶ B(7)(b) & B(11)). No waste materials will be discharged into the ground or into surface waters, barring a construction accident. See Exhibit 14 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No environmental hazards are anticipated to arise due to this project. See Exhibit 14 (Environmental Checklist ¶ B(7)(a)). There is the potential for exposure to vehicle fuels or exhaust during construction. See *id.* There is also a potential for limited exposure to hazardous substances during research projects. See *id.* However, the Hearing Examiner does not view these possibilities as significant impacts on the environment within the meaning of SEPA.

On January 31, 2018, the Planning Department of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 13. Any appeal of the DNS was due on or about February 14, 2018. See *id.* No appeal of the DNS was filed.

There is no substantive evidence in this record that environmental impacts make the project unfeasible or materially problematic. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS to challenge this conclusion. 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. See SMC 17G.060.170(D)(2)(a)(i).*

The site is designated as Limited Urban Environment (“LUE”) under the Shoreline Master Program. See Exhibit 1, p. 5. The LUE designation applies to shorelines that are “...intended to accommodate further urban growth and infill development and that are appropriate for a mix of water-oriented residential, institutional, and limited commercial uses.” See CP, Chapter 14, p. 17. Thus, the LUE designation specifically supports an institutional use like Gonzaga’s plan for a science and engineering facility. Further, the site is designated as a Campus/U-District, which acknowledges that this site is to be used for college campus purposes. See Exhibit 1, p. 5. The proposed project is consistent with the policies of the Shoreline Management Act and the Shoreline Master Program. As a result, this criterion is satisfied.

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

This project does not affect “normal public use” of the shorelines. The project site and Arthur Lake are within the Gonzaga Campus, and thus are located on private property. See Exhibit 1, p. 5. The City of Spokane has an easement for a public trail on the south side of the lake. See *id.* In addition, there is shoreline access from the campus through the existing trail system along the Spokane River that will continue to be accessible. See *id.* In other words, public access to the shoreline will remain the same after the project is completed. See *id.* Moreover, there is no evidence in the record suggesting that the project would interfere with the normal public use of the shorelines. 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. See SMC 17G.060.170(D)(2)(a)(iii).*

A SCUP was approved in 2016 for the Martin Woldson Performing Arts Center. See Exhibit 1, p. 6. In that project, a portion of a patio will encroach into the Shoreline Jurisdiction. See *id.* The remaining properties surrounding the proposed site, which are also on campus and fall within the Shoreline Jurisdiction, are already developed. See *id.* The possibility for multiple additional SCUPs is therefore remote. The Hearing Examiner concludes that there is no genuine threat to the shoreline environment posed by the cumulative impact of this and other projects. As a result, this criterion 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. See SMC 17G.060.170(D)(2)(a)(iv).*

The development site is designated as Institutional property and is a part of the Gonzaga campus. The property is surrounded by other institutional uses. “The design of the building will be compatible to the other campus buildings, as the same design standards will apply.” See Exhibit 1, p. 6. Moreover, the structure will be required to meet all design and developed standards listed under Chapter 17E.060, Shoreline Regulations. The project must also comply with the Institutional Design Standards, found at SMC 17C.110.510, although the Shoreline Regulations are more stringent. See *id.*; *Testimony of D. deBit.* As has been discussed above, the proposal is well designed to fit the site, the campus, and the surrounding neighborhood. The foregoing discussion, in particular in Paragraphs 2, 4 and 5 above, applies here as well. 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. See SMC 17G.060.170(D)(2)(a)(v).*



See the discussion in paragraphs 5 and 6b above. As the Staff concluded, the project will not impede the public's physical or visual access to the shoreline. See Exhibit 1, p. 6. On the contrary, the new structure will provide views overlooking Lake Arthur and the Spokane River. See *id.* These amenities will more likely increase opportunities for public enjoyment of the shoreline. 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 subject to the following conditions:

1. Approval is for a shoreline conditional use permit to allow Gonzaga University to construct an Integrated Science and Engineering Facility on the Gonzaga University Campus (the specific property being identified above and in the record). The facility will be constructed substantially as set forth in the plans and application on file in the Planning Department.
2. The Shoreline Conditional Use Permit is subject to the compliance of this proposal with all applicable codes and requirements including but not limited to shoreline regulations, public access, building height, bulk, setbacks, and site coverage.
3. The site shall be developed in substantial compliance with the plans submitted with the application, SEPA, as well as comments received on the project from City Departments and outside agencies.
4. 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 impacts resulting from this proposal.
5. A Habitat Management Plan and Vegetation Replacement Plan are required to be reviewed and approved by the Planning Department prior to any activity being permitted on the site.
6. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.
7. 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 well as requirements of City Departments and outside agencies with jurisdiction over land development.

8. 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.

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.

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 19<sup>th</sup> day of February 2018.



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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 by the Hearing Examiner regarding conditional use permits and variances are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is the date the decision is entered into the public record. This decision was entered into the public record on February 19, 2018. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 12<sup>th</sup> DAY OF MARCH 2018 AT 5:00 P.M.**

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.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.