

CITY OF SPOKANE HEARING EXAMINER

Re: Preliminary Plat, Planned Unit Development, and Shoreline Conditional Use Permit to subdivide 48 acres into 94 single-family lots on property located at 3515 S. Inland Empire Road)	FINDINGS, CONCLUSIONS, AND DECISION
)	FILE NO. Z19-985SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant, Taud A. Hume, on behalf of JRP Land, LLC, has applied for a preliminary plat, planned unit development (PUD), and a shoreline conditional use permit (SCUP) to subdivide 48 acres into 94 single-family lots. The project may also include a community building and/or a self-storage area for the use of the residents.

Decision: Approved, with conditions.

FINDINGS OF FACT **BACKGROUND INFORMATION**

Applicant/ Agent: Taud A. Hume
Parsons, Burnett, Bjordahl, Hume, LLP
Steam Plant Square, Suite 225
159 S. Lincoln
Spokane, WA 99201

Property Owner: JRP Land LLC
10223 S. Hangman Valley Road
Spokane, WA 99224

Property Location: The subject property is located at 3515 S. Inland Empire Road. The property includes Tax Parcel Nos. 35312.0002, 35361.0006, and 35361.0007.

Legal Description: The legal description of the property is provided in Exhibit 13B (Statutory Warranty Deed, recorded June 4, 2004, Instrument No. 5080540).

Zoning: The property is zoned RSF (Residential Single Family) and RA (Residential Agriculture).

Comprehensive Plan (CP) Map Designation: The property is designated as R 4-10 (Residential 4-10 units per acre) and Agriculture.

Shoreline Designations: Urban Conservancy and Natural Environment

Environmental Overlays: Riparian Habitat Zone 2 (RHA-2)

Site Description: The site consists of three parcels and is approximately 48 acres in size. The site is predominantly flat, but does contain some steep slopes. The steepest slopes on the site range from 60–90 percent in grade. The site is improved with a single-family home and approximately 10 farm-related outbuildings (barns, sheds, chicken coups, etc.). There is a gravel access road to an AVISTA substation to the north of the property. Most of the site consists of natural, vegetated land or old farmland. Latah Creek runs through the site and flows into the Spokane River. The site includes approximately 2,200 feet of frontage along Latah Creek. There is an existing bridge that provides access for the property over Latah Creek. Access to the property is via State Route (SR) 195 and Inland Empire Way, the frontage road.

Project Description: The applicant is proposing to subdivide 48 acres of land into 94 single-family lots. The houses will likely range in size from 1,600 square foot, two-story townhomes at the base of the bluff to 3,600 square foot detached houses on the larger parcels along Latah Creek. The project may also include a community building and/or a self-storage area for the use of the residents. All structures existing on the site will be demolished, except the single-family residence. The existing bridge over Latah Creek must be expanded or replaced in order to accommodate the development. The applicant is requesting deviations from the zoning development standards, including reduced rear yard setbacks, reduced minimum lot size, attached townhomes, narrower streets, and sidewalks on one side of the street.

Surrounding Zoning: The property to the north, south, east, and west is predominantly zoned RSF. There is some property to the north that is zoned RA. To the south of the site and across SR 195, there is one parcel zoned NR-35 and a small number of other parcels that are zoned CB-55.

Adjacent Land Use: The uses surrounding the site are predominantly single-family residences and open space. The project site abuts city-owned open space to the east, commonly referred to as the "Bluff." There is an AVISTA substation to the north. Latah Creek and SR 195 are located to the west. Commercial uses are south of the site, across SR 195, and include a gas station, mini storage facilities, a grocery store, a bank, offices, and eating establishments.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110, Residential Zones; SMC 17G.060, Land Use Application Procedures; SMC 17G.070, Planned Unit Developments; SMC 17G.080, Subdivisions; and SMC 17E, Environmental Standards.

Notice of Community Meeting: Mailed: November 22, 2016
Posted: November 22, 2016

Community Meeting: December 8, 2016

Notice of Application/Public Hearing: Mailed: March 27, 2019
Posted: March 27, 2019
Publication: April 2 & 9, 2019

Public Hearing Date: May 2, 2019

Site Visit: April 30, 2019

State Environmental Policy Act (SEPA): A Determination of Non-Significance (DNS) was issued on April 15, 2019. The deadline to appeal the DNS was April 29, 2019. The DNS was not appealed.

Testimony:

Tami Palmquist, Principal Planner
City of Spokane, Planning & Development
808 W. Spokane Falls Boulevard
Spokane WA 99201

Taudd A. Hume
Parsons, Burnett, Bjordahl, Hume, LLP
Steam Plant Square, Suite 225
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Spokane WA 99224

Chrys Ostrander
7034C Hwy. 291
Tumtum WA 99034

Exhibits:

1. Planning Services Staff Report dated 04/23/19
2. DNS dated 04/15/19
3. Public Meeting Notices and Affidavits, including:
 - 3A Affidavit of Individual Notice dated 04/23/19
 - 3B Affidavit of Public Notice dated 04/23/19
 - 3C Affidavit of Request for Publication dated 04/23/19
 - 3D Revised Notice of Application (March) and Public Hearing and related correspondence
 - 3E Notice of Application & Public Hearing Instructions dated December 7, 2018, and related correspondence
4. Community Meeting Notices and Affidavits, including:
 - 4A Affidavit of Individual Notice dated 12/16/16
 - 4B Affidavit of Public Notice dated 12/16/16
 - 4C Affidavit of Removal of Public Sign dated 12/16/16
 - 4D Community Meeting Sign-In Sheet dated 12/8/16
 - 4E Correspondence related to Notice of Community Meeting
5. Design Review Board (DRB) Documents, including:
 - 5A-1 DRB Recommendations, File No. DRB 1907, dated 04/24/19
 - 5A-2 Collaborative Workshop, File No. DRB 1906-1902, dated 04/10/19
 - 5B Recommendation Meeting, File No. DRB 1906, dated 04/05/19
 - 5C Program Review/Collaborative Workshop, File No. DRB 1902, dated 2/27/19
 - 5D Program Review/Collaborative Workshop, File No. DRB 1902, dated 2/22/19
 - 5E Program Review/Collaborative Workshop, File No. DRB 1624, dated 8/25/16
6. Third Request for Agency Comments, including:
 - 6A Spokane County comments via City Engineering dated 04/17/19
 - 6B Spokane Parks and Recreation comments dated 04/16/19
 - 6C Washington Department of Transportation (WSDOT) comments dated 04/16/19
 - 6D AVISTA comments dated 02/01/19
 - 6E AVISTA comments dated 01/18/19
 - 6F Applicant response re: Right Turn Lane Memo and Gate Access dated 10/18/18 and 10/17/18
 - 6G Applicant response re: Concept Utility Crossing dated 10/18/18
 - 6H Spokane Fire Department comments dated from 10/22/18 through 10/31/18
 - 6I Development Services comments dated 09/14/18
 - 6J Technically Incomplete Letter dated 06/29/18
 - 6K Planning & Development Memo dated 06/29/18

- 6L Planning & Development Memo dated 06/26/18
- 6M Spokane Parks and Recreation comments dated 06/14/18
- 6N Development Services comments dated 06/06/18
- 6O Spokane Fire Department comments dated 06/06/18
- 6P Integrated Capital Management comments dated 06/05/14
- 6Q 3rd Request for Comments dated 06/05/14
- 7. Second Request for Agency Comments, including:
 - 7A Email to Applicant dated 09/08/17 re: technically incomplete application, including attachments
 - 7B Technically Incomplete Letter dated 09/08/17
 - 7C Planning & Development Memo dated 09/06/17
 - 7D WSDOT comments dated 08/30/17
 - 7E Forwarding AVISTA comments to Applicant dated 08/09/17
 - 7F Agency requests for an extension of time to submit comments dated 08/08/17 through 08/16/17
 - 7G AVISTA comments dated 08/09/17
 - 7H Washington State Department of Ecology (WSDOE) comments dated 08/07/17
 - 7I Spokane Tribe of Indians comments dated 08/03/17
 - 7J Spokane Fire Department comments dated 07/25/17
 - 7K 2nd Request for Comments dated 07/25/17
 - 7L Letter from Parsons Burnett Bjordahl Hume to Planning Department dated 03/20/16 re: review of file
- 8. Request for Agency Comments, including:
 - 8A Technically Incomplete Letter dated 02/08/17
 - 8B Washington State Department of Fish and Wildlife (WSDFW) comments dated 02/06/17
 - 8C Planning & Development Memo dated 02/03/17
 - 8D WSDOT comments dated 02/02/17
 - 8E Planning & Development Memo dated 01/31/17
 - 8F AVISTA comments dated 01/30/17
 - 8G Spokane Fire Department comments dated 01/30/17
 - 8H WSDOE comments dated 01/24/17
 - 8I AVISTA comments dated 01/23/17
 - 8J Washington State Department of Archaeology and Historic Preservation (WSAHP) comments dated 01/23/17
 - 8K Spokane Transit comments dated 01/23/17
 - 8L WSDOT comments dated 01/23/17
 - 8M Planning & Development letter to Applicant dated 01/19/17 re: request for additional time to review and comment
 - 8N Planning & Development comments dated 01/19/17
 - 8O Request from WSDFW dated 01/19/17 re: request for more time
 - 8P Spokane Tribe of Indians comments dated 01/12/17
 - 8Q WSDOE comments dated 01/12/17

- 8R Integrated Capital Management comments dated 01/09/17
- 8S Request for Comments dated 01/06/17
- 9. Public Comments from First Notice of Public Hearing
- 10. Public Comments from Second Notice of Public Hearing
- 11. Application, including:
 - 11A General Application
 - 11B Counter Complete Checklists for Long Plat, PUD, and Shoreline Permit
 - 11C Project Narrative
 - 11D SCUP Application
 - 11E Preliminary Long Plat Application
 - 11F PUD Development Application
 - 11G Environmental Checklist
 - 11H Critical Areas Assessment Checklist
 - 11I Latah Creek Development Traffic Impacts by USKH dated 06/10/11
 - 11J Trip Generation and Distribution Letter (TGDL) by Stantec dated 09/30/16
 - 11K Habitat Management Plan (HMP) undated prepared by unknown entity
 - 11L Concept Sewer and Water Design Memo by Stantec dated 09/30/16
 - 11M Concept Drainage Study by Stantec dated 10/30/16
 - 11N Preliminary Geotechnical Site Characterization Study by Cummings Geotechnology, Inc. dated 02/22/10
 - 11O Channel Migration Zone Delineation by GeoEngineers dated 09/27/16
 - 11P DRB File No. DRB 1624 dated 08/25/16
 - 11Q Bridge Over Latah Creek Widening dated 11/04/16
 - 11R Preliminary Plat by Stantec dated 10/30/16
 - 11S Community Meeting Recording
- 12. Application Revisions, including:
 - 12A Revisions dated 05/09/18
 - 12B Revisions dated 07/24/17
- 13. Pre-Development Materials, including
 - 13A Pre-Development Conference Notes dated 11/05/15
 - 13B Pre-Development Conference Application
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation
 - A-2 CP Policies submitted by Chrys Ostrander as being overlooked by City Staff
- B Exhibits added to the record by the Hearing Examiner:
 - B-1 Excerpt from Findings, Conclusions, and Decision in File No. Z2005-121-PUD, Tuscan Ridge (pp. 1, and 18-19)
 - B-2 Excerpt from Findings, Conclusions, and Decision in File No. Z200050ZC/PP/PUD/SL, River Run (pp. 1, 15, and 20)
 - B-3 Excerpt from Testimony in File No. Z2005-121-PUD, Tuscan Ridge
 - B-2 Excerpt from Testimony in File No. Z200050ZC/PP/PUD/SL, River Run

FINDINGS AND CONCLUSIONS

A. Preliminary Plat

To be approved, the proposed preliminary plat must comply with the criteria set forth in SMC 17G.060.170(C).

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The subject property is predominantly zoned¹ RA. The RA zone has the following characteristics:

The RA zone is a low-density single-family residential zone that is applied to areas that are designated agriculture on the land use map of the comprehensive plan. Uses allowed in this zone include farming, green house farming, single-family residences and minor structures used for sales of agricultural products produced on the premises.

See SMC 17C.110.030(A).

In the RA zone, "Residential Household Living" is outright permitted. See Table 17C.110-1. Residential Household Living is characterized by the residential occupancy of a dwelling unit by a household. See SMC 17C.190.110(A). Residential Household Living includes single-family residences, duplexes, apartments, condominiums, and other residential structures. See SMC 17C.190.110(C). In the RA zone, certain low-density housing types are permitted, such as detached and attached single-family residences. See Table 17C.110-2.

The proposed subdivision will create a total of 94 residential lots, including 62 single-family lots and 32 townhome lots. See Exhibit 1, p. 4. This proposed use is explicitly permitted in the RA zone, per the SMC provisions cited above. Thus, the proposed use is allowed under the land use codes.

The project also satisfies the development standards in the SMC. The density of the subdivision is 8.83 units per acre. See Exhibit 1, p. 5. The minimum density in the RA zone is four units per acre, while the maximum density in the RA zone is 10 units per acre. See Table 17C.110-3. Thus, the project fits within the allowed density range² of the applicable zoning.

The minimum lot size in the RA zone, for a detached single-family residence, is 7,200 square feet. See Table 17C.110-3. The minimum lot width is 40 feet. See *id.* The maximum building coverage is 40%. See *id.* The front, side, and rear yard setbacks are also shown in the Table 17C.110-3. See *id.* The applicant has requested modifications to several development standards³ through the PUD process. Specifically, the applicant is

¹ Portions of the property are zoned RSF. However, the proposed subdivision is not being proposed on the land that is zoned RSF.

² The same density range, i.e. 4-10 units per acre, also applies in the RSF zone.

³ Initially, the applicant was proposing to increase the maximum allowed lot coverage as well. However, at the hearing, the applicant confirmed that it would adhere to the 40% maximum lot coverage limitation. *Testimony of T. Hume*. Therefore, the applicant is no longer proposing a modification to the coverage standard.

proposing a minimum lot width of 20 feet; a minimum lot size of 2,000 square feet; and reductions in the setbacks for the lots as shown on the table included in the Staff Report. See Exhibit 1, p. 5.

The minimum lot size, lot depth, and lot width standards may be modified through a PUD application. See SMC 17G.070.030(C)(1)(a). With certain exceptions that do not appear to be applicable to this proposal, the front, side, and rear yard setbacks may also be modified through the PUD process. See SMC 17G.070.030(C)(3). In exchange for smaller lots, relaxed development standards, etc., the developer of a PUD is required to set aside common open space for the residents and their visitors. See SMC 17G.070.030(E). At least 10% of the site of a PUD must be dedicated to common open space. See SMC 17G.070.030(E)(1)(a).

The proposed development satisfies the PUD standards in order to justify making modifications to the development standards. More than 50% of the property is being set aside as common open space. The proposed subdivision includes 2.37 acres of common areas and approximately 34.7 acres of riparian buffers and critical areas. See Exhibit 1, p. 10. The common area tracts will be used for open spaces, drainage tracts, and shared community facilities. See *id.*

The Hearing Examiner concludes that this proposal is authorized by the land use codes. Therefore, this criterion for approval is satisfied.

2. *Considering the project as a whole, and in light of applicable law, the Hearing Examiner concludes that 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 Staff identified several relevant policies of the CP that generally support the conclusion that the project is consistent with the CP. See Exhibit 1, pp. 5-6. The Hearing Examiner agrees with the Staff that the identified policies provide some justification for approving the proposed subdivision. See *id.*; see also *Testimony of T. Palmquist*. The Hearing Examiner would add the following comments to the Staff's analysis of the issue.

The site is located between the highway and the bluff, two features that separate the site from residential areas. See also ¶ B.6 below. The creek runs through the westerly portion of the property, creating natural separation between the project and other uses. In addition, the majority of the site is being set aside as open space, buffering adjacent properties from potential impacts by virtue of the project design. Moreover, the predominant uses near the site are residential in nature, which is consistent with the proposed use. The Hearing Examiner finds that these factors together ensure that the project is compatible with neighboring properties, consistent with the goals and policies of the CP. See CP, Chapter 3, Goal LU 5, p. 3-26 (promoting development that is complementary and compatible with other land uses); see also CP, Chapter 3, Policy LU 5.5, p. 3-27 (discussing the need to ensure compatibility when permitting infill developments).

More than half of the property will be kept as open space, with the development efforts being focused on the previously disturbed areas of the site. The open space includes 34.7 acres of riparian buffers and critical areas. A wildlife corridor was identified in the northwest portion of the property. See Exhibit 11G (Environmental Checklist ¶ B(5)(c)).

The HMP includes steps to enhance the vegetation for wildlife as well as to rehabilitate the riparian areas. See Exhibit 11K. This approach is squarely supported by Shoreline Master Program (SMP) 11.37, Open Space and Wildlife Habitat Preservation. That policy encourages new development "to contribute to the creation or preservation of open space and/or fish and wildlife habitat along the shorelines of...Latah Creek through the use of such tools as...planned unit developments."

The wildlife habitat along Latah Creek is already degraded. See Exhibit 11G (Environmental Checklist ¶ B(4)(a)). The ecological function of Latah Creek in this location is poor. See *id.* The HMP calls for installation of vegetation, the removal of agricultural fencing to facilitate wildlife movement, and adding signage to establish habitat boundaries and educate people about the protected areas. See *id.* These types of actions promote the objectives of SMP 10 and SMP 10.6. SMP 10, Restoration, calls for the rehabilitation of impaired areas along the shorelines. SMP 10.6, Best Management Practices, likewise encourages the restoration of degraded shorelines and the enhancement of wildlife habitat.

The project is designed to set aside and conserve the critical areas as much as possible, consistent with SMP 4.3, Conservation of Critical Areas. By setting aside the sensitive areas, the project avoids impacts to the banks, water quality, and ecological functions of the shoreline. See SMP 4.6, Mitigation of Adverse Impacts. The applicant is also taking steps to improve the conditions for wildlife, consistent with the need to address potential impacts. See *id.* The conditions placed upon the project are extensive. Both the design and the conditions of approval serve to protect water quality, implement erosion control, and preserve habitat, among other things, consistent with SMP 5.4, Provisions for Shoreline Protection. The project conditions also ensure that the property can be developed and put to productive use, while also minimizing the disruptions to the natural character of the shoreline. See SMP 5, Economic Development.

The project includes internal trails providing the residents and their guests with access to common areas, as well as the shorelines of Latah Creek. Residents will also have access to the city trail system on the bluff. And, as stated above, improvements will be made to the wildlife corridor. These features of the development further the objectives of PRS 1.1, Open Space System, which encourages the creation of open space amenities inside the Urban Growth Area (UGA), as well as setting aside open space for use by wildlife. These amenities provide benefits to both residents and visitors, in accordance with PRS 2.3, Urban Open Space Amenities.

Despite the foregoing, some compelling arguments were made at the hearing contending that the proposed subdivision is not consistent with the CP. Mr. Ostrander, for example, submitted a list of CP policies that he claimed were overlooked or ignored in the Staff Report. See Exhibit A-2. Some of those policies are not relevant,⁴ in the Hearing Examiner's view. Other policies have some application and raise valid questions about whether the project is consistent with the CP. However, there are many competing goals and policies⁵ in the CP, and the conclusions to be reached can be fairly debated. On the

⁴ For example, Mr. Ostrander cited to policies LU 1.14, Nonconforming Uses, and LU 7.3, Historic Reuse. In the Hearing Examiner's view, these policies are not legally relevant to this application. This matter does not concern nonconforming use rights or the reuse of historic properties.

⁵ The general statements in SMP 1 and SMP 4.1 are examples of broad declarations of policy that provide little specific guidance and can be interpreted and applied in competing ways.

whole, for the reasons discussed above, the Hearing Examiner concludes that the project fulfills the intent of the CP.

Having said that, there is one specific point upon which the Hearing Examiner must agree with Mr. Ostrander. The property being proposed for residential development is designated as "Agriculture" in the CP. The proposal to develop such property with a 94-lot residential subdivision is not consistent with that land use designation. The CP describes the significance of the designation as follows:

The Agriculture designation is applied to agricultural lands of local importance in the Urban Growth Area. These areas have historically been farmed, contain highly productive agricultural soils (at least SCS Class II soils or designated prime agricultural lands...), and have large enough parcel sizes for productive farming.

See CP, Chapter 3, Land Use, p. 3-13. Land designated for Agriculture is expected to remain Agriculture for at least the next 20 years. See *id.* Single-family residential use is allowed, but it is intended to support the agricultural use. See *id.* Further, clustering of residential building sites is *required* when subdividing Agricultural lands because that will maximize the preservation of productive land. The CP states:

To protect and preserve Agriculture designated land, clustering of residential building sites shall be required as part of the subdivision process. Through the planned unit development (PUD) process, land in the Agriculture designation may be developed at a density of up to 10 units per acre. Clustering the allowable units is required so that structures located on Agriculture designated parcels are situated in a manner that preserves as much land as possible for the agricultural operation.

See CP, Chapter 3, Land Use, p. 3-13 (emphasis added).

For land designated as Agriculture, the PUD process is employed to preserve as much valuable agricultural land as possible, while also allowing the owner to develop residential housing in an efficient manner, presumably on the less productive land. The proposed subdivision does not do this. On the contrary, the proposal utilizes most of the productive land for housing, setting aside only a small amount of land that *may* be used for a community garden. There was a substantial amount of testimony pointing out the importance of preserving agricultural land, and emphasizing this property's continuing potential as an agricultural resource. See *e.g. Testimony of T. Foote, M. Gauthier, V. Carter, W. Edelen, & W. Jacques*. However, through this project, the agricultural land is converted, not preserved. Building craftsman-style houses or adding wagon wheels or other decorations does not change this reality.

The issue that must be confronted, then, is whether the proposal's inconsistency with the Agriculture land designation requires denial of the development. It is clear enough that the project must be consistent with the CP to be approved. See SMC 17G.060.170(C)(2). However, the project must also be consistent with the zoning regulations. See SMC 17G.060.170(C)(1). And the Hearing Examiner has already concluded that the project is allowed under the zoning and land use codes. See ¶ 1 above. The resolution of this issue, then, depends on whether there is a conflict between the CP and the zoning code.

It should be recalled that a CP is a general guide for development. See *Cougar Mountain Associates v. King County*, 111 Wn.2d 742, 756, 765 P.2d 264 (1988). It is not a document for making specific land use decisions. See *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). The zoning regulations, by contrast, set forth the specific requirements for land development and use. *Cougar Mountain*, 111 Wn.2d at 756. If there is an inconsistency between the zoning ordinance and the CP, the conflict must be resolved by applying the zoning code. See *id.*, at 757. In other words, the CP is subordinate to specific zoning regulations. See *id.*

The Hearing Examiner concludes that "Agriculture" designation of the site cannot be relied upon as a basis to deny the proposed subdivision, even though the proposal is inconsistent with the apparent intent of that designation. The Hearing Examiner reaches this conclusion for several reasons.

First, the proposed subdivision/PUD is permitted in the RA zone, at the proposed density. See ¶ 1 above. Thus, the zone code specifically permits the proposed development. There is nothing in the RA standards that appears to change the rules based upon the "agricultural" nature of the property. On the contrary, it appears that the development standards for the RA zone are the same as for the RSF zone. For example, the uses allowed in the RA and RSF are the same⁶, except that agriculture is allowed in the RA zone. See Table 17C.110-1. The density standards for the RA and RSF zones are identical. See Table 17C.110-3. The minimum lot size in the RA zone is larger than in the RSF zone, but many of the other standards are the same, such as minimum lot width, minimum lot depth, minimum front line, most setbacks, and building/wall height. See *id.* The PUD standards can be used to modify the development standards as well, in both zones.

Second, the RA provisions do not include any standards for the preservation of agricultural land. As noted above, the RA zone does not adopt a density with a lower maximum than found in the RSF zone. There are no prohibitions on converting the land to a non-agricultural use. There are no standards for preserving a certain percentage of land for agricultural use when a residential subdivision is proposed. There are no standards qualifying the use of PUDs so that they are only approved when applied for the purpose of preserving productive farm ground. In sum, there are no criteria that the Hearing Examiner can rationally apply to decide whether property must be reserved for future agricultural use or is better developed for residential purposes. Single-family residences are allowed in the RA zone. So is agriculture. Given the lack of contrary intent in the zone code, the Hearing Examiner concludes that RA means it is residential and/or agriculture. It is up to the owner to decide what permitted use to pursue.

Third, the above-quoted portions of the CP are general purpose statements or expressions of intent, not regulations. These types of declarations cannot operate to prohibit a use or activity that is allowed pursuant to specific development regulations. An illustrative case applying this principal is *Lakeside Industries v. Thurston County*, 119 Wn.App. 886, 83 P.3d 433 (2004). In that case, the property owner applied for a special use permit to construct an asphalt manufacturing and recycling plant on its rural property. See *Lakeside Industries* 119 Wn.App. 890-91. On review, the county commissioners concluded that the proposal was inconsistent with an area-specific comprehensive plan

⁶ In addition, Commercial Outdoor Recreation is not permitted in the RA zone, but is allowed as a conditional use in the RSF zone. See Table 17C.110-1.

(i.e. the “sub-area plan”) which was adopted to preserve the agricultural and pastoral character of the valley. See *id.*

The case eventually reached the Court of Appeals, which concluded that the commissioners lacked authority to apply the sub-area plan’s general purpose provisions to deny the proposed use. See *id.* The Court of Appeals concluded:

...the Board may not invoke the plan’s general purpose statements to overrule the specific authority granted by the zoning code to manufacture asphalt as an accessory use to mining. ... The Board’s decision violates the rule that specific zoning laws control over general purpose growth management statements, and fails to provide meaningful standards for review of a county decision to deny a permit.

See *Lakeside Industries*, 119 Wn.App. at 897-98; see also *Cougar Mountain Associates v. King County*, 111 Wn.2d 742, 744, 765 P.2d 264 (1988) (holding that rural density in the CP was superseded by the higher density standard of the zone code).

The Hearing Examiner concludes that the proposed development is consistent with the objectives and policies of the CP, in all material respects. It must be acknowledged that the proposed development is not consistent with the stated purposes of the “Agriculture” designation. However, the zoning code specifically allows the proposed development. To the extent there is a conflict between the CP and the zoning code in this regard, the conflict must be resolved in favor of the zoning code. Therefore, this criterion for approval is satisfied.

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

On January 6, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 8S. Numerous comments were submitted to the Planning Department. See e.g. Exhibits 8B-8R.

On July 25, 2017, the 2nd Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 7K. Another set of comments was submitted to the Planning Department. See e.g. Exhibits 7C-7J.

On June 5, 2018, the 3rd Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 6Q. The Planning Department again received numerous comments regarding the proposal. See e.g. Exhibits 6A-6E, 6H-6I & 6K-6P.

After considering the comments made, the Planning Department determined that adequate public facilities exist in the area to serve the proposed subdivision. See Exhibit 1, p. 6. The Staff also noted that commenting service providers had confirmed that public services were available to the site. See *id.* The Hearing Examiner’s review of the agency comments verified the Staff’s conclusion in this regard. None of the commenting agencies suggested that public services or infrastructure were unavailable or inadequate, with one potential exception.

There was a concern about the infrastructure providing access to the site. There is only one access in and out of the site and that access is via a narrow bridge over Latah Creek. The bridge is not adequate to provide ingress and egress for emergency vehicles or to serve the residents of the plat. See Exhibit 1, p. 6. The Staff emphasized that the applicant "will be required to expand or replace the existing single-lane bridge with a bridge that can accommodate two way traffic and pedestrian access prior to final plat approval." See *id.* There are numerous conditions of approval that relate to the bridge, including conditions ensuring that the bridge will be widened to provide proper access. See e.g. Conditions 29, 32-37, 41(b), & 46(h)(i). The Hearing Examiner finds that those conditions are sufficient to address the concerns about ingress and egress from the site.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the SMC, provided that project conditions are satisfied. As a result, this criterion for approval 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 development area is of sufficient size to accommodate the development, as is demonstrated on the proposed plat. The site is approximately 48 acres, but the buildable area of the property is approximately 15-20 acres. See Exhibit 11C. The site is an irregular shape, but there is no indication in this record that the shape poses a genuine impediment to development.

The site is predominantly flat, although there are some steep slopes. See Exhibit 11G (Environmental Checklist ¶ B(1)(a)). The steepest slopes on the site range from 60-90 percent in grade. See Exhibit 11G (Environmental Checklist ¶ B(1)(b)). There is also evidence of unstable soils, but only on the parts of the site with slopes over 75% and along Latah Creek. See Exhibit 11G (Environmental Checklist ¶ B(1)(d)). The development activity is confined to a flat area of the site. The areas with steep slopes, riparian areas, or critical areas are being set aside as part of the 34.7 acres of open space. See Exhibit 1, p. 10.

The applicant is required to ensure that stormwater from the development is properly handled. See *also* ¶ 5 below. There are extensive project conditions designed to ensure that stormwater is properly collected, treated, and discharged. See e.g. Conditions 4, 11, 13, 19, 40 & 47(d), (e), & (g). The Hearing Examiner concludes that drainage from the site has been sufficiently addressed. The project design and project conditions are also sufficient to protect groundwater.

Latah Creek runs through the site and flows into the Spokane River. See Exhibit 11G (Environmental Checklist ¶ B(3)(a)(1)). However, the development activity will take place outside the shoreline area. Thus, the construction of roads, buildings, etc., will not directly impact the shoreline or the river. In addition, the applicant plans to take steps to improve the habitat area on the site as well as the riparian area along Latah Creek, in accordance with the HMP. See Exhibit 11K.

There are no known natural, historic, or cultural features on the development site itself. See Exhibit 11G (Environmental Checklist ¶ B(13)(a)-(b)). Nonetheless, two commenting agencies raised concerns about the possible presence of historic, archaeological, or cultural resources. WSAHP submitted a comment on the project on January 23, 2017. See Exhibit 8J. In that letter, the WSAHP stated:

The project area contains at least three previously recorded archaeological sites and has the potential to contain additional archaeological sites.

See *id.* As a result, the WSAHP recommends that a professional archaeological survey be completed prior to any ground-disturbing activities. See *id.* The Spokane Tribe similarly characterized the site as being in a “sensitive area.” See Exhibit 7I. The Tribe further stated that “...this area has a lot of history and TCP affected geographic area that will be impacted...” See *id.* The Tribe then requested a cultural survey and sub-surface testing on all ground disturbing activity. See *id.*

The WSAHP’s letter did not include any additional information to support its conclusions. The project area was not defined or described. There was no specific information about the presence of archaeological sites on the subject property. The WSAHP did not identify or describe the archeological sites that were within the project area.

The Spokane Tribe did not submit any specific evidence to support its proposed mitigation measures. The Tribe characterized the site as being in a “sensitive area,” but failed to describe that area or how the property fit within that area. The Tribe stated that there was a “lot of history” that should inform a decision, but did not share any of that history with the Hearing Examiner. The only pertinent history that is included in this record is that the part of the land proposed for development has been used for farming for many years. The location of the proposed residences is not, therefore, undisturbed ground.

The Hearing Examiner concludes that the more typical project conditions will address the concerns raised by the WSAHP and 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 studies that were provided with the application were reviewed by all the salient agencies and departments. See Exhibit 1, p. 7. Those agencies and departments made various comments, resulting in a number of proposed project conditions. See *id.* However, no department or agency contended that the project resulted in significant impacts to the environment that could not be addressed through mitigation measures. After considering the comments, and the record, the Director of Development Services issued a DNS. See Exhibit 2. The DNS was issued on April 15, 2019. See *id.* The appeal period for the DNS expired on April 29, 2019. See *id.* The DNS was not appealed.

On or about June 30, 2017, the applicant prepared an environmental checklist for the project. See Exhibits 2 & 11G. The checklist supports the conclusion that no significant environmental impacts will arise from this project.

No threatened or endangered species were identified on the site. See Exhibit 11G, Environmental Checklist ¶¶ B(4)(c) & B(5)(b). No waste materials will be discharged into the ground or into surface waters as a result of this project. See Exhibit 11G (Environmental Checklist ¶¶ B(3)(a)(6), B(3)(b)(2) & B(3)(c)(2)). No environmental hazards are anticipated to arise due to this project. See Exhibit 11G (Environmental Checklist ¶ B(7)(a)).

The site is located within a the 100-year floodplain and a Critical Aquifer Recharge Area (CARA), which is rated as "highly sensitive." See Exhibit 11G (Environmental Checklist ¶ A(13)). However, these designations do not preclude development of the property. Rather, they require that steps be taken to protect the environment from the potential impacts. For example, the applicant will be required to obtain a floodplain development permit for any activity that impacts the floodplain. See Condition 36. The applicant will also be required to implement on-site controls for stormwater and surface drainage generated from the development. See SMC 17D.060.010 *et seq.* The applicant has acknowledged that drainage waters will be collected and treated prior to discharge. See Exhibit 11G (Environmental Checklist ¶ B(3)(c)(1)). Prior to any development, the applicant will be required to prepare a stormwater management plan, which is reviewed and approved by the city. See Exhibit 11G (Environmental Checklist ¶ A(14)(b)(2)); *see also* Exhibit 11M. Moreover, as already mentioned, this project does not result in the discharge of waste materials into the groundwater.

A natural wildlife corridor was identified in the northwest portion of the property. See Exhibit 11G (Environmental Checklist ¶ B(5)(c)). There are noticeable game trails through this part of the site. See Exhibit 11G (Environmental Checklist ¶ B(5)(c)). However, the area lacks any significant vegetative stands to support wildlife. See Exhibit 11G (Environmental Checklist ¶ B(4)(a)). Most of the ecological function of this part of Latah Creek are not functioning properly. See *id.* Generally, this part of the creek is in poor ecological condition. See *id.*

The applicant has recognized the need to protect the wildlife habitat and enhance the shoreline area. See Exhibit 11G (Environmental Checklist ¶ B(5)(c)). The applicant enlisted the services of GeoEngineers to assess, identify, and delineate the Channel Migration Zone of Latah Creek. See Exhibit 11O. This was done to better delineate the overlapping critical area and buffers. See Exhibit 1, p. 7. These boundaries will be required to be shown on the plat. See *id.* The applicant will implement an HMP to protect and enhance the wildlife corridor as well as the riparian areas of the site. See Exhibit 11K. The applicant has specifically proposed a vegetative enhancement area that will provide increased cover and staging areas for wildlife. See Exhibit 11G (Environmental Checklist ¶ B(5)(c)).

The applicant's traffic engineer prepared a TGDG analyzing the traffic from the proposed project. See Exhibit 11J. The letter concluded that there would be approximately 987 weekday trips from the development, with approximately 77 AM peak hour trips, and 100 PM peak hour trips. See *id.* There was no evidence that the transportation system lacked capacity to handle the traffic load from the proposed development. However, there are two access issues that need to be addressed.

First, according to the applicant's traffic engineer, the applicant will need to make improvements to the US 195 on-ramp, and must do so in conformance with WSDOT standards. See Exhibit 6F. Project conditions have been included to address this concern. See Conditions 29-30.

Second, the only access point in and out of the proposed subdivision is over a bridge owned by AVISTA. That bridge is not designed to provide sufficient access for a residential subdivision and will need to be expanded or replaced. Several project conditions address the bridge. See e.g. Conditions 32 & 37. It should also be emphasized that the project to expand or replace the bridge will require a separate SEPA analysis. See Condition 33. This requirement has been acknowledged by the applicant. *Testimony of T. Hume.*

There will be some impacts as a result of construction activities, such as vehicle exhaust, dust, and noise. However, the construction impacts will not result in significant environmental impacts, and can be adequately mitigated (e.g. dust control, erosion control, limited work hours, etc.). See e.g. Exhibit 11G (Environmental Checklist ¶ B(1)(f) & 2(c)). Further, the construction activity is temporary. Once the construction project ends, the potential impacts from noise, dust, and emissions from vehicles will cease. The project is not anticipated to create any long-term impacts from noise or light. See Exhibit 11G (Environmental Checklist ¶ B(7)(b) & B(11)).

Based upon the foregoing, the Hearing Examiner concludes that the proposal will not have a significant adverse impact on the environment or the surrounding properties, which cannot be adequately addressed through mitigation and, therefore, this criterion for approval has been met.

6. *The proposed subdivision makes appropriate (in terms of capacity and concurrence) provisions for: (a) public health, safety, and welfare; (b) open spaces; (c) drainage ways; (d) street, roads, alleys, and other public ways; (e) transit stops; (f) potable water supplies; (g) sanitary wastes; (h) parks, recreation and playgrounds; (i) schools and school grounds; and (j) sidewalks, pathways, and other features that assure safe walking conditions. See SMC 17G.060.170(D)(5).*

The proposal makes adequate provisions for the public health, safety, and welfare. The proposal is designed and will be required to satisfy the applicable city standards for drainage, streets and other public ways, proper disposal of stormwater, and the like. All the pertinent facilities, such as streets, curbing, sidewalks, water, and sewer lines, etc., must be designed and constructed in accordance with City standards. See Exhibit 1, pp. 9-11. There is no evidence in the record that the public services and facilities are not available or lack capacity to serve the proposed development, provided certain mitigation measures are implemented. See also ¶ A.3.

As has already been discussed, the transportation system has sufficient capacity to serve the development, although certain improvements are necessary to ensure proper access. It is important to emphasize that there is only one point of ingress and egress from the site, and it is via a narrow bridge. Because of the single access point, the Fire Department has stated that all buildings in the subdivision will need to be equipped with automatic fire sprinklers. See Exhibit 1, p. 9; see also Exhibit 6O. The bridge will also need to be

expanded or replaced to properly serve the subdivision. The applicant will also be required to make improvements to the US 195 on-ramp. These requirements have been included as project conditions. See e.g. Conditions 29, 37 & 41(b).

The proposed subdivision includes 2.37 acres of common open space and approximately 34.7 acres of riparian buffers and critical areas. See Exhibit 1, p. 10. The common open space tracts will be used for open spaces, drainage tracts, and share community facilities. See *id.* The shared community facilities may include community gardens and trails, among other things. See *id.* The majority of the property will be dedicated to open spaces. The Hearing Examiner concludes that the proposal properly accounts for the need for open space.

The project includes appropriate provisions for drainage. The applicant is required to implement on-site controls for stormwater and surface drainage. See SMC 17D.060.010 *et seq.* Prior to any development, the applicant will be required to prepare a stormwater management plan, which is reviewed and approved by the city. See Exhibit 11G (Environmental Checklist ¶ A(14)(b)(2)); see also Exhibit 11M. Numerous conditions of project approval address the need to manage stormwater and ensure proper drainage of the site. See e.g. Conditions 4, 11-13, 19, 40(a), & 47.

The applicant is required to design and install the private streets, including paving, curbs, sidewalks, signs, storm drain structures/facilities, and swales/planting strips. See Exhibit 1, p. 10. Those streets must be designed in accordance with SMC 17H.010.070, governing street widths in low-density residential zones. Extensive conditions of project approval address the requirement to construct streets and all related improvements in accordance with city standards. See e.g. Conditions 13, 16-17, 24, 27, 31, 40(d), & 41(a). The applicant will also be required to undertake the traffic mitigation measures previously discussed, including the expansion/replacement of the bridge and improvements to the US 195 on-ramp. Thus, the project includes adequate provisions for streets, roads, and other public ways.

The nearest transit stops are located at 57th and Perry on the South Hill and Sunset and Cannon, in Browne's Addition. See Exhibit 1, p. 10. The Spokane Transit Authority (STA) does not serve the subject site and has no plans to extend service to this area. See Exhibit 8K. The project has no impact on STA service that would justify any mitigation measures related to transit service. Moreover, the lack of transit service is not a problem that the developer can be expected to solve. In the Hearing Examiner's view, a plat cannot be denied based upon the lack of public transit to the area, absent the codification of a specific standard in that regard. This criterion is satisfied because, under the circumstances, no action is required by the applicant.

The proposed subdivision makes appropriate provisions for sewer and water service. Both public water and public sewer are available to serve the property. See Exhibit 1, pp. 10-11. The developer will be required to develop the private sewer and water facilities within the subdivision itself. However, the project will be required to connect to the public water and sewer system. See e.g. Condition 40(g). Construction plans for the sewer and water improvements must be properly engineered and approved by the city. There are extensive project conditions ensuring that the sewer and water systems are properly designed and constructed to serve the property. See e.g. Conditions 8-9, 13-16, & 40(d).

The proposed subdivision makes appropriate provisions for parks and recreational areas. As previously discussed, the majority of the site is dedicated to open space, including 2.37 acres of common area tracts and 34.7 acres of riparian buffers and critical areas. These areas of the property will include open spaces, pathways or trails, and shared community facilities, such as a community garden. See Exhibit 1, p. 11. The future residents of the project will have access to the city's trail system as well as the adjacent parts of Latah Creek. See Exhibit 11G (Environmental Checklist ¶ B(12)(a)). There is currently no requirement that a private subdivision developer must create new public park amenities, pay impact fees, or otherwise contribute to the park system as a condition of approval.

The proposed subdivision is located within Spokane Public School District #81. See Exhibit 1, p. 11. The closest school in the School District is Wilson Elementary School, which is approximately 4.5 miles from the site. See *id.* The school system apparently has sufficient capacity to serve the development because the School District made no comments about the project. See *id.* There is no evidence in this record that the proposal has any specific impact on the school system or otherwise taxes the capacity of the school system. Under the circumstances, the Hearing Examiner concludes that no mitigation measures are necessary with respect to the school system.

The proposal includes sidewalks, pathways, and other features that assure safe walking conditions. Separated sidewalks with street trees will be provided on one side of each new street. See Exhibit 1, p. 11. The applicant is including a trail system within the development. See *id.* The pedestrian trails will run throughout the site and will provide a connection to the bridge, shoreline, and bluff. See *id.*

B. Planned Unit Development.

To be approved, the proposed preliminary plat must comply with the criteria set forth in SMC 17G.060.170(C).

1. *The proposed development and uses comply with all applicable standard of the title, except where adjustments are being approved as part of the concept plan application, pursuant to the provisions of SMC 17G.070.200(F)(2). See SMC 17G.060.170(D)(4)(a).*

The proposed subdivision is required to comply with all applicable development standards. The project, as designed, satisfies several of those standards without the need for approval of design deviations. For example, the subdivision has a density of 8.83 units per acre, less than the 10 unit per acre maximum. See Exhibit 1, p. 5. The project will adhere to the 40% building coverage requirement. *Testimony of T. Hume.* The structures on the site will be at or below the 35-foot height limitation. See Exhibit 1, p. 5.

However, the applicant is requesting approval of deviations from a number of other development standards. Specifically, the applicant is seeking approval of a reduction of the rear yard setbacks for the lots. See Exhibit 1, p. 5. The applicant is also requesting approval of 2,000 square foot lots and a minimum lot width of 20 feet. See *id.* Without making any exceptions, the minimum lot size would be 7,200 square feet, and the minimum lot width would be 40 feet. See *id.*

There were some objections at the hearing about these modifications, in particular that the lot sizes were "too small." See *e.g. Testimony of C. Ostrander.* The Hearing Examiner

disagrees. First, the Planning Department confirmed that the applicant is allowed to modify the development standards, in the manner requested, through the PUD process, per SMC 17G.070.030. See Exhibit 1, p. 5. These kinds of adjustments are allowed, in part, because of all the open space that is being provided in the proposed design. Moreover, the PUD standards do not set minimum thresholds for the lot size. It is a case-by-case determination. There was no evidence that the smaller lots would cause any particular impact, especially given the applicant's adherence to the 40% lot coverage standard. The lots are smaller, but so are the houses.

Second, the setback adjustments make sense given the surrounding conditions. There are steep slopes to the east and riparian areas along the creek on the east side. Making relatively minor modifications to the rear yards of lots abutting these features is a reasonable way to permit development while also protecting more sensitive features of the land.

The Hearing Examiner concludes that the project complies with all the applicable development standards. In addition, the Hearing Examiner concludes that the proposed deviations from the standards are appropriate and are contemplated by the PUD process. This criterion for approval is satisfied.

2. *The proposed development has completed the design review process and the design review committee/staff has found that the project demonstrates the use of innovative, aesthetic, and energy-efficient architectural and site design. See SMC 17G.060.170(D)(4)(b).*

On this record, it appears that there have been three Program Review/Collaborative Workshops on this project, taking place on August 25, 2016; February 22, 2019; and February 27, 2019. See Exhibits 5C-5E.

On April 5, 2019, the DRB held a meeting to deliberate on its recommendations for the project. See Exhibit 5B. On April 10, the DRB held a collaborative workshop regarding its potential recommendations. See Exhibit 5A-2. On April 24, 2019, the DRB rendered its final recommendations on the project. See Exhibit 5A-1.

In its final recommendations, the DRB concluded: "The Design Review Board finds that the project demonstrates the use of innovative, aesthetic, and energy-efficient design." See Exhibit 5A-1 (Recommendation 1).

The Hearing Examiner concludes that the design review process has been completed and the DRB has made its final recommendations on the project. In addition, the DRB has rendered the necessary finding under the PUD standards. As a result, this criterion for approval is met.

3. *There is either sufficient capacity in the transportation system to safely support the development proposed in all future phases or there will be adequate capacity by the time each phase of development is completed. See SMC 17G.060.170(D)(4)(c).*

The transportation system has the capacity to support the proposed development. To the extent that the development places burdens on the system, that burden is being addressed through a transportation impact fee. See Conditions 32 & 40(f). In addition, the

specific concerns related to transportation are being addressed through two mitigation measures: (1) the expansion or replacement of the bridge; and (2) improvements to the US 195 on-ramp. See e.g. Conditions 29, 37 & 41(b). These mitigation measures address the analysis of the project's traffic engineer, and the comments of relevant departments and agencies, such as Engineering Services and the Fire Department. The Hearing Examiner concludes that the project, as conditioned, does not exceed the capacity of the transportation system. Therefore, this criterion for approval is satisfied.

4. *There is either sufficient capacity within public services such as water supply, police and fire services, and sanitary waste and stormwater disposal to adequately serve the development proposed in all future phases, or there will be adequate capacity available by the time each phase of development is completed. See SMC 17G.060.170(D)(4)(d).*

Public services and infrastructure are sufficient to support the development, as the previous discussion of concurrency established. See ¶ A.3 above. The commenting agencies and departments generally confirmed that public services and facilities were adequate to support the proposed use, albeit with various conditions. The concerns and requirements of the commenting departments and agencies were addressed, as appropriate, in the conditions of approval below. To the extent that a department or agency did not comment, then it must be concluded that the project does not have a material impact on the infrastructure or service governed by that entity. The Hearing Examiner concludes that this criterion is satisfied.

5. *City-designated resources such as historic landmarks, view sheds, street trees, urban forests, critical areas, or agricultural lands are protected in compliance with the standards in this and other titles of the Spokane Municipal Code. See SMC 17G.060.170(D)(4)(e).*

The project is designed to protect and preserve the city-designated resources on the property. For example, the applicant is proposing to keep the hillside on the east side of the site in a natural condition. See Exhibit 1, p. 13. This will protect the hillside and preserve the most forested parts of the property.

The project is also designed to preserve the wildlife corridor identified in the northwest part of the site. See Exhibit 11G (Environmental Checklist ¶ B(5)(c)). Vegetative enhancements will be made to improve the conditions for wildlife. See *id.* The applicant will implement an HMP to protect and enhance the wildlife corridor as well as the riparian areas of the site. See Exhibit 11K.

The applicant is limiting the development to areas outside the Shoreline Jurisdiction, except for the bridge that constitutes the only access to the site. See *id.* The rear yards of some of the lots will contain shoreline buffer, but "no-build" easements will be required for these lots. See *id.* The applicant also contracted with GeoEngineers to assess, identify, and delineate the Channel Migration Zone of Latah Creek. See Exhibit 11O. The boundaries for these sensitive areas will be shown on the plat. See Exhibit 1, p. 13.

The record does not make reference to any city-designated historic landmarks. There are no known historic features on the site. See Exhibit 11G (Environmental Checklist ¶ B(13)(a)-(b)). Because the site was used for farming for many years, there aren't internal roads and street trees on the site currently. However, separated sidewalks with street

trees will be provided on one side of each new street in the development. See Exhibit 1, p. 11.

There is some unavoidable tension, however, between the CP designation of "Agriculture" and the proposal to develop the historically farmed ground with 94 houses. And yet the predominant zoning of the site, i.e. "Residential Agriculture," plainly allows up to 10 units per acre, a density level higher than the proposed subdivision. In other words, the zoning specifically allows the proposed development. To the extent there is a conflict, the zoning regulations control. As such, the proposal is in compliance with the applicable standards, despite the "Agriculture" designation in the CP. See ¶ A.2 above.

The Hearing Examiner concludes that the proposed development protects or preserves city-designated resources and otherwise complies with the applicable development standards. As a result, this criterion is met.

6. *The concept plan contains design, landscaping, parking/traffic management and multi-modal transportation elements that limit conflicts between the planned unit development and adjacent uses. There shall be a demonstration that the reconfiguration of uses is compatible with surrounding uses by means of appropriate setbacks, design features, or other techniques. See SMC 17G.060.170(D)(4)(f).*

The Hearing Examiner concludes that this criterion has little application to this particular project. There is very little reason to expect that this project will give rise to conflicts with surrounding uses. The site will largely consist of open space, with only the flat area formerly used for farming being developed with homes. The design of the project by itself separates the proposed development from surrounding properties. Even disregarding that, the topography and development patterns of the area further separate the development from adjacent uses. For example, the land to the east is a steep hillside that is owned by the city as open space or conservation area. Latah Creek flows through the site, roughly along the westerly border. No development will take place within 200 feet of the creek. Farther to the west are the Cheney-Spokane Interchange and US 195, which creates a substantial separation between the site and properties to the west. Uses to the south/southeast and the north/northwest are primarily residential and are relatively spread out. The Hearing Examiner concludes that the project design, topography, natural features of the land, and development patterns together ensure that the project is compatible with surrounding uses. This criterion is therefore satisfied.

7. *All potential off-site impacts including litter, noise, shading, glare, and traffic will be identified and mitigated to the extent practicable. See SMC 17G.060.170(D)(4)(g).*

This is a residential development. As such, the Hearing Examiner would not anticipate significant impacts from litter or noise. The noise that can be expected from a residential use is rather minimal. Any excessive noise would be a subject of code enforcement. Similarly, the light or glare that can be anticipated from a residential subdivision is also nominal. The structures on the site are limited to 35 feet in height in the RA zone. In addition, the project lies in a valley, between a steep hillside and the highway. The Hearing Examiner cannot conceive of how this project would create any impacts due to shading, under those circumstances. Finally, the impacts from traffic have been addressed elsewhere in this decision. There is no need to discuss that issue again here. This criterion for approval is met.

C. Shoreline Conditional Use Permit

To obtain an SCUP, an applicant must demonstrate that the proposed development satisfies the criteria set forth in SMC 17G.060.170(D)(2)(a).

1. *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 Hearing Examiner agrees with Staff's conclusion that this proposal is consistent with the policies of the Shoreline Management Act (SMA) and the SMP. See Exhibit 1, p. 8. The Hearing Examiner reaches this conclusion for at least two reasons.

First, the Hearing Examiner has already concluded that the proposal is consistent with the goals and policies of the SMP, which carries out state law. See ¶ A.2 above. Those goals and policies have already been discussed in detail. That prior discussion applies with equal validity here and does not need to be repeated.

Second, the project is designed to avoid impacts to the sensitive areas of the site, consistent with the classification of the creek/shoreline that cuts through the property. The vast majority⁷ of the shoreline through the site is classified as Urban Conservancy Environment (UCE). See Exhibit 11G (Environmental Checklist ¶ B(8)(g)). The purpose of the UCE is to protect and restore ecological functions of open space, flood plain, and other sensitive lands. See CP, Chapter 14, Shorelines, p. 14-16. The proposed development fulfills this intent by setting aside the environmentally sensitive areas of the site and excluding that territory from the development activity. As the Staff explained:

The proposed plan precludes the construction of residences within the boundaries of the Channel Migration Zone, 100 Year Floodplain and Shoreline Jurisdiction and includes setbacks from the applicable buffers.

See Exhibit 1, p. 8. The project conditions also require the applicant to engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts of the proposal. See Condition 3.

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

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

The Hearing Examiner concludes that this project does not, and indeed cannot, affect "normal public use of public shorelines." There is no "normal public use" of the shorelines on the property. The public does not currently have access to the shoreline at all. See Exhibit 1, p. 8. The only access to the site and its associated shoreline is via a private bridge, which is gated. See *id.* Because there is no public access to this particular stretch

⁷ The extreme southern portion of the site is classified as Natural Environment under the SMP. See Exhibit 11G (Environmental Checklist ¶ B(8)(g)). The development activity does not encroach into this part of the property.

of shoreline, it cannot be said that the project has any impact on "normal public use" of the shoreline. Moreover, this part of the shoreline cannot be classified as "public shorelines." Latah Creek cuts through private property at this location. Given these circumstances, the Hearing Examiner necessarily must conclude that the criterion is satisfied.

3. *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 Hearing Examiner concludes this SCUP will not contribute to cumulative impacts on the shoreline, thereby undermining the goals or policies of the SMP. This conclusion is reached for a number of reasons.

There have been very few SCUPs approved in the general vicinity of this proposal. See Exhibit 1, p. 8. A cumulative impact analysis cannot reasonably be conducted when there aren't several permits to consider.

There was a reference in the Staff Report to the SCUP granted to WSDOT, related to the interchange and on-ramp on US 195. There is also little doubt that the project affected Latah Creek given that WSDOT armored the banks to protect the highway improvements. However, the proposed subdivision specifically avoids conducting development work within the shoreline. The one exception to this is the expansion or replacement of the bridge. Currently, there is insufficient information to properly consider the potential impacts of the bridge project. For this reason, the bridge project will be subject to a separate environmental analysis under SEPA.

There is no evidence in this record that the cumulative effect of multiple SCUPs threatens the integrity of the shoreline. As a result, the Hearing Examiner concludes that this criterion is satisfied.

4. *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 applicant is proposing to develop a residential subdivision. This is consistent with the zoning of the site and the surrounding land. See ¶ A.1 above. The land in all directions from the site is predominantly zoned RSF. See Exhibit 1, p. 2. The actual uses of the surrounding land are primarily residential and open space. See Exhibit 1, p. 3. As designed, the proposed subdivision consists of single-family residences and a substantial amount of open space. These characteristics blend well with the surrounding uses.

The Hearing Examiner has already discussed how the proposed subdivision is consistent with the goals and policies of the CP. See ¶ A.2 above. That discussion included consideration of the goals and policies of the SMP. See *id.* The Hearing Examiner also considered the ways in which the project is compatible with neighboring uses. See ¶ B.6. The Hearing Examiner's analysis of these issues applies equally to this criterion.

For the reasons discussed above, and for the reasons discussed elsewhere in this decision, the Hearing Examiner concludes that this criterion is satisfied.

5. *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).*

The Hearing Examiner concludes that the proposed subdivision will not cause significant impacts to the shoreline environment. The city issued a DNS for this project, which was not appealed. The Hearing Examiner reviewed the environmental information in the record and confirmed that the project would not have significant impacts on the environment, including to the shoreline environment. See ¶ A.5 above. The relevant departments and agencies reviewed the proposal and did not identify any significant impacts that could not reasonably be mitigated.

The Hearing Examiner has already discussed how the project has been designed to avoid impacts to the sensitive areas, in particular the shoreline environment. See ¶ C.1 above. The development plans preclude construction of residences within the boundaries of the Channel Migration Zone, the 100 Year Floodplain, and the Shoreline Jurisdiction. See Exhibit 1, p. 8. Further, the conditions of approval require the applicant to engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts of the proposal. See Condition 3.

The Hearing Examiner further concludes that the project will not cause a substantial detrimental effect on the public interest in enjoying visual or physical access to the shoreline. As stated previously, the public does not currently have access to this part of the shoreline. The site is private property and there are no easements assuring public access. When development occurs on private property, the physical access requirements of the shoreline regulations “are not intended to require property owners to increase the public’s physical access to the shorelines.” See SMC 17E.060.280(A)(1). Rather, the intent of the regulations is to ensure that development on private property does not “result in a net loss of the public’s **currently existing rights** to visual and physical access.” See *id.* (emphasis added). The regulations, in other words, are intended to mitigate the impacts to existing public rights. The regulations do not require owners to grant public access in cases where the public does not such access rights to begin with.

There is no evidence in this case that the project impacts any currently existing public rights to physical or visual access. As a result, this project does not result in a substantial detrimental effect within the meaning of the standard. The Hearing Examiner concludes that this criterion is satisfied.

- D. *The applicant cannot be compelled to provide public access through the subdivision to the adjacent public lands or trail system.*

There were voluminous public comments requesting that the applicant be required to set aside a public access route through the property and to the adjacent public lands. See Exhibit 9. It was contended that there was precedent for this type of condition in other land use decisions, including Kendall Yards, Tuscan Ridge, and River Run. See *id.* (numerous comments to this effect); see also *Testimony of P. Keegan*. In addition, it was argued that the SMC required such access to be granted. See Exhibit 9; see also *Testimony of C. Jepson*. This contention was based upon a provision in the subdivision ordinance that provides as follows:

Adequate provisions for public access to publicly owned parks, conservation areas or open space land shall be provided when a subdivision, short plat, or binding site plan is adjacent to such lands.

See SMC 17G.080.070(B)(3) (from a section entitled "Easements"). Further, failing to provide such access would be contrary to the public interest, it was maintained. *Testimony of C. Jepson.*

The request for the creation of a new public easement across the property was supported by at least one city department. Specifically, the City of Spokane Parks and Recreation suggested the following project condition:

Provide and maintain unrestricted public access via 15-ft trail easement, through the property within the shoreline buffer around the proposed improvements, connecting to existing park trails. Specific route alignment to be determined by developer and Spokane Parks and Recreation.

See Exhibit 6B.

The Hearing Examiner does not believe that the foregoing contentions can legally justify mandating that the applicant provide access through the subdivision for the benefit of the general public. The Hearing Examiner reaches this conclusion for several reasons.

First, the Hearing Examiner agrees with the Planning Department that requiring public access through the development would amount to an unconstitutional exaction of property. *Testimony of H. Trautman & T. Palmquist.* The reason this is the case requires some explanation of the applicable law.

There is a two-part test to determine whether a project condition, which requires the dedication of private land for public use (i.e. an exaction), is constitutionally permissible. First, it must be determined whether an "essential nexus" exists between the exaction and a "legitimate state interest." See *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987). If an essential nexus is demonstrated, the second part of the test asks whether the exaction is "roughly proportional" to the impact of the development. See *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

In this case, the proposed condition would require the developer to grant an access easement through the subdivision for the benefit of the general public. The Hearing Examiner concludes that this condition passes the "essential nexus" test of *Nollan*. The purpose of such a condition, as evidenced by the language of SMC 17G.080.070(B)(3), is to ensure that the public has access to parks, conservation areas, and other public lands. Certainly, the city has a legitimate state interest in promoting public access to the miles of trails along the bluff. In addition, there is an essential nexus⁸ between that public interest and the proposed condition. Requiring the developer to provide public access directly promotes the identified state interest. Therefore, the proposed condition satisfies the first part of the test.

⁸ This case stands in contrast to *Nollan* in this regard. In *Nollan*, the Court struck down a condition requiring the property owner to grant an access easement across their property, which was situated between two public beaches. However, the alleged "state interest" articulated in that case was the protection of public views of the beach from the public roads. Because the easement condition had no relationship to protecting views, the Court concluded that the easement condition was an unconstitutional taking.

The Hearing Examiner is convinced, however, that a condition requiring the developer to grant public access across its property fails the second part of the test. The project has no impact on public access to the bluff or other public land. The site of the proposed development is private property. *Testimony of T. Palmquist*. There is no public access across this property currently. See *id.* The project cannot be said to diminish or alter the public's right of access across the site when there is no right-of-way in the first place. The proposed development does not diminish the public's right to access in any way. Under the circumstances, there is no basis to conclude that a public access condition is "roughly proportional" to the project's effect on access public lands. As a result, the proposed condition, if imposed, would result in an unconstitutional taking.

The Friends of the Bluff argued that the *Nollan/Dolan* standards were satisfied in this case. *Testimony of P. Larkin*. The Friends of the Bluff cited to *Koontz v. St. John's River Water Management District* for the proposition that so long as the permitting authority offers the landowner at least one alternative that would satisfy *Nollan* and *Dolan*, the landowner has not been subjected to an unconstitutional condition. *Testimony of P. Larkin*; see also *Koontz v. St. John's River Water Management District*, 570 U.S. 595, 611 (2013).

The Hearing Examiner concludes that the *Koontz* case does not support the imposition of a public access condition on this development. Initially, it should be noted that the Court struck down the condition proposed by the Water District as being in violation of the principles of *Nollan* and *Dolan*. See *Koontz*, 570 U.S. at 619. Thus, *Koontz* does not provide an example of a condition that actually satisfied the standards. That said, in this case we are not making a choice among alternative conditions, one of which apparently satisfies the "nexus" and "rough proportionality" requirements. There is really only one condition being proposed. That condition mandates access across the private property so that the general public can more conveniently enjoy adjacent public lands. However, there is no public access across that land currently. The argument by the Friends of the Bluff necessarily conceded as much, noting that currently there is no access to the bluffs from the west, not because of this project, but because of the railroad, the creek, and the lack of public right-of-way. *Testimony of P. Larkin*. The project does not eliminate or impact any existing public access rights. Legally, it cannot be concluded that a public access condition is necessary because of any impact caused by the project itself.

University Legal Assistance (ULA) similarly argued that the proposed condition did not constitute an improper exaction given the holding of the Washington Supreme Court in *Sparks v. Douglas County*, 127 Wn.2d 901, 904 P.2d 738 (1995). *Testimony of C. Jepson*. According to ULA, the Court in *Sparks* concluded that requiring access as a condition of a land use permit does not result in a taking. See *id.* As a result, ULA asserts that requiring the developers of Deep Pine Overlook to grant public access does not run afoul of takings law. After reviewing the *Sparks* case, the Hearing Examiner respectfully disagrees.

The Court in *Sparks* did not consider whether an access easement for public use could properly be imposed as a condition of a land use permit. Rather, the question there was whether it was proper to require the developer to dedicate some of its land to expand and improve the adjacent, public roads that served that development. See *Sparks*, 127 Wn.2d at 904-5. The evidence in that case was that the traffic from the proposed development necessitated additional right-of-way and reconstruction of adjacent roads to accommodate the overflow. See *id.*, at 916. The county engineer testified that the development itself

created the need to upgrade the adjacent roads. See *id.* Given this record, the Court concluded that the “rough proportionality” test of *Dolan* was satisfied:

That degree of connection was established in this case by evidence the proposed developments would likely generate increased traffic on adjacent roads that are inadequate for safe access. Douglas County’s required dedication of rights-of-way as a condition of approval of the Sparkses’ plat applications thus do not constitute an unconstitutional taking of property.

See *Sparks*, 127 Wn.2d at 917.

In *Sparks*, the project itself created the need for the required dedications and road improvements. In this case, the proposed subdivision does not create the need for public access. As a result, requiring the developer to grant public access as a condition of project approval is an improper exaction of property rights and cannot be sustained. See e.g. *Luxembourg Group, Inc. v. Snohomish County*, 76 Wn.App. 502, 887 P.2d 446 (1995) (holding that county could not condition approval of a subdivision upon the developer granting an access easement to the neighbor’s landlocked property); see also *Burton v. Clark County*, 91 Wn.App. 505, 958 P.2d 343 (1998) (holding that a condition requiring a road dedication was improper because the exacted road lacked any tendency to solve the traffic and circulation problems identified by the county.)

Second, the Hearing Examiner does not believe that the fact that access conditions were included in previous land use decisions compels the imposition of a public access condition on Deep Pine Overlook. Initially, it should be repeated that, under the circumstances of this case, the imposition of a public access requirement would be an unconstitutional exaction, in the Hearing Examiner’s view. As a result, the condition could not be imposed, regardless of whether similar access requirements had been included in previous land use decisions. That said, the Hearing Examiner does not believe that the prior land use decisions are truly analogous to the situation here.

The site for Kendall Yards, for example, was already burdened with public roads and access rights for the Centennial Trail. Moreover, that project is a mixed-use site that contemplated public access to and through the site, as an amenity of the development. The Friends of the Bluff did not submit evidence that public access was actually imposed as a condition of the development, despite the objection of the developer. As a result, Kendall Yards is not similar to the proposed subdivision, in the Hearing Examiner’s view.

There is no question that the hearing examiner who decided Tuscan Ridge and River Run included a requirement, in each case, for public access across private property. See Exhibit B-1(Condition 13, Tuscan Ridge); see also Exhibit B-2 (Condition 26, River Run). However, the evidence does not demonstrate that the access conditions were included irrespective of the property rights of the owner. Nothing was submitted from the records⁹ of those cases to demonstrate that those conditions were imposed over the objections of the developer. It appears that the public access conditions in those cases resulted from some sort of concession by the property owner that was then incorporated as a project condition.

⁹ The Hearing Examiner looked into the testimony presented at the public hearings for Tuscan Ridge and River Run. The Hearing Examiner reopened the record for the limited purpose of adding excerpts from those hearings into this record, in order to better understand the basis for the conditions imposed in those projects. See Exhibits B-3 and B-4.

In other words, the conditions were either voluntary or were the result of a negotiated understanding.

In River Run, for example, there is a condition stating that the "100-foot buffer area adjacent to the Spokane River shall have a public access easement placed upon it." See Exhibit B-2. However, in his discussion of the decision criteria, the hearing examiner noted that the applicant's site plan included trails from the public roads to the shoreline, which would presumably be "open to the public." See *id.*, p. 15. The hearing examiner further clarified:

The proposal does not include a trail along the shoreline for the length of the project. The applicant's representative testified at the public hearing that they would develop an easement for this area and, at such time as the Centennial Trail may be extended either to the north or south boundary of this property, then that public easement would allow the centennial trail to be built through the site along the shoreline.

See *id.* The testimony presented to the hearing examiner in the River Run case further supports the notion that public access was incorporated into the developer's plans. See Exhibit B-4. The developer's attorney conceded that a public access easement, for a trail through the shoreline but on private property, would be provided. See *id.* However, that concession was made on the proviso that a public entity would be responsible for the trail and any liability associated with public use of the trail. See *id.* In making that concession, the developer's lawyer pointed out that he didn't know "of any legal basis" to force the developer to provide such access. See *id.*

With respect to Tuscan Ridge, there was no evidence that the hearing examiner mandated public access across private property, irrespective of the limits of *Nollan* and *Dolan*. Rather, it appears that the hearing examiner included the condition, which reflects prior negotiations over the access question. Those negotiations ultimately resulted in a plan, agreed to by the developer, to provide public access in one form or another. The decision itself does not elucidate these matters. But the testimony at the hearing by one of the developer's consultants, however, supports this understanding. The consultant testified:

*MR. OGRAM: ... There is proposed an access to the project off of Hatch and 57th, and it would come off of here, drop down, and then there is an entry feature right here as the road terraces down the slope to access the architectural units. **We are currently and have continued to work with the City Parks Department in developing a potential public access trail head that would be within our project,** and then provide improvements and access onto some of the existing trails that meander through the conservation area. That process continues to evolve, and we're making really good headway with coming up with something that **will improve public access through the project and adjacent to it.***

Emphasis added. See Exhibit B-3.

The foregoing description is consistent with the Mr. Keegan's testimony about Tuscan Ridge. In his testimony, he stated that the city worked with the developer to secure a parking lot and trail access through the Tuscan Ridge development. *Testimony of P Keegan*. He urged the city to engage in similar negotiations with respect to Deep Pine Overlook. See *id.* The Hearing Examiner concludes that the condition imposed in Tuscan

Ridge was a negotiated concession, not an unfiltered mandate from the hearing examiner. As a result, the situation in Tuscan Ridge is not analogous to the circumstances here.

Finally, the Hearing Examiner does not interpret the language of SMC 17G.080.070(B)(3) as requiring public access through private property no matter the circumstances. The Staff contended that the code requirement was satisfied because the residents and guests of the subdivision are being provided access to the trails. *Testimony of T. Palmquist; Testimony of H. Trautman*. The SMC does not require that a private property owner provide public access where none existed before. See *id.* Rather, the intent of the code is to preserve or protect public access routes from being negatively impacted by development. See *id.*

The Hearing Examiner agrees with the Staff's analysis. Whenever possible, an ordinance should be interpreted to avoid an unconstitutional result. If SMC 17G.080.070(B)(3) were read to always mandate public access, the ordinance would result in unconstitutional exactions of private property, at least in cases like this one. The Staff's interpretation avoids the constitutional dilemma, while still honoring the wording and intent of the enactment. In addition, the Planning Department is the administrative agency charged to interpret and apply the land use codes. As such, their interpretation of the code should be given a certain degree of deference by the Hearing Examiner. The Hearing Examiner concludes that, under the circumstances of this case, "adequate provisions" have been made for public access.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed preliminary plat, planned unit development (PUD), and shoreline conditional use permit (SCUP), subject to the following conditions:

1. The development shall adhere to plans, drawings, illustrations, and/or specifications on file with the Development Services Center.
2. The Shoreline Master Program (SMP), 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.
3. The contractor is required to have a Construction Stormwater Pollution Prevention 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.
4. If lots 89-92 are built out as a self-storage area for the residents only, it shall be screened from view from the street and adjoining properties using dense landscaping and architecturally compatible materials.
5. Lots 2-3 Block 1 and Lots 47-52 & 55, Block 3 contain a portion of the shoreline buffer within proposed lot boundaries. No build easements will be required to be shown on the face of the plat for these lots. Landscaping will be required to be native, and turf grass is highly discouraged within the boundaries of the shoreline.

6. The applicant submitted a Habitat Management Plan (HMP), originally conducted in October 2008, updated on November 6, 2009, January 14, 2010, and again on June 19, 2016. The HMP will need to be updated to reflect the final configuration of the turnaround on the east side of the proposed bridge prior to final plat approval.
7. The sanitary sewer connection point indicated in the Concept Sewer and Water Design Memo 8 was abandoned and buried during construction of the interchange and is no longer accessible. The Memo states, "this manhole will be re-established and connected by an 8-inch line across US-195 to a 27-inch sewer main." Final design for this connection shall be approved by the Washington State Department of Transportation (WSDOT) and the City of Spokane.
8. Because site grades do not allow for a gravity connection, a private sewer lift station will be required. This will be required to be designed and built to City Standards.
9. The proposed bridge will need to be designed to carry the necessary additional utilities such as water, pressure sanitary sewer, fire apparatus, etc. Construction plans for the bridge must be designed by a Professional Engineer, licensed in the State of Washington, and submitted to Planning and Development Services for review and acceptance prior to construction. The applicant will be responsible for obtaining all necessary permits (including a shoreline permit) and approvals prior to construction of the bridge.
10. If drywells are utilized, they will need to be tested to ensure design infiltration rates are met. A minimum factor of safety of two will be required. In accordance with State Law, existing and proposed Underground Injection Control (UIC) structures need to be registered with the Washington State Department of Ecology (WSDOE). Proof of registration must be provided prior to plan acceptance.
11. Other possible permits, such as National Pollutant Discharge Elimination System (NPDES) and Total Maximum Daily Load (TMDL) Permits, will need to be obtained where required during final engineering design.
12. Construction plans for sanitary sewer, water, street, and stormwater improvements must be designed by a Professional Engineer, licensed in the State of Washington, and submitted to Planning and Development Services for review and acceptance prior to construction.
 - a. All sanitary sewer, water, street, and stormwater improvements within the PUD will be private.
 - b. Freeze protection for wet utilities (i.e., water and sewer) crossing the bridge is required.
 - c. Plan review fees for sanitary sewer, water, street, and storm water improvements will be determined at the time of plan submittal and must be paid prior to the start of review.
 - d. Individual water and sewer service connections, to each lot, shall be constructed and accepted for service prior to the paving of the street and the issuance of any Certificates of Occupancy on any structures in the plat.
 - e. Frontage improvements on all streets will be required to serve this plat including curb, sidewalk, and paving. Plans for these improvements must be submitted to

and accepted by Planning and Development Services prior to the City Engineer signing the final plat.

f. The minimum curb radius for the cul-de-sac bulb shall be 50 feet.

g. This plat may be subject to General Facilities charges.

13. The water system shall be designed and constructed in accordance with City Standards. A pressure of 45 pounds per square inch (psi) minimum at the property line is required for service connections supplying domestic flows. Pressures shall not drop below 20 psi at any point in the system during a fire situation. Pressures over 80 psi will require pressure relief valves be installed at developer expense.

14. An updated hydraulic analysis depicting the final system is required and must include supporting calculations for domestic and fire flows.

15. The developer will be responsible for all costs associated with design and construction of all sanitary sewer, lift station, water, street, proposed bridge, and stormwater improvements necessary to serve the proposed plat. Sanitary sewer and water mains, including service connections to property lines, shall be constructed and inspected to City standards, prior to the City Engineer signing the final plat.

EXCEPTION: Nothing in the foregoing paragraph shall be interpreted as requiring the developer to pay the cost of re-establishing the sewer facilities (manhole and a portion of the sewer line that traversed under the highway) that were buried or destroyed when the SR 195 interchange at Cheney Spokane Road was constructed. The responsibility to pay the costs to re-establish the buried or destroyed facilities that were available to serve the property prior to that highway construction project is the subject of a dispute between the developer, the city, and WSDOT. There is insufficient information in this record to resolve the matter by project condition, and it is unclear that it would be appropriate for the Hearing Examiner to attempt to do so. The issue will have to be resolved by the parties through negotiations, dispute resolution, or other means.

16. In accordance with the City's Financial Guarantee Policy, a financial guarantee will be required for all street, bridge, and/or stormwater improvements not constructed prior to approval of the final plat.

17. Civil engineered plans and profiles shall use NAVD88 datum (City of Spokane datum minus 13.13 feet).

18. All stormwater and surface drainage generated on-site shall be disposed of on-site in accordance with SMC 17D.060 "Stormwater Facilities," the Spokane Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and, per the Project Engineer's recommendations.

a. Prior to construction, a grading and drainage plan shall be submitted to Developer Services for review and acceptance.

b. An erosion/sediment control plan, detailing how dust and runoff will be handled during and after construction, shall be submitted to Developer Services for review and acceptance prior to construction.

- c. No building permit shall be issued for any lot in the plat until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17D.060 "Stormwater Facilities," the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and the Project Engineer's recommendations have been complied with. A surface drainage plan shall be prepared for each lot and shall be submitted to Planning & Development for review and acceptance prior to issuance of a building permit.
 - d. The development of any below grade structures (including basements) in the plat is subject to review of a geotechnical evaluation for foundation design to determine suitability and affects from stormwater and/or subsurface runoff. The geotechnical evaluation is required to be performed for each lot with below grade level structures and submitted for review and concurrence to Development Services prior to issuance of a building permit. An overall geotechnical analysis may be performed in lieu of individual lot analysis to determine appropriate construction designs.
19. Portions of the proposed development are located in a FEMA flood zone, shoreline area, and a hazardous geology area. Additional information and any required studies are required to address these special concerns during final engineering design.
20. All easements for existing or future access to utilities must be shown on the face of the plat.
21. Addresses must be shown on the face of the final plat. Addresses will need to be applied for **prior** to side sewer service and water service permits. To apply for and obtain addresses, please contact Joeline Eliason, at the City of Spokane at (509) 625-6385 or at jeliason@spokanecity.org.
22. Garages shall be a minimum of 20 feet from the back of sidewalk to fully accommodate a parked vehicle without obstructing the sidewalk.
23. All street identification and traffic control signs required due to this project must be installed by the developer at the time street improvements are being constructed. They shall be installed and inspected to the satisfaction of the City's Construction Management Office in accordance with City standards prior to the occupancy of any structures within the plat.
24. The proposed bridge, streets, water, storm and lift station and other sanitary sewer facilities within the development along with the open tracts will be operated and maintained by a Homeowners Association (HOA) established for this plat. The proposed HOA along with the established Covenants, Conditions, and Restrictions (CC&R's), shall follow the Operation and Maintenance (O&M) Manual established for the private infrastructure maintenance. The O&M Manual will also establishing a sinking fund to calculate the required maintenance cost for the above-described private infrastructure that the HOA will be required to collect and use for the required maintenance. Dissolution of the HOA shall not relinquish the responsibility of the maintenance from the property owners within the boundary of the proposed plat.
25. A \$250.00 deposit will be required for each monument to be installed as part of the final plat.
26. Private streets, including paving, curb, sidewalk, signs, storm drainage structures/facilities, and swales/planting strips necessary to serve the proposed plat,

shall be designed and constructed in accordance with City standards. Sidewalks or a trail shall serve each lot.

- a. Signing and striping plans, where appropriate, shall be included as part of the design submittal.
- b. Street design for the plat shall include supporting geotechnical information on the adequacy of the soils underneath to support vehicular design loads.
- c. Any grades exceeding 8% must be shown on the preliminary plat.

27. All parking areas and driveways shall be hard surfaced.

28. In accordance with the October 2017 Stantec traffic analysis update, the applicant will need to design and construct a right turn lane to WSDOT standards on the SR 195 Northbound on-ramp at the site entrance. As an alternative to the construction of the right turn lane, the on-ramp could be re-configured to have only one-way traffic (northbound). In this case, the existing southbound lane can be re-configured as a right turn lane. The applicant/developer will need to choose one of these two methods and enter into a WSDOT development agreement for its construction prior to the platting of the phase that includes the 43rd lot.

29. If the on-ramp is widened per the above condition, the existing shared-use path running next to the on-ramp must be shifted to the east and rebuilt.

30. Streets must be designed in accordance with SMC 17H.010.070. Some sections of roadway may need to be wider than the proposed 32-foot width, or may require limiting parking to one side.

31. A condition of approval for this plat application by the City of Spokane for Engineering and Transportation will be that the proposed bridge must be in place prior to approval of the final plat. Water service shall be available to the proposed lots and be capable of providing the required fire protection prior to any building permit issuance. Water and sewer service shall be connected to all residences prior to certificate of occupancy. Also, an impact fee will be assessed for this plat for 94 SFR lots in the South Service Area calculated at \$693.66/dwelling with credit given for the existing SFR dwelling. This fee must be paid prior to issuance of any building permit.

32. The proposed bridge will be situated above an established high water mark (100-500 year flood), which will make for wide abutments with the potential for significant fill sections in the streambed and may impact the layout of the proposed lots east of the bridge. This is a significant issue that needs to be addressed with additional review under SEPA, an additional Shoreline Conditional Use Permit application and Floodplain Permit in order to identify all environmental impacts.

33. The proposed bridge shall be situated with enough clearance to allow navigability of Latah Creek for small watercraft such as kayaks and canoes.

34. The City and the bridge owner must approve the addition of utilities, sewer, and water facilities to the bridge structure.

35. Substantial improvements within the floodplain shall be consistent with Chapter 17E.030.140. A Floodplain Development Permit will be required for all work proposed in the floodplain, specifically as it relates to the bridge expansion and utility crossings. The proposal must show how these requirements are met.

36. The City concurs with the permits noted in Stantec Memorandum dated May 8, 2018, for the required permits for the bridge expansion. Expansion and/or reconstruction of the bridge will have to be designed by a licensed engineer, and that design must include an official, stamped load rating, all in accordance with WSDOT and federal standards. The bridge could then potentially be owned, operated, and maintained by the City in accordance with terms and conditions to be negotiated in an agreement executed by the parties involved.

37. The proposed bridge is to be opened to the general public; therefore, it will have to be entered on the National Bridge Inventory. It will then be subject to all the requirements of the federal bridge program, including inspection every two years by WSDOT-certified bridge inspectors and maintenance of official bridge records in accordance with state and federal standards. Inspection and file maintenance can be handled by the City on the owner's behalf or the bridge owner can hire a consultant to perform these tasks.

38. Any proposed deviations from standards shall be sought in writing, justified, and may be approved by the City Engineer for Planning and Development. The proposal must meet all City standards, including those for plats and PUDs. See SMC Section 17G.080.050 Subdivisions.

39. The following statements shall be included in the Dedicatory Language on the face of the final plat:

- a. All stormwater and surface drainage generated on-site shall be disposed of on-site in accordance with SMC 17D.060 "Stormwater Facilities," the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and, per the Project Engineer's recommendations.
- b. No building permit shall be issued for any lot in this plat until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17.060 "Stormwater Facilities," the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and the Project Engineer's recommendations have been complied with. A surface drainage plan shall be prepared for each lot and shall be submitted to the Planning and Development Services for review and acceptance prior to issuance of a building permit.
- c. The development of any below-grade structures, including basements, is subject to prior review of a geotechnical evaluation for foundation design to determine suitability and effects from stormwater and/or subsurface runoff. The geotechnical evaluation shall be submitted to Planning and Development Services for review and concurrence prior to the issuance of a building permit. It must address the disposal of stormwater runoff and the stability of soils for the proposed structure. This evaluation must be performed by a geotechnical engineer, licensed in the State of Washington. It must be submitted to the City Building Department and to Planning and Development Services for review and concurrence prior to issuance of any building permit for the affected structure. An overall or phase-by-phase geotechnical analysis may be performed in lieu of individual lot analyses to determine appropriate construction designs.
- d. All improvements (sanitary sewer, water, street and stormwater) shall be constructed to City standards prior to the occupancy of any structures served by said improvements.
- e. The proposed bridge, streets, water, storm and lift station and other sanitary sewer facilities within the development along with the open tracts will be operated and

maintained by a Homeowners Association (HOA) established for this plat. The proposed HOA along with the established Covenants, Conditions, and Restrictions (CC&R's), shall follow the Operation and Maintenance (O&M) Manual established for the private infrastructure maintenance. The O&M Manual will also establishing a sinking fund to calculate the required maintenance cost for the above described private infrastructure that the HOA will be required to collect and use for the required maintenance. Dissolution of the HOA shall not relinquish the responsibility of the maintenance from the property owners within the boundary of the proposed plat.

- f. A Transportation Impact Fee will be collected prior to the issuance of a building permit for the affected lot.
 - g. Only City water and sanitary sewer systems shall serve the plat; the use of individual on-site sanitary waste disposal systems and private wells is prohibited.
 - h. No portion of the road or open tracts may be used for any residential structure or transferred as a lot to be used for any residential structure. Said tracts shall be left in open space for the common use and be held in common ownership by the HOA established for this plat.
 - i. Road and Open Tracts, including any drainage and/or access easements on or to Tracts, will be operated and maintained by an HOA established for this plat. The HOA will operate and maintain all storm water lines and structures. Property owner(s) will maintain drainage swales or planting strips adjacent their property, with a permanent live cover of lawn turf, with optional shrubbery and/or trees, which do not obstruct the flow and percolation of runoff in the drainage swale, as indicated on the accepted plans.
 - j. All parking areas and driveways shall be hard surfaced.
 - k. In accordance with the City's Financial Guarantee Policy, a financial guarantee will be required for all street and storm water improvements not constructed prior to approval of the final plat.
 - l. Any property offered for sale within the agricultural overlay zone will include notice on subdivisions, development permits, and building permits within 300 feet of lands designated as agriculture that agricultural activities may be conducted, and that such activities are legal and permitted by zoning regulations.
40. The City of Spokane Fire Department provided the following conditions of the plat:
- a. The change to the street width is permitted under SMC 17H.010.0700, which also includes several conditions that need to be met (17H.010.070.B 1-4). Meeting SMC 17H.010.140 is one of those conditions. In order to verify that the development can meet those requirements, we will require that the developer demonstrate and indicate on the plans how they intend to do so. We would like to see the requirements of 17H.010.140 drawn with dimensions on the plan if street widths are 32 feet with parking on both sides prior to final plat approval.
 - b. With only one access to the site, all of the buildings in the development will be required to be provided with automatic fire sprinklers.
 - c. The cul-de-sacs will need to comply with the Fire Code for adequate turning radii and width.

41. The Design Review Board (DRB) finds that the project demonstrates the use of innovative, aesthetic, and energy-efficient site design.

- a. The applicant shall comply with the City of Spokane public street tree standards.
- b. The applicant is encouraged to consider an alternative to the Black Cottonwood proposed in the Habitat Management Plan (HMP).

The DRB finds that the project demonstrates movement toward the use of an innovative, aesthetic, and energy-efficient architectural design.

- a. The applicant is encouraged, in the design of structures, to pursue a consistent architectural style as proposed in the previous workshops.

42. Washington State Department of Fish and Wildlife (WSDFW) provided the following conditions of the shoreline permit:

- a. The current proposal includes information that the bridge that will be used for access will need to be widened and/or replaced. This project will require a Hydraulic Project Approval (HPA) from WSDFW. WSDFW reminds the applicant to apply early for permits to insure adequate time for processing. WSDFW has added bridge guidance to our Water Crossing Guidelines. This information may be of use while considering potential design options.
<http://wdfw.wa.gov/publications/01501/wdfw01501.pdf>
- b. WSDFW looks forward to reviewing the final shoreline restoration plans. Planting the shoreline with native vegetation is an excellent way to enhance habitat while protecting the banks from erosion with natural armoring.

43. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to Revised Code of Washington (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 (WDAHP) before excavating, removing or altering Native American human remains or archaeological resources in Washington.

44. AVISTA provided the following conditions of the plat:

- a. AVISTA has a tentative timeline to rebuild the substation lying to the parcel north of subject property, of which work is slated to begin by June 2019. A portion of the project will require road grading and new gravel on the easement area through the subject parcel, followed by additional prep work on the substation parcel involving additional earthwork.
- b. AVISTA requests to work closely to coordinate with the developer on the project, should potential simultaneous projects occur, in order to ensure AVISTA's access to the transmission lines and substation facilities remain unimpeded as secured by our granted easements.
- c. AVISTA has acknowledged that the current alignment of the access road through the site and to the AVISTA substation, as depicted in the preliminary plat, is adequate meet its needs. The developer has the right to develop its property but must also accommodate the access rights of AVISTA. The respective rights of the parties are addressed in the recorded easement establishing that access. The

development of the plat will be undertaken in a manner that does not materially interfere with AVISTA's access to its substation. The developer will not make changes to the current alignment of the access road without first notifying and consulting with AVISTA. To the extent any disputes arise regarding access, the terms of the existing easement will govern the matter.

- d. Additionally, plat approval will be subject to existing easements and new easement areas being properly identified on face of plat as well as applicable dedication language.
- e. There must be a 10-foot wide utility easement running along and adjoining the front of all lots as they have frontage to the private roads.
- f. Please add the following language to the dedication language to be shown on the face of the plat:

"Utility easements shown on the herein described plat are hereby dedicated for the use of serving utility companies for the construction, reconstruction, maintenance, protection, inspection and operation of their respective facilities, together with the right to prohibit changes in grade over installed underground facilities, the right to trim and/or remove trees, bushes, landscaping, without compensation and the right to prohibit structures that may interfere with the construction, reconstruction, reliability, maintenance, and safe operation of same. The Private Roads as shown hereon are dedicated for utility purposes in addition to ingress and egress as stated. Serving utility companies also reserve the right to cross all common areas and open space areas."

- g. Below is a list of concerns and comments from AVISTA's Transmission department regarding the proposed developments effects on our ability to maintain the historical access routes to our transmission substation and transmission corridors granted to us via easement years ago:
 - i. If the current bridge that AVISTA owns is modified to accommodate the development as a primary access point, the new engineering specifications must, at a minimum, meet or exceed the specifications of the current structure that will continue to allow fully loaded trucks, trailers, and utility equipment to cross unencumbered.
 - ii. If an additional bridge will be constructed and utilized as a one-way ingress/egress route, then the new bridge will need to meet or exceed the engineering specifications of the existing AVISTA-owned bridge to allow the entrance/exit of fully loaded trucks, trailers, and utility equipment to cross unencumbered.
 - iii. Access to our 9th and Central –Sunset 115KV transmission line must be maintained. We believe it has been accommodated by Fritz Lane on the proposed plat map but would need further specifications on the road base and width to determine if the proposed private lane would be able to accommodate our large trucks and equipment.
 - iv. Access to our Shawnee-Sunset 115KV must be retained. We believe it has been accommodated by Fritz Lane on the proposed plat map but would need further specifications on the road base and width to determine if the

proposed private lane would be able to accommodate our large trucks and equipment.

- v. We need to confirm and verify that we have a viable ingress/egress route from SR 195 to our Sunset 115 KV Substation, as well as confirmation that the designed streets allow enough of a turning radius for large trucks, trailers, and materials to get through the development safely and to our facilities.
- vi. Lot #92 appears to have a house constructed within and under our easement area. The building of a permanent structure within the easement area may create a clearance issue under our transmission lines.
- vii. Any grade changes within our right of way or within 25 feet of our transmission pole structures will need further inspection and examination by AVISTA engineers.
- viii. Any vegetation and/or trees planted along or within our transmission corridors will need to be approved by AVISTA vegetation management and/or comply with our list of acceptable low growing tree list that is generally allowed in situations such as this.

45. The WSDOE provided the following conditions of the plat and shoreline permit:

Water Quality Program-Elaine Snouwaert (509) 329-3503

- a. Latah Creek (also known as Hangman Creek) has impaired water quality. According to a 2009 TMDL Report (<https://fortress.wa.gov/ecy/publications/documents/0910030.pdf>), fecal coliform bacteria concentrations need to be reduced by 72% in the City of Spokane's stormwater, as well as in the segment of creek adjacent to the project site to comply with state water quality standards (Chapter 173-201A WAC). Therefore, there is no capacity for additional bacteria delivered through stormwater outfalls or runoff to the creek. Pet waste in residential stormwater is known to increase bacteria in stormwater runoff so it must be prevented from entering the creek.

Water Quality Program-Shannon Petrisor (509) 329-3610

- b. Proper erosion and sediment control practices must be used on the construction site and adjacent areas to prevent upland sediments from entering surface water. Local stormwater ordinances will provide specific requirements. Also refer to the Stormwater Management Manual for Eastern Washington (http://www.ecy.wa.gov/programs/wq/stormwater/eastern_manual/manual.html). All ground disturbed by construction activities must be stabilized. When appropriate, use native vegetation typical of the site.
- c. All new dry wells and other injection wells must be registered with the UIC program at WSDOE prior to use and the discharge from the well(s) must comply with the ground water quality requirement (nonendangerment standard) at the top of the ground water table. Contact the UIC staff at UIC Program, WSDOE, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6143 or go to http://www.ecy.wa.gov/programs/wq/grndwtr/uic/registration/reg_info.html for registration forms and further information.
- d. Stormwater runoff may contain increased levels of grease, oils, sediment, and other debris. Stormwater Best Management Practices (BMPs) should be installed

and maintained so that any discharge will be appropriately treated to remove these substances.

- e. Routine inspections and maintenance of all erosion and sediment control BMPs are recommended both during and after development of the site.
- f. A Stormwater Pollution Prevention Plan (SWPPP) for the project site may be required and should be developed by a qualified person(s). Erosion and sediment control measures in the plan must be implemented prior to any clearing, grading, or construction. These control measures must be effective to prevent soil from being carried into surface water by stormwater runoff. Sand, silt, and soil can damage aquatic habitat and are considered pollutants. The plan must be upgraded as necessary during the construction period.
- g. Proper disposal of construction debris must be in such a manner that debris cannot enter the natural stormwater drainage system or cause water quality degradation of surface waters. Dumpsters and refuse collection containers shall be durable, corrosion resistant, nonabsorbent, non-leaking, and have close fitting covers. If spillage or leakage does occur, the waste shall be picked up immediately and returned to the container and the area properly cleaned.
- h. The operator of a construction site that disturbs one acre or more of total land area, and which has or will have a discharge of stormwater to a surface water or to a storm sewer, must apply for coverage under WSDOE's Baseline General Permit for Stormwater Discharges Associated with Construction Activities.
- i. If any soil or ground water contamination is known to be on the site, additional information is needed. The applicant may be required to submit additional studies and reports including, but not limited to, temporary erosion and sediment control plans, a stormwater pollution prevention plan, a site map depicting sample locations, a list of known contaminants with concentrations and depths found and other information about the contaminants.
- j. Application should be made at least 60 days prior to commencement of construction activities. A permit application and related documents are available online at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction>; or by contacting the Water Quality program, WSDOE, P.O. Box 47600, Olympia, WA 98504-7600; (360) 407-6401.

DATED this 28th day of May, 2019.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by SMC 17G.060.210 and 17G.050.

On May 29, 2019, a copy of this decision will be sent by first class mail to the Applicant, the Property Owner, and the Agent and by email or first class mail to other parties of record.

Decisions by the Hearing Examiner regarding preliminary long plats and PUDs are final. The Hearing Examiner's decision may be appealed to the Spokane City Council. **All appeals must be filed with the Planning Department within fourteen (14) calendar days of the issuance of the decision. THE LAST DAY FOR APPEAL OF THIS DECISION TO THE SPOKANE CITY COUNCIL IS JUNE 12, 2019.**

Decisions of the Hearing Examiner regarding SCUPs are reviewed by WSDOE. 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 the appeal fee to appeal the decision, the ordinance requires payment of a transcript fee to the Office of the Hearing Examiner to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the City Council.

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

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.

CITY OF SPOKANE HEARING EXAMINER

Re: Planned Unit Development Application by) FINDINGS, CONCLUSIONS
Yong Lewis for a 100-unit Planned Unit) AND DECISION
Development named Tuscan Ridge to be)
located at 5602 South Hatch Road)
)
) FILE NO. Z2005-121-PUD

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks a Planned Unit Development (PUD) approval in order to allow the development of a 100-unit condominium project. The proposal also includes an activity center, storage units, a maintenance facility and a pathway system.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Yong Lewis
520 West Katelyn
Spokane, WA 99224

Represented by: Randy Hahn
Hahn Engineering
605 East Holland Ave, Suite 112
Spokane, WA 99218

Michael Murphy, Attorney at Law
Groff Murphy, PLLC
300 East Pine Street
Seattle, WA 98122

Property Address: 5602 South Hatch Road, Spokane, Washington

Property Location: The subject property is located below the bluff, southwest of Hatch Road as it curves eastward and becomes 57th Avenue in the City of Spokane, Washington.

Legal Description: A full legal description is in the record on Exhibit #2A

Zoning: The current zoning is RSF (Residential Single-Family). When this application vested, the property was zoned R3-L (Limited Medium Density Multifamily Residential).

Land Use Plan Designation: The property is designated Residential 4-10 in the City's 2001 Comprehensive Plan.

stormwater and/or subsurface runoff. The geotechnical evaluation is required to be performed for each building with below grade-level structures and submitted for review and acceptance to the City of Spokane Building Department and the City Engineering Services-Developer Services Department prior to issuance of a building permit.

12. Public and private streets serving this proposed PUD must be constructed and designed to City standards. Hatch Road is a designated minor arterial in the 2001 Comprehensive Plan, and as such is designated to have a 75-foot right-of-way. Thirty-seven and one-half feet west of the existing centerline of Hatch Road where fronting this project must be dedicated to the City of Spokane for street improvements. Full frontage improvements along Hatch Road are required, including City of Spokane standard curb, sidewalk, paving, street signage, striping, and stormwater drainage. Appropriate transitional ends to existing street and drainage structures are required.

- a. Final design of property access must be reviewed and approved by Developer Services and Street Department Staff prior to construction. One access point will be allowed onto Hatch Road/57th Avenue and shall be so stated in the dedicatory language on the face of the PUD. On-site profile grades shall not be greater than 8 percent unless a design deviation is approved by the Director Engineering Services. A landing at the driveway long enough for two vehicles as identified in the traffic analysis shall be provided. Guardrail end treatments acceptable to Developer Services and Street Department Staff will be required.
- b. Any proposed entry gate shall meet all criteria in SMC 17H.010.100 and the City's Design Standards.
- c. Each structure shall be served by a sidewalk meeting City standards. Sidewalks shall be constructed on at least one side of the street.
- d. All units shall be addressed off of named streets. Driveways cannot be named or used for address purposes.
- e. Roadways shall not be less than 20 feet in width to accommodate emergency vehicles.
- f. The Applicant shall construct a deceleration lane for right turns into the project from the north. The deceleration lane shall meet City standards.
- g. The Applicant shall construct a center turn lane in Hatch Road in front of the project. The design shall be approved by the City's Department of Engineering Services.
- h. An access for emergency vehicles with a locked gate, controlled by the City, shall be constructed in the south portion of the property to allow emergency vehicles access to the City's Park land which is adjacent to the PUD.

13. The Applicant shall relocate the pathway on its property to connect to trails in Hangman Park adjacent. A trailhead shall be provided from this development to Hangman Park with a public parking area off Hatch Road at the project's entrance. An agreement between the City Parks

Department and the Applicant shall be finalized reflecting generally, the issues addressed in Exhibit #42. If the parties cannot agree, the matter shall be forwarded to the Hearing Examiner for resolution.

14. Street designs for the proposed PUD must include supporting geotechnical information on the adequacy of soils underneath to support vehicular loadings.
15. Minimum 20-foot radii are required at all residential street intersections.
16. All street identification and traffic control signs required for the proposed PUD must be installed by the developer at the time of street improvements for the phase being constructed. They must be installed in accordance with City standards and inspected to the satisfaction of the City's Construction Management Office prior to the occupancy of any structures within the PUD. Signing and striping shall be shown on street plans. The developer will be responsible for all costs associated with constructing street improvements necessary to serve this proposed PUD.
17. Slope easements for cuts and fills, as deemed necessary by Engineering Services – Developer Services in accordance with the Design Standards of the City's Engineering Services Department, are hereby granted to the City of Spokane for the construction and maintenance of public streets adjoining this PUD. This statement must be included in the dedicatory language on the face of the final PUD. All easements, existing and proposed as well as their purpose shall be on the final PUD. A 10-foot utility easement shall be granted along all streets and roads within the PUD.
18. A \$250.00 deposit will be required for each monument to be installed as part of this final PUD. Civil engineered plans and profiles shall use NAVD88 datum (City of Spokane datum minus 13.13 feet.)
19. In accordance with the City's Financial Guarantee Policy, a financial guarantee will be required for all street, drainage, and erosion/sediment control improvements not constructed prior to approval of the final PUD.
20. Where the private lanes connect to the public roadway, City Standard F-104A driveways shall be constructed or a concrete alternative acceptable to Engineering Services. Clear view at driveways and street intersections must be maintained. Sidewalks are required on at least one side of the private drives. Garages will not be constructed less than 20 feet from the back of sidewalks.
21. The Fire Department requires 20 feet of unobstructed access width for its vehicles with an exterior clear radius of 50 feet and an interior turning radius of 28 feet. Fire Department access must also be provided to within 150 feet of any point around the perimeter of a building. Dead-end roads of more than 150 feet require a turn-around.
22. To accommodate fire apparatus access, streets less than 28 feet wide will have no parking allowed on either side of the street. For streets from 28 feet to less than 36 feet wide, no parking will be allowed on one side of the street. On streets that are 36 feet or wider, parking is allowed on both sides. The maximum slope of roads for fire department apparatus is 10 percent.
23. Site fire flow shall not be less than 1,000 GPM for single-family residences or duplexes up to 3,600 square feet. If structures exceed 3,600 total square feet, Appendix B of the IFC will be used.

CITY OF SPOKANE HEARING EXAMINER

Re:	Preliminary Plat, Planned Unit)	FINDINGS, CONCLUSIONS
	Development, Zone Change, and)	AND DECISION
	Shoreline Substantial)	
	Development Conditional Use)	
	Permit Application by Fort Wright)	
	LLC for the River Run)	
	Preliminary Plat)	FILE NO. Z200050ZC/PP/PUD/SL

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks a zone change, preliminary plat, planned unit development overlay, and a shoreline substantial development conditional use permit to allow the development of approximately 154 acres of land, comprising the former Central Pre Mix Plant site into a mixed-use and mixed-density development. The site will be primarily residential with commercial and retail services in the vicinity of the intersection of Fort George Wright Drive and Government Way.

Decision: Approval, subject to conditions.

FINDINGS OF FACT **BACKGROUND INFORMATION**

Applicant: Fort Wright LLC
P. O. Box 3366
Spokane, WA 99212

Represented by: Frank Ide
Taylor Engineering
106 West Mission Avenue
Spokane, WA 99201

Stan Schultz, Attorney at Law
Witherspoon, Kelley, Davenport
& Toole P.S.
1100 U.S. Bank Building
Spokane, WA 99201

Property Address: Not assigned

Property Location: The site is located south of Fort George Wright Drive, east of Government Way, west of the Spokane River, and north of the Riverside Cemetery.

Legal Description: A legal description of the area annexed to the City is found in Exhibit #21. The legal description of the remainder of this site, which is zoned R1, is attached to

applicant for piers, docks, or floats to serve this residential community. The final requirement of SMC 11.15.272 is that the proposal must have measures to be used to preserve vegetation and control erosion during construction. As stated earlier, the slopes and natural area along the river are to be preserved and this decision will require that an erosion control plan be utilized for all construction in and around the river environment. The Hearing Examiner finds, therefore, that this criterion has been met.

3. The proposed use complies with the goals, policies, and map designation of the Comprehensive Plan that apply to it and to the area in which it is proposed to be located.

As noted above, this proposal is consistent with the Comprehensive Plan, both for the area that was always within the City and that area that was annexed in 1996.

4. The proposed use is timely considering the capacity of the transportation system, public facilities and services existing in the area, including such improvements that are funded in the City's Capital Improvement Programs.

See discussion under Zone Change Criterion #5 above.

5. Conditions can be placed on the proposed use to avoid significant adverse impacts or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use with uses existing in the area.

Both City and County Staff have suggested many conditions that are to be placed on this approval to insure that there are no significant adverse impacts to the surrounding area or to the shoreline area. The Hearing Examiner will require most, if not all, of those conditions as part of this approval and, in doing so, finds that those conditions will avoid significant adverse impacts on surrounding areas.

6. For shoreline conditional use permits the following additional criteria apply:

a. The proposed use will not interfere with the normal public use of public shorelines.

The site plan shows trails leading from the public roads down to the shoreline. Presumably, they would be open to the public. The proposal does not include a trail along the shoreline for the length of the project. The applicant's representative testified at the public hearing that they would develop an easement for this area and, at such time as the Centennial Trail may be extended either to the north or south boundary of this property, then that public easement would allow the centennial trail to be built through the site along the shoreline. It was not the intent, however, of the project applicant to build that trail.

25. The applicant may construct entry signs for the PUD at each entrance, but only on one corner of an intersection. These signs should be low-profile monument-type signs, and a final design of the signs must be submitted to Planning Services for its review and approval.

26. The 100-foot buffer area adjacent to the Spokane River shall have a public access easement placed upon it. It will be made available for construction of a trail, such as the Centennial Trail, if such a trail is extended to the north or south property line of this site. This easement shall be filed with the County Auditor and the easement shall be identified by number and content on the face of any final plat that has frontage on the river. This 100-foot buffer shall be measured from the Ordinary High Water Mark and shall be identified as a buffer area rather than a building setback. The existence of this buffer area with its public access requirement shall be addressed in the CC&Rs.

27. The 100-foot buffer area adjacent to the Spokane River shall remain in its natural state and shall not be disturbed. No structures shall be built therein. Trimming of trees within this area shall not be allowed except for life/safety reasons and any proposed trimming requires written approval from the shoreline administrator. This area may be enhanced by the planting of native species such as mock orange, Oregon grape, etc. This condition shall be on the face of the final plat.

28. The 100-foot buffer area boundary shall be marked in such a manner as to be obvious to future property owners that this is an area where the vegetation is to remain natural. The method of marking the boundary is the platator's option subject to approval by the City of Spokane at final plat time. The method of delineation shall appear on the face of the final PUD plan for this area.

B. Prior to Approval of the Final Plat:

29. The applicant shall submit the following plans to the Engineering Department for its review and approval:

- a. Construction plans for all streets and sidewalks in and adjacent to the plat;
- b. A detailed plan for water service to be constructed to serve the plat;
- c. A detailed plan for sanitary sewers constructed to serve this plat;
- d. A "208" storm drainage and grading plan, which includes an erosion control plan, along with any required geotechnical report.

30. A fire protection plan demonstrating that there exists the necessary fire flow and showing the location of all fire hydrants shall be submitted to the Fire Department for its review and approval.

**Partial verbatim transcript of testimony given at the hearing held on
December 7, 2006;
Continued to December 20, 2006;
Continued to final hearing on May 11, 2007**

**An Application by Yong Lewis
for a 100-unit Planned Unit Development named Tuscan Ridge**

Hearing Examiner File No. Z2005-121-PUD

[Testimony up to this point is not transcribed.]

HEARING EXAMINER: Could you state your name and address for the record?

MR. OGRAM: Excuse me. Fred Ogram, 424 East Sherman Avenue, Coeur d'Alene, Idaho.

We have assembled a really top-notch team that's very aware of the local conditions. You can see Mike has introduced them and they will all testify in greater depth than I will, but my role here is to kind of run through and give a broad overview of the land use issues and how we've developed conceptual architecture and site planning to date. The project is located here within the city limits, 57th and Hatch. You can see in this map, an aerial, that it is located on a hillside below Quail Ridge. Above there is City conservation area. There is overhead utility easements on either side. Qualchan Golf Course and Latah Creek below, and the Bridalwood development adjacent to that (inaudible). Again being consistent with the underlying Comprehensive Plan that shows it's within the City limits, it is in residential single family. You can see here is the City limit boundary. Again shows the conservation area and its adjacencies. The overall Master Plan has been developed to be contact sensitive and carefully sited to have the road systems and the arrangement of the architecture to follow the underlying slope, and to be set into the hill rather than over or off of it. And you will see images of that a little bit later. There is proposed an access to the project off of Hatch and 57th, and it would come off of here, drop down, and then there is an entry feature right here as the road terraces down the slope to access the architectural units. We are currently and have continued to work with the City Parks Department in developing a potential public access trail head that would be within our project, and then provide improvements and access onto some of the existing trails that meander through the conservation area. That process continues to evolve, and we're making really good headway with coming up with something that will improve public access through the project and adjacent to it. This image places the project a little bit more transparently through the development,

current development contacts. You can see Quail Ridge assuming kind of a high ground at the top of the hill, and you can see its arrangement of the architecture that follows that natural contour. However, they're at the top of the slope here. You'll notice that our architectural arrangement has similar size and scale units in a very similar arrangement, and again terracing down the hill. We have also access internally with an internal trail system that connects up and meanders through the property to create connections to the adjacent conservation area through on-site trail head. The other thing to see here is the density of bull pine and existing vegetation and the arrangement of the architectural units within that context. Through careful site planning and arrangement and design of these proposed architectural units we have maintained major tree stands, created corridors and vistas where we can between it, but also doing some fire smart concepts to reduce fuel load with some of the dead and dying or diseased trees around here so that being consistent with fire smart landscaping we actually are trying to reduce some of the fire hazard that is currently present with the density of some of the existing vegetation. Site characteristics and views off the site. This is up on Hatch, and you can see the basic arrangement of the slope. You can see the native grasses and the tree stands. The views from the site are spectacular. The beautiful, long-distance views of the Hangman Valley and Latah Creek below, it's a beautiful site for an in-fill type of project. Again, this gives you an indication of the density of the vegetation. You can see there are some areas on site that are light, and you can see exposed rock and gravel, and then other areas that are very dense. But, again, the off-site views. This gives you an indication of what the location is looking across the valley up at it. You can see Quail Ridge up above and Tuscan Ridge would be sitting just below that in this general zone. Dropping down off of 57th and Hatch, this is our entry road into the entry monument. And in keeping with the Tuscan vernacular and the ideas of a beautiful hillside development, we have characterized this in a Tuscanesque kind of fashion. The project is super high quality and will be a real attribute in the way that it's marketed, and the underlying guidelines to keep the quality at a really high level. A proposed median with a really understated entry monument coming off of Hatch and 57th on the curve as you drop down. Again, beautification of this corner and understated high quality materials. This would be a typical trail head and keeping with the current design idea. This would be an internal trail head. Tuscan Ridge will be over here behind it, and this gentleman is walking out accessing onto the improvements to the existing conservation area trails.

[Testimony after this point is not transcribed.]

**Partial verbatim transcript of testimony given at the hearing held on
October 27 2000**

**An Application by Fort Wright LLC
for a Preliminary Plat, Planned Unit Development, Zone Change, and Shoreline
Substantial Development Conditional Use Permit for the River Run Preliminary
Plat**

Hearing Examiner File No. Z20050ZC/PP/PUD/SL

[Testimony up to this point is not transcribed.]

MR. SCHULTZ: Good morning Mr. Smith. I'm Stan Schultz, my office address is 1100 U.S. Bank Building.... [skipping to point in testimony that addresses the trail] ... Lastly, with regard to the 100 foot buffer area. Um.... Some of the lots are ... um ... are greatly impacted by that buffer, and some aren't. I think as you can see the lots, which are basically in the middle of the frontage there are heavily impacted by the buffer ... um ... in terms of their buildable area and usable area. However, the ... um ... the idea of a setback, obviously no buildings will be constructed within that area. And, at the present time, it appears that the ... that the ... natural buffer within even those lots, will be ... it will be acceptable, uh, as a design criteria.

The problem with the ... uh ... the issues with the trail ... uh ... Centennial Trail, what the developer has proposed is that, when this area is platted and the 100-foot buffer area is deeded to the Home Owners Association, it will be owned by all of the people who own property within this development. And, uh, within that document, um, there will be reserved the right to have a Centennial Trail, some organized trail, um, on a defined easement, uh, allowed to be constructed in that area. However, I'm shh, as you can readily understand, um, at the present time, uh, the interest of the developer is that that the Centennial Trail build, operate, and maintain that trail, and provide, uh, liability insurance for people that use it. Um, if we, if the trail was constructed presently, obviously, the developer and/or the Home Owners Association, it would be private property, um, with public access across it, and the liability issues become, um, really overwhelming for a Home Owners Association to deal with over time. Um, so, I think the, the solution to this is really one born of a liability issue, and that is that the, that an eas – an area for the trail can be reserved in this common area. And, it can be built, uh, as long as a public entity, uh, agrees to build, operate it, maintain it, and insure it. Um, for those uses, so, uh, Conditions, uh, Condition #2, uh, is not acceptable. Um, for that reason, and, frankly, um, I know of no, uh, I don't know of any legal basis to, to um, to require that, um, that kind of condition. Um, southerly, the other the other.

UNKNOWN SPEAKER: [inaudible]

MR. SMITH: Yes sir?

UNKNOWN SPEAKER: Could you remind me what, um, #2 is?

ANOTHER UNKNOWN SPEAKER: Want me to read that?

MR. SMITH: Oh, I'm sorry. Okay. Number 2 calls for a, um, a public pathway in the 100-foot buffer area, and then it also says that if the Centennial Trail is extend, that the, uh, trail will be improved to, uh, a 12-foot-wide solid surface that meets American with Disabilities Act standards. And, the improvements will be paid for by the developer, not the Home Owners Association. That's #2.

UNKNOWN SPEAKER: Question.

MR. SMITH: Yes sir?

UNKNOWN SPEAKER: Um, I came late, and I didn't get a copy of the agenda and proposal. Is there one available?

MR. SMITH: Um, do you have another, can you make another copy? ... We'll make you a copy. We made some for people earlier.

Some inaudible background conversation.

MR. SMITH: We'll make more. Oh, I guess we had an extra. Anybody else need a copy of that? Okay. Go ahead Mr. Schultz.

MR. SCHULTZ: Oh thank you Mr. Smith. That, um, uh, also will be number, uh, the condition resulted from Design Review #4 on the last page, um, uh, indicates that the ...

MR. SMITH: Would, would you read that condition.

MR. SCHULTZ: Yes.

MR. SMITH: So that.

MR. SCHULTZ: It says that if the trail becomes a condition of approval, this staff member (who I assume is the Design Review staff member), would recommend that the northerly end of the trail be moved back to sh, to into what is shown on the preliminary plat as Riverbend Court due to topographical constraints and lack of ownership. Uh, the southern end can be physically connected to Government Way.

Um, the only issue with regard to, um, looping it back into Riverbend Court is that, again, that would be across Home Owners Association property, and again, you'd have members of the general public basically on private property. Um, and so some, if that could occur, some issue or some, uh, again the matter would have to be constructed by a public entity, and operated, maintained, and insured by them. Um, the other problem, maybe that, um, it is not necessarily true that all of the roads within this, uh, plat would...could necessarily be public roads. Some may be private. So there may be, uh, no access, uh, across the, the roads that are within this plat. Um, or portions of it. As, as time develops; so, um, again the issue here is that the ... the property that, uh, will become a home owners property is private property to be owned by that Home Owners Association. It's not intended to provide public access. There is no public access presently. And, as I'm sure you are aware, the master program indicates that we need to safeguard areas where there is existing public access to the public property. And, um, of course this property has been private for years. And, no, and no, um, no public access to the public property. So, that the, the liability issues are considerable. Um, I've had some personal experience with it. The area where I live, um, the Home Owners Associations are, um, are uh, are, find it difficult to, um, insure against the risks which are, uh, created when, uh, the public has general access to their properties. So, I, I, the only real way that this can operate is to have, uh, is to have a trail, if there is one, constructed, be constructed by a public body, who, um, has a liability insulation that private entities don't. And, uh, so for that reason, we would provide the easement in an area for it to be constructed. And, if a public entity wanted to construct, operate, and maintain it, um, that we'd provide for that reservation in the covenants.

[Testimony after this point is not transcribed.]