

CITY OF SPOKANE HEARING EXAMINER

Re:	Shoreline Conditional Use Permit (SCUP))	FINDINGS, CONCLUSIONS,
	Application by the City of Spokane)	AND DECISION
	Department of Engineering Services for)	
	the construction of a stormwater)	FILE NO. Z19-0008SCUP
	treatment swale, a buried stormwater)	
	storage tank, and associated pipes and)	
	pumps, adjacent to the Spokane River,)	
	along N. Erie Street)	

SUMMARY OF PROPOSAL AND DECISION

Proposal: The City of Spokane Department of Engineering Services ("Engineering Services") is proposing to construct a stormwater treatment swale, a buried stormwater storage tank, and associated pipes and pumps. There will also be an extension of the Ben Burr trail across the project parcels that will connect with a trail segment to be constructed by Washington State Department of Transportation (WSDOT) under the Trent Bridge.

Decision: Approved, with conditions.

FINDINGS OF FACT BACKGROUND INFORMATION

Applicant/Owner: City of Spokane
808 W. Spokane Falls Boulevard
Spokane WA 99201

Owner: Union Gospel Mission
UGM Foundation Inc.
PO Box 4066
Spokane WA 99202-0066

Property Location: The proposed site is located at 1206 E. Trent Avenue and 513 N. Erie Street, Parcel Nos. 35174.0562, 35174.0561, and 35174.0528. The legal descriptions of the parcels that make up the site are provided in Exhibit 2A.

Zoning: The property is zoned Heavy Industrial (HI).

Comprehensive Plan Map Designation: The property is designated as HI in the Comprehensive Plan for the City of Spokane ("CP").

Shoreline Designations: Limited Urban Environment (LUE) Designation, 75-foot Shoreline Buffer, and Campus/U District Shoreline District.

Environmental Overlays: Habitat and Species, Riparian Habitat Area 2

Site Description: The subject property is located adjacent to the Spokane River, along N. Erie Street and directly south of the E. Trent Bridge. The project site is currently being used as a grassed park-like area, and Erie Street is a gravel road. The area is flat and is immediately adjacent to and approximately 10 feet above the Spokane River. The Spokane River is designated by the Shoreline Management Act (SMA) as a shoreline of statewide significance and, therefore, subject to the requirements of the Shoreline Master Plan (SMP). The SMP designates this area as within the Shoreline LUE Designation and the Campus/U District Shoreline District with a 75-foot buffer from the Spokane River.

Surrounding Conditions and Uses: The Spokane River is adjacent to and westerly of the site. The Union Gospel Mission facilities are east of the site. Second Harvest is located to the south of the property. The Iron Bridge Complex is located to the north of the site. The properties to the east of the Spokane River and south of Trent Avenue, including the project site, are zoned HI. The properties to the east of the Spokane River, and north of Trent Avenue are zoned Light Industrial. The properties to the west of the Spokane River are zoned CC1-DC, a centers and corridors classification.

Project Description: Engineering Services is proposing to construct a stormwater treatment swale, a buried stormwater storage tank, and associated pipes and pumps. This facility is necessitated by state regulations that discourage direct discharge of stormwater to the river without treatment. Also included in the project is an approximately 12-foot-wide trail parallel to and adjacent to the shoreline, part of a future Ben Burr to Iron Bridge Trail planned for the south side of the Spokane River. This trail will connect with a trail segment that will be constructed by WSDOT. The finished grade where the segments connect will be approximately a half foot below the Ordinary High Water Mark (OHWM).

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17G.160, Land Use Application Procedures; and SMC 17G.060.170(C), Decision Criteria

Notice of Community Meeting: Mailed: December 26, 2018
Posted: December 27, 2018

Notice of Application/Public Hearing: Mailed: March 11, 2019
Posted: March 11, 2019

Community Meeting: January 10, 2019

Public Hearing Date: April 11, 2019

Site Visit: April 10, 2019

SEPA: A Determination of Nonsignificance (DNS) was issued by Engineering Services, the lead agency, on January 11, 2019.

Testimony:

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

Dan Buller
City of Spokane Engineering Services
808 West Spokane Falls Boulevard
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report dated 04/03/19
 - 1A Revised Planning Services Staff Report dated 04/09/19
2. Application, including:
 - 2A General Application
 - 2B Floodplain Development Permit Application
 - 2C Shoreline/Critical Areas Checklist
 - 2D Conditional Use Permit Application
 - 2E Notification Map Application
 - 2F State Environmental Policy Act (SEPA) Checklist
3. Request for Comments Letter dated 01/11/19
 - 3A Revised Request for Comments Letter dated 02/19/19
 - 3B Spokane Fire Department dated 02/20/19
 - 3C Washington State Department of Archaeology and Historic Preservation (WSAHP) dated 01/17/19
 - 3D Spokane Tribe of Indians dated 01/23/19
 - 3E Washington State Department of Ecology (WSDOE) dated 01/24/19
 - 3F Avista dated 03/07/19
4. DNS dated 01/11/19
5. Community Meeting instructions dated 12/20/18
 - 5A Notice of Community Meeting
 - 5B Affidavit of Mailing dated 12/26/18
 - 5C Affidavit of Posting at Library and City Hall dated 12/27/18
 - 5D Affidavit of Posting at project site dated 12/27/18
 - 5E Community Meeting Sign in Sheet
 - 5F Community Meeting Presentation
 - 5G Community Meeting Summary
6. Notice of Application Instructions dated 03/06/19:
 - 6A Notice of Application & Public Hearing
 - 6B Affidavit of Mailing dated 03/11/19
 - 6C Affidavit of Posting at project site dated 03/11/19
 - 6D Affidavit of Posting at Library and City Hall dated 03/11/19
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation
- B Exhibits received after the hearing:
 - B-1 Clarification of Fire Department's Condition #4

- B-2 Letter from the Hearing Examiner to Planning & Development and Engineering Services dated 04/29/19 requesting additional information
- B-3 Response letter from Engineering Services to the Hearing Examiner dated 05/06/19
- 5D-2 Correction to Exhibit 5D, listed above

The record on this matter was left open until close of business, Thursday, April 18, 2019, to include a hard copy of Staff's PowerPoint presentation, obtain a corrected Affidavit of Posting on the project site for the Notice of Community Meeting dated 12/27/18 to add the location of the posting, and to clarify the Fire Department's Condition #4 given that the applicant indicated there is access without constructing a new temporary turnaround for emergency vehicles.

FINDINGS AND CONCLUSIONS

To be approved, the proposed SCUP must comply with the criteria set forth in SMC 17G.060.170(C) and 17G.060.170(D). The Hearing Examiner has reviewed the proposed SCUP and the evidence of record with regard to the application and makes the following findings and conclusions:

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

The project site is zoned HI, an industrial zoning category. The uses allowed in the industrial zones are shown on Table 17C.130-1. The table does not specifically identify a stormwater treatment facility among the regulated uses. However, the table does show that "Basic Utilities" are permitted in the HI zone. See Table 17C.130-1. "Basic Utilities" include water and sewer pump stations, sewage disposal and conveyance systems, water towers and reservoirs, water quality and flow control facilities, water conveyance systems, and stormwater facilities and conveyance systems. See SMC 17C.190.400(C). The proposed project is properly characterized as a Basic Utility and, therefore, is outright permitted in the HI zone.

The project site is also designated as an LUE under the shoreline regulations. The proposed stormwater facility fits within the definition of a "Non-Water Oriented Use." See SMC 17E.060.360; see also Exhibit 1, p. 6. Pursuant to Table 17E.060-04, new construction or expansion of existing utilities or facilities is a Limited or Conditional Use ("L(2)/CU") on LUE-designated property. See Table 17E.060-04. Thus, a SCUP is required in order to allow this project. In addition, new construction or expansion of existing utilities or facilities that are Non-Water Oriented shall not be allowed in the shoreline jurisdiction unless it can be demonstrated that feasible alternatives are not available. See SMC 17E.060.700(2). If that can be demonstrated, then the proposed use may be permitted. See *id.*

Although this project is permitted outright in the underlying zone, the shoreline regulations also apply. Pursuant to those regulations, the Applicant is required to obtain a SCUP for this project. So long as the requirements for the shoreline conditional use and the other criteria are satisfied, the project is allowed at this site. Therefore, this criterion for approval is met.

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

The project is designed to control the flow of untreated stormwater into the Spokane River during storm events. *Testimony of D. Buller*. The project is necessitated by state regulations, which discourage direct discharge of stormwater into the river without treatment. See Exhibit 2D. As a result, while the project does have some environmental impact, from a broader perspective the project serves to protect the environment, in particular the Spokane River. In this fashion, the project protects and preserves a river corridor for the health and enjoyment of the public. See CP, Policy PRS 1.2, River Corridors. The project also fulfills the intent of Goal CFU 5 of the Capital Facilities Element, which states as follows:

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

See CP, Goal CFU 5, Environmental Concerns. The project also fulfills the policies underlying this goal by controlling the impacts of runoff. For example, Policy CFU 5.3 – Stormwater states: “Implement a Stormwater Management Plan to reduce impacts from urban runoff.”

In addition to the foregoing, the proposed facility is consistent with a variety of other goals and policies of the CP, as set forth in the Staff Report. See Exhibit 1, p. 4. As a result, the Hearing Examiner concludes that this criterion is satisfied.

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

The decision criteria for Type III decisions (such as an SCUP) mandate that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). In addition, under the concurrency standards, facilities for public wastewater (sewer and stormwater) must be evaluated for concurrency. See SMC 17D.010.010(I). Accordingly, on January 11, 2019, and February 19, 2019, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction.

The City received limited responses to its request for comments. See Exhibits 3B-3F. Upon reviewing the comments, City staff noted that “...there were no departments or agencies that reported that concurrency could not be achieved.” See Exhibit 1, p. 5. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. The concurrency provisions of the SMC state that a lack of response by a notified facility or service provider shall be construed as a finding that concurrency is met. See SMC 17D.010.020(B)(1).

A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied. The proposal, by its nature, does not place substantive demands on public infrastructure or services. If anything, the proposal improves public services by adding facilities to treat and dispose of stormwater. See Exhibit 2F (Environmental Checklist ¶ B(15)).

The Hearing Examiner finds that the project satisfies the concurrency requirements of the SMC. Therefore, this criterion for approval of the SCUP is met.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of*

ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).

The Hearing Examiner concludes that the property is suitable for the proposed use, given its physical characteristics. The site is basically flat, although there are steep slopes on the westerly border along the bank of the Spokane River. See Exhibit 2F (Environmental Checklist ¶ B(1)(a)-(b)). The proposed improvements and facilities will be installed in the adjacent right-of-way (ROW) and in the flat area of the parcels. All work will be done above the OHWM. The project is designed to fit within the available space, and in the portions of the property that are appropriate for this type of development. The location for the project is also appropriate. The stormwater facilities are being installed in the HI area, at the intersection of Trent Avenue and Erie Street. Further, the project is designed to capture and treat stormwater that would otherwise flow directly into the river. See Exhibit 2F (Environmental Checklist ¶ A(11)).

The site is currently a grassy field that is used like a small park. See Exhibit 2D. There are a small number of trees and shrubs on the site as well. See Exhibit 2F (Environmental Checklist ¶ B(4)(a)). Existing grass and some trees will be removed. See Exhibit 2F (Environmental Checklist ¶ B(4)(b)). The grass and trees will be replaced, however. See Exhibit 2F (Environmental Checklist ¶ B(4)(d)). Notably, the proposed swales will be covered with grass, allowing the site to continue to be used like a park in the future. See *id.* However, the swale will fill with water at wet times of year, periodically preventing its use as a park. See *id.*

The site is adjacent to the Spokane River, but the portions proposed for development do not contain surface waters. See Exhibit 2F (Environmental Checklist ¶ B(3)(a)(1)). The groundwater level is approximately 10 to 20 feet below the surface, depending on the time of year. See Exhibit 2F (Environmental Checklist ¶ A(14)(b)(1)). However, the project is designed to capture and treat stormwater before it enters the groundwater or the Spokane River. See Exhibit 2F (Environmental Checklist ¶¶ A(14)(a)(1) & B(3)(c)). The project will, therefore, serve to protect groundwater and the Spokane River from pollutants. If anything, the project will have a net positive effect on the environment.

There are no buildings, structures, or sites on the property that are listed or eligible for listing in national, state, or local preservation registers. See Exhibit 2F (Environmental Checklist ¶ B(13)(a)). However, it is possible that the site, being adjacent to the Spokane River, may contain evidence of historic, archaeological, or cultural significance. See Exhibit 2F (Environmental Checklist ¶ B(13)(b)). A cultural report prepared for this site in 2015 recommended monitoring during construction due to the potential for discovery of culturally significant items. See *id.* The Spokane Tribe of Indians also characterized the site as being in a "high risk area," and requested that the project include monitoring by a professional archeologist and the incorporation of an inadvertent discovery plan. See Exhibit 3D. Under the circumstances, the city has proposed a condition requiring monitoring and an inadvertent discovery plan for this project. The Hearing Examiner concludes that the proposed condition is appropriate under the circumstances. As a result, the proposed condition has been incorporated in to this decision. See Condition 4.

Based upon the foregoing, the Hearing Examiner finds that this criterion for approval is met.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding*

area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).

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

On or about January 5, 2019, Engineering Services prepared an environmental checklist, pursuant to SEPA, for the proposed stormwater facility. See Exhibit 2F. The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties.

There are no wetlands or streams on the land to be developed, although the Spokane River is adjacent to the site. See Exhibit 2F (Environmental Checklist ¶ B(3)(a)(1)). No threatened or endangered species were identified on the site. See Exhibit 2F (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The project is not anticipated to create any significant noise or light. See Exhibit 2F (Environmental Checklist ¶ B(7)(b) & B(11)). No waste materials will be discharged into the ground or into surface waters, barring some type of accident. See Exhibit 2F (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No environmental hazards are anticipated to arise due to this project. See Exhibit 2F (Environmental Checklist ¶ B(7)(a)).

The potential impacts of this project are those typical of construction projects, such as vehicle exhaust and noise. See Exhibit 2F (Environmental Checklist ¶ B(2)(a)). The impacts of construction are temporary. *Testimony of D. deBit*. In addition, the applicant will be required to use best management practices to protect the shoreline during the construction process. See *id.* Once the project is completed, there will be minimal impacts due to the proposed use. Traffic to and from the site, for example, is *de minimis*. See Exhibit 2F (Environmental Checklist ¶ B(2)(a)).

On January 11, 2019, Engineering Services, as lead agency, issued a DNS for the project. See Exhibit 4. Any appeal of the DNS was due on or about January 25, 2019. See *id.* No appeal of the DNS was filed.

There is no substantive evidence in this record that environmental impacts make the project unfeasible or materially problematic. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS to challenge this conclusion. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review. As a result, the Hearing Examiner concludes that this criterion for approval of the SCUP is satisfied.

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

Currently, contaminated stormwater is flowing from a drainage area east of the Spokane River and north of Trent Avenue into the Spokane River. This "Stormwater Drainage Area" is about ½ mile long and includes an industrial area. See Exhibit 5G; see also *Testimony of D. Buller*. The pollutants in the stormwater include polychlorinated biphenyls (PCBs). *Testimony of D. Buller*. None of this stormwater is treated. See *id.*

The project site was selected because it is located very near to the point where the stormwater naturally drains into the Spokane River. *Testimony of D. Buller*. Once the stormwater facility is

constructed, the site can continue to be used like a park. See *id.* However, the site will also serve as a facility to treat stormwater so that contaminants are not discharged directly into the river. See *id.* It is an ideal location for a swale and a tank that can be utilized to treat the stormwater. See *id.* The stormwater will be collected in an underground tank, so that the flows can be controlled. See *id.* Thereafter, the water will be pumped to the swale for treatment. See *id.* The treated water will then be collected and piped approximately 100 feet to the south and discharged into non-contaminated soils and drywells. See *id.*

This project, as described above, is consistent with the policies of the SMA and the SMP for several reasons. First and foremost, the project will result in a stormwater facility that will prevent untreated, contaminated stormwater from flowing into the Spokane River. By doing so, the project protects water quality and aquatic/wildlife habitat by removing a potential source of river pollution. See CP, SMP 5.4. In addition, the soil under the grass is already contaminated from industrial activities in the area. *Testimony of D. Buller.* As part of the project, the city will remove the top two feet of soil, approximately, and line the bottom of the swale to assist in the collection of treated water, as described above. See *id.* These features of the project are also consistent with the objective to control pollution and prevent damage to the shoreline. See Revised Code of Washington (RCW) 90.58.020. They also protect the resources and ecology of the shoreline. See *id.*

The applicant must ensure that there is no net loss of vegetative cover in the shoreline. *Testimony of D. deBit.* As previously mentioned, grass and trees will be removed during construction, but that vegetation will be replaced. See *id.* In addition, the applicant will be required to implement a revegetation plan to compensative for any loss of natural vegetation in the shoreline. See *id.* In this way, the applicant will ensure that there will be no net loss of shoreline ecological functions. See CP, SMP 1.3 & 8.2.

The project preserves the use of the site as a park, although the site will also serve as a swale. The project includes trail improvements as well, providing additional access and recreational opportunities for public use of the shoreline. The SMA grants preference to alterations that increase recreational opportunities, enhance public access, and otherwise provide greater opportunities for the public to enjoy the shorelines of the state. See RCW 90.58.020. In addition, all of the improvements will be made above the OHWM, in order to minimize the impacts to the shoreline. This is consistent with the SMP. See CP, SMP 11.35.

The construction of the stormwater facilities in this location is also consistent with SMC 17E.060.700(2), which precludes utilities from being installed in the shoreline unless there are no feasible alternatives. Engineering Services has determined that even the least-cost alternative to the project is not feasible under the circumstances of this case. See Exhibit B-3, p. 1. Several alternative sites were considered, but very few are potentially viable options. See Alternative Treatment Swale Locations, attached to Exhibit B-3. One is too small, another is not available, and two more are not economically feasible. See *id.* The least-cost alternative will add a minimum of \$1,000,000 to the estimated project cost due to additional piping and property acquisition costs. See Exhibit B-3, p. 1. This assumes that the owner of the site is willing to sell the property to the city. See *id.* If the seller does not agree, the city would be required to use its eminent domain authority to acquire the site, adding another \$500,000 to the expense of the project, to pay attorneys' fees and other expenses related to the condemnation process. See *id.* The Hearing

Examiner concludes that the evidence submitted by Engineering Services, considered as a whole, is sufficient¹ to satisfy the requirements of SMC 17E.060.700(2).

Finally, the project, as designed and conditioned, provides adequate provisions to protect water quality, views, and archaeological sites, as well as guarding against erosion, among other things. See SMP 5.4, Provisions for Shoreline Protection.

Based upon the foregoing and the record in this case, the Hearing Examiner concludes this criterion is satisfied.

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

The project preserves the site's current use as a park-like area. In addition, the project will add a public trail along the south bank of the river, providing increased access and viewing opportunities for the public. See Exhibit 1, p. 7. The Hearing Examiner agrees with the Staff that the project will actually increase public access and views of the Spokane River. See *id.* During wet times, the availability of the park-like area will be reduced due to the presence of water. However, the Hearing Examiner concludes that this does not *unreasonably* interfere with the public use of the shorelines, especially considering that the project protects the river from an ongoing source of industrial contamination. In addition, the opportunities for public use are increased overall. This criterion for approval is satisfied.

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

In 2002, WSDOE approved an SCUP for the Iron Bridge development on the north side of Trent Avenue. See Exhibit 1, p. 7; see also Exhibit A-1 (Site and Surrounding Uses). WSDOT is also actively working on a project to replace the Trent Avenue Bridge, which will also require shoreline permits. See Exhibit 1, p. 7. However, there is no evidence in the record that the cumulative effect of various projects in the vicinity will undermine the SMP. This is especially true in this case, given that the proposal is intended to prevent an ongoing problem with contaminated runoff impacting the Spokane River. The Hearing Examiner agrees with the Staff that this criterion is satisfied.

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

There is no evidence in this record that the project will be incompatible with other authorized uses in the area or with uses planned for the area. The stormwater infrastructure will be buried in the site and in the adjacent ROW. See Exhibit 2D. There are no substantial structures above-ground that might interfere with access, use, or views of the shoreline. The site will be grassed and will retain a park-like appearance and function, although the site will be "sunken" about two feet, so that it functions as a swale. *Testimony of D. Buller.* The design fits well into the site and does not have any features that would apparently interfere with any adjoining properties or uses. The property is in an industrial and commercial area as well. See Exhibit 1, p. 7. Not only is the

¹ Engineering Services made several other arguments in support of the contention that the "no feasible alternative" requirement of SMC 17E.060.700(2) was satisfied. Because the Hearing Examiner believes Engineering Services' first and primary argument was sufficient to meet the standard, the Hearing Examiner does not find it necessary to analyze or consider the various other ways that the project may satisfy the standard.

proposed utility permitted outright in these types of zones, there is no concern that a stormwater utility would create material impacts on uses of that intensity. There was no testimony or evidence introduced at the hearing to suggest that the proposed use would be incompatible with surrounding uses. There are no proposed or planned uses that would be impacted by this project, to the knowledge of the Hearing Examiner. As a result, the Hearing Examiner concludes that this criterion is met.

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

The project will not cause any significant adverse effects on the shoreline environment, for various reasons. The project is landward of the OHWM. The project will result in the removal of some existing grass and trees, but the trees and grass will be replaced. *Testimony of D. Buller.* In addition, the project conditions require a vegetation restoration plan to be implemented in the event that natural vegetation is lost. See Condition 3.

The project will not undermine physical or visual access of the shoreline environment. The stormwater infrastructure will be installed underground. The ground surface will be restored and grassed to operate as a swale. The site will retain a park-like atmosphere and use. The project also includes trail improvements, thereby enhancing public access and views of the shoreline.

Certainly, there will be some impact from construction, but those impacts will be temporary and can be mitigated. Moreover, the project will ultimately result in improvement to the shoreline environment by preventing contaminated stormwater from reaching the Spokane River. The Hearing Examiner agrees with Staff that this criterion for approval is satisfied.

DECISION

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

1. Approval is for an SCUP to allow Engineering Services to construct stormwater treatment swale, a buried stormwater tank, and associated pumps and piping in furtherance of state regulations designed to protect the Spokane River.
2. The site shall be developed in substantial compliance with the plans submitted with the application, as well as comments received on the project from City Departments and outside agencies with jurisdiction.
3. The SMP, SMC 17E.060 and SMC 17E.020, require no net loss of shoreline ecological functions that could result from the proposal. A vegetation replacement plan will be required if any native vegetation is removed.
4. Per the comments submitted by the Spokane Tribe of Indians and WSAHP, monitoring and an inadvertent discovery plan shall be implemented into the scope of work. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane shall be immediately notified, and the work in the immediate area will cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from

WSAHP before excavating, removing or altering Native American human remains or archaeological resources in Washington.

5. The project shall adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County, Washington State, and any Federal agency.
6. SMC 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.
7. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 6th 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.

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 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.