

CITY OF SPOKANE HEARING EXAMINER

Re: Application for Shoreline Conditional Use Permit by Sagamore Spokane, LLC, to construct approximately 134 residential units in two buildings with inside and outside parking on property zoned HI and GC-150 )  
 )  
 ) FINDINGS, CONCLUSIONS, AND DECISION  
 )  
 ) FILE NO. Z20-079SCUP  
 )

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The applicant, Sagamore Spokane, LLC (“Sagamore”), has applied for a Shoreline Conditional Use Permit (SCUP). Sagamore is proposing to construct approximately 134 residential units in two buildings with inside and outside parking. It is within the 200-foot shoreline designation and, therefore, requires a Type III SCUP before the Hearing Examiner. This project is the second phase of the River Bend Development that will total approximately 300 units in four buildings.

**Decision:** Approved, with conditions.

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

Applicant/ Property Owner: Sagamore Spokane, LLC  
One East Camelback Road  
Suite 140  
Phoenix, AZ 85016

Agent: Stanley Schwartz  
Witherspoon Kelly  
422 W. Riverside Avenue  
Suite 1100  
Spokane, WA 99201

**Property Location:** The project site is bounded by the Spokane River to the north and Martin Luther King, Jr. Way to the south. The project site is located to the north and across from the intersection of Martin Luther King, Jr. Way and N. Erie Street. The site addresses include 111, 115, 119, 225, and 229 E. Erie Street. The site includes Tax Parcel Nos. 35174.0601 through 35174.0608, and is located in the City of Spokane, Washington.

**Legal Description:** The full legal description of the property is set forth in Exhibit 2.

**Zoning:** The property is zoned Heavy Industrial (HI) and General Commercial-150’ Height Limit (GC-150).

**Comprehensive Plan (CP) Map Designation:** The project falls within the Heavy Industrial (HI) and General Commercial (GC) CP land use designations.

**Shoreline Designations:** Limited Urban Environment Designation; 200-foot Shoreline Jurisdiction Buffer; Campus/U District Shoreline District.

**Environmental Overlays:** Habitat and Species, Riparian Habitat Area 2.

**Site Description:** The project site is approximately 13.16 acres and is essentially flat, having a grade of less than 2%. The project site is currently vacant and has been for decades. Major cleanup efforts continue due to previous industrial uses on the site and the contamination left behind. Given this history, the soils at the site is largely imported fill. The Hamilton Street Bridge bisects the site, with bridge piers located in the center of the property.

**Project Description:** Sagamore is proposing to construct approximately 134 multi-family dwelling units in two buildings on the southern portion of the site. There will be parking on the ground, and the first and second floors of one of the buildings. This project will be the second phase of an overall 300-unit development in four total buildings. In 2001, a SCUP and Binding Site Plan (BSP) was approved for the first phase of the development, which includes two slab-on-grade buildings immediately adjacent to the Spokane River. Building permits are currently being processed for that phase and are slated for construction within the year.

**Surrounding Zoning:** The property to the north, on the other side of the Spokane River, is zoned Centers and Corridors 1 (CC1). The property to the immediate west is zoned GC. The property to the south is zoned HI, Light Industrial (LI), or GC. The property to the east is zoned HI.

**Adjacent Land Use:** To the north of the site, on the other side of the Spokane River, is the McKinstry Building and another large office building. Easterly of the site are Second Harvest Food Bank and the Union Gospel Mission. West and south of the site are various commercial and industrial uses.

## **PROCEDURAL INFORMATION**

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

**Community Meeting:** March 19, 2020

**Notice of Application/Public Hearing:** Mailed and Posted: July 1, 2020

**Public Hearing Date:** August 20, 2020

**Site Visit:** September 11, 2020

**State Environmental Policy Act (SEPA):** A Mitigated Determination of Nonsignificance (MDNS) was issued on August 5, 2020, with an appeal period ending on August 19, 2020. No appeal was filed.

**Testimony:**

Dave Compton, Assistant Planner  
City of Spokane, Planning & Development  
808 W. Spokane Falls Boulevard  
Spokane WA 99201

Stanley Schwartz  
Witherspoon & Kelley  
422 W. Riverside Avenue  
Suite 1100  
Spokane WA 99201

David Cook  
Aspect Consulting  
710 2<sup>nd</sup> Avenue  
Suite 550  
Seattle WA 98104

Rustin Hall  
ALSC Architects  
203 N. Washington  
Suite 400  
Spokane WA 99201

Phil Altmeyer  
Union Gospel Mission  
1224 E. Trent Avenue  
Spokane WA 99202

Matt Gibb  
DCI Engineers  
707 W. 2<sup>nd</sup> Avenue  
Spokane WA 99201

Robert Hayes  
4215 East Calle Redonda  
Phoenix AZ 85018

**Present but did not testify:**

Gale Stanley  
ALSC Architects  
203 N. Washington  
Suite 400  
Spokane WA 99201

Eric Brown  
Brown Properties LLC  
PO Box 30668  
Spokane WA 99223

**Exhibits:**

1. Planning Services Staff Report
2. General Application, including:
  - A Shoreline Permit Application
  - B SCUP SMC Criteria
  - C Shoreline/Critical Areas Checklist
  - D Notification Map and Addresses
  - E Revised Phase 2 Site Plan
3. SEPA Checklist
4. MDNS
5. Request for Comments, including
  - A City of Spokane Engineering Comments
  - B City of Spokane Waste Water Comments
6. Public Comments
7. Noticing Documents
8. Parking Reduction Letters
9. Boundary Line Adjustment (BLA) Certificate of Approval
10. Design Review Board Staff Report

11. Community Meeting Documents
12. Pre-Development Final Comments
13. Staff Presentation
14. Applicant's Letter dated 08/18/20
15. Applicant's Presentation
16. Applicant's Additional Slide re: piling

## **FINDINGS AND CONCLUSIONS**

To be approved, the proposed SCUP application must comply with the criteria set forth in SMC 17G.060.170 and SMC 17E.060, the shoreline regulations. The Hearing Examiner has reviewed the proposed SCUP and the evidence of record with regard to the application and makes the following findings and conclusions:

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

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

The subject site is zoned HI and GC. Residential use categories are identified in SMC 17C.190.110. In that section, the term "residential household uses" includes multi-family dwellings such as apartments and condominiums, among other residential uses. See SMC 17C.190.110(C).

Multi-family uses are allowed outright on the GC portions of the site. See SMC Table 17C.120-1. The remainder of the site, which is zoned HI, also allows the proposed use, given that the project is located within one-quarter (1/4) mile of the Spokane River. See SMC Table 17C.130-1; see also SMC 17C.130.110(2)(a). Thus, the zoning code authorizes multi-family uses on the entire site.

The site is designated by the Shoreline Master Program (SMP) as being within the Limited Urban Environment (LUE) as well as the Campus/U District Shoreline District. See Exhibit 1. The Campus/U District Shoreline District contemplates a mixture of passive recreation and residential, academic, and other uses. See SMC 17E.060.830(A)(1). A multi-family project certainly fits within the mixture of uses in the vicinity. The project is designed to have campus-like amenities, which fit well with the adjacent University District. In addition, in LUE designated areas, multi-family residential uses (4 or more dwelling units) are allowed through a conditional use permit. See SMC Table 17E.060-4.

The shoreline regulations contemplate that multi-family development may take place in the shorelines. See SMC 17E.060.570(A). However, new multi-family residential development must provide public access to the shoreline, consistent with the requirements of SMC 17E.060.290. See SMC 17E.060.570(E). In addition, parking facilities, which are accessory to that use, are subject to certain restrictions. See SMC 17E.060.590(E) & (F).

The project has been designed to provide public access to the shoreline through parking facilities, pedestrian friendly layout and trail connections, open areas for public use, and the campus-like atmosphere that takes advantage of the site's proximity to the

Spokane River. Onsite parking will be required to adhere to the applicable code requirements, as reflected in the conditions of approval.

The Hearing Examiner concludes that the proposed use is allowed under the provisions of the land use codes and shoreline regulations, provided an SCUP is obtained and the other development regulations are satisfied. Therefore, this criterion for approval is fulfilled.

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 western-most portion of the site is designated as GC under the CP. See Exhibit 13 (Surrounding Land Use). GC supports a wide range of commercial uses. See CP, Chapter 3, Land Use, p. 3-39. This designation also allows higher-density residential use. See *id.*

The remaining property, which makes up the majority of the site, is designated as HI. See CP, Chapter 3, Land Use, p. 3-39. HI is intended to accommodate heavier industrial uses at locations where there is no interaction with residential uses. See *id.* However, higher density residential use is allowed in the HI zones, as previously discussed, when situated near the Spokane River. The CP reinforces that idea, stating that “river-oriented residential use” is allowed in industrial areas “along the Spokane River where residents can take advantage of the river amenity.” See CP, Chapter 3, Land Use, p. 3-12.

As the Applicant notes, the project site is adjacent to the University District and is close to downtown, the “regional center” of Spokane. See Exhibit 2A (Attachment to CUP Application). This multi-family project will provide additional housing for a broad range of individuals, including students, individuals who work in the University District and in the downtown area, medical professionals, and others. *Testimony of R. Hayes.* In addition to housing, the project provides “pedestrian pathways, visual access to the river, large open-space areas, off-street parking, as well as facilities by transit and bicycle use.” See Exhibit 2A (Attachment to CUP Application).

The project’s design is consistent with Goal LU 1, concerning citywide land use. The project features a range of opportunities for living, working, recreation, education, and cultural activities, in furtherance of that goal. See CP, Chapter 3, LU 1, p. 3-6. The project also reinforces downtown’s role as the urban center of the city, as contemplated by LU 1. See *id.* By developing higher density housing in this location, the project supports the efficient functioning of transit, in furtherance of Policy TR 3.4. See CP, Chapter 4, TR 3.4, p. 21. The design of the project promotes walking and pedestrian circulation, as contemplated by Policies TR 2.6 and 2.7. See Exhibit 1; see *also* CP, Chapter 4, TR 2.6, and 2.7, p. 15. In addition, the project has features that improve the appearance of development, encourage social interaction, and enhance the urban and natural environment. This aspect of the project fulfills Policy LU 2.1, relating to public realm features. See CP, Chapter 3, LU 2.1, p. 3-16.

The project also satisfies the intent and policies of the SMP, as is discussed below. See Paragraph 6. The Hearing Examiner also agrees with the analysis of Staff concerning this criterion. See Exhibit 1.

The Hearing Examiner concludes that this criterion for the approval of the SCUP is satisfied.

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

The application was circulated on May 4, 2020, among all City departments and outside agencies with jurisdiction. See Exhibit 1, p. 5; see *also* Exhibit 5. There were no departments or agencies that reported that concurrency could not be achieved. See *id.* The lack of comment from the various departments and outside agencies suggests that there are no unmet concurrency requirements. The Hearing Examiner concludes that this criterion is satisfied.

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 site plan for the Phase II is included in the record as Exhibit 2E. The site plan generally shows the location, size, and shape of the property. The plan also includes information about the physical characteristics of the site and other details about the proposed project.

The Applicant and its consultants expertly designed the project to account for the conditions of the site. This is not a small accomplishment. The site is bisected by the Hamilton Street Bridge, which certainly poses limitation on how the property can be developed and used. The site is also encumbered by industrial contamination, which is the subject of ongoing cleanup efforts. As the Applicant explained:

*The property is the subject of a Consent Decree (Spokane County Superior Court No. 02-205445) and is subject to institutional controls to remediate hazardous substances under the supervision of the WDOE. Applicant has been working with WSDOE to obtain a Prospective Purchaser Consent Decree (PPCD) under the Model Toxics Control Act, RCW 70.105D to include submitting environmental information and planned remediation to WDOE.*

See Exhibit 3 (Environmental Checklist ¶ A(8)); see *also* *Testimony of D. Cook*. Despite the challenges, the Applicant has presented a project that places buildings to take advantage of the unique benefit of being by the Spokane River, creates an attractive campus along the river for both public and private enjoyment, while also avoiding or minimizing the risk of disturbing the contaminants underground. See *Testimony of R. Hayes, D. Cook, R. Hall, and M. Gibb*.

The property is a suitable location for multi-family housing, despite the existing contamination. Cleanup efforts at the site have been ongoing for many years. The “responsible parties” and the Washington State Department of Ecology (WSDOE) entered into a Consent Decree, which established the cleanup strategy. *Testimony of D. Cook*. That strategy primarily involved identifying the extent of the contamination, placing a layer of soil over the contaminated area and contouring it to direct rainwater away from the

contamination, and ongoing monitoring of the ground water. See *id.* The Applicant is working with the WSDOE to draft a Prospective Purchaser Consent Decree (PPCD) consistent with the Model Toxics Control Act (MTCA). See *id.*; see also Exhibit 14. The Applicant anticipates that the PPCD will be signed shortly. *Testimony of D. Cook.* Through the PPCD, the Applicant will complete additional remediation, including “enhancing the existing cap and rock surfacing and creating impervious caps over significant portions of the Property to prevent stormwater infiltration and direct contact with impacted soils.” See Exhibit 14; see also *Testimony of D. Cook.* The WSDOE will be in charge of the additional remediation measures, per the PPCD. *Testimony of D. Cook.* In addition, the original Consent Decree will remain in place. See *id.*

The project has been designed to minimize the environmental risks. Whenever possible, the proposed buildings avoid the area that is contaminated. *Testimony of R. Hall and D. Cook.* In instances when the project encroaches into the contaminated area, such as to excavate for a foundation, the soil will either be put back to its original location, as appropriate, or will be removed and disposed of in an environmentally safe manner. *Testimony of D. Cook.* The excavation for the foundations of the buildings will be above the ground water level. *Testimony of D. Cook and M. Gibb.* The only penetration below the ground water level will be by the pilings to support Building IIB. *Testimony of D. Cook.* However, those pilings will be inserted using a technique that will ensure that the contaminants are not provided a route for migration. See *id.*; see also Exhibit 16. The contaminant itself is also very viscous, meaning it does not readily flow and, when not disturbed, will tend to stay in its current location. *Testimony of D. Cook.* While undertaking a development project on a contaminated site may not be the ideal, in this case the appropriate precautions are being taken, after thorough consideration of the conditions. In addition, the remediation work will be taking place under the direction of the WSDOE.

Drainage from the site will be handled in a manner that does not contribute to or exacerbate the underground contamination. The impervious surfaces of the project will assist in controlling the movement and infiltration of storm water into the ground. See Exhibit 2A (Attachment to CUP Application); see also *Testimony of D. Cook.* Storm water will be collected and stored in ponds. See Exhibit 2A (Attachment to CUP Application). In this manner, the storm water will be treated by bioinfiltration before being disposed of into the ground. See Exhibit 3 (Environmental Checklist ¶ A(14)(b)(2)). The bioinfiltration facility will be located outside the area of soil contamination. See *id.*; see also *Testimony of D. Cook.* No impacts to the ground water or the river are anticipated from this drainage. See *id.*

The site is essentially flat, so the slope or topography is not a significant challenge for development. The size and shape of the property are likewise not significant obstacles to development. The project has been designed to fit well with the slightly irregular shape of the property and the presence of the bridge, and there is plenty of area to accommodate the project as designed. Thus, there is nothing about the size, shape, location, or topography of the property that makes it unsuitable for this development. City departments and other agencies reviewing the project apparently agreed. None of those entities suggested that the site was unsuitable for the proposed development. See Exhibit 1, p. 6.

The site does not have any known historic or cultural features. See Exhibit 2A (Attachment to CUP Application); see also Exhibit 3 (Environmental Checklist ¶ B(13)(b)). There are no buildings or objects that are listed on or proposed to be listed on the national,

state, or local registers. See Exhibit 3 (Environmental Checklist ¶ B(13)(a)). If anything, the historic use of the site as a gas and tar facility suggests that no such resources are present. See Exhibit 2A (Attachment to CUP Application). No evidence was introduced at the hearing to demonstrate that there were historic or cultural features that needed protection. In addition, no comments were received from the Spokane Tribe of Indians or the Department of Archaeological and Historic Preservation. Irrespective of that, the usual protocols under State law apply to this project, as is reflected in the conditions of approval.

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

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

As the Applicant has explained, the property was previously the location of intense industrial activity, which resulted in a significant contamination of the site. See Exhibit 2A (Attachment to CUP Application). However, in 2002, the “responsible parties” entered into a Consent Decree with the State of Washington pursuant to MTCA. See *id.* This Consent Decree established a remediation plan to address the contamination on the site.

As discussed above, the Applicant has been working with WSDOE on both a new and amended Consent Decree. See *id.* Through these arrangements, the proposed development will incorporate environmental remediation measures that are acceptable to WSDOE. See *id.* The MDNS issued by the City sets forth a condition that memorializes that intent. See Exhibit 4. Specifically, the MDNS states:

*Under the Model Toxics Control Act (RCW 70.105D) the Applicant and WSDOE are addressing and mitigating the pre-existing environmental contamination through a Prospector Purchaser Consent Decree.*

See Exhibit 4. The MDNS was not appealed and, thus, the conclusion reached by the City, as the lead agency, is not subject to challenge. In addition, the Hearing Examiner finds that there is no evidence in this record that undermines the City’s judgment that the project, as conditioned, will not have a significant impact on the environment. See *also* Paragraph 4 above.

The record also does not contain evidence that the proposal creates any significant impacts on neighboring or surrounding properties. No neighboring property owners criticized the design of the project or contended that there would be unaddressed impacts, with the possible exception of a concern about traffic. Furthermore, the site is bisected by the Hamilton Street Bridge and contains substantial industrial contamination. This project will put an otherwise problematic piece of real estate to a use that will benefit future residents and the public. The project will create new opportunities to congregate, recreate, and enjoy the Spokane River, and will be an amenity that complements the adjacent University District. The site has already been the subject of substantial governmental scrutiny due to the existing contamination. New or modified consent decrees will ensure that the environmental concerns are being addressed going forward.



As just alluded to, there was one concern raised about the project, and that concerned traffic and parking. *Testimony of P. Altmeyer*. Mr. Altmeyer pointed out that Martin Luther King Way was only two lanes, which may not be sufficient to handle the traffic from this project. *See id.* He also worried that the parking may be insufficient, in particular given the parking variance. *See id.* The Hearing Examiner is sympathetic to these concerns. However, on this record, the Hearing Examiner does not believe he is in the position to impose additional traffic mitigation.

There are no comments from the City Traffic Department suggesting that additional traffic mitigation measures are needed, and no other traffic engineers testified on the matter. Thus, there is no expert testimony at this stage that would support the need for traffic mitigation. The Hearing Examiner has no specific information, for example, regarding the capacity of Martin Luther King Way and how that capacity is affected by the anticipated traffic from the project. The MDNS contains no traffic mitigation measures, and that determination was not appealed. The Applicant also pointed out that traffic impacts may still be addressed at the building permit stage, but that is a matter for discussion or negotiation with the City of Spokane at a later date. With respect to the parking, the parking variance was granted after due consideration of the issue following submission of the relevant information by the Applicant and consideration of a range of factors by the Planning Department. *See Exhibit 8.* That administrative decision was also unchallenged. At this stage, then, the Hearing Examiner is inclined to approve the project and allow the subject of traffic mitigation to be handled, as needed or appropriate, in subsequent discussions between the Applicant and the City.

The Hearing Examiner concludes that this project is not likely to have significant, negative impacts on the environment. To the extent impacts will occur, those impacts will be sufficiently mitigated. As a result, this criterion for approval 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)(a)(i).*

The site is designated as LUE in the CP. The LUE environment is “intended for development that creates a unique waterfront environment, enhances aesthetic appeal, provides public access, and allows compatible uses.” *See CP, Chapter 14, Shorelines, p. 14-18.* The proposal plainly satisfies this intent. One need only review the site plan and project renderings to see how the proposal will create a unique amenity along the shoreline. *See e.g. Exhibit 15.* Public access will be enhanced by the trail and access improvements as well as the open spaces that are incorporated into the design. The project is an allowed use under both the shoreline regulations and the zoning, which will blend well with the University District. *See Paragraph 1 above.* The proposal is also consistent with the policies directed specifically at the use of the shoreline environment, as discussed below.

The Applicant has been coordinating the planning of this project with City Planning as well as WSDOE, in particular given the underground pollution resulting from the site’s historic use for industrial purposes. In particular, the Applicant is working with the WSDOE on a PPCD to address additional measures for site remediation as the site is re-developed. In this fashion, the project fulfills Policy SMP 1.1, which calls for coordinated planning with state and local agencies. *See CP, Chapter 14, Shorelines, p. 14-23.*

The project will ensure that there is no net loss of ecological functions, consistent with Policy SMP 1.3. See CP, Chapter 14, Shorelines, p. 14-23. The project will incorporate additional remediation measures as well as impervious surfaces over the contaminant plume. See Exhibit 2A. Storm water will be collected and treated in ponds located outside the contaminated area. See Exhibit 3 (Environmental Checklist ¶ A(14)(b)(2)). These features will provide additional protections for the shoreline environment by reducing the likelihood that hazardous substances will migrate. See Exhibit 2A; see also Exhibit 3 (Environmental Checklist ¶ A(14)(b)(2)).

The project furthers several other policies contained in the SMP. Those policies are sufficiently discussed in the Staff Report and the Applicant's comments on the project. See Exhibit 1; see also Exhibit 2A. Rather than merely repeat that analysis, the Hearing Examiner incorporates those comments by reference.

The proposal is also consistent with the broader goals and objectives expressed in Revised Code of Washington (RCW) 90.58.020. One of the overarching goals of the Shoreline Management Act (SMA) is to promote public access the shorelines. See CP, Chapter 14, Shorelines, p. 14-8. As discussed above, the project will provide enhanced and additional opportunities for the public to use and enjoy the Spokane River. Furthermore, state policy encourages all reasonable and appropriate uses of the shorelines. See CP, Chapter 14, Shorelines, p. 14-8. State policy also prefers uses that are "consistent with the control of pollution and prevention of damage to the natural environment..." See CP, Chapter 14, Shorelines, p. 14-9. This project puts a former industrial site, which has significant contamination, to productive, beneficial use. The project will also incorporate remediation measures, under WSDOE supervision, that ensure that the pre-existing contamination does not migrate further to impact ground water or the river.

The Hearing Examiner concludes that the proposal fulfills the intent of the SMA as well as the SMP. Therefore, this criterion for approval is satisfied.

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

The site is currently vacant, although there is an existing asphalt trail providing pedestrian access along the shoreline. Through development of this project, the existing public trail will be enhanced to provide increased access and viewing opportunities for the public. See Exhibit 1. The project design includes not only enhancement of the trail, but also landscaping, greenspace, and other open areas providing places for viewing and enjoying the Spokane River environment. See Exhibit 2A. There is no evidence in this record that the proposed structures will unreasonably interfere with normal public use of the shorelines. Therefore, the Hearing Examiner concludes that this criterion 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)(a)(iii).*

There is no evidence, on this record, of multiple SCUPs affecting the shoreline in this vicinity. Therefore, there is no basis upon which to perform a cumulative impact analysis. The most recent SCUP concerned the adjacent property to the east. The City of Spokane installed a Combined Sewer Overflow (CSO) tank at that property in 2019. CSO

tanks are designed to reduce or prevent sewage from being discharged into the river and, thus, generally have a net positive effect on the shoreline environment. In addition, the development potential of that publicly owned property is limited. See Exhibit 1. The property to the west may be developed in the future. However, there is no current application to consider or analyze.

The Hearing Examiner concludes this SCUP will not contribute to cumulative impacts on the shoreline. Therefore, this criterion for approval is met.

9. *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)(a)(iv).*

The Hearing Examiner has already concluded that this multi-family project is consistent with the shoreline designation, the shoreline regulations, and the SMP. See Paragraphs 1, 2, and 6. It is also consistent with the zoning and CP. See Paragraphs 1 and 2. The Hearing Examiner further concluded that the surrounding properties will not experience significant impacts from this project. See Paragraph 5. The previous discussion of these issues clearly supports the conclusion that the proposal is compatible with surrounding properties and potential uses.

That being said, the surrounding area is undergoing substantial re-development at present with both public and private commercial projects. See Exhibit 1. The Staff concluded, and the Hearing Examiner agrees, that this residential development complements this growth and is consistent and desirable as outlined in the CP and SMP. See *id.* Moreover, by enhancing public access to the shoreline and incorporating open space amenities, the project is improving the connections between the site and the nearby University District and downtown. 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 the physical and visual access suffers no substantial detrimental effect. See SMC 17G.060.170(D)(a)(v).*

This site, in combination with Phase I of this development, is still subject to an existing Consent Decree with the WSDOE, Avista, and Burlington Northern Railroad. See Exhibit 1. Significant mitigation, rehabilitation, and restoration has occurred and will continue under MTCA. See *id.* This was made a condition of the SEPA MDNS issued on August 5, 2020. See Exhibit 4. In addition, a landscape plan will be required during the building review process to meet current development code standards and is intended to incorporate the recommendations found in the Design Review Committee staff report. See Exhibit 1. Finally, as previously discussed, this proposal will not have a negative impact on the ability to enjoy the Spokane River, and will in fact enhance the public's ability to access and view the River. The Hearing Examiner concludes that this criterion is satisfied.

## **DECISION**

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

1. 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.
2. 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 cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation (WSDAHP) before excavating, removing, or altering Native American human remains or archaeological resources in Washington.
3. The Applicant shall adhere to the conditions of the Parking Variance request granted by the Planning Director on August 7, 2020.
4. The Applicant shall adhere to all mitigation measures of the MDNS issued August 5, 2020.
5. The Applicant shall take into consideration recommendations of the Design Review Chair made on April 22, 2020.
6. This approval does not waive the Applicant's obligation to comply with all other requirements of the SMC, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
7. The Applicant shall adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington State, and any Federal agency.
8. Prior to the issuance of any building or occupancy permits, the Applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

## **COVENANT**

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

9. 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.

10. This approval is subject to the above-stated conditions. By accepting this approval the Applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above-required covenant constitutes the Applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

SIGNED this 11<sup>th</sup> day of September 2020.



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Brian T. McGinn  
City of Spokane Hearing Examiner

## **NOTICE OF RIGHT TO APPEAL**

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

On September 14, 2020 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 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.

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