

CITY OF SPOKANE HEARING EXAMINER

Re: Application for Shoreline)	FINDINGS, CONCLUSIONS, AND DECISION
Conditional Use Permit by the City)	
of Spokane to replace the Hatch)	FILE NO. Z20-145SCUP
Road bridge deck over Latah)	
Creek, along with other features.)	

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, City of Spokane Engineering Department, has applied for a Shoreline Conditional Use Permit (SCUP). The City is proposing to replace the Hatch Road bridge deck over Latah Creek, replace pavement on bridge approaches, temporarily relocate utilities, and install a right-turn lane between the bridge and Highway 195 (north side of Hatch Road).

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

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

Agent: Dan Buller
City of Spokane Engineering Department
808 W. Spokane Falls Boulevard
Spokane WA 99201

Property Location: The project is located entirely in the right-of-way (ROW), approximately 250 feet east of the intersection of Hatch Road and Highway 195. Directly south of parcel number 34083.0011.

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

Comprehensive Plan (CP) Map Designation: The project falls within the Residential 4-10 land use designation.

Shoreline Designations: Urban Conservancy Environment (UCE) Designation; 150-foot Shoreline Buffer; Latah Shoreline District.

Environmental Overlays: Habitat and Species, Riparian Habitat Area 6.

Site Description: The site is a part of the city’s ROW. Hatch Road bridge traverses over and across Latah Creek. Latah Creek is designated by the Shoreline Management Act (SMA) as a shoreline of statewide significance and, therefore, subject to the requirements of the City of Spokane Shoreline Master Program (SMP). The SMP designates this area

as within the UCE and the Latah Shoreline District with a 150-foot buffer from Latah Creek. The proposed turn-lane will be constructed in an unimproved portion of the ROW.

Project Description: The City of Spokane Engineering Department is proposing to replace the Hatch Road Bridge deck over Latah Creek, replace the pavement on the bridge approaches, temporarily relocate overhead utilities during construction, and install a right-turn lane between the bridge and Highway 195 (S. Inland Empire Way). The subject property is located entirely in the ROW, approximately 250 feet east of the intersection of Hatch Road and Highway 195, directly south of parcel number 34083.0011. South Hatch Road is designated as a minor arterial in the City's street network. The addition of the right-turn lane is proposed in an undeveloped portion of City ROW.

Surrounding Zoning: The land in all directions from the site is zoned Residential Single-Family, like the project site.

Adjacent Land Use: The site is developed with a bridge, roadway, and utilities. Latah Creek runs under the bridge. Highway 195 is just west of the bridge. There are residential areas east of the bridge. The land immediately surrounding the site is mostly undeveloped public land, including public ROW.

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: July 23, 2020
Posted: July 23, 2020

Community Meeting: August 11, 2020

Notice of Application/Public Hearing: Mailed: September 24, 2020
Posted: September 29, 2020

Public Hearing Date: October 29, 2020

Site Visit: October 27, 2020

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued on July 21, 2020, with an appeal period ending on August 4, 2020. No appeal was filed.

Testimony:

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

Dan Buller
City of Spokane, Engineering Department
808 W. Spokane Falls Boulevard
Spokane WA 99201

Exhibits:

1. Planning Services Staff Report
2. General Application, including:
 - A Shoreline Permit Application
 - B Shoreline/Critical Areas Checklist
 - C Notification Map and Addresses
3. DNS
4. SEPA Checklist
5. Hatch Bride Deck Replacement project presentation
6. Request for Comments, including
 - A City of Spokane Street Department Comments
 - B City of Spokane DSC Engineering Comments
 - C Spokane Tribe of Indian Tribal Historic Preservation Office
 - D Washington State Department of Ecology (WSDOE)
7. Noticing Documents
8. Community Meeting Documents
9. Staff Presentation

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); see *also* SMC 17E.060.360(A).

The project site is zoned RSF, a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17C.110.110. The table does not specifically identify city roads or related infrastructure among the regulated uses. See Table 17C.110-1. When uses are not listed in the zone code, the planning director is authorized to compare the proposed use to other uses in a particular zone, and on that basis decide whether a use is permitted or not permitted. See SMC 17C.190.030(B). As allowed by the code, the planning department determined that city roads have the essential characteristics of “basic utilities” because the transportation system is part of critical infrastructure serving the public. See Exhibit 1, p. 3.

“Basic Utilities” are allowed in the RSF zone as a limited (“L”) use. See Table 17C.110-1. However, the “limited use” restrictions do not apply to this proposal. The “L” standards require a conditional use permit for new buildings or larger additions (exceeding 1,500 square feet) to an existing facility. See SMC 17C.110.110(C). The proposal here is to resurface roadway and bridge, eliminate drainage into the creek, and add a turn lane to the existing road. The proposal does not include a “new building or a larger addition” to an existing facility, as contemplated by the municipal code. As a result, the project is allowed

in the RSF zone without needing a conditional use permit. The Hearing Examiner agrees with the Staff's conclusion in this regard. See Exhibit 1, p. 3.

The site is designated by the SMP as being within the UCE. See Exhibit 1, p. 1. The uses allowed in each shoreline environment are set forth in Table 17E.060-4. Elements of the proposed project undoubtedly are allowed outright as "maintenance" of an existing facility. See Table 17E.060-4 ("Capital Facilities and Utilities"). However, the project involves more than resurfacing the existing bridge and adjacent roadway. The project also includes the addition of new turn lane within the shoreline jurisdiction. In the Hearing Examiner's view, the additional turn lane qualifies as an "expansion" of an existing facility, which requires a conditional use permit. See *id.* In addition, "street expansions" that are part of the city's regional arterial network require a conditional use permit. See Table 17E.060-4 ("Transportation"). Again, the addition of a new turn lane would seem to qualify as a "street expansion." It should also be emphasized that shoreline regulations must be liberally construed to fulfill the purposes of the shoreline policies and regulations, i.e. the protection of the shoreline environment. See SMC 17E.060.040. Under the circumstances, the Hearing Examiner concludes that this project requires a conditional use permit under the shoreline regulations.

It should also be noted that "street expansions" of the city's arterial road network are not allowed in the shoreline jurisdiction "unless it can be demonstrated that no other feasible alternative is available." See SMC 17E.060.700(A)(9). This requirement is satisfied in this case.

The bridge is the only convenient path to cross over Latah Creek in the vicinity. This is evident from the detour route that will be utilized when the bridge is closed for repairs. The detour will require traffic from the South Hill to drive all the way to I-90 before circling back south on Highway 195. *Testimony of D. Buller, see also Exhibit 5 (detour route).* This project will not result in a new crossing of Latah Creek. The bridge has been there for many years and has served an essential function in the transportation system in the area. Short of creating new crossings, which would result in significant, new impacts to the shoreline, the maintenance and repair of this bridge is the only reasonable choice. There is no feasible alternative to this improvement project.

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 project primarily involves the replacement of the deck of the Hatch Road Bridge, the replacement of pavement on the bridge approaches, and the installation of a new turn lane. Given its primary purposes, the project most directly fulfills the objectives of the Transportation and Capital Facilities elements of the CP.

The CP suggests that priority should be placed upon fixing our existing infrastructure before expanding the system. See CP, Chapter 4, Transportation, p. 4-5. This project fulfills this objective by putting resources into repairing and restoring the bridge. The project ensures that the transportation system continues to have the capacity

to meet the demands of growth, in furtherance of Policy TR 2. See CP, Chapter 4, Transportation, p. 4-20. The project also keeps facilities within the ROW well maintained, as encouraged by TR 16. See CP, Chapter 4, Transportation, p. 4-26. The addition of the right-turn lane maximizes the use of available ROW to improve the transportation system, another objective of TR 16. See *id.*

Similarly, the Capital Facilities element calls for the city to provide and maintain adequate public facilities and utility services. See CP, Goal CFU 1, Adequate Public Facilities and Services. Policy CFU 1.2 of the Capital Facilities Element further provides as follows:

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

See CP, Policy CFU 1.2, Operational Efficiency. Land Use Goal 6 contains a similar objective, calling for the provision and distribution of adequate public facilities throughout the City. See CP, Chapter 3, Land Use, p. 3-28.

In addition to the above-referenced improvements, the project will also result in the relocation of utilities. See Exhibit 1, p. 5. Currently, stormwater from the bridge flows directly into Latah Creek. The project will result in that stormwater being re-routed to the public land between the creek and Highway 195, where the stormwater can infiltrate into the ground. This will reduce the existing environmental impacts to Latah Creek. As a result, the project 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.

There are other goals and policies that further support this project, as the Staff noted. See Exhibit 1, pg. 4. Given the foregoing, and the Staff's comments, 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 August 18, 2020, among all City departments and outside agencies with jurisdiction. See Exhibit 1, p. 4; see *also* Exhibit 6. 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).*

This site has been the location of the road and bridge for many decades. This experience confirms that the property is a suitable location for this infrastructure. Given this history, any decision regarding the suitability of the site was determined long ago. That being said, the proposal is to replace the deck of the bridge, repave the approaches to the bridge, and to add a right-turn lane. Thus, the project largely concerns the repair and maintenance of the existing facilities. The only change to the scope of the infrastructure is the addition of a right-turn lane. That additional lane is adjacent to the road/bridge and is on undeveloped, public property. The project adds only one additional lane and for the short distance between the bridge and Highway 195. The bridge is the only crossing over Latah Creek in the vicinity and serves an important role in connecting the South Hill to Highway 195 and to the areas to the west. Adding a turn lane makes a great deal of sense given the heavy reliance placed on this connection to the west.

There is no evidence in this record suggesting that the proposed improvements are not appropriate at this location. The site area is suitable for development per the site plan submitted with this application, as the Staff concluded. See Exhibit 1, p. 4. The City lists all physical and environmental elements located on the site, or in the vicinity, in its Environmental Checklist. See Exhibit 4. It should be acknowledged that the area where the right-turn lane addition is proposed is fairly sloped. See Exhibit 1, p. 5. As a result, the turn-lane project will require 400 cubic yards of fill. See *id.* However, there were no comments from city departments or other agencies suggesting that the site was not suitable for the project.

With respect to drainage, the project will actually result in greater environmental protection than the existing conditions. Stormwater falling on the bridge deck is currently piped directly to the Creek. See Exhibit 1, p. 5. This project will disconnect that pipe and reroute stormwater to the west end of the bridge where it will sheet flow onto the adjacent ground for treatment/infiltration away from Latah Creek, providing an improvement to the health of the Creek. See *id.*

The site does not have any known historic or cultural features. See Exhibit 4 (Environmental Checklist ¶ B(13)(b)). No evidence was introduced at the hearing to demonstrate that there were historic or cultural features that needed protection. However, comments were received from the Spokane Tribe of Indians requesting monitoring of all ground disturbing activity. The conditions of approval incorporate this protection. In addition to that, the usual protocols under State law apply to this project, which is also 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 Staff noted, the proposal was circulated among the relevant departments and agencies for comment. See Exhibit 1, p. 5. There were no specific comments suggesting that any probable or significant environmental impacts would result from the project. See Exhibit 6. In the only specific comment, the Spokane Tribe of Indians requested archeological monitoring during ground-disturbing activities. See Exhibit 6C. The project conditions incorporate that request, as well as reiterating the applicable requirements of state law. There were no public comments on this project. See Exhibit 9. Thus, the project conditions address the only specific concern raised in project comments.

The City prepared an environmental checklist for the proposal. See Exhibit 4. By the Hearing Examiner's review, that checklist does not suggest that there may be significant impacts from this project. See *id.* Not surprisingly, given these circumstances, the City issued a DNS for this project. See Exhibit 3. The DNS was not appealed. Thus, the SEPA process confirmed that the project will not have significant, environmental impacts that are not or cannot be adequately addressed by the proposed mitigation.

There will be impacts on the site during construction. See Exhibit 1, p. 5. However, such impacts are only temporary. In addition, there are long-term environmental benefits from this project. As previously mentioned, the project includes measures to ensure that stormwater is treated prior to reaching the creek. See *id.*

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 addressed by the project mitigation. 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 located within the UCE. As previously discussed, the maintenance and repair of the bridge and road, and the improvement or expansion of the road, are permitted in the UCE pursuant to the shoreline regulations. See Paragraph 1 above.

The proposal is also consistent with the SMP. There is no evidence suggesting that the proposed improvements will result in a net loss of shoreline ecological functions. See *e.g.* CP, SMP 1.3 & 8.2. To the extent that the construction work results in the removal of native vegetation, the City will be required to revegetate with native plants. This requirement is included as a project condition. In addition, the rule requiring "no net loss of ecological functions" is also a condition of project approval.

The City will be taking steps to ensure that no debris falls into the creek during the construction work. The project will re-route the stormwater so that untreated stormwater will no longer discharge directly into the creek. These features of the project, in addition to other mitigation measures, are 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 water quality and aquatic/wildlife habitat, as well as remove a potential source of river pollution, consistent with shoreline policies. See CP, SMP 5.4.

The Hearing Examiner concludes that the proposal is consistent with the map, goals, and policies of the SMP and state law. 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).*

As the Staff noted, this project does not interfere with the public use or enjoyment of the shorelines. The bridge does provide a viewpoint to Latah Creek, and that viewpoint will be unavailable during the four-month construction phase. However, this interference is only temporary. Once the project is completed, the public's ability to view and enjoy the shoreline will continue unaffected by this project. 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 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).*

This project is fairly limited in scope and primarily concerns the repair and maintenance of existing infrastructure. The Hearing Examiner agrees with Staff that the project will not have any material, negative impacts on surrounding uses. There were no public comments on the project, by neighboring property owners or anyone else.

There is no evidence in the record that the repair of the road/bridge will have any impacts on the surrounding area, other than the temporary inconveniences associated with construction. There will, by contrast, be some positive outcomes, including the treatment of stormwater, decreased road congestion, and extension of the life of the transportation infrastructure serving the area. Under the circumstances, the Hearing Examiner concludes that this criterion for approval 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).*

As previously discussed, this project will not have material impacts on the shoreline environment. See Paragraphs 5-6. On the contrary, in certain respects the

project will be an improvement. See *id.* In addition, the project conditions will ensure that native vegetation is replaced, as necessary, and that there is no net loss of ecological functions due to the project. See Paragraph 6. Further, this project will not impact the use and enjoyment of the creek by the public. See Paragraph 7 above. For these reasons and the reasons previously discussed, the Hearing Examiner concludes that this criterion for approval is fulfilled.

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. The SMP, SMC 17E.060, and SMC 17E.020, require that there be no net loss of shoreline ecological functions as a result of the project. A vegetation replacement plan will be required if any native vegetation is removed.
3. Per the comments submitted by the Spokane Tribe of Indians, monitoring during ground disturbing activities shall be incorporated 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 cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.
4. 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.
5. 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.

SIGNED this 13th day of November 2020.



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 November 13, 2020, a copy of this decision will be sent by verifiable email 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.