

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Conditional Use Permit Application by ) FINDINGS, CONCLUSIONS,  
Andrey Chumov to reduce the buffer of a ) AND DECISION  
wetland for the construction of a single )  
family home, shop, well and septic ) FILE NO. Z20-108CUP3  
system )

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The Applicant, Andrey Chumov, is seeking a conditional use permit (CUP) allowing a reduction of the buffer of a wetland to facilitate the construction of a single-family home, shop, well and septic system.

**Decision:** Approved, with conditions.

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

**Applicant/** Andrey Chumov  
**Owner:** 4127 E Hartson Ave  
Spokane, WA 99202

**Property Location:** The subject property is located at 1455 S. Geiger Boulevard, Tax Parcel No. 25271.1901, in Section 27, Township 25 North, Range 42 East, Willamette Meridian, in the City of Spokane, County of Spokane, and State of Washington.

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

**Comprehensive Plan Map Designation:** The property is designated as Residential 4-10 in the City of Spokane Comprehensive Plan (CP).

**Site Description:** The subject site consists of approximately 2.5 acres located south of Geiger Boulevard and Sunset Highway, between Royal Street on the east, Miller Avenue to the west, and 16th Avenue to the south. The site is sloped, and a wetland runs through the site from west to east.

**Surrounding Conditions and Uses:** Residential Single Family (RSF) surrounds the property. Commercial zoning is across Geiger to the west and approximately ½ block to the east. Land Use is Residential 4-10 units per acre surrounding the parcel.

**Project Description:** This project proposal is for a wetland buffer reduction from 150 feet to 75 feet to allow the construction of a home, shop, well and septic tank.

## PROCEDURAL INFORMATION

**Authorizing Ordinances:** Spokane Municipal Code (SMC) 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Decision Criteria; SMC 17E.070, Wetland Protection, and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: May 19, 2020  
Posted: May 18, 2020

**Notice of Application/Public Hearing:** Mailed: July 15, 2020  
Posted: July 15, 2020

**Community Meeting:** June 2, 2020

**Public Hearing Date:** August 13, 2020

**Site Visit:** September 7, 2020

**State Environmental Policy Act (SEPA):** The proposal was determined to be categorically exempt from SEPA analysis.

### **Testimony:**

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

Andrey Chumov  
4127 E Hartson Ave  
Spokane, WA 99202

Sondra Collins  
Ecos USA  
PO Box 1698  
Deer Park WA 99006

Bill Conley  
PO Box 6563  
Spokane WA 99217

Jay & Kathleen Sharp  
1911 South Royal St  
Spokane WA 99224

Florence Sharp  
4817 W. 16<sup>th</sup>  
Spokane WA 99224

### **Exhibits:**

1. Planning Services Staff Report dated 08/04/20
2. Application Materials, including
  - A General Application
  - B Shoreline/Critical Areas Checklist
  - C CUP Application
  - D Critical Area Wetland Buffer Reduction and Critical Area Buffer Mitigation Plan, including
    - Attachment 1 Legal Description and Plat Maps
    - Attachment 2 Site Development Plan, Site Area Profile Maps, ECOS USA

- Attachment 3 Proposed Site Architect Plans and Specifications – Proposed Footprints for Home with Attached Garage and Shop, Proposed Septic Design and Specifications, J&J Well Report
  - Attachment 4 Wetland Delineation, Eastern Washington Wetland State Rating, and Water Type Modification Forms
  - Attachment 5 Required Agency Maps and Documentation for Wetland Rating and Wetland Mitigation Plan
  - Attachment 6 Wetland Planting Species List, Planting Calendar, and Planting Specifications
  - Attachment 7 ECOS USA Silt Fences Construction Specifications
  - Attachment 8 U.S. Department of Agriculture Natural Resources Conservation Service Practice Code, Standards, and Implementation Requirements #342
  - Attachment 9 Washington Department of Ecology (WSDOE) Stormwater Best Management Practices BMP1-C150E “Materials on Hand”
  - Attachment 10 ECOS USA Baseline Photo Log Available Upon Request
  - Attachment 11 Landowner Signatures
  - Attachment 12 Chumov Community Meeting Information
3. Request for Comments, including comments received from
    - A WSDOE
    - B Spokane Tribe of Indians
    - C City of Spokane Engineering Services
  4. Notice of Application & Public Hearing Materials, including:
    - A Notification Map Application
    - B Affidavit of Mailing on 07/15/20
    - C Affidavit of Posting on 07/16/20
  5. Public Comments
  6. Staff Presentation

### **FINDINGS AND CONCLUSIONS**

To be approved, the proposed CUP must comply with the criteria set forth in SMC Section 17C.060.170, 17C.320.080(F), and SMC 17E.070. The Hearing Examiner has reviewed the proposed CUP 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 site is zoned RSF. The Applicant proposes to develop the site with a single-family residence and related improvements. This proposed use is outright permitted in the RSF zone. See Table 17C.110-1; see also SMC 17C.110.115. If only the zoning classification was at issue, then this criterion could be considered satisfied. However, the site is also the location of a Category II wetland. See Exhibit 1, pp. 2-3; see also Exhibit 2D. As a result, the standards of the wetland protection code, found in Chapter 17E.070, apply to this case. See SMC 17E.070.020(A).

The wetland protection code provides that no regulated activity may take place in a wetland or a wetland buffer without submitting a Critical Areas checklist and first obtaining the required permits. See SMC 17E.070.040(A). The regulated uses and activities include, among other things, excavation and grading of soil, sand, or gravel; construction of any structure; removal or cutting of any vegetation; and construction or installation of utilities. See *id.* In the context of this case, such uses and activities in wetlands or wetland buffers are only authorized through a CUP. See *id.*

The Applicant submitted the Critical Area checklist and a CUP application. See Exhibits 2B & 2C. The Applicant also submitted the required application materials in accordance with SMC 17E.070.080, including a wetlands report, site plan information, and a proposed wetland mitigation plan. See Exhibit 1, p. 3; see *also* Exhibit 2D.

The wetland on the site is a Category II wetland with a functional score of 6. See Exhibit 2D; see *also* Exhibit 1, p. 4. The buffer for a Category II wetland potentially impacted by a “moderate” land use is 150 feet. See Table 17E.070.110-3. To facilitate the development of the land, however, the Applicant has requested approval of a reduction of the wetland buffer from 150 feet to 75 feet. See Exhibit 1, pp. 2 & 4. The wetland protection code provides that a combination of buffer reduction and buffer averaging may be utilized to achieve a buffer setback of 75 feet. See SMC 17E.070.110(D) & (E).

Specifically, the City may reduce the standard wetland buffer zone width on a case-by-case basis, for wetlands that have a functional score of 5 or more, provided certain criteria are satisfied. See SMC 17E.070.110(D)(1). Those criteria include the following:

*A relatively undisturbed vegetative corridor of at least one hundred feet in width is protected between the wetland and any other priority habitats; and*

*The protected area is preserved by means of easement, covenant, or other measure;*

*Measures identified in SMC 17E.070.110(C)(2) (Table 17E.070.110-5) are taken to minimize the impact of any proposed land use or activity.*

See SMC 17E.070.110(D)(1)(a)-(c). The proposed development, as conditioned, satisfies these buffer reduction standards.

The wetland on the site has a functional score of 6, and thus fits within the range stated in SMC 17E.070.110(1). The project conditions require a vegetative corridor of at least 100 feet between the wetland and any priority habitat. See Condition 3. Those conditions also require that the protected area be preserved through an easement, covenant, or other means. See *id.* The conditions further mandate that the Applicant shall implement the measures identified in SMC Table 17E.070.110-5 in order to minimize the impacts of the proposal. See *id.* Thus, all the requirements of SMC 17E.070.110(D)(1) are addressed.

The project will also honor the structural setback requirements of the wetland protection code. The project conditions state that all buildings and other accessory structures must be setback a distance of ten feet from the edges of all delineated wetland protection areas. See Condition 6. This is consistent with the code requirements. See SMC 17E.070.110(H).

The Hearing Examiner concludes that the proposal, subject to the conditions contained in this decision, is allowed under the land use codes, so long as the conditional use and other development and wetland protection standards are satisfied. Therefore, this criterion is satisfied.

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 proposed development is consistent with the pertinent provisions of the CP. The site is designated as Residential 4-10. This designation contemplates the development of single-family residences on individual lots. See CP, Chapter 3, p. 3-40.

The CP also includes standards intended to protect the natural environment, including wetlands. Goal NE 7 provides that the City should preserve natural land forms that typify and identify this region. See CP, Chapter 9, p. 9-11. Policy NE 7.7, meanwhile, states that the City should enforce regulations that achieve no overall net loss in acreage and functions of the remaining wetland base. See CP, Chapter 9, p. 9-12.

As the Staff contended, SMC Chapter 17E.070 Wetlands Protection implements the forgoing objectives of the CP. See Exhibit 1, p. 5. The purpose of the wetland protection code is to protect the public health, safety, and welfare by preserving, protecting, and restoring wetlands through the regulation of development and other activities within wetlands and their buffers. See *id.*

The Hearing Examiner concludes that the project is consistent with the goals and policies of the CP. Therefore, this criterion is satisfied.

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

According to the Staff, there are no concurrency requirements associated with this application. See Exhibit 1, p. 5. However, Staff noted that concurrency will be addressed at the time of building permit application for new development on the site. See *id.* Under the circumstances, the Hearing Examiner concludes 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 is 2.5 acres in size. This is more than enough space, absent other factors, to support the development of a single-family residence and the related improvements. There are some limits to the development potential of this site, however. There are basalt formations and slopes as high as 12% leading down to the wetland. And, as discussed previously, the wetland itself is the central limiting feature of this site, requiring setbacks and buffers that further limit the use of the site. Despite these physical characteristics, the Hearing Examiner concludes that the site is appropriate for this proposal, for the reasons discussed below.

The foregoing conditions make development of the site more difficult. But none of those factors, such as the presence of basalt or topography, warrant denial of the proposed use. The most important question is whether the development can proceed without irreparably damaging the

wetland. Ultimately, the Hearing Examiner concludes that the project is properly designed to permit the development to go forward, while still ensuring that the wetland area is adequately protected.

A qualified professional has prepared a thorough analysis of the wetland documented in a report. See Exhibit 2D. The wetland has been classified and delineated on the site. See *id.* The wetland analysis supports the conclusion that a reduction in the buffer width from 150 to 75 feet is appropriate. See Paragraph 1 above. The project has been designed to allow the owner to put his property to productive use, while also ensuring that the development activities are set back far enough to protect the environmentally sensitive areas. The Applicant has proposed a thorough wetland mitigation plan, which is detailed in the wetland report. See Exhibit 2D. The wetland report also notes that other mitigation measures will be implemented, such as stormwater and erosion control. The project conditions require the development to adhere to the terms of the wetland report.

The use of the property is limited to single-family residential use, given the zoning. This is a relatively low-impact type of development. The Applicant is not permitted to run a commercial business on this property, or to store commercial vehicles or industrial machinery. See Exhibit 1, p. 6. Home occupations may be allowed, but such activities must be located within the primary residence and cannot occur in accessory structures. See *id.* The Applicant has been informed of these limitations. The Applicant has acknowledged that he will honor these restrictions in the development and use of the property. *Testimony of A. Chumov.*

On this record, there are no known historic or cultural features on this site. However, the Spokane Tribe of Indians notes that this site is considered to be in a high-risk area for discovery of archaeological or cultural resources which may be impacted by development. To address the concern, the Spokane Tribe recommended that the Applicant hire a professional archaeologist to complete a cultural survey of the site. The Applicant is already in consultation with the Tribe. *Testimony of S. Collins.* The Applicant will be completing a cultural survey and furnishing the results to the Spokane Tribe as well as the Washington State Department of Historic and Archaeological Preservation (WSDAHP). See *id.* In addition, the report shall be submitted to the Planning Department prior to any ground disturbing activities. With the agreement of the Applicant, the cultural resource survey has been made a condition of project approval.

Based on the foregoing, the Hearing Examiner concludes that this criterion is satisfied.

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

The proposed residential use is relatively low intensity. However, there is a Category II wetland on the site that must be protected. SMC17E.070.130 provides standards for wetland mitigation in order to offset the impacts resulting from proposed activities such as those involved in this application. See Exhibit 1, p. 6. In addition, there various project conditions that will ensure that the environmentally sensitive areas will not be materially affected by the proposed use.

The wetland report and mitigation plan submitted with the CUP application are consistent with the requirements of SMC Chapter 17E.070 Wetlands Protection. See Exhibit 1, p. 6. The recommendations of the wetland report and mitigation plan are incorporated as project

conditions. See Condition 2. Wetland monitoring reports will be completed each year for 4 years. See Exhibit 1, p. 6. The Applicant shall mark the areas of the wetland buffer and mitigation area prior to any ground disturbing activities so that these areas are not encroached into by construction equipment. See *id.*; see also Condition 4. A vegetated corridor of at least 100 feet in width shall be protected between the wetland and any other priority habitat. See Condition 5. These conditions and requirements, among others, will ensure that the environment is protected from the impacts of the proposed use.

Subject to the conditions contained in this decision, the Hearing Examiner finds the application will not have a significant impact on the environment or the surrounding properties. Therefore, this criterion is satisfied.

6. *The Hearing Examiner concludes that this proposal should be approved even though neighboring property owners raised understandable concerns about the project.*

Neighboring property owners raised a handful concerns about the project. See Exhibit 5. The neighbors worried that the Applicant may be planning to use the property for commercial purposes or to store commercial or industrial equipment. See *id.* This also led to the fear that heavy equipment may be damaging the access road. See *id.* In addition, there was a significant concern about the potential impacts of the project on the wetlands and wildlife that frequent that natural area. See *id.*; see also *Testimony of F. Sharp*. There was also a more general request to assure that all relevant codes and regulations were followed in the development of the site. *Testimony of B. Conley*.

The Hearing Examiner concludes that the neighbors' concerns have been sufficiently addressed. The property cannot be used for commercial purposes or storage of commercial or industrial equipment. The zoning does not allow such uses, and the Applicant has acknowledged this fact. This also alleviates any concern about heavy equipment using the access road. In addition, the project includes extensive mitigation measures to protect the wetlands. These mitigation measures will also ensure that the wildlife that uses and depends upon those wetlands is also protected.

The project will be required to satisfy the applicable development regulations and restrictions. See e.g. Conditions 9 & 10. The project must also satisfy the specific requirements to protect the existing wetlands, per the wetland protection code. See Paragraphs 1, 4 & 5. The project has been carefully designed to avoid impacting the environmentally sensitive areas of the site. The project conditions, which have been agreed to by the Applicant, provide substantial protections for the wetlands, consistent with applicable standards. In addition, the Applicant must, in any case, adhere to the rules and regulations for development. Under the circumstances, the Hearing Examiner concludes that this project should be approved.

## **DECISION**

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

1. The site shall be developed substantially in conformance with the plans and application on file with the Planning and Development.

2. The proposal will be developed in conformance with the findings of the Wetland Report on file with this application, specifically with respect to the Wetland's ratings, assigned buffers, and mitigation plan.
3. A vegetated corridor of at least 100 feet in width shall be protected between the wetland and any other priority habitat, the protected area shall be preserved by means of an easement, covenant or other means, and measures identified in SMC Table 17E.070.110-5 shall be taken to minimize the impact of the proposed land use activities on this site.
4. The Applicant shall mark the boundaries of the wetland buffer and mitigation area prior to any ground disturbing activities so that these areas are not encroached into by construction equipment.
5. Buildings and other accessory structures shall be set back a distance of ten feet from the edges of all delineated wetland protection areas.
6. Spokane Tribe of Indians requests a cultural survey be completed by a professional archaeologist, and if any artifacts or human remains are found upon excavation, this Planning and Development should be immediately notified and the work in the immediate area cease. The survey shall be completed before any ground disturbing activities begin.
7. The property may not be used for commercial or industrial activities.
8. Wetland buffer zones shall be retained in their natural condition and free from mowing or other cutting activity, except for the removal of noxious weeds. Where buffer disturbances have occurred before or during construction, revegetation with native vegetation shall be required.
9. 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.
10. This approval does not waive the Applicant's obligation to comply with all of the requirements of City Departments and outside agencies with jurisdiction over land development.

### **COVENANT**

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

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

11. 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.
12. This approval is subject to the above-stated conditions. By accepting this approval the Applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above-required covenant constitutes the Applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.



DATED this 8<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 Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is three days after a written decision is mailed by the local jurisdiction. This decision was mailed on September 9, 2020. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS SEPTEMBER 30, 2020, AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

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