

**CITY OF SPOKANE HEARING EXAMINER**

Re: Application for Shoreline )  
Conditional Use Permit by Whipple ) FINDINGS, CONCLUSIONS,  
Consulting Engineers to develop a ) AND DECISION  
new 24-unit multi-family )  
development in the RMF zone ) FILE NO. Z22-196SCUP  
along Upriver Drive.

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The applicant, Whipple Consulting Engineers, on behalf of 3027 E. Upriver LLC, is proposing a new 24-unit multi-family development with associated parking and landscaping within the Shoreline Jurisdiction.

**Decision:** Approved, with conditions.

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

**Applicant:** Whipple Consulting Engineers, Inc.  
c/o Ryan Andrade  
21 S. Pines Road  
Spokane Valley, WA 99206

**Owner:** 3027 E Upriver, LLC  
9125 N Palmer Rd.  
Spokane, WA 99217

**Property Location:** The subject property is located at 3027 E. Upriver Drive (parcel no. 35102.3806) and 3024 E. Jackson Avenue (parcel no. 35102.3801).

**Zoning:** The property is zoned Residential Multi-Family (RMF).

**Comprehensive Plan (CP) Map Designation:** The project site is designated as Residential 15-30 units per acre according to the CP.

**Shoreline Designations:** Shoreline Residential Environment, Upriver District.

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

**Site Description:** The site is located on the north bank of the Spokane River. The site is approximately 0.91 acres in size, and generally flat. There is a steep slope of approximately 15% where the site is adjacent to Upriver Drive. The existing site contains two single-family residences that will be removed.

**Project Description:** The proposal is to construct a 24-unit multi-family development. This project includes associated parking and landscaping. The building footprint will be approximately 8,500 square feet, and there will be approximately 41 parking stalls.

**Surrounding Zoning:** The project site is zoned RMF and is surrounded in all directions by property within the same zone. The Spokane River is zoned as conservation open space. Residential single-family zoning is located across the river.

**Adjacent Land Use:** An apartment complex is located to the west, and duplex and triplex buildings are located to the east. Across Jackson Street there is another apartment complex. The Spokane River is to the south.

**Shoreline Management Act:** The project is located on the north side of 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 City of Spokane Shoreline Master Program (SMP) in the Spokane Municipal Code (SMC) Chapter 17E.060. The City of Spokane SMP designates this area as Shoreline Residential Environmental Designation, Upriver District with a 75-foot buffer from the Spokane River. The project is also located within the Riparian Habitat Zone 2 (250 feet from OHWM) as designated in the SMC Chapter 17E.020, Fish and Wildlife Conservation Areas.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** SMC 17C.110 – Residential Zones; SMC 17E.060 – Shoreline Regulations; and SMC 17G.060.170 – Decision Criteria.

**Notice of Community Meeting:** Mailed: April 21, 2022  
Posted: April 19, 2022

**Community Meeting:** May 10, 2022

**Notice of Application/Public Hearing:** Mailed: July 1 & 6, 2022  
Posted: June 29, 2022

**Public Hearing Date:** August 10, 2022

**Site Visit:** August 23, 2022

**State Environmental Policy Act (SEPA):** A Determination of Nonsignificance (DNS) was issued on July 7, 2022. The DNS was not appealed.

#### **Testimony:**

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

Ryan Andrade  
Whipple Consulting Engineers, Inc.  
21 S. Pines Road  
Spokane Valley, WA 99206

**Present but did not testify or submitted comments to the record:**

Ben Goodmansen  
Whipple Consulting Engineers, Inc.  
21 S. Pines Road  
Spokane Valley, WA 99206

**Exhibits:**

Planning Services Staff Report, including:

1. General Application, pp. 1-2
2. Notification Map Application, pp. 3-4
3. Conditional Use Permit Application, pp. 5-9
4. Shoreline Permit Application, pp. 10-14
5. Project Narrative, pp. 15-16
6. SEPA Checklist, pp. 17-37
7. Trip Generation and Distribution Letter (TGDL), pp. 38-50
8. DNS, p. 51
9. Title Company Certification and Applicant Certification, pp. 52-68
10. Request for Comments, pp. 69-71, including comments from:
  - A. Washington State Department of Archaeology and Historic Preservation (WSDAHP), pp. 72-73
  - B. Washington State Department of Ecology (WSDOE), pp. 74-75
  - C. Spokane Tribe of Indians, p. 76
  - D. Spokane Regional Health District (SRHD), pp. 77-78
11. Notice of Application/Public Hearing, pp. 79-86
12. Community Meeting Materials, pp. 87-94
13. Noticing Affidavits, pp. 95-101
14. Staff Presentation
15. Applicant's Response to Staff Report

**FINDINGS AND CONCLUSIONS**

To be approved, the proposed Shoreline Conditional Use Permit (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 in the shoreline jurisdiction, a use must be permitted in both the shoreline jurisdiction and in accordance with the applicable zoning of the property. See SMC 17E.060.690(C).

The property is zoned RMF and lies within the Shoreline Residential Environment (SRE). See Exhibit 1, p. 3. In the RMF zone, multi-dwelling structures are permitted outright. See Table 17C.110-2. In the SRE, multi-family residences are permitted as a conditional use. See Table 17E.060-04.

Under both the zoning and shoreline designations, the proposal is allowed, provided the applicable development standards and requirements are met. 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 CP designates the site and the surrounding neighborhood as Residential 15-30. See Exhibit 1, p. 3. This designation allows higher density residential use, specifically at a density of 15 to 30 units per acre. See CP, Chapter 3, Land Use, p. 35. The site is also designated as SRE, which is a proper designation for multi-family residential development. See CP, Chapter 14, Shorelines, p. 17.

The proposal is for a 24-unit multi-family development on 0.91 acres, which fits the Residential 15-30 density range. The site and the property immediately surrounding the site is zoned for multi-family use. The area already includes several apartment buildings as well as single-family uses. The project, therefore, will blend in well with its surroundings. In this regard, the project fulfills Goal LU 5.1 and Policy LU 5.5, which promote development that is complementary and compatible with surrounding uses and building types. See CP, Chapter 3, p. 3-27 & 3-28.

The project conditions require a revegetation plan if any native vegetation is removed. See Condition 2. The conditions also required a revegetation plan to accompany each building permit. See Condition 4. These conditions fulfill several land use policies by ensuring development is sensitive to the natural environment, enhance environmental quality, maintain the quality of life, and ensure compatibility. See CP, Chapter 3, LU 5.1, 5.2, & 5.4, p. 3-27.

The proposal is also consistent with policies directed specifically at the use of the shoreline environment. Approving the project will allow productive use of the property, while also honoring the regulations intended to protect the shoreline environment. This is consistent with SMP 1.4, which requires that the interest of the public be protected, while also recognizing private property rights. See CP, Chapter 14, p. 14-23. The project conditions require that there be no net loss of ecological functions of the shoreline, consistent with Policy SMP 1.3. See Condition 2; see also See CP, Chapter 14, p. 14-23. This objective will be accomplished, in part, through revegetation efforts. See *id.* Revegetation with native plant species enhances the shoreline environment and improves or guards against the loss of ecological functions, consistent with Policies SMP 10.2 and 10.3. See CP, Chapter 14, p. 14-37. Planting with native species also promotes Policy SMP 4.5, which encourages landscaping with native plant communities as new development occurs. See CP, Chapter 14, Shorelines, p. 14-29.

To the extent that some impacts may arise, the Hearing Examiner believes those concerns are addressed by project conditions and mitigation measures. As stated above, the shoreline will be improved, to some extent, by the planting of native species of plants. In addition, the applicant will be implementing storm water controls to ensure that storm water runoff is filtered and then discharged into the groundwater. Thus, the policy that calls for the mitigation of any adverse impacts arising from the project will also be fulfilled. See CP, SMP 4.6.

Because the project is consistent with the designations, goals, and policies of the CP, the Hearing Examiner finds that this criterion has been 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 31, 2022, among all City departments and outside agencies with jurisdiction. See Exhibit 10. There were no departments or agencies that reported that concurrency could not be achieved. See Staff Report, p. 4; see also Exhibits 10A-10D. 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 Hearing Examiner concludes that the property is suitable for the proposed use, given its physical characteristics. The development area is of sufficient size and shape to accommodate the project, as is demonstrated by the layout shown on the site plan. See Exhibit 7, Attachment 2. The location of the site does not pose genuine limitations on its use and development. The site is located along Upriver Drive and near other apartments and residential uses. The site is basically flat. See Exhibit 6 (Environmental Checklist ¶ B(1)(a)). The steepest slope on the site is 15%, but that area is located where the property is adjacent to Upriver Drive. See Exhibit 6 (Environmental Checklist ¶ B(1)(b)). The site plan was developed with the topography of the site in mind. See Exhibit 3. The topography does not present a genuine obstacle to development.

The Spokane River is approximately 80-90 feet from the site. See Exhibit 6 (Environmental Checklist ¶ B(3)(a)(1)). However, there are no indications of surface water on the site. See *id.* Storm water drainage on the property will be handled through the typical methods identified in the Spokane Regional Stormwater Manual (SRSM). See e.g. Exhibit 6 (Environmental Checklist ¶¶ A(16)(a)(1), A(16)(b)(2), & B(3)(b)-(d)). No groundwater will be withdrawn as the project will be served by city water. See Exhibit 6 (Environmental Checklist ¶ B(3)(b)(1)). In addition, public wastewater will be collected and routed to the public sewage treatment facility. See Exhibit 6 (Environmental Checklist ¶ B(3)(b)(2)). There is no apparent evidence of groundwater, and a geotechnical report has been prepared for this site. See Exhibit 3. There is no reason to expect that groundwater will be impacted by this project. See e.g. Exhibit 6 (Environmental Checklist ¶ B(3)(b)).

There are no known historic or cultural features on the site. See Exhibit 6 (Environmental Checklist ¶ B(13)). However, the WSDAHP advised that its predictive model indicates a high probability of encountering cultural resources within the proposed project area. See Exhibit 10A. Both WSDAHP and the Spokane Tribe of Indians recommended that a cultural survey be completed for this site. See *id.*; see also Exhibit 10C. Based upon this recommendation, the project conditions require the developer to enlist the services of an archaeologist to conduct a cultural survey of this site prior to any ground disturbing activities. See Condition 5. The Applicant has confirmed that this survey is already in progress. *Testimony of R. Andrade.*

Various City departments and agencies reviewed the SEPA checklist for physical characteristics of the property and no other comments were received indicating the site is unsuitable for development. See Staff Report, p. 5.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant 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).*

On or about May 19, 2022, the Applicant prepared an environmental checklist for the project. The checklist supports the conclusion that no significant environmental impacts will arise from this project. For example, there are no wetlands, surface waters, or other limiting features on the site. See Exhibit 6 (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 6 (Environmental Checklist ¶ B(3)(a)(5)). No threatened or endangered species were identified on the site. See Exhibit 6 (Environmental Checklist ¶ B(4)(c) & B(5)(b)). The project is not anticipated to create any significant noise or light, beyond that associated with normal residential uses. See Exhibit 6 (Environmental Checklist ¶ B(7)(b) & B(11)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 6 (Environmental Checklist ¶¶ B(3)(a)(6), B(3)(b)(2) & B(3)(c)(2)). No environmental hazards are anticipated to arise due to this project. See Exhibit 6 (Environmental Checklist ¶ B(7)(a)).

The Applicant will be required to implement onsite controls for stormwater and surface drainage generated from the development. See SMC 17D.060.010 *et seq.* As discussed above, all stormwater will be collected, treated, and discharged in accordance with the SRSM. See Paragraph 4.

The project will be required to meet shoreline design standards found in SMC 17E.060 as well as the multi-family design standards found in SMC 17C.110.400-575. See Staff Report, p. 5. The applicant will also be required to submit a revegetation plan with the building permit submittal showing there will be no net loss of native vegetation in the Shoreline Jurisdiction. See *id.*; see *also* Condition 2.

The project does have some effect on the transportation system. The project will result 28 AM peak trips and 28 PM peak trips. See Exhibit 7. However, the City has not conditioned this project upon the completion of specific transportation improvements. Rather, the City will be collecting traffic impact fees in accordance with an adopted schedule. See *id.* The impact fee will be collected for each dwelling unit and must be paid prior to issuance of the building permit. See *id.* Thus, to the extent there are impacts from traffic, those impacts are being mitigated via impact fee contributions.

There will be some impacts due to construction activity. However, the construction impacts will not result in significant environmental impacts, and can be adequately mitigated (e.g. dust control, limited work hours, etc.). Further, the construction activity is temporary. Once the construction project ends, the potential impacts from noise, dust, and emissions from vehicles will cease. See e.g. Exhibit 6 (Environmental Checklist ¶ B(7)(b)(1) (concerning

construction noise)). In addition, the environmental impacts of the completed project are minor.

Various departments and agencies reviewed the proposal and did not conclude that there were significant environmental impacts. The City examined the environmental checklist, and ultimately issued a DNS on July 7, 2022. See Exhibit 8. The appeal period for the DNS expired on July 22, 2022. See *id.* The DNS was not appealed.

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

*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 Hearing Examiner agrees with Staff's conclusion that this proposal is consistent with the policies of the SMP. See Staff Report, p. 6. The site is designated as SRE and Upriver District. See *id.* These designations contemplate that this property is a proper location for a multi-family development. See Paragraph 1. In addition, the proposal is also consistent with the adopted shoreline policies. See Paragraph 2.

The proposal will not diminish the quality of the shoreline environment, given the site's characteristics and conditions. The project will be constructed outside the 75-foot shoreline buffer. See Exhibit 14; *Testimony of D. deBit.* There is a busy public right-of-way between the site and the banks of the Spokane River. See Exhibit 14. The project will replace two existing homes with an apartment building and associated parking. However, the area northerly of Upriver Drive is already developed with apartments, triplexes, and duplexes. The developer will be replacing some non-native vegetation with native vegetation, per the project conditions. The conditions also require that there be no net loss of ecological function as a result of this project. The record does not support a claim that the project will have a negative effect on shoreline ecology.

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

*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 project site is separated from the banks of the Spokane River by Upriver Drive. There is currently no direct access from the site to the shoreline. Aside from the short-term impacts of construction, the removal of two residences and the construction of an apartment building will not have any material impact on the public's access or use of the shoreline. On the other hand, the project will result in an improved sidewalk. See Staff Report, p. 6. This will contribute to safe pedestrian access, and thus will improve the public's ability to use and enjoy the Spokane River. See *id.*

The Hearing Examiner finds 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)(a)(iii).*

The Hearing Examiner concludes this SCUP will not contribute to cumulative impacts on the shoreline. There are not any SCUPs within a half mile of this project site. See Staff Report, p. 6. A cumulative impact analysis cannot reasonably be conducted when there aren't several permits to consider. In addition, there is no evidence in this record that the cumulative effect of multiple SCUPs threatens the integrity of the shoreline. This criterion is, therefore, satisfied.

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 the proposal is consistent with the CP and the SMP. See Paragraph 2 above. That discussion applies with equal force to this criterion and need not be repeated here. 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).*

The discussion in Paragraphs 5-7 demonstrates that the proposed use will not have significant adverse effects on the shoreline environment or public access to the shorelines. As stated previously, the project has been reviewed through the SEPA process and reviewed by applicable departments and agencies. Their findings and recommendations are incorporated into the conditions of approval for this proposal. See *id.* The site will be developed in accordance with the land use requirements in place at the time of building permit. The applicant will be required to show there is no net loss of ecological functions on site during and after the project is complete. Currently there are non-native plantings in the Shoreline Jurisdiction that the applicant will be replacing with native vegetation (to be approved during building permit plan review, shown on a revegetation plan). 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. 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.



3. 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 Revised Code of Washington (RCW) 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the WSDAHP before excavating, removing, or altering Native American human remains or archaeological resources in Washington.
4. A revegetation plan shall be submitted with the building permit submittal.
5. Prior to any ground disturbing activities, a cultural survey shall be completed by a professional archaeologist of the project area.
6. 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.
7. This approval does not waive the applicant's obligation to comply with all of the requirements of the SMC, including the International Codes (as adopted in this jurisdiction), as well as requirements of City Departments and outside agencies with jurisdiction over land development.
8. SMC section 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.
9. 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.

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 24<sup>th</sup> day of August 2022.



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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 August 24, 2022, 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.