

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit)
Application by the City of Spokane) FINDINGS, CONCLUSIONS,
Engineering Department for the) AND DECISION
installation of a 30-inch water and)
8- to 18-inch sewer main lines for the) FILE NO. Z24-091SCUP
growing HWY 195 corridor.)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, the City of Spokane Engineering Department, on behalf of the property owner, the City of Spokane, and Latah Creek Plaza, LLC, has applied for a shoreline conditional use permit (SCUP) for a 30-inch water and 8- to 18-inch sewer main lines for the growing HWY 195 corridor. This application is for the portion of the extensions that are within the shoreline jurisdiction.

Decision: APPROVED, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: City of Spokane Engineering Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Owners: City of Spokane
808 West Spokane Falls Boulevard
Spokane, WA 99201

Latah Creek Plaza, LLC
801 West Riverside Avenue, Suite 400
Spokane, WA 99201

Property Location: The project is located in the public right-of-way of Cheney-Spokane Road. Parcel nos. 35313.0016 and 35313.0044 (via easement).

Legal Description: The legal description for the site is available upon request.

Zoning: Residential 1 (R1)

Comprehensive Plan (CP) Map Designation: Residential Low

Shoreline Designations: Urban Conservancy Environment (UCE) Designation, 200-foot Shoreline Buffer, and Latah Creek Shoreline District

Environmental Overlays: Habitat and Species, Riparian Habitat Area 6

Site Description: The proposal location is within the public right-of-way (South Cheney-Spokane Road), parcel no. 35313.0016, and via easement through parcel number 35313.0044. See Exhibit 1, p. 2. Latah Creek is designated by the Shoreline Management Act as a shoreline of statewide significance and, therefore, subject to the requirements of the City of Spokane Shoreline Master Program. *Id.* The City of Spokane Shoreline Master Program designates this area as within the Urban Conservancy Environment Designation and the Latah Creek Shoreline District with a 200-foot buffer from Latah Creek. *Id.* The project site consists of a city street designated as a Minor Arterial (Cheney-Spokane Road), and an access driveway/road to the Latah Creek Plaza. *Id.* The site is generally flat and primarily disturbed and/or degraded. *Id.*

Surrounding Zoning and Uses: The properties to the northwest, northeast, east and south of the site are zoned R1. Directly north of the site is an area zoned community business. Properties to the west, across Spokane-Cheney Road, and to the south are within Spokane County and zoned Rural Traditional or Rural Conservation.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17G.061.310(C)&(D2) – Decision Criteria, 17E.060 – Shoreline Regulations, and 17C.111 – Residential Zones.

Notice of Community Meeting: Mailed: January 9, 2024
Posted: January 9 & 11, 2024

Notice of Application/Public Hearing: Mailed: March 13, 2024
Posted: March 13, 2024

Site Visit: April 16, 2024

Hearing Date: April 17, 2024

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued by the City on November 29, 2023. The DNS was not appealed.

Testimony:

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

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

Exhibits:

1. Planning Services Staff Report, 7 pp.
2. Application, including:
General Application, pp. 1-2
Shoreline Permit Application, pp. 3-5
Shoreline/Critical Areas Checklist, pp. 6-8

- Notification Map Application, p. 9
- Engineering Drawings and Maps, pp. 10-14
- 3. Request for Comments (pp. 1-2), including:
 - City of Spokane DSC Engineering, p. 3-5
 - Inland Power & Light, p. 6
 - Washington State Department of Ecology (WSDOE), pp. 7-12
- 4. DNS and SEPA checklist
- 5. Notice of Application and Hearing Materials, including:
 - Instructions, pp. 1-2
 - Notice of Application and Public Hearing, pp. 3-4
 - Noticing Map and List of Parcels, pp. 5-8
- 6. Community Meeting Materials, including:
 - Instructions, pp. 1-2
 - Notice of Community Meeting, pp. 3-4
 - Attendance Roster, p. 5
 - Comment Sheet, p. 6
 - Meeting Summary, p. 7
 - Public Comments, pp. 8-16
- 7. Noticing Affidavits, including:
 - Community Meeting Affidavits, pp. 1-5
 - Public Hearing Affidavits, pp. 6-8
- 8. Staff Presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed SCUP must comply with the criteria set forth in Spokane Municipal Code Section 17G.061.310 (Sections 1-5 below) and SMC 17G.061.310.D2 (Section 6 below). The Hearing Examiner has reviewed the proposed SCUP application and the evidence of record regarding these decision criteria and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use code. See SMC 17.G.061.310(C)(1).*

The subject site is zoned R1. See Staff Report (Exhibit 1), p. 4. Water and sewer conveyance systems are identified in SMC 17C.190.400 as Basic Utilities, an Institutional Category of Use. See *id.* As specified in SMC 17C.111.100-1, Basic Utilities are permitted with limitations not applicable to this type of development and, therefore, outright permitted. See *id.*

Under both the zoning and shoreline designations, the proposal is allowed. Therefore, the Hearing Examiner finds this criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17.G.061.310(C)(2).*

The CP designates the site as “Residential.” Basic utilities are imperative to support residential uses as well as other uses in the area. The Hearing Examiner agrees with the CP goals and policies outlined in the Staff Report. *Id.*

The site is also designated UCE under the Shoreline Master Program. The UCE designation contemplates an urban conservancy sentiment to protect and restore ecological functions of open space, flood plain, and other sensitive lands, while allowing a variety of compatible uses. See CP, Chapter 14, Shorelines, p. 16. In this instance, Latah Creek is the shoreline under consideration.

The proposal will provide extensions to the water and sewer mains in the HWY 195-corridor area. Providing these services to this area is well-supported by several CP goals and policies.

Because the project is consistent with the designations, goals, and policies of the CP, the Hearing Examiner finds that this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010. See SMC 17.G.061.310(C)(3).*

The decision criteria for Type III decisions (such as a SCUP) require that these types of applications satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.061.310(C)(3). Accordingly, on February 13, 2024, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 3.

The city received various comments regarding the proposal. See e.g. Exhibit 3, pp. 3-12. None of the commenting departments or agencies reported that concurrency could not be achieved. See Exhibit 1, p. 5. The WSDOE indicated the project exhibit appeared to show the work may be located within the 100-year floodplain boundary, and that a floodplain permit would be required. See Exhibit 3, pp. 7-8. Staff reviewed the exhibit submitted and determined that the floodplain boundary was shown in error on the cross section. See Exhibit 1, p. 3. Staff followed up with the WSDOE to explain the error, and WSDOE concurred with the determination that a floodplain permit would not be required. See Exhibit 3, p. 8-12. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner concludes that the project satisfies the concurrency requirements of the municipal code. 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 17.G.061.310(C)(4).*

The site area is suitable for development per the site plan submitted with this application. See Exhibit 1, p. 5. The applicant lists all physical and environmental elements located on the site, or in the vicinity, in the Environmental Checklist submitted. See *id*; see also Exhibit 4. City departments and other agencies also reviewed this checklist for physical characteristics of the property. See Exhibit 1, p. 5. The new utility mains will be located entirely underground in the existing right of way (Cheney-Spokane Road), and a portion of the sewer main will be partially located under a paved driveway (Latah Creek Plaza). *Id*. The sewer main will extend over about 370 feet of unimproved city land to connect to

HWY 195, but that portion of the extension is not located within the Shoreline Jurisdiction. *Id.*

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 effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17.G.061.310(C)(5).*

As mentioned above, this proposal was routed for review by applicable departments and agencies. See #3. Their findings and recommendations are incorporated into the conditions of approval for this proposal. There will be short-term impacts on the site during construction; however, the long-term impacts will be positive in that the installation of these utility mains will improve the level of service to the growing Latah neighborhoods. The City issued a DNS on November 29, 2023. See Exhibit 4. The deadline to appeal the DNS expired on December 13, 2023. See *id.* The DNS was not appealed.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment that cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the SCUP is satisfied.

6. *For shoreline conditional use permits the following additional criteria apply:*

- a. *The proposed use is consistent with the policies of [Revised Code of Washington] RCW 90.58.020 and the Shoreline Master Program.*

The Hearing Examiner agrees with Staff's conclusion that this proposal is consistent with the policies of the Shoreline Master Program. See Exhibit 1, p. 6. In particular, the Staff noted the proposal is consistent with the adopted shoreline policies, as is discussed in some detail in Paragraph 2 above.

The site is designated in the Shoreline Master Program as UCE and as part of the Latah Creek Shoreline District. The "urban conservancy" environment is intended to support a variety of uses, including residential and community business uses. In the UCE, the new utilities located in the shoreline jurisdiction (water/sewer/stormwater) are allowed through a shoreline conditional use permit, per Table 17E.060.690-1, Shoreline Primary Uses. *Id.*

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

- b. *The proposed use will not unreasonably interfere with the normal public use of public shorelines;*

The Hearing Examiner concludes that this project does not affect "normal public use" of the shorelines by the public. The applicant identified in their Shoreline Application that the proposed project will install the water and sewer mains beneath the existing roads and then repave the roads. See *id.* This will not be changing any public use of the shorelines, except temporary disruptions and detours during construction. *Id.* The access to the

shoreline for neighboring properties in the Sunny Creek Mobile Home Park will not be impacted as their access is within their private roads and not from South Cheney-Spokane Road. *Id.* This proposal does not interfere with this imperative and will provide much needed water/sewer utility extensions.

The Hearing Examiner concludes that this criterion is satisfied.

- c. 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.*

There are other SCUPs in the general vicinity, however, they all work together to improve the Latah Creek Shoreline experience and implement the goals and policies outlined in the Shoreline Master Program. Z20-145SCUP was approved in December 2020 by the WSDOE to allow the removal and replacement of the bridge deck of Hatch Street Bridge and the addition of a right turn lane. *Id.* This past approval does not preclude this proposal from achieving the goals of the Shoreline Master Program. *Id.*

The Hearing Examiner finds this criterion satisfied.

- d. 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.*

As has been discussed above, the project is a needed utility extension within the HWY 195-corridor. Ultimately, the Hearing Examiner agrees with the Staff's comment on this issue:

The zoning surrounding the site is mostly Residential 1 (R1), with Community Business (CB-55) to the north where Latah Creek Plaza is located. County land is located to the west across Cheney-Spokane Rd and the zoning is Urban Reserve (UR) according to the County zoning map. This utility project is permitted in the surrounding zones.

See Exhibit 1, p. 6. For these reasons, and for the reasons discussed elsewhere in this decision, the Hearing Examiner concludes that this criterion is satisfied.

- e. 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.*

This project is located entirely underground and will not change the physical and visual access to the shoreline of Latah Creek. See Exhibit 1, p. 7. There are anticipated construction disruptions with traffic as the project is constructed, but the project site will be back to its original state once construction is completed. See *id.* The applicant is aware of the no net loss of shoreline ecological function regulation outlined in 17E.060.210 and will be responsible for ensuring this is achieved. See *id.*

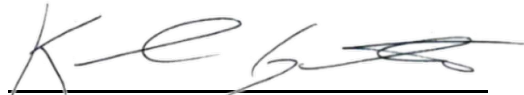
For these reasons, the Hearing Examiner concludes that this criterion is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the SCUP for the water and sewer main line extensions, 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 Shoreline Master Program, 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 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.

DATED this 23rd day of April 2024.



Karl J. Granrath
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.061.340 and 17G.050.

Decisions of the Hearing Examiner regarding shoreline conditional use permits are reviewed by the Washington State Department of Ecology. 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.