

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit) FINDINGS, CONCLUSIONS,
Application by City of Spokane Parks and) AND DECISION
Recreation Department to install shoreline)
stabilization measures and a sloped)
pathway on the south bank of the Spokane)
River) FILE NO. Z1400039-SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: City of Spokane Parks and Recreation Department has applied for a shoreline conditional use permit in order to install shoreline stabilization measures to protect an eroding bank and incorporate a ramp-like sloped pathway on the south bank of the Spokane River to facilitate access for the purpose of launching small, non-powered watercraft, such as canoes and kayaks.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Owner:** City of Spokane Parks and Recreation Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Property Address: Not assigned.

Property Location: The site is under the Division Street Bridge (Senator Sam C. Guess Memorial Bridge), on the south bank of the Spokane River. The subject property is situated within the Division Street right-of-way.

Legal Description: The legal description of the project site is included in Exhibit 2C.

Parcel Nos.: 35184.3004; 35184.0093; and 35185.0041.

Zoning: The existing zoning is DTG & DTU (Downtown General & University)

Shoreline Designations: Adjacent to Spokane River (south bank); Shoreline Urban Intensive Environment Designation and Limited Urban Environmental Designation; 200-foot buffer; Downtown and Campus/U-District Design District.

Environmental Overlays: FEMA Flood Zone (100 year); Fish & Wildlife Habitat Area (RHA-2)

Comprehensive Plan Map Designation: The property is designated Conservation Open Space in the City's 2001 Comprehensive Plan.

Site Description: The project site is approximately 80 feet long and 50 feet wide. There is no vegetation on the site. It is a small area located between the Spokane River and the south abutment of the Division Street Bridge. It is located on the south shore of the Spokane River and underneath the bridge. The site is undeveloped Parks property preserved as a conservation area.

Project Description: The project consists of two elements. First, the applicant proposes to stabilize the slope of a portion of the river bank directly underneath the Division Street Bridge. The currently eroding river bank between the ordinary high water mark ("OHWM") and the north edge of the Centennial Trail will be stabilized by the placement of granite boulders. Second, the applicant proposes to install a ramp-like sloped pathway for use by recreationists to launch and recover small, non-motorized water craft, such as canoes or kayaks. The entire project, including all construction activities, will be located landward (with a minimum distance of three feet) of the OHWM.

Surrounding Conditions: To the north of the site is the bed of the Spokane River and the forebay pool behind Upper Falls Dam. To the south the site is Spokane Falls Boulevard. The site is adjacent to the Centennial Trail, and to the west is the Spokane Convention Center.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 17E.060, 17E.060.400, 17E.060.490, 17G.060, and 17G.060.170.

Notice of Community Meeting: Mailed: October 7, 2014
Posted: October 9, 2014

Notice of Application/Public Hearing: Mailed: November 18, 2014
Posted: November 18, 2014

Community Meeting: October 23, 2014

Hearing Date: January 15, 2015

Site Visit: The Hearing Examiner visited the site on January 28, 2015.

SEPA: A Determination of Nonsignificance (DNS) was issued by City of Spokane Planning on December 22, 2014. No appeal of the DNS was filed.

Testimony:

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

Garrett Jones, Landscape Architect
Parks Planning, City of Spokane Parks and
Recreation Department
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Exhibits: 14-39-SCUP – Division Street Bridge boat launch

1. Planning Services Staff Reports
 2. Application, including:
 - 2A General application
 - 2B Shoreline permit application
 - 2C Notification Map application
 - 2D Joint Aquatic Resources Permit application (JARPA)
 - 2E Site Plan
 3. Engineering Services comments
 4. Avista comments
 5. Notice map with parcel listing
 6. Notice of Community Meeting
 7. Notice of Application, SEPA Review and Public Hearing
 8. Affidavit of mailings
 - 8A Community Meeting dated 10-07-14
 - 8B Combined application SEPA review and hearing dated 11-18-14
 9. Affidavit of postings:
 - 9A Community Meeting dated 10-09-14
 - 9B Combined application SEPA review and hearing dated 11-18-14
 10. Affidavit of sign removal 10-24-14
 11. SEPA Determination of Nonsignificance
 12. Environmental checklist
 13. Community Meeting sign in sheet
 14. Community Meeting presentation
 15. Letter dated 08-28-14 to Garrett Jones from Tami Palmquist
re: community meeting instructions
 16. Letter dated 10-28-14 to Interested Parties from Tami Palmquist
re: requesting comments
 17. Letter dated 11-12-14 to Doug Pineo from Tami Palmquist
re: notice of application/SEPS review/public meeting instructions
- A. Material received at hearing:
- A-1 Hardcopy of Staff's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed shoreline conditional use permit must comply with the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed conditional use permit application and the evidence of record with regard to this section and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use code.*

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

The project site has two zoning classifications. A portion of the site is zoned Downtown General (“DTG”) and a portion of the site is zoned Downtown University (“DTU”). The proposed uses, including the non-motorized boat launch, are best categorized as Parks and Open Areas in the Institutional Category under SMC 17C.190.460. See Exhibit 1, p. 4. Parks and Open Space uses are allowed outright in these zoning classifications. See Table 17C.124-1. Thus, this project is a permitted use under the zoning code.

The project site also has two shoreline designations. A portion of the site is designated as Limited Urban Environment, and a portion of the site is designated as Urban Intensive Environment. The site is being improved to both stabilize the shoreline and enhance recreation. The improvements include the installation of stabilizing boulders, the creation of a staging area with boulder benches, the construction of an art rail, the installation of a boat ramp, and other improvements designed to improve enjoyment of and access to the river. See Exhibit 2E. These uses are properly characterized as “Water-enjoyment Uses” under the shoreline regulations. See Exhibit 1, p. 4. The Spokane Municipal Code defines “Water-enjoyment Use,” in part, as a “...recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use, or a use that provides recreational use or aesthetic enjoyment of the shoreline for a substantial number of people...” See SMC 17E.060.360(D)(3)(a). Examples of Water-enjoyment Uses include, among other things, “boat ramps for recreation...and other improvements facilitating public access to shorelines of the state...” See SMC 17E.060.360(D)(3)(b). Water-enjoyment Uses are allowed as conditional uses in both the Limited Urban Environment and the Urban Intensive Environment designations. See Table 17E.060-04.

Although Water-enjoyment Uses are allowed and include recreational boat ramps, the municipal code also states that “launch ramps for small non-motorized watercraft” are not permitted in the Urban Intensive Environment. See Table 17E.060-04. This prohibition precisely describes the proposed boat launch. However, the proposed boat launch will be constructed entirely on the portion of the site that is designated Limited Urban Environment, not the portion designated as Urban Intensive Environment. *Testimony of T. Palmquist*. As a result, the prohibition does not apply to this project.

The Hearing Examiner concludes that the project is allowed under both the underlying zoning of the property and the restrictions applicable in the shoreline jurisdiction.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.

The site is designated as “Conservation Open Space” in the Spokane Comprehensive Plan. The designation is typically applied to properties that are publicly owned, are unimproved, and are intended to remain in a natural state. See Exhibit 1, p. 4. The purpose of the designation is to protect properties that have scenic value, are environmentally sensitive, and have passive recreational features, to name a few of the nonexclusive characteristics identified in the Comprehensive Plan. See id.

The project is consistent with and promotes various goals and policies of the Comprehensive Plan.

The project includes the construction of a staging area with boulder seats, along with a ramp-like path to the shoreline. This will improve physical and visual public access to the shoreline. See Comprehensive Plan, SMP 11.35. Enhanced public access to shorelines in the Central Business District is one of the specific objectives of the Comprehensive Plan. See Comprehensive Plan, SMP 8.3. The project also results in the development of urban open space amenities, such as the new viewpoints and an art rail with signage conveying access rules and other information. See Comprehensive Plan, PRS 2.3. The project is well-designed to have an attractive appearance, as well as to improve the condition of the shoreline under the Division Street Bridge. See Comprehensive Plan, LU 2.1; see also Exhibit 2E. All the improvements will be above the OHWM, with a buffer of at least three feet. Thus, the improvements will enhance public use and enjoyment of the shoreline, while minimizing the impacts to the shoreline. See Comprehensive Plan, SMP 11.35.

The shoreline is currently susceptible to erosion. This project will help protect the shoreline through erosion control measures. See Comprehensive Plan, SMP 5.4. Erosion control will be achieved by installation of boulders along the shoreline. Thus, the project will employ natural materials to achieve erosion control. See Comprehensive Plan, SMP 11.28. The improvements will be made above the OHWM, and there is no evidence suggesting that the improvements will result in a net loss of shoreline ecological functions. See Comprehensive Plan, SMP 1.3 & 8.2. The site already contains fill material that is contaminated. This fill material will be replaced with clean soil. To that extent, the project protects water quality and aquatic/wildlife habitat by removing a potential source of river pollution. See Comprehensive Plan, SMP 5.4.

Because the project is consistent with the objectives, policies and goals of the Comprehensive Plan, the Hearing Examiner finds that his criterion has been satisfied.

3. The proposal meets the concurrency requirements of Chapter 17D.010.

The decision criteria for Type III decisions, such as the shoreline conditional use permit under review, require that any proposal satisfy the concurrency standards under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on October 28, 2014, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 16.

A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. City staff advised that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 6. Given the lack of comments, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1). In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied. Finally, the proposal, by its nature, does not place any substantive demands on public infrastructure.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the shoreline conditional use permit is met.

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.

The site plan for the project is included in the record as Exhibit 2E, which shows (in general) the location, size, shape, and slope of the property. The site plan also includes information about the physical characteristics of the site and details about the proposed project. In addition, the applicant completed an environmental checklist, the JARPA, and a shoreline/critical area checklist, all of which describe the physical and environmental conditions of the site. A review of this documentation confirms that the project site is suitable for the proposed use. City departments and other agencies reviewed the checklist and JARPA regarding the physical characteristics of the property. See Exhibit 1, p. 6. There were no comments from any agencies objecting to the proposed use of the site.

As stated above, the project includes the use of natural materials to stabilize the shoreline and prevent erosion. In addition, contaminated fill will be replaced with clean soil. Even if there is a material impact from this project, on balance the result will be positive.

The site is located under an existing bridge and contains some amount of contaminated fill. Thus, the site has already been disturbed. There was no comment from the Spokane Tribe of Indians or any other agency suggesting that this project may impact any historic or cultural features. Thus, there is little reason to suspect that historical or cultural resources exist on the site. To the extent that there is any reason for concern, there is a condition requiring that the Tribe and others be notified if anything is discovered during the course of the improvements.

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 or neighboring property or the surrounding area, considering the design and intensity of the proposed use.

An Environmental Checklist was prepared for the project on or about October 28, 2014. See Exhibit 12. The City issued a Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA) on December 22, 2014. See Exhibit 11. The project was circulated amongst all agencies and City departments with jurisdiction and no significant adverse impacts were noted in the environmental documents. The findings and recommendations of the applicable departments and agencies were incorporated into the conditions for approval of this project. See Exhibit 1, p. 6. No evidence was submitted at the hearing to support a claim that the project will have significant or unmitigated environmental impacts, or that the checklist or DNS was otherwise in error.

The limited impacts of this project are those typical of construction projects, such as dust and vehicle exhaust. However, mitigation measures imposed at the time of permitting can control such impacts. Further, the impacts of construction are temporary, and will be eliminated when the project is completed.

The project is relatively low intensity, being limited to shoreline erosion control, some site improvements to improve access and aesthetics, and the installation of a staging area and small boat launch. The impacts are relatively low because the site is small and the scope of the project is fairly discrete. In addition, the site is under a public bridge, between the Centennial Trail and the Spokane River. As a result, there aren't any material impacts to nearby properties.

The Hearing Examiner finds that this criterion has been met.

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

a. The proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;

The proposed use is consistent with the policies expressed in RCW 90.58.020. The project increases public access to the shorelines. See RCW 90.58.020. The proposal creates recreational opportunities for the public. See id. By implementing erosion control and removing polluted fill material, the project protects the resources and ecology of the shoreline, and helps preserve the natural character of the shoreline. See id. These features of the project are also consistent with the objective to control pollution and prevent damage to the shoreline. See id. The project does result in alterations to the shoreline as well, but those alterations are accomplished in a manner that is consistent with the applicable policies. The Shoreline Management Act grants preference to alterations that increase recreational opportunities, enhance public access, and otherwise provide greater opportunities for the public to enjoy the shorelines of the state. See id.

The project site has two designations under the Shoreline Master Program. Approximately one-half of the site is designated as "Urban Intensive Environment." See Exhibit 1, p. 7. And the other half (approximately) is designated as "Limited Urban Environment." See id. The project is generally consistent with these classifications.

The project is consistent with the "urban intensive" category because the project promotes the use of open space, recreational and cultural facilities within an urban setting. See id. The project is consistent with the "limited urban" category because the project promotes physical and visual public access and recreational uses of the shoreline, while also protecting and restoring ecological functions of the shoreline. See id. The project is also consistent with various policies incorporated into the SMP, as is discussed in Section 2 above.

For the foregoing reasons, the Hearing Examiner concludes that this criterion for approval is satisfied.

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

As the Staff Report notes, existing public access and views of the shoreline will not be diminished by this project. See Exhibit 1, p. 7. The project does not result in the construction of structures or dedicate the site to uses that will obstruct or interfere with public use of the shoreline. On the contrary, this project will improve public access and increase the opportunities to use and enjoy the shoreline and the Spokane River. There will be disruptions due to the construction work. However, that kind of interference is not unreasonable and will be for a limited period of time.

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 no known conditional use permits in the general vicinity. See Exhibit 1, p. 8. Further, the project is designed to enhance public access while also protecting the shoreline from further erosion. See id. Based upon this record, there are no cumulative impacts that could undermine the goals of the Shoreline Master Program. As a result, this criterion is 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;

See the discussion in paragraph 5 above. In addition, best management practices will mitigate against any impacts to neighboring properties. See Exhibit 1, p. 8. The Hearing Examiner concludes that this criterion is met.

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.

As has already been discussed, the project will not have significant adverse effects on the shoreline. There is no vegetation on the site currently, and the site was previously disturbed. See Exhibit 1, p. 8. Given the existing conditions, the project will not adversely affect any habitat. See id. The project will result in the installation of erosion controls and removal of contaminated fill, and thereby will serve to improve water quality. The project will be completed above the OHWM, preventing adverse impacts to the river. The Staff commented as follows: "There will be no temporary or permanent loss of ecological function." See id. See also the discussion in paragraphs 5 and 6b above. The Hearing Examiner agrees with the Staff that this criterion for approval is satisfied.

DECISION

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

1. Approval is for a shoreline conditional use permit authorizing the construction of shoreline stabilization measures to protect an eroding bank and a ramp-like sloped pathway for the purpose of launching small non-powered watercraft (the "Boat Launch"), along with related improvements.
2. The project shall be completed substantially in accordance with the application and the site plan on file as Exhibit 2E. If changes are sought to this approval, the applicant shall submit those changes to Planning Services for review and approval. If Planning Services finds that the changes are substantial, then they shall be submitted to the Hearing Examiner for review and approval.
3. This project lies within the Riparian Habitat Zone 2 of The Spokane River as defined in

Spokane Municipal Code, 17E.020.070. In compliance with Spokane Municipal Code 17E.020.070, Fish and Wildlife Conservation Areas – Exemptions, all exempt activities shall be undertaken using best management practices; the applicant shall maintain records documenting compliance with best management practices.

4. The project lies within the 100-year FEMA Flood Zone and is subject to the provisions of Section 17E.030 – Floodplain Management and 17E.060.190 – Flood Hazard Reduction.
5. 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. Pursuant to Section 17E.060.020 the applicant shall engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts resulting from this proposal.
6. Pursuant to SMC 17E.060.260, the following standards shall apply for the replacement of removed native vegetation within the shoreline jurisdiction: (a) removed shoreline vegetation shall be replaced within the shoreline jurisdiction; and (b) New plantings shall be native plant species or other approved species similar in diversity, type, density, wildlife habitat value, water quality characteristics and slope stabilizing qualities of the original vegetation.
7. The City of Spokane Parks and Recreation Department (“City Parks”) shall coordinate with Avista to ensure that patrons using the proposed facilities are aware of and follow the applicable safety rules and guidelines. In addition, the following conditions of approval, as requested by Avista, shall apply to this project:
 - a. City Parks shall actively enforce the existing City Ordinance that prohibits people from being in the river between the west end of the Division Street Bridge and the Monroe Street Bridge at all times of the year.
 - b. City Parks shall ensure that people stay out of the water downstream of the bridge and upstream of the boat restraining system because this area is extremely dangerous at all times of year, but especially during high flow periods.
 - c. The Boat Launch shall not be open to the public during high flow periods. City Parks shall install appropriate warning signs at the Boat Launch, as well as at all other upstream boat launches, warning the public of the dangers associated with being on the river during high flows.
 - d. The City shall install at least two “take-out” signs upstream of the Boat Launch directing people to take out on the left side of the river underneath the Division Street Bridge. These signs should be located downstream of the Don Kardong Bridge to provide adequate time to use the take out at the Boat Launch.
8. The Centennial Trail is a fire access lane and access must be maintained for all emergency vehicles.
9. This project shall conform to the requirements of the Hydraulic Project Approval issued for this project by the Washington State Department of Fish and Wildlife and any additional agency permits.
10. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians

and the Planning & Development Department should 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.

11. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development.
12. Spokane Municipal Code 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.
13. 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 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 28th day of January 2015.



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 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.**