

CITY OF SPOKANE HEARING EXAMINER

Re: Application for a Conditional Use)
Permit and Planned Unit Development) FINDINGS, CONCLUSIONS,
to develop a 39.44-acre Manufactured) AND DECISION
Home Park and PUD residential)
community in the RSF zone.) FILE NO. Z20-184PPUD

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant, Sycamore Group, LLC, with permission from the Estate of Bettie R. Simmons, is requesting approval of an application for a Preliminary Planned Unit Development (PUD) and Conditional Use Permit (CUP) to develop a 39.44 acre Manufactured Home Park (MHP) and PUD residential community to be known as Latah Glen. The project will include 157 leased spaces, a community clubhouse, laundry facilities, and an interconnected pedestrian system with open space. The project includes private roads and private utilities.

Decision: Approved, with *revised* conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Sycamore Group, LLC
Attn: William Nascimento
9850 Research Drive
Irvine, CA 92618

Agent: Storhaug Engineering
Attn: William Sinclair
510 E. 3rd Avenue
Spokane, WA 99202

Owner: Estate of Bettie R Simmons
3504 S Inland Empire Way
Spokane, WA 99224

Property Location: The subject property is located on parcel number 25364.0001, addressed as 1925 W. 36th Avenue, in the City of Spokane, Washington. The subject property is generally located between S. Inland Empire Way/W. Victoria Lane to the east and S. Marshall Road to the west. The proposed MHP is located to the northwest of the Latah Creek Plaza shopping area on S. Cheney-Spokane Road, south of Medo-Mist RV Park and north of W. 44th Avenue.

Legal Description: The legal description of the property is provided in Exhibit 4a.

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

Comprehensive Plan (CP) Map Designation: The property is designated as Residential 4-10.

Site Description: The subject property is approximately 39.44 acres in size and is currently vacant. Access to the project will require dedication of right of way (ROW) across parcel 25361.0004. ROW dedication will be completed outside of the PUD/CUP application approval process. Additionally, unimproved Marshall Road will provide secondary fire access to the site until such time as Marshall Road is paved which, per the recommended conditions of approval herein, triggers compliance for full access between Marshall Road and the proposed MHP.

Surrounding Conditions and Uses: The subject property and adjoining property is zoned RSF. Adjacent land uses are generally larger tracts of land that are either vacant or residential in nature. Government-owned land (Washington State Department of Natural Resources [WSDNR]) is located immediately east and to the south of the proposed MHP. Medo-Mist RV Park is located to the north of the site. BNSF rail as well as US-195 transportation corridors are located in very close proximity directly to the east of the project site.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110, Residential Development; SMC 17C.320, Conditional Uses; SMC 17C.345, Manufactured Home and Mobile Home Parks; SMC 17G.060, Land Use Application Procedures; SMC 17G.070, Planned Unit Developments; SMC 17G.040.020, Development & Applications Subject to Design Review; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: September 8, 2021
Posted: September 8, 2021

Notice of Application/Public Hearing: Mailed: May 19, 2022
Posted: May 19, 2022

Community Meeting: September 23, 2020

Site Visit: July 17, 2022

Public Hearing Date: June 29, 2022

State Environmental Policy Act (SEPA): A Mitigated Determination of Non-Significance (MDNS) was issued on June 14, 2022. The deadline to appeal the MDNS was June 28, 2022. The MDNS was not appealed.

Testimony:

Melissa Owen, Assistant Planner
City of Spokane Planning & Development
808 W. Spokane Falls Boulevard
Spokane, WA 99201

Jerry Storhaug
Storhaug Engineering
510 E. 3rd Avenue
Spokane, WA 99202

G. William Nascimento
Sycamore Group, LLC
9850 Research Drive
Irvine, CA 92618

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

William Sinclair
Storhaug Engineering
510 E. 3rd Avenue
Spokane, WA 99202

AT Miller
Paine Hamblen LLP
717 W. Sprague Avenue, Suite 1200
Spokane, WA 99201

Inga Note
City of Spokane
Integrated Capital Management
808 W. Spokane Falls Boulevard
Spokane, WA 99201

Greg Figg
Washington State Department of
Transportation
2714 N. Mayfair St.
Spokane, WA 99207

Detrich Nascimento
6914 S. Pheasant Ridge Dr.
Spokane, WA 99224

Pat Girtz
206 W. Nebraska
Spokane, WA 99205

Submitted Comments to the Record or Present but did not Testify:

Bob Vicars
509 W. Bolan Avenue
Spokane, WA 99224
Bobmcv1@hotmail.com

Faith Hayflich
9815 Hangman Valley Road
Spokane, WA 99224
faithhay@me.com

Molly Marshall
2914 W. Grandview Avenue
Spokane, WA 99224

Patti Berg
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Su Sawyer
1918 S. Audubon Court
Spokane, WA 99224
susawyer@juno.com

Grandview-Thorpe Neighborhood Council
[no address required]
grandviewthorpe@hotmail.com

Exhibits:

Staff Report, dated 06/23/22, including the following exhibits:

1. Vicinity Map
2. Zoning Map
3. Land Use Map
4. Application Materials, including:
 - a. General Application with Owner Authorization, pp. 2-3
 - b. PUD Application, pp. 4-5
 - c. CUP Application, pp. 6-7
 - d. Project Narrative, 7-16
5. Site and Context Plan Documents, including:
 - a. Context/Site Analysis – revised 08/13/21, p. 2
 - b. Site Plan – revised 11/30/21, p. 3

- c. Site Plan – design character – updated – revised 05/19/21, p. 4
 - d. Concept Building Details – revised 05/19/21, p. 5
 - e. Neighborhood and Site Detail – revised 05/19/21, p. 6
 - f. Concept Building Details, p. 7
6. Technical Documents including:
- a. Site Lighting Calculations and Specifications
 - b. Wetland Report
 - c. Cultural Resource Survey
 - d. Geotechnical Engineering Report and Addendum
 - e. Traffic Impact Analysis and Appendices
 - f. Trip Generation Letter (Updated October 28, 2020)
 - g. Stormwater and Utility Concepts
 - h. Sewer and Water Utility Technical Memo
7. Approved Design Standards Variance Request Form
8. SEPA Checklist (updated 11/30/2021)
9. Critical Areas Checklist
10. MDNS
11. Request for Agency Comments, including:
- a. Request letter dated 10/27/20, pp. 2-4
 - b. Request for Additional Information (pp. 5-40) from:
 - Washington State Department of Archaeology and Historic Preservation (WSDAHP) dated 10/28/20
 - Spokane Tribe of Indians dated 10/28/20
 - City of Spokane, Dave Kokot, Fire, dated 10/30/20
 - Washington State Department of Transportation (WSDOT), Greg Figg, dated 11/05/20
 - City of Spokane, Inga Note, Integrated Capital Management (ICM), dated 11/05/20
 - Washington State Department of Ecology (WSDOE) dated 11/06/20
 - City of Spokane, Bobby Halbig, Streets, dated 11/09/20
 - WSDNR dated 11/09/20
 - City of Spokane, Joelle Eliason, Engineering, dated 11/10/20
 - City of Spokane, Melissa Owen, Planning
 - City of Spokane, Marcia Davis, ICM, dated 11/16/20
 - Avista dated 11/25/20
12. Second Request for Agency Comments, including:
- a. Request letter dated 03/17/21, pp. 2-4
 - b. Request for Additional Information (pp. 5-52) from:
 - Spokane Tribe of Indians dated 03/10/21
 - City of Spokane Treasurer Department dated 03/18/21
 - City of Spokane Fire Department dated 03/23/21
 - ICM Water Distribution dated 03/24/21
 - WSDOE dated 03/29/21
 - City of Spokane Engineering dated 03/29/21
 - Streets Department dated 03/30/21
 - City of Spokane Inga Note dated 03/30/21
 - WSDOT dated 03/30/21
13. Third Request for Agency Comments, including:
- a. Request letter dated 05/24/21, pp. 2-4

- b. Request for Additional Information (pp. 5-35) from:
 - ICM Water Distribution dated 05/25/21
 - WSDOE dated 06/02/21
 - WSDAHP dated 06/07/21
 - City of Spokane Treasurer Department dated 06/07/21
 - WSDOT dated 06/07/21
 - City of Spokane Inga Note dated 06/07/21
 - City of Spokane Engineering dated 06/15/21
- 14. Fourth Request for Agency Comments, including:
 - a. Request letter date 08/19/21, p. 2
 - b. Request for Additional Information (pp. 3-31) from:
 - ICM Water Distribution dated 08/24/21
 - WSDOE dated 08/31/21
 - WSDAHP dated 06/26/21
 - WSDOT dated 09/01/21
 - City of Spokane Engineering dated 09/22/21
- 15. Fifth Request for Agency Comments, including:
 - a. Request for Additional Information (pp. 2-45) from:
 - WSDOE dated 12/16/21
 - WSDOT dated 12/23/21 & 03/11/22 (including original email to Whipple Consulting and attachment (Meadow Lane Results Binder)
 - City of Spokane, ICM, Inga Note dated 12/21/21
 - City of Spokane, Correspondence re: Traffic Mitigation (email chains beginning 01/23/22, 02/11/22)
 - City of Spokane Engineering updated 01/10/22
- 16. Sixth Request for Agency Comments, including:
 - a. Request letter dated 04/04/22, p. 2
 - b. Request for Additional Information (pp. 3-17) from:
 - Attachment Package 1
 - WSDAHP (10/28/20, 07/07/21, 07/26/21)
 - Spokane Tribe of Indians (10/28/20, 03/10/21)
 - WSDOE (11/06/20, 03/29/21, 06/02/21, 08/31/21, 12/16/21)
 - WSDNR (11/09/20)
 - Avista (11/25/20)
 - Attachment Package 2
 - WSDOT (11/05/20, 03/21/21, 06/07/21, 10/01/21, 12/23/21, 03/11/22, 04/19/22, 04/27/22)
 - Attachment Package 3
 - City of Spokane, ICM, Inga Note (11/05/20, 03/30/21, 06/07/21, 12/21/21, May 2022 follow-up email chain)
 - City of Spokane Planning (Agency Review No. 1 Comments; all other comments incorporated into request for more information and technically complete letter)
 - Attachment Package 4
 - City of Spokane Engineering (11/10/20, 03/29/21, 06/15/21, 09/22/21, 01/10/22)
 - Attachment Package 5
 - City of Spokane Fire Department (10/30/20, 03/23/21)
 - City of Spokane, Streets (11/09/20, 03/30/21)

- City of Spokane, ICM, Marcia Davis (11/16/20, 03/24/21
05/25/21, 08/24/21)
 - City of Spokane, Treasury Accounting (03/30/21, 05/24/21)
- 17. Notice of Application, SEPA, and Hearing Documents, including:
 - a. Public Notice Sign/Posting/Mailing instructions, pp. 2-3
 - b. Public Notice Letter, Map and Parcel List, pp. 4-8
 - c. Affidavits, pp. 9-10
 - d. Copy of email to Neighborhood Council representatives and Spokane Public Library, p. 11
- 18. Combine Notice Public Comments (includes WSDOE letter submitted during agency comment period)
- 19. Design Review Board (DRB) Documents, including:
 - a. DRB Application, pp. 2-15
 - b. Collaborative Workshop Staff Report and Advisory Actions, pp. 16-30
 - c. Applicant Submittal for Recommendation Meeting, pp. 31-61
 - d. Final Recommendations, pp. 62-63
- 20. Virtual Community Meeting Materials, including:
 - a. Public Notice Sign/Posting/Mailing instructions (pp. 2-7), including:
 - Instruction letter
 - Notification map
 - Notification parcel list
 - Notification letter (to be completed by applicant)
 - b. Mailed/Posted Virtual Public Notice Letter, pp. 8-9
 - c. Community Meeting Summary and Attendee List, pp. 10-14
 - d. Community Meeting Presentations (general project and traffic scoping), pp. 15-31
 - e. Affidavits of Posting and Mailing, pp. 32-34
 - f. Notification Map Application, pp. 35-36
 - g. Meeting Recording
- 21. Pre-Development Final Comments
- 22. Staff Presentation
- 23. Applicant Brief, including:
 - a. Whipple Consulting Engineers letter dated 06/28/22
 - b. Todd Whipple Resume
 - c. Ben Goodmansen Resume
- 24. Sinclair Exhibit

FINDINGS AND CONCLUSIONS

To be approved, a PUD must comply with the criteria set forth in Section 17G.060.170 SMC. The Hearing Examiner has reviewed the application 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. “Residential Household Living” is permitted in the RSF zone. See Table 17C.110-1. “Manufactured housing” is an example of “residential household living.” See SMC 17C.190.110(C). In addition, the RSF zone allows a variety of housing types,

including manufactured homes. See Table 17C.110-2. Generally speaking, manufactured homes are allowed in all areas¹ of the city in which single-family residences are a permitted use. See SMC 17C.345.010.

There is no question that the proposed use is allowed in the RSF zone. Having said that, the Applicant is not proposing to install an individual manufactured home on an RSF lot. Rather, the Applicant is proposing to develop an MHP. The park will remain under the sole ownership of the developer. The developer will lease spaces within the park to future residents, i.e. to individual manufactured home owners. Manufactured home parks are also allowed in the RSF zone, subject to the review and approval as a Type III conditional use application. See SMC 17C.345.100; see *also* Staff Report, p. 5. In addition, an MHP must also satisfy the development standards set forth in Chapter 17C.345 SMC. See Staff Report, p. 5.

The Hearing Examiner agrees with Staff that the proposed MHP satisfies the applicable development standards, as the following discussion illustrates.

Density. In the RSF zone, the minimum density is four dwelling units per acre (DUs/acre) and the maximum density is ten DUs/acre. See Table 17C.110-3. Staff calculated that the proposed development is four DUs/acre, applying the methodology set forth in the municipal code. See Staff Report, pp. 5-6. Thus, the proposed MHP is consistent with the density requirements of the zone.

Lot Area. An MHP must have a minimum area of 10 acres. See SMC 17C.345.120(B). The proposed MHP is approximately 39.44 acres in size, easily satisfying this standard. See Staff Report, p. 5.

Open Space. At least 15% of the gross site area must be in open space or recreational areas available for use by all residents. See SMC 17.345.120(D). The proposal includes 18.08 acres of common open space. See Staff Report, p. 5. Of those 18.08 acres, 3.23 acres is accessible open space, 7.9 acres is visually accessible steep slopes, and 6.78 acres is private street area. Taken together, these open space areas represent nearly 46% of the proposal's land area. See *id.* Even excluding the private street area from the calculation results in 28.2% open space. The proposal sets aside well in excess of 15% of its land area for open space.

Setbacks. The municipal code includes specific setback standards for MHPs. See SMC 17C.345.120(C). Staff confirmed that the project was designed to satisfy the setback standards for the distance from the boundary of the park (20 feet) and the distance from a public street (20 feet). See Staff Report, p. 5. Required setbacks from private streets, walking areas, and parking areas must be verified at the time of issuing permits for new manufactured homes. See *id.* In any case, the site plan must demonstrate compliance with the setback standards. See Condition 15. The Hearing Examiner concludes that the setback standards are properly addressed.

Pedestrian Access. The municipal code requires the developer to install a paved or graveled system of walkways that provides safe and convenient access to every

¹ MHPs are not permitted in designated historic districts. See SMC 17C.345.100. This exception, however, is not relevant to this application.

manufactured home and all common areas. See SMC 17C.345.120(J). The proposal satisfies this requirement by including sidewalks on one side of the private streets as well as an interconnected system of walking paths that provides convenient access to all homes and common areas. See Staff Report, p. 7.

Streets. Each lease space in an MHP must be adjacent to a public or private street. See SMC 17C.345.120(L). This requirement is satisfied. All the leased spaces in the proposed development are adjacent to the streets. See Exhibit 5.

The streets in the development must be designed and constructed to City standards. The project conditions ensure that this requirement will be met. See e.g. Conditions 16, 27, & 35. That being said, on July 6, 2020, the Applicant requested approval of a design standards variance. See Exhibit 7. The Applicant sought a variance² to narrow the required street and ROW widths, to restrict parking to one side of the street, and to remove sidewalks from one side of the street. See *id.*; see also Staff Report, p. 7. The Director of Engineering Services approved the variance request on July 20, 2020. See Exhibit 7.

It should be acknowledged that the MHP standards appear to preclude design deviations for public or private streets. Specifically, those standards state:

Deviations to the public or private street standards, curbing, sidewalks, lighting, pedestrian buffer strips and other street standards are not permitted through a mobile home park approval.

See SMC 17C.345.120(L). It could be argued that the design deviations approved by Engineering are not consistent with this language. The point is debatable, as this language does not necessarily preclude design deviations through other procedures, such as a PUD or a variance. That aside, the Hearing Examiner does not reach this issue. Engineering Services approved the design deviation just over two years ago, pursuant to SMC 17H.010.020. A decision of the Director of Engineering Services may be appealed to the Hearing Examiner, but only if the appeal is lodged within 14 days of the written decision. See SMC 17G.050.310(A). That decision was not appealed or challenged. The variance was approved and cannot now be appealed. Therefore, the propriety of the design deviations is not properly before the Hearing Examiner.

Buffer Strips. The MHP standards require the maintenance of a 20-foot strip around the boundary of the park. See SMC 17C.345.120(F). This strip must be landscaped to provide a visual screen. See *id.* This feature is incorporated into the design of the proposed MHP. See Exhibit 5. The buffer strip is also required by project conditions. See Conditions 14, 22, & 23. Therefore, this requirement of the MHP standards is fulfilled.

As discussed in the Staff Report, the project either satisfies or will satisfy (based on project conditions and legal requirements) the remaining development standards. See Staff Report, pp. 6-7. For example, the proponent will be required to install utilities, provide parking, and complete landscaping, all consistent with the standards, project conditions,

² To pursue these changes, the Applicant was also required to submit a PUD application, which included design review. See Staff Report, p. 7.

and City guidance. See *id.* If signs or accessory structures are installed, the standards applicable to such improvements must be fulfilled. See *id.* Individual manufactured homes are also required to meet siting standards. See *id.*, p. 7. The Hearing Examiner incorporates the Staff's analysis of these issues by reference.

The proposal, as conditioned, also satisfies the development standards for PUDs. Those developments standards are discussed below. See Paragraph 6.

The Hearing Examiner concludes that the proposal is consistent with the land use codes. Therefore, this criterion for approval 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 allows single-family residences on individual lots and attached (zero-lot line) single-family residences. See CP, Chapter 3, p. 3-40. The proposal is to develop an MHP. Manufactured homes are just one type of single-family residence. The CP recognizes this and encourages the further development of this housing option.

The City of Spokane's policy is to permit manufactured homes on individual lots in all areas where residential uses are allowed. See CP, Chapter 6, Policy H1.16, p. 6-9. The City seeks to provide opportunities for a variety of housing types that are safe and affordable for all income levels. See CP, Chapter 6, Goal H1, p. 6-9. Similarly, Policy H1.18 promotes a wide range of housing types and housing diversity to meet the needs of a diverse population with varying income levels. See CP, Chapter 6, Policy H1.18, p. 6-9. The project serves these goals given that it is intended to provide affordable housing options for mid-level incomes. *Testimony of W. Nascimento*. In addition, the project will increase housing diversity at a time when the community is experiencing housing shortages and limited choices.

As its name suggests, land designated as Residential 4-10 may be developed with a minimum of four DUs/acre and a maximum of ten DUs/acre. See *id.* The density of the project is four DUs/acre. Thus, the project satisfies the density objective of its residential designation.

The development is situated within an area that is predominantly designated for low-density residential use. See Exhibit 22 (slides 5-6). There is a shopping center to the southeast. Shopping centers are generally intended to provide services to residential areas. There is a mobile home park to the north. An MHP is similar to and compatible with this type of residential use. Given these characteristics, the proposal is consistent with Goal LU5 and Policy LU 5.5. These provisions of the CP promote development that is complementary and compatible with surrounding land uses. See CP Chapter 3, Goal LU 5 & Policy LU 5.5, pp. 3-26 & 3-27.

No departments or agencies reported that public facilities or services were inadequate to serve the development, provided project conditions were fulfilled. To the extent there were insufficiencies, the Applicant will be addressing those concerns. For example, the Applicant will be improving Inland Empire Way from the project site to US-195. See

Condition 3b. In addition, the MDNS incorporates mitigation for impacts to US-195. See Exhibit 10; see also Condition 3a.

These improvements will provide proper access for automobiles, as encouraged by the transportation element of the CP. See e.g. CP, Chapter 4, TR Goal B, Policy TR 2, & Policy TR 7, pp. 20 & 24 (encouraging development of adequate transportation choices for various modes of travel). In making these improvements, the project fulfills Policy LU 1.12, which requires that public facilities be sufficient to support development. See CP, Chapter 3, Policy LU 1.12, p. 3-14. The project, as conditioned, promotes the efficient use of land by focusing growth in areas where adequate facilities and services are available. See CP, Chapter 3, Policy LU 3.1, p. 3-17. The commenting agencies also suggested mitigation measures where necessary to protect the natural and built environment, consistent with Policy LU 5.1. See CP, Chapter 3, Policy LU 5.1, p. 3-27.

The project will clean up a site that has been historically used for auto salvage. The site is littered with old parts, waste products, and garbage. In addition to addressing the site conditions, the project is well-designed to create an attractive, residential community. See e.g. CP, Chapter 8, Policy DP 2.6, p. 8-8 (stating projects should be designed to improve the quality of the neighborhood as well as account for the topography and other natural features of the site). Among other things, the design includes an integrated pedestrian pathway that provides access to all the lease spaces as well as the common areas of the site. A substantial amount of open space is provided. The project also includes an improved access to Fish Lake Trail, providing pedestrian and bicycle access to that recreational amenity. The developer will also be required to make improvements or participate in mitigation projects to improve the transportation system. These features support several goals and policies of the comprehensive plan.

The integrated pathway, common amenities, and connection to the trail all encourage social interaction and enhance the urban environment, consistent with Policy LU 2.1. See CP, Chapter 3, Policy LU 2.1, p. 3-16. The design helps create a connected network that provides safe, direct, and convenient access for pedestrians and bicyclists, in line with Policy LU 4.4. See CP, Chapter 3, Policy LU 4.4, p. 3-26. This project helps to connect places in the city with a walkway or bicycle path system, in furtherance of Policies NE 13.1 and NE 13.2. See CP, Chapter 9, Policy NE 13.1 & Policy NE 13.2, p. 9-16. The project also furthers the objectives of TR 20, which calls for coordinated efforts to provide safe access for pedestrians and bicyclists. See CP, Chapter 4, Policy TR 20, p. 4-20.

The project is consistent with several other goals and policies of the CP, as discussed in the Staff Report. See Staff Report, pp. 10-12. The Hearing Examiner concludes that this criterion is satisfied.

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

Six requests for agency comment were circulated between October 27, 2020, and April 4, 2022. In response, the City received comments from various agencies regarding the project. See Staff Report, p. 12. The conditions suggested by agencies or departments with jurisdiction were incorporated as project conditions. See *id.* "No agency with jurisdiction identified that concurrency could not be met if conditions and/or SEPA mitigation were followed." See *id.* To the extent any deficiencies exist in public

infrastructure, those conditions are addressed by the project conditions. See e.g. Conditions 3-7, 27, 29, & 32-33 (setting forth requirements for water, sewer, and transportation). The Hearing Examiner concludes that, with the proposed conditions, the project satisfies this criterion for approval.

- 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 proposed plat. See Exhibit 5. The location of the site does not pose genuine limitations on its use and development. The site is located in an area zoned/designated for low-density residential use. The nearby uses include a shopping center, a mobile home park, and some residences. The primary challenge of the location is the potential traffic issues related to US-195. However, that issue does not relate directly to the physical suitability of the site. That issue is more properly discussed in relation to traffic impacts or project conditions.

There are no streams or other surface waters on the site. See Exhibit 8 (Environmental Checklist ¶ B(3)(a)(1)); see also Exhibit 6b. There is surface water off-site and to the north, in the form of a small lake. See Exhibit 8 (Environmental Checklist ¶ B(3)(a)(1)). It is located approximately 720 feet at the closest point. See *id.* There are no wetlands or wetland buffers on the site. See Exhibit 6b. The property does not lie within a floodplain. See Exhibit 8 (Environmental Checklist ¶ B(3)(a)(5)).

According to the geotechnical report submitted by the Applicant, the soils at the site are generally sufficient to support foundations, pavement, and drainage. See Exhibit 6d.1. The geotechnical engineers concluded that the site is suitable for the proposed construction, provided the project recommendations are followed. See *id.* In addition, the project conditions address both geotechnical concerns as well as drainage. See Conditions 28, 31, & 35b; see also Dedication f-h, k-n. Stormwater drainage on the property will be handled through the typical methods identified in the Spokane Regional Stormwater Manual (SRSM). See Exhibit 8 (Environmental Checklist ¶¶ A(14)(a)(1), A(14)(b)(2) & B(3)(c)).

No groundwater will be withdrawn as the project will be served by city water. See Exhibit 8 (Environmental Checklist ¶ B(3)(b)(1)). In addition, wastewater will be collected and routed to the public sewage treatment facility. See Exhibit 8 (Environmental Checklist ¶¶ B(3)(b)(2), B(3)(c)(2)). There is no reason to expect that groundwater will be impacted by this project. See e.g. Exhibit 8 (Environmental Checklist ¶ B(3)(c)(2)).

A cultural resources survey was completed for this site. See Exhibit 6c. The survey did not reveal any eligible cultural resources. See *id.*, p. 38. The survey concluded that the project should be permitted to proceed as planned. See *id.* The WSDAHP concurred with the results and recommendations of the survey report. See Exhibit 14 (Letter of WSDAHP, dated 07/26/21). The WSDAHP did not recommend any further archaeological supervision of the site. See *id.* The Spokane Tribe of Indians also confirmed that they had no further concerns. See Exhibit 12 (Letter of Spokane Tribe of

Indians, dated 03/10/21). Both the WDAHP and the Tribe recommended that an inadvertent discovery plan (IDP) be implemented for the project. See Exhibits 12 & 14. This recommendation has been incorporated into the project conditions. See Condition 54.

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 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 record in this case supports the conclusion that no significant environmental impacts will arise from this project.

As previously discussed, there are no wetlands or surface waters on this site, and the site is not located within a 100-year floodplain. See Paragraph 4. No threatened or endangered species were identified on the site. See Exhibit 8 (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 8 (Environmental Checklist ¶ B(7)(b) & B(11)). No waste materials will be discharged into the ground or surface waters. See Exhibit 8 (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 8 (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. These requirements have been incorporated into the project conditions. See *id.*

The project will generate new traffic that has an impact on the transportation system. In order to address those impacts, the developer is required to improve Inland Empire Way from the project site to US-195. See Condition 3b. In addition, the developer will be required to complete a mitigation project(s) on US-195, to be agreed upon between the developer and WSDOT/City of Spokane. See Condition 3a. The developer will also be required to update its traffic analysis to determine whether a right-turn lane must be added to the intersection of US-195 and Inland Empire Way. See Condition 3c. If necessary, the developer must install the right-turn lane prior to occupancy of the 100th unit. See *id.*

The City will be collecting impact fees pursuant to SMC 17D.075. See Conditions 3a & 6. The developer's payments toward the mitigation projects for US-195 will be entitled to a credit against the impact fee. See Condition 3a. The impact fee will be collected for each single-family residence and must be paid prior to issuance of the building permit. See Condition 6. Thus, to the extent there are impacts from traffic, those impacts are being mitigated via road improvements and 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 5 (Environmental Checklist ¶ B(7)(b)(2)-(3) (concerning construction noise)). In addition, the environmental impacts of the completed project are minor.

Various departments and agencies reviewed the proposal and concluded that there were no significant environmental impacts. The City examined the environmental checklist, and ultimately issued an MDNS on June 14, 2022. See Exhibit 10. The appeal period for the MDNS expired on June 28, 2022. See *id.*; see also Staff Report, p. 15 The MDNS was not appealed. See *id.*; *Testimony of M. Owen*.

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 proposal is consistent with the development standards for planned unit developments. See SMC 17G.060.170(D)(4).*

The project satisfies the criteria for approval of a PUD, as set forth in SMC 17G.060.170(D)(4).

a. *Compliance with All Applicable Standards. See SMC 17G.060.170(D)(4)(a).*

The Staff has confirmed that the proposal satisfies the applicable standards for a planned unit development, found at SMC 17C.070.030. See Staff Report, p. 7. The Hearing Examiner agrees with the Staff's analysis³ and conclusions, and hereby incorporates the Staff's reasoning into this decision. See Staff Report, pp. 7-10. The decision also includes conditions that further ensure that the proposed development will remain consistent with the PUD standards. See e.g. Conditions 21, 24, 25, & 47. The Hearing Examiner concludes that this criterion is satisfied.

b. *Architectural and Site Design. See SMC 17G.060.170(D)(4)(b).*

The proposed development has completed the design review process. See Exhibit 19. The DRB determined that the project demonstrated the use of innovative, aesthetic, and energy-efficient architectural and site design. See *id.* In addition, the DRB's recommendations are incorporated into the project conditions. See e.g. Conditions 46-50. Therefore, the Hearing Examiner concludes that this criterion is satisfied.

c. *Transportation System Capacity. See SMC 17G.060.170(D)(4)(c).*

The Staff determined that there is "...either sufficient capacity in the transportation system to safely support the development proposed in all future phases or there will be

³ The Hearing Examiner also agrees with Staff's approach of favoring the MHP regulations, in cases where there is some conflict or inconsistency with other development standards. *Testimony of M. Owen*. This makes sense given this proposal is for a MHP. The regulations specific to the proposed use should control in cases of inconsistency.

adequate capacity by the time each phase of development is completed.” See Staff Report, p. 15. The Hearing Examiner agrees.

The Applicant submitted a Traffic Impact Analysis (TIA) and Trip Generation and Distribution Letter (TGDL) for this proposal. See Exhibits 6e1-6e5 & 6f. That documentation acknowledged there would be an impact on the transportation system and suggested mitigation measures. WSDOT and the City of Spokane considered this information, and formulated appropriate conditions and mitigation measures to address the anticipated impacts.

Pursuant to the project conditions, the Applicant will be required to fund the design and construction of a mitigation project(s) on US-195 to reduce the impact of its traffic on northbound US-195 to eastbound I-90 ramp. See Condition 3a. The Latah Glen project cannot receive final approval until the financial commitment is in place to complete that mitigation project. See *id.*

The Applicant must improve Inland Empire Way from the proposed site access to US-195, including paving, a separated sidewalk, drainage facilities, etc., in a manner consistent with City standards, the conditions of approval, and engineering plans. See Condition 3b. In addition, prior to occupancy of the 100th unit, the Applicant must update its traffic analysis to determine whether a right-turn lane must be installed at the intersection of Inland Empire Way and US-195 in the southbound direction.

The development will also be designed and constructed to provide vehicular and pedestrian access to Marshall Road, if and when Marshall Road is improved. See Conditions 16 & 21.

The Hearing Examiner finds that all applicable standards including capacity have been met or will be met in compliance with the conditions of approval. Therefore, this criterion is satisfied.

d. Availability of Public Services. See SMC 17G.060.170(D)(4)(d).

The City solicited comments from the relevant departments and agencies multiple times, from October 27, 2020, to April 4, 2022. See Exhibits 11-16. The city also received public comments on the project. See Exhibit 18.

The commenting agencies and departments confirmed that public services and facilities were available. The City verified that public sewer was available to serve the project. See Exhibit 11. The City also stated that the transmission main in Marshall would be available to provide water to the development in the future. See Exhibit 12; see *also* Condition 7. Avista confirmed that electricity and gas were also available to the project. See Exhibit 11. The Fire Department requested certain conditions and design features, but did not suggest that fire services were unavailable or insufficient. See Exhibits 11-12. The Spokane Police Department did not provide any comments. Nor did the School District. On this record, public services are or will be made available to serve the proposed development.

The public comments did raise concerns about the lack of public/community services, including fire protection, police, libraries, schools, and other services. See Exhibit 18 (Note of M. Marshall; E-mail of F. Hayflich 6-7-2022, 5:19 PM). While the Hearing Examiner is sympathetic to these concerns, the service providers did not corroborate the claims, as discussed above. There were no comments from the Spokane Police Department or the School District, and the Fire Department did not suggest that fire protection was lacking,

for example. When there were deficiencies, the commenting agencies and departments suggested mitigation measures or limitations, and those were incorporated as project conditions.

The Hearing Examiner concludes that this criterion is met.

e. Protection of Designated Resources. See SMC 17G.060.170(D)(4)(e).

This criterion calls for the protection, consistent with code requirements, of City-designated resources such as historic landmarks, view sheds, street trees, urban forests, critical areas, or agricultural lands. See SMC 17G.060.170(D)(4)(e). This proposal does not transgress this requirement, in the Hearing Examiner's view, for various reasons.

There are no historic landmarks on this site. There was no testimony or evidence identifying such resources. The cultural resources survey, likewise, did not reveal such resources.

The property does have scenic qualities. However, the Hearing Examiner has not found regulations in the municipal code that defines view sheds or sets forth guidelines for their protection. Staff did not suggest that the city has designated any part of this site as a view shed, or that any particular feature was entitled to protection.

No "street trees" were identified or designated for removal. In any case, the project will result in the planting of street trees along the newly developed roads. See Condition 13.

The development will undoubtedly require removal of some trees to clear the land for residential spaces, roads, landscaping, and other improvements. However, there was no testimony or other evidence that the trees on the site are considered part of the "urban forest" or are otherwise designated for protection. The Hearing Examiner is not aware of a rule or regulation precluding the removal of trees from private property. In any case, as the Staff emphasized, the applicant is proposing to leave stands of mature trees in multiple locations across the site. See Staff Report, p. 16. The retention of these trees and understory conforms the standards found in the SMC regarding potentially hazardous geology. See *id.*

The site is not designated as agricultural lands. The zoning is RSF. In addition, there was no evidence introduced to suggest that the site was historically used for agricultural purposes or, even if it was, that it is currently an agricultural resource that needs to be protected.

The only critical area on the site is geologically hazardous areas. However, the proposed development is supported by a geotechnical analysis, confirming that the site is suitable and the design is appropriate. See Exhibit 6d. In addition, the project conditions require the Applicant to demonstrate that the requirements of SMC 17E.040.100, regulating geologically hazardous areas, are being met. See Condition 17. Staff did not contend that the design of the project deviates from those standards. On the contrary, Staff noted that the developer is retaining many trees in a manner that protects geologically hazardous areas of the site. See Staff Report, p. 16.

The Hearing Examiner concludes that this criterion is fulfilled.

f. Compatibility with Adjacent Uses. See SMC 17G.060.170(D)(4)(f).

The Applicant seeks to develop a residential use on property zoned RSF. The site is surrounded by other land with the same residential zoning designation. "Nearby land is either vacant or used for existing residential development like Medo-Mist RV Park and individual single-family homes." See Staff Report, p. 16. Manufactured homes are just one specific type of residence. As previously discussed, manufactured homes are allowed in the same locations where other single-family residences are allowed. See Paragraph 1.

The proposal is very well-designed, with generous open space, an integrated pedestrian path, and buffers along its perimeters, among other features. See Exhibit 5b. The proposal has been through the design review process as well. The design and concept were approved unanimously by the DRB. See Exhibit 19.

Finally, there was no testimony or other evidence suggesting that the proposed use was incompatible with any other uses nearby.

The Hearing Examiner concludes that the proposed use is compatible with adjacent uses. Therefore, this criterion is satisfied.

g. Mitigation of Off-Site Impacts. See SMC 17G.060.170(D)(4)(g).

The proposal is to develop an MHP, ultimately consisting of 157 single-family residences. This type of use is not likely to be a significant source of off-site impacts like litter, noise, shading, or glare. The MHP will include regular refuse collection. The noise from the park would be typical for any residential development of this size. Excessive noise would be a matter for code enforcement. The light/glare associated with the use would, again, be similar to any residential neighborhood. There is no specific feature of this proposal that would be considered a significant source of light or glare. In addition, the development would not create off-site shade. The residences are limited under the zoning code to 35 feet in height. Adjacent properties are not likely to be impacted by structures in the park, especially given the perimeter buffer included in the design.

The one potentially significant off-site impact relates to traffic. However, the traffic impacts arising from this project are the subject of significant mitigation measures. The Hearing Examiner concludes that the potential traffic impacts have been sufficiently addressed, as is discussed elsewhere in this decision.

The proposal was reviewed by the relevant agencies and departments to ensure consistency with local codes and regulations. There are extensive project conditions that ensure that off-site impacts are minimized. The project was also reviewed under SEPA for potential impacts to the environment and surrounding properties. An MDNS was issued for the project, and that determination was not appealed.

The Hearing Examiner concludes that the proposal will not result in material, off-site impacts. The project design and conditions mitigate against such impacts. Therefore, this criterion is satisfied.

7. The MHP should be approved despite concerns about traffic impacts. The Hearing Examiner concludes that the project conditions adequately address this issue.

The primary objection raised in public comments concerned traffic impacts. Specifically, area residents opposed the project due to the impacts of additional traffic on the US-195

corridor. In particular, area residents argued that the intersection/ramp of US-195 and I-90 could not handle any more traffic. See Exhibit 18 (E-mail of B. McVicars 6-8-2022, 11:13 AM; Note from M. Marshall). They argued that no additional projects should be approved unless and until this intersection and the other infrastructure issues along the corridor are resolved. See *id.* (E-mail of F. Hayflieh 6-7-2022, 5:19 PM; E-mail of S. Sawyer 6-8-2022, 11:06 AM; E-mail of Grandview-Thorpe Neighborhood Council 12-9-2020, 12:08 PM; E-mail of B. McVicars 12-9-2020, 12:09 PM; E-mail of B. McVicars 6-8-2022, 11:13 AM).

The Hearing Examiner agrees that mitigation measures are necessary to address the capacity limitation on US-195. WSDOT has essentially agreed with the neighbors that the intersection of US-195 and I-90 cannot handle any more traffic. For this reason, WSDOT has insisted on a condition, applied to several projects along the corridor, that any additional traffic load northbound on US-195 must be offset through corridor improvement projects. We have reached the stage that for any development proposal to move forward, the developer will be required to fund and construct a mitigation project in order to proceed. See Condition 3a.

The Hearing Examiner is inclined to rely upon the expertise of WSDOT, City traffic engineers, and the project traffic engineer when analyzing the anticipated traffic and the necessary mitigation. There was some debate about which mitigation projects should or could be required, but there was no genuine debate about the amount of anticipated traffic or the propriety of Condition 3a.⁴ In addition, the residents objecting to the development did not submit any expert testimony or analysis on traffic issues. The expert testimony in this record supports the conclusion that the proposed mitigation measures are appropriate and sufficient to address the impacts on the transportation system.

8. *Fencing in a PUD.*

The Applicant's request for a variance from the street design standards triggered a requirement to apply for PUD approval. See Staff Report, p. 7. The fencing regulations imposed by the PUD standards, however, are not consistent with the Applicant's intent for this project. *Testimony of W. Sinclair.*

The PUD development standards include the following requirements for fencing:

*Perimeter fencing for a planned unit development is permitted except the **maximum height of fencing along a street frontage of the planned unit development may not exceed forty-two inches.** When a fence is along a street frontage, usable **pedestrian access shall be provided spaced a minimum of one every three hundred feet.***

See SMC 17G.070.030(C)(7) (emphasis added). This requirement is incorporated into the project conditions. See Condition 21.

The project engineer pointed out that the MHP was designed as a gated community with a 6-foot privacy fence around its perimeter. *Testimony of W. Sinclair; see also Exhibit 24.* Under the PUD standards, if a perimeter fence is installed, it could only be 3½ feet tall, and would have to include pedestrian access points every 300 feet. See *id.* This would

⁴ Notably, that condition was adopted through the MDNS issued pursuant to SEPA. The condition was not appealed, by either the proponents or the opponents of the project.

defeat the purpose of the design. *See id.* It also does not make sense in the context of an MHP. *See id.* Under the circumstances, the Applicant requested that the Hearing Examiner approve a 6-foot perimeter fence, as proposed, and revise Condition 21 to allow that design. *See id.*

Staff did not object to allowing the requested security fence, provided the Hearing Examiner could find some legal basis to support that result. *Testimony of M. Owen.* Unfortunately, the Hearing Examiner was unable to find authority to grant the Applicant's request. The fencing standard set forth in SMC 17G.070.030(C)(7) is stated in mandatory language, and does not provide the Hearing Examiner with any apparent discretion to make exceptions or modifications. Under the relevant law, the Hearing Examiner has no authority to revise development standard adopted by the City Council. *See Chaussee v. Snohomish County Council*, 38 Wn.App. 630, 638, 689 P.2d 1084 (1984) (stating a hearing examiner has no authority to exempt a landowner from development standards). The Hearing Examiner, in other words, can only interpret and apply the rules as written. He does not have any legislative prerogative.

The Hearing Examiner is very sympathetic⁵ to the proposal. If a security fence is to be installed, and given the nature and design of this development, a short fence with pedestrian access points does not seem appropriate or practical. However, the applicable standards do not allow for a perimeter security fence as proposed. Neither Staff nor the Applicant alerted the Hearing Examiner to any code provisions that would support the requested change to Condition 21. The Hearing Examiner's own research also revealed none. In the absence of such authority, the Hearing Examiner feels compelled to retain Condition 21 in its original form.

9. *The Applicant is not required to form a homeowners' association (HOA) for purposes of maintaining the common areas of the park.*

The PUD standards require that common open space be permanently maintained by either an HOA or property owners' association or a public agency that has agreed to take on that responsibility. *See SMC 17G.070.030.* As a result, this requirement was incorporated into the project conditions proposed by Staff. *See Condition 18.*

The project engineer explained that the MHP will remain under the ownership of the development entity, Sycamore Group, LLC, which will be responsible to maintain all common areas. *Testimony of W. Sinclair.* The homeowners will be leasing space for their manufactured homes and will not have an ownership interest, individually or collectively, in the common areas. In addition, because the common areas will not be public, there is no reason for a public agency to control or maintain the common areas.

The Hearing Examiner agrees with the project engineer. An owner in an HOA, by virtue of his or her membership, "is **obligated to pay** real property taxes, insurance premiums, maintenance costs, or for improvement to **real property other than that which is owned by the member.**" *See RCW 64.38.010(12)* (emphasis added). Here, no such obligation exists or will arise, because the homeowners will own neither the real estate

⁵ If the City Council amended the PUD fencing standards in the future, and those modifications allowed the proposed security fence, the Hearing Examiner would be willing to revisit the matter upon receipt of a change of conditions request.

beneath their residences nor any commonly held property. The formalities of an association are unnecessary and irrelevant when the ownership of common areas will remain with a single person or entity.

HOAs typically have authority do certain things on behalf of the owners. With respect to common areas, the HOA may grant easements through common areas; collect fees for the use of common areas; and regulate their use, improvement, maintenance, repair, or replacement. See RCW 64.28.020. However, in this case, the individual owners will have no property interest in the common areas. There is no basis upon which the individual manufactured home owners could legally or logically control the use, maintenance, improvement, etc. of the common areas. There is no commonly held property in this development.

In reality, the future residents of the MHP will be tenants, and the developer will be their landlord. The rights and interests of the residents, and the corresponding duties of the owner, will be governed by the landlord-tenant relationship. That relationship will be defined by the lease between the parties, as supplemented by the relevant law, in particular the Manufactured/Mobile Home Landlord-Tenant Act. See RCW 59.20.010 *et seq.*

As a landlord of an MHP, the developer will be required to maintain the common premises; keep any shared or common premises reasonable clean, sanitary, and safe; keep common premises free of noxious weeds and free of potentially injurious or unsightly objects; maintain and protect all utilities serving the manufactured homes; and maintain the roads within the MHP, among other things. See RCW 59.20.130(2)-(4), (6) & (9). Given the foregoing, the property owner's duty to maintain the MHP is ensured by state law, separate and apart from the conditions of approval.

The Hearing Examiner concludes that Condition 18 should be modified to remove the requirement to form an HOA. Those terms of SMC 17G.070.030 are not relevant to this application. That said, the developer's obligation to maintain common areas may remain a project condition. This is consistent with continued ownership of the common areas and the owner's future role as the park's landlord.

10. Condition 3a lawfully requires the Applicant to participate in mitigation project(s) in the same manner as other developments along the US-195 corridor.

The project conditions require the Applicant to make a financial commitment to design and construct a mitigation project(s) in order to offset the additional trips to the intersection of US-195 and I90. See Condition 3a. The Applicant did not object to this requirement or seek to change the language of the condition. *Testimony of B. Goodmansen.* However, the Applicant did raise significant concerns about the open-ended nature of the condition. To resolve the uncertainty, the Applicant requested that the Hearing Examiner explicitly identify (and appropriately limit) the Applicant's obligations pursuant to that condition.

At the hearing, the Hearing Examiner engaged in a lengthy colloquy with the Applicant's and his consultants, the WSDOT traffic engineer (Mr. Figg), and the City traffic engineer (Ms. Note) regarding this request. To frame the discussion, the project traffic engineer presented a menu of four mitigation projects to improve the US-195 corridor. See Exhibit 23a. According to the project traffic engineer, these were the projects most likely to be

constructed to offset the traffic impacts of the proposed development. In simplified form, these projects included the following:

- Project 1 – Restrict 16th Avenue eastbound movement to right turn only
- Project 2 – Repave and make other improvements at Thorpe and 23rd
- Project 3 – Improvements to 23rd and Inland Empire Way
- Project 4 – New connection to Inland Empire Way

The project traffic engineer contended that Projects 1-3 could be completed within the proper time frame and within the impact fee budget. See Exhibit 23a; *Testimony of B. Goodmansen*.

The Applicant's attorney argued that the Applicant's obligation to mitigate traffic impacts should be capped in some manner, by dollar amount or by limiting the Applicant's mitigation obligation to the first three projects. *Testimony of A.T. Miller*; see also Exhibit 23. He emphasized that, under the *Dolan* test, any required mitigation must be "roughly proportional" to the anticipated impacts of the development. See *id.* He argued that requiring the Applicant to complete Project 4 would go beyond mitigating for the traffic anticipated from the proposed development. *Testimony of A.T. Miller*. Such a condition, he maintained, would fail the rough proportionality test and, therefore, would be unlawful. See *id.*

Mr. Nascimento added that Project 4 was estimated to cost between \$1.2 to 1.5 million. *Testimony of W. Nascimento*. He argued that requiring him to construct Project 4 would go well beyond addressing the impact of 13 PM peak-hour trips. See *id.* He further objected to the possibility that his project would be delayed some indeterminate number of years awaiting the completion of Project 4 by others. See *id.* Mr. Nascimento believed it would be unlawful to either require him to fund a large project on his own or preclude him from proceeding for many years even if he was ready to pay his fair share for the impacts of his project. See *id.*

Finally, the Applicant argued that the Hearing Examiner could condition the development on the completion of Project 1. *Testimony of J. Storhaug, A.T. Miller & W. Nascimento*. The Applicant's traffic engineer confirmed that completing Project 1 would more than offset the traffic from the proposed MHP. *Testimony of B. Goodmansen*. The Applicant stated that it was prepared to immediately fund the project. *Testimony of W. Nascimento*. To be effective, the Applicant's right to complete Project 1 would have to be exclusive. To address any concern about granting an exclusive right, the Applicant's attorney suggested that the Applicant's commitment to that mitigation project could be subject to a deadline, e.g. one year. *Testimony of A. T. Miller*.

The Hearing Examiner is sympathetic to the Applicant's desire for clarity and certainty. The Hearing Examiner also agrees that the Applicant cannot be required to mitigate (whether in dollars or in kind) beyond the impacts attributable to the proposal. However, the Hearing Examiner is not inclined to modify, supplement, or clarify Condition 3a in the manner requested. The Hearing Examiner reaches this conclusion for a range of reasons.

The intersection of US-195 and I-90 has reached its capacity. As the Applicant acknowledges, WSDOT has adopted a "net zero" policy for trips being routed to that intersection. Condition 3a was formulated as a way to allow development projects to go

forward, despite the lack of additional capacity at that intersection. The condition addresses the capacity problem by requiring developers to complete mitigation project(s) in the US-195 corridor that offset or redirect traffic, so there is no net impact to the intersection of US-195 and I-90.

The condition is intentionally open-ended. *Testimony of B. Goodmansen & G. Figg.* There are several mitigation projects that could be done. *Testimony of I. Note.* In addition, the timing of the development projects along the corridor is unknown. *Testimony of G. Figg.* Sewer and water infrastructure also has a significant effect on the timing of development. *Testimony of I. Note.* Which developers will move forward first or when those developments will proceed is unknown. *Testimony of G. Figg.* Sometimes approved developments sit for years or are abandoned altogether. *Testimony of I. Note.*

The solution to these realities is to allow developers to commit to one or more mitigation projects that would result in no net impact to the intersection of US-195 and I-90. *See id.* This is a first-past-the-post system. For example, a developer could financially commit to Project 1, fulfilling its mitigation obligation (in whole or in part) while also precluding another developer from taking advantage of that mitigation option. *Testimony of G. Figg.* The next developer would have to select a different mitigation project, or propose and negotiate something new. *See id.*

The Hearing Examiner rejects the proposal to set a monetary cap on the Applicant's mitigation obligation. The traffic impact fee is governed by an adopted schedule. *See SMC 17D.075.180, Appendix A – Impact Fee Schedule.* The fees are collected at the time of permit, not at the time of preliminary approval. *See SMC 17D.075.040(D)* (stating that impact fees shall be paid at the issuance of a building permit or, in certain cases, at the completion of construction). A developer does not have a right to freeze the fee at the time of making its application. *See Pavlina v. City of Vancouver, 122 Wn. App. 520, 529, 94 P.3d 366 (2004)* (holding that an impact fee is not a land use ordinance that vests with the application). The amount of the fee changes over time as well. In fact, the City of Spokane is in the process of revising its fee schedule. *Testimony of I. Note.* The proper way for an applicant to determine the applicable fee is to usher its development to the permitting stage.

The Hearing Examiner also declines to limit the Applicant's mitigation obligation to specific mitigation projects. There are in the range of 10 to 15 development projects in the US-195 corridor, at various stages of permitting. *Testimony of I. Note.* All these developments are conditioned in the same⁶ manner, and must find a way to move trips off of the I-90 ramp. *See id.* Any one of these developers could make a financial commitment to complete one or more of the mitigation projects identified by the Applicant. Other projects could be pursued as well. *Testimony of G. Figg.* There is no fixed or exclusive list⁷ of mitigation projects. *Testimony of I. Note.* In a first-past-the-post system, it does not make sense nor is it equitable for the Hearing Examiner to grant an exclusive right for the Applicant to complete a particular mitigation project. If the Applicant wishes to secure that right, the Applicant will have to make the financial

⁶ Each project is subject to Condition 3a. *Testimony of I. Note.* The language of the condition is only modified to state the number of trips attributable to the particular project. *See id.* This is consistent with the Hearing Examiner's experience, based upon his consideration of recent proposals in the corridor.

⁷ The menu of projects presented at the hearing was provided to the City and WSDOT just before the hearing. *Testimony of I. Note.* Projects 2-3, for example, are new to the City. *See id.* These proposals have not been vetted and would not likely be approved by the City. *See id.*

commitment to the available mitigation project it selects, and lock in the option in that way.

The Hearing Examiner disagrees with the claim that Condition 3a will result in mitigation requirements that are unlawful or violate the “rough proportionality” test of *Dolan*. The Hearing Examiner reaches this conclusion for several reasons.

First, the amount of impact fees that the Applicant must pay to the City of Spokane are based upon the trips generated by the project. The fee is therefore proportional, logically and legally, to the impacts of the project. The Applicant will not be required to pay fees exceeding the trips attributable to the project. The Applicant may decide to take on a greater financial obligation, to expedite its project or for other reasons. The impact fee requirement, however, does not mandate payment of fees in excess of the development’s impact on the transportation system.

Second, with respect to the US-195 corridor, the Applicant is only required to complete mitigation projects that ensure no net traffic impacts to the ramp at US-195 and I-90. Moreover, the City has agreed to give the developers credit against the impact fees for amounts expended on US-195 corridor improvements. Under these circumstances, the developer is not being required to pay more than its proportionate share.

Third, Condition 3a does not mandate that the Applicant fund and construct Project 4, let alone on its own. See Condition 3a. The condition was not intended to force a single developer to fund and construct Project 4. Project 4 was a proposal by a group of developers, and was intended to mitigate the impacts of multiple projects. *Testimony of I. Note*; *Testimony of G. Figg*. It is not a public project, for which WSDOT is seeking contributions. *Testimony of G. Figg*. Likewise, it is not a City-sponsored project, and will not be funded or constructed by the City. *Testimony of I. Note*. To date, the developers have not pooled their resources or made the necessary arrangements to complete that mitigation proposal. See *id.* Thus, if the Applicant wished to mitigate its impacts via Project 4 or contributions to Project 4, the Applicant would be doing so on a voluntary basis.

The Applicant is not satisfied with this answer, however. According to the Applicant, the Applicant must either fund a mitigation project that exceeds its impacts or face potentially significant delay in constructing its development. The Applicant believes that forcing this choice is unlawful. *Testimony of W. Nascimento*. The Hearing Examiner disagrees, in the context of this case. Initially, the dilemma may be a false one, provided there are mitigation projects available to the Applicant at lower cost (e.g. Project 1). As of the date of the hearing, the Applicant’s choices were not limited to any specific project. That aside, the potential dilemma described by the Applicant does not arise from Condition 3a.

The root cause of the problem, rather, is the insufficient capacity of the ramp connecting US-195 with I-90. That lack of capacity requires either that development cease until a solution is found, or that the addition of traffic be offset through one or more mitigation projects before a development may proceed. The project conditions reasonably follow the latter course. If, in the future, the Applicant’s project is stalled because the only mitigation options are not realistic, that is a function of inherent limitations in the transportation system, not evidence of an unlawful condition. The Hearing Examiner

does not see this situation as terribly different than a lack of water. The outcome is due to a lack of capacity, not an abuse of regulatory discretion.

DECISION

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

1. Latah Glen Community will be developed in substantial conformance with applicable Code and development standards.
2. Development should adhere to plans, drawings, illustrations, and/or specifications on file with the Development Services Center and with comments received regarding the project from City Departments and outside agencies with jurisdiction.
3. The proposal should comply with issued SEPA MDNS:
 - a. Per the traffic analysis, vehicular traffic from this project is expected to add 13 AM trips and 5 PM trips to the NB US-195 to EB I-90 ramp. WSDOT has commented that no additional peak hour trips may be added to the ramp due to safety concerns. Latah Glen is required to complete an improvement to the US-195 corridor that will reduce the impact of its traffic on NB US-195 to EB I-90 ramp ("Mitigation Project(s)"). Latah Glen may not receive final plan approval until a financial commitment is in place (secured by a letter of credit or bond), which has been approved by the City, providing for the design and construction for the Mitigation Project(s), which shall be under contract for construction within one year from the final plan approval. The details of the mitigation project(s) will be agreed upon by the developers, City, and WSDOT. The applicant's contributions to funding the design and construction of the mitigation project will qualify for a credit against transportation impact fees per SMC 17D.075.070.
 - b. The applicant shall improve Inland Empire Way from the proposed site access to US-195. This improvement shall consist of paving the roadway, providing a separated sidewalk, drainage facilities, signage, etc. in a manner consistent with City of Spokane standards, application conditions of approval, and the Storhaug Engineering plans for this section of roadway.
 - c. The applicant shall update the traffic analysis prior to the approval of the plans that would allow the occupancy of the 100th residential unit. This updated traffic analysis shall evaluate the need for a right-turn lane at the intersection of US-195 and Inland Empire Way in the southbound direction. If this right-turn lane is deemed necessary, the applicant shall enter into a WSDOT development agreement for the design and construction of this right-turn lane with the approval of the 100th residential unit. As part of the development agreement the applicant can bond for the construction of the turn lane in the next construction season.

Transportation Conditions include:

4. Inland Empire Way RPW on the east side to be dedicated as part of the final PUD/MHP process.
5. Access to the US-195 Frontage Road will require that a WSDOT access permit be applied for and approved by WSDOT. The WSDOT Access Permit approval is

required to be obtained prior to the connection being made to Inland Empire Way and prior to approval of engineering/civil plans for the construction of street improvement/street development.

6. Impact fees will be calculated using the City's rate table for single-family residential, not as proposed in the TGDL.

ICM:

7. ICM agrees with a distribution main in Marshall Road as a solution for water distribution to the Latah Glen project. Latah Glenn may choose to wait until Marshall Road Transmission construction is complete and construct a distribution main connecting to the City's system or construct a distribution main in Marshall Road required for only their development site (ICM Evaluation Memo included in exhibits).

Planning Department:

8. Final PUD/MHP application submittal requirements are found in 17G.070.200.
9. Signs require a separate permit and will need to meet the sign standards for MHPs.
10. In order to ensure consistency with any CUP/PUD preliminary approval for the proposed MHP, it is recommended that required landscape plans along with the detailed site plan required of the final PUD and MHP process be submitted at the time of engineering plan review. Continued adherence to the PUD design standards SMC 17G.079.100 (.100 series) and MHP standards of SMC 17C.345.130 are required and will continue to be reviewed throughout the final PUD/MHP process.
11. Based on the updated proposal, a boundary line adjustment may no longer be required as the MHP does not extend into parcel 25361.0004; however, access still appears to be from a portion of the aforementioned property (parcel 25361.0004). Legal access to parcel 25364.0001 will need to be developed and will be required prior to approval of final PUD/MHP.
12. Submittals for construction activities will need to demonstrate how requirements under SMC 17E.040.100 - Geologically Hazardous Areas, general performance standards are being met for those elements placed in geologically hazardous areas and associated buffers.
13. Street trees are required along all residential streets pursuant to SMC 17C.200.040 and 17C.200.050. This requirement will continue to apply to streets for which engineering approved a variance to eliminate sidewalks (and associated planter strips) on one side of the street.
14. The 20-foot required landscape buffer around the perimeter of the MHP appears to be serving a dual purpose as the required buffer as well as private outdoor space for those units closest to Inland Empire Way in particular. An L1 landscape buffer will be required for those areas where the 20-foot required landscape buffer around the perimeter of the MHP also serves as private outdoor space.
15. The site plan will need to clearly indicate that minimum setback standards are met for final PUD/MHP approval process.
16. The development will be designed and constructed to provide future vehicular and pedestrian connections meeting the City's street standards to Marshall Road consistent with SMC 17H.010.030, Street Development standards. This condition of approval will be verified during engineering/civil plan review and approval for the construction of street improvement/street development for the Latah Glen Community. Both vehicular and pedestrian access are to be provided as a condition of approval at the time of Marshall Road improvement/paving. See *also* Comment

no. 21 below regarding pedestrian additional access points to Marshall Road in compliance with the PUD code.

17. Landscape plans are required for developments of more than 7,000 square feet of lot area. Landscape plans shall be prepared and stamped by a licensed landscape architect, registered in the state of Washington as per SMC 17C.200.020. Requirements for landscaping are stated in Chapter 17C.200 SMC, Landscaping and Screening as well as in applications specific codes (MHP SMC 17C.345.120 and the PUD section under SMC 17G.070.130).
18. *The developer or its successors shall be responsible to repair, maintain, and replace the common areas, common facilities, and private infrastructure, as needed. An operations and maintenance manual will be required for stormwater facilities in particular as well as a sinking fund. The City of Spokane Planning Department will work with the developer to address this as part of the final PUD/MHP approval process.*
19. The design standards of SMC 17C.110.500 shall apply to any common buildings within a PUD.
20. Final gate locations will be reviewed for compliance with fire and other required codes prior to installation (separate permit is required). Please continue to show the proposed gates on your site and other plans for continued review.
21. Fencing requires a separate permit. Please also note that the PUD code indicates that the maximum height of fencing along a street frontage of the PUD may not exceed 42 inches. Per the PUD code, chain-link fence is specifically discouraged. When a fence is along a street frontage, usable pedestrian access shall be provided/spaced a minimum of one every 300 feet. See Section 17G.070.030(C)(7) Development Standards. If/when Marshall Road is improved, a logical connection for required access along Marshall Road would be at the proposed turn around at the southwest edge of the development. Because Marshall Road is not improved at this time, planning is not requesting that this access be provided at this time, but that the connection would be planned for and identified during the final PUD/MHP approval phase for future pedestrian access. As a condition of approval, pedestrian access is to be required if/when Marshall Road is improved/paved.
22. Visual screen landscaping is required within the 20-foot landscape buffer around the entire park boundary pursuant to SMC 17C.345.120(F) - Development Standards for Mobile Home Parks.
23. The 20-foot strip around the boundary of the MHP and all open spaces and other unimproved areas must be suitably landscaped. All landscaping must be maintained and furnished with an automatic sprinkler system. In areas that the ground is being disturbed, required landscape area must be irrigated. All required landscape buffers must be irrigated. For common areas that are not being disturbed, irrigation is not required. All other common areas should be landscaped in a manner that adheres to site development standards and SpokaneScape, which include limits on water use.

Engineering Conditions to be addressed prior to approval of the Final PUD/MHP:

24. Necessary ROW dedications will need to be completed prior to the approval of the final PUD.
25. Frontage improvements on Inland Empire Way from the intersection to the entry will be required. The minimum frontage improvements will allow for two-way traffic as well as a pedestrian connection.

26. Construction plans for street, sewer, water, and stormwater systems must be designed by a Professional Engineer, licensed in the State of Washington, and submitted to Development Services for review and acceptance prior to construction. Civil engineered plans and profiles shall use NAVD88 datum.
27. In accordance with the City's Financial Guarantee Policy, a financial guarantee will be required for all street, drainage, and erosion/sediment control improvements not constructed prior to approval of the final development.
28. Plan review fees for sanitary sewer, water, street, and stormwater improvements will be determined at the time of plan submittal and must be paid prior to the start of the review.
29. A \$250.00 deposit will be required for each monument to be installed as part of the final development. Monuments shall be provided in accordance with the City's Design Standards (SMC 17H.010.170).
30. All stormwater and surface drainage generated on site shall be disposed of on site in accordance with SMC 17D.060 – Stormwater Facilities, the SRSM, Special Drainage Districts, City of Spokane Design Standards, and per the Project Engineer's recommendations based on the drainage plan accepted for the final development. Pre-Development flow of any off-site runoff passing through this proposed project shall not be increased (rate or volume) or concentrated due to the development of the project based on a 50-year design storm. An escape route for a 100-year design storm shall be provided.
 - a. Drainage plans shall be prepared and submitted for review and acceptance for the proposed development and land disturbing activities prior to issuance of any permits for site disturbance, including but not limited to grading permits and building permits. With respect to drainage plans required under SMC 17D.060.140(C):
 - i. The volume and rate of surface water runoff after new development shall be no greater than the runoff volume and rate leaving the site prior to development, unless the Director of Engineering Services approves the discharge of additional runoff based on a comprehensive drainage plan and down gradient impact study.
 - ii. Drainage plans shall include identification of all properties to be reserved for on-site stormwater facilities and the location of natural drainage systems.
 - b. The developer will be responsible for all costs associated with constructing stormwater improvements necessary to serve the proposed development.
 - c. The developer; property owner; or other responsible, authorized, and designated entity acceptable to the Director shall be responsible for accepting and maintaining on-site stormwater facilities. The developer shall provide a perpetual maintenance plan, including funding mechanisms and appropriate financial security for such on-site stormwater facilities acceptable to the director.
 - d. Acceptance of the conceptual drainage plan does not imply that the concept proposed is inherently accepted as the final design. Acceptance only implies that the applicant or (agent) has demonstrated that stormwater disposal is manageable. It does not relieve the applicant from changes to the design that

may be necessary in order to comply with the City's Stormwater Ordinance and Design Standards.

- e. If drywells are utilized, they will be tested to insure design infiltration rates are met. A minimum factor of safety of two will be required. In accordance with State Law, existing and proposed Underground Injection Control structures need to be registered with the WSDOE. Proof of registration must be provided prior to plan acceptance.
 - f. No building permit shall be issued for any lot/lease area in the development until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17D.060 – Stormwater Facilities, the SRSM, Special Drainage Districts, City Design Standards, and the Project Engineer's recommendations, based on the drainage plan accepted for the final development, have been complied with. A surface drainage plan shall be prepared for each lot/lease area and shall be submitted to Engineering Services – Developer Services for review and acceptance prior to issuance of a building permit.
 - g. With respect to any increased stormwater flows accruing as a result of any development, each property owner, on its own behalf and the behalf of its successors in interest, fully accept without reservation, the obligation to obstruct and artificially contain and collect all natural or artificially generated or enhanced drainage flows across or upon said owner's property. The purpose of this requirement is to avoid causing or potentially contributing to flooding, erosion, or stormwater loads on other private or public properties and the public sewer systems.
 - h. Each property owner, on its own behalf and the behalf of its successors in interest, acknowledges and accepts full responsibility to maintain drainage facilities within all drainage easements, and to maintain and protect any on-site stormwater control facilities. Under no circumstances does the City of Spokane, its officers or agents, accept any responsibility to maintain on-site stormwater control facilities, drainage courses or drainage pipes on private lots/lease areas within this development or otherwise within drainage easements or flood plain areas.
31. An erosion/sediment control plan, detailing how dust and runoff will be handled during and after construction, shall be submitted to Developer Services for review and acceptance prior to construction or land disturbing activities.
- a. The developer will be responsible for all costs associated with design and construction of the water system necessary to serve the proposed project.
 - b. All water systems, whether public or private, shall be designed to City of Spokane Design Standards.
 - c. Construction plans shall be submitted to Development Services for review and acceptance. The water system, including individual service connections to each lot/lease area, shall be constructed and accepted for service prior to the City Engineer signing the final approval.
 - d. General Facilities Charges, as per SMC 13.04 shall be applicable to this proposed development.

- e. A hydraulic model shall be completed to prove that the design meets the minimum standards for both domestic and fire flows. See City of Spokane Design Standards Section 8.2 for more information.
 - f. Residual water pressures during the fire flow demand conditions shall be designed to be no less than 20 pounds per square inch (psi) at every point in the system. If static pressures exceed 80 psi, then each service line shall be required to have an individual pressure reducing valve set to reduce pressures to a maximum of 80 psi.
 - g. "Wheeling" water through a private water system shall not be permitted. Water from the City's distribution system entering a private water system must not be allowed to return to the public system. A meter and double check valve assembly must be provided at each connection to the City water system.
32. Only City of Spokane sanitary sewer shall serve the proposed development. The use of on-site septic disposal systems is prohibited.
- a. There is a 27-inch diameter PVC sanitary sewer main located at the northern boundary of parcel 25361.0004 available for connection.
 - b. The developer will be responsible for all costs associated with design and construction of the sanitary sewer system necessary to serve the proposed project.
 - c. All sanitary sewer systems, whether public or private, shall be designed to the City of Spokane standards.
 - d. Construction plans shall be submitted to Development Services for review and acceptance. The sanitary sewer system, including individual service connections to each lot/lease area, shall be constructed and accepted for service prior to the City Engineer signing the final approval.
 - e. General Facilities Charges, as per SMC 13.03 shall be applicable to this proposed development.
33. Per SMC 17H.010, developments comprised of more than 30 lots or units shall include two access points acceptable to the city fire department and Director of Engineering Services.
34. Public/private streets, including paving, curb, sidewalk, signs, storm drainage structures/facilities, and swales/planting strips necessary to serve the proposed development, shall be designed and constructed in accordance with City standards unless otherwise approved by a design variance.
- a. Signing and striping plans, where appropriate, shall be included as part of the design submittal.
 - b. Street design for the development shall include supporting geotechnical information on the adequacy of the soils underneath to support vehicular design loads.
 - c. The maximum profile grade for City streets is 8%. A variance may be granted considering topography, safety, maintainability, function, and emergency vehicle access. In no case shall the profile grade exceed 10% when a variance is granted.

- d. Garages shall be a minimum of 20 feet from the back of sidewalk, or back of the curb if sidewalk is not required, to fully accommodate a parked vehicle without obstructing the sidewalk.
 - e. All parking and maneuvering areas shall be hard surfaced.
 - f. All street identification and traffic control signs required due to this project must be installed by the developer at the time street improvements are being constructed. They shall be installed and inspected to the satisfaction of the City's Construction Management Office in accordance with City standards prior to the occupancy of any structures within the development.
 - g. The developer will be responsible for all costs associated with constructing street improvements necessary to serve the proposed development.
 - h. Roadway widths shall be, at minimum, in accordance with the approved Design Variance, signed July 20, 2020.
 - i. Public ROWs or private tracts shall contain all street elements including paving, curbing, gutters and pedestrian buffer strips or swales in accordance with the City of Spokane Design Standards or as detailed in the approved Design Variance.
 - j. The roadways within the development will be private. The operation, maintenance, repair, and replacement of said private roadways shall be the responsibility of the developer, property owner, or an entity set up to provide this service. Signing, striping, snowplowing, and parking enforcement are the responsibilities of the developer or their designee.
35. New, permanent dead-end or cul-de-sac streets require the approval of the Director of Engineering Services. Dead-end and cul-de-sac streets are only allowed when street connectivity is unachievable, such as property that is isolated by topography or the configuration of existing lots and streets.
- a. Turn-arounds designed to meet the City's standards are required at all street dead-ends to allow emergency and service vehicles to turn around.
 - b. Dead-end or cul-de-sac streets shall be not less than 140 feet nor more than 600 feet long along the centerline as measured from the curb line of the cross street at the street entrance to the point of curvature into the cul-de-sac bulb. Proposed exceptions to this rule will be considered by the Director of Engineering Services based on pertinent traffic planning factors.
 - c. A hard surfaced public pathway shall be provided at the end of every dead-end or cul-de-sac street connecting the sidewalk to an existing or future street or public pathway.
36. Per Section 17H.010.180 Sidewalks:
- a. In steep, hillside areas, where development occurs only on one side of the street, sidewalk may be omitted from one side in accordance with SMC 17H.010.110. However, it must be demonstrated that the segment to be omitted is not a critical link in the sidewalk system.
 - b. All sidewalks shall be designed and constructed in accordance with the City's design standards, standard plans and specifications.

37. Per Section 17H.010.190 Pedestrian Buffer Strips:

- a. The width and type of pedestrian buffer strip for each street shall comply with the requirements of the comprehensive plan and the city's design standards.
 - b. Planted strips are required on residential local access streets. A minimum 3-foot-wide concrete pedestrian buffer strip may be allowed in place of the planted strip for certain land uses such as churches and schools that require passenger loading and unloading. These will be evaluated on a case-by-case basis and allowed at the discretion of the director of engineering services.
 - c. In situations where a separation between the sidewalk and the street is constrained by topography, narrow ROW, or existing development, a variance from this standard may be granted by the Director of Engineering Services.
 - d. In cases where sidewalk has been omitted on one side of the street, the pedestrian buffer strip may also be omitted on that side.
38. Road names, if required, shall be submitted for pre-approval prior to the submittal of civil plans for design of streets, sewer, and water. Road names can be submitted for review to addressing@spokanecity.org.
- a. Per Section 17D.050A.060 Roadway Naming Standards:
 - i. Duplicate roadway names will not be allowed. Any roadway name shall not duplicate any county roadway names unless the new roadway is in alignment with the existing county roadway.
 - ii. Roadways with the same root name but different suffix (that are not in reasonable alignment with the existing roadway) will be considered as a duplicate roadway name, e.g., Chesterfield Drive or Chesterfield Lane and thus disallowed.
 - b. The roadway name "Latah Glen Lane" noted on the response letter dated November 30, 2021, will not be approved. The "Latah" root duplicates existing names (Latah Ridge Lane, Latah Creek Road, Latah Creek Lane, Latah Hills Court, Latah Lane, and Latah Road). Please propose a different roadway names to replace Latah. "Wedgeway Lane" is acceptable.
 - c. Addresses, including unit/space/lot numbers, must be shown on the development plan, which will be required prior to requesting sewer and water permits. Address permits can be applied for at the City of Spokane permit center by emailing a request, including the proposed development layout, to addressing@spokanecity.org.

Fire Department:

39. The gate widths in and out of the site will need to be a minimum of 14 feet wide.
40. North access will need to be maintained at all times for fire apparatus access.
41. North access will need to have an approved surface approved for the weight of the responding fire apparatus.
42. North access will need "No Parking – Fire Lane" signs on both sides of the access road.

43. Per the Fire Code, the exterior fire pit is shown for the club house will need to be provided with protection to prevent users from accessing the flames.
44. Fire hydrant placement will need to comply with the International Fire Code, with local amendments.

DRB Recommendations:

45. The Board appreciates the Applicant's objective to imbue regional architectural influences on the manufactured residential home designs. The Applicant's community Design Guidelines shall include architectural elements, materials, textures, and colors consistent with the Regional Northwest theme as presented.
46. The Board strongly encourages the Applicant to utilize black or brown chain-link fencing in all areas where chain-link is proposed, and ornamental fencing in areas highly visible to the public along Inland Empire Way, South Marshall Road, and as visible from Fish Lake Trail (please note that the PUD code strongly discourages use of chain link fencing). Additionally, the PUD code indicates that the maximum height of fencing along a street frontage of the planned unit development may not exceed 42 inches. These PUD code conditions are listed in the Planning Conditions of Approval Above).
47. The Applicant is encouraged to utilize additional innovative solutions to manage stormwater, including Low Impact Development best management practices such as pervious pavements.
48. The Applicant is strongly encouraged to develop a shared use path connecting the westernmost pedestrian gate to the Fish Lake Trail.
49. The Applicant shall implement Type L1 screening along the entirety of the west edge of the access drive. Please note that this condition may not apply given the elimination of parcel 25361.0004 from the application. Staff in the DSC with review the final plan submitted for access in order to ensure that this condition is met if applicable.

WSDOE:

50. The WSDOE Water Quality Program has identified that the project will require a Construction Stormwater General Permit.

Avista:

51. Avista serves the area with both gas and electric distribution. Currently both parcels are subject to easements for the distribution and/or service lines and poles that lie on or across subject parcels. Any costs associated with the relocation of poles, wires or any other appurtenances will be at the cost of the owner/developer. This e-mail (email dated 11/25/2020 included in exhibits) does not guarantee the ability to realign said facilities, and is for informational purposes only.

WSDNR:

52. Per Comments from WSDNR, they would like to see more detailed information regarding on-site detention of stormwater to ensure that WSDNR-owned land adjoining the project site is not negatively impacted by the proposed development. The City's adopted stormwater code will be followed and compliance verified by engineering services during the civil plan review process. Stormwater requirements are included in engineering conditions of approval above.

WSDAHP & Spokane Tribe of Indians:

53. Per follow-up comments letters from the Spokane Tribe and WSDAHP, an IDP is to be implemented into the scope of work prior to ground disturbing activities.

Statements to be included in the Dedicatory Language on the face of the final development plan/detailed site map:

- a. Only City water and sanitary sewer systems shall serve the development; the use of individual on-site sanitary waste disposal systems and private wells is prohibited.
- b. Ten foot utility easements as shown here on the described development are hereby dedicated to the City and its permittees for the construction, reconstruction, maintenance, protection, inspections and operation of their respective facilities together with the right to prohibit structures that may interfere with the construction, reconstruction, reliability and safe operation of the same.
- c. Development of the subject property, including grading and filling, are required to follow an erosion/sediment control plan that has been submitted to and accepted by Development Services prior to the issuance of any building or manufactured home siting permit and/or grading permits.
- d. Prior to the issuance of any building or manufactured home siting permits, the lots/lease areas shall be connected to a functioning public or private sanitary sewer system and connected to a public or private water system, complying with the requirements of the Development Services and having adequate pressure for domestic and fire uses, as determined by the Water and Hydroelectric Services Department and the Fire Department.
- e. All parking areas and driveways shall be hard surfaced. All new or modified driveway locations will need to be reviewed and approved prior to construction.
- f. All Stormwater and surface drainage generated on-site must be disposed of on-site in accordance with chapter 17D.060 SMC, Stormwater Facilities, the Spokane Regional Stormwater Manual, and City Design Standards. A surface drainage plan should be prepared for each lot/lease area and shall be submitted to the City of Spokane Development Service Center for review and acceptance prior to the issuance of a building or manufactured home siting permit on said lot/unit/lease space.
- g. With respect to any increased stormwater flows accruing as a result of any development, each property owner, on its own behalf and the behalf of its successors in interest, fully accept without reservation, the obligation to obstruct and artificially contain and collect all natural or artificially generated or enhanced drainage flows across or upon said owner's property. The purpose of this requirement is to avoid causing or potentially contributing to flooding, erosion, or stormwater loads on other private or public properties and the public sewer systems.
- h. Each property owner, on its own behalf and the behalf of its successors in interest, acknowledges and accepts full responsibility to maintain drainage facilities within all drainage easements, and to maintain and protect any on-site stormwater control facilities. Under no circumstances does the City of Spokane, its officers or agents, accept any responsibility to maintain on-site stormwater control facilities, drainage courses or drainage pipes on private lots/lease areas within this development or otherwise within drainage easements or flood plain areas.

- i. The City of Spokane is not a guarantor of public improvements with respect to protection of property from flooding or damage from stormwater, excessive groundwater levels, soil erosion, movement or related risks. Notwithstanding any other provision, no special duty or obligation of the City to any identifiable person or class pursuant to this Chapter shall ever be deemed to be created, and any duty nonetheless deemed created shall be exclusively to the general public (SMC 17D.060.210).
- j. The water system shall be designed and constructed in accordance with City Standards. A pressure of 45 psi minimum at the property line is required for service connections supplying domestic flows. Pressures shall not drop below 20 psi at any point in the system during a fire situation. Pressures over 80 psi will require that pressure relief valves be installed at the developer's expense.
- k. All drainage easements shown hereon shall be maintained by the property owner of the underlying lot(s)/lease space(s)/common space(s). Any re-grading of the lots/lease space(s)/common space(s) shall not alter the drainage of such facilities. The property owner shall maintain the drainage swales with a permanent live cover of lawn turf, with optional shrubbery and/or trees, which do not obstruct the flow and percolation of storm drainage water in the drainage swale as indicated by the approved plans. The City of Spokane and its authorized agents are hereby granted the right to ingress and egress to, over, and from all public and private drainage easements and tracts for the purposes of inspection and emergency maintenance of drainage swales and other drainage facilities. The property owner or his/her representative shall inform each succeeding purchaser of all drainage easements on the property and his/her responsibility for maintaining drainage facilities within said easements.
- l. The City of Spokane does not accept the responsibility of maintaining the stormwater drainage facilities on private property nor the responsibility for any damage whatsoever, including, but not limited to, inverse condemnation to any properties due to deficient construction and/or maintenance of stormwater drainage easements on private property.
- m. No building or manufactured home siting permit shall be issued for any lot/unit/lease space in this development until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17.060 "Stormwater Facilities", the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and the Project Engineer's recommendations, based on the drainage plan accepted for this final development plan, have been complied with. A surface drainage plan should be prepared for each lot/lease area and be submitted to Developer Services for review and acceptance prior to issuance of a building permit.
- n. The development of any below-grade structures, including basements, may be subject to prior review of a geotechnical evaluation for foundation design to determine suitability and effects from stormwater and/or subsurface runoff. The geotechnical evaluation shall be submitted to Developer Services for review and concurrence prior to the issuance of a building or any manufactured home siting permit. It must address the disposal of stormwater runoff and the stability of soils for the proposed structure. This evaluation must be performed by a geotechnical engineer, licensed in the State of Washington. It must be submitted to the City Building Department and to Developer Services for review and concurrence prior to issuance of any building or manufactured home siting permit for the affected

- structure. An overall or phase-by-phase geotechnical analysis may be performed in lieu of individual lot analyses to determine appropriate construction designs.
- o. All public/private improvements (street, sewer, storm sewer, and water) shall be constructed to City standards prior to the occupancy of any structures served by said improvements.
 - p. No building or manufactured home siting permit shall be issued for any lot/lease area in the PUD until evidence satisfactory to the City Engineer has been provided showing that sanitary sewer and water improvements, constructed to City standards, have been provided to the lot/lease area in question.
 - q. Slope easements for cut and fill, as deemed necessary by Planning & Development in accordance with City Design Standards, are granted along all public right of ways.
 - r. A Transportation Impact Fee will be collected prior to the issuance of a building or manufactured home siting permit for the affected lot/unit/space.
 - s. General Facilities Charges for new and/or upsized water and sewer services will apply to the lots/units/spaces within this development and will be collected prior to the issuance of a building or manufactured home siting permit for the affected lot/unit/space.
 - t. The roadways within the development will be private. The operation, maintenance, repair, and replacement of said private roadways shall be the responsibility of the developer, property owner, or an entity set up to provide this service. Signing, striping, snowplowing, and parking enforcement are the responsibilities of the developer or their designee.
 - u. If any archaeological resources, including sites, objects, structures, artifacts, and/or implements, are discovered on the project site, all construction and/or site disturbing activities shall cease until appropriate authorities, agencies, and/or entities have been notified in accordance with Chapters 27.44 and 27.53 RCW.

DATED the 22nd day of July 2022.



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.

Decisions of the Hearing Examiner on CUPs and PUDs are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 22nd day of July 2022. **THE DATE OF THE LAST DAY TO APPEAL IS THE 5th DAY OF AUGUST 2022, AT 5:00 P.M.**

In addition to paying the appeal fee 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 City Council.