

CITY OF LIBERTY LAKE HEARING EXAMINER

Re: Application by Rivercrossing,) FINDINGS, CONCLUSIONS,
LLC, for River Crossing East) AND DECISION
Preliminary Plat for a residential)
and mixed use development on) FILE Nos. PLT2018-0001
164 acres.) & LUA2018-0003

I. SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks approval of a subdivision to create 612 lots and several tracts for residential, commercial, and mixed use development on 164.11 acres in the RD-R and RD-M Zones, with open space tracts totaling 34.66+/- acres.

Decision: Approved, subject to conditions.

II. BACKGROUND/FINDINGS OF FACT

A. General Information

Applicant: Rivercrossing, LLC
c/o Kevin Schneidmiller
1421 North Meadowwood Lane, Suite 200
Liberty Lake, WA 99019

Property Owner: River Crossing, LLC
Centennial Properties, Inc.

Property Address: n/a

Property Location: The site is located north of Mission Avenue and west of Harvard Road. The property is located in portions of Sections 8 and 9, Township 25 North, Range 45 East, W.M., in the City of Liberty Lake, Washington.

Legal Description: The full legal description of the subject property is included in Attachment A of the Staff Report.

Tax Parcel Numbers: 55081.9082; 55084.9086; 55093.9041; 55093.9042; 55095.9007; 55095.9050; 55094.9087; 55094.9086.

Zoning: RD-R (Mixed Residential) & RD-M (Community Center)

Comprehensive Plan Map Designation: Single Family Residential, Mixed Residential, Community Center Mixed Use, and Open Space/Recreation

Environmental Review: A Mitigated Determination of Nonsignificance (MDNS) was issued by the City of Liberty Lake on June 25, 2018. The MDNS contains several mitigating measures which will become conditions of this approval. On July 9, 2018, an appeal of the SEPA MDNS as filed by the City of Spokane Valley. The appeal will be considered by the Hearing Examiner in conjunction with the underlying application.

Site Description: The site is approximately 164.11 acres of undeveloped land just south of the Spokane River and adjacent to the Centennial Trail, in the River District of Liberty Lake. The site is located west of Harvard Road, north of Mission Avenue, and east of the Avista Power Transmission line. The site is irregular in shape, contains no structures, and is relatively flat. There are no wetlands, streams, or geologically hazardous areas on the project site. There are no other environmentally sensitive areas on the project site, with the exception of the Spokane River buffer. However, all development activity will take place outside of that buffer. The site has been used to grow crops. There are no known historic or cultural features present on the site.

Surrounding Conditions: The Centennial Trail borders the property on the north, adjacent to the Spokane River. North of the Spokane River, in unincorporated Spokane County, the uses are single family residential and agriculture. The land to the south of the portion of the site zoned RD-R is vacant and is generally also zoned RD-R, except for a portion fronting on Mission Avenue. The portion of the land fronting Mission Avenue is zoned RD-C (Freeway Commercial) and is vacant. The land to the south of the portion of the site zoned RD-M is also zoned RD-M, and that land is vacant except for an existing self-storage facility. The land east of the site is zoned RD-M and P (Public/Semi-Public Institutional). The land zoned RD-M is vacant. The land zoned P is utilized for Liberty Lake Sewer & Water operations. The land west of the site is zoned RD-R and R-1 (Single Family Residential). This area includes the single family residential developments of Greenacres Estates, River Crossing Planned Unit Development, and River Crossing North.

Project Description: The applicant seeks approval of a proposal to subdivide approximately 164.11 acres into 612 lots. The property consists of eight tax parcels and includes two different zoning classifications. The westerly 129 acres of the site is zoned RD-R, which allows various housing types, including single-family residences, duplexes, and townhomes. The easterly 35 acres is zoned RD-M, a mixed use zone that allows not only residential but also various types of office, retail, civic, and commercial uses. The applicant has proposed to develop the RD-R zoned part of the site with 487 lots, mostly consisting of single-family residences. There is also a small area in the southwest corner of the site which is the proposed location for some attached townhomes. The RD-M portion of the site, located next to Harvard Road on the easterly portion of the property, is the proposed location for 125 lots. Those 125 lots will include both residential uses (at a higher density than the RD-R property) and a mixture of commercial and retail uses designed to serve the neighborhood. The project design also includes open space tracts totaling nearly 35 acres. There will be an open area preserved along the Spokane River. The project is designed to ensure connectivity of roads, sidewalks, and trails in the River District. The project includes several connections to the Centennial Trail. The estimated build-out of the project is 8-12 years.

B. Procedural Information

Applicable Zoning Regulations: The proposal is generally regulated by articles 10-2C and 10-4D, Chapter 3, and Chapter 6.

Hearing Date and Location: The hearing was held on July 25, 2018, at 2:00 p.m. in the City Council Chambers at the Liberty Lake City Hall.

Notice of Application: Mailed: April 4, 2018
Posted: April 3, 2018
Publication: April 6, 2018

Notice of Public Hearing: Mailed: July 5, 2018
Posted: July 10, 2018
Published: June 29, 2018

Site Visit: July 25, 2018

Testimony:

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Liberty Lake, WA 99016

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Exhibits:

1. Staff Report, including:
 - 1A Recommended Conditions of Approval (Attachment A)
 - 1B Maps (Attachment B)
 - 1B-1 Preliminary plat map (sheets 1-5)
 - 1B-2 Site analysis map (sheet 6)
 - 1B-3 Standard details (sheets 7a & 7b)
 - 1B-4 Proposed structures (sheet 8)
 - 1B-5 Phasing Plan (sheet 9)
 - 1B-6 Preliminary Plat Map overview of plat sections (sheet 1)
 - 1B-7 Plant legend (sheets 2 - 5)
 - 1B-8 Habitat and Buffer Mitigation Plan
 - 1C Supporting maps and Plans adopted by the City (Attachment C)
 - 1C-1 Comprehensive Plan, land use map
 - 1C-2 Zoning Map
 - 1C-3 River district specific area Master Plan
 - 1C-4 River district specific area Parks & Greenway Plan
 - 1C-5 River district specific area Trails Master Plan
 - 1C-6 River district specific area Transportation Plan
 - 1C-7 River district specific area Waste Water Reuse Plan
 - 1C-8 River district specific area Water Master Plan
 - 1C-9 River district specific area Sewer Master Plan
 - 1D SEPA Checklist and Threshold Determination (Attachment D)
 - 1D-1 Mitigated Determination of Non-Significance (MDNS) dated 06-25-18
 - 1D-2 SEPA Checklist dated 12-07-17
 - 1E Agency Comments (Attachment E)
 - 1E-1 Certificate of Sewer Availability by Spokane County
 - 1E-2 Certificate of Water Availability by Consolidated Irrigation Dist. #19
 - 1E-3 Letter from City of Liberty Lake affirming water and sewer capacity
 - 1E-4 Spokane Valley Fire Department letter dated 04-17-18
 - 1E-5 Avista comments dated:
 - 1E-5a 04-25-18
 - 1E-5B 04-04-18
 - 1E-6 Department of Ecology comment
 - 1E-7 Washington State Department of Transportation comments
 - 1E-8 Spokane Transit comments
 - 1E-9 City of Spokane Valley Appeal of SEPA
 - 1F Public Comments (Attachment F)
 - 1F-1 Lt David Theodore Hayes & David George Hayes dated 04-16-18
 - 1G Procedural Documentation, Notices and Publications (Attachment G)
 - 1G-1 Title Company Certification
 - 1G-2 Notification listing of address with parcel numbers
 - 1G-3 Notice of application dated 04-04-18
 - 1G-4 Affidavit of Posting NOA dated 04-03-18
 - 1G-5 Affidavit of Mailing NOA dated 04-04-18
 - 1G-6 Affidavit of Publication NOA dated 04-06-18
 - 1G-7 Notice of Public hearing (NOH) dated 06-25-18
 - 1G-8 Affidavit of Mailing NOH dated 07-05-18

- 1G-9 Affidavit of Posting NOH dated 07-10-18
- 1G-10 Affidavit of Publication NOH dated 06-29-18
- 1G-11 Title Company Certification dated 06-28-18
- 1G-12 Notification Map

2. Addendum to Staff report to the Hearing Examiner

- 2A Spokane Valley Appeal of the SEPA Determination (Attachment A)
- 2B SEPA Checklist & Threshold Determination (Attachment B)
- 2C Procedural Notices and Affidavits (Attachment C)
 - 2Ca Determination of Completeness
 - 2Cb Notice of Application
 - 2Cb-1 NOA Packet
 - 2Cb-1a Affidavit of Mailing
 - 2Cb-1b Affidavit of Posting
 - 2Cb-1c Agency Notification
 - 2Cb-1d Proof of Publication
 - 2Cc Notice of Hearing
 - 2Cc-1 NOH Packet
 - 2Cc-1a Affidavit of Mailing
 - 2Cc-1b Affidavit of Posting
 - 2Cc-1c Agency Notification
 - 2Cc-1d Proof of Publication
- 2D Data Analyses Considered in Support of the Threshold Determination (Attachment D)
 - 2D-1 City of Liberty Lake Network Analysis (2017)
 - 2D-2 Harvard Road Mitigation Plan 2013 Update
 - 2D-3 Spokane County River District Revenue Development Area at Liberty Lake (2007)
 - 2D-4 City of Liberty Lake 6-Year Transportation Improvement Plan (TIP) 2019-2024
 - 2D-5 Resolution NO. 12-164D Exhibit A
 - 2D-6 Notice of Availability, DNS & SEPA Checklist for River District SAP 08-001
 - 2D-7 Adopted Ordinance 178
 - 2D-8 Adopted Ordinance 241

A. Exhibits entered into the record at the time of SEPA Appeal

- A-1 Power point presentation of the project
- A-2 Submittal by City of Spokane Valley
- A-3 Talking points by Lisa Key
- A-4 CD containing SEPA for RD SAP-0001, FEIS for Spokane Comp Plan 2008 and FEIS for Liberty Lake Urban Growth Boundary Alt Case #PLT2018-0001
- A-5 Spokane Valley Northeast Industrial Area PAO – Phase 1 Traffic Analysis
- A-6a/j Submittals by Jim Frank
 - A-6a River District SEPA Appeal
 - A-6b River District Conceptual Master Plan
 - A-6c Aerial view of River District with road improvements in red
 - A-6d I-90 Barker Road to Harvard Road Conceptual Interchange Designs
 - A-6e River Crossing Preliminary Plat brief Denial of SEPA Appeal

- A-6f Review Freeway Forecasting and Operations Results, Barker Road IJR
 - A-6g WSDOT I-90 Liberty Lake Vicinity dated 01-25-18
 - A-6h City of Spokane Valley Request for Qualifications Barker/I-90 North Interchange
 - A-6i Traffic Impact Analysis for Bella Tess Apartments
 - A-6j Liberty Lake Network Analysis Transportation Study dated 02-02-17
- B. Exhibits entered into the record at time of Plat hearing
- B-1 Department of Ecology comment letter dated 07-19-18
 - B-2 Presentation by Applicant
 - B-2a River Crossing East hard copy of PowerPoint
 - B-2b Harvard Road Mitigation Plan, Updated Version March 2014
 - B-2c Spokane County River District Revenue Development Area at Liberty Lake, 06-20-07
- C. Comments
- C-1 Mr. DuShey submittal of Effect of High Voltage Transmission Lines on Human Health, Plant Life and Animal Activity
 - C-2 David Hayes presentation
 - C-3 Ray Wright, Senior Traffic Engineer, City of Spokane Valley, Traffic Memo
- D. Record left open for submittals re traffic
- D-1 Submittal from Jim Franks received on 07-26-18
 - D-2 Response from City of Spokane Valley received on 07-27-18
 - D-3 Rebuttal from Jim Franks received on 07-27-18

FINDINGS AND CONCLUSIONS

A. SEPA Appeal.

1. Background Facts.

On April 4, 2018, Planning & Building Services issued the Notice of Application for River Crossing East. See Exhibit 1G-3. The Notice of Application stated that the comment period ends 14 calendar days from the issuance date. See *id.* The “comment deadline” is stated as “4:00 PM 4/18/18.” See *id.* With respect to the environmental review, the Notice of Application stated, in pertinent part, as follows:

... The City of Liberty Lake expects to issue a Mitigated Determination of Nonsignificance (MDNS) for this project. ... The optional DNS process in WAC 197-11-355 is being used and this may be your only opportunity to comment on the environmental impacts of this portion of the proposal. ... Probable MDNS Conditions: Participation in the Harvard Road Mitigation Plan / updated transportation mitigation plan and other conditions as recommended by reviewing agencies.

See id.

The day prior to the issuance of the Notice of Application, April 3, 2018, the applicant posted the Notice of Application at three different locations on the property. See Exhibit 1G-4.

On April 4, 2018, Planning & Building Services mailed the notice of application to property owners within 400 feet of the project site. See Exhibit 1G-5. The property owners within that area are identified in the certification prepared by a title company. See Exhibit 1G-1.

The Interim Planning & Building Manager, Lisa D. Key, also sent the Notice of Application to the relevant agencies. See Exhibit 2Cb-1c. Among others, she sent the Notice of Application to Gloria Mantz, the Spokane Valley Engineering Manager, via her e-mail address: "gmantz@spokanevalley.org." See *id.* Ms. Mantz was out of the office at the time the notice was sent. See Exhibit A-2 (Attachment 7). The e-mail system generated an automatic reply to the April 4 e-mail. See *id.* The reply stated: "I will return to the office on April 9, 2018. I will respond to your email when I am back in the office." See *id.* The Notice of Application was not sent to any other officials at the City of Spokane Valley. See Exhibit 2Cb-1c.

In the past, the City of Liberty Lake also notified John Hohman, the Deputy City Manager for the City of Spokane Valley, concerning pending applications. See Exhibit A-2 (Attachment 7). This was the practice when Amanda Tainio was the Planning and Building Services Manager at the City of Liberty Lake. See *id.*

On April 6, 2018, the Notice of Application was published in the Spokane Valley News Herald. See Exhibit 1G-6.

On May 6, 2018, the City of Liberty Lake conducted a technical review meeting concerning River Crossing East. See Exhibit A-2 (Attachment 4). However, representatives for the City of Spokane Valley were not invited to that meeting. See *id.* This also deviated from past practice. See *id.*

On May 18, 2018, Ms. Key apologized for the oversight in not inviting Spokane Valley officials to the technical review meeting. See *id.* However, she also emphasized that the Notice of Application was delivered to Spokane Valley, via the e-mail sent to Ms. Mantz. See *id.* She also explained that when no comments were received on the project, she assumed that Spokane Valley did not have an interest in the project. See *id.*

On June 25, 2018, the City of Liberty Lake issued a Mitigated Determination of Non-significance ("MDNS") for the project. See Exhibit 1D-1. The MDNS explicitly provides that there is no comment period and that the MDNS was issued pursuant to the optional DNS procedure set forth in WAC 197-11-355. See *id.*

On July 9, 2018, the City of Spokane Valley filed an appeal of the MDNS to the Hearing Examiner. See Exhibit 2A. In the appeal, the City of Spokane Valley contended that the conditions imposed through the MDNS were insufficient to address the significant impacts that the project would have on the transportation system within the City of Spokane Valley. See *id.*

2. Discussion.

After considering the arguments and evidence presented by the parties, the Hearing Examiner concludes that the City of Spokane Valley lacks standing to pursue

SEPA claims on appeal. As a result, the city's appeal must be denied. The Hearing Examiner reaches this conclusion for the following reasons.

- a) *The City of Spokane Valley received proper notice of the application and the associated environmental review.*

The City of Liberty Lake sent the relevant agencies, including the City of Spokane Valley, a copy of the Notice of Application, on April 4, 2018. The cover e-mail requested comments by April 18, 2018. The Notice of Application set forth Liberty Lake's intention to use the optional DNS process described in WAC 197-11-355, and explicitly stated the comment deadline: 4:00 p.m. on April 18, 2018. It was undisputed that the City of Spokane Valley did not submit comments on or before that deadline. A threshold question in this appeal is whether the City of Spokane Valley was required to do so, and whether the failure to provide comments precludes its SEPA appeal. In response to this question, the City of Spokane Valley argued that was not obligated to adhere to the comment deadline because the notification process followed by the City of Liberty Lake was defective.

The City of Spokane Valley did not question the content, mode of delivery, or timing of the Notice of Application. The City of Spokane Valley did, however, question whether the notice was sent to the appropriate officials in the city. In its submission in support of the appeal, the City of Spokane Valley emphasized that the Notice of Application was only sent to Gloria Mantz, Spokane Valley's Engineering Manager. See Exhibit A-2. Spokane Valley contended that the notice should have been sent to Ms. Mantz and John Hohman, who "oversees the Community & Economic Development Division that includes Planning, Building and Engineering." See *id.* One implication of this argument is that Mr. Hohman should have been given notice because of his higher position within the management hierarchy of the City of Spokane Valley. At oral argument, the City of Spokane Valley seemed to go a bit further, stating that if the "right person" (meaning Mr. Hohman) had been notified, the City of Spokane Valley would not have missed the comment deadline. *Argument of E. Lamb.* Spokane Valley also pointed out that Ms. Mantz was on vacation, a fact that must have been known to the City of Liberty Lake because of the auto-reply e-mail that was generated when the Notice of Application was sent out. See Exhibit A-2 (Attachment 7). Spokane Valley also emphasized that failing to notify Mr. Hohman deviated from the practice followed by the former Director of Planning & Building Services at Liberty Lake. See Exhibit A-2. Not only was the NOA *not* provided to Mr. Hohman, he was also not invited to participate in the technical review meeting in May, another break from the customary practice. See *id.*

The Hearing Examiner disagrees with the City of Spokane Valley's claims regarding notice, for a number of reasons. The City of Spokane Valley failed to establish either (1) that the City of Liberty Lake was required to notify Mr. Hohman, due to his position or on any other basis, or (2) that notification to Ms. Mantz was legally insufficient to serve as notice to the City of Spokane Valley. The City of Spokane Valley did not cite to any local code, state law, or any other authority to establish that the e-mail notification to Ms. Mantz was legally insufficient. There is no reason to suspect that Ms. Mantz was not a proper agent to receive notice on behalf of the City of Spokane Valley. The fact that Ms. Mantz was on the notification list to begin with, without objection from the City of Spokane Valley, at least tacitly suggests that she is a proper recipient of such notice. Although Spokane Valley contended that notice should have been given to the "right person," the

city did not actually establish that Ms. Mantz was the "wrong person." It is true that notifying Mr. Hohman would have provided a greater degree of notice to the City of Spokane Valley. That does not necessarily mean, however, that notice to Ms. Mantz alone was not legally adequate.

Ms. Mantz's temporary absence from the office does not establish that the City of Spokane Valley did not receive proper notice of the project. First, if city officials are going to be absent, it is incumbent upon the city to make arrangements for others to monitor incoming messages and be prepared to respond to time-sensitive communications. The onus is not properly placed upon the City of Liberty Lake to monitor the presence or absence of officials in other agencies. The Hearing Examiner does not believe that the effect of the notice is legally changed due to an "auto-reply" e-mail stating that an official is temporarily out of the office.

Second, assuming *arguendo* that auto-reply e-mail was relevant, that e-mail stated that Ms. Mantz would be absent until April 9, and would respond to that e-mail upon her return. The deadline for comments did not occur until April 18, nine days after Ms. Mantz was scheduled to be back in the office. Thus, even assuming Liberty Lake was alerted to Ms. Mantz's temporary absence, that particular e-mail did not suggest that Liberty Lake needed to take any action as a result. On the contrary, the e-mail suggested that the Spokane Valley would be addressing the matter in due course.

The Hearing Examiner does not believe that the customary practices of the former Director of Planning & Building Services have much bearing on the analysis. As stated above, the City of Spokane Valley was unable to establish that the City of Liberty Lake was legally obligated to send the NOA to Mr. Hohman, in addition to the notice given to Ms. Mantz. To the Hearing Examiner's understanding, there is no such requirement. In the absence of an ordinance, statute, or other authority for such a mandate, the City of Spokane Valley suggests that the customary practices of the former Director should have been followed by the current Director. However, the Hearing Examiner is unable to conceive of a legal theory supporting this conclusion and the City of Spokane Valley did not identify one. Perhaps the Spokane Valley is implicitly requesting some form of equitable relief. If so, the City of Spokane Valley did not clearly articulate its equitable theory or establish how that relief can be properly granted in this case. The Hearing Examiner is skeptical that any such theory can be successful, in any event, since the Hearing Examiner generally lacks the jurisdiction to grant equitable remedies. See *Chausee v. Snohomish County Council*, 38 Wn.App. 630, 638, 689 P.2d 1084 (1984) (holding the hearing examiner lacked jurisdiction to consider the doctrine of equitable estoppel).

The City of Liberty Lake properly provided the Notice of Application to the City of Spokane Valley. The NOA advised the City of Spokane Valley of the 14-day comment period, which was applicable to both the application and the associated environmental review. The question, then, is whether the City of Spokane Valley's failure to submit comments during the 14-day window precludes the city from pursuing its SEPA appeal. That issue is addressed in the sections that follow.

b) WAC 197-11-545 describes the legal consequences of an agency's failure to comment on a development project.

The SEPA rules¹ dictate the legal effect of an "agency's" decision to forgo commenting (or its failure to comment) on a development project. See WAC 197-11-545. The effect of not commenting is described differently depending upon whether the agency is classified as a "consulted agency" or an "other agency." See *id.*

If a "consulted agency" does not respond with written comments to the environmental documents within the comment period, the lead agency may assume that the consulted agency has no information relevant to the potential environmental impacts of the project as related to the consulted agency's jurisdiction or special expertise. See *id.* Moreover, any consulted agency "that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with" the regulations governing the preparation of impact statements. See *id.*

With respect to "other agencies," the SEPA rules state as follows:

*Lack of comment by **other agencies** or members of the public on environmental documents, within the time periods specified by these rules, **shall be construed as lack of objection to the environmental analysis**, if the requirements of WAC 197-11-510 are met.*

See WAC 197-11-545 (emphasis added).

It is clear enough that the City of Spokane Valley is an "agency" within the meaning of the SEPA rules. The term "agency" is broadly defined to include any state or local governmental body, as well as any state agency or local agency. See WAC 197-11-714(1). Further, the terms "local government" and "local agency" mean any political subdivision of the state and any municipal or public corporation, including cities. See WAC 197-11-762. Acknowledging that the city is an "agency," however, is not enough. To properly apply WAC 197-11-545 to this case, it must be determined whether the City of Spokane Valley should be considered a "consulted agency," or is more properly characterized as an "other agency."

c) *The City of Spokane Valley is not a "consulted agency" within the meaning of WAC 197-11-545.*

The term "consulted agency" is defined to mean "any agency with jurisdiction or expertise that is requested by the lead agency to provide information during the SEPA process." See WAC 197-11-724. The question, then, is whether the City of Spokane Valley qualifies as an "agency with jurisdiction" or an "agency with expertise" within the meaning of WAC 197-11-724.

¹ It should be noted that the SEPA rules discussed in this decision have been adopted by reference by the City of Liberty Lake. See e.g. LLDC 10-6A-5(A) (adopting WAC 197-11-545); see also LLDC 10-6A-8 (adopting WAC 197-11-714 & 762); see also LLDC 10-6A-10(A) (adopting WAC 197-11-920).

An "agency with jurisdiction" means an agency "with authority to approve, veto, or finance all or part of" a development project. See WAC 197-11-714(3). The City of Spokane Valley has no such authority over River Crossing East. The project is located entirely within the boundaries of the City of Liberty Lake. Only the City of Liberty Lake could receive, review and approve/deny a land use application to develop the property. Moreover, there is no legal basis for the City of Spokane Valley to exercise a veto over the project, assuming it is approved by the City of Liberty Lake. The City of Spokane Valley also has no direct or indirect involvement in the project financing. The Hearing Examiner concludes that the City of Spokane Valley is not an "agency with jurisdiction" under the SEPA rules.

An "agency with expertise" means an agency "with special expertise on the environmental impacts involved in a proposal or alternative significantly affecting the environment." See WAC 197-11-714(2). This description could be interpreted to include a local government, depending upon the specific issues being discussed. However, the SEPA rules are more explicit: "These agencies are listed in WAC 197-11-920." See *id.* Thus, the "agencies with expertise" have been specifically identified in the state regulations. That list can be expanded, but there is a process (pursuant to WAC 197-11-906) that must be followed in order to change the list. See *id.*

The City of Spokane Valley is not an "agency with expertise" as defined by the administrative code. WAC 197-11-920 lists various categories of environmental issues, along with the agencies that are deemed to possess special expertise regarding those issues. For example, the Department of Ecology is listed in various categories, such as air quality, water resources and water quality, and solid and hazardous waste, among others. See WAC 197-11-920(1), (2), & (4). The Department of Health, the Department of Fish & Wildlife, the Department of Natural Resources, and the Department of Transportation, among others, are also listed under various categories. See WAC 197-11-920. The City of Spokane Valley does not appear on the list. As a result, the City of Spokane Valley cannot be considered an "agency with expertise" within the meaning of the rules.

d) The City of Spokane Valley fits the definition of an "other agency" within the meaning of WAC 197-11-545.

As discussed above, the City of Spokane Valley does not fit the definition of a "consulted agency." The question here, then, is whether the city fits the definition of an "other agency."

It should first be emphasized that the term "other agency" is not specifically defined. See *e.g.* WAC 197-11-714 (defining the types of "agencies"). The components of the term should therefore be considered. The term "agency" is defined in the SEPA rules to specifically include local governments, such as cities. The word "other," as employed in this context, means "being or designating the remaining one of two or more..." See The American Heritage Dictionary, Second College Edition, p. 880 (1985) (definition 1.a of the adjective "other"). This interpretation of "other" applies to this case. WAC 197-11-545 first references the effect of a failure to comment by a consulted agency. See WAC 197-11-545(1). The provision then contrasts that circumstance with the result when no comment is provided by "other agencies." See WAC 197-11-545(2). In other words, the *other* agencies are the "agencies" that do not qualify as a "consulted agency."

The City of Spokane Valley is properly categorized as an "other agency" within the meaning of WAC 197-11-545. The city is an "agency" as defined by the SEPA rules. It is also one of the agencies that does not qualify as a "consulted agency." Instead, it is one of the "other agencies" that may comment on a project. Therefore, the effect of Spokane Valley's failure to comment on River Crossing East is governed by WAC 197-11-545(2).

- e) *The City of Spokane Valley is precluded from maintaining a SEPA appeal because it did not submit comments on the project within the 14-day comment period.*

WAC 197-11-545(2) provides that the failure of an "other agency" to comment on the environmental documents within the comment period "*shall be construed as lack of objection to the environmental analysis...*" This provision seems to direct, in mandatory language, that in the absence of comments the lead agency proceed with the understanding that a commenting agency has no criticisms of its environmental review. This provision could be construed to preclude a commenting agency from thereafter raising objections to the environmental analysis, including via a SEPA appeal. On the other hand, environmental issues must be considered in conjunction with the underlying application and the comment period expired well prior to an open-record hearing. In addition, WAC 197-11-545(2) does not literally state that a SEPA appeal is legally precluded by the failure to comment.

The Hearing Examiner considered the available authorities to determine the meaning of WAC 197-11-545(2). Only one court case was cited that interpreted WAC 197-11-545, and that case had limited application because it did not concern the second paragraph of WAC 197-11-545. *See Kitsap County v. DNR*, 99 Wn.2d 386, 662 P.2d 381 (1983). However, as the City of Liberty Lake noted, there are several state board decisions that provide persuasive authority on the matter. Those decisions conclude that an "other agency" that fails to comment within the allowed time period is precluded from subsequently lodging an appeal on SEPA grounds. After considering those cases carefully, the Hearing Examiner concludes that the rationale employed in those board decisions applies to this case.

In what is probably the most-cited case on the issue, the Pollution Control Hearing Board concluded that the language of WAC 197-11-545(2) requires "other agencies and the public" to submit comments within the comment period in order to have standing to seek further review via a SEPA appeal. *See Spokane Rock Products, Inc. v. Spokane County Pollution Control Authority*, Pollution Control Hearings Board, PCHB No. 05-127, Order Granting Motion for Summary Judgment, p. 9 (February 13, 2006). In reaching this conclusion, the Board cited to Professor Settle, who interpreted WAC 197-11-545(2) as follows:

[The SEPA rules go] beyond consulted agencies to provide that lack of timely comment by other agencies or members of the public 'shall be construed as lack of objection to the environmental analysis.' Since this provision does not purport to absolutely bar legal challenge for nonparticipation in the DEIS commenting process, apparently commonly law principles of waiver and exhaustion of remedies would govern.

See *id.*, p. 8 (citing Richard L. Settle, *The Washington State Environmental Policy Act, A Legal and Policy Analysis*, § 14.01 [10], pages 14-76/77 (12/03 ed.) (footnotes omitted)).

The Board found this interpretation to be consistent with the policies and objectives underlying SEPA. One of SEPA's objectives, for example, is to provide consideration of environmental factors at the earliest possible stage in the process. See *id.*, p. 8. SEPA's policies would be frustrated if objections to an environmental analysis are reserved until a party receives an unfavorable decision. See *id.* "Participation and objection to the environmental analysis is generally regarded as a prerequisite to review of agency decisions." See *id.*, p. 9 (citing to Washington case law). By equating the lack of comment with lack of objection, the language of WAC 197-11-545(2) acknowledges that the comment period is part of an available administrative process that should be utilized by interested parties. See *id.*, p. 10. In other words, comments must be submitted during the comment period in order to exhaust all the available administrative remedies and to preserve a party's standing to subsequently challenge SEPA decisions on appeal. See *id.*, pp. 9-10.

Other State Boards have reached the same conclusions as Spokane Rock, employing similar reasoning. See e.g. *Pacificorp dba Pacific Power and Light v. City of Walla Walla*, Shoreline Hearings Board, SHB No. 13-023, Order on Motions, 2014 WL 1390955, p. 8 (February 12, 2014) (holding that the petitioner was precluded, by the terms of WAC 197-11-545(2), from pursuing a SEPA appeal when the petitioner failed to submit timely comments to the SEPA lead agency); see also *Lowen Family Limited Partnership v. City of Seattle*, Central Puget Sound Growth Management Hearings Board, Case No. 13-3-0007, Order of Dismissal, 2013 WL 5651357, p. 4 (September 30, 2003) (holding that the petitioner's failure to participate and comment during the comment period, as required by WAC 197-11-545(2), deprived it of standing to raise SEPA issues on appeal).

It was undisputed that the City of Spokane Valley did not submit comments regarding the MDNS during the 14-day comment period, which expired on April 18, 2018. The city received proper notice of the application, including the fact that the optional DNS process was being employed. The process followed by the lead agency was apparently consistent with the SEPA requirements. Under the circumstances, the City of Spokane Valley was obligated to submit its objections to the environmental analysis for River Crossing East during the designated comment period. Because it failed to do so, the city did not exhaust its administrative remedies and therefore does not have standing to challenge that analysis via a SEPA appeal to the Hearing Examiner. As a result, the SEPA appeal must be denied.

B. Preliminary Plat and Land Use Application

To be recommended for approval, the proposed preliminary plat must comply with the criteria set forth in Section 10-4D-5 of the Liberty Lake Development Code. The Hearing Examiner has reviewed the proposed plat application and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposed preliminary plat complies with all the applicable Development Code sections and other applicable ordinances and regulations. See LLDC 10-4D-5(A)(1).*

The development site consists of approximately 164 acres. See Exhibit A-1, p. 5. Within that site, there are approximately 129 acres which are zoned RD-R (Mixed Residential) and approximately 35 acres which are zoned RD-M (Community Center). See *id.*; see also Exhibit 1B-1. The applicant is proposing 487 residential lots in the RD-R zone. The applicant is proposing a mixture of uses on the 125 lots proposed in the RD-M zone.

The area of the site which is zoned RD-R will be developed almost entirely with single-family residences. See Exhibits 1B-1 & A6-b. There is one small area in the southwest corner of River Crossing East, south of Orchard Park and adjacent to Mission Avenue, which will be developed with townhomes. *Testimony of J. Frank*; see also Exhibits 1B-1 & A6-b. These proposed uses are consistent with the development code. Single-family dwellings and single-family attached townhomes are outright permitted in the RD-R zone. See RDSAP 4.1 (River District Zoning District Matrix).

The area which is zoned RD-M will be developed with a townhomes and mixed uses designed to serve the neighborhood. See Exhibits 1B-1 & A6-b. The zone code provisions describing the RD-M zone reflect an intent to authorize a mixture of land uses and to provide an appropriate level of retail and commercial services to the neighborhood. See e.g. RDSAP 10-2E-1(B) & (E). For example, the following uses are permitted in the RD-M zone: single-family attached townhomes; two family duplexes; offices; community and cultural centers, and various types of retail and commercial uses. See RDSAP § 4.1 (River District Zoning District Matrix); see also Exhibit B-2a.

The minimum density in the RD-R zone is 4 dwelling units per acre, while the maximum density in that zone is 18 dwelling units per acre. See RDSAP 10-2C-7(A). In the RD-M zone, the minimum residential density is 6 dwelling units per acre. See RDSAP 10-2E-7(A). There is no maximum net density in the RD-M zone. See *id.* The net density of the project as a whole is approximately 6.73 lots per acre. See Exhibit A-1, p. 7. Thus, the project satisfies the applicable density standards, under both types of zoning that apply the development site. In addition, the city will review the project for compliance with a wide range of design requirements at the time a final plat, civil plan, or building permit is submitted. See Exhibit 1, p. 40. Thus, the project will also be required, at the appropriate stage, to satisfy the other applicable development standards, such as setbacks, lot coverage, and height.

River Crossing East will be developed consistent with the River District Trail Plan and the Parks and Greenways Plan. *Testimony of K. Schneidmiller*, see also Exhibit B-2a. Greenway connections are proposed along with western and northern boundaries of the project, as well as on the north side of Indiana Avenue. See Exhibit 1, p. 39. The greenways and trails incorporated into River Crossing East will establish connectivity to Orchard Park (currently under construction), West River Park, and the Centennial Trail. See *id.* The project sets aside approximately 35 acres, or 20% of its area, as open space. See Exhibit A-1, p. 5.

The Hearing Examiner concludes that the proposed development satisfies the requirements of the development code and other applicable ordinances and regulations. As a result, this criterion for approval is met.

- 2. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of RCW 58.17. See LLDC 10-4D-5(A)(2).*

The name "River Crossing East" has not been used for any other subdivision in Spokane County. See Exhibit 1, p. 40. Therefore, this criterion for approval is satisfied.

- 3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform to or transition to the plats of subdivisions and short plats and maps of land division already approved for adjoining property as to width, general direction, and in other respects. All public improvements and dedications are identified on the preliminary plat or short plat. See LLDC 10-4D-5(A)(3).*

The proposed plat aligns with existing streets and has been designed to have interconnecting streets and blocks which meet the RDSAP standards. See Exhibit 1, p. 40. The street and sidewalk layout matches the proposed RDSAP Transportation Plan. See *id.* As the project is developed in phases, the city will review the development to ensure that appropriate street connections and access are provided. See *id.* The project includes an interconnected sidewalk and trail system, as noted above. The Staff also confirmed that utilities and surface water management facilities have an appropriate layout. See *id.*

The Hearing Examiner concludes that the layout of the development properly facilitates connectivity with the surrounding property, consistent with the RDSAP. Therefore, this criterion for approval is satisfied.

- 4. All proposed private common areas and improvements (e.g. home owner or property owner association property) are identified on the preliminary plat. See LLDC 10-4D-5(A)(4).*

Common areas are identified on the preliminary plat. See Exhibit 1, p. 40. Therefore, this criterion is met.

- 5. The subdivision meets the City's housing density standards of Chapter 2. See LLDC 10-4D-5(B).*

The proposed development is consistent with the applicable housing density standards. The minimum density in the RD-R zone is 4 dwelling units per acre, while the maximum is 18 dwelling units per acre. See RDSAP 10-2C-7(A). The minimum density of the RD-M zone is 6 dwelling units per acre, and there is no maximum net density. See RDSAP 10-2E-7(A). The net density of the project is 6.73 units per acre, which is well within the density range allowed in the applicable zones. See Exhibit A-1, p. 7. Therefore, this criterion is satisfied.

6. *All proposed blocks (i.e. one or more lots bound by public streets), lots, and parcels conform to the lot and block standards. See LLDC 10-4D-5(C).*

The preliminary plat is consistent with the design requirements for subdivisions. The specific ways that the proposal satisfies those standards are discussed below.

- (a) *All lots shall comply with the lot area, setback, and dimensional requirements of the applicable zoning district (Chapter 2), and the standards of Article 10-3G. See LLDC 10-4D-5(C)(1).*

The proposed development satisfies the density requirements of the RDSAP, as discussed above. The lots must also satisfy the dimensional and other requirements of the applicable zoning districts. The additional development standards, such as setbacks, will have to be considered and verified at a later stage in the process. At the time of final plat, civil plan, or building permit submittal, the City of Liberty Lake will review the proposed improvements and plans to ensure that the required standards of the development code, including Article 10-3G, will be satisfied when applicable. See Exhibit 1, p. 41. Compliance with such development standards is also a recommended condition of approval of this project.

- (b) *Setbacks shall be as required by the applicable zoning district (Chapter 2). See LLDC 10-4D-5(C)(2).*

The preliminary plat depicts the layout of the lots, but does not specify the precise location of the improvements. The setbacks must be verified at the appropriate stage in the development. As a result, satisfaction of the setback requirements of the RD-R and RD-M zones is a recommended condition of approval for this plat.

- (c) *Each lot shall conform to the standards of Article 10-3B – Access and Circulation. See LLDC 10-4D-5(C)(3).*

The Access and Circulation standards are addressed by this proposal. To the extent a specific requirement is not explicitly considered at the preliminary plat stage, the standards will be reviewed for compliance by the City of Liberty Lake at the time the final plat, civil plan, or building permits are submitted. See Exhibit 1, p. 41. However, it appears that those standards are adequately addressed for purposes of this proposal. The project includes paved streets with lighting. See *id.* There is an interconnected sidewalk and trail system proposed for this project. See *id.* For example, there are three connections to the Centennial Trail along the northern boundary of the project. See *id.* In addition, compliance with the access and circulation standards is a recommended condition of approval. The Hearing Examiner finds, therefore, that the requirements for access and circulation are satisfied.

- (d) *Landscape or other screening may be required to maintain privacy for adjacent uses. See LLDC 10-4D-5(C)(4).*

The City of Liberty Lake will review the project to ensure compliance with any landscaping requirements at the time that a final plat, a civil plan, or building permits is submitted. See Exhibit 1, p. 41. The Hearing Examiner concludes that the project, as appropriately conditioned, satisfies this criterion.

- (e) *In conformance with the Fire Code, a twenty-foot wide fire apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right-of-way or approved access drive. See LLDC 10-4D-5(C)(5).*

Compliance with this standard will be determined when improvements are made consistent with the preliminary plat. At the time of submittal of the final plat, civil plans, or buildings permits, the City of Liberty Lake will review the project and ensure that there is proper fire access. See Exhibit 1, p. 41. The Hearing Examiner concludes that the project, as appropriately conditioned, satisfies this criterion.

- (f) *Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved subdivision. See LLDC 10-4D-5(C)(6).*

The roads serving the subdivision will be dedicated to the public in the final plat process. As a result, a reciprocal easement will be recorded with the final plat, in fulfillment of this requirement. In addition, the City of Liberty Lake will review the project at the time of submission of the final plat, civil plans, or building permits, to ensure this standard is satisfied, as appropriate. See Exhibit 1, p. 41. The Hearing Examiner finds that the project, as conditioned, satisfies this requirement.

7. *The Hearing Examiner recommends approval of the preliminary plat despite the concerns raised by neighboring property owners.*

Neighboring property owners or residents raised a number of concerns about this project. While the concerns were understandable, the Hearing Examiner was not convinced that the issues raised during the public testimony demonstrated that the project should be denied or that the proposed conditions should be substantively altered. The reasons that the Hearing Examiner reached this conclusion are discussed below.

The most unusual concern raised at the hearing was that future residents of River Crossing East faced health risks because of the high voltage power line that traverses through the westerly part of the property. *Testimony of A. DuShey*. In support of this claim, a scientific paper was submitted which discussed the negative effects of electromagnetic radiation on humans, plants, and animals. See Exhibit C-1. After considering the testimony and evidence on this issue, the Hearing Examiner does not believe that additional project conditions are warranted.

To establish this kind of claim, expert testimony would be required, and the expert would need to be present to answer questions and explain his or her opinions. A myriad of factors could come into play in a scientific analysis of the effects of electromagnetic radiation. Some of the factors that the Hearing Examiner would want to explore include the effect of voltage; the proximity of the radiation source; the length of the exposure; the methodology to measure the radiation; the probability of genuine health or environmental effects; how those effects are established; and strategies to mitigate against the potential effects. None of these kinds of issues were explored at the hearing. There is insufficient information to draw any confident conclusions about the alleged effect of the existing power lines. The Hearing Examiner's questions were not adequately addressed by the

scientific paper. See Exhibit C-1. The paper was actually an engineering student's note, not an expert analysis. In addition, the paper contained numerous conclusory remarks about the health and environmental effects of electromagnetic radiation. However, the paper did not explore how those conclusions were reached. In any event, the author of the paper was not available to answer questions or to explain how the general conclusions of the paper applied to the circumstances of this case.

Another concern was that the development of the townhouses in the southwest corner of the site would have a negative impact on the existing properties to the west. It was asserted that the townhomes would depress the property values of the properties immediately to the west. *Testimony of D.T. Hayes*. It was further suggested that the townhomes would undermine the peace and tranquility of the neighborhood, especially the homes at Augusta Court. See *id.* Some alternatives to the proposed development were suggested, including extending Orchard Park to the south, leaving the proposed site of the townhomes undeveloped, or using that site for parking or other purposes. See *id.*; *Testimony of A. DuShey*.

The Hearing Examiner does not believe the project should be denied or conditioned based upon the alleged effects on neighboring property values. First, there was no expert testimony at the hearing to explain how the new townhomes would lower the neighbors' property values. Without a market analysis by an expert, who was available to answer questions, it would be very difficult to draw any firm conclusions on this issue. Second, the testimony on this issue was disputed. Mr. Hayes asserted that property values would be lowered by the project. *Testimony of D. T. Hayes*. Mr. Frank testified, based on his experience developing in Liberty Lake, that the effect on property values would either be none or positive. *Testimony of J. Frank*. There is insufficient evidence in this record to decide who is correct. If he was required to choose, the Hearing Examiner would be inclined to believe that neighboring property values would not be materially affected by the new construction, based upon the testimony of Mr. Frank and the Hearing Examiner's impressions from the site visit. Third, the alleged impact on property values is not one of the decision criteria when reviewing a plat. Therefore, it is not clear that the Hearing Examiner should consider the issue in the first place.

The Hearing Examiner is sympathetic to some neighbors' desire to keep the neighboring land as undeveloped or open space. However, the property owner certainly has a right to put his or her property to productive use. The property is zoned for residential purposes, including both single-family residences and townhomes. Under those circumstances, there is no reasonable expectation that the area will remain undeveloped. The Hearing Examiner cannot, on the basis of the desire for peace and tranquility alone, prevent a property owner from developing his or her land. Similarly, the Hearing Examiner cannot require that certain land become a park, be used as open space or parking, etc., without a specific legal justification.

Another neighboring property owner was concerned about the decreased access that would be caused by the fencing proposed along the western boundary of River Crossing East. *Testimony of L. Sanders*. In response, the developer offered to work with the property owners along the western boundary to explore options for ensuring emergency and pedestrian access. *Testimony of J. Frank*. Under the circumstances, the Hearing Examiner concludes that no specific project conditions are necessary. The

parties should have some flexibility to implement a solution, if possible, in consultation with the city.

8. *Traffic generated by the project does not warrant a change to the proposed conditions or additional mitigation measures.*

River Crossing East is a 612-lot development that will generate a significant amount of traffic. However, the Hearing Examiner is convinced that the traffic generated from the development has been accounted for in the long-range planning that has been completed by the City of Liberty Lake. The City of Liberty Lake has employed a rather extraordinary approach to transportation planning, at least in the Hearing Examiner's experience. The city has studied the question of traffic impacts in a comprehensive manner and has implemented a traffic mitigation plan for the city based upon full build-out of the available property. See e.g. Exhibits A-4, A-6j, & B-2b. The City of Liberty Lake noted that infrastructure to support build-out is being funded and constructed on an ongoing basis, in some cases before the developments are constructed. The planning undertaken by the city included the property proposed for development as River Crossing East. The information gathered by the city to support its analysis is extensive, and was prepared in response to the shortcomings of piecemeal planning for transportation. Demonstrating that this analysis is insufficient would likely require an equally extensive effort to point out the errors or omissions, if any exist. The record does not contain the kind of detailed analysis that would be required to undermine the city's analysis, either generally or with specific reference to the proposed project.

The City of Spokane Valley's traffic engineer and a WSDOT representative both testified that the project would have impacts outside the territorial limits of Liberty Lake, specifically to Barker/Mission and the Barker Road interchange. In essence, the City of Liberty Lake and WSDOT argued that all the traffic analysis done by the City of Liberty Lake was purely internal, and thus only considered impacts within the territorial limits of the city. The impact of concern was to the road system across the border, in the City of Spokane Valley. However, the Hearing Examiner has already concluded that the City of Spokane Valley does not have standing to pursue its SEPA appeal. Neither the City of Spokane Valley nor WSDOT submitted comments in a timely manner criticizing the city's SEPA determination. Thus, the City of Liberty Lake, as the lead agency, was deprived of the opportunity to consider the contentions of WSDOT or the City of Spokane Valley prior to making its threshold determination. The City of Liberty Lake was entitled to assume that no such criticisms existed, given the lack of comment. The legal result is that neither of these governmental entities can now challenge the city's decisions on SEPA grounds.

The City of Spokane Valley and WSDOT both contended that the City of Liberty Lake should be required to mitigate the impacts to the transportation system within the City of Spokane Valley. However, the Hearing Examiner has concluded that the claims in support of extra-territorial impacts should not be considered due to lack of standing. As a result, the Hearing Examiner certainly cannot require mitigation of the alleged extra-territorial impacts. Assuming *arguendo* that such measures could be considered, the Hearing Examiner is convinced that imposing additional mitigation is not appropriate under the circumstances of this case.

The City of Spokane Valley was not able to identify any specific mitigation measures that should be imposed. At the hearing, it was suggested that the City of

Spokane Valley should be paid a mitigation fee to address the impacts to its road system. *Argument of E. Lamb*. However, the information supplied by Spokane Valley was not specific enough to justify a specific mitigation fee. The City of Spokane Valley's traffic engineer did provide his own analysis showing that the traffic from River Crossing East would have a measurable impact on Barker Road. *Testimony of R. Wright*. Mr. Wright's opinion cannot be summarily disregarded. He has extensive experience with transportation planning and provided thoughtful and credible testimony on the issue. However, his analysis on this occasion was conceded to be preliminary in nature. There was no study supporting his opinion; he did not gather data. His analysis was memorialized in a comment letter which included very general assumptions, and the analysis itself was admittedly limited. In short, the Hearing Examiner was left to weigh the extensive and comprehensive study of the city's whole transportation system, at full build-out, against a quickly prepared comment letter that made some rather broad assumptions.

Given the lack of specific information, the City of Spokane Valley contended that the picture would become clearer in the near future. The testimony at the hearing suggested that the City of Spokane Valley was in the process of studying the traffic conditions on the Barker Road corridor and would be adopting some mechanisms to collect mitigation fees at the conclusion of that effort. However, that process has not been completed. In the Hearing Examiner's view, mitigation measures for this project cannot properly be based upon a future mitigation process that may or may not be adopted by the City of Spokane Valley in the future. Further, there is no interlocal agreement between the City of Spokane Valley and the City of Liberty Lake to facilitate an inter-jurisdictional process for collection and sharing of mitigation fees. Thus, even if the mitigation fee system were in place, its application here would be an open question.

9. Conclusion.

The Hearing Examiner believes that the Applicant has satisfied all the requirements for the development of this subdivision. As a result, the Hearing Examiner recommends approval of the plat.

DECISION

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

1. All conditions imposed by the Hearing Examiner and/or the City Council shall be binding on the "Applicant", which term shall include the owner or owners of the property, heirs, assigns, and successors.
2. The preliminary subdivision applies to the following described real property: See Exhibit 1A (Attachment A to the Staff Report, File # PLT2018-0001/LUA 2018-0003).
3. The applicant shall comply with the SEPA MDNS Determination that was issued on 6/25/18 and the mitigating conditions set forth therein. They are:
 - a. Participation in the voluntary updated Harvard Road Mitigation Plan at the time of issuance of building permits for this project. If the applicant elects to not participate in the updated Harvard Road Mitigation Plan, then a Traffic Impact

Analysis shall be submitted for review with the final plat and the project shall be subject to any transportation improvements that are determined to be needed. Any impact fees, such as that for schools, parks, etc., approved by the City Council, consistent with the City of Liberty Lake's Comprehensive Plan, shall also be paid upon issuance of building permits for this project.

- b. At the time of final plat submittal, a trip generation and distribution letter shall be submitted to the Washington State Department of Transportation (WSDOT) and the City of Spokane Valley.
 - c. The project shall comply with the City Development Code Chapter 6, Environment, specifically as related to critical areas and any form of potential disturbance to critical areas shall be reviewed and mitigated as required by Chapter 6 and the Habitat and Buffer Mitigation Plan. If the applicant chooses to utilize it, a 20% reduction to the Riparian Buffer Width has been granted bringing the buffer to 200', consistent with the ordinary high water mark setback line.
 - d. The project shall comply with SAP-08-0001, Section 10-3C-2, Landscape Conservation, specifically as related to the protection of significant vegetation in critical areas.
 - e. Development of the site shall comply with SAP-08-0001 Article 10-3H, the Spokane Regional Stormwater Manual, as amended and the specific SAP-08-0001 requirements.
 - f. Erosion control measures and repairs must be implemented if and where surface erosion occurs.
 - g. The requirements for Spokane Clean Air and Washington State Department of Ecology shall be met at the time of or prior to project construction.
4. The proposal shall comply with the requirements RD-R (Mixed Residential) and RD-M (Community Center) zone, as applicable or amended, the River District SAP-08-0001 (RDSAP), as applicable or amended, and other applicable portions of the City Municipal Code, as applicable or amended.
 5. The final plat shall be designed substantially in conformance with the preliminary plat. No increase in density or numbers of lots, or substantial modification of the preliminary plat or conditions of approval shall occur, without a change of conditions application submittal and approval.
 6. The Director of Planning & Engineering Services/ designee shall review any proposed final plat to ensure compliance with these Findings and Conditions of Approval.
 7. The plat name and file number shall be indicated on the final plat. Any changes to the name must be approved by the Director of Planning & Engineering Services / designee.
 8. The preliminary plat is given conditional approval for five (5) years from date of approval, unless additionally modified by WA State Law. To request an extension of time on the preliminary plat, the applicant must submit a written request to the City of Liberty Lake Planning & Building Services at least thirty (30) days prior to the preliminary plat expiration. The extension request shall be processed in accordance with SAP-08-0001 Section 10-4D-3 (D) Modifications and Extensions,

as amended. If an extension request is not submitted prior to the expiration of the preliminary plat, the preliminary plat will become null and void at such time to the extent it has not received final plat approval.

9. In accordance with RCW 58.17.170, as amended, any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five (5) years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval for a period five (5) years after final plat approval, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.
10. Building setbacks shall conform to the RD-R Zone or RD-M zone, as applicable, and shall be identified on the final plat with a matching detail, if required by the Director of Planning & Engineering Services / designee.
11. Final plat submissions shall comply with SAP-08-0001 Article 10-4D Land Divisions and Boundary Line Adjustments, as applicable, and the City of Liberty Lake Final Plat / Short Plat / BSP Review Application.
12. At the time of final plat submittal, the applicant shall supply a current certificate of title to the City of Liberty Lake, with the plat name / file number indicated on the plat certificate cover sheet.
13. At the time of final plat submittal, the applicant shall supply a copy of all Covenants, Conditions, & Restrictions (CCR's), deed restrictions, private easements and agreements, and other documents pertaining to common improvements that have or will be recorded that are referenced on the plat or that affect the property and CCR annexation, as applicable.
14. At time of building permit review, compaction reports shall be required on lots identified as having fill material exceeding 24" in depth.
15. At the time of or prior to final plat submittal, a Professional Engineer, licensed in the State of Washington, shall submit a street, grading, and drainage plan, a drainage report, and calculations that conform to the adopted City Street and Stormwater Standards, and all standards and laws that are applicable to this project, as applicable. Final street, grading, and drainage plans, and drainage reports shall receive acceptance by the City prior to release of a construction or building permit or recording of the final plat.
16. Before the street and stormwater plans, as applicable are submitted to the City of Liberty Lake, a Design Deviation must be submitted to the City for any non-standard elements of the project plans. The sponsor shall acquire approval of the Design Deviation from the City before construction plans are submitted for review. The Design Deviation request must include adequate engineering justification and drainage calculations, and should include any other agency approvals that may be necessary for the proposed deviation to work as designed. The Design Deviation request shall include a description of maintenance responsibilities. The City may approve or deny a Design Deviation or may impose conditions of approval on the Design Deviation.
17. As approved by the City Engineer, streets within River Crossing East will be designed to the RDSAP Local Access Residential with Parking street section, with the exception of Indiana Avenue and Harvest Parkway, which should match the

revised street sections as reflected on Sheets 7a & 7b of 9, Standard Details for River Crossing East, Attachment B, or as may be approved by the City Engineer.

18. Streets within River Crossing East shall be constructed with separated sidewalks, street trees, and street lighting, and shall be constructed to public street standards, as determined by the City Engineer, and dedicated as public streets at time of final plat.
19. Trask Rd. shall provide for a future street connection to development south of River Crossing East. Thompson Ave. shall provide for a future street connection to the east.
20. Appropriate provisions shall be made that the following described property be held in trust until the continuation of the streets be dedicated or deeded: A 1-foot strip at the ends of edges of all streets that terminate or border the plat or plat phase boundary. Temporary cul-de-sacs / fire apparatus turn-arounds are required when streets terminate at the plat or plat phase boundaries. Street construction should run to the nearest planned intersection to provide a hammerhead.
21. Prior to recording the final plat, the applicant shall supply a landscape plan for street tree installation along all streets within River Crossing East, prepared and stamped by a licensed Landscape Architect, that conforms to SAP-08-0001 Section 10-3C-4 Street Trees and Section 10-3B-2(N) for the clear view triangle. Street trees identified by the City Engineer as being located within the clear view triangle should be relocated within the development to a publically accessible area.
22. A plan for street and pedestrian pathway lighting installation that conforms to the requirements of SAP-08-0001 Section 10-3G-2(T) Street Lighting Standards, as amended, must be submitted and approved by the City prior to recording of the final plat.
23. Construction within the proposed streets and easements shall be performed under the direct supervision of a licensed engineer / surveyor, who shall furnish the City with "Record Drawings" plans and a certification in writing that all improvements were installed to the lines and grades shown on the approved construction plans and that all disturbed monuments have been replaced.
24. All construction work, i.e. utilities, streets, stormwater, etc., is to be completed prior to recording of the final plat or a performance guarantee shall be submitted as outlined in SAP-08-0001, Section 10-4D-9 Performance Guarantees, as amended.
25. The applicant is advised that there may exist utilities either underground or overhead affecting the applicant's property, including property to be dedicated or set aside future acquisition. The City of Liberty Lake will assume no financial obligation for adjustments or relocation regarding these utilities. The applicant should contact the applicable utilities regarding responsibility for adjustment or relocation costs and to make arrangements for any necessary work.
26. Appropriate water, sewer and dry utility easements shall be indicated on copies of the proposed final plat. Serving utility companies will be provided up to thirty (30) days to review the final plat prior to recording.
27. 10' utility easements adjoining and behind the sidewalk / right-of-way shall be shown on the final plat. Additionally, any tract that will be dedicated to the HOA which will contain gas or electric will need crossing easements.

28. Consistent with SAP-08-0001, Section 10-3G-6 Utilities, all utility lines including, but not limited to, those required for electric, communication, lighting, and cable television services and related facilities shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground if screened, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above. The SAP-08-0001 additional standards shall also apply to all new subdivisions, in order to facilitate underground placement of utilities.
29. The final plat dedication shall state:
- Utility easements (electric, gas, phone, fiber, cable TV) as shown on the herein described plat are hereby dedicated for the use of serving utility companies for the construction, reconstruction, maintenance, protection, inspection and operation of their respective facilities, together with the right to prohibit changes in grade over installed underground facilities and the right to prohibit, trim and/or remove trees, bushes, landscaping, without compensation and to prohibit brick, rock or masonry structures that may interfere with the construction, reconstruction, reliability, maintenance, and safe operation of same. Storm drain dry wells and Water Meter boxes shall not be placed within the "Dry" easements; however, lateral crossings by storm drain, water and sewer lines are permitted. Serving utilities reserve the right to cross Border easements and common areas.
30. The final plat dedication shall state:
- The development of River Crossing East shall comply with the power transmission utility easement, as recorded under Auditor's Document No. _____.
31. The project shall construct sidewalks and trails per the SAP-08-0001 Parks and Greenway Plan as well as greenway connection and park improvements to ensure the development is served by a park or greenway area. Per SAP-08-0001, all proposed residential uses within the SAP shall be located within ½ mile of a public or private park or greenway area. Greenway and park improvements shall be constructed or a performance guarantee provided prior to recording the final plat phase where the greenway and park improvements will be located.
32. The subject site shall be annexed into the River Crossing Homeowner's Association or a homeowner's association must be established to provide for maintenance of all landscaped strips, open space tracts, common areas, alleys / driveways, private streets, and street lighting, as applicable.
33. The final plat dedication shall state and information shall be provided:
- The owners of all lots within this subdivision shall be members of the " _____ " Homeowner's Association, a homeowners association created by document recorded _____ by the Secretary of State of the State of Washington under U.B.I Number _____ and subject to the Articles of Incorporation and Bylaws thereof. Also subject to the DECLARATION OF PROTECTIVE COVENANTS FOR " _____ " HOMEOWNER'S ASSOCIATION as recorded under Auditor's Document No. _____.

34. The final plat dedication shall state:
“ _____ ” Homeowner's Association will be responsible for the maintenance of all landscaped strips, open space tracts, common areas, alleys / driveways, private streets, and street lighting, as applicable.
35. The final plat dedication shall state:
All tracts shall be dedicated to the “ _____ ” Homeowner's Association or a related private entity responsible for the ownership and maintenance of said property; however the general public is granted access to utilize said open space tracts.”
36. Any private streets and common areas shall be considered subservient estates for tax purposes to the other lots created herein.
37. The drainage system will neither be maintained nor operated by the City. Prior to final plat acceptance by the City, the Sponsor shall provide a mechanism, acceptable to the City, for the perpetual maintenance of the stormwater drainage system. Homeowners Associations are accepted by the City for carrying out the required maintenance functions and responsibilities.
38. The City of Liberty Lake shall prepare and record with the Spokane County Auditor at time of final plat recording, a notice that the property in question is subject to a variety of special conditions imposed as a result of approval of a land use action. This Title Notice shall serve as a public notice of the conditions of approval affecting the property in question. The Title Notice should be recorded within the same time frame as allowed for an appeal and shall only be released, in full or in part, by the City. The Title Notice shall generally provide as follows:
The parcel of property legally described as [insert legal description] and commonly known as "River Crossing East" is the subject of a land use action by the City of Liberty Lake on [insert date], imposing a variety of special development conditions. File # PLT2018-0001 is available for inspection and copying at the City of Liberty Lake.
39. The final plat dedication shall state:
The owners or successors in interest agree to join in any City-approved stormwater management program and to pay such rates and charges as may be fixed through public hearings for service or benefit obtained by the planning, design, constructing, maintaining, or operation of stormwater control facilities.
The owners or successors in interest also agree to join in any City-approved local improvement district for street improvements and to pay such rates and charges as may be fixed through public hearings for service or benefit obtained by the planning, design, constructing, maintaining, or operation of streets.
40. The final plat dedication shall state:
A public sewer system will be required to be installed for the plat. Individual service must be provided to each lot prior to sale. Use of individual on-site disposal systems shall not be authorized. The developer of the proposal shall bear the cost of providing the required services to the lots
41. The final plat dedication shall state:

A public water system will be required to be installed for the plat. Individual service must be provided to each lot prior to sale. The use of private wells or water systems is prohibited. The developer of the proposal shall bear the cost of and shall provide for individual domestic water service as well as fire protection to each lot prior to sale of each lot and prior to issuance of a building permit for each lot.

42. Commercial developments shall submit historical and or estimated water usage to Spokane County Utilities prior to the issuance of the initial building permit of the project in order to establish sewer fees. A sewer plan may be required.
43. Applicant shall submit water and sewer infrastructure plans directly to the applicable water and/or sewer purveyor "under separate cover", only those plan sheets showing applicable sewer and water plans and specifications for the public utility connections and facilities for review and approval. Commercial developments shall submit historical and or estimated water usage as part of the sewer plan submittal. Prior to plan submittal, the developer is required to contact the applicable sewer and/or water purveyor to discuss the details of said utility plans.
44. At the time of or prior to final plat submittal, a water plan with hydrant placement in conformance with the International Fire Code (IFC), as amended, shall be supplied to the City and Fire District #1. The size of the water mains shall be indicated on the water plan. The water plan must be approved by the City prior to recording of the final plat.
45. Hydrant placement and emergency access shall be consistent with the International Fire Code (IFC), as amended and as interpreted by the City. A signature block on the water plan may be utilized in lieu of the approval letter.
46. Prior to the issuance of the initial building permit(s), the applicant shall submit to the City, documentation signed by the water purveyor and Fire District #1 stating that the public water system has been installed, tested, and accepted, including the fire hydrant(s) as operational.
47. Appropriate street name(s) for all public and private streets, approved by the City, shall be drafted on the face of the final plat. No street name shall be used which will duplicate or be confused with the names of existing streets in Spokane County, except extensions of existing streets may be permitted.
48. A second means of egress from each phase shall be in place prior to construction beginning on the 30th parcel of that phase.
49. The street address for each lot shall be indicated on the face of the final plat. The City reserves the right to confirm the actual address at the time a building permit is issued.
50. Addresses shall be posted so they are visible from adjoining streets during and after construction. Numbers shall be a minimum 4" tall and contrasting to background.
51. Prior to recording the final plat, the sponsor shall demonstrate to the satisfaction of the Spokane Regional Health District that an adequate and potable water supply is available to each lot of the plat.
52. If the requested plat is approved, the Director of Planning & Engineering Services will review to ensure Transportation Concurrency.

DATED this 15th day of August 2018.



Brian T. McGinn
City of Liberty Lake Hearing Examiner Pro Tem

NOTICE OF RIGHT TO APPEAL

Type II Project Permits: An appeal of the final decision of the Hearing Examiner can be made to Spokane County Superior Court as outlined in Judicial Appeal in River District SAP-08-0001, Section 10-4B-4(H). Appeals from the final decision of the Hearing Examiner shall be made to the Spokane County Superior Court and must be filed as a land use petition at the superior court within twenty-one (21) calendar days of the date the written decision is issued.

1. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the City Clerk and all persons identified in RCW 36.70C.040, within the applicable time period.
2. Costs of transcribing and preparing all records ordered certified by the court or desired by the appellant shall be borne by the appellant. Prior to the preparation of any records, the appellant shall post with the City Clerk, an advance fee deposit in the amount specified by the City Clerk. Any overage will be promptly returned to the appellant.