

Letter of Transmittal

DATE: December 27th, 2023
TO: City of Okanogan's City Council
FROM: Bryan F. Forbus, Permit Administrator
cc: Parties of Record, Okanogan County Sheriff's Department (Mike Worden)
Re: **Staff Report – Okanogan County Storage and Morgue Shoreline Development
Conditional Use Permit**

File ID: OKA SDP-23-01

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THE PROPOSAL

The proponent is requesting approval of a Shoreline Conditional Use Permit (SCUP) for the demolition of 3 old structures and creation of a new structure for equipment storage and county morgue located in the Industrial two zoning district of the City of Okanogan and located in the sovereign nation of the Colville Confederate Tribe (CCT). The said location of project proposal is described under *the findings of fact* section of this report. The application seeks to request approval of a SDCUP for the use to be allowed within **Conservancy and Upland** designations of the Colville Confederate Tribe Shoreline Master Program.

BACKGROUND

In February of 2023 the proponent filed an application for a CUP for the demolition of 3 old structures and creation of a new structure for equipment storage and county morgue on the property described in the section *findings of fact* of this report. Staff requested a site plan be submitted with the application so staff could assess the project for affecting the critical areas, Floodplain, Shoreline, etc.... After staff reviewed the application, it was determined that the project site is in the 100-year Floodplain and Shoreline areas of the Okanogan River. After review, Staff deemed the application complete on March 31st, 2023, and started the notice process with SEPA.

Staff's first order of business was to run the project through the City of Okanogan's Zoning Conditional Use process for the use of the morgue in the building as it was unique to the Industrial two zone for the city of Okanogan. On June 28th 2023 Staff processed the notice of application for a Zoning Conditional Use Permit (CUP) and scheduled a public hearing on the matter on July 17th, 2023 with the City of Okanogan's Board of Adjustment. The Board filed a finding of fact and concluded said hearing with a motion of final approval subject to (5) specified conditions recommended by staff.

Now that the Proponent has approval from the City for zoning use, the proponent is moving forward with wanting approval for the development of the morgue use in the Shoreline area of the CCT Shoreline master program designated as conservancy and upland.

DESIGNATIONS

Comprehensive Plan Land Use Designation: The area is designated as “Eastern Industrial”.

Zoning District: The property is zoned Industrial Two (I-2).

Flood plain Zone: Generally, the site has parallel floodplain zones extending away from the river. The land immediately adjacent to the river is designated as floodway – no filling is allowed in this zone without a flood impact evaluation (no-rise). The next zone is designated by the FIRM maps as Zones AE (100-year floodplain) – some filling and disturbance can be accommodated in this zone, consistent with the state and city regulations. The 100-year floodplain in this location extends from the left bank of the Okanogan River to the raised roadbed for the Railroad tracks. The entire property is within the designated 100-year floodplain.

Shoreline Designation: The City of Okanogan shoreline code does not apply to lands within the boundaries of the Colville Reservation. As the subject property lies within the boundary of the reservation, the Shoreline Plan adopted by the Colville Tribes forms the basis for regulations within this area. The Tribes has assigned processing to the City of Okanogan for this proposal and the city will utilize the Tribes Shoreline Plan. The Tribal SMP follows the same model as the City’s SMP ordinance, in that, designations generally parallel the Okanogan River boundary. The Shoreline Environment includes the first 200’ measured landward from the Ordinary High-Water Mark (OHWM), together with any adjacent wetland areas. The entire site lies within the shoreline environment of the Tribes SMP - Basis: CTCR SMP 4-15-4 -Shoreline Areas” means all surface waters of the Reservation (as defined in Chapter 4-7 of the Colville Tribal Code), including lakes, reservoirs, streams, and wetlands, and underlying lands, lands extending landward for two hundred feet in all directions as measured on a horizontal plan from the ordinary high water mark or wetland, and in addition shall include 100-year floodplains. The proposed use is not identified in the Tribes SMP and is therefore regulated as an unclassified use Per- CTCR SMP 4-15-53, which states that uses not specifically listed and not synonymous with or substantially or materially the same as a listed use shall be prohibited unless the Administrator finds, by clear and convincing evidence and based on formal written findings of fact that such use is consistent with the goals and policies and the management principles and guidelines of the Shoreline Management Plan and with the shoreline designation criteria of the particular shoreline designation in which the proposal is to be located. Such uses, once reviewed by the Administrator, may be authorized through the issuance of a Shoreline Conditional Use Permit.

SEPA

Actions: The applicant submitted a SEPA checklist on February 22nd, 2023. The City of
OKACUP-23-03, Staff Report,
July 10th, 2023, Page 2 of 9

Okanogan completed a review of the applicant's State Environmental Policy Act Checklist (SEPA) and issued a Determination of Non-Significance (DNS) in accordance with WAC 197-11-340(2) on June 7th, 2023. Public notice of the SEPA DNS was issued also on June 7th, 2023. The 15-day public SEPA comment period ended June 22nd, 2023, and the SEPA appeal period closed on July 3rd, 2023. No appeals were filed within the period provided.

Mitigation: One comment was received during the SEPA comment period. The Comment was reviewed by the city, as the SEPA lead agency, and the issued DNS was upheld. All comments received during SEPA review will be presented in staff findings of fact and conclusions of law for review of the Conditional Use permit. Staff have developed recommended conditions of approval, which may be applied as conditions of approval for this Conditional Use Permit.

ACTIONS ON OTHER RELEVANT PERMITS

The proponent has filed a building permit application and JARPA form for the demolition of the 3 old structures and construction of the new building. Staff have put the building permits, water/sewer applications, and floodplain/shoreline permits, on hold until Council concludes and renders a decision on the SCUP. If Council approves the SCUP these permit applications will then be processed.

FINDINGS OF FACT

- The proposal is to be developed at 269 Railroad Ave Okanogan, WA 98840; Parcel #: 3326160026; Legal: TAX 26 PT LOTS 3,4 & SE NW, PT VAC OKANOGAN ST & Parcel #: 1380110000; Legal: NE40.9FT Lot 11, Lots 12-15, PT VAC RD LY N OF SUSANNES Addition of Section: 16, Township: 33-N, Range: 26 E. WM, Okanogan. These parcels are within the city limits of the City of Okanogan thereby Chapter 35A.63 of the Revised Code of Washington establishes the City of Okanogan as the authority with jurisdiction on local land use decisions.
- The Subject Property is within the Industrial Two (I-2) Zoning District.
- Section 18.48.030 Item Q of the OMC provides the use of Storage facilities use in the Industrial two district of the City of Okanogan requires the approval of a Conditional Use Permit.
- Final approval of the Zoning CUP was given by the Board of adjustments on June 7th 2023.
- Section 16.12 and 16.16 of OMC requires that all land uses and/or development permit applications on all lots or parcels and/or rights-of-way within the city that lie within designated critical areas (as identified on one or more of the maps of the critical areas

contained within the land use element of the comprehensive plan) shall comply with the provisions of the city's Shoreline Master Program (SMP) and Critical Areas Ordinance (CAO). In applying the Tribes SMP (CTCR SMP 4-15-4) the City shall seek to harmonize the intents of the two plans to ensure that no action shall be taken by any person that results in any alteration of any critical area except as consistent with the purposes, objectives, and intent of the city's CAO and SMP.

- The Subject Property lies within the **100 year floodplain and within 200' of the Okanogan River's OHWM and/or floodway landward boundary** and/or its associated wetlands.
- While the Okanogan River is defined as a shoreline of statewide significance (WAC 173-18-280), the Subject Property is located within the boundaries of the Colville Reservation, which is excluded from state shoreline jurisdiction.
- The project site is designated by the Colville Shoreline Master Program as being located within **Conservancy and Upland** designations.
- The following master program provisions are applicable to this development:
Colville Confederate Tribe SMP (CCTSMP CHAPTER 4-15 SHORELINE MANAGEMENT, 2022)
 - Section 4-15-7 (bb) "Non-water-oriented use" means upland uses that have little or no relationship to the shoreline. All uses which do not meet the definition of water-dependent, water-related or water-enjoyment are classified as non-water-oriented uses. Adding public access features to a non-water-oriented use does not automatically change the inherent use to a water-enjoyment use. Examples may include, but are not limited to, professional offices, automotive sales or repair shops, mini-storage facilities, multi-family residential development, convenience stores, and gas stations.
 - Section 4-15-7 (b) (4) Existing nonconforming uses and development are permitted to continue subject to the nonconforming use and structure provisions of Chapter 4-3 of the Tribal Code, however, current uses and activities are permitted to continue providing such uses and activities are in compliance with all applicable tribal and federal laws and regulations other than this management plan. As leases are renewed, range management or landscape plans approved, structures destroyed or other conditions exist that result in a change of practice, any continued use must be done in compliance with this management program.
 - Section 4-15-11 (2) (3) Development located in shoreline areas may be required to provide view corridors, public access ways, recreational trail easements or other amenities upon a determination by the Tribes that the action would enhance

enjoyment of the shoreline and not unduly conflict with the proposed use, adjacent uses or public safety nor adversely impact the shoreline environment.

- Section 4-15-54 Nonconforming Development

Nonconforming development is a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Use and Development Code Chapter, or applicable amendment thereto, but which does not conform to present regulations or standards contained herein or the goals, policies and management principles of the Shoreline Management Plan. In such cases, the following standards shall apply:

(a) Nonconforming development may be continued provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity unless authorized by a Conditional Use Permit;

(e) A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed;

- The Colville Tribes have provided written direction to the City of Okanogan that designates the City as the responsible agency for processing the Tribes Shoreline Master program for this Project Application. (CCT document dated **January 10th, 2023**, and is attached to this report as document of record.)
- Section 11.08 of Okanogan’s SMP specifies the procedures for approval of all Shoreline Conditional Use permits in the City of Okanogan.
- Section 7.03 of Okanogan’s SMP empowers and directs the City Council to hear and decide on Shoreline conditional use permit applications.
- The applicant has vested a completed application.

CONCLUSIONS

CCT SMP

The City of Okanogan has applied the standards and policies of the CCT SMP Chapter 4-15 cited below without deviation or modification.

- Section 4-15-7 (b) (4) Existing nonconforming uses and development –

The Subject Property has been determined by the City of Okanogan to meet the CCT SMP definition of both) existing nonconforming uses and existing nonconforming development, and as such are permitted to continue providing such uses and activities provided they are in compliance with all applicable tribal and federal laws and regulations other than the Shoreline Management Plan. The City of Okanogan has reviewed the Proposal for re-development for compliance with Flood Standards, Domestic Water, Storm Water, and Sanitary Sewer standards. Compliance with each shall be deemed conditions of approval for this action.

- Section 4-15-54 Nonconforming Development –

The City of Okanogan has determined that the Subject Property has a long and continuing history of government use for transportation and general storage. Use of the site has resulted in extensive development across the property that was lawfully constructed or established prior to the effective date of the Shoreline Use and Development Code Chapter. The proposal would reduce the existing non-conformity by removing 3 existing structures, 3 existing fuel storage tanks, and other ancillary development features no longer needed for current or proposed government uses. Redevelopment of the site for continued government purposes is found to be consistent with allowances for continuance of nonconforming development that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity. The redevelopment of the Subject Property for continued governmental purposes is found to be consistent with the requirement that a nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed.

- Section 4-15-7 (bb) “Non-water-oriented use” –

The City has determined that the proposed re-development of the property cannot be considered a water-oriented uses as defined in the CCT SMP. However, continuance and re-development of the existing nonconforming uses and development may be authorized as provided in Section 4-15-7 (b) (4) and Section 4-15-54, provided such uses do not result in an expansion in non-conformity or lot coverage. The City has determined that the proposed re-development of the property would not result in an expansion in non-conformity or lot coverage

- Section 4-15-11 (2) (3) Shoreline Enhancements Required -

The Tribes SMP includes language intended to improve the relationship between existing Non-Conforming Uses and Developments located in shoreline area and the broader goals of the SMP through provision of view corridors, public access ways, recreational trail easements or other amenities that the requirement would enhance enjoyment of the shoreline and not unduly conflict with the proposed use, adjacent uses or public safety nor adversely impact the shoreline environment.

The City has consulted with the Tribal Planning Department and the applicant (Okanogan County) and has determined that the requirement for dedicated public access ways or recreational trail easements into the proposed re-development of the property would likely conflict with the proposed use, impact public safety and potentially impact the shoreline environment. The City of Okanogan has determined that the goal of providing increased visual access to the shoreline would be supported by reducing the level of development on the site and that increasing setbacks for development and storage uses would further the objective to preserve and enhance the portions of the property immediately adjacent to the shoreline of the Okanogan River.

FLOODPLAIN

A portion of the property is within the AE (100-year) flood zone. The City's Flood Damage Prevention regulations (Chapter 15.28 OMC) for flood hazard reduction will apply to work in the zone, the application and drawing indicate compliance. The proposal be required to meet floodproofing requirements by floodproofing the building from 1 foot about the floodplain datum and under with floodproofing such as: flood vents, waterproof materials, and concealment of electrical wiring in sealed conduit. Or by elevating the building to one-foot above floodplain, and mitigating storm water run-off. The proponents may be required to provide an engineered hydraulic analysis of the fill and cut areas of the site which demonstrates that the fill will not result in a rise which exceeds conformance with Flood Damage Prevention regulations.

A portion of the site is also mapped as Floodway. No development is proposed within this area.

SHORELINE

Both the City and Tribal SMPs place substantial emphasis on ensuring that buildings in the shoreline should be limited where possible, to areas previously developed. The proposed action will reduce the developed area on the Subject Property and not further encroach on the shoreline environment and is therefore deemed to be consistent with this objective.

The primary objective of the City and Tribes SMPs is to ensure that development adjacent to designated waters of the state (in this case, the Okanogan River) does not result in degradation of the shoreline environment. Setbacks proposed by this development are consistent with the intent of the Tribes current shoreline program to reduce or not enlarge existing non-conforming uses and will not result in clearing of riparian vegetation, discharge of additional materials into the river, or substantial alteration of the buffer areas established under the current adopted plan.

STAFF RECOMMENDED CONDITIONS OF APPROVAL

Approved to standard, as filed by the proponent with the following specific conditions.

Site Specified Conditions:

The site development and resulting activities shall be restricted in the following manner in order to promote the SMA and the City of Okanogan’s Comprehensive Plan by the integrated SEPA review process.

1. OKA CUP 23-03 – All assertions made by the applicant in their oral and written submittals together with the Conditions of Approval (06/24/2023) are by this reference merged with and made requirement of this SMA approval, and are inclusive herein.
2. Compliance with tribal and City Flood Standards, Domestic Water, Storm Water, and Sanitary Sewer regulations shall be fully demonstrated prior to occupancy.
3. All storage vessels for hazardous materials that are no longer required for the proposed public uses shall be abated from the property prior to occupancy of the proposed new structures.
4. No debris, construction material, or other similar materials shall be stored, even temporarily, closer than 75' to the Ordinary High Water Mark (OHWM).
5. No development or disturbance of soil is allowed within 50' of the OHWM of the Okanogan River.

RECOMMENDATION

Staff recommends that the City Council make and approve a motion in the manner of:

“I move to adopt by reference the Staff Finding of Facts & Conclusions and approve as applied OKA SDP-23-01 to standard subject to the applicant satisfying all of conditions as recommended by Staff.”

Synopsis of Returned Comments

(Staff rebuttal for each comment are in italic font)

Returned comments are attached herein as attachments to this staff report with staff comments for each.

Parties of Record:

Public & Agencies

To date no agency or public has requested Party of Record status.

Returned Comments:

To date no agency or public has submitted comment.