

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Substantial Development) FINDINGS, CONCLUSIONS,
Conditional Use Permit Application by) AND DECISION
Avista Corporation in order to allow the)
placement of a variety of weirs in the)
Spokane River.)
) FILE NO. Z1100015-SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant, Avista Corporation, has applied for a shoreline conditional use permit in order to allow the placement of a variety of sizes of weirs in different locations within the north and south channel of the Spokane River. The project site is located within the Shoreline Master Program’s Downtown – Urban Intensive Environmental Designation, Zone 2 Riparian Habitat Area (RHA) and the weirs will be placed on both sides of Canada Island.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Robin Bekkedahl
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

Property Address: Not assigned.

Property Location: The project will occur in various locations in the north and south channels of the Spokane River on either side of Canada Island within Riverfront Park between the Post Street and Howard Street bridges.

Legal Description: The staff report states that the project will be on parcel number 35185.0053 in Section 18 (SW), Township 25N, Range 43E in the City and County of Spokane, Washington.

Zoning: The existing zoning is DTG-70 (Downtown General)

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

Site Description: The Spokane River at this location, between the Howard Street and Post Street bridges has two channels. The north and south channels flow around an island known as Canada Island. The weirs will be placed in various locations in both the North and the South channels near Canada Island.

Surrounding Conditions: The Spokane River in this area flows through Riverfront Park so most of the adjacent land is park land. To the north there are condominiums and the Flour Mill retail area and also the Federal Credit Union. Canada Island has various recreational facilities and trails and there are two footbridges that cross the Spokane River in this location.

Project Description: Pursuant to Spokane Municipal Code Chapter 17E.060.310 and SMC 17G.060.170, Avista Corporation, has applied for a shoreline conditional use permit in order to allow the placement of a variety of sizes of weirs in different locations within the north and south channels of the Spokane River.

This project is a channel restoration and enhancement project required under the Washington 401 Water Quality Certification and 2009 FERC License to recreate aesthetic flows in the two channels that are split by Canada Island in downtown Spokane. The project includes efforts that will reestablish river flows outside of the abandoned troughs that were cut in the channel to pass city sewage and water to the various mills that once lined the shoreline.

This consists of improving the river channel with a retrofitting of weirs to the existing bedrock/basalt, which may include the shaving of the basalt. These improvements will blend with the existing terrain's texture and color and will restore and enhance the aesthetic qualities of the river in summer months by distributing water over a greater surface area of the river channels. In addition to providing the aesthetic attributes, the improvements will accommodate fish passage at various flows as determined acceptable by the Washington Dept of Fish and Wildlife and the Dept. of Ecology.

Construction includes: A) Temporary fencing and securing of staging area and job trailer. Currently some of the areas that are noted include the YWCA area, City Parks property, and the Federal Credit Union. B) Pedestrian and vehicular control devices will be placed to provide circulation for public safety. C) Track vehicles (i.e. small bobcat) will be placed within the riverbed by a crane. D) Placement of temporary bridges using sand bags and plate steel to cross the existing trenches for site traversing. E) Placement of temporary water diversion structures including but not limited to hay bales, sand bags and/or silt fencing. This is for residual water flowing downstream. F) Drilling anchors and removal of loose rock debris; placement of anchors; transport of reinforcing steel to each weir location; some minor shaving of basalt may occur for retrofitting of the weirs, on-site fabrication of steel reinforcing cage(s). G) Delivery of concrete to sub-stage areas and

pumping to each weir location; finishing concrete with texture to complement surrounding landform; removal of all construction debris; removal of diversion structures.

The weirs will be cementitious in composition and irregular in cross section resembling the natural bedrock as much as possible. Cementitious bonding to the bedrock as well as the irregular nature of the bedrock surface will facilitate weir stability. Steel anchors with high strength resin into the underlying bedrock will compensate for any additional foundation resistance needed for long term stability. The bonded length of the rock anchor will be predominately a function of the joint/fracture spacing. The river bed will have designated clean out areas for the temporary placement of the remaining cement in the pump hose at the end of the scheduled pours. The weight of the hose with the remaining cement prevents Avista from transporting and cleaning out the hoses in the upland area without first removing it. The remainder will be expelled from the pump hose onto an impermeable membrane surrounded by absorbent booms. The washout and remaining cement is expected to be less than 50 gallons in quantity during each cleaning. The waste will be transported by crane upland and disposed of appropriately. The clean out for the cement trucks and the residual from the pump hose will be done upland away from the river and the wash out will be disposed in a contained area and then transported to an appropriate facility

PROCEDURAL INFORMATION

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

Hearing Date: July 7, 2011

Notices: Mailed: January 25 and April 1, 2011
Posted: January 26 and April 1, 2011

Site Visit: The Hearing Examiner has visited this site numerous times including on July 5, 2011.

SEPA: A Determination of Nonsignificance (DNS) was issued by the City on June 21, 2011.

Testimony:

Tami Palmquist
City of Spokane, Current Planning
808 West Spokane Boulevard
Spokane, WA 99201

Robin Bekkedahl
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

Speed Fitzhugh
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

Exhibits:

1. Planning Services Staff Reports
2. Application, including:
 - 2A General application with written summary
 - 2B Shoreline conditional use permit application
 - 2C Notification Map application
 - 2D Joint Aquatic Resources Permit application (JARPA) with minor modification request.
 - 2E Site Plan including:
Aesthetic notes, structural notes, plans/profiles and details
 - 2F Critical Areas Assessment checklist
3. Design Review comments
4. Spokane Tribe of Indians comments
5. Spokane Regional Clean Air Agency comments
6. Notice map with parcel listing
7. Notices
8. Affidavit of mailing 01-25 and 04-01-11
9. Affidavit of posting 01-26 and 04-01-11
10. Affidavit of sign removal 02-11-11
11. SEPA Determination of Nonsignificance
12. Environmental checklist
13. Community Meeting sign in sheet
14. Hearing File Preparation Checklist
15. Letter dated 03-29-11 to Robin Bekkedahl from Tami Palmquist
re: notice of application/public meeting instructions
16. Letter dated 04-01-11 to Tami Palmquist from Robin Bekkedahl
re: submittals
17. Letter dated 04-12-11 to Interested Parties from Tami Palmquist
re: requesting comments
18. Letter dated 05-11-11 to Tami Palmquist from Robin Bekkedahl
re: modification to JARPA

FINDINGS AND CONCLUSIONS

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

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

In the Downtown General zone, weirs are allowed by conditional use permit. This is outlined in the Shoreline Master Program Regulations, Table 17E.060-4 which allows jetties, groins and weirs waterward of the ordinary high-water mark. Therefore this is a use that is allowed in the zone by conditional use permit.

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

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings as set forth in the Planning Services Staff report Exhibit #1, pages 4 and 5.

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

There are no concurrency requirements for this type of application.

4. If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to: size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water, and the existence of natural, historic, or cultural features.

The site plan shows that the site area is suitable for the development of these weirs. The project is a Federal Energy Regulatory Commission (FERC) license requirement. The purpose of the project is to increase and restore aesthetic attributes within two channels of the Spokane River around Canada Island. This consists of improving the river channel with a retrofitting of the weirs to the existing bedrock/basalt. These improvements will blend with the existing terrain's texture and color and will restore and enhance the aesthetic qualities of the river in the summer months by distributing water over a greater surface area of the river and also to accommodate fish passage at various flows.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary, conditions can be placed on the proposal to

avoid significant effect or interference with the use or neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The impacts of the placements of the weirs should be positive to the environment. The overall intent is to restore and enhance the area for the public. Avista will be required to use best management practices to protect the shoreline area as well as the surrounding properties during the short construction phase.

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

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

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings as set forth in the Planning Services Staff report Exhibit #1, pages 6 through 9.

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

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings as set forth in the Planning Services Staff report Exhibit #1, pages 6 through 9.

c. The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program;

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings as set forth in the Planning Services Staff report Exhibit #1, pages 6 through 9.

d. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with the uses planned for the area under the comprehensive plan and the Shoreline Master Program;

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings as set forth in the Planning Services Staff report Exhibit #1, pages 6 through 9.

e. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying the physical and visual access suffers no substantial detrimental effect.

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings as set forth in the Planning Services Staff report Exhibit #1, pages 6 through 9.

DECISION

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

1. Approval is for a shoreline substantial development conditional use permit to allow Avista Corporation to construct various weirs in the Spokane River in the north and south channels near Canada Island between the Howard Street and Post Street bridges. The proposal is to be preformed substantially in accordance with the various permits including the Federal Energy Regulatory Commission (FERC) permit and other permits as issued by State and Federal agencies. The proposal is also to be performed consistent with the plans that are in the record noting the location and size of the various weirs. If changes are sought to this approval, the applicant shall submit those changes to Planning Services for review and approval. If Planning Services finds that the changes are substantial, then they shall be submitted to the Hearing Examiner for review and approval.

2. This project lies within the Riparian Habitat Zone 1 of The Spokane River as defined in Spokane Municipal Code, 17E.020.050. In compliance with Spokane Municipal Code 17E.020.050, Fish and Wildlife Conservation Areas – Regulated Activities, all activities shall be undertaken using best management practices; the applicant shall maintain records documenting compliance with best management practices. The Shoreline Master Program, SMC 17E.060 and SMC 17E.020 require the replacement of any lost habitat functions that result from the proposal.

3. The Spokane Tribes of Indians made the following comments in an email dated 4/25/11:

“The Spokane Tribe has no immediate concerns about this project. However, if any artifacts or human remains are found upon inadvertent discovery, this office should be immediately notified and the work in the immediate area cease. Should additional information become available our assessment may be revised.”

4. The following recommendations of the Design Review Board (dated March 23, 2011) shall be conditions of this approval:

- a. The weirs will not be visually apparent, especially from public viewpoints.
- b. A skilled and experienced shotcrete artist will be employed to ensure that the shape, texture and color of each weir will blend with the natural basalt riverbed.

- c. Ongoing maintenance of these features will be provided as necessary to protect the river's visual character.
5. Public and/or visual access to the Spokane River and river views shall be required as part of the Shoreline Masters Program and SMC 17E.060.
6. All SCAPCA requirements must be met. SCAPCA's comments are included in the record.
7. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development.
8. This approval is good for a period of five years from the effective date of this approval.

DATED this 11th day of July 2011.



Greg Smith
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions of the Hearing Examiner regarding shoreline conditional use permits are reviewed by the Washington State Department of Ecology. After review, they may be appealed to the Washington State Shoreline Hearings Board. **All appeals must be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date of the Ecology decision.**