

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Avista Corporation to allow the) AND DECISION
expansion of a substation and related)
improvements at 7901 N. Nine Mile) FILE NO. Z16-383CUP3
Road)

SUMMARY OF PROPOSAL AND DECISION

Proposal: Avista Corporation seeks a conditional use permit in order to allow the expansion of an existing substation from 220,000 square feet to 415,000 square feet, in order to make room for new equipment and increase reliability of the substation. The project also includes the expansion of the driveway area, the installation of a new security fence, the relocation of some transmission poles, and the construction of a new control enclosure. The site is in a Residential Single Family Zone.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Avista Corporation
Owner: P.O. Box 3727 MSC-21
Spokane, WA 99220

Agent: Michelle Anderson
P.O. Box 3727 MSC-21
Spokane, WA 99220

Property Location: The proposed site is located at 7901 N. Nine Mile Road, in the City of Spokane, Washington. The site is located in the Northeast ¼ of Section 18, Township 26 North, Range 42 East, W.M.

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

Comprehensive Plan Map Designation: The property is designated as R 4-10 (Residential 4-10 units per acre).

Site Description: The property is approximately 30.49 acres in size and is the location of an Avista substation. The site is essentially flat and is accessed by a dirt driveway off Nine Mile Road. This is a private access road that is gated and services the Avista facilities. The Avista property is approximately 1,000 feet from Nine Mile Road and is out of view for most of the public. The existing substation was built in 1971 and has a 450 x 485 foot

fenced yard located in the center of the property. The substation is approximately 250 feet from the nearest residential property.

Surrounding Conditions and Uses: There is Residential Single Family zoning to the east, south, and west. The municipal boundary runs along the northerly property line. North of the site is Spokane County. The property to the north has a County zoning classification of Low Density Residential. To the north, south and west of the site is vacant, open space. To the east, the land is improved with single-family residences.

Project Description: Avista is proposing to expand the existing substation from 220,000 square feet to 415,000 square feet. The expansion will make room for new equipment and increase the capacity of the substation. In addition, Avista is proposing to expand the driveway area, to install a new security fence, and to relocate some transmission poles. Avista has already removed a number of trees in anticipation of the proposed work. Avista has also requested authorization to replace an existing control enclosure building, which is approximately 40 x 50 feet in size. The existing control enclosure will be demolished. A new control enclosure will be constructed on the western side of the site, within the newly expanded fence line. The replacement of the control enclosure was not addressed in the original application, so Avista is requesting approval of a minor modification to the proposed scope of work.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Criteria, and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: April 1, 2016
Posted: April 4, 2016

Notice of Application/Public Hearing: Mailed: June 2, 2016
Posted: June 1, 2016

Community Meeting: April 19, 2016

Public Hearing Date: July 7, 2016

Site Visit: July 7, 2016

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Engineering Department on June 22, 2016. The deadline to appeal the DNS expired on July 6, 2016. The DNS was not appealed.

Testimony:

Ali Brast, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Aaron Henson
1411 E. Mission Avenue
Spokane, WA 99220

Exhibits:

1. Planning Services Staff Report
 - 1A Updated Page 6 of Staff Report
 2. Application, including:
 - 2A General application
 - 2B Conditional Use Permit application
 - 2C Project Narrative
 - 2D Notification Map application
 - 2E Site Plan
 - 2F Aerial view of existing substation footprint
 - 2G Aerial view of proposed expanded footprint
 3. Engineering Services comments
 4. Traffic Engineering comments
 5. Planning comments
 6. Spokane Tribe of Indian comments
 - 6A Response from Avista dated 05-25-16
 - 6B Response from Avista dated 06-10-16
 7. Notice map
 8. Parcel Listing
 9. Notice of Community Meeting
 10. Notice of Application and Public Hearing
 11. Affidavit of mailings
 - 11A Community Meeting dated 04-01-16
 - 11B Application and Public Hearing dated 06-02-16
 12. Affidavit of postings:
 - 12A Community Meeting dated 04-04-16
 - 12B Application and Public Hearing dated 06-01-16
 13. Affidavit of community meeting sign removal dated 04-25-16
 14. SEPA Determination of Nonsignificance dated 06-22-16
 15. Environmental checklist dated 05-06-16
 16. Community Meeting sign in sheet
 17. Community Meeting minutes
 18. Community Meeting presentation
 19. Letter dated 03-29-16 to Michelle Anderson from Ali Brast
re: community meeting instructions
 20. Letter dated 05-10-16 to Interested Parties from Ali Brast
re: requesting comments
 21. Letter dated 05-26-16 to Michelle Anderson from Ali Brast
re: notice of application and notice of hearing instructions
- A. Material received at hearing:
 - A-1 Hardcopy of Staff's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170 and 17C.320.080(F). The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The project site is zoned Residential Single Family ("RSF"), a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17C.110.110. Among the uses allowed in the RSF zone are Basic Utilities. See Table 17C.110-1. However, the municipal code further states that new buildings or larger additions to Basic Utilities require a conditional use permit. See SMC 17C.110.110(A)(3); see also Exhibit 1, p. 3. There is no question that the proposed use qualifies as a Basic Utility. "Electrical substations" are specifically identified in the municipal code as Basic Utilities. See SMC 17C/190.400(C); see also Exhibit 1, p. 3.

The land use codes permit a Basic Utility, such as an electrical substation, to be constructed in the RSF zone, so long as the project satisfies the criteria for a conditional use and the other development standards in the municipal code. The Hearing Examiner finds that this criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

Goal 1 of the Land Use element of the comprehensive plan memorializes the objective of providing coordinated, efficient, and cost effective public facilities and utility services. See Comprehensive Plan ("CP"), Goal LU 1, Citywide Land Use. Goal 6 of the Land Use element seeks to ensure the distribution of adequate and well-located public facilities throughout the city. See CP, Goal LU 6, Adequate Public Lands and Facilities. Policy 1.12 of the Land Use element recognizes that adequate public facilities and services systems must exist to accommodate proposed development, and must exist before development is permitted to occur. See CP, Policy LU 1.12, Public Facilities and Services.

Similarly, the Capital Facilities element calls for the city to provide and maintain adequate public facilities and utility services. See CP, Goal CFU 1, Adequate Public Facilities and Services. Policy CFU 1.4 of the Capital Facilities Element further provides that existing facilities should be used or adapted for reuse before new facilities are constructed. See CP, Policy CFU 1.4, Use of Existing Structures. Goal CFU 5 embodies the goal to minimize impacts to the environment and the public. See CP, Goal CFU 5, Environmental Concerns.

The proposal results in the expansion of an existing utility, in order to better serve the public and satisfy the need. Expanding the existing facility is not only a more economical approach, it also minimizes the impacts on the environment and the public. The expansion is also designed in a manner that reduces the impacts on neighboring property owners. The Hearing Examiner finds that the project is consistent with the goals and policies of the comprehensive plan, and therefore this criterion is satisfied.

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

The decision criteria for Type III decisions (such as a conditional use permit) mandate that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on May 10, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 20.

The city received a handful of responses to its request for comments. See e.g. Exhibits 3, 4, 5, 6A, & 6B. However, City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 4. A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

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

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The site plan for the project is included in the record as Exhibit 2E. The site plan and other documents in the record describe the location, size, shape, and topography of the property. These documents also include information about the physical characteristics of the site and details about the proposed project. A review of this documentation confirms that the project site is suitable for the proposed use.

The Avista property is approximately 30 acres. The substation is located in a flat area in the middle of the site, and the property has been used as a substation for decades. The project will expand the substation and driveway area, as shown on Exhibits 2F and 2G, but not in a way that radically changes the intensity of the use or substantially expands the area of the substation, at least as compared to the site as a whole.

There is nothing problematic about the topography of the site. The site is generally flat, with the steepest slopes not exceeding a 3% grade. See Exhibit 15 (Environmental Checklist ¶ B(1)(a)-(b)). There "...are no surface indications of unstable soils." See Exhibit 15 (Environmental Checklist ¶ B(1)(d)). In addition, there is no evidence of surface waters on the project site. Ground water is located 80 feet below the surface according to a geotechnical report dated April 2016. See Exhibit 15 (Environmental Checklist ¶ A(14)(b)(1)). Less than 1% of the surface of the project has impervious surfaces. See Exhibit 15 (Environmental Checklist ¶ A(14)(a)(1)). As a result, there are no surface discharges at this site. See *id.*

There are no known cultural or historic resources on this site. See Exhibit 15 (Environmental Checklist ¶ B(13)(a)-(b)). The Spokane Tribe of Indians recommended that a cultural survey be completed prior to ground disturbing activities. See Exhibit 6. However, after a site visit and consultation between the Spokane Tribe of Indians and Avista, it was concluded that a cultural survey was not needed for this site. See Exhibit 6B. Under the circumstances, the Hearing Examiner will include the usual condition that if, during excavation, any significant resources are discovered, the appropriate protocol will be followed. That is sufficient given this record, in the Hearing Examiner's opinion.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about May 6, 2016, Avista Corporation prepared a SEPA checklist for this project. See Exhibit 15 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, there are no wetlands or streams on the site, although the project is about 1,100 feet from the Spokane River. See Exhibit 15 (Environmental Checklist ¶ B(3)(a)(1)-(2)). The property does not lie within a floodplain. See Exhibit 15 (Environmental Checklist ¶ B(3)(a)(5)). No waste materials will be discharged into the ground or into surface waters as a result of this project. See Exhibit 15 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No threatened or endangered species were identified on the site. See Exhibit 15 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The site has been used as a substation since 1971. See Exhibit 15 (Environmental Checklist ¶ B(7)(a)(1)). No contamination is known to have occurred due to this activity on the site. See *id.*

There are some environmental risks that should be considered, given the nature of the facility. There should not be any risk of fire or explosion at this site. See Exhibit 15 (Environmental Checklist ¶ B(7)(a)(1)). However, when extreme weather takes down transmission lines feeding the station, there can be hazardous electrical conditions. See *id.* Even so, the substation is equipped with sensors that will alarm in a control center that is staffed 24 hours a day in the event of a problem. See *id.* In addition, there is an electrical transformer on site that is filled with 3,100 gallons of mineral oil, which is used for cooling. See Exhibit 15 (Environmental Checklist ¶ B(7)(a)(5)). However, the tank is sealed and secondary containment is provided. See *id.* There are also sensors to alert Avista should any problems arise. See *id.* Avista staff can reach the substation in a very

short time in the event of any problems at the substation. See Exhibit 15 (Environmental Checklist ¶ B(7)(a)(2)).

On June 22, 2016, the Planning and Development Department of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 14. Any appeal of the DNS was due on July 6, 2016. See *id.* No appeal of the DNS was filed.

There is no substantive evidence that the project should not be permitted due to environmental impacts. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. Further, there was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment, which cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F).*

This project will not negatively impact the residential appearance or function of the area. The substation has been in operation at this location since 1971, and has coexisted with nearby residences for many years. Some trees will be removed, but many trees will remain and provide screening between the residences and the site. See Exhibit 1, p. 5. In addition, the substation’s boundaries will be expanding to the north, south, and west, away from the existing residences to the east of the site. See *id.* The existing control enclosure is near the easterly fence of the substation. This building will be demolished and a new control enclosure will be constructed in the westerly part of the site, farther away from the residences. See *id.* The new control enclosure will not be visible to any of the surrounding neighbors. See *id.* In essence, after the expansion, the site will be put to the same use and will appear largely the same as before the project was undertaken. The Hearing Examiner concludes that this criterion for approval is met.

7. *The proposal will be compatible with the adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping. The proposal will mitigate the differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).*

The substation has coexisted with nearby residences for many years. The substation is located in the middle of a relatively large, wooded site. The substation is some distance from the nearby residences, and the trees provide some screening of the site. The expansion of the substation will be away from the existing residences, as discussed above. In addition, technological improvements mean that the updated substation will be quieter in operation than the existing facility. See Exhibit 1, p. 6. A new

security fence will be installed, improving security and safety, and providing additional screening. See *id.* The Hearing Examiner agrees with the Staff that this criterion is satisfied.

8. *The proposal will not have significant adverse impacts on the livability of nearby residential lands due to noise, glare, late-night operations, odors and litter, or privacy and safety issues. See SMC 17C.320.080(F)(3).*

The location of the substation and the parcel is such that it is hidden from view of the general public. See Exhibit 15 (Environmental Checklist ¶ B(10)(a)). The proposed work will not change this fact. See *id.*

Emergency lighting will be installed at the substation. See Exhibit 15 (Environmental Checklist ¶ B(11)(a)). However, it is not anticipated that the project will cause light or glare impacts. See Exhibit 15 (Environmental Checklist ¶ B(11)(b)). "Lighting will only be used during night operations of the substation which are short and infrequent in occurrence." See Exhibit 15 (Environmental Checklist ¶ B(11)(a)).

There is some noise that is inherent with operating the facility. However, there was no testimony from neighbors suggesting that sounds emanating from the site were problematic. Further, the upgraded facility will be quieter than the existing facility. In any event, the project will not increase noise above existing levels. See Exhibit 15 (Environmental Checklist ¶ B(7)(b)(2)). Other than operations, the only other source of noise would be from construction activity. However, the construction noise is temporary, and will cease when the project is completed.

There will be no operations carried on at the site that would result in glare, odors, litter, or similar impacts. See Exhibit 1A, p. 6. There was no testimony or evidence offered at the public hearing to suggest that such impacts were a probable result of this project. Further, the proposal itself does not raise any obvious concerns about privacy or safety, and there was no evidence or testimony suggesting any ways in which the facility would cause such problems.

The Hearing Examiner concludes that this criterion for approval has been satisfied.

9. *The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).*

The proposal is to construct utility infrastructure. As a result, factors such as connectivity, circulation, and transit availability are not particularly relevant to the proposal or the nature of the use. Almost no traffic is generated from this utility operation. See Exhibit 15 (Environmental Checklist ¶ B(14)). The proposal does not decrease the level of service on any adjacent street. See Exhibit 1A, p. 6. No traffic study was required or undertaken for this proposal. See *id.* Under the circumstances, it is clear that the area transportation system can easily accommodate the proposed use.

As discussed above on the issue of concurrency, there are adequate public services to support the proposed use. "The site has access to all City of Spokane public services, and will not require any additions to be made in order to fully accommodate the expanded substation. See Exhibit 1A, p. 6. There will be no change to public services as a result of this project. See Exhibit 15 (Environmental Checklist ¶ B(15)(a)).

The proposal is consistent with the transportation element of the comprehensive plan, and therefore this criterion to approve a conditional use is satisfied.

10. The Hearing Examiner lacks authority to extend the date that a conditional use permit expires.

Table 17G.060-3 of the Spokane Municipal Code provides that Type III conditional use permits expire in three (3) years¹. During the hearing, Avista requested that the expiration of the CUP be changed from three years to six years because the project will take six years to complete. *Testimony of A. Henson*. Although the request is reasonable and understandable, the Hearing Examiner does not have jurisdiction to modify the requirements of the land use codes. There are no provisions in the municipal code granting the Hearing Examiner authority to change the expiration dates of permits. Such a change would require a legislative act, which is the purview of the City Council, not the Hearing Examiner. As a result, the Hearing Examiner must decline this request. Having said that, the Hearing Examiner encourages Avista to consult with the Planning & Development Department to obtain further guidance on how and when CUPs expire.

DECISION

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

1. Approval is for a conditional use permit to allow Avista Corporation to expand its existing substation at Nine Mile Road, and complete associated work and improvements, including but not limited to the replacement of the control enclosure. The project shall be completed substantially as set forth in the application and plans included in the record.
2. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
3. If the owner elects to pave the driveway, a drainage report/plan will be required.
4. At the time of permit submittal, a specifications sheet identifying the dust suppressant product for the existing driveway will be required.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately

¹ It should also be noted that Footnote 1 of Table 17G.060-3 provides: "Approval expires after the specified time if no permit to develop the project is issued by the City of Spokane or building permit expires without completion of the improvements." See Table 17G.060-3 n.1; see also 17G.060.240(C) (stating the same).

notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.

6. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the building codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.

7. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.

8. A Notice of Construction and Application for Approval shall be submitted and approved by the Spokane Regional Clean Air Agency prior to the construction, installation, or establishment of an air pollution source and Notice of Intent shall be submitted to Spokane Clean Air prior to any demolition project or asbestos project.

9. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.

10. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

11. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

12. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written

agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 14th day of July, 2016.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

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

Decisions by the Hearing Examiner regarding conditional use permits and variances are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is the date the decision is entered into the public record. This decision was entered into the public record on July 14th, 2016. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 4th DAY OF AUGUST 2016 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.