

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Avista to construct a new power) AND DECISION
substation on property located at 3400)
S. Inland Empire Way) FILE NO. Z20-035CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant, Avista, is proposing to construct a new power substation on its property located at 3400 S. Inland Empire Way. Once the new substation is constructed and operational, the existing substation, situated on the same parcel, will be decommissioned. The proposed work also includes rerouting existing overhead facilities.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Avista
Agent: Todd McLaughlin
PO Box 3727 MSC-21
Spokane, WA 99220-3727

Property Avista
Owner: 1411 E Mission Ave
Spokane, WA 99220

Property Location: The subject property is located at 3400 S. Inland Empire Way, Tax Parcel No. 25361.0015 in the NE ¼ of Section 36, Township 25 North, Range 42 East, Willamette Meridian.

Zoning: The property is zoned RA (Residential Agricultural).

Comprehensive Plan Map Designation: The property is designated as Agricultural in the City of Spokane Comprehensive Plan (CP).

Site Description: The site is approximately 13.7 acres and is trapezoidal in shape. The site is generally flat. A power substation was constructed on the northwestern portion of the site in 1940. A long, private driveway provides access to the site. The remainder of the site is undeveloped. The westerly boundary of the site abuts the Burlington Northern Railway right-of-way.

Surrounding Conditions and Uses: Properties to the north, east, and west are all zoned Residential Single Family (RSF). Properties to the south are zoned RA. The land to the north, south, and east consists of vacant parcels. A Burlington Northern Railroad line runs along the westerly boundary of the property. Just west of the railroad line is SR 195.

Project Description: The site is owned by Avista and is the current location of the Sunset Substation, which has been on this site since approximately 1940. The proposal involves building a new and larger substation to replace the aging infrastructure. Once the new substation is operational, the existing substation will be decommissioned and that portion of the site will be contoured and reseeded with native grasses and shrubs. The project also includes realigning existing transmission, distribution, and communication lines.

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: September 19, 2019
Posted: September 24, 2019

Notice of Application/Public Hearing: Mailed: May 8, 2020
Posted: May 15, 2020

Community Meeting: October 9, 2019

Public Hearing Date: June 4, 2020

Site Visit: June 1, 2020

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued by the City of Spokane on February 20, 2020. Any appeal of the DNS was due on March 5, 2020. No appeal was filed.

Testimony:

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

Todd McLaughlin
Avista
PO Box 3727 MSC-21
Spokane, WA 99220-3727

Stacie Maier
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Exhibits:

1. Planning Services Staff Report dated 05/29/20
2. Application Materials
3. State Environmental Policy Act (SEPA) Checklist dated 01/14/20
4. Determination of Nonsignificance "DNS" dated 02/20/20
5. Notice of Application & Public Hearing Materials, including:
 - A Notice of Application & Public Hearing for 06/4/20

- B Affidavit of Mailing on 05/15/20
 - C Affidavit of Posting on 05/15/20
 - D Sign posted on Briefing Center on 3/16/20, notifying public that hearing was postponed due to COVID-19
 - E Notice of Application & Public Hearing for 3/26/20
 - F Affidavit of Mailing on 02/20/20
 - G Affidavit of Posting on 02/21/20
6. Agency Comments
 7. Public Comments
 8. Community Meeting Materials, including:
 - A Notice of Community Meeting for 10/09/19
 - B Affidavit of Mailing on 09/19/19
 - C Affidavit of Posting on 09/24/19
 - D Community Meeting Sign-in Sheet
 - E Community Meeting Summary
 9. Notification Map Application and Receipt
 10. Predevelopment Conference Notes
 11. Staff Presentation
 12. Avista Presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC Section 17C.060.170 and 17C.320.080(F). The Hearing Examiner has reviewed the proposed CUP 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).*

Electrical substations are identified in the municipal code as Basic Utilities, an Institutional Category of Use. See SMC 17C.190.400(C). A Basic Utility is a Limited/Conditional Use in the RA zone. See Table 17C.110-1. In the RA zone, an addition to an existing basic utility of more than 1,500 square feet and/or new buildings or larger additions require a CUP. See SMC 17C.110.110.C. These types of developments are processed as Type III applications. See *id.*

This application concerns the construction of a new electrical substation that will replace an existing facility. This is not a small addition to an existing utility. The new facility will substantially exceed the 1,500 square foot threshold. See Exhibit 2. Therefore, a Type III CUP is required.

The Hearing Examiner concludes that the proposal is allowed under the land use codes, so long as the conditional use and other development standards are satisfied. As a result, 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).*

Several goals and policies of the CP support this proposal. The CP acknowledges the importance of constructing, maintaining, upgrading, and replacing utilities and other important infrastructure as the need arises.

The project is consistent with the Land Use element of the CP. Policy LU 1.2, Public Facilities and Services, for example, seeks to ensure that these systems are adequate to accommodate proposed development before permitting occurs. See CP, Chapter 3, Land Use, p. 3-7. The need for adequate electrical services in the future is the impetus behind this project. *Testimony of S. Maier*. The existing substation has reached its capacity and suffers from reliability issues due to its aging equipment. See *id.* This project will ensure that the facility can reliably serve the needs of a growing community See *id.*; see also Exhibit 1, p. 4

Policy LU 3.1 states that growth should be focused in areas where adequate services and facilities exist or can be economically extended. See CP, Chapter 3, Land Use, p. 3-17. This project places an upgraded facility on a site that has been used for utility purposes for decades. The site already serves the area, and it is more economical to upgrade an existing site than to incur the costs, both monetarily and environmentally, of developing an entirely new site.

The proposal supports the objectives and policies of the Capital Facilities element of the CP. The proposal ensures appropriate levels of service by providing and maintaining adequate public facilities in support of Goal CFU 1 and Policy CFU 1.2. See CP, Chapter 5, Capital Facilities and Utilities, p. 5-6. Similarly, the proposal supports Goal CFU 2, Concurrency, by ensuring that public facilities and services have the capacity to meet the service demands of development without decreasing current service levels below locally established minimum standards. See *id.*, p. 5-7. The project also accounts for the impacts to the environment, public health, and safety, further fulfilling the Capital Facilities element of the CP. See CP, Chapter 5, Capital Facilities and Utilities, Goal CFU 5, p. 5-16.

Based upon the foregoing, the Hearing Examiner concludes that the project is consistent with the goals and policies of the CP. Therefore, this criterion is satisfied.

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

The decision criteria for Type III decisions (such as a CUP) mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on January 29, 2020, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction.

The city received limited responses to its request for comments, and none of those comments indicated that concurrency could not be achieved. See Exhibit 6. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1). In addition, 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 SMC. Therefore, this criterion for approval of the CUP 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).*

An Avista substation has been operating at this site for decades. See Exhibit 1, p. 4. There is no reason to suspect, at this point in the facility's history, that the site does not have the appropriate size, shape, topography, soils, slopes, or drainage characteristics. The property has already proven to be an appropriate location for the facility.

The site is approximately 13.7 acres in size. However, the project area, including the location of the old substation, is 8 acres. See Exhibit 3 (Environmental Checklist ¶ A(11)). There is more than sufficient space for the project, and the proposal is well designed to fit the site as well as to utilize the most appropriate parts of the land. See Exhibit 2 (Site Plans). Although the property is trapezoidal, the project area is a smaller portion of the whole, and is roughly rectangular in shape. There is nothing about the size or shape of the property, or the area to be developed within the property, that is problematic for development.

The site is generally flat. Although a significant amount of site preparation will be necessary, the project will not materially alter the topography of the site. There are no surface indications or history of unstable soils in the immediate vicinity. See Exhibit 3 (Environmental Checklist ¶ B(1)(d)).

There are no surface waters on this site. See Exhibit 3 (Environmental Checklist ¶ B(3)(a)(1)). Latah Creek is near the project, running along the southwest corner of the site. See Exhibit 1, p. 4. However, all proposed improvements, including the security fencing, will be completed outside the 200-foot shoreline jurisdiction. See *id.*

There is no evidence in this record of poor drainage conditions at this property. In addition, less than one percent of the site will be covered with impervious surfaces. See Exhibit 3 (Environmental Checklist ¶ B(1)(g)). When the old substation is decommissioned, the site will be reseeded with native grasses. See Exhibit 3 (Environmental Checklist ¶ B(1)(h)).

Stormwater will not be collected at this site. See Exhibit 3 (Environmental Checklist ¶ B(3)(c)(1)). Rather, stormwater will naturally infiltrate outside gravel areas. See *id.* Even so, stormwater pollution protection and erosion and sediment control plans will be designed and submitted for permitting. See Exhibit 3 (Environmental Checklist ¶ B(3)(d)).

No groundwater will be withdrawn or discharged. See Exhibit 3 (Environmental Checklist ¶ B(3)(b)(1)). No waste material will be discharged to the ground. See *id.* (Environmental Checklist ¶ B(3)(b)(2)).

There are no known cultural or historic resources on this site that warrant against approval of the proposal. See Exhibit 3 (Environmental Checklist ¶ B(13)(a)-(b)). A Cultural Resources Survey was completed for the site and no cultural or historic resources were discovered. See Exhibit 1, p. 4.

Based upon the foregoing, the Hearing Examiner concludes that the site is suitable for the proposed use. Therefore, this criterion for approval 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 SEPA, demonstrates that the project will not have significant environmental impacts.

The Applicant prepared an environmental checklist, pursuant to SEPA, for this project. See Exhibit 3 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, no part of the site has been classified as a critical area. See Exhibit 3 (Environmental Checklist ¶ B(8)(h)). The property does not lie within a 100-year floodplain. See Exhibit 3 (Environmental Checklist ¶ B(3)(a)(5)). No threatened or endangered species were identified on the site. See Exhibit 3 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 3 (Environmental Checklist ¶¶ B(3)(a)(6), B(3)(b)(2) & B(3)(c)(2)). And the project will not be a significant source of light or glare. See Exhibit 3 (Environmental Checklist ¶ B(11)).

The Applicant will remove only trees that are necessary for the relocated substation, overhead infrastructure realignment, and/or to comply with overhead electrical vegetation clearance requirements. See Exhibit 1, p. 5. As a part of the application materials, the applicant provided simulation boards to show how the viewpoints may change because of the project. See Exhibit 2 (Simulation Boards). Those simulations suggest that the project will not have significant impacts on views. This makes sense, given the location, topography, and surrounding conditions. Furthermore, Washington State Department of Natural Resources (WSDNR) provided comments on the application and determined that a Forest Practices Application is not required given the relatively limited amount of tree removal. See Exhibit 6.

A DNS was issued on February 20, 2020. See Exhibit 4. The DNS was not appealed. As a result, the City's determination that the project does not result in significant environmental impacts is not subject to challenge.

The proposal is compatible with the surrounding area. The site is already the location of a substation. The project merely moves the location of the substation within the site itself. See Exhibit 2. There is no evidence in this record suggesting that the presence of the substation has created any nuisance conditions or has proven incompatible with other uses or activities.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment that cannot be adequately addressed through mitigation. The project is compatible with the surrounding uses and zones. Therefore, this criterion for approval of the CUP 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)(1).

The residential appearance and function of the area will not be negatively impacted by this project. This institutional use has been on this site for nearly 80 years. See Exhibit 1, p. 5. The continuation of the use will not reduce the residential appearance of the property any more than the existing facility. See *id.* Some trees will need to be removed in order to comply with overhead electrical vegetation clearance requirements and/or for the installation of the new facility itself, but the applicant has worked closely with the local neighborhood group to ensure minimal tree removal and maintained viewpoints. See *id.*, pp. 5-6.

The Hearing Examiner concludes that the project, as conditioned, is compatible with the surrounding neighborhood. Therefore, this criterion is satisfied.

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).*

As stated previously, this site has been used for utility purposes for almost 80 years. See Exhibit 1, p. 6. The surrounding properties are currently undeveloped. See *id.* Under such circumstances, the Hearing Examiner agrees with the Staff that “compatibility is less of a concern.” See *id.* Any development of neighboring land will take place with an understanding that the electrical substation is a permanent part of the area landscape. See *id.*

The existing substation will be decommissioned and removed once the new substation is operational. After the existing substation is removed, the applicant will restore the site with native grasses and shrubs, as well as new trees, shrubs and native grasses along the new fence line of the relocated substation. See *id.* Additionally, per the simulation boards, a site-obscuring fence will be built around new substation. See *id.* All these elements help screen the institutional use in an undeveloped, but residentially zoned area. See *id.*; see also Exhibit 12.

The Hearing Examiner finds this requirement 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).*

There is no evidence in this record suggesting that the livability of residential lands will be diminished by this project. The project will not cause unanticipated or undue light, glare, odor, or litter. See Exhibit 1, p. 6. Although some lighting will be included, overhead lighting is required to be contained on the site per SMC 17C.110.520, Lighting. No late night operations are expected. See *id.* Finally, no concerns were raised about privacy or safety, and the Hearing Examiner cannot conceive of any such impacts, given the nature of the proposal.

The Hearing Examiner agrees with the assessment of City Staff regarding livability impacts and finds this criterion is met.

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).

This project does not create material burdens on the transportation system or on other public facilities. This proposal does not create enough traffic to warrant additional analysis. See Exhibit 1, p. 7. The substation will result in less than 4 vehicle trips per month during normal operations. See Exhibit 3 (Environmental Checklist ¶ B(14)(f)). No traffic study was required or undertaken for this proposal. See Exhibit 1, p. 7. The project does not decrease the level of service on any adjacent street. See *id.*

The Applicant has proposed to replace an existing power substation. The nature of the use is not changing. There is no reason to believe this project will cause any genuine stress on the transportation system. In addition, there was no evidence presented to suggest that this project is incongruous with the transportation element of the CP. The Hearing Examiner concludes that this criterion is satisfied.

DECISION

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

1. Approval is for a CUP to allow the relocation of an existing Avista substation on the parcel located at 3400 S. Inland Empire Way, substantially in conformance with the plans and application on file in Planning and Development.
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. The new substation shall be enclosed with a site-obscuring fence, substantially as depicted on the simulation boards submitted as part of the application materials.
4. The Applicant shall adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington State, and any Federal agency.

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.

5. SMC 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.
6. 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

6. 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 30th day of June, 2020.



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 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 three days after a written decision is mailed by the local jurisdiction. This decision was mailed on June 30, 2020. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS JULY 21, 2020, 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.