

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Shoreline Substantial Development ) FINDINGS, CONCLUSIONS,  
Conditional Use Permit, Variance, and ) AND DECISION  
Special Permit Application by the )  
City of Spokane for the Wastewater )  
Treatment Plant ) FILE NO. Z2002-07-HESP/SL/VA

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** To add several improvements to the City’s Advanced Wastewater Treatment Plant over a period of approximately 15 years to meet water quality performance levels as mandated by the State. Some of the improvements will be located within the 100-foot setback from the river.

**Decision:** Approval, subject to conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant:** City of Spokane Advanced Wastewater Treatment Plant  
represented by Tom Arnold and Tim Pelton  
909 East Sprague Avenue  
Spokane, WA 99202

**Agent:** Greta Gilman and Jim Correll  
CH2M Hill  
9 South Washington Street  
Spokane, WA 99201

**Property Address:** 4401 North Aubrey L. White Parkway

**Property Location:** The Wastewater Treatment Plant is located adjacent to the Spokane River between the river and Aubrey L. White Parkway. It is approximately half way between Downriver Municipal Golf Course and the Bowl and Pitcher portion of Riverside State Park.

**Legal Description:** The property is located in Section 3, Township 25 North, Range 42, EWM, in the City and County of Spokane, Washington.

**Zoning:** R1 (Single-family Residential Zone)

**Comprehensive Plan Map Designation:** The site is designated in the City’s new Growth Management Comprehensive Plan as “Institutional.”

**Site Description:** The site is irregular in shape and almost fully developed with the City's Wastewater Treatment Plant. There is an undeveloped area on the northwest corner of the site which is to be designated as a habitat conservation area. There is another unoccupied area at the other end of the site. The site slopes moderately from the road down to the river, and contains approximately 57 acres in size. A vicinity map and plan view showing the site and its improvements is in the record as Exhibit #1D.

**Surrounding Conditions:** The property surrounding the site on all sides is zoned R1. Adjacent on the northeast is a steep bluff which is designated in the Comprehensive Plan as "Conservation Open Space." On top of the bluff there are single-family residences. Park areas are located to the southeast and northwest and across the Spokane River. To the southeast is the Downriver Golf Course, and to the northwest is the Bowl and Pitcher portion of Riverside State Park, which includes a camping and picnicking area.

**Project Description:** The City has operated the a wastewater treatment plant on the site since 1958, but it was upgraded substantially to approximately its current configuration in 1977. The City is planning further upgrades in order to meet Washington State Department of Ecology (DOE) water quality standards. The various improvements planned for the plant, which are to occur over a 15-year period, are set forth in the record on Exhibit #1E. The various improvements are necessary for three reasons; number (1), to meet water quality requirements; number (2), to address maintenance issues and obsolescence; and number (3), to address system growth needs due to population growth in Spokane County. Exhibit #1D shows where the expansion is planned and what exactly is planned during the expansion and upgrading process. The shoreline variance is necessary because some of the improvements will be located within the 100-foot setback from the Spokane River. There are already several improvements on site which are within that 100-foot setback, but the modernization and upgrading of the facility will add more structures in that area. There does not appear, however, to be anything closer than 50 feet from the river. There is currently a fence which separates the improved portion of the site from the river environment. Photographs of the plant improvements and the banks of the river adjacent are in the record as Exhibit #24.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code Sections 11.02, 11.15, 11.15.290, 11.15.292, 11.19, and 11.19.310.

**Hearing Date:** May 9, 2002

**Notices:** Mailed: January 4, 2002  
Posted: January 9, 2002

**Site Visit:** None made

**SEPA:** A Mitigated Determination of Nonsignificance was issued by the City on April 29, 2002

**Testimony:**

Steve Haynes  
City of Spokane Planning Services  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Tom Arnold  
City of Spokane Wastewater Mgmt.  
909 East Sprague Avenue  
Spokane, WA 99202

Jim Correll  
CH2M Hill  
9 South Washington Street  
Spokane, WA 99201

Tim Pelton  
City of Spokane Wastewater Treatment  
4401 N. Aubrey L. White Parkway  
Spokane, WA 99205

**Exhibits:**

1. Application, including:
  - 1A. General application
  - 1B. JARPA application
  - 1C. Applicant's 4-3-02 letter amending application
  - 1D. Site plans: Revised Figure 1; Figure 1; Cross Sectional Views
  - 1E. Itemized list of proposed improvements
2. Traffic Engineering Department comments
3. Fire Department comments
4. Solid Waste Department comments
5. Legal Department comments
6. Spokane Tribe of Indians comments
7. Spokane County Transportation Engineering Section comments
8. Notice map
9. Notification list
10. Notice
11. Affidavit of Mailing
12. Affidavit of Posting
13. Planning Services Staff Report
14. Environmental Checklist
15. Hydraulic Project Approval, Washington State Dept. of Fish and Wildlife
16. Contour drawing of the site
17. Waste Discharge Permit
18. E-mail dated 1-22-02 to Heather Trautman from Tom Arnold  
re: filing application
19. Letter dated 1-30-02 to Heather Trautman from Tim Pelton  
re: improvements to AWWTP
20. Letter dated 1-31-02 to Heather Trautman and Steve Haynes from Greta Gilman, CH2M Hill Co. re: improvements to AWWTP
21. Habitat Management Plan prepared by CH2M Hill, January 2002
22. Audio tape and sign in sheet from community meeting
23. Revised Planning Services Staff Report

24. Photographs of the shoreline at the WWTP site
25. Mitigated Determination of Nonsignificance

## **FINDINGS AND CONCLUSIONS**

### **Zoning Special Permit and Shoreline Conditional Use Permit**

To be approved, the proposed zoning special permit and shoreline conditional use permit must comply with all of the criteria set forth in Spokane Municipal Code Section 11.02.0452. The Hearing Examiner has reviewed the proposed shoreline conditional use application and the evidence of record with regard to this section and makes the following findings and conclusions.

1. The use is listed as requiring a zoning special permit or shoreline conditional use permit in the regulations.

The applicants seek an amendment to their special permit to allow the proposed improvements. They were originally given a special permit to develop this treatment plant. The Hearing Examiner has the authority, pursuant to SMC 11.19.310, to grant and amend special permits for sewage treatment plant facilities. (See SMC 11.19.310Q.) In addition, since the proposal is located within the shoreline area, it is governed by the City's Shoreline Master Program. The regulations of the Master Program do allow sewage treatment plants by conditional use permit in the Downriver environment, which is where this is located. (See SMC 11.15.292B2.) Therefore, this criterion has been met.

2. Except for planned unit developments, the proposed use complies with all applicable use and development standards.

As noted above, a utility facility such as this is allowed by special permit in any zone. The code does not set forth any specific development standards, but simply states that the Hearing Examiner should attach such conditions and standards as the Examiner may deem necessary for each approval. Further, the Shoreline Management Regulations, set forth in SMC 11.15.290, require that the facility should not detract from the aesthetic qualities of an area and also that certain erosion control standards must be followed with the construction of such facilities. The Hearing Examiner will require that appropriate erosion control measures are taken during construction of the proposed improvements. It does not appear that those improvements will have any adverse aesthetic effects on the area. They will all be located within the existing Wastewater Treatment Plant complex and will offer an overall benefit to the operational capabilities of the plant. Therefore, the Hearing Examiner finds that this criterion has been met.

3. The proposed use complies with the goals, policies, and map designation of the Comprehensive Plan that apply to it and to the area in which it is proposed to be located.

The City's new Comprehensive Plan has a section on capital facilities and utilities. There is also a subsection, Section 5.10, that addresses sanitary sewer and the City's needs for the future. It is stated in that section that the City will soon outgrow its treatment plant and additional capacity

will be necessary to serve a growing population in the urban area. These system improvements are meant to address that future growth. There are other policies of the Comprehensive Plan which are relevant and which support this expansion, and they are addressed in the Planning Services Staff Report, Exhibit #23, pages 3 and 4. The Hearing Examiner hereby adopts and incorporates that discussion herein.

4. The proposed use is timely considering the capacity of the transportation system, public facilities and services existing in the area, including such improvements that are funded in the City's Capital Improvement Programs.

The proposal was reviewed by all City Departments and outside agencies with jurisdiction over land development, and there were no adverse comments which would convince the Hearing Examiner that other public facilities or transportation systems are inadequate to serve this proposal. There was testimony given that the plant was originally designed to have 100 employees and currently has only 70. There is no increase in the number of employees anticipated, so traffic should not increase to any significant degree. Therefore, the Hearing Examiner finds that the proposed use is timely.

5. Conditions can be placed on the proposed use to avoid significant adverse impacts or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use with uses existing in the area.

The Staff has reviewed the proposal under the State Environmental Policy Act and issued a Mitigated Determination of Nonsignificance with a mitigating condition which relates to a habitat management plan. The City did a habitat management plan and has agreed to follow its recommendations. There are certain other recommended conditions of approval from Staff which relate to enhancing the shoreline area with landscaping and other improvements. The Hearing Examiner will adopt many of those recommended conditions and finds that appropriate conditions can be placed in order to avoid any significant adverse impacts.

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

a. The proposed use will not interfere with the normal public use of public shorelines.

This plant was established prior to the City's Shoreline Master Program being adopted and has never provided a public trail or access to the shoreline. It does not need to do so now. The fact that all proposed improvements to the plant will be contained within the plant's current perimeter, demonstrates that the use will not interfere, any more than it already does, with the public use of the shorelines.

b. 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.

All improvements proposed for this expansion will be contained on the current site. No expansion outside the current site is anticipated, and it is also not anticipated that additional sewage treatment plants will be permitted within the area. In fact, this proposal is meant to address increased population growth for the foreseeable future and to eliminate the need to site

additional treatment plants along the shoreline areas within the City. Therefore, this criterion has been met.

### Zoning and Shoreline Variance

To be approved, the proposed variance must comply with all of the criteria set forth in Spokane Municipal Code Section 11.02.0454. The Hearing Examiner has reviewed the proposed variance and the evidence of record with regard to this Section and makes the following Findings and Conclusions:

1. A variance or modification of the standard or requirement is not prohibited by the land use codes.

SMC 11.02.0210B2 states:

*2. A person needs a variance or a certificate of compliance from the Planning Director or Hearing Examiner to render lawful proposed or existing structures which do not comply with the locational or dimensional standards of the zoning code.*

The applicant seeks to vary a locational and dimensional standard of the shoreline code. The proposal would place structures within the 100-foot setback from the shoreline. There are already structures within that area, but the proposal will add to those which exist. This is a locational and dimensional standard which would anticipate some variance applications. There is nothing in the land use codes or the shoreline code to prohibit a variance of this type and, as noted above, these types of dimensional variances are specifically authorized under certain conditions.

2. No other procedure is provided in this chapter to vary or modify the standard or requirement, or compliance with such other procedure would be unduly burdensome.

There is no other procedure in the code to vary this particular setback standard. Neither the zoning code nor the shoreline ordinance sets forth any other procedure other than the variance procedure.

3. Strict application of the standard or requirement would create an unnecessary hardship due to one or more of the reasons listed below. Mere economic hardship or self-created hardship are not considered hardships for the purposes of this section.

a. The property cannot be developed to the extent similarly zoned property in the area can be developed because the physical characteristics of the land, the improvements, or uses located on the land do not allow such development.

The plant has been in this location in various forms since 1958. The plant, in its current configuration, was constructed in 1977 before the 100-foot setback was established. There are, therefore, structures within the 100-foot shoreline area. Because of the nature of the improvements, some must be placed near existing structures within that 100-foot shoreline in order to meet the operational needs of the plant. A practical difficulty arises if the owner of the plant cannot place the structures in the area proposed, in that it could affect the operational

capabilities of the plant. If the plant cannot be upgraded and expanded to meet water quality standards and also to accommodate future growth, it may be that another plant would have to be located somewhere along the shoreline. It is a substantial benefit to the public to have expansion occur at this existing site, rather than have another plant located elsewhere along the river. The Hearing Examiner finds that this constitutes enough of an unnecessary hardship to justify this variance.

b. Compliance with the requirement or standard would eliminate or substantially impair a natural, historic, or cultural feature of area-wide significance.

There was no evidence presented that there are natural, historic, or cultural features of area-wide significance on this site which would be impaired or eliminated.

4. Notwithstanding the proposed modification of the standard or requirement, all of the following objectives shall be reasonably satisfied:

a. Surrounding properties will not suffer significant adverse effects.

The Hearing Examiner finds this criterion has been met and, in so doing, hereby adopts and incorporates the Planning Services Department Findings on this criterion, set forth in the Planning Services Revised Staff Report, Exhibit #23, page 5.

b. The appearance of the property or use will not be adversely affected.

No evidence was presented to show that the appearance of the property will be adversely affected by the variance approval.

c. The ability to develop the property in compliance with other standards will not be adversely affected.

There was no evidence presented to demonstrate that this proposed expansion will make it impossible to comply with other standards.

5. The cumulative impact of several additional variances on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program.

See findings under special permit criterion #6b

### **DECISION**

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

1. Approval is for an expansion of the existing Wastewater Treatment Plant substantially in accordance with the plans and application set forth in the file. The approval also allows the construction of structures within the 100-foot shoreline area, as long as they are contained within

the existing site. The Hearing Examiner recognizes that these improvements may take place over an extended period of time, estimated to be approximately 15 years. This approval allows the expansion to occur over that period of time. If changes are proposed to the expansion, they shall be submitted to Planning Services for review and approval. If those changes are found to be substantial, then Planning Services shall submit them to the Hearing Examiner for review and approval.

2. The applicant shall follow the proposed Habitat Management Plan which is in the record as Exhibit #21. This includes the dedication of the habitat conservation area on the northwest part of the site.

3. The applicant shall explore the possibility of providing a cover or bridge over the effluent discharge chute from the Wastewater Treatment Plant in such a manner as to allow the lateral movement of small wildlife along the shoreline.

4. The plant will coordinate with the appropriate Indian Tribal Authorities to ensure that any archaeological artifacts that may be unearthed during excavation can be identified and recovered as appropriate. Any archaeological artifacts that may be discovered during earth movement on site, most notably the fill stockpile area, shall be immediately reported to the City-County Historic Preservation office and work shall cease in the affected area.

5. A landscape plan demonstrating how the shoreline will be enhanced with landscaping, trees and shrubs, shall be submitted to Planning Services for its review and approval, along with initial building permit applications.

6. The applicant shall comply with the erosion control measures set forth in SMC 11.15.290.

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. 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.

9. 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 23<sup>rd</sup> day of May 2002.

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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 11.02.0730.

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 thirty (30) calendar days of the date of the Ecology decision.**

\* \* \* \* \*

Decisions by the Hearing Examiner regarding special 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 DECISION SET OUT ABOVE.** The date of the decision is the 23rd day of May 2002. **THE DATE OF THE LAST DAY TO APPEAL IS THE 14th DAY OF June 2002 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.