

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2009-0005
Application for)
)
Puget Sound Energy) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct a 115 kV to 12.5 kV electrical substation that will encompass 0.70 acres of a 2.0 acre parcel of land. The proposal also includes new transmission lines to be installed over existing distribution lines on the south side of Birch Bay-Lynden Road, from Kickerville Road to the substation site.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: Puget Sound Energy, Inc.

Applicant’s Representative: Jeff McMeekin

Property Address: 4390 Birch Bay-Lynden Road
Blaine, WA

Legal Description: SW ¼ Section 20, T40N, R1E, W.M.

Zone: Rural – one dwelling unit per five acres (R5A)

Subarea: Birch Bay – Blaine Subarea Plan

Comprehensive Plan: Rural

Authorizing Ordinances and Policies:

1. Whatcom County Comprehensive Land Use Plan
2. Whatcom County Code Chapter 12, Development Standards
3. Whatcom County Code Chapter 15, Building Code
4. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
5. Whatcom County Code Chapter 16.16, Critical Areas
6. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

SEPA Review: Determination of Non significance issued June 26, 2009

Legal Notices: Posted – July 1, 2009
Mailed – April 9 and June 26, 2009
Published – April 9 and July 2, 2009

Hearing Date: July 15, 2009

Parties of Record:

Jeff McMeekin and Janeen Loughin
Puget Sound Energy, Inc.
PO Box 97034, EST-11W
Bellevue, WA 98009

Philip and Lynette Walters
4346 Birch Bay Lynden Road
Blaine, WA 98230

Anna and Ken Cook
4364 Birch Bay Lynden Road
Blaine, WA 98230

Dale and Sheila Giffen
4190 Birch Bay Lynden Road
Blaine, WA 98230

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Statutory Warranty Deed
 - 1-3 Letter of Completeness, dated April 6, 2009
 - 1-4 Form Letter, dated April 9, 2009
 - 1-5 Form Memo to Tech Review Committee
 - 1-6 Property Owners Mailing Labels and Site Addresses
 - 1-7 Land Disturbance Permit Application
 - 1-8 Revocable Encroachment Permit Application
 - 1-9 Customer Receipt
 - 1-10 Preliminary Traffic Information
 - 1-11 Assessor's Map
 - 1-12 Preliminary Stormwater Proposal
- 2 DNS, dated June 26, 2009, with SEPA Checklist attached
- 3 Vicinity Map, 1,000 feet highlighted in yellow
- 4 Zoning Map
- 5 Aerial Map
- 6 Preliminary Landscape Plan
- 7 Topographic Survey
- 8 Construction Notes
- 9 Site Plan
- 10 Legal Notice of Application, dated April 9, 2009
- 11 Certificate of Mailing, dated June 26, 2009
- 12 Certificate of Posting, dated July 1, 2009
- 13 Legal Notice of Hearing, dated July 2, 2009
- 14 Letters of Concern
- 15 Revised and Final Staff Report, dated July 9, 2009

- 16 Email communication from Jeff McMeekin to Brenda Wilson, dated July 16, 2009
- 17 (3) Drawings showing graphic intent for plant size at ten years of growth-South elevation from Birch Bay Lynden Road
- 18 Geographical map showing transmission system

II.

Puget Sound Energy is requesting Zoning Conditional Use Approval for construction of Semiahmoo Substation and for the installation of new transmission lines over existing distribution lines, within an existing easement, on the south side of Birch Bay-Lynden Road to the substation on Kickerville Road.

III.

The lot in question is located on the north side of Birch Bay-Lynden Road and east of Blaine Road. The area is zoned R5A and general development in the area of the site consists of residential homes on small acreage parcels. The parcel in question is two acres in size and the proposed development will encompass approximately .7 acres or about 35% of the parcel. The proposed site of the substation will be toward the north and west corner of the parcel. The nearest residence is just west of the proposed site. The resident in this residence has been working with the Applicant and did not object to the proposed substation. There are three other residences on similar sized parcels abutting this site. These all appeared to be approximately 100-feet from the cleared area which will be developed for the substation.

The only adjacent property owner which objected to the proposal at the public hearing was the owner to the east. The owners of the next parcel to the east were also opposed. The main concerns were visual pollution and the lowering of property values.

IV.

Planning and Development Services Staff has recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. It was Planning's position that the expensive wetland mitigation and landscaping proposal would adequately provide a visual buffer for the site and would reduce visual impacts sufficiently to conclude that the proposed project is visually compatible and harmonious with the surrounding residential development. The Applicant has offered to work with the abutting property owners and to place additional landscaping and vegetative buffering materials on the adjacent sites, with the permission of the adjacent owners, should they so desire.

V.

The need for an additional electrical substation in this area has been recognized by Whatcom County's Comprehensive Plan for approximately fifteen years.

There were probably other sites available in the immediate vicinity and some of these may have had less impact on surrounding property owners. However there are practical limits to the area in which the substation can be placed so that it properly meshes with the existing grid and can handle the additional demand being placed on electrical service in this area adjacent to and encompassing both Birch Bay and Blaine Urban Growth Areas.

VI.

There will be two pole-like structures reaching approximately 35-feet in height which will connect the substation to the transmission lines along Birch Bay-Lynden Road. The remainder of the development is relatively low in height and will be completely screened by vegetation within a few years. The closest party who objected to the development will have in excess of 100-feet of professionally designed and installed landscaping between their residence and the substation. Over time, this landscaping will eliminate almost all of the visual impacts on the neighbors.

The record does not indicate any adverse impacts other than visual impacts and the potential reduction in property values from those residential parcels nearest to the site. Concern about potential health hazards was mentioned but no evidence was provided. While it is unclear to what effect this facility will have on the property values of the abutting properties, there is no evidence that it would be a significant impact.

The economic vitality of the community requires adequate utility service and the need for this substation has been long recognized.

Wherever the substation is located, there is likely to be some concern and objection. There are not many people who would actually desire an industrial-looking facility of this type on a parcel next to their residence.

VII.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

Utility uses are allowed in all zoning classifications under the Whatcom County Ordinances. This recognizes the general need and public good associated with an effective and functioning utility system. In particular, the Comprehensive Plan has acknowledged the need for the proposed substation in the general area of the subject property. The siting of a substation in this rural area, abutting the Birch Bay Urban Growth Area, is consistent with the Comprehensive Plan.

II.

The Applicant has submitted a comprehensive wetland mitigation and landscaping plan designed to minimize and nearly eliminate the adverse, visual impacts associated with the substation. There are no other adverse impacts identified in the record which would support a finding that the proposal is not consistent with the Conditional Use Criteria. The only real issue raised by this proposal relates to the potential adverse visual impacts. Planning and Development Services Staff has concluded that the proposed landscaping plan mitigates these potential impacts to a sufficient degree to allow the conclusion that the project is consistent with the Conditional Use Criteria. After a careful review, the Hearing Examiner concurs in Staff's conclusion.

The proposed substation is consistent with the Zoning Conditional Use Criteria, subject to Conditions of Approval regarding landscaping, including a ten year maintenance plan to ensure the landscaping survives and flourishes. The Hearing Examiner should enter a decision granting Zoning Conditional Use Permit Approval to the project.

III.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

The Whatcom County Hearing Examiner hereby approves Zoning Conditional Use Permit, CUP2009-0005, a Zoning Conditional Use Permit Application from Puget Sound Energy, Inc. requesting approval for the location, construction, and operation of an electrical substation, on a property located at 4390 Birch Bay-Lynden Road, Blaine, Washington, subject to the following conditions:

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. Disturbances to neighboring properties during the construction phase may occur and shall be minimized by the following practices:
 - A. On site construction shall be limited to the hours of 7AM to 6PM between M-F.
 - B. Limit dust generation by clearing only those areas where immediate activity will take place and by maintain the original ground cover as long as practical.
 - C. Water spray exposed soils during dry season construction as necessary to keep dust to a minimum.
3. The Applicant shall comply with the conditions stated in the Public Works Engineering memorandum, dated April 20, 2009, [copy attached to this decision].
4. The Applicant shall comply with the inadvertent discovery condition as follows:

“Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.”

5. The Applicant shall comply with the conditions stated in the memorandum of Whatcom County Planning and Development Services, Plans Examiner, dated April 15, 2009, [copy attached to this decision].
6. The Applicant shall comply with the conditions stated in the Critical Areas Specialist, memorandum, dated April 24, 2009, [copy attached to this decision].
7. The Applicant shall coordinate with Planning and Development Services Staff in order to establish a landscape maintenance bond. The duration of the bond shall be coordinated with PDS staff and shall be based on general landscape science and practices.
8. The landscaping shall be installed per the approved landscape plan and shall be installed no later than 30 days after completion of the construction of the substation. Where possible, landscaping outside of the construction area, especially along the south, east, and north property lines should be installed as soon as possible, consistent with construction related needs and appropriate timing for plantings. The purpose of immediate planting where possible is to ensure visual screening of the site at the earliest possible time.

In addition to working with Staff, as required by Condition No. 7 above, to establish a landscape maintenance bond, the Applicant shall also submit a maintenance and care plan, prepared by an expert, to maximize the survival, health, and growth of the landscape vegetation.

9. The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the

comments of Whatcom County Planning & Development Services before granting any extension.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing.

Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 21st day of July 2009.

Michael Bobbink, Hearing Examiner