

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2011-0013  
Application for )  
*Puget Sound Energy* ) FINDINGS OF FACT,  
 ) CONCLUSIONS OF LAW,  
 ) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: Puget Sound Energy seeks a Zoning Conditional Use Permit to rebuild the Point Roberts Substation, relocating it to the southern portion of the existing parcel which is addressed as 1581 Roosevelt Road, Point Roberts.

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.

Site Location/Address: 1581 Roosevelt Road  
Point Roberts, WA

Legal Description: SUNRISE TERRACE DIV NO 2 THAT PTN OF LOT 14 DAF-BEG AT NW COR OF LOT 14-TH S ALG W LI OF LOT 14 272.95 FT TH E PAR WI N LI OF LOT 14 140 FT-TH N PAR WI W LI OF LOT 14 272.95 FT TO N LI

Assessor's Parcel Number(s): 415334-240220

Zoning: Rural Residential (RR1)

Comprehensive Plan: Rural Community

Subarea: Point Roberts

Total Acreage: Approximately 0.87 acre

Roads: Access to the property is from Tyee and Roosevelt Roads

Water Supply: N/A

Sewage Disposal: N/A

Fire Protection: Whatcom County Fire District No. 5

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District No. 503

Topography: The site is described as mostly level.

Vegetation: There is existing buffer vegetation along the border of Tyee Road and along the southern portion of the parcel which has a number of trees buffering neighboring uses.

Adjacent Land Uses: *North:* the parcel borders Roosevelt Rd and the US-Canada border; *East:* RR (1), Point Roberts border crossing; *South:* RR (1) Heavily-treed area, with parking and storage associated with the border crossing; *West:* RR (1), vacant parcel

SEPA Review: Determination of Non-significance issued November 4, 2011

AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS

Revised Code of Washington Chapter 36.70

Whatcom County Comprehensive Plan

Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Chapter 15, Building Code

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County

Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Critical Areas

Whatcom County Code, Title 17 – Flood Damage Prevention Code

Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code, Title 24, Health Regulations

Legal Notices:  
Posted – November 28, 2011  
Mailed – October 4 and November 21, 2011  
Published – October 3 and December 1, 2011

Hearing Date: December 14, 2011

Parties of Record:

Puget Sound Energy  
Attn: Jeff McMeekin

PO Box 97034 Mailstop PSE-09N  
Bellevue, WA 98009

Lee Carter  
Division of Engineering

Alex Cleanthous  
Planning and Development Services

Exhibits:

- 1 Land Use Application, with attachments
  - 1-1 Supplemental Application
  - 1-2 Customer Receipt
  - 1-3 Fee Responsibility
  - 1-4 Statutory Warranty Deed
  - 1-5 Determination of Completeness, September 15, 2011
  - 1-6 PDS Tech Committee Form Memo, September 28, 2011
  - 1-7 Notice of Application and Optional SEPA DNS, comment form letter
  - 1-8 Mailing Labels
  - 1-9 PDS Land Disturbance Permit Application
  - 1-10 Preliminary Stormwater Proposal
  - 1-11 Preliminary Traffic and Concurrency Information
  - 1-12 Hearing Examiner Checklist
- 2 SEPA Determination of Nonsignificance, November 4, 2011, checklist attached
- 3 Agency Comments: Fire Marshal, 10-27-2011; Plans Examiner, 10-04-2011; Engineering, 10-03-2011
- 4 Zoning Map
- 5 Aerial Site Photos
- 6 Site Layout
- 7 Site Layout – Sections and Details
- 8 Conceptual Grading, Drainage and Erosion Control Plan
- 9 Landscape Plan
- 10 Landscape Details
- 11 Irrigation Plan
- 12 Irrigation Plan –Controller Installation
- 13 Bellingham Herald Tear-Sheet Notice of Application, October 3, 2011
- 14 Certificate of Mailing Notice of Application, October 4, 2011
- 15 Certificate of Mailing, Notice of Public Hearing, November 21, 2011
- 16 Certificate of Posting, Notice of Public Hearing, November 28, 2011
- 17 Legal, Notice of Public Hearing, December 1, 2011
- 18 Staff Report, dated December 5, 2011

**II.**

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #18, dated December 5, 2011, a copy of which is attached hereto and incorporated herein by this

reference.

With a request to amend the size of the equipment storage structure for the proposed substation from 240-square feet to 360-square feet, the Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant expressed no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter.

### III.

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.

The proposed rebuilding and relocation of the existing Point Roberts Substation can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (2 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

#### II.

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

A Zoning Conditional Use Permit is hereby granted to Puget Sound Energy for the proposed rebuilding and relocation of the Point Roberts Substation to be located on Assessor's Parcel No. 415334 240220, 1581 Roosevelt Road, Point Roberts, Washington, subject to the following conditions:

#### **Planning Division**

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Pursuant to WCC 20.72.350, Building setbacks along Tyee Drive and Roosevelt Road are increased to 50 feet and 40 feet respectively. The landscape buffer requirements pursuant to WCC 20.80.345 will supersede the standards building side and rear yard setbacks.
3. Landscaping: Shall be implemented pursuant to WCC 20.80.300. A landscape buffer plan that is consistent to WCC 20.80.345 must be submitted and approved prior to issuance of the foundation permit.

4. Parking space dimensions shall comply with WCC 20.80.510. The parking area shall be designed in such a manner that any vehicle leaving or entering the parking area from or into a public or private street shall be traveling in a forward motion. Access of driveways and parking areas shall comply with WCC 20.80.565. One parking spot is required for the maintenance vehicle.
5. All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
6. Pursuant to WCC 20.72.651, all commercial and institutional use structures and appurtenant signs shall conform to the requirements of the Point Roberts Character Plan
7. Any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
8. On site construction shall be limited to the hours of 7 a.m. to 6 p.m., Monday thru Friday.
9. All equipment shall comply with the State Noise Level Standards under the Washington 5 Administrative Code (WAC) 173.6
10. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, 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.
11. A demolition permit is required for the removal of all existing structures. Approval by the Northwest Clean Air Agency (NWCAA) is required prior to issuance of the permit by Whatcom County. NWCAA can be contacted at 800.622.4627 – ext. 212 or by email at [info@nwcleanair.org](mailto:info@nwcleanair.org). A building inspection is required after the demolition has occurred.
12. All equipment shall comply with the State Noise Level Standards under the Washington 5 Administrative Code (WAC) 173.6.
13. Pursuant to WCC 20.72.654, all structures or developments other than a single-family home on an individual lot shall conform to the requirements of the adopted Point Roberts Character Plan. Scenic views and open space shall be considered in all developments and the site plan designed to ensure view access is maximized while maintaining reasonable use of the development site.
14. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.

## **Engineering**

The Applicant shall comply with all conditions set forth in the Division of Engineering memorandum dated October 3, 2011, unless modified by Engineering or appealed to the appropriate agency.

Specifically those conditions include:

1. Best Management Practices will be implemented on any civil plans and that proper measures are employed during the construction phase to avoid erosion and sedimentation escaping the site. Ongoing site drainage will be infiltrated and/or directed to the landscaped areas for uptake by the vegetation.
2. At the time of construction, the Applicant will need a Whatcom County Revocable Encroachment Permit for any and all work/activities occurring in County rights-of-way.
3. All development shall comply with Whatcom County Development Standards in particular Chapter 5 Roads, unless modified by the Division of Engineering, or appealed to the appropriate agency.

## **Building Services**

The Applicant shall comply with all the conditions set forth in the Plans Examiner's memorandum dated October 4, 2011, unless modified by the Plans Examiner, or appealed to the appropriate agency. Specifically those conditions include:

1. A building permit is required for this proposal. The building permit shall be for foundations only, for prefabricated structures approved by the Department of Labor and Industries and for the support of equipment.
2. Due to the scope of the proposed project, the Applicant must apply with the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official's discretion, a pre-application meeting may be required.
3. Applicable code references for this project proposal are the 2009 International Building Code (IBC); the 2009 International Fire Code (IFC); the 2009 International Mechanical Code (IMC); the 2009 International Fuel Gas Code (IFGC); the 2009 Uniform Plumbing Code (UPC); all applicable code referenced manuals and standards; all applicable Washington State Amendments to the above referenced codes; the 2009 Washington State Non-residential Energy Code (NREC) and Ventilation & Indoor Air Quality Code per 2009 IBC.
4. A Washington State Professional Engineer shall engineer the proposed building. The Engineer shall perform a complete structural analysis for the proposed building(s).
5. The Engineer shall provide analysis for any special loads such as those imposed by an automatic sprinkler system, mechanical equipment, concentrated loads, impact loads, cranes, etc. The Engineer should also include any required anchorage of non-building structures (signs, tanks, storage racks, equipment, etc.) to resist seismic loads.

6. **The Applicant shall (REQUIRED) provide a code data summary sheet on the plan drawing submittals.** List all applicable code data specific to the proposed project, including but not limited to types of occupancy, type(s) of construction, allowable height and area justification, occupant loads, egress path and travel distance, required exits and widths, non-separated or separated use, mixed occupancy, incidental and or accessory uses, fire protection systems, building design criteria, plumbing fixture counts, etc.
7. A Geotechnical Engineer may be required, per the request of the engineer of record or the building official.
8. A design professional of record (licensed architect or engineer of record) shall be designated on the permit submittal documents and drawings where appropriate. The design professional of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building. (IBC Section 106.3.4)
9. Exits shall meet the requirements of Chapter 10 of the International Building Code.
10. Heating, cooling, ventilation and/or lighting (interior and exterior) of any occupied buildings shall require compliance with the current adopted edition of the Washington State Nonresidential Energy Code (NREC) and Ventilation and Indoor Air Quality Code per 2009 IBC.
11. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
12. Required plans for this project shall include but not be limited to. (Suggested scales)
  - a. Site plan (1/10<sup>th</sup> scale)
  - b. Foundation plan (1/4" =1' scale)
  - c. Floor plan (plan views) (1/4" =1' scale)
  - d. Elevation plans (1/4" =1' scale)
  - e. Structural plans (1/4" =1' scale)
  - f. Section views (1/2" =1' scale)
  - g. Details (special construction and or connections) (1/2" =1' scale)
13. Storage of flammable and combustible materials and/or high piled storage items shall conform to the requirements of the current adopted edition of the International Fire Code (IFC).
14. When special inspections are required by an architect/engineer or by IBC Section 1704, the architect/engineer of record shall prepare an inspection program, which shall be submitted to the Building Official for approval prior to permit issuance. The special inspection program shall designate the portions of work requiring special inspections, the name of the individual or firm performing the inspections and the duties of the special inspectors. (IBC Sec 1704)

## **Fire**

The Applicant shall comply with all the conditions set forth by the Fire Marshal, memorandum dated October 7, 2011, unless modified by the Fire Marshal, or appealed to the appropriate agency.

Specifically those conditions include:

1. The Applicant is required to provide fire flow. The closest fire hydrant shall be shown on the plans for the building permit. A hydrant shall be within 300 feet of the project.
2. Fire extinguisher size shall be 2A10BC and the locations shall be approved by the Fire Marshal.
3. Fire department access shall meet the requirements of the Whatcom County Development Standards for roads.
4. The Applicant shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

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 19<sup>th</sup> day of December 2011.



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Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-676-6907, TTY 800-833-6384  
360-738-2525 Fax



#18

**J.E. "Sam" Ryan**  
Director

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

December 5, 2011  
Hearing Date: December 14, 2011

The application of <b>Puget Sound Energy</b> <b>Substation</b> for a Zoning Conditional Use Permit	CUP2011-00013 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary:

Puget Sound Energy proposes to rebuild the Point Roberts substation located at 1581 Roosevelt Road, Point Roberts. The proposal will be located in the southern portion of the parcel. The substation rebuild is required for system reliability for Point Roberts. The outdated equipment is not compatible with PSE system standards and must be replaced with equipment meeting PSE's current specifications.

The proposed substation yard will consist of equipment with a lower profile than the existing. The equipment will be lower in height, with the tallest feeder structure reaching 15.5 feet. The new equipment will include an open air feeder, two pad-mount transformers, two vista switches, two load break switches and a ~~240~~ <sup>360</sup> square foot equipment storage structure. The substation will also include provisions for future installation of radio equipment including foundations for a generator and propane tanks in an enclosure outside the main substation fence.

Recommendation:

The Technical Review Committee recommends approval of the application for a zoning conditional use permit, subject to the requested conditions, as attached.

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

Applicant: Jeff McMeekin for Puget Sound Energy, Inc.

Site Location/Address: Puget Sound Energy  
1581 Roosevelt Road, Point Roberts WA

Legal Description: SUNRISE TERRACE DIV NO 2 THAT PTN OF LOT 14 DAF-BEG AT NW COR OF LOT 14-TH S ALG W LI OF LOT 14 272.95 FT TH E PAR WI N LI OF LOT 14 140 FT-TH N PAR WI W LI OF LOT 14 272.95 FT TO N LI

Assessor's Parcel Number(s): 415334-240220

Zoning: Rural Residential (RR1)

Comprehensive Plan: Rural Community

Subarea: Point Roberts

Total Acreage: Approximately .87 acre

Roads: Access to the property is from Tyee and Roosevelt Roads

Water Supply: N/A

Sewage Disposal: N/A

Fire Protection: Whatcom County Fire District No. 5

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District #503

Topography: The site is described as mostly level.

Vegetation: There is existing buffer vegetation along the border of Tyee Road and along the southern portion of the parcel which has a number of trees buffering neighboring uses.

Adjacent Land Uses: *North:* Canada, the parcel borders Roosevelt Rd and the US-Canada border. *East:* RR(1), Point Roberts Border Crossing; *South:* RR(1) Heavily treed area along with parking and storage associated with the border crossing; *West:* RR(1) Zoning, vacant parcel

SEPA Review: Determination of Non-significance issued November 4, 2011.

#### AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS

1. Revised Code of Washington Chapter 36.70
2. Whatcom County Comprehensive Plan.
3. Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
4. Whatcom County Code, Title 14, Use of Natural Resources
5. Whatcom County Code Chapter 15, Building Code
6. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
7. Whatcom County Code Chapter 16.16, Critical Areas
8. Whatcom County Code, Title 17 – Flood Damage Prevention Code
9. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
10. Whatcom County Code, Title 24, Health Regulations

### III. APPLICATION PROPOSAL

Puget Sound Energy (PSE) has applied for a conditional use permit to rebuild the existing Point Roberts substation which is located at 1581 Roosevelt Road, Point Roberts, WA. The proposed development will be located on the southern portion of the subject .87 acre parcel which already contains an existing substation on the north half. PSE is requesting to reconstruct the 50 year old subdivision as a means of improving their reliability to the Point Roberts area. Once construction is completed the existing 26.Kv

substation, which receives power from BC Hydro, will be removed.

The new substation yard will consist of equipment with a lower profile than the existing. The equipment will be lower in height, with the tallest feeder structure reaching 15.5 feet. The new equipment will include an open air feeder, two pad-mount transformers, two vista switches, and two load break switches. A ~~240~~ <sup>360</sup> square foot prefabricated building will also be constructed to house some of the substation equipment. The applicant has also proposed to include provisions for the future installation of radio equipment including foundations for a generator and propane tanks which are proposed to be within an enclosure outside of the main substation fence.

#### **IV. SITE DESCRIPTION**

The subject property is located at 1581 Roosevelt Road, Point Roberts, which is in Section 34, Township 41, Range 3 West W.M. in Whatcom County, WA. Currently, the site is accessed by a driveway along the southeast property corner as well as from Roosevelt Road.

At this time, PSE operates a 26 Kv distribution substation on the north half of the subject .87 acre property. This substation switches 26 Kv power from BC Hydro to 12.5 Kv power. This function is necessary in order to serve the Point Roberts area.

The site is described as relatively flat, and largely consists of concrete paving, crushed rock surfacing, and asphalt. The site does contain coniferous and deciduous vegetation including alders, maples, douglas firs and cedar trees. To further augment the existing vegetation, the applicant has submitted a detailed landscape plan. The proposed landscaping, included a wooden fence along the east property line, will act as vegetative/screening buffer as outlined in WCC 20.80.345.

The site is surrounded to north by Canada, the east by the United States border crossing station and the south by a parking lot owned by the United States government. The parcel to the west is currently undeveloped.

#### **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in Chapter 2.33 WCC.

**Notice of Application:** The Notice of Application for this proposal was published on October 3, 2011. The fifteen (15) day comment period ended on October 18, 2011.

Pursuant to WCC 20.84.235(2), Notices were mailed on October 3, 2011 property owners whose property boundaries lie within 1000 feet of the subject property.

**Notice of Public Hearing:** The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

**Public Comments:** During the public comment period the Whatcom County Planning and Development Services did not receive any written and/or verbal comments in opposition of the proposal.

#### **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from the SEPA threshold review. The Whatcom County SEPA Official has reviewed the completed SEPA checklist submitted by the applicant, and has made a determination that with proper mitigation and by compliance with applicable codes and requested conditions, no significant adverse impacts to the environment would likely to occur as a result of approving the proposed zoning conditional use. Through the Optional Determination of Non-significance (DNS)

process (WAC 197-11-355), an anticipated DNS and the notice of application was sent out jointly for public comment on June 30, 2011. The comment period for the Optional DNS ended on October 18, 2011. Staff received (1) comment from the Washington State Department of Ecology (see below). A formal Determination of Non-significance was issued on November 4, 2011. The appeal period for this DNS ended on November 18, 2011. No appeals to this determination were filed.

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Whatcom County Comprehensive Plan**

Zoning regulations of a specific use district are meant to implement the goals and policies of the County's Comprehensive Plan. Conditional uses are those uses that may be approved within a zoning district if it is determined that the specific use is consistent with the general and specific objectives of the Whatcom County Comprehensive Plan.

The rebuilding of the Point Roberts substation is consistent with the following goals and policies of the Whatcom County Comprehensive Plan:

#### **Chapter 5 – Utilities**

**GOAL 5A: Specify a clear process for determining appropriate locations for future needed utility facilities including electric power facilities greater than 55 kV.**

Policy 5A-2: When expansion or improvements of utility systems are being considered, Whatcom County prefers the following in the order provided:

- (i) upgrading of existing facilities in existing corridors;
- (ii) replacing facilities in existing corridors where appropriate;
- (iii) sharing existing corridors.

*Discussion: The proposed facility is a replacement of the current outdated facility, no impacts to land outside of the parcel with the existing substation will occur.*

**GOAL 5C: Facilitate accessibility of utilities.**

Policy 5C-7: Public facilities and utilities will be designed and located in a manner which protects the integrity of planned land uses, existing land forms, drainage ways, natural systems, critical areas and resource lands.

*Discussion: The proposal includes a landscaping that is designed to provide screening to the surrounding properties. The land use intensity will remain the same as what exists, there are no critical areas on site and stormwater runoff will infiltrate onsite.*

**GOAL 5J: Facilitate maintenance and rehabilitation of existing utility systems and facilities and encourage use of existing utility corridors.**

*Discussion: The proposal considered system maintenance by PSE and is located on the existing lot of the existing substation.*

### **A. Official Whatcom County Zoning Ordinance (Title 20, WCC)**

WCC 20.82 is the Public Utilities chapter of Title 20. The proposed substation is specifically stated within Whatcom County Code 20.82.030(9):

(9) Electrical substations and electrical powerlines operating at voltages greater than 55 kV (55,000 volts); provided, applications for such substations and power lines shall be processed as a major

development permit (pursuant to Chapter 20.88 WCC); provided, that no further major development permit shall be granted for such lines which:

- (a) Operate at greater than 115 kV (115,000 volts) except on land where such permits have already been granted or in those districts classified as industrial; or
- (b) Operate at 115 kV (115,000 volts) and carry greater than 160 mw (160 megawatts) average loading, except on land where such permits have already been granted or in those districts classified as industrial. For purposes of this section, "average loading" means the average power in megawatts carried by a power line over any 12-month period; provided, that loading at full line carrying capacity may not extend beyond any 90-day period;
- (c) Are dedicated to provision of transmission service to (from) an electrical generating plant having a generating capacity greater than 160 mw (160 megawatts), except on lands where such permits have already been granted or in those districts classified as industrial.

The substation that is currently in use has existed at its current location for 50 years.

*The Technical Review Committee has determined that the project meets the requirements of WCC 20.35.150.*

#### **A. Roads and Bridges (WCC Chapter 12.08)**

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

The Whatcom County Public Works Engineer Department has reviewed the proposal and submitted a letter on October 3, 2011 with conditions of approval for the conditional use permit. The applicant shall comply with all of the conditions of the letter unless modified by the Whatcom County Public Works Engineer Department or appealed to the appropriate agency.

*The Technical Review Committee has determined that the project meets the requirements of WCC Chapter 12.08.*

#### **D. Fire Code (WCC Title 15)**

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

The Whatcom County Fire Marshal submitted a memo dated October 7, 2011 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.*

**E. Critical Areas (Title 16)**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

Based on the review of Whatcom County Critical Area maps by critical area staff, it has been determined in a memo 10/3/2011 that there will be no wetland or habitat conservation area impacts as a result of this proposal.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.16.*

**G. Building Services (WCC Title 15)**

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 15.*

**H. Development Standards (WCC Title 20)**

**WCC Chapter 20.32 Rural Residential Zone Development Regulations**

The Whatcom County Zoning Ordinance, Title 20, allows for substations in the rural residential zone by approval of a Conditional Use Permit pursuant to WCC 20.82.030(9).

**WCC 20.37.350 Building setbacks.**

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements) however, the setback requirements in 20.80.200 are superseded by the setback requirements in the Point Roberts zoning district 20.72.350.

**20.72.350 Building setbacks/buffer areas.** (1) Building setbacks along Tyee Drive and Roosevelt Road are increased to 50 feet and 40 feet respectively. In existing treed areas along Tyee Drive and Roosevelt Road, a 50-foot/40-foot vegetative buffer comprised of existing trees shall be maintained for visual or aesthetic purposes except for necessary ingress and egress points. In open areas a 50-foot/40-foot planted buffer shall be developed as part of the normal landscape requirements for site development.

No building setbacks will be reduced through the proposed conditional use permit. Building setbacks will be reviewed at the time of the building permit submittal.

**WCC 20.72.402 Height limitations.**

The maximum building height in all other zones shall be 25 feet unless further restricted by the Whatcom County Shoreline Management Program or the requirements of the adopted character

plan. Height of structures shall also conform to the general requirements of WCC 20.80.675 where applicable.

*Height limitations will be reviewed at the time of building permit submittal.*

**WCC 20.32.450 Lot coverage.**

No structure or combination of structures shall occupy or cover more than 2,500 square feet or 35 percent, whichever is greater of the total area.

*All future development will be reviewed at the time of building permit.*

**WCC 20.80.500 Parking requirements.**

One parking spot shall be required for the operation of the maintenance vehicle.

**WCC 20.32.656 Drainage.**

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.37.*

**I. Concurrency (WCC Section 20.80.212)**

WCC Section 20.80.212 states that no conditional use permit shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

**Water**

Not applicable, the site is not proposed to use any water.

**Sewage Disposal**

Not applicable, the proposal has no need for sewage waste disposal.

**Schools**

Not applicable, the proposal will have no impact on the Blaine School District.

**Fire Protection**

Fire District 5 already serves the existing substation.

The Whatcom County Deputy Fire Marshal submitted a memo dated October 7, 2011 with conditions of approval for this proposal.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212. This project does not require the use of water or sewage disposal.*

**J. WCC 20.84.200 & WCC 20.84.220 Compliance with Criteria**

Before approving an application for a conditional use permit, the Hearing Examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location.

**(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plans and Zoning regulations.**

The proposal is consistent with the following comprehensive plan goals and policies;

**GOAL 5A:** Specify a clear process for determining appropriate locations for future needed utility facilities including electric power facilities greater than 55 kV.

**Policy 5A-2:** When expansion or improvements of utility systems are being considered, Whatcom County prefers the following in the order provided:

- (i) upgrading of existing facilities in existing corridors;
- (ii) replacing facilities in existing corridors where appropriate;
- (iii) sharing existing corridors.

**GOAL 5C:** Facilitate accessibility of utilities.

**Policy 5C-7:** Public facilities and utilities will be designed and located in a manner which protects the integrity of planned land uses, existing land forms, drainage ways, natural systems, critical areas and resource lands.

**GOAL 5J:** Facilitate maintenance and rehabilitation of existing utility systems and facilities and encourage use of existing utility corridors.

The proposal replaces and removes an existing substation operated by Puget Sound Energy, the existing substation is 50 years old and is in need of replacement to serve Point Roberts. This proposal has been reviewed by the technical review committee and as conditioned the proposal is consistent with all applicable Whatcom County regulations including Title 20 Zoning.

**(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.**

The substation will have designed landscaping to screen the facility from nearby properties. Puget Sound Energy has worked with Whatcom County staff and consulted a landscape architect to create a landscaping plan that is in accordance with Whatcom County code landscaping requirements and screen the use from neighboring properties.

Construction will occur normal business hours and once built the substation will be a low intensity use. The trips that will be generated will be for routine maintenance of the substation and landscaping of the vegetation.

**(3) Will not be hazardous or disturbing to existing or future neighboring uses.**

There are no activities related to this proposal that may be hazardous or disturbing to existing or future neighboring uses. The proposed landscaping and buffers will minimize the effect of any altered views. Noise generated from the substation equipment will comply with Whatcom County noise standards.

**(4) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.**

No additional public facilities are necessary for this proposal. Roosevelt and Tyee Roads currently access the property. No other public facilities are required to serve the project.

**(5) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.**

There are no additional public costs that will be a result of the proposal and the proposal will not be detrimental to the economic welfare of the community.

**(6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.**

The proposal will not result in increased traffic, noise, smoke, fumes, glare, dust, or odors. Temporary noise from equipment may result during the short duration of construction on the site.

**(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.**

Once in operation, the substation will have very little vehicular traffic. The only traffic will be for normal maintenance. The proposal will not create interference with traffic at the border crossing or on surrounding roads.

**(8) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.**

There are no known natural, scenic, or historic features on or near the subject site.

*The Technical Review Committee finds the proposal as conditioned, will comply with WCC 20.80.200 and WCC 20.84.220.*

#### **VIII. RECOMMENDATION**

The Technical Review Committee has determined that subject to the following proposed conditions, the proposed expansion of a nonconforming use complies with applicable Whatcom County regulations.

As stated above, the Technical Review Committee recommends approval of the CUP subject to the following conditions:

#### **IX. CONDITIONS OF APPROVAL**

##### **A. Planning Division**

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.

2. Pursuant to WCC 20.72.350, Building setbacks along Tyee Drive and Roosevelt Road are increased to 50 feet and 40 feet respectively. The landscape buffer requirements pursuant to WCC 20.80.345 will supersede the standards building side and rear yard setbacks.
3. Landscaping: Shall be implemented pursuant to WCC 20.80.300. A landscape buffer plan that is consistent to WCC 20.80.345 must be submitted and approved prior to issuance of the foundation permit.
4. Parking space dimensions shall comply with WCC 20.80.510. The parking area shall be designed in such a manner that any vehicle leaving or entering the parking area from or into a public or private street shall be traveling in a forward motion. Access of driveways and parking areas shall comply with WCC 20.80.565. One parking spot is required for the maintenance vehicle.
5. All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
6. Pursuant to WCC20.72.651, all commercial and institutional use structures and appurtenant signs shall conform to the requirements of the Point Roberts Character Plan
7. Any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
8. On site construction shall be limited to the hours of 7AM to 6PM between M-F.
9. All equipment shall comply with the State Noise Level Standards under the Washington 5 Administrative Code (WAC) 173.6
10. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, 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.
11. A demolition permit is required for the removal of all existing structures. Approval by the Northwest Clean Air Agency (NWCAA) is required prior to issuance of the permit by Whatcom County. NWCAA can be contacted at 800.622.4627 – ext. 212 or by email at [info@nwcleanair.org](mailto:info@nwcleanair.org). A building inspection is required after the demolition has occurred.
12. All equipment shall comply with the State Noise Level Standards under the Washington 5 Administrative Code (WAC) 173.6.
13. Pursuant to WCC 20.72.654, all structures or developments other than a single-family home on an individual lot shall conform to the requirements of the adopted Point Roberts Character Plan. Scenic views and open space shall be considered in all developments and the site plan designed to ensure view access is maximized while maintaining reasonable use of the development site.
14. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.

### **B. Engineering**

The applicant shall comply with all conditions set forth by the Engineering department's memorandum dated October 3, 2011, unless modified by that Department or appealed to the appropriate agency. Specifically those conditions include:

1. Best management practices will be implemented on any civil plans and that proper measures are employed during the construction phase to avoid erosion and sedimentation escaping the site. Ongoing site drainage will be infiltrated and/or directed to the landscaped areas for uptake by the vegetation.
2. At the time of construction, applicant will need a Whatcom County Revocable Encroachment Permit for any and all work/activities occurring in County rights-of-way.
3. All development shall comply with WC Development Standards in particular Chapter 5 Roads.

### **C. Building Services**

The applicant shall comply with all the conditions set forth by the Plans Examiner's memorandum dated October 4, 2011, unless modified by that Department or appealed to the appropriate agency. Specifically those conditions include:

1. Due to the scope of this project, these comments do not address any specific requirements. Specific requirements will be discussed at time of application of each individual building pre-application meeting and or submittal when more detailed plans are available. The following are general comments are not intended to be the final comments or requirements for any one project.
2. A building permit is required for this proposal. The building permit shall be for foundations only, for prefabricated structures approved by the Department of Labor and Industries and for the support of equipment.
3. Due to the scope of the proposed project, the applicant must apply to the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official's discretion a pre-application meeting may be required.
4. Applicable code references for this project proposal are the 2009 International Building Code (IBC); the 2009 International Fire Code (IFC); the 2009 International Mechanical Code (IMC); the 2009 International Fuel Gas Code (IFGC); the 2009 Uniform Plumbing Code (UPC); all applicable code referenced manuals and standards; all applicable Washington State Amendments to the above referenced codes; the 2009 Washington State Non-residential Energy Code (NREC) and Ventilation & Indoor Air Quality Code per 2009 IBC.
5. A Washington State Professional Engineer shall engineer the proposed building. The engineer shall perform a complete structural analysis for the proposed building(s).
6. The engineer shall provide analysis for any special loads such as those imposed by an automatic sprinkler system, mechanical equipment, concentrated loads, impact loads, cranes, etc. The engineer should also include any required anchorage of non-building structures (signs, tanks, storage racks, equipment, etc.) to resist seismic loads.
7. **(REQUIRED) Provide a code data summary sheet on the plan drawing submittals.** List all applicable code data specific to the proposed project, including but not limited to types of occupancy, type(s) of construction, allowable height and area justification, occupant loads, egress

path and travel distance, required exits and widths, non-separated or separated use, mixed occupancy, incidental and or accessory uses, fire protection systems, building design criteria, plumbing fixture counts, etc.

8. Geotechnical engineer may be required, per the request of the engineer of record or the building official.
9. A design professional of record (licensed architect or engineer of record) shall be designated on the permit submittal documents and drawings where appropriate. The design professional of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building. (IBC Section 106.3.4)
10. Exits shall meet the requirements of Chapter 10 of the International Building Code.
11. Heating, cooling, ventilation and/or lighting (interior and exterior) of any occupied buildings shall require compliance with the current adopted edition of the Washington State Nonresidential Energy Code (NREC) and Ventilation and Indoor Air Quality Code per 2009 IBC.
12. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
13. Required plans for this project shall include but not be limited to. (Suggested scales)
  - a. Site plan (1/10<sup>th</sup> scale)
  - b. Foundation plan (1/4"=1' scale)
  - c. Floor plan (plan views) (1/4"=1' scale)
  - d. Elevation plans (1/4"=1' scale)
  - e. Structural plans (1/4"=1' scale)
  - f. Section views (1/2"=1' scale)
  - g. Details (special construction and or connections) (1/2"=1' scale)
14. Storage of flammable and combustible materials and/or high piled storage items shall conform to the requirements of the current adopted edition of the International Fire Code (IFC).
15. When special inspections are required by an architect/engineer or by IBC Section 1704, the architect/engineer of record shall prepare an inspection program, which shall be submitted to the Building Official for approval prior to permit issuance. The special inspection program shall designate the portions of work requiring special inspections, the name of the individual or firm performing the inspections and the duties of the special inspectors. (IBC Section 1704)

#### **D. Fire**

The applicant shall comply with all the conditions set forth by the Fire Marshal's memorandum dated October 7, 2011, unless modified by that Department or appealed to the appropriate agency. Specifically those conditions include:

1. Fire flow is required. The closest fire hydrant shall be shown on the plans for the building permit. Hydrant shall be within 300 feet of the project.
2. Fire extinguisher size shall be 2A10BC and the locations shall be approved by the Fire Marshal.
3. Fire department access shall meet the requirements of the Whatcom County Development standards for roads.

4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

Report prepared for the Technical Review Committee by:

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Planner