

**OFFICE OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND, WASHINGTON**

REPORT AND DECISION

Project: Puget Sound Energy Shoreline Substantial Development/Conditional Use Permit and Special Use Permit

File number: SCUP/SUR17833

Applicant: Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009

Request: Within an overall project for undergrounding 6,000 linear feet of electrical distribution line, Phase 2 will include the trenching of conduit and placement of vaults and utility poles along an approximately 1800 linear foot stretch within the Rural shoreline environment adjacent to Eagle Harbor. An underground electrical distribution system is a primary utility use requiring a Shorelines Conditional Use Permit. In addition, the project's impact to nearly 500 square feet of wetland buffer at its southeast corner outside shorelines jurisdiction will require a Special Use Permit.

Location: Portions of Bucklin Hill Road and Eagle Harbor Drive

Environmental Review: A Mitigated Determination of Non-significance (MDNS), in accordance with the State Environmental Policy Act (SEPA) was issued on July 13, 2012.

FINDINGS OF FACT

A. Procedural History

1. On November 15, 2011 the City held a pre-application conference with Puget Sound Energy (PSE) to discuss the proposed utility undergrounding project. PSE had earlier explored the option of boring underground from Bucklin Hill to Eagle Harbor Drive within the existing easement where the current overhead lines are located but determined that this approach would be prohibitively expensive.
2. On May 1, 2012 PSE applied for Shoreline Substantial Development/Conditional Use and Special Use Permits to re-route and underground the power distribution lines down

the Bucklin Hill right-of-way and along Eagle Harbor Drive in the same location as existing overhead lines. Although not within shorelines jurisdiction, the Special Use Permit application was consolidated for procedural purposes with the shorelines review.

3. A Joint Notice of Application/SEPA comment period was sent to property owners within 500 feet and to appropriate agencies and published in the paper of record on June 8, 2012. In addition the site was duly posted. No written public comments were received. A Mitigated Determination of Non-significance (MDNS) was issued on July 13, 2012 and was sent to all SEPA agencies.

B. Project Characteristics

4. The 1800 linear foot segment of Phase 2 lying within shorelines jurisdiction is located mostly along Eagle Harbor Drive, with its northernmost tip encompassing the intersection with Bucklin Hill Road and a small segment of the Bucklin approach. The project envisions placing distribution line conduit within the road right-of-way within a trench 30" wide by 50" deep, placing concrete maintenance vaults in two locations within wetland buffers, and installing and replacing an undetermined number of poles. Along Eagle Harbor Drive the proposal will impinge upon three wetland buffers and cross three small streams. Existing roadway development has resulted in all three streams being already culverted, and the project will not intrude further into the buffers for the three wetlands.
5. Outside shorelines jurisdiction a vault and pole will be placed adjacent to a wetland on the Strauss property (Tax Lot Number 272502-3-064-2001) within a PSE easement, impacting approximately 465 square feet of wetland buffer. This wetland lies within the existing transmission line route. The need for a replacement route is driven by the presence of the wetland with its dense vegetation and unstable soils plus the site's wind exposure, which has resulted in frequent power outages. Pursuant to the Special Use Permit, wetland restoration and native plantings will mitigate for project impacts within the same wetland system.
6. Lane blockages resulting from work within the road prism and adjacent right-of-way will be the principal construction impact of the proposal. Construction is planned for the summer months when school is out, and PSE will co-ordinate with Kitsap Transit to notify bus riders of delays. A traffic control plan will be implemented.

C. Regulatory Review

Comprehensive Plan Analysis (applicable policies of Bainbridge Island Shoreline Management Master Program (SMMP))

7. *Section III.A, Archaeological and Historic Resources:* PSE contracted to have a resource study performed by Garth L. Galdwin, M.A., RPA of Tierra Right of Way. No archaeological resources were found during exploratory probes, and since the new lines will be installed under existing asphalt road and ditch areas it appears unlikely that cultural materials will be encountered. But if cultural resources are discovered during the project, work shall stop and the City and the Department of Archeology and Historic Preservation shall be notified.

8. *Section III.C, Environmental Impacts:* The trenching within the shoreline jurisdiction will occur primarily on the opposite side of the improved road from the shoreline, so environmental impacts on the shoreline are unlikely. Erosion control measures will be in place to prevent any sediment-laden runoff from polluting the aquatic environment .

9. *Section III.D, Environmentally Sensitive Areas:* The total development area contains five wetlands as well as several roadside ditches that a biologist has classified as fish-bearing streams. Most of the proposed work will occur within the existing developed road prism and ditch, and a bore pit may infringe on stream C, impacting nine square feet. Outside shoreline jurisdiction one vault complex and pole will encroach approximately 465 square feet into a wetland buffer. The wetland report contains a mitigation plan to address these impacts.

10. *Section V.M, Utilities:* The proposal is to place primary utilities underground within an existing right-of-way corridor that already supports utility use. The proposed location is the most feasible among available alternatives. Topography, extensive wetlands and dense vegetation make the current location difficult to maintain and of marginal reliability. The undergrounding of the facilities is consistent with the policies of the Shoreline Master Program.

Shoreline Master Program Regulations–Bainbridge Island Municipal Code Regulations

11. *BIMC16.12.050. Archaeological and historic resources:*

As stated above, the applicant has provided a Cultural and Archaeological survey of the project area that concluded the project is unlikely to encounter archaeological resources. As conditioned, the applicant is required to immediately stop work and notify the City and Department of Archeology and Historic Preservation if any items of archaeological interest are encountered during excavation.

12. *BIMC 16.12.070. Environmental impacts:*

The proposed trenching within the wetland buffers in shorelines jurisdiction will be primarily within the existing road prism and maintained ditch area. The construction will take place outside the rainy season with appropriate erosion controls in place, thus minimizing the potential impacts upon the shoreline environment.

13. *BIMC16.12.080. Environmentally sensitive areas:*

According to the applicant's biologist, numerous wetlands and ditches are nominally classified as fish-bearing streams within the vicinity of the project area. Appropriate measures, such as working during the dry time of the year, implementing proper erosion controls and mitigating for impacts on the wetland buffer and stream corridor, are addressed in the application and wetland report/mitigation plan.

14. *BIMC 16.12.280. Utilities(primary and accessory):*

a. Regulations-General- The subject proposal is for undergrounding a primary utility (power distribution line) within the Rural shoreline designation, which requires a shoreline conditional use permit. The undergrounding will occur within the existing right-of-way/utility corridor.

b. Regulations- Location and Design- Consistent with the location and design regulations of the Shoreline Master Program, the proposal is undergrounding most of the lines. Lines will be located below the existing stream crossings and will not require structural shore defense. Vegetation clearing is limited to the ditched areas and a small segment of wetland buffer. No landfilling or clearing of wetlands or shoreline aquatic areas are proposed for the project.

15. *BIMC 16.12. 360. Permit or exemption required before undertaking development or activity.*

In making the decision, the director shall consider the applicable provisions of the Shoreline Management Act of 1971, as amended, Chapter 173-14 WAC or its successor, the master program, all other applicable law, and any related documents and approvals. The director shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the comprehensive plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.

Applicable regulatory provisions were considered in this review. The applicant has properly applied for a shoreline substantial development/shoreline conditional use permit. Over time the undergrounding of primary utility lines within shorelines jurisdiction is likely, but the cumulative impacts of doing so will be a net benefit to the shoreline. Overhead utility lines require ongoing maintenance of vegetation and often emergency repairs, in addition to creating aesthetic and view impacts.

16. *BIMC 16.12.380. Shoreline Variance and Shoreline Conditional Use Permits Conditional Uses*

a. *Uses classified as conditional uses may be authorized provided that the applicant can demonstrate all of the following:*

(1) *The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the Master Program. Undergrounding of the distribution line system is consistent with the policies of the Master Program.*

(2) *The proposed use will not interfere with the normal public use of the public shorelines. Undergrounding of the distribution line benefits the public's use of the shoreline, as the lines will no longer visually obstruct shoreline vistas.*

- (3) *The proposed use of the site and design of the project will be compatible with other permitted uses within the area.* The transmission lines will continue to provide power to nearby homes as well as to residences to the south and east of the project site. The project will improve the reliability of the power service, which will no longer be susceptible to outages caused by tree damage.
- (4) *The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.* The undergrounding of the distribution lines will occur within the existing right-of-way on the opposite side of the developed road from the shoreline. No significant trees or vegetation within shoreline jurisdiction will be removed as part of the project.
- (5) *The public interest suffers no substantial detrimental effect.* The public interest will be served because the project will increase the reliability of power service to a large number of residences at the south end of the Island.
- (6) *The proposed use is consistent with the provisions of the Zoning Ordinance (BIMC Title 18) and the Comprehensive Plan (Ordinance 94-21).* The placement of power lines within rights-of-way is supported by the zoning code and comprehensive plan.

17. *BIMC 16.20.130. Fish and Wildlife Conservation areas*

Utilities- Placement of utilities within designated fish and wildlife habitat conservation areas may be allowed pursuant to the following standards:

- a. *The minor utility maintenance authorized in 16.20.040.C shall be allowed within designated fish and wildlife habitat conservation areas subject to best management practices.*
- b. *Construction of utilities may be permitted in fish and wildlife habitat conservation areas or their buffers, only when no practicable or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below as required pursuant to BIMC 16.20.106.G (special use review), which may be required by this chapter.*

Undergrounding the distribution lines will involve burrowing beneath or to the side of several roadside ditches identified by the consulting biologist as potential fish-bearing streams based on their direct connection to salt water. The applicant is required to obtain a Hydraulic Projects Approval from the Washington Department of Fish and Wildlife before commencing any work within or under a stream.

18. *BIMC 16.20.160. Wetlands*

As identified in the applicant's wetland report (Exhibit #24) there are five wetlands within the vicinity of the project. Four of the wetlands are Category III and one is a Category II. While the project lies within the regulatory wetland buffers, most of the transmission line is proposed within already constructed areas of the road system. At the southeastern terminus of the project a vault complex and a pole will be installed within an undeveloped wetland buffer. This new encroachment will disturb 465 square feet of buffer, requiring a Special Use Permit.

BIMC 16.20.160 G. Wetlands and Streams Restoration, Creation, Mitigation or Enhancement.

Under BIMC 16.20.160, Table 8, utility facilities are permitted within a Category II or III wetland or wetland buffer via issuance of a Special Use Permit. BIMC 16.20.160(G)(2) provides the following review standard:

The director may approve a permit after review of the application and a wetland mitigation plan submitted in accordance with this chapter. The director shall determine whether the use or activity cannot be avoided because no reasonable or practicable alternative exists, the proposed use is consistent with the spirit and intent of this chapter and it will not cause adverse impacts to the wetland or the wetland buffer which cannot be mitigated. In taking action to approve a special use review, the director may attach reasonable conditions as necessary to minimize impacts, rectify impacts or compensate for impacts to the wetland or wetland buffer.

There is no reasonable alternative to locating the utility inside the wetland buffer. In fact, this re-routing and undergrounding avoids the more extensive impacts of having the utility line run through an entire wetland and its buffer. The existing line is an overhead line located in a Category III wetland that requires continual maintenance and trimming of vegetation in response to trees damaging the lines.

Since the project requires the disturbance of wetland buffer for the placement of a vault and pole complex, the applicant must mitigate for the impact on the wetland buffer. Consistent with the code the applicant has proposed to restore 365 square feet of wetland buffer and enhance another 100 square feet. This will mitigate for the 465 square feet of buffer impacted by the proposal. The buffer restoration and enhancement plan is described in the wetland report prepared for this application (Exhibit #24). As conditioned, the applicant will implement the recommended enhancement/restoration plan prepared by the wetland biologist, including monitoring .

19. *BIMC 16.20.180. Performance and maintenance surety*

A performance surety is required in an amount equal to 125 percent of the estimated mitigation cost. As conditioned, the applicant is to provide a performance surety for the wetland restoration and enhancement prior to any disturbance of the wetland buffer. Once mitigation work has been completed, the Director may release the performance surety based upon acceptance of a maintenance surety to be held for the duration of the monitoring period.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this consolidated shorelines and zoning permit proceeding. Applicable notice and SEPA requirements have been met.
2. As conditioned below, the PSE application meets the standards stated in the Bainbridge Island Shorelines Master Program and WAC chapter 173-27 for the issuance of shoreline substantial development and conditional use permits. The proposed relocation and undergrounding of this utility line within shorelines jurisdiction are consistent with both the Master Program and applicable municipal code regulations.

3. The mitigation requirements for issuance of a Special Use Permit authorizing utility development outside shoreline jurisdiction within a wetland buffer are met by the PSE proposal.

DECISION

The consolidated application of Puget Sound Energy for a Shoreline Substantial Development/Conditional Use Permit for siting a distribution line within shorelines jurisdiction and for a zoning Special Use Permit is GRANTED, subject to the following conditions:

SEPA MDNS Conditions

1. Work shall be completed in accordance with the approved site plan and cross section drawings received June 2, 2011
2. Washington State Department of Fish & Wildlife Hydraulic Project Approval is required prior to beginning any work on this project. Copies of the approval must be submitted to the City prior to beginning any work on the site. A copy of all public agency approvals and approved drawings shall be given to all contractors performing work at the site prior to beginning any construction work.
3. As indicated in the Wetland Resources, Inc report dated April 16, 2012, 465 square feet of wetland buffer shall be restored/enhanced to mitigate for the disturbance caused by the project immediately following construction (BIMC 16.20.160 8,e,iii). Maintenance and monitoring shall occur in accordance with the recommendation contained in the wetland report.
4. A performance surety in an amount of 125 percent of the cost of restoration/enhancement shall be submitted to the City prior to any work occurring within the wetland buffer.
5. Prior to the release of the performance surety, a maintenance surety in an amount of 20 percent of the cost of the restoration/enhancement shall be provided to the City and maintained for the duration of the monitoring period.
6. All Hydraulic Project Approval conditions shall become conditions of approval for this permit.
7. All graded materials removed from the site shall be hauled to and deposited at City approved locations. (Note: Local regulations require that a grade/fill permit is obtained for any grading or filling exceeding 50 cubic yards of material and that a SEPA Threshold Determination is obtained for any fill over 100 cubic yards).

8. Contractor is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Department of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.
9. A Temporary Erosion and Sedimentation Control Plan meeting the requirements in BIMC 15.20 and 15.21 shall be submitted and approved by the City Engineer prior to the issuance of building, clearing or grading permits. The plan shall indicate location and type of proposed erosion control measures.
10. The proposed development shall comply with the City's noise ordinance; specifically, Bainbridge Island Municipal Code Section 16.16.020 regarding maximum environmental noise levels and Section 16.16.025 regarding the limitations on construction hours and activities.
11. Prior to beginning construction, a traffic control plan shall be submitted and approved by the City.
12. If the asphalt road or shoulder is disturbed by this project, the road cut shall be at the fog line, so that there is no seam within the bicycle travel lane.

ORDERED September 4th, 2012.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The shorelines permit decision of the City issued by the Hearing Examiner may be appealed to the Shorelines Hearings Board in accordance with the provisions of BIMC 16.12.380 C. (7). (Please note: Washington Department of Ecology has final decision authority for a Shoreline Conditional Use application. Within eight days of the City's decision, the application packet is forwarded to the Department of Ecology, which shall approve, approve with conditions, or deny the application within 30 days.)

The exhibit list prepared by the Hearing Examiner's Clerk is attached.