

CITY OF LYNDEN
LYNDEN CITY COUNCIL

IN RE THE CONDITIONAL USE
PERMIT REQUEST OF Puget Sound
Energy

CUP # 22-01
VAR # 22-02 and 22-03

FINDINGS OF FACT AND
CONCLUSIONS OF LAW for Puget
Sound Energy Expansion

Owners of the premises known as:

THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF BLOCK 1 HAWLEY AND LAWRENCE ADDITION TO LYNDEN AS FILED IN VOLUME 1 OF PLATS, PAGE 46, RECORDS OF WHATCOM COUNTY, WASHINGTON; THENCE SOUTH 66°34'31" WEST ALONG THE NORTHWESTERLY RIGHT OF WAY MARGIN OF FRONT STREET A DISTANCE OF 70.00 FEET; THENCE NORTH 22°22'34" WEST A DISTANCE OF 140.00 FEET TO THE SOUTHEASTERLY MARGIN OF AN UNNAMED ALLEY BETWEEN FRONT AND GROVER STREETS; THENCE NORTH 66°34'31" EAST ALONG SAID SOUTHWESTERLY MARGIN A DISTANCE OF 70.00 FEET TO THE NORTHWESTERLY CORNER OF A PARCEL AS DESCRIBED IN STATUTORY WARRANTY DEED RECORDED UNDER AUDITORS FILE NO. 1529480, RECORDS OF SAID COUNTY; THENCE NORTH 22°27'21" WEST ALONG THE WESTERLY LINE OF A PORTION OF A VACATED ALLEY AS DESCRIBED IN CITY OF LYNDEN VACATION ORDINANCE NO. 1102, A DISTANCE OF 20.00 FEET; THENCE NORTH 66°34'31" EAST ALONG THE NORTHERLY LINE OF SAID VACATED ALLEY A DISTANCE OF 72.49 FEET TO THE WEST LINE OF SAID BLOCK 1; THENCE NORTH 01°39'49" EAST ALONG SAID WEST LINE OF BLOCK 1, A DISTANCE OF 22.08 FEET; THENCE NORTH 66°34'31" EAST ALONG A LINE 162 FEET SOUTHEASTERLY OF AND PARALLEL WITH THE CENTERLINE OF GROVER STREET, A DISTANCE OF 125.22 FEET; THENCE SOUTH 23°25'56" EAST ALONG A LINE 25 FEET EASTERLY OF AND PARALLEL WITH THE WEST LINE OF LOT 3 OF SAID BLOCK 1, A DISTANCE OF 81.41 FEET TO SAID NORTHWESTERLY RIGHT OF WAY MARGIN; THENCE SOUTH 41°25'46" WEST ALONG SAID NORTHWESTERLY RIGHT OF WAY MARGIN A DISTANCE OF 231.96 FEET TO THE POINT OF BEGINNING.

COMMONLY DESCRIBED AS: 131 E Front Street, Lynden.

Having made application for a conditional use permit and three variances to allow the expansion and upgrade to the existing PSE Substation at the above noted address within the RM-3 zone.

The Lynden Planning Commission held a public hearing on August 25, 2022, and considered the consistency of the applications under LMC 19.49.020 and LMC 19.47.060 and has determined that the Conditional Use Permit and Variance applications meet the required criteria according to the findings, conditions and recommendations of the Technical Review Committee Report dated August 18,

2022, except that landscape requirements for the 3 foot space between the sidewalk and wall were removed so as to utilize non-conductive materials for safety reasons. These conditions have been collectively represented at the conclusion of this document.

Said request having come before the Lynden City Council on September 19, 2022, and the Lynden City Council having fully and duly considered the conditional use permit request, hereby makes the following:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.01 Application. Emily Hagin, Puget Sound Energy, (“Applicant”) filed a conditional use application and three variance applications which were accepted by the City as complete on June 7, 2022.

1.02 Location. The Property is located at 131 E Front Street in Lynden, Whatcom Co., Washington as described above.

1.03 Ownership. Puget Sound Energy is the Property Owner.

1.04 Reason for Request. The request is for a Conditional Use Permit to allow the expansion and upgrade to the existing Lynden substation within a residential zone to address aging infrastructure, increase reliability, and to address future capacity issues. The application also includes three (3) variance requests (fence heights and setback encroachment). One variance request regarding fence (all) setback was removed during the technical review process and the plan revised to comply with the minimum code requirement.

1.05 Compliance with Criteria for Granting a Conditional Use Permit and Variance. The application as presented during the public hearing complies with the criteria listed within Section 19.49.020 and 19.47.060 of the Lynden Municipal Code.

1.06 Compliance with Project Manual for Engineering Design and Development Standards. The application complies with the development standards and requirements set forth in the Project Manual for Engineering Design and Development Standards, as applicable.

1.07 Appropriate Provisions for Promoting Health, Safety and General Welfare. The application makes appropriate provisions for public health, safety and general welfare. Meeting electrical safety standards is the highest priority of the project. Revisions to the substation will result in greater enclosure of electrical structures and an increased use of non-conductive enclosures and materials. Variance request to utilize wall heights of 8 and 9 feet have been granted to provide additional security and screening of the substation.

1.08 Open Spaces, Streets, Roads, Sidewalks and Alleys. The application makes appropriate provisions for public open spaces, roads, streets, sidewalks

and alleys. Review and final findings recognize the significance of this location at it is a key pedestrian connector between downtown and neighborhoods along East Grover and East Front Streets. The only sidewalk along this corridor passes immediately by the subject substation. Care has been taken to avoid encroachment into the sidewalk and enhance the pedestrian experience with attractive wall and gate materials and the installation of irrigated landscaping.

1.09 Potable Water Supplies, Sanitary Wastes and Drainage Ways. The application makes appropriate provisions for public drainage ways, potable water supplies and sanitary wastes.

1.10 Public Interest. The application is consistent with the City's comprehensive plan and the Growth Management Act. The public interest will be served by the approval of the application. The project serves to expand critical electrical infrastructure and increase resilience of this service to the public.

1.11 Critical Area Review. There were no critical areas found to be on the site. Critical areas on the opposite side of the street will not be impacted by this project.

1.12 SEPA Determination. Formal notice of the SEPA Determination (MDNS) was published in the Lynden Tribune on June 22, 2022 and mailed to neighbors within 300 ft of the property.

The foregoing Findings of Fact and Conclusions of Law are not labeled. Those sections which are most properly considered Findings of Fact are hereby designated as such. Those sections which are most properly considered Conclusions of Law are also designated as such. From the foregoing Findings of Fact and Conclusions of Law, the City Council establishes the following conditions:

II. CONDITIONS

- 1) Approval of the Conditional Use Permit is approved on the condition that Type V landscape is re-established on the north and east perimeter of the substation and new landscape is installed on the west and south sides of the substation per the plan provided to the City on 6/30/22 or equivalent.
- 2) Approval of the Conditional Use Permit is approved on the condition that new wall sections along Front Street are setback a minimum of 3 feet as required by code.
- 3) Approval of the Conditional Use Permit is approved on the condition that landscape and irrigation is required as submitted on page 1 and 2 of the landscape plan. The Planning Commission and City Council indicated support for the use of gravel between the sidewalk in areas setback only 3

feet, as non-conductive material is needed in this location to meet safety requirements.

- 4) Variance 22-03 to allow structures within what are typically residential front setbacks is approved as the perimeter wall will screen these structures and on the condition that the driveway to the proposed gate at the southwest corner of the site is a minimum of 25 feet long so vehicles, at no time, encroach on the sidewalk.
- 5) Variance 22-02 regarding height of the concrete wall and non-conductive walls at 8 to 9 feet, as submitted to the City on 6/30/22, is approved in association with the submitted landscape plan and wall types specified. That is Superior Cobblestone Concrete Wall or the equivalent along Front Street, and a non-conductive Shakespeare Safe Fence or the equivalent for the remainder of the sub-station perimeter.

By Planning Commission Recommendation and the City Council final approval the following conditions from the Technical Review Committee Report have also been adopted as required:

- 6) *Front Street Gates*: The applicant is required use attractive metal gates along the Front Street frontage rather than chain link “station gates”. These must be similar to those made by Superior Concrete in conjunction with the Superior Concrete Cobblestone wall.
- 7) *Site Lighting*: Any lighting proposed for the site must be glare-free and shielded from the sky and adjacent properties.
- 8) *Maintenance Bond*: A landscape maintenance bond in the amount of 10% of the construction costs will be required prior to fence/wall approval for all landscape and irrigation installation.
- 9) *Wall Finish*: The use of a graffiti sealer on the proposed concrete panel fence is required to protect the wall and allow for an easier cleaning process.
- 10) *Access Points*: Proposed (new) access points shall be paved a minimum of 50 feet from the back of the sidewalk. Existing access point shall be paved a minimum of 10 feet from the back of sidewalk in order to prevents gravel from tracking into public streets.
- 11) *Stormwater*: If impervious addition reach a threshold by which a stormwater management plan is required, it must be prepared by a professional engineer and meeting the requirements of the City’s Manual for Engineering Design and Development Standards and the approved Department of Ecology Stormwater Manual is required. This

plan must be approved by the City of Lynden prior to final approval of the project plans including proposed fill and grade permit.

- 12) *Civil Review Deposit*: A review deposit of \$6,000 minimum, to review the civil construction plans, due prior to review and construction respectively.
- 13) *Maintenance Bond*: A post construction maintenance bond in the amount of 10% of the construction costs will be required prior to final approval for all work within the City's right-of-way.
- 14) *Performance Bond*: A 150% performance bond is required for all work in the City's right-of-way or on city owned property prior to final approval for all work within the City's right-of-way.
- 15) *Final Drawings*: All surveying work and engineering design must be based on the City of Lynden survey control monuments. AutoCAD files for all improvements must be provided to the City in digital format approved by the City. A copy of the City's control monuments is available to the project consultant for their use.
- 16) The proposed conditional use permit and variance requests shall be consistent with the scope of the proposal as provided within the applications. Any changes to the proposal may require additional review and approval by City staff and/or City Council.

III. DECISION

Petitioner's application for a Conditional Use Permit and two variance requests to allow the expansion and upgrade of the existing Puget Sound Energy substation within the Residential Multi-Family Zone (RM-3) on the property described herein is hereby **Approved**.

DATED: _____

Scott Korthuis
Mayor