



August 18, 2022

## CITY OF LYNDEN TECHNICAL REVIEW COMMITTEE

### FINAL STAFF REPORT

Re: The application of Puget Sound Energy, for a Conditional Use Permit and Variance(s) Applications.

CUP #22-01 and VAR 22-01, 22-02, and 22-03, Puget Sound Energy  
FINDINGS, CONCLUSIONS, AND  
RECOMMENDATION

#### I. APPLICATION SUMMARY AND RECOMMENDATIONS

Proposal:

The request is for a Conditional Use Permit to allow the expansion and upgrade to the existing Lynden substation to address aging infrastructure, increase reliability, and to address future capacity issues. The application also includes three (3) variance requests. One request was removed during the technical review process.

- 1) ~~Fence Location~~ - withdrawn
- 2) Fence Height.
- 3) Front Setbacks.

Recommendation:

The Conditional Use Permit (CUP) and Variance applications will be consolidated as one project. The Planning Commission will hold one open record hearing on the entire project and the City Council will make the final decision. After initial review staff recommendations are shown below with staff conditions are included at the conclusion of this report and further subject to any conditions placed by the Planning Commission and City Council.

Conditional Use Permit (CUP):

Staff (the Technical Review Committee) supports expansion of the substation and recommends approval of the Conditional Use Permit; however, expansion of the substation should not be done at the detriment to the surrounding residential area and must recognize that this street frontage is a popular walking route for nearby residents. Specific conditions of CUP approval are recommended within the body of this report.

**Variance Applications:**

**Fence Location (request withdrawn):** Code requires that fences (a wall in this instance) must be located a minimum of 3 feet from the edge of public sidewalks. Staff did not support the variance to fence/wall location which would have placed the proposed wall closer than 3 feet to the sidewalk. Staff asserted that the significant height of the fence/wall warranted, at a minimum, meeting the setback from the sidewalk. In response, the applicant has revised the application to remove the variance request and will not only be placing the new wall at the required setback but will be replacing the old wall in a location which meets setback as well.

**Fence Height:** Staff can support some variance to fence height with the justification provided. This is discussed in more detail in the following TRC Report.

**Setback Encroachment:** The residential zoning in this location requires that structures be setback 20 feet from the street frontage. Staff can recommend approval of the front setback variance to allow structures within the front setbacks as impacts of this variance are mitigated by the treatment of the site perimeter and, given the unique use of the location.

**II. PRELIMINARY INFORMATION**

Applicant: Emily Hagin, Puget Sound Energy

Property Owner: Puget Sound Energy

Zoning Designation: RM-3 (Residential Multi-Family)

Property Location: 131 E Front Street, Lynden WA

Parcel Number: 400320-444398

Legal Description: 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'S 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

Puget Sound Energy Conditional Use Permit and Variance Requests – TRC Report

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.

<u>Notice Information:</u>	Application Submitted:	May 25, 2022
	Notice of Application:	June 22, 2022
	Notice of SEPA determination:	June 22, 2022
	Notice of Hearing:	June 22, 2022
	Comment Period Ending:	July 6, 2022

SEPA Review: Lynden SEPA #22-05. Mitigated Determination of Non-Significance (MDNS) issued June 17, 2022.

Authorizing Codes, Policies, and Plans:

- Lynden Municipal Code (LMC) Chapter 2.09 Hearing Examiner
  - LMC 2.09.040 (B) and (C), Jurisdiction – Duties – Powers
- LMC Chapter 17 Land Development
  - LMC 17.09, Review and Approval Process
  - LMC 17.09.040, Planning Commission Review and Recommendation
  - LMC 17.17.040, Standards and criteria for granting a variance.
- LMC Chapter 19 Zoning Code
  - LMC 19.17, Multi-Family Building Zones
  - LMC 19.17.050, Conditional Property Uses
  - LMC 19.17.060, Height, Area, Setback and Bulk Requirements
  - LMC 19.49, Conditional Use Permits
  - LMC 19.49.020, Standards and Criteria for Granting a Conditional Use Permit.

- LMC 19.49.050, Maximum coverage and minimum lot size for certain conditional uses.
- LMC 19.49.080, Modification of or addition to, existing conditional uses.
- LMC 19.63 Fence Permits and Requirements
- International Building Code
- City of Lynden Manual for Engineering Design and Development Standards
- RCW 197-11-350 – SEPA MDNS

## I. **PROJECT DESCRIPTION**

Puget Sound Energy is requesting a modification to their existing CUP to allow the expansion and upgrade of the existing Lynden substation in order to address aging infrastructure, increase reliability, and to address future capacity issues. The proposed substation expansion upgrade is located within RM-3 zoning (residential multi-family). Substations are a conditional use within this zoning jurisdiction. The applicant states that expansion of the substation footprint will allow for necessary upgrades to increase reliability to customers served by the substation and to accommodate future load growth in the area.

Running concurrently with the Conditional Use Permit application are two separate variance requests:

~~Variance #1. LMC 19.63.040 – Fencing Location: PSE is requesting that the concrete panel fence around the front of the substation be located within 3 feet of the property owners side of the sidewalk. Code requires a minimum of 3 foot setback. WITHDRAWN~~

Variance #2. LMC 19.63.080 (A) – Non-Residential zone fences: PSE is requesting to replace the 22 year-old wall along East Front Street with a concrete (rock finish) wall at a height of 9 feet. This will be setback a minimum of 3 feet from the sidewalk. The remainder of the substation will be surrounded by an 8'-9' conductive fence which will replace the chain-link enclosure currently in place. Code limits solid nonresidential fences to 7 feet in height and wire fencing to 12 feet in height. Existing non-conforming fence heights cannot be continued when located parallel to a City street (LMC 19.63.060(D)(5)).

Variance #3. LMC 19.22.040 (B) – Accessory Structure Setbacks: PSE is requesting to allow accessory substation structures to be placed within 20-feet of the front setback to meet substation design and safety clearances.

### **PREVIOUS PROJECT APPROVAL CUP #99-05**

In 1999, Puget Sound Energy was granted approval of a Conditional Use Permit to expand the existing (50-year old) power substation to allow installation of a new transmission line circuit breaker. In addition to the standard requirements for approving a CUP, the decision also included the following:

- That all overhead *distribution* lines be placed underground at the proponent's expense.
- That the proponent install an 8 foot brick fence on the property line adjoining East Front Street (this was installed as a concrete cobblestone panels).
- Type V landscape buffer ten feet in width is to be installed on the west and northern boundaries of the project expansion.

## **II. PUBLIC NOTICE AND COMMENT**

Notice of Application: Formal legal notice for this application was published in the Lynden Tribune on June 22, 2022

Notice of 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 comment period for the SEPA determination expired on July 6, 2022.

### Public Comment Received:

The comments are summarized, with City response, below:

- 1) Jewett-Kelly Letter (124 E. Grover Street #4D and 126 E. Grover Street #6B). Patricia Jewett and Steven Kelly, nearby residents, wrote to the Planning Department with concerns related to the condition of the alley, impacts associated with recent PSE construction (not specifically related to this expansion), and the request to have vegetation installed around the perimeter of fenced area. (see attached July 5, 2022 letter).

City's response: Jewett and Kelly raise appropriate concerns about the condition of the site during construction. Impacts are keenly felt as this PSE location is very near to residential dwellings. During construction of the substation expansion, residents will be encouraged to contact the City if issues related to dust and garbage arise so that City staff can intervene and correct if needed.

The alley adjacent to the PSE property will be paved as requested by the residents. PSE will also be required to install a vegetated perimeter along the west, north, and east sides of the substation. See the provided landscape plan for more details.

### III. ANALYSIS AND CONSISTENCY WITH REGULATIONS

#### Conditional Use Permit 22-01

The application is reviewed in accordance with the LMC 19.49.020, and the criteria listed for land use application review in LMC 17.09.040(C) “Planning Commission Review and Recommendation; Required Findings”.

A. Certain uses may be allowed by a CUP granted by the City Council, after it receives a recommendation of the Planning Commission. The Planning Commission shall issue its recommendation after a public hearing on the CUP application. In the application and during the hearing process, it shall be clearly shown by the applicant that the proposed use is not detrimental to the surrounding area or a liability to adjacent uses. For the purpose of this review, the surrounding area, or neighborhood, means those parcels that are in close proximity to the subject parcel.

B. An application for a CUP may be made only for those uses specified under the conditional use section of the appropriate zoning district.

C. The Planning Commission and Council shall enter findings to support any recommendation or decision on a CUP application. Conditions may be attached to CUP approvals to mitigate any adverse impacts, protect surrounding properties and to promote the general welfare of the public. A CUP will be granted only if the proposed use complies with the standards and criteria listed below. The applicant shall bear the burden of proof in all CUP proceedings.

1. The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district. **Applicant’s response: The proposed use is an expansion of an existing substation and substations are an approved conditional use under Zoning RM-3. PSE is proposing the expansion upgrade to address aging infrastructure, increase reliability, and future capacity issues.**
2. The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following:

Puget Sound Energy Conditional Use Permit and Variance Requests – TRC Report

- a. Traffic and pedestrian circulation; **Applicant's response:** **There will be temporary traffic and pedestrian impacts during construction. Street and sidewalk closures will likely be needed during construction for delivery and installation of new equipment. Post construction vehicle access will typically be limited to monthly substation inspection site visits.**
  - b. Noise, smoke, fumes, glare or odors generated by the proposed use; the substation; **Applicant's Response:** **Some noise will be generated from the transformer within the substation but will be reduced by the fencing and vegetation screening. Lighting will be directed towards the substation to reduce glare on neighboring properties.**
  - c. Building and site design; **Applicant's Response:** **Due to the odd shape of the property, the proposed expansion to the substation requires a variance for structure setbacks. PSE is applying for a BOA and development variance. The structures otherwise comply with zoning height requirements. The tallest structures in the substation will be 35 ft. tall.**
  - d. The physical characteristics of the subject property. **Applicant's response:** **The property is long and somewhat narrow with very little topographic change. The existing site is developed with an existing substation that is proposed to be expanded to the west.**
3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services. **Applicant's Response:** **The substation does not require domestic water or sewer services. A water service may be utilized for landscape irrigation. The substation will be secure from the public and only authorized personnel will be allowed within fence boundaries.**
  4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service. **Applicant's Response:** **The expansion of the substation will not increase traffic to the surrounding vicinity. There will be no change in overall traffic patterns post construction and will revert back to monthly site inspections by a substation operator.**
  5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code. **Applicant's Response:** **The proposed substation expansion complies with most standards and other provisions of the LMC. PSE will install appropriate**

**vegetation screening around the perimeter of substation or architectural wall where there is no room for vegetation per LMC. Structures meet conditional use height requirements, and no vehicles are proposed to be parked or stored on site. PSE is applying for variances for the 20 ft front setback for accessory structures (LMC 19.22.040B), fence height (LMC 19.63.088) and 3 ft. sidewalk setback (LMC 19.63.088).**

6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse impacts of the proposed use. **Applicant's Response: PSE will plant appropriate vegetation screening to obscure substation structures, noise, and glare from neighboring landowners. The North and East corner of the property will have a 9-foot non-conductive safety fence for additional screening and safety for adjacent properties. PSE plans to extend the 8-foot concrete panel fencing along E Front Street with a 10-foot high concrete panel fencing to match the existing style.**
7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance. **Applicant's Response: The project is not located near any natural, scenic or historic features of major importance. PSE purchased 125 E. Front Street as part of the expansion upgrade. PSE did conduct an Intensive Survey of the home per SEPA requirements before demolition of the home.**
8. The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan. **Applicant's Response: The proposed use is an expansion of an existing substation and substations are an approved conditional use under Zoning RM-3.**

### **VARIANCE REQUESTS - #22-01, #22-02 and #22-03**

The application is reviewed in accordance with the LMC 19.47.060, which specifically states, "Where unnecessary hardships and practical difficulties render it difficult to carry out a bulk provision of the zoning ordinance, the hearing body may grant a variance in harmony with the general purpose and intent of the provisions contained in this title from any rules, regulations or provisions of the zoning ordinance relating to the bulk provisions of the zoning ordinance, so that the spirit of the ordinance will be observed, public safety secured, and substantial justice done. However, the hearing body may only grant a variance if it finds that all of the following conditions exist for each variance application.



- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application is located;
- B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity and zone in which the subject property is located;
- C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located.

*Staff Comment:* Variance requests facilitate the efficient use of space for this conditionally permitted use of an electrical substation within a residential zone. This is a special circumstance that is unique to this site. Mitigating factors such as screening by fence and landscape will mitigate for detrimental effect to the public welfare while providing a valuable expansion of electrical service to the Lynden community.

#### **IV. TECHNICAL REVIEW COMMITTEE COMMENTS**

##### Planning and Development Department

1. *Site Context:* Applicant has been advised as to 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. Recognizing this, the applicant is expected to contribute positively to the street frontage at a scale that is appropriate to pedestrians.
2. *Landscape Buffer and Screening:* Consistent with a condition of approval for the CUP approved in 1999, a Type V landscape buffer must be restored on the north and east property lines. Any plantings that are affected or removed during this expansion must be replaced. In addition, the same landscape screening is recommended on the westerly boundary of the substation. This condition appears to be met per the provided landscape plan.
3. *Irrigation:* Irrigation of landscaped areas must be provided as noted on the landscape plan, Note 3 on D-21035.
4. *Landscape required along Front Street Walls:* LMC 19.22.050(A)(2)(a) requires that landscape material be installed and maintained within the three-foot wall setback.

This is the space between the sidewalk and the wall. Plans currently indicate gravel in this area however, plant material creates a more pedestrian-friendly environment adjacent to a 9 foot wall. Staff understands that PSE's grounding lines run within this space and may require excavation in the future. Because of this, staff recommends the use of a low ground cover such as Vinca, Bearberry, or Creeping St. John's Wort.

5. *Front Street Gates:* The applicant has agreed to use attractive metal gates along the Front Street frontage rather than chain link "station gates". These are expected to be similar to those made by Superior Concrete in conjunction with the Superior Concrete Cobblestone wall. Example shown here:



*Drive gate for Big Sky, Montana, Substation project, plus Superior Cobblestone™ screening wall from Superior Concrete Products.*

6. *Barbed Wire Fence:* Chain link and barbed wire fencing has been removed from this application request.
7. *Fence Heights:* Per LMC 19.63.080 the maximum height for solid fencing / walls for nonresidential uses in a residential zone is 7 feet. Wire fence is permitted to heights of 12 feet. The existing wall along Front Street is 8 feet in height. The variance request is to allow a wall heights of up to 9 feet. The application states that increased fence heights are needed to meet "NESC Criteria in Section 110.A". Additionally, solid fencing, in this case, is preferable to wire fencing. Staff can support the current proposal that uses non-conductive fencing and concrete wall at heights of 8-9 feet.
8. *Accessory Structure and Siting Requirements:* After reviewing the proposed site plan, staff can agree that the location of structures within the front setback is

consistent with the previously permitted Conditional Use, and the depth of the property limits the applicant's ability to meet front setbacks. Staff can also agree that locating structures within the front setback may not be detrimental to the surrounding properties if it is properly mitigated with screening along Front Street.

9. *Site Lighting:* Any lighting proposed for the site must be glare-free and shielded from the sky and adjacent properties.
10. *Driveways:* The proposed driveway has been modified from the initial application so that gates are set back a minimum of 25 feet from inside edge of the sidewalk. This allows a service vehicle to park outside the gate without impeding the public sidewalk.
11. *Maintenance Bond:* Be advised, 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.

#### Public Works Department

12. *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.
13. *Access Points:* Proposed 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. This prevents gravel from tracking into public streets.
14. *Stormwater:* Be advised, if impervious addition require a stormwater management plan 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.
15. *Civil Review Deposit:* Be advised, there is a review deposit of \$6,000 minimum, to review the civil construction plans, due prior to review and construction respectively.
16. *Maintenance Bond:* Be advised, 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.
17. *Performance Bond:* Be advised, 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.

18. *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.
19. *Other Requirements*: Be advised, issuance of the Conditional Use Permit and associated Variances does not release the applicant from any other Local, State, or Federal statutes or regulations applicable to the proposed development.
20. 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.

Fire Department – The Fire Department had no additional comments on this application

Parks Department – The Fire Department had no comments on this application.

## V. RECOMMENDATION

Based on the above findings, Staff recommends approval with conditions of Conditional Use Permit #22-01.

~~Denial of Variance #22-01 related to fence location. - WITHDRAWN~~

Approval with conditions of Variance #22-02 related to fence height.

Approval of Variance #22-03 related to setback encroachment.

- 1) Approval Conditional Use Permit is recommended 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 recommended on the condition that new wall sections along Front Street are setback a minimum of 3 feet as required by code, and landscape, such as a low-maintenance ground cover, be installed between the wall and the sidewalk.

Puget Sound Energy Conditional Use Permit and Variance Requests – TRC Report

- 3) Approval of the Conditional Use Permit is recommended on the condition that Irrigation of landscaped areas is required as noted on page 1 of the landscape plan.
- 4) Approval of Variance 22-03 to front setbacks is recommended 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) Approval of the 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 recommended in association with the approved landscape plan and wall types specified. That is Superior Cobblestone Concrete Wall or the equivalent along Front Street, and Shakespeare Safe Fence elsewhere.
- 6) Approval of the Variance 22-02 with the required use of a graffiti sealer on the proposed concrete panel fence to protect the wall and allow for an easier cleaning process.