



October 20, 2023

CITY OF LYNDEN TECHNICAL REVIEW COMMITTEE STAFF REPORT

Re: The application of Freeland and Associates, Inc. for a Modification to Conditional Use Permit Application #22-02.

CUP #23-01, Premier Freezer
FINDINGS, CONCLUSIONS, AND
RECOMMENDATION

I. APPLICATION SUMMARY AND RECOMMENDATIONS

Proposal: The request includes a modification to conditional use permit #22-02 which was approved by City council on December 19, 2022, requesting to construct the freezer portion of the cold storage facility to a maximum of 80-feet in height from the previously approved 50-feet.

Recommendation: Staff recommends approval of the Conditional Use Permit (CUP) modification, subject to the conditions of approval described in the conclusions of this document.

II. PRELIMINARY INFORMATION

Applicant: JP Slagle, Freeland and Associates, Inc.

Property Owner: Chill Build Lynden III, LLC

Property Location: 603 Curt Maberry Road, Lynden WA

Parcel Number: 400221-416131

Legal Description: LOT 1 WEST MAIN STREET SHORT PLAT, AS RECORDED UNDER AUDITOR'S FILE NO. 2150500587, RECORDS OF WHATCOM COUNTY, WASHINGTON.

Notice Information:

Application Submitted:	August 31, 2023
Notice of Application:	October 11, 2023
Notice of SEPA determination:	October 28, 2022
Notice of Hearing:	October 11, 2023
Comment Period Ending:	October 25, 2023

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SEPA Review: Lynden SEPA #22-09. Mitigated Determination of Non-Significance (MDNS) issued October 28, 2022.

Authorizing Codes, Policies, and Plans:

- LMC Chapter 16 Environmental Policy
- LMC Chapter 17 Land Development
 - LMC Chapter 17.09, Review and Approval Process
 - LMC Chapter 17.09.040, Planning Commission Review and Recommendation
- LMC Chapter 19 Zoning Code
 - LMC Chapter 19.25, Industrial Zone
 - LMC Chapter 19.25.030, Primary Permitted Uses
 - LMC Chapter 19.25.040,
 - LMC Chapter 19.25.050, Performance Standards
 - LMC Chapter 19.25.060, Required Bulk Regulations, Height Limits and Setbacks
 - LMC 19.25.070, Landscaping requirements
 - LMC Chapter 19.57.200-250, Conditional Use Permits
- International Building Code
- City of Lynden Manual for Engineering Design and Development Standards
- WAC 197-11-340(2) Determination of Non-Significance (DNS)

III. PROJECT DESCRIPTION

In December 2022, the City Council approved a Conditional Use Permit (CUP) to allow food processing on the 11.77-acre site within the City’s Industrial Business Zone (IBZ). Additionally, as allowed through the CUP process, the applicant secured approval for a maximum building height of 50 feet. The project originally included construction of a 249,836 square foot seafood processing facility and freezer storage with associated access, parking, and utilities. Access to the site will be provided from Curt Maberry Road to the east. Truck access, loading areas, and employee/visitor parking will be located to the south and east of the building.

Today, the applicant has come forward requesting an amendment to the Conditional Use Permit #22-02 outlined above. The modification includes a redesigned facility that contains an expanded freezer space with a maximum height of 80 feet from the previously approved 50-foot limit. The additional height will create additional vertical storage capacity to support storage of frozen product. The applicant states that the increase in building height will allow for additional cold-storage capacity without increasing stormwater roof runoff volumes to the regional stormwater facility. Additionally, recent advancements in cold storage technology include equipment and automation designed to support freezers of increase building heights. These technologies have been incorporated into the current building design.

IV. PUBLIC NOTICE AND COMMENT

Notice of Application: Formal legal notice for this application was published in the Lynden Tribune on October 11, 2023

Public Comment Received:

Comments specific to the CUP 23-01 proposing additional height: None at this time.

V. ANALYSIS AND CONSISTENCY WITH REGULATIONS

The application is reviewed in accordance with the LMC 19.57.200 – 19.57.250 and the criteria listed for land use application review in LMC 17.09.040(C) “Planning Commission Review and Recommendation; Required Findings” where it states that application shall clearly show 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. A CUP will be granted

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only if the proposed use complies with the standards and criteria listed below. Staff review of these criteria is detailed below.

- 1. LMC 19.57.210(C) “The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district.”**

Staff Review

Surrounding Uses: The proposed use and height of the facility and freezer is consistent with the surrounding uses in this area. This site and the surrounding properties are zoned as Industrial Business Zone (IBZ) or will be zoned as industrial when they are annexed into the City. Additionally, not only does the zoning category match but the uses are very similar. The Lineage Freezer facility is located immediately to the east. Storage facilities, existing and planned, are located on the parcels immediately to the west. Additionally, the Canature (Alliance) freeze dry facility will be located to the northwest. This facility is currently under construction. Both the Canature and Lineage facilities secured Conditional Use Permits for additional building height. Canature is located immediately adjacent to Main Street and Berthusen Roads and was granted a maximum height of 75 feet for about 8% of the total building. The parcels immediately to the north and south are undeveloped.

Impacts: The proposed height of the Premier Packing freezer is located farther from arterial public streets of Main and Berthusen than the Canature facility which was granted a maximum height of 75 feet. The building will not cast a shadow on any residential property. The property located immediately south of the project will be zoned industrially when it is annexed into the City but is currently used agriculturally. However, because the proposed project is located to the north of this ag land, the building shadows will have little to no impact.

- 2. LMC 19.57.210(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: a. Traffic and pedestrian circulation; b. Noise, smoke, fumes, glare or odors generated by the proposed use; c. Building and site design; and d. The physical characteristics of the subject property.**

Staff Review

The proposed industrial use is subject to the performance standards listed in LMC 19.25.040 and 19.25.050 as it relates to circulations, noise, smoke, fumes, glare

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or odors. Additionally, these aspects have been reviewed with the Conditional Use Permit which was approved in 2022. Associated conditions of approval have been put in place to address these concerns. All processing will occur indoors and the final product will be frozen. Staff has recommended that the impacts related to noise and odor be reviewed annually to assess if any mitigation is needed to comply with performance standards. The current request for additional height does not significantly alter these types of impacts to circulation, noise, smoke, fumes, glare or odors.

Consideration of the impacts potentially created by the additional height request is warranted as the building and site design and the physical characteristics of the subject property have been altered from the previous CUP approval. As the applicant describes in their responses, the proposed facility will contain fire lanes, truck access, loading areas, employee parking and walkways using pre-planned access connections. The applicant has also committed to landscaping the site to meet City of Lynden requirements and enhance the aesthetics of the facility.

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. LMC 19.57.210(3)*

Staff Review

The request for additional height to accommodate freezer space will not create significant additional impacts to public facilities and services.

The facility, as noted by the applicant, “will be supported by municipal water and sewer connection. Electricity, natural gas, and refuse service will be supplied by private providers. Fire protection infrastructure and security systems will be installed onsite to reduce impact on fire and police protections services. Impact fees will be paid to the City of Lynden to mitigate impacts to the public services.”

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. LMC 19.57.210(4)*

Staff Review

Transportation review was completed with the 2022 SEPA and Conditional Use Application when the facility was originally proposed. The current additional height request will increase the capacity of the freezer space at the facility, and this may, cumulatively, result in additional truck traffic but not such an increase as

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to cause the adjacent circulation systems to fall below an accepted level of service (LOS) as defined in the City’s Comprehensive Plan – Transportation Element.

- 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. LMC 19.57.210(5)***

Staff Review

Planning staff has reviewed the proposed site plan and can confirm that the plans for the proposed facility comply with parking requirements, setbacks, and lot coverage. The site layout will accommodate industrial landscaping requirements. Detailed code review will be conducted in association with building permit review and the final stormwater plan. Permits will not be issued until all provisions of the Lynden Municipal Code are met. The facility will be held to performance standards outlines in LMC 19.25 during operation.

- 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. LMC 19.57.210(6)***

Staff Review

The proposed facility is located within an industrial area where the topography is extremely flat. It may be visible from residential properties in the area but these homes are more than 900 feet from the proposed structure. Reasonable use of residential / agricultural properties in the vicinity will not be hindered in any way by the proposed facility even at a height of 80 feet.

- 7. *The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance. LMC 19.57.210(7)***

Staff Review

In 2022 the proposed facility secured a Conditional Use Permit to operate on the site. It was determined that it would not destroy or substantially damage any natural, scenic or historic feature of major importance. The current proposal of additional height does not create the need to modify this determination.

- 8. *The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan. LMC 19.57.210(8)***

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Staff Review

The proposed project is consistent with the purposes and objectives of the Comprehensive Plan and specifically the West Lynden Commerce Subarea described and depicted in Chapter 2. This subarea is slated as the City's largest industrial area. At the start of 2023 the City Council took steps to define this area exclusively for commerce and industrial use by clarifying that residential / mixed-use overlays are not permitted in this area. The growth of this facility in this area also represents the retention and success of an existing Lynden business as Premier Packing is currently located in a much smaller industrial space at the center of the city.

Notably, other industrial areas of the City include users with over height buildings and structures with the largest being the Darigold with a drying tower that reaches a height of 110 feet.

As the applicant aptly writes "The objectives for industrial development within the West Lynden sub-area include the following 'Economic diversity and growth are the key components in Lynden's Comprehensive Plan' and the plan "outlines the need and desire for family wage jobs within the community. It also expresses the benefits of a healthy economy as a method to support the services that the community values and the quality of life that is important to Lynden residents. The proposed seafood processing facility will provide economic growth and new job opportunities for the local Lynden community."

The Planning Commission is asked to review each land use application against the criteria listed in LMC 17.09.040(C). As these criteria are applied to every application some of the criteria are not always relevant to the proposal. Staff has reviewed the application against these criteria and provided analysis to each as applicable.

- 1. The development is consistent with the comprehensive plan and meets the applicable requirement of the intent of this code.***

Staff Review

See #5 and #8 above.

- 2. The development makes adequate provisions for open space, drainageways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds.***

Staff Review

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The project will be subject to Park, Fire, and Transportation Impact Fees at the time of building permit. These fees are used by the City to mitigate impacts to services and infrastructure. This includes improvements to the nearby intersection of Main and Berthusen which is slated to occur within the next 18 months. The site is located on Curt Maberry Drive with access to Main Street. Both of these street corridors have been improved to city standard. Consistent with the City's transportation element the south edge of the site must address the future extension of Alderwood as described in SEPA determination issued 10/28/2022.

The project will not create school impacts as student generation rates are based on residential, not industrial uses.

Water usage, waste production, and stormwater plans will be reviewed in detail prior to building permit issuance. The project will be subject to applicable connection fees and usage rates.

3. The development adequately mitigates impacts identified under Titles 16-19 (Environmental Policy, Land Development, Subdivisions, and Zoning)

Staff Review

Title 16 has been addressed through SEPA review. Land Development process including public notice and hearing is being followed per Title 17. The property is not requesting a subdivision which would trigger Title 18 review. Title 19 development standards have been reviewed to date. Detailed review of development standards will occur with building permit review (see also #5 above). Landscape buffers and street trees will be required along all public streets. Staff is recommending that all exterior lighting be shielded to be dark-sky compliant.

4. The development is beneficial to public health, safety and welfare and is in the public interest.

Staff Review

The project serves the public interest in that it represents a significant property improvement which benefits the Lynden tax base. It is located in an areas that is slated for industrial use. It will provide jobs and support the Western fishing industry. Additionally, the applicant is currently operating out of an outdated facility which has proved to be problematic when striving to comply with discharge standards. The new facility will include modern filtering systems which will significantly improve the quality of the waste discharged from this facility and reduce the impact to city waterways and the burden to the waste water facility.

- 5. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established with the comprehensive plan, and fully complies with Chapter 17.15 of the city code.**

Staff Review

Transportation review was conducted in 2022 consistent with the SEPA determination issued 10/28/2022. The review concluded that the development does not lower the level of service of transportation facility below minimum standards established with the comprehensive plan. Additionally, the project will be subject to transportation impact fees which will assist in the improvements to nearby streets. The development does not create a significant impact to city park facilities. Park Impact Fee will be due at the time of building permit.

- 6. The area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development and are proportional to the impacts created by the development.**

Staff Review

The current proposal for additional building height does not result in a need for additional dedication or mitigation. The facility must dedicate and improve right-of-way along the southern frontage for Alderwood Drive. This is addressed in the SEPA determination issued 10/28/22.

VI. TECHNICAL REVIEW COMMITTEE COMMENTS

- Landscape Buffer and Screening:* Be advised, per LMC 19.25.070, landscape enhancement is required along all streets in an industrial zone. This is to include a minimum 10-foot, Type I landscape buffer which consists of “a combination of trees, shrubs and other landscaping materials, including bark and/or decorative rock, or grass. The landscaping shall be designed to improve the appearance of the development, not necessarily to obscure it.” (LMC 19.61.070). The current plan is laid out in such a way as to accommodate this requirement. Be advised, that detailed planting plans will be required within the civil plan set and at the time of building permit. Prior to Planning Commission review, please revise the Conditional Use site plan to include a note regarding this 10’ landscape buffer requirement along the south and east lot lines.

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2. *Landscaped Entrance:* Industrial properties must include entrance landscaping. This would be applied to the site entrance off of Curt Mayberry Drive. Detailed planting plans will be required within the civil plan set and at the time of building permit. Prior to Planning Commission review, please revise the Conditional Use site plan to include a note to identify the landscaped entrance and potential sign location(s).
3. *Street Trees:* The installation of street trees along all public street frontages will be required. Code requires that trees be planted a minimum of 30 feet on center or averaged to reach an equivalent quantity. Minimum caliper at the time of planting is 1.5 inches. Detailed planting plans will be required within the civil plan set and at the time of building permit. Prior to Planning Commission review, please revise the Conditional Use site plan to include a note this 10' street tree requirement along the south and east lot lines.
4. *Screening of Mechanical Equipment:* Be advised, consistent with the City's design standards in commercial zones, staff will be recommending, and the applicant has agreed, that all roof-mounted condenser units be screened from view so that this mechanical equipment is not visible from public streets.
5. *Site Lighting:* As previously required under CUP #22-02, the modification will be required to reduce impact to surrounding properties, on-site lighting shall be located, directed, and/or shielded in a manner which reduces light glare or spill onto adjacent properties. Standards recommend that fixtures be glare-free and shielded from the sky and adjacent properties. Staff is recommending that prior to Planning Commission review, the site plan be noted to indicate compliance.
6. *Performance Standards:* Be advised, the facility is expected to comply with performance standards detailed in LMC 19.25.040 and 19.25.050. This includes, but is not limited to, emissions of smoke, dust, and other particulate matter, and of toxic and noxious gases. All discharge must meet or exceed standards set by Northwest Clean Air Agency and all Washington State and federal standards. Emissions permits are likely to be required by the Northwest Clean Air Agency. It is up to the applicant to ensure that they meet the requirements of those permits. Adjacent agriculturally zoned properties are not subject to these same standards.
7. *Stormwater Infrastructure:* The applicant has acknowledged that a stormwater management plan including pipe sizing 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.

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8. *Stormwater Planning:* The proponent has submitted a **revised** Preliminary Stormwater Design Memo, written by Freeland and Associates and dated August 30, 2023. The memo identifies the property soils, the project details, and proposes a plan for managing stormwater as follows:

It is anticipated that stormwater management will be to convey all stormwater runoff from the site to the existing West Lynden Regional stormwater facility. Although the subject property is not currently contained within the pond's design contributing basin, the project's ownership has secured stormwater credits, which are currently being transferred. It is anticipated that these credits will cover most of the proposed hard surfaces proposed with this project. Additional surfaces outside of the capacity of the regional pond's credits will be mitigated with shallow, low-impact development techniques such as permeable pavement or bioretention facilities. These will reduce the effectiveness of the proposed hard surfaces and allow the project to fit into the regional pond' credit capacity for site. As noted previously, geotechnical evaluation of the soils is in progress.

9. *Permit Review:* Be advised that due to the complexity of this type of facility, and the on-site storage of hazardous materials, the City will coordinate 3rd party review of building and fire code requirements. Costs associated with the 3rd party review will be the responsibility of the applicant.
10. *Access:* Water supply and street access in this area are conducive to fire access however, be advised, the proposed building height may require additional clear space around the building to allow fire apparatus access and collapse zone clearance. Complete Fire review will occur at the time of building permit.
11. *Booster Pump:* Be advised, additional height may require the installation of booster pumps for fire suppression system.

VII. RECOMMENDATION

Issuance of this Conditional Use Permit does not release the applicant from any other local, State, or Federal statutes or regulations applicable to the proposed development.

Staff has concluded that the request for additional height at the Premier Packing facility will have minimal impacts to the surrounding properties. The Technical Review Committee recommends the approval of a maximum building height of 80

feet subject to the following conditions which include those outlined within the Original Conditional Use Permit application #22-02:

- 1) To minimize impacts to surrounding properties all exterior lighting must be shielded or “dark-sky compliant” lighting throughout the site to minimize lighting impacts.**
- 2) Sewer Discharge. Prior to issuance of the building permit, a sewer discharge study is required to verify impacts, treatment loads, and pipe size. Be advised, this study will require 3rd party review and the applicant assuming associated costs of this review.**
- 3) Roof-mounted mechanical equipment including condenser units must be screened from view so that this mechanical equipment is not visible from public streets.**
- 4) The Conditional Use Permit will be evaluated annually to ensure that compliance with the performance standards as described in LMC 19.25.040 are met, especially as it related to noise and smell.**