



November 14, 2022

CITY OF LYNDEN TECHNICAL REVIEW COMMITTEE STAFF REPORT

Re: The application of Freeland and Associates, Inc. for a Conditional Use Permit Application.

CUP #22-02, Project Zebra
FINDINGS, CONCLUSIONS, AND
RECOMMENDATION

I. APPLICATION SUMMARY AND RECOMMENDATIONS

Proposal: The request facilitates the relocation of an existing Lynden business from the industrial area near Main and Depot Streets to the west Lynden industrial area. Specifically, the request is for a Conditional Use Permit to allow food processing to occur within the City's Industrial Business Zone (IBZ). The application details construction of a 194,250 square foot seafood processing facility with associated truck access, employee parking, and utility infrastructure. The proposal also includes a request to build an additional 5 feet of building height for the freezer portion of the structure. This would result in a maximum height of 50-feet rather than 45 as permitted outright by code. Additionally, the facility may expand an additional 74,000 square feet as shown within the application.

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

II. PRELIMINARY INFORMATION

Applicant: Tony Freeland, Freeland and Associates, Inc.

Property Owner: Chill Build Lynden III, LLC

Property Location: 603 Curt Maberry Road, Lynden WA

Parcel Number: 400221-416131

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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:	September 13, 2022
Notice of Application:	October 12, 2022
Notice of SEPA determination:	November 2, 2022
Notice of Hearing:	October 12, 2022
Comment Period Ending:	October 26, 2022

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 18 Subdivisions
- 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 19.49, Conditional Use Permits
 - LMC Chapter 19.49.020, Standards and Criteria for Granting a Conditional Use Permit
 - LMC Chapter 19.49.040 Special Conditions for the Approval of a Conditional Use Permit within the West Lynden Sub Area.
- International Building Code
- City of Lynden Manual for Engineering Design and Development Standards
- RCW 197-11-340(2)

III. PROJECT DESCRIPTION

A seafood processing facility, currently located within the central industrial code of the City is proposing to relocate to the west Lynden industrial area. The relocation will allow this company to modernize and expand their current operation.

The request is for a Conditional Use Permit (CUP) to allow food processing to occur within the City's Industrial Business Zone (IBZ). Specifically, the construction of a 194,250 square foot seafood processing facility with associated truck access, employee parking, and utility infrastructure. In the future the facility may grow to include an additional 74,000 square feet as shown within the application. Cold storage, a component of the application is permitted within the IBZ but the food processing aspect requires additional review through the CUP process.

The proposal also includes a request to build the freezer portion of the building to a maximum of 50-feet in height. Buildings in this zoning category are permitted to reach heights of 45 feet and most of the building will be within this height limitation with the exception of the freezer portion of the facility. Similar requests for additional height have been granted to Preferred Freezer and Alliance Freeze Dry, as well as on two structures for Darigold on Depot Road. For reference the Darigold tower at Main and Depot is 145 feet tall.

IV. PUBLIC NOTICE AND COMMENT

Notice of Application: Formal legal notice for this application was published in the Lynden Tribune on October 12, 2022

Notice of SEPA determination: Formal notice of the SEPA Determination (MDNS) was published in the Lynden Tribune on November 2, 2022 and mailed to neighbors within 300 ft of the property. The comment period for the SEPA determination expired on November 16, 2022.

Public Comment Received:

Comments specific to the CUP application for food processing: None at this time.

The City received comments regarding the environmental review and SEPA determination (MDNS) for this proposal. They are summarized below:

Whatcom County: Expressed concerns about traffic impacts of the proposal to nearby County roads and intersections (Birch Bay Lynden Road and Berthusen Road). The

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applicant is currently working with Transpo to produce a traffic impact assessment report that will identify any deficiencies to the local transportation system that would result from this proposal.

Northwest Clean Air Agency: Requested that the applicant confirm registration and clean air permit requirements for this proposal. Applicant will secure any required permits prior to construction.

Lummi Tribe: Reiterated the SEPA condition of having appropriate Inadvertent Discovery Protocol in place prior to ground disturbing activity.

Glen Tromp: The property owner to the south, Glen Tromp, has visited City Hall and met with Planning and Public Works staff. He requested information about the subject property's stormwater plans as it relates to potential impacts to his property.

V. ANALYSIS AND CONSISTENCY WITH REGULATIONS

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.*

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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.*
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.*
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.*
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.*
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.*
7. *The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance.*
8. *The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan.*

VI. TECHNICAL REVIEW COMMITTEE COMMENTS

Planning and Development Department

1. *Landscape Buffer and Screening:* 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

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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 has noted this requirement. Detailed planting plans will be required within the civil plan set and at the time of building permit.

2. *Landscaped Entrance:* Industrial properties must include entrance landscaping. This would be applied to the site entrance off of Curt Mayberry Drive. The current plan has noted this requirement. Detailed planting plans will be required within the civil plan set and at the time of building permit.
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.
4. *Building Height and Construction Methods:* The applicant has acknowledged that per International Building Code and Fire Code standards the building, as currently designed, shall not exceed 50 feet in height. Nearby industrial facilities have been granted additional height through the Conditional Use Process including Alliance Freeze Dry with permissions to build to 74 feet in height. The property is surrounded by industrial properties within the City limits. Residential structures outside of the City limits are more than 1000 feet away from the proposed building.
5. *Screening of Condenser Units:* 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.
6. *Building Finish:* Applicant has indicated that the building’s exterior will consist of industrial standard high quality building material, white insulated metal panels.
7. *Site Lighting:* 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. The site plan has indicated compliance with this recommendation.
8. *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,

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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.

Public Works Department

1. *Access Points:* Be advised, if implemented, emergency access locations which are gated for day-to-day use must be approved by Public Works and the Fire Chief. Access to these gated entrances must be coordinated with the Lynden Fire Department.
2. *Transportation:* **Be advised:** Alderwood St dedication and frontage improvements are required to a ¾ street standard along the south edge of this parcel. All public improvements must be constructed to the standards as noted in the current City of Lynden Manual for Engineering Design and Development Standards. A full engineered traffic study is required for this proposal, prior to the approval of future building permits.

Staff note: Stormwater planning does not relate specifically to the Conditional Use Permit for food processing as it is required based on the development of the site regardless of the use requested. However, the following has been included to provide additional information to the reviewing bodies.

3. *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.
4. *Stormwater Planning:* The proponent has submitted a Preliminary Stormwater Design Memo, written by Freeland and Associates and dated October 21, 2022. The memo identifies the property soils, the project details, and proposes Plan A (preferred) and Plan B for managing stormwater.
 - a. Plan A is conveyance of stormwater to the City's West Lynden Regional Stormwater Pond. Applicant must provide proof of available pipe conveyance, pond capacity and adequate allowance for this parcel's use of that capacity prior to approval of building permits.

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- b. Plan B, proposed only if applicant is not able to secure allocation to the Regional Pond, is basin diversion to the west of the parcel through existing infrastructure or with upgrades to existing infrastructure. The details of the proposed diversion will need to be approved prior to issuance of any building permit and must meet the requirements of the Dept of Ecology Stormwater Manual.
5. *Stormwater Planning*: This plan must be approved by the City of Lynden prior to final approval of the project plans. Additionally, applicant has acknowledged that groundwater is high in this area. A groundwater investigation shall be incorporated into this design. Please note that this drainage plan needs to address the existing 10-foot emergency overflow for Curt Maberry.
6. *Stormwater Pollution Prevention Plan*: The applicant has acknowledged that a final Stormwater Pollution Prevention Plan (SWPPP) (erosion control and sediment plan) must be included in the drainage plan and construction plans. This must be designed by a professional engineer and constructed in compliance with the Department of Ecology's Best Management Practices (including all known and reliable technologies) and the standards approved in the Manual for Engineering Design and Development Standards.
7. *Utilities – Water and Sanitary Sewer*: The applicant has acknowledged that water hookup fees and sanitary sewer fees shall be paid as established by City Code. If future structure increases/changes demand for water or sewer capacity, studies may be required to see if impacts to the City system require remediation. Applicant must demonstrate the capacity of the existing service line prior to water connection. Sewer discharge quantity and/or concentration studies may be required to see if impacts to the City system require remediation.
8. *Water Pressure*: Be advised, development may require a fire booster pump depending on system requirements.
9. *Sewer Discharge Study*: Prior to issuance of the building permit, a sewer discharge study to the city's system is required to verify impacts, treatment loads and pipe size. Be advised, this study will require 3rd party review.

Fire Department

1. *Permit Review*: The applicant has acknowledged 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.

2. *Fire Suppression System:* Be advised, buildings 50,000 square feet and larger require an ESFR (Early Suppression, Fast Response) pump system. For more detail, see Sections 910.2.1, 910.3.2 and 910.3.3 of the 2018 International Building Code.
3. *Hydrants:* The applicant has acknowledged that additional hydrants may need to be installed to meet required 300-foot clear access spacing between hydrants. Complete Fire review will occur at the time of building permit.

Parks Department – had no comments on this application.

VII. RECOMMENDATION

The proposed conditional use permit shall be consistent with the scope of the proposal as provided in Conditional Use Application #22-02. Any changes to the proposal may require additional review and approval by City staff and/or City Council. 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 recommends the approval of the 194,250 square foot seafood processing facility including the potential future addition of up to 74,000 square feet and granting a maximum building height of 50 feet subject to the following conditions meant to address potential impact of the processing use:

- 1) **Prior to issuance of the building permit, a sewer discharge study to the city’s system is required to verify impacts, treatment loads and pipe size. Be advised, this study will require 3rd party review.**
- 2) **Roof-mounted condenser units must be screened from view so that this mechanical equipment is not visible from public streets.**
- 3) **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.**