

July 7, 2014

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

**REPORT AND DECISION**

**Project:** Puget Sound Energy Shoreline Conditional Use, Shoreline Variance and Site Plan Review Permits

**File numbers:** SCUP13224, SVAR13224 and SPR13224

**Owner:** Puget Sound Energy  
PO Box 97034, PSE 9S  
Bellevue, WA 98009-0734

**Applicant:** Puget Sound Energy  
Barry Lombard, Project Manager  
PO Box 97034, PSE 9S  
Bellevue, WA 98009-0734

**Request:** Puget Sound Energy (PSE) is requesting to replace an existing 130 foot tall steel lattice tower with two 140 foot steel poles. To accommodate the increased height of the poles two existing wood poles will also be replaced. One pole is in the right-of-way adjacent to Reitan Road and the other in the right-of-way adjacent to SR-305.

**Location:** North of Reitan Road and east of SR-305, within the SW ¼ of Sec. 28, T. 26N., R. 2E., W.M.

**SEPA Review:** The City of Bainbridge Island determined that the project is exempt from SEPA review under WAC 197-11-800(23) as the repair and replacement a utility facility within an existing right-of-way or developed utility corridor.

---

**FINDINGS OF FACT**

**A. Site Characteristics**

1. Assessor's Record Information:
  - a. Tax Lot Number 4131-000-029-0209
  - b. Owners of record Puget Sound Energy

- c. Site size approximately 0.42 acres
- d. Land use Utility

2. TERRAIN:

Proceeding north from Reitan Road approximately 2/3 of the parcel is fairly level leading to a bluff overlooking Agate Pass. The existing transmission tower is located on the level portion of the lot. Moving north and west on the property toward Agate Pass the terrain abruptly becomes a steep slope with grades of 40-45% descending down to the beach. The slope is densely vegetated with trees and an understory consisting primarily of ferns and blackberry bushes.

3. SOILS:

A geotechnical report included with the application and prepared by Icicle Creek Engineers, Inc. (Exhibit 6) identifies two soil types on the project site: Glacial Till and Pre-Vashon Deposits.

4. SITE DEVELOPMENT:

The site contains an existing 130-foot tall transmission tower which will be removed. A dirt path to the west of the tower provides public access down to the beach. A wire fence east of the tower separates it from Reitan Road along the south property boundary.

5. ACCESS: Vehicular access to the site is from Reitan Road, immediately south of the property.

6. PUBLIC UTILITIES:

- a. Water – Not Applicable.
- b. Sewer – Not Applicable
- c. Storm drainage – Not Applicable

7. PUBLIC SERVICES:

- a. Police - Bainbridge Island Police Department.
- b. Fire - Bainbridge Island Fire District.
- c. Schools - Bainbridge Island School District.

8. EXISTING USE: Electrical transmission tower

9. SURROUNDING USES: The surrounding uses are all single-family residential.

10. EXISTING ZONING/SHORELINE MASTER PROGRAM DESIGNATIONS:

The site is zoned Residential, 1 Unit Per Acre (R-1). The City Shoreline Master Program designates the site a Semi-Rural environment.

11. SURROUNDING ZONING/SHORELINE MASTER PROGRAM DESIGNATIONS:

The surrounding vicinity is zoned R-0.4, R-1 and R-2. The City Shoreline Master Program designates all nearby waterfront parcels as Semi-Rural environments.

12. EXISTING COMPREHENSIVE PLAN DESIGNATION:

The City Comprehensive Plan Land Use Map designates the site as Open Space Residential, one residence per acre.

13. **SURROUNDING COMPREHENSIVE PLAN DESIGNATIONS:**

The City Comprehensive Plan Land Use Map designates the surrounding area as Open Space Residential, one residence per 1, 2 and 2.5 acres.

**B. Procedural History**

14. A pre-application conference was held on August 13, 2013, with a subsequent pre-application letter sent out August 30, 2013. A public participation meeting was held by PSE staff and City staff on September 24, 2013. Shoreline Conditional Use (SCUP13224) and Shoreline Variance (SVAR13224) applications were submitted October 9, 2013, and deemed complete on November 4, 2013. Notices of Application were issued on November 8, 2013, and February 21, 2014. The second notice reflected that an amendment to include a Site Plan Review Permit request (SPR13224) was filed on February 7, 2014. No public comments were received. An earlier MDNS was withdrawn and a SEPA exemption issued for the project on May 27, 2014. The public hearing on the applications was held on June 26, 2014.

15. The proposal to replace an existing 130 foot tall steel tower located on the north end of Bainbridge Island with two 140 foot tall steel poles requires shoreline conditional use, shoreline variance and site plan review permits. The existing tower on Bainbridge Island is 44 years old and is nearing the end of its lifespan. In addition to the two steel poles, two existing wood transmission poles will also be replaced.

16. The shoreline conditional use permit is required per Table 4-1 (Shoreline Use and Modification Activity Matrix) of the Shoreline Master Plan because the proposal includes new utility poles. The shoreline variance is to authorize a height for the new poles at 140 feet; the current shoreline regulations limit utility poles to a 30 foot height. The proposed height increase is to meet federal regulations regarding the separation between the transmission lines and the waterway beneath them. The site plan review allows the poles to exceed 100 feet in height pursuant to a recently adopted ordinance 2014-05, which amended BIMC section 18.09.030.F.2, Table 18.12.040 and section 18.36.030.251. This amendment authorizes poles taller than 100 feet based on a site plan review. The site plan review process was consolidated with the public hearing on the shoreline permits as provided by BIMC 2.16.170.

17. The tower replacement will coincide with another tower replacement on the north side of Agate Pass, within unincorporated Kitsap County. The tower on the Kitsap County side of Agate Pass and the tower on Bainbridge Island support the only transmission lines to Bainbridge Island, delivering power from the Kitsap Peninsula to Bainbridge Island. The transmission pole upgrades will ensure that PSE can continue to provide customers with reliable power during times of high energy usage or during outages on one of the lines.

**C. Regulatory Standards**

18. The provisions of BIMC 16.12.360 applicable to this shoreline variance and conditional use permit review are the following:

*B. Shoreline Variance. The purpose of a shoreline variance permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the master program,*

where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the Shoreline Management Act policies as stated in RCW [90.58.020](#) or its successor.

1. *Application.* An application for a shoreline variance shall be submitted on a form provided by the city. The application should be accompanied by maps, a completed environmental checklist, applicable fees, and any other information specified in the master program or requested by the director.

2. *Criteria for Granting Shoreline Variances.* Shoreline variance permits for development that will be located landward of the ordinary high water mark (OHWM), except within wetlands (marshes, bogs, or swamps) may be authorized provided the applicant can demonstrate all of the following:

a. *The strict requirements of the bulk, dimensional, or performance standards set forth in the master program preclude or significantly interfere with a reasonable economic use of the property not otherwise prohibited by the master program.*

b. *The hardship described above is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, natural features, and the application of the master program, and is not, for example, from deed restrictions or the applicant's own actions.*

c. *The design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.*

d. *The shoreline variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.*

e. *The public interest will suffer no substantial detrimental effect. (WAC [173-14-150\(2\)](#) or its successor.)*

3. *Applications for shoreline variance permits where the development authorized by the shoreline variance will be located either waterward of the ordinary high water mark (OHWM) or within marshes, bogs or swamps may be approved or approved with conditions or modifications subject to approval by Ecology, if the decision maker finds the applicant has demonstrated compliance with all of the following criteria as well as those stated in subsections B.2 and B.4 of this section:*

a. *The strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable economic use of the property not otherwise prohibited by the master program.*

b. *The public rights of navigation and use of the shorelines will not be adversely*

*affected.*

*4. In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances should also remain consistent with the policies of Chapter [90.58](#) RCW or its successor and should not produce substantial adverse effects to the shoreline environment.*

*C. Conditional Uses. The purpose of a shoreline conditional use permit is to allow greater flexibility in applying the use regulations of the master program in a manner consistent with the policies of RCW [90.58.020](#), or its successor; provided, that shoreline conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of state policy enumerated in RCW [90.58.020](#) or its successor. In authorizing a conditional use, special conditions may be attached to the permit by the city or the State Department of Ecology to prevent undesirable effects of the proposed use. Uses which are specifically prohibited by the master program may not be authorized with approval of a shoreline conditional use permit.*

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

*a. The proposed use will be consistent with the policies of RCW [90.58.020](#) or its successor and the policies of the master program.*

*b. The proposed use will not interfere with the normal public use of the public shorelines.*

*c. The proposed use of the site and design of the project will be compatible with other permitted uses within the area.*

*d. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.*

*e. The public interest suffers no substantial detrimental effect. (WAC [173-14-140\(1\)](#) or its successor.)*

*f. The proposed use is consistent with the provisions of the zoning ordinance (BIMC Title 18) and the comprehensive plan (Ordinance No. 94-21).*

19. As detailed in the staff report, the PSE proposal raises no significance issues with respect to compliance with the City's Comprehensive Plan policies, shoreline policies and regulations, or zoning regulations. The proposed PSE project simply replaces and upgrades an existing essential utility structure. The site is already dedicated to the utility use. A steep slope critical area lying on the north side of the parcel will be protected by a buffer deemed adequate by the site's geotechnical study. No new offsite impacts will be generated. The new steel poles will be colored to blend into the surrounding environment. The findings of policy and regulatory compliance listed at pages 6 through 10 of the Department of Planning and Community Development staff report are thus determined to be accurate

and sufficient and are adopted herein by reference.

20. The proposed poles will not interfere with the public use of the shorelines. A dirt trail exists on the property connecting Reitan Road down to the shoreline. PSE has no plans to remove the trail but it will be temporarily closed during construction. Once construction is completed, the trail will be reopened for public use.

21. The continuation of a reasonable, essential and publicly beneficial use of the property would be precluded if a variance for this project were not approved because the transmission lines would become incapable of meeting current federal regulations imposing a minimum clearance requirement above a navigable waterway. Based on the federal regulations the two new steel poles must be 10 feet higher (140 feet) than the existing pole (130 feet). The height of the new poles is not the consequence of a deed restriction or the owner's own actions and is the minimum required to meet federal regulations for transmission lines over a waterway. Approval of this project will promote the public interest by continuing to provide Bainbridge Island with adequate and reliable electrical service.

22. As indicated by the neighborhood testimony offered at the public hearing, questions regarding the avoidance of adverse effects to adjacent residential properties relate primarily to the project construction phase. Reitan Road is a rather basic rural street that begins at its intersection on the east side of SR 305 and loops north under the Agate Pass Bridge following the shoreline until it reaches a dead-end. Most of the homes lie beyond the PSE site. So construction closures will cut these homes off from their sole road access. Because moving the pole towers onto the site and raising them with cranes could cause some 25 closures of Reitan Road lasting from 45 minutes to a few hours each, construction road closures potentially present a major inconvenience to local residents.

23. At the very least Reitan Road residents should be informed in advance when road closures are expected to occur so that they can make necessary adjustments to their transportation plans for getting to and from their homes. PSE stated that it will investigate obtaining access to an undeveloped field lying between the construction site and SR 305 as a potential temporary parking facility for use of Reitan Road residents. A work plan meeting between PSE and its primary contractor, Telco, is slated for July 8<sup>th</sup>, 2012. A condition added to the project approval will require PSE to provide Reitan residents with a road closure schedule and a procedure for receiving updated closure information. The City's right-of-way permit process will address PSE's duty to repair any damage caused to Reitan Road during project construction.

24. BIMC 2.16.040.E states the decisional criteria for approval of a site plan review permit:

*1. The site plan and design is in conformance with applicable code provisions and development standards of the applicable zoning district, unless a standard has been modified as a housing design demonstration project pursuant to BIMC [2.16.020.Q](#);*

*2. The locations of the buildings and structures, open spaces, landscaping, pedestrian, bicycle and vehicular circulation systems are adequate, safe, efficient and in conformance with the nonmotorized transportation plan;*

*3. The Kitsap County health district has determined that the site plan and design meets the*

*following decision criteria:*

*a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system.*

*b. If the health district recommends approval of the application with respect to those items in subsection E.3.a of this section, the health district shall so advise the director.*

*c. If the health district recommends disapproval of the application, it shall provide a written explanation to the director.*

*4. The city engineer has determined that the site plan and design meets the following decision criteria:*

*a. The site plan and design conforms to regulations concerning drainage in Chapters [15.20](#) and [15.21](#) BIMC; and*

*b. The site plan and design will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and*

*c. The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties; and*

*d. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; and*

*e. If the site will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the site, and the applicable service(s) can be made available at the site; and*

*f. The site plan and design conforms to the “City of Bainbridge Island Engineering Design and Development Standards Manual,” unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title [18](#).*

*5. The site plan and design is consistent with all applicable design guidelines in BIMC Title [18](#), unless strict adherence to a guideline has been modified as a housing design demonstration project pursuant to BIMC [2.16.020.Q](#);*

*6. No harmful or unhealthful conditions are likely to result from the proposed site plan;*

*7. The site plan and design is in conformance with the comprehensive plan and other applicable adopted community plans;*

*8. Any property subject to site plan and design review that contains a critical area or buffer, as*

*defined in Chapter [16.20](#) BIMC, conforms to all requirements of that chapter;*

*9. Any property subject to site plan and design review that is within shoreline jurisdiction, as defined in Chapter [16.12](#) BIMC, conforms to all requirements of that chapter;*

*10. If the applicant is providing privately owned open space and is requesting credit against dedications for park and recreation facilities required by BIMC [17.20.020.C](#), the requirements of BIMC [17.20.020.D](#) have been met;*

*11. The site plan and design has been prepared consistent with the purpose of the site design review process and open space goals;*

*12. For applications in the B/I zoning district, the site plan and development proposal include means to integrate and re-use on-site storm water as site amenities.*

25. To the limited extent that these criteria apply to review of a utility structure, they have been adequately discussed above. The proposed project will replace an existing transmission tower with two steel poles near the footprint for the current tower. Disturbance to the site will be relatively minor. The above-recited findings are adopted herein as sufficient for purposes of site plan review.

## **CONCLUSIONS**

1. The Hearing Examiner has jurisdiction over this shoreline permit application proceeding. Applicable notice requirements have been met.

2. The proposed use is consistent with the policies of RCW 90.58.020 and the City's Shorelines Master Program. As conditioned, the proposal meets the requirements of BIMC 16.12.380 and WAC Chapter 173-27 for issuance of a shoreline variance and conditional use permits. It also meets the requirements for site plan review approval pursuant to BIMC 2.16.040.E.

3. The proposed use will not interfere with normal public use of the shorelines and will be compatible with other permitted uses in the areas. It will cause no long-term or significant adverse effects to the shoreline environment nor impose a detrimental effect on the public interest. The proposal is consistent with the City's zoning ordinance and Comprehensive Plan.

## **DECISION**

The Shoreline Variance, Shoreline Conditional Use and zoning Site Plan Review permit applications of Puget Sound Energy (file nos. SCUP13224, SVAR13224 and SPR13224) are APPROVED, subject to the following conditions:

1. Puget Sound Energy shall have an archeologist on site for monitoring during ground disturbing activities. At the conclusion of the project the archeologist shall provide a monitoring report to the Suquamish Tribe. Work shall immediately stop and the Department of Planning and Community Development and the Washington Department of Archaeology and Historic Preservation shall be immediately notified if any historical or archaeological artifacts are uncovered during excavation or construction.

Construction shall only continue thereafter in compliance with the applicable provisions of law.

2. Once the new transmission poles are installed, as-built drawings shall be submitted to the Department of Planning and Community Development.
3. A right-of-way permit shall be secured prior to working at the site. The right-of-way permit shall include provisions for temporary road closures and potential repairs to Reitan Road, if needed due to impacts from construction equipment, following completion of construction activities.
4. The installation of the poles shall follow the geotechnical engineer's recommendations. Once installed, PSE shall provide the Department of Planning and Community Development with documentation that the pole construction and installation followed the geotechnical engineer's recommendations.
5. Within 90 days of completion of the project, PSE shall provide the Department of Planning and Community Development for review and approval a replanting plan for those disturbed areas on the site. The plan shall also include the timing for installing the proposed landscaping.
6. The proposed development shall substantially conform to the site plans date stamped February 19, 2014. Note: The color of the poles shall be weathered steel based on community input.
7. At least seven days prior to commencing construction activities PSE shall provide to residents on Reitan Road a schedule for anticipated road closures. Changes to the schedule shall be communicated by PSE to the residents at least 48 hours before the start of any closure to be altered. PSE shall provide to Reitan Road residents the telephone number of a contact person to whom closure inquiries can be directed.

ORDERED July 7, 2014.

/s/Stafford L. Smith  
Stafford L. Smith, Hearing Examiner  
City of Bainbridge Island

The 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 decisional authority for Shoreline Variance and Conditional Use applications. Within eight days of the City's decision on the application, the application packet will be forwarded to the Department of Ecology. The Department of Ecology shall approve, approve with conditions, or deny the application within 30 days.)

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