



**PLANNING COMMISSION REGULAR MEETING
THURSDAY, AUGUST 22, 2024**

BAINBRIDGE ISLAND CITY HALL
COUNCIL CHAMBERS
280 MADISON AVENUE N.
BAINBRIDGE ISLAND, WASHINGTON

AND

ZOOM WEBINAR
[HTTPS://BAINBRIDGEWA.ZOOM.US/J/81285913438](https://bainbridgewa.zoom.us/j/81285913438)
OR TELEPHONE: US: +1 253 205 0468
WEBINAR ID: 812 8591 3438

AGENDA

1. **CALL TO ORDER/LAND ACKNOWLEDGMENT/AGENDA REVIEW - 6:00 PM**
We would like to begin by acknowledging that the land on which we gather is within the ancestral territory of the Suquamish, "People of Clear Salt Water." Expert fishermen, canoe builders and basket weavers, the Suquamish live in harmony with the lands and waterways along Washington's Central Salish Sea as they have for thousands of years. Here, the Suquamish live and protect the land and waters of their ancestors for future generations as promised by the Point Elliot Treaty of 1855.
2. **PLANNING COMMISSION MEETING MINUTES - 6:05 PM**
Review and approve meeting minutes.
 - 2.a **Minutes** 5 Minutes
[Minutes - Planning Commission 07252024.pdf](#)
3. **PUBLIC COMMENT - 6:10 PM**
 - 3.a **Public Comment** 10 Minutes
[Instructions for Providing Public Comment at Hybrid Meetings 20240709.pdf](#)
4. **PUBLIC HEARING - 6:20 PM**
 - 4.a **(6:20) Hold a Public Hearing for Ordinance 2024-21 prohibiting crematoria in all zoning districts.** 30 Minutes
[Crematorium Memo 07192024](#)

4.b (6:50) Hold Public Hearing on Puget Sound Energy (PSE) Code Amendment Requests and Draft Ordinance No. 2024-04 45 Minutes

[Staff Report_Ordinance No. 2024-04.pdf](#)

[DRAFT Ordinance No. 2024-04 Utility Regulations_7.3.2024.pdf](#)

[PSE_UPDATED Proposed Code Amendment_BIMC2.16.020_8.06.2024.pdf](#)

[PSE Submittal_Bainbridge Code Amendment Analysis.pdf](#)

[PSE Submittal_Bainbridge Island Code Amendment Best Available Science Review.pdf](#)

[PSE Submittal_Code Amendment Narrative_3.21.24.pdf](#)

[Public Comment Recieved Prior to 8.15.2024.pdf](#)

5. PLANNING DIRECTOR'S REPORT - 7:35 PM

6. FOR THE GOOD OF THE ORDER - 7:40 PM

7. ADJOURNMENT - 7:45 PM

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #2 - Manage the water resources of the Island to protect, restore and maintain their ecological and hydrological functions and to ensure clean and sufficient groundwater for future generations.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



Planning Commission meetings are wheelchair accessible. Assisted listening devices are available in Council Chambers. If you require additional ADA accommodations, please contact the Planning & Community Development Department at (206) 780-3750 or pcd@bainbridgewa.gov by noon on the day preceding the meeting.

Public comment may be limited to allow time for the Commissioners to deliberate. To provide additional public comment, email your comment to pcd@bainbridgewa.gov or mail it to Planning and Community Development, 280 Madison Avenue North, Bainbridge Island, WA 98110.



CITY OF
BAINBRIDGE ISLAND

Planning Commission Regular Meeting Agenda Bill

MEETING DATE: August 22, 2024

ESTIMATED TIME: 5 Minutes

AGENDA ITEM: Minutes

AGENDA CATEGORY: Minutes

PROPOSED BY: Renee Argetsinger

**PREVIOUS PLANNING COMMISSION
REVIEW DATE(S):**

PREVIOUS COUCIL REVIEW DATE(S):

RECOMMENDED MOTION:

I move to approve the July 25, 2024, minutes as presented.

SUMMARY:

BACKGROUND:

ATTACHMENTS:



Planning Commission Regular Meeting July 25, 2024

Meeting Minutes

1) **CALL TO ORDER/LAND ACKNOWLEDGMENT/AGENDA REVIEW**

Vice Chair Sarah Blossom called the meeting to order at 6:02 PM and read the Land Acknowledgement. Commissioner Benjamin Deines noted a Conflict of Interest with the Wing Point Golf & Country Club Public Participation Meeting and said he would recuse himself from that portion of the meeting. Present at the meeting were Commissioners Blossom, Schaab, Preudhomme, Garcia, and Deines. Excused were Commissioners Birtley and Sullivan. Staff present were Planning Manager - HB Harper, and City Planner - Auburn Lovett. City Council Liaison - Ashley Mathews joined the meeting in progress, via Zoom.

2) **PLANNING COMMISSION MEETING MINUTES**

2a. Minutes

[Cover Page](#)

[PC Minutes 06272024.pdf](#)

MOTION: I move to approve the June 27, 2024, meeting minutes with the correction to my surname on page 2, item 4.

Garcia / Deines - The motion passed unanimously, 5-0.

3) **PUBLIC COMMENT**

3a. Public Comment

[Cover Page](#)

[Instructions for Providing Public Comment at Hybrid Meetings 20240709.pdf](#)

Mr. Mike Kushler - Speaking about crematoria - spoke against it.

Ms. Lisa Macchio - speaking about crematoria, expressed concerns about regulations and the code.

Mr. Raphael Escandon - encourages the Planning Commission to evaluate the need for crematoria services.

4) **PUBLIC PARTICIPATION MEETING**

Wing Point Golf & Country Club Public Participation Meeting

[Cover Page](#)

[PLN52754_Pre-App Letter_1 \(4\).pdf](#)

[WPG_Site Plan-01-16-24 \(6\).pdf](#)

Vice-Chair Sarah Blossom opened the Public Participation Meeting (PPM), introduced Auburn Lovett, City Planner for the project, who provided a brief description of the project and introduced Charlie Wenzlau – Project Architect, who provided a detailed presentation of the project.

Public Comment on the Wing Point Golf & Country Club:

Mr. Steve Williams - expressed concerns about excessive noise from events hosted at the club.

Mr. Jeff D'Amico, General Manager - provided further details / enhancements to the project.

Mr. Robert Eagan - expressed concerns re: noise from the driving range.

Ms. Lisa Macchio - offered comments that would make the facility more environmentally friendly.

Discussion Only.

Vice Chair Sarah Blossom closed the PPM at 6:44 PM.

5) **NEW BUSINESS**

5a. [Discuss SB 5290 Code Amendments](#)

[Cover Page](#)

[SB 5290 07192024.pptx](#)

Emily Romanenko with OMW Law, presented information on SB5290.

Discussion Only.

5b. [Discuss Crematoria Policy Options and Set Public Hearing.](#)

[Cover Page](#)

[Crematorium Memo 07192024](#)

Additional Public Comment Received:

Mr. Mike Bonoff - recommended rejecting the project as it's incompatible with the area and would further pollute the air.

Mr. Tim Dinan, owner of the Cook Family Funeral Home - spoke in favor of the project.

Planning Manager, HB Harper, presented information and a timeline on the issue.

MOTION: I move to schedule a public hearing on August 22, 2024, or the next available agenda, on an ordinance implementing the staff recommendation to prohibit crematoria on Bainbridge Island.

Garcia / Preudhomme: The motion passed unanimously, 5-0.

MOTION: I move to request that staff prepare information for the upcoming public hearing on crematoria, to research with Puget Sound air quality regulatory body and with the City Attorney, if that's appropriate, as to whether we can create a regulation specific to point-source pollution, rather than addressing it through the use.

Deines / Schaab: The motion passed unanimously, 5-0.

6) **UNFINISHED BUSINESS**

[Motion to move the Public Hearing for PSE's Legislative Review of Land Use Regulations application.](#)

[Cover Page](#)

MOTION: I motion to move the Public Hearing for PSE's Legislative Review of Land Use Regulations application and proposed Ordinance 2024-04, that was previously scheduled for the August 8th meeting, to the August 22, 2024, Planning Commission meeting, or the next available agenda thereafter.

Garcia / Schaab: The motion passed unanimously, 5-0.

7) **PLANNING DIRECTOR'S REPORT**

Planning Manager – HB Harper provided information on upcoming events for the Planning Commission.

8) **FOR THE GOOD OF THE ORDER**

No discussion.

9) **ADJOURNMENT**

Vice-Chair Blossom adjourned the meeting at 8:24 PM.

Sarah Blossom, Acting Chair

Renee Argetsinger, Clerk to the Planning Commission

DRAFT



CITY OF
BAINBRIDGE ISLAND

Planning Commission Regular Meeting Agenda Bill

MEETING DATE: August 22, 2024

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: Public Comment

AGENDA CATEGORY: Discussion

PROPOSED BY: Renee Argetsinger

**PREVIOUS PLANNING COMMISSION
REVIEW DATE(S):**

PREVIOUS COUCIL REVIEW DATE(S):

RECOMMENDED MOTION:
Instructions for Providing Public Comment.

SUMMARY:

BACKGROUND:

ATTACHMENTS:



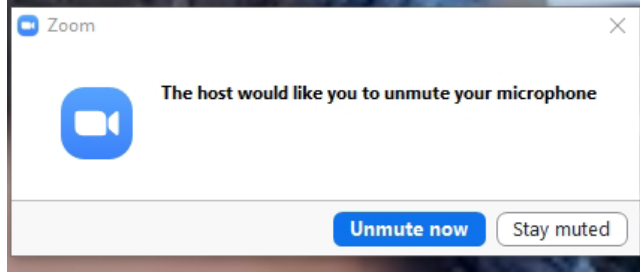
PLANNING AND COMMUNITY DEVELOPMENT

Members of the public are encouraged to submit written public comment to the Planning Commission at any time by emailing Commissioners directly or sending comments to pcd@bainbridgewa.gov and City staff will forward your comment directly to Planning Commissioners on your behalf. Members of the public who wish to provide public comment may attend the meeting in Council Chambers or may participate remotely by following the instructions outlined below. If you are attending in-person, please sign up to speak on the sign-in sheet by the Chamber doors. The Chair or Acting Chair will call the people signed up on the sign-in sheet in Council Chambers first, and speakers will have three minutes to speak from the podium. Following the in-person comment, people who have notified the City in advance will be called on next, provided that the remote commenter displays their true name and has their camera turned on to show their true uncovered face while delivering their comments. A timer on the screen will indicate when 3 minutes have elapsed. Guidelines for public comment are also attached.

Instructions for Providing Public Comment Remotely

1. Contact the City at cityadmin@brainbridgewa.gov no later than Noon of the day of the meeting. State which meeting you would like to make a public comment and provide your true name.
IMPORTANT: No remote public comments will be accepted without first registering at the email address above.
2. Join the Zoom webinar by following the link posted on the agenda and on the City calendar. Sign into Zoom. You will need to enter and display your true name on Zoom and your camera needs to be enabled to show your true uncovered face while delivering comments.
3. The Chair will indicate when it is time for public comment.
4. Attendee indicates desire to speak by clicking on “Raise Hand” option at the bottom of the screen.
If you are calling in by phone and would like to make a comment, *6 mute/unmute
*9 raise/lower hand to be called on to speak.

5. Attendee clicks button “Unmute now” after they are called to speak by the Chair.



6. Attendee will appear on screen with other panelists.

7. Attendee provides comment.

8. A timer on the screen will track your time.

9. Stop speaking when the timer reaches the 3-minute mark.

10. Attendee is returned to attendee group, and microphone is muted.

11. Public comment is simply received by the Planning Commission, with no response.

Guidelines for Public Comment

These guidelines were established for and approved by the City Council and apply to all advisory boards, committees and commissions of the City Council.

Excerpts from the Governance Manual regarding public comment:

5.6 Respect and Decorum

It is the duty of the Presiding Officer and Councilmembers to maintain dignity and respect for their offices, City staff, and the public. While the Council is in session, the Councilmembers shall preserve civility, order and decorum. No member of the public shall, by conversation or otherwise, delay, disrupt, or interrupt the proceedings of the Council, nor engage in any of the prohibited behavior described below. Councilmembers and the public shall obey the proper orders of the Presiding Officer of the meeting.

5.6.1 Orderly Behavior and Civility in Remarks

Any person disrupting the business of the Council, either while addressing the Council or attending the proceedings, shall be asked to leave, or be removed from the meeting. Continued disruptions may result in a point of order by the Presiding Officer or a Councilmember pursuant to the Council’s parliamentary rules, or a recess, forced removal, or adjournment as described elsewhere in this manual. Disruptive behavior includes, but is not limited to, the following:

- a) Speaking without being recognized by the Presiding Officer.

- b) Continuing to speak after the allotted time has expired.
- c) Speaking on an item at a time not designated for discussion by the public of that item, such as speaking on a quasi-judicial item at a time other than during a public hearing or closed record proceeding on the matter.
- d) Throwing objects.
- e) Speaking on an issue that is not a public topic, in violation of Section 9.12.2.
- f) Speaking in favor of or in opposition to a ballot proposition or a candidate for public office, provided, that public comment is allowed when the City Council is considering taking a collective position in favor of or in opposition to a ballot proposition as authorized in RCW 42.17A.555.
- g) Impersonating a City Councilmember or a member of the City staff.
- h) Shouting or otherwise engaging in loud or boisterous behavior.
- i) Continuing to make repetitive remarks after being requested not to do so by the Presiding Officer or a majority of the City Council.
- j) Attempting to engage the audience rather than the Council, e.g., asking audience members to stand, clap, boo or otherwise express collective support or opposition to any matter.
- k) Booing, hissing, or otherwise disrupting the comments of another speaker.
- l) Using racial slurs or other slurs directed at the color, creed, religion, ancestry, gender, sexual orientation, gender expression or identity, national origin, citizenship or immigration status, or mental, physical, or sensory disability of any individual or group, under circumstances where such words constitute “fighting words” under constitutional law.
- m) Refusing to modify conduct after being advised by the Presiding Officer that the conduct is disrupting the meeting or disobeying any other lawful order of the Presiding Officer or a majority of the City Council.

5.6.2 Permission Required to Address the Council

Persons other than Councilmembers and Administration shall be permitted to address the Council only upon recognition and introduction by the Presiding Officer of the meeting.

9.12.2 Subjects – Whether or Not on the Current Agenda

Public comments received during the public comment period may be on any public topic, whether or not on the agenda, but a comment on the subject that is covered by a public hearing at that meeting must be made during the period of the public hearing. All public comments shall be made consistent with Section 5.6.

9.12.3 Use of Microphones

Comments shall be made directly into the microphone, as it is necessary for the public record and for the audience to hear all proceedings. No comments shall be made from any other location.



CITY OF
BAINBRIDGE ISLAND

Planning Commission Regular Meeting Agenda Bill

MEETING DATE: August 22, 2024

ESTIMATED TIME: 30 Minutes

AGENDA ITEM: (6:20) Hold a Public Hearing for Ordinance 2024-21 prohibiting crematoria in all zoning districts.

AGENDA CATEGORY: Ordinance

PROPOSED BY: HB Harper

PREVIOUS PLANNING COMMISSION

REVIEW DATE(S): July 25, 2024

PREVIOUS COUCIL REVIEW DATE(S): April 23, 2024, May 28, 2024, June 25, 2024

RECOMMENDED MOTION:

MOTION: I move to adopt Ordinance 2024-21 prohibiting crematoria in all zoning districts.

SUMMARY:

At this time, the City does not have any zoning regulations specific to crematoria. The City has until October to consider and adopt crematoria-specific regulations per the adopted moratorium.

Staff collected and reviewed public comment, conducted preliminary research and carried out a review of potential options for locating, constructing and operating a crematorium on Bainbridge Island. Staff preliminarily analyzed three alternatives for addressing crematoria in the City's development regulations:

prohibiting, allowing crematoria in Business/Industrial zones with additional use-specific standards, and regulating crematoria as Kitsap County does by allowing as a conditional use in the R-0.4, R-1, R-2 and commercial zones, with crematoria structures required to have a 200-foot setback from residentially zoned properties.

A majority of public concern with the siting, construction and operation of a crematorium on Bainbridge Island has focused on potential human health impacts from crematorium air emissions during combustion. Other concerns included the reliance on propane and increased greenhouse gas emissions and to a lesser extent, the diminishment of property values due to becoming in proximity of a crematorium. Some public comment in support of the siting, construction and operation of a crematorium on Bainbridge Island stated that there was insufficient information on any potential negative air quality of human health impacts and a desire to have cremation services available on Bainbridge Island rather than using off-island cremation services elsewhere in Kitsap and King Counties.

Staff analysis shows the Comprehensive Plan to be unsupportive of a crematorium being located in any zoning district in the City. Staff recommends prohibiting the siting, construction and operation of crematorium anywhere on Bainbridge Island.

BACKGROUND: The City Council adopted Ordinance No. 2024-11 on April 23, 2024, imposing a six-month moratorium on the acceptance and processing of development permit applications related to crematoria, and held a public hearing as required by law on May 28, 2024. On June 25, 2024, the City Council referred the topic to the Planning Commission. The Planning Commission discussed the topic at a study session on July 25, 2024, and moved to set a public hearing for August 22, 2024.

ATTACHMENTS:



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Date: July 12, 2024
To: Planning Commission and City Council
From: HB Harper, Planning Manager and Patricia Charnas, Planning Director
Re: Crematoria

Background

The City Council adopted a six-month moratorium on the acceptance and processing of development permit applications related to crematoria on April 23, 2024. The City does not have any zoning regulations specific to crematoria.

The City's Planning and Community Development department was contacted in late 2023 and early 2024 by the current owners/operators of the Cook Family Funeral Home. The Cook Family Funeral Home offers cremation, burial and memorial services for its clients. Cremation is via transportation to an off-site crematory. The current owners of the Cook Family Funeral home requested information about the permitting process to construct and operate a crematorium originally on the site of the Hillcrest cemetery.

During the six-month moratorium, staff has been collecting and reviewing public comment, conducting preliminary research and carrying out an initial review of potential options for locating, constructing and operating a crematorium on Bainbridge Island.

Policy Considerations

Crematoria Policy Alternatives

Staff preliminarily analyzed crematoria locations and regulations in nearby jurisdictions, as well as three policy alternatives for possible locations and regulations within Bainbridge Island:

1. to prohibit crematoria throughout Bainbridge Island;
2. to allow crematoria in the Business/Industrial zone, and consider additional use-specific standards for protecting air quality, screening, and/or an additional setback of 100 feet from residentially zoned properties; or
3. to regulate crematoria in the same manner as Kitsap County by allowing as a conditional use in the R-0.4, R-1, R-2 and commercial zones, with crematoria structures required to have a 200-foot setback from residentially zoned properties.

Crematoria in Other Kitsap County Jurisdictions

Crematoria in nearby jurisdictions include:

- Stone Chapel Poulsbo Mortuary - 22272 Foss Rd Ne, Poulsbo, WA 98370
- Pendleton-Gilchrest Funeral Home, 1151 Mitchell Ave, Port Orchard, WA 98366

- Bradley-Kosec Funeral Home & Crematory 1615 Parkside Dr, Port Townsend, WA 98368

Stone Chapel Poulsbo Mortuary is located in unincorporated Kitsap County (not within Poulsbo city limits) and is zoned Rural Residential and abuts zoned Rural Residential and Rural Industrial. Kitsap County's zoning regulations for crematoria are described below. (There is also a pet crematory in the commercial Gorst area of unincorporated Kitsap County.)

The Pendleton-Gilchrest Funeral Home is zoned Residential 4 and abuts Commercial Mixed Use, Urban Medium Residential and Civic and Institutional areas. In Port Orchard, new crematoria are permitted in commercial, industrial, and civic institutional zones. Therefore, it is likely that this facility predates the zoning and is therefore legally nonconforming.

Bradley-Kosec Funeral Home & Crematory is zoned General Commercial and directly abuts lots zoned Existing Park or Open Space, Public/Infrastructure, and Residential II. In Port Townsend, new crematoria are permitted in Public/Infrastructure zones. Again, it appears likely that this facility predates the zoning and is therefore legally nonconforming.

Kitsap County Regulations: Title 17 Zoning

Definitions and Zoning in Title 17 Zoning

Kitsap County defines Funeral Home as follows: "a building or part thereof used for human funeral services. Such building may contain space and facilities for (1) embalming and the performance of other services used in the preparation of the dead for burial; (2) the performance of autopsies and related surgical procedures; (3) the storage of caskets, funeral urns, and other related funeral supplies; (4) storage of funeral vehicles; and **(5) facilities for cremation**" (emphasis added).

Funeral Homes are allowed as a conditional use in all residential zones. Funeral homes are allowed as an Administrative Conditional Use Permit (no hearing required) or Conditional use in most Commercial zones as well, except Business Park. Finally, funeral homes are a conditional use in most designated Limited Areas of More Intense Rural Development.

Use Specific Standards:

Kitsap County requires that funeral homes meet the following use-specific standards:

- Use shall have its principal access on a county roadway.
- Ingress and egress shall be designed to minimize traffic congestion.
- The use shall provide required off-street parking spaces.
- No mortuary or crematorium in conjunction with a cemetery is permitted within two hundred feet of a lot in a residential zone.

Preliminary Impacts Analysis

Public Comments Regarding Impacts

A majority of public concern with the siting, construction and operation of a crematorium on Bainbridge Island is focused on potential human health impacts from crematorium air emissions during combustion. Other concerns included the reliance on propane and increased greenhouse gas emissions and to a lesser extent, the diminishment of property values due to becoming in proximity of a crematorium. Public comments in favor of the siting, construction and operation of

a crematorium on Bainbridge Island stated that there was insufficient information on any potential negative air quality or human health impacts and a desire to have cremation services available on Bainbridge Island rather than using off-island cremation services elsewhere in Kitsap and King Counties.

Staff has conducted preliminary research into the air quality and human health impacts to address public concerns, as well as a policy analysis related to the Comprehensive Plan and Climate Action Plan.

Preliminary Research Regarding Impacts from Crematory Emissions

The Puget Sound Clean Air Agency (PSCAA) is a special-purpose, regional government agency chartered by Washington State in 1967. PSCAA oversees King, Pierce, Snohomish and Kitsap Counties. Among its work and responsibilities, PSCAA implements a compliance and permitting process for stationary sources of air pollution. PSCAA ensures compliance with ambient air quality standards through permitting, inspections and enforcement.

Planning and Community Development staff spoke with the Puget Sound Clean Air Agency (PSCAA) regarding air quality permits and monitoring for crematoria. PSCAA has described their process to have crematoria operators apply for permits and to identify and monitor emissions. The principal air quality emissions concerns are aerosolized mercury and mercury-containing compounds, some volatile organic compounds, and other emissions with chlorinated biphenyls and transitional metal (including zinc, lead, manganese and zinc) which can but are not always associated with emissions at a crematorium.

Staff were informed about the ongoing permit process that a funeral home in the City of Everett is currently going through to obtain a permit for a new crematorium. Upon submittal of the permit application, PSCAA used a database to identify emissions estimates for Best Available Control Technologies. These estimates showed that emissions from the proposed crematorium would exceed PSCAA acceptable limits for Chromium, Cadmium, Mercury (elemental), Hydrochloric Acid, and two other dioxins. PSCAA then required the funeral home to perform modeling related to established health-based acceptable source impact levels (ASIL). This showed that the levels for the dioxins, Mercury, and Chromium would still exceed acceptable levels. As a result, they required the business to undergo a health impact assessment.

The health impact assessment determines the potential increase in lifetime cancer risk and other health effects for individuals exposed to higher levels of toxic air pollutants that would occur from operating a crematorium. The cancer and health risks are then compared to the maximum allowable limits set by PSCAA. The health impact assessment must be completed by a consultant and submitted to the Department of Ecology. After the review is complete, the Department of Ecology will report its findings and may recommend additional control conditions required for approval.

Should a crematorium move forward in Everett and be constructed, the facility has 180 days to perform an emissions test. This test will confirm the emissions from the facility are within the limits specified in the approved permits. This limit test is conducted only once. If the crematorium passes the emissions test, it will not be inspected for its emissions limits again unless a complaint is submitted to the PSCAA.

The PSCAA informed staff that if a permit is submitted for a new crematorium on Bainbridge Island, they predict that at minimum the business will need to perform ASIL modeling for the six toxins mentioned above.

Although the high heat levels associated with crematoria typically evaporate most toxins, mercury emissions occur from dental amalgam fillings. The emissions of mercury are subject to a 24-hour rolling limit, and if an individual has a large number of dental fillings, it is possible to exceed this.

Limitations on Further Impacts Analysis

While the above information is useful, staff cannot complete a full impacts analysis for all policy alternatives at this level of research. The information thus far provided by PSCAA and other typical channels of land use research (such as the Municipal Research Service Center), is insufficient to properly quantify the anticipated impacts on nearby properties under the land use scenarios described in Alternatives 2 and 3. For instance, there may be a combination of a certain height (of the stack causing the emissions) with a certain distance of setback that could be documented as mitigating the impacts to human health. However, significant further research would be required to properly assess this. The additional research would of necessity entail continuing to investigate and review written scientific research papers documenting human health and air quality measurements, assessing public health risk and reporting on best available mitigation controls and air quality monitoring and reporting techniques.

Staff capacity to perform further research is severely limited by lack of in-house expertise in the fields of air quality and public health, other mandates and commitments that must be fulfilled, and budgetary constraints.

Comprehensive Plan Analysis Including Climate Action Plan Climate Action Plan

The City of Bainbridge Island adopted a Climate Action Plan in November 2020. The adopted Climate Action Plan has goals, objectives and monitoring actions that commit city resources to actively lower greenhouse gas emissions (GHG) as a major climate change mitigation action. Similarly, the CAP states a goal to shift existing business and industrial GHG emissions away from fossil-based fuels. Crematoria ovens rely solely on propane. Without specific validation, it has been reported that a crematorium consumes on average 28 gallons of propane per corpse. While propane combustion delivers a more limited breadth of greenhouse gas emissions than gasoline or diesel, and the transport of corpses off-island would involve some GHG emissions as well, propane combustion produces carbon dioxide, some carbon monoxide, and water vapor, all of which add to GHG emissions.

The 2016 Comprehensive Plan

Climate mitigation and other actions appear in the Vision, Guiding Principles and as policies in the Land Use, Economic, Environment and Transportation chapters of the Comprehensive Plan. These policies speak to the need for GHG reductions, mitigation, and community engagement, which would not be supportive of a crematorium.

Adopted policies also call for supporting businesses that are compatible with community values (Policy EC 1.2). Adding a crematorium that relies solely on substantial quantities of propane for

its operations would not be compatible with community values related to climate action. Allowing crematoria would not promote business practices that protect the Island's natural beauty (EC-3).

Regarding business development generally, it does not appear that allowing crematoria would measurably add to the City meeting its employment target, growth of a more diverse workforce or add to local tax bases in any significant fashion (Goals EC-3, EC-7, EC-10).

Related specifically to Alternative 2, the Comprehensive Plan calls for the Business/Industrial zones to provide space for job creating enterprises (Goal EC-15). Allowing a crematorium in these zones would reduce the space available for businesses that provide more jobs.

Related specifically to Alternative 3, Policy LU 4.10 identifies the Conservation Area as appropriate for residential, recreational, agricultural, habitat and open space uses. Allowing a crematorium in the residential zones identified as Conservation Area would not be consistent with this policy, nor the general descriptions of the Conservation Area that occur throughout the Comprehensive Plan.

Adopted policies potentially supportive of allowing crematoria on the island include Policy HS 1.4, related to increasing emergency preparedness and Policy HS 2.1 related to programs that meet the basic needs of survival including access to emergency health care. These policies do not specifically mention crematoria, burial practices, or end of life care, but could be related to the issues raised by proponents, depending on the scale and type of disaster or emergency.

Comprehensive Plan Update

While the 2016 Comprehensive Plan is currently undergoing a periodic review and may be updated, no changes are anticipated that would pertain to this topic in such a way as to indicate more favorability for crematoria on Bainbridge Island. No comments received during scoping indicate a community interest in changing direction on the commitments related to climate change and GHG reductions. Comments were received regarding protecting the Conservation Area. Therefore, the analysis of the 2016 Comprehensive Plan analysis can be relied upon even as that version of the plan is being updated for the periodic review.

Conclusions and Staff Recommendation

Staff preliminarily analyzed three policy alternatives regarding the siting, construction and operation of a crematorium on Bainbridge Island:

1. to prohibit crematoria throughout Bainbridge Island;
2. to allow crematoria in the Business/Industrial zone, and consider additional use-specific standards for protecting air quality, screening, and/or an additional setback of 100 feet from residentially zoned properties;
3. to regulate crematoria in the same manner as Kitsap County by allowing as a conditional use in the R-0.4, R-1, R-2 and commercial zones, with crematoria structures required to have a 200-foot setback from residentially zoned properties.

A suitable staff recommendation for Planning Commission and ultimately City Council must be defensible and thoroughly researched. At this time, given the level of research already conducted, staff cannot fully quantify the impacts of Alternatives 2 and 3. Significant unidentified resources would be needed to thoroughly research the likely and anticipated impacts and

associated concerns of these two alternatives. With respect to the information provided here and based on a limited level of supporting research including an analysis of the Comprehensive Plan, staff do not find a compelling reason to conditionally permit crematoria as a new use.

It should be noted that extending the moratorium would not change the level of additional investigation and research that may still remain at an uncertain or unsatisfactory level and would not change the level or amount of staff resources available to devote time during an extended moratorium. Pre-existing commitments and mandates obligate existing staff resources well into and past 2025. The issues surrounding acceptable risk, the necessary research and reassurances that any staff proposal must attend to will not be resolved within the time of the existing moratorium nor within a moratorium extension.

Staff recommends prohibiting the siting, construction and operation of crematorium anywhere on Bainbridge Island.

ORDINANCE NO. 2024-21

AN ORDINANCE of the City of Bainbridge Island, Washington, amending BIMC 18.36.010 and BIMC Table 18.09.020 to define and prohibit crematoria in all zoning districts of the City; and terminating the moratorium imposed by Ordinance NO. 2024-11.

WHEREAS, crematoria are not defined in Section 18.36.010 of the Bainbridge Island Municipal Code (“BIMC”) and are not listed among the land uses addressed in BIMC 18.09.020; and

WHEREAS, on April 23, 2024, the Bainbridge Island City Council adopted Ordinance No. 2024-11, imposing a moratorium on the acceptance and processing of applications for crematoria for a period of six months to allow the City to determine if the use was appropriate for location in the zoning districts of the City and, if so, in which districts and under which conditions; and

WHEREAS, on June 25, 2024, the City Council directed the City Manager to direct staff to prepare materials for the Bainbridge Island Planning Commission to consider whether the use should be permitted in Bainbridge Island and under what regulations; and

WHEREAS, on July 19, 2024, the City Planning Director and Planning Manager issued a staff report for the Planning Commission and City Council on three alternatives relating to crematoria; and

WHEREAS, the Planning Director and the Planning Manager recommended that crematoria be prohibited in all zoning districts of the City based upon the inconsistency of crematoria with policies in the City’s Comprehensive Plan and Climate Action Plan, and based upon the potential impacts of crematoria on neighborhood character, air quality, and public health; and

WHEREAS, the Planning Commission studied the issue of crematoria at its meeting of July 25, 2024 and set a public hearing for August 22, 2024 on the alternatives presented in the staff report prepared by the Planning Director and Planning Manager; and

WHEREAS, the City Planning Director, acting as the City’s SEPA Responsible Official, issued a Determination of Nonsignificance for the crematoria alternatives on August 6, 2024, and

WHEREAS, the public hearing was held before the Planning Commission on August 22, 2024, and, after closing the public hearing, the Planning Commission accepted the recommendation of the Planning Director and Planning Manager and recommended to the City Council that this ordinance be adopted; and

WHEREAS, pursuant to RCW 36.70A.106, the City notified the Washington State Department of Commerce on August 2, 2024, of the City’s intent to adopt the regulations set forth in this ordinance; and

WHEREAS, the City Council considered the Planning Commission’s recommendation at the Council’s meeting of _____, 2024, which was more than sixty days after notification to the Department of Commerce, and determined to adopt the Commission’s recommendation; and

WHEREAS, Section 5 of Ordinance No. 2024-11 provides for the moratorium to be terminated upon adoption of permanent regulations relating to crematoria, such as those set forth in this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON DOES ORDAIN AS FOLLOWS:

Section 1. Rationale. The following is adopted as the City’s rationale for enacting the regulations set forth in this ordinance:

There exists on Bainbridge Island significant documented public concern related to potential human health impacts from crematorium air emissions during combustion. Recent modeling from a proposed new moratorium in a nearby jurisdiction showed emissions estimates that exceeded acceptable standards. Additional testing will be required for that facility, and potentially additional controls required for approval; however, even if a crematorium can be permitted through that process, there is only one actual test that is required of the facility after construction. An emission test from a constructed facility may confirm that emissions are within the limits specified in the approved permits, but such a test is only conducted once. A crematorium would not be inspected for its emissions limits again unless a complaint is submitted. These regulations do not give strong assurance that the public concerns related to human health impacts are unwarranted.

Other concerns include the reliance on propane and increased greenhouse gas emissions. The Climate Action Plan’s goals and objectives focused on shifting business greenhouse gas emissions away from fossil-based fuels do not support permitting a crematorium given that they rely solely on propane. Adopted policies in the Comprehensive Plan’s Economic Element call for supporting businesses that are compatible with community values (Policy EC 1.2); adding a crematorium that relies solely propane for its operations would not be compatible with community values related to climate action. Allowing crematoria would not promote business practices that protect the Island’s natural beauty, as is called for in Goal EC-3. Allowing crematoria would not measurably add to the City meeting its employment target, growth of a more diverse workforce or add to local tax bases in any significant fashion (Goals EC-3, EC-7, EC-10). In terms of land use, there are no Comprehensive Plan goals or policies that indicate any zoning districts appropriate for such a use. Policy LU 4.10 identifies the Conservation Area as appropriate for residential, recreational, agricultural, habitat and open space uses, and Goal EC-15 calls for the Business/Industrial zones to provide space for job creating enterprises. There does not exist in the Comprehensive Plan or other adopted plans any

compelling reason to permit crematoria, nor any particular policy support in favor of allowing crematoria anywhere on Bainbridge Island.

Section 2. Crematorium Defined. The following definition is added to BIMC 18.36.010:

“Crematorium” means a building or buildings, or other establishments at which bodies of the human dead are cremated.

Section 3. Crematoria Prohibited. The “Public and Institutional” Uses section of BIMC Table 18.09.020 is amended to prohibit crematoria in all zoning districts of the City and to read as set forth on Exhibit A to this ordinance.

Section 4. Termination of Moratorium. Upon the effective date of the permanent regulations set forth in this ordinance, the moratorium established by Ordinance No. 2024-11 is terminated.

Section 5. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Effective Date. This ordinance shall take effect and be in full force five (5) days after its passage and publication as required by law.

PASSED by the City Council this ____ day of _____, 2024.

APPROVED by the Mayor this ____ day of _____, 2024.

Joe Deets, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, MMC, City Clerk

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.



CITY OF
BAINBRIDGE ISLAND

Planning Commission Regular Meeting Agenda Bill

MEETING DATE: August 22, 2024

ESTIMATED TIME: 45 Minutes

AGENDA ITEM: (6:50) Hold Public Hearing on Puget Sound Energy (PSE) Code Amendment Requests and Draft Ordinance No. 2024-04

AGENDA CATEGORY: Review and Recommendation

PROPOSED BY: Jo Mendenhall

PREVIOUS PLANNING COMMISSION

REVIEW DATE(S): February 22, 2024, March 14, 2024, March 28, 2024, April 25, 2024, May 23, 2024, and June 27, 2024.

PREVIOUS COUCIL REVIEW DATE(S):

RECOMMENDED MOTION:

I move to recommend the City Council approve Ordinance 2024-04 Utility Regulations to amend Bainbridge Island Municipal Code (BIMC) Sections 16.20, 18.09, and 18.12, as proposed by staff.

SUMMARY:

The Planning Commission reviews and makes recommendations on Legislative Review of Land Use Regulations in accordance with Bainbridge Island Municipal Code (BIMC) 2.16.180. including holding a public hearing (2.16.180.D.2). Puget Sound Energy (PSE), the applicant, has applied for a Legislative Review of Land Use Regulations in support of their broad work plan to upgrade electrical transmission and distribution lines to better provide service to the residents of the City of Bainbridge Island. The application included a request for review of multiple sections of code that have presented permitting challenges for PSE projects, and the applicant provided materials documenting these challenges as well as proposed code amendment language. After multiple study sessions with the Planning Commission, staff prepared a draft ordinance with recommended code language addressing most, but not all, of PSE's request, with significant input from the Planning Commission.

Now, as part of the public hearing, staff will present on the process and draft ordinance, and PSE will present on their overall work program and projects. PSE will also present an updated proposed change to Bainbridge Island Municipal Code (BIMC) 2.16.020, regarding owner authorization. The Planning Commission is asked to accept and consider written and verbal comment, conduct deliberations and formulate a recommendation for City Council consideration and action.

BACKGROUND: The Puget Sound Energy (PSE) application for code amendments was first brought to the Planning Commission in February, 2024 where commissioners moved to separate out the various code amendment requests to be considered at several Planning Commission meetings. The March 14, 2024, discussion focused on amendments to aquifer recharge protection area designation requirements, the standards for regulated wetlands, and zoning setback and height

requirements. The March 28, 2024, discussion focused on the PSE-requested amendments regarding who can apply for permits. The April 25, 2024, presentation reviewed the entirety of all code amendment requests by PSE and discussed staff preliminary recommended code language. The May 23, 2024, discussion looked at a draft ordinance based on the previous conversations with the Planning Commission, staff recommendation, and PSE-requested changes and resulted in four motions for change. The June 27, 2024 meeting reviewed changes made to the ordinance based on the Planning Commission's motions from the May 23, 2024, discussion and moved to schedule the public hearing required by Bainbridge Island Municipal Code (BIMC) 2.16.180 for Legislative Review of Land Use Regulations.

ATTACHMENTS:



CITY OF
BAINBRIDGE ISLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

DATE: August 9, 2024
TO: Planning Commission
FROM: Joanne Mendenhall, Planner
SUBJECT: Puget Sound Energy (PSE) Code Amendment Requests PLN52234 -
Ordinance No. 2024-04 Utility Regulations

I. INTRODUCTION AND PROCESS

Puget Sound Energy (PSE) has several proposed projects to install, upgrade, and maintain PSE's infrastructure within the City of Bainbridge Island. These projects include installing a new transmission line, rebuilding an existing transmission line, and upgrading all three substations within the City. In preparation for these projects, PSE submitted an application for Legislative Review of Land Use Regulations under Bainbridge Island Municipal Code (BIMC) 2.16.180. The initial application was submitted April 20, 2022, with two amendment requests. However, through further conversations with city staff, several additional amendments were identified as necessary to support the intention of the applicant. PSE revised their application on February 6, 2024, to include five amendment requests for changes to BIMC 2.16 – Land Use Procedures, BIMC 16.20 – Critical Areas, and BIMC 18.12 – Dimensional Standards.

Applications for Legislative Review of Land Use Regulations are initially reviewed by Planning Commission with a public hearing held prior to making a recommendation to the City Council. The Planning Commission engaged in six study sessions regarding this application resulting in draft Ordinance 2024-04 Utility Regulations prior to public hearing. This staff report contains background information and analysis to aid the Planning Commission and City Council in their recommendation and decision, respectively.

APPLICATION HISTORY

Date:	Action:
April 20, 2022	Initial Application Submitted
April 28, 2022	Application deemed technically complete
May 6, 2022	Notice of Application and SEPA Comment Period
February 6, 2024	Revised Application Submitted
February 22, 2024	Planning Commission Study Session Introduction and overview of application
March 14, 2024	Planning Commission Study Session Focused discussion - BIMC 16.20 and BIMC 18.12
March 28, 2024	Planning Commission Study Session Focused discussion – BIMC 2.16
April 25, 2024	Planning Commission Study Session Preliminary staff recommendations
May 23, 2024	Planning Commission Study Session Draft Ordinance
June 16, 2024	Notice of Application on Ordinance No. 2024-04
June 27, 2024	Planning Commission Study Session on the Revised Draft Ordinance
July 3, 2024	SEPA Threshold Determination of Nonsignificance (DNS) on Ordinance No. 2024-04
July 7, 2024	Notice of Intent to Adopt Amendment sent to the Department of Commerce.
August 22, 2024	Public Hearing

II. BACKGROUND AND SUMMARY OF REQUEST

PSE submits permits to the City of Bainbridge Island to construct, extend, maintain, and upgrade existing and new facilities both at site-specific locations such as substations, and for linear infrastructure spanning multiple parcels such as transmission and distribution lines.

The City’s municipal code contains provisions related to utility infrastructure development in 15.12, 16.12, 16.20, 18.09, 18.12, and 18.36 chapters. However, there are several issues identified in the code that hinder or otherwise delay a timely permitting process for PSE projects:

- Code typically written with consideration for projects involving one or, at most, a couple properties in close proximity where the property owner(s) are the applicant(s). Less consideration is given to large linear projects, spanning dozens of properties not directly owned by the applicant, and requiring connections to specific points both inside and outside the City.
- Lack of clarity or seemingly conflicting dimensional and procedural regulations that can change with internal policy updates.
- Lack of specificity for primary versus accessory utilities.
- Prohibition on all primary utilities in Category I and II wetlands when there is existing, aging, infrastructure that was installed in wetlands prior to the current understanding of critical areas.

To address the breadth of issues, PSE's requested code amendments span several topics and sections of code, including the following:

1. WHO CAN APPLY

PSE requests changes to BIMC 2.16.020.D to add utility providers to the list of who can apply, with specific proposed language as follows:

“A public or private utility that provides written documentation of their authority to exercise eminent domain under RCW 80.32.060.”

2. DEVELOPMENT STANDARDS – AQUIFER RECHARGE PROTECTION AREA

PSE requests changes to 16.20.100.E.1 to add linear utility projects to the list of exemptions, with the specific proposed exemption language as follows:

“Activities related to the installation, upgrade and maintenance of utility facilities and corridors, when located on property not owned by the utility provider.”

3. PROHIBITED ACTIVITIES (WETLANDS)

PSE requests an adjustment to BIMC 16.20.140.G.2.i to make allowances for linear primary utility development in Category I and II wetlands, with the specific proposed language to amend the prohibition as follows:

“New primary utility not within or directly adjacent to an existing road right-of-way in Category II wetlands. New primary utilities are prohibited in Category I wetlands.”

4. STANDARD LOT DIMENSIONAL STANDARDS & PERMITTED HEIGHT MODIFICATIONS

PSE requests that BIMC Tables 18.12.020-2 and 18.12.020-3 be adjusted to clarify in code that listed permitted height modifications under BIMC 18.12.040 do not require a conditional use permit as is current department practice, with the specific language proposed to be:

“Alternative height limits may apply for nonresidential uses if additional conditional use permit provisions of BIMC Title 2 are met. Some encroachments through height limits are permitted under BIMC 18.12.040 without conditional use permit approval.”

Additionally, PSE requests a change to BIMC Table 18.12.040 in order to permit a new distribution or transmission pole added along an existing corridor to meet the height of the surrounding infrastructure without the need for a new conditional use permit, with the specific language proposed as:

Distribution Poles - “Replacement poles over 55 feet in height, see BIMC 18.09.030.F.2.b. For new distribution utility facilities or corridors, see Table 18.09.020. Poles shall not be moved more than 20 feet from the original location or a new pole added along an existing distribution line corridor unless permitted under BIMC 18.09.030.F.2.b.”

AND

Transmission Poles - “Replacement poles over the 25 percent increase or 100 feet in height, see BIMC 18.09.030.F.2.b. For new transmission utility facilities or corridors, see Table 18.09.020. Poles shall not be moved more than 20 feet from the original location or a new pole added along an existing transmission line corridor unless permitted under BIMC 18.09.030.F.2.b.”

5. PERMITTED SETBACK MODIFICATIONS

PSE requests a modification to BIMC Table 18.12.040 to allow overhead and underground primary utilities in setbacks in the same way accessory utilities are allowed, with the specific proposed language to allow the following in all setbacks:

“Overhead or underground primary or accessory utilities that are not the primary use of the site.”

III. PUBLIC COMMENT

To date, this project has received 17 public comments provided by ten different commenters (three commentors provided multiple comments). Two comments were

received with the initial notice of application, thirteen comments were received during the Planning Commissions study sessions, and two were received with the notice of application on Ordinance No. 2024-04 Utility Regulations.

Comments fall into four categories:

1. Six commentors expressed general support for both the code amendment updates and the subsequent PSE proposed projects. There is concern regarding current service reliability metrics, capacity, safety of the existing infrastructure currently in category I and II wetlands, and the amount of time the application has taken to date. There was specific support for removing the blanket restrictions on primary utilities in Category II wetlands when adjacent to road right-of-way. Specific support for the substation and infrastructure upgrades to allow the electrification of the ferry system was also provided by several commentors including Matt Von Ruden of the Washington State Department of Transportation. These projects are crucial to meeting the Ferry electrification timelines.
2. Two commentors had specific concerns regarding the proposed changes to the wetland code. Both felt that the applicant's proposed changes to wetland code were too broad and both suggested creating a utility exemption with specific review criteria per the Washington Department of Ecology's guidance. One of the commentors, Cullen Brady of the Bainbridge Island Land Trust, is generally supportive of the changes, but requests careful consideration of what changes should apply to *all* primary utilities vs. specific to PSE's infrastructure.
3. One of the commentors who provided multiple comments, Kim McCormick, is representing Bulrush Farms. Ms. McCormick and her client are very concerned about the potential impacts that the Winslow Tap Transmission line rebuild could have on their business and want the opportunity to negotiate for the rights to their land prior to a permit being issued. Additionally, Ms. McCormick raised concerns that the change to the definition of applicant would allow PSE to decline to explore ways to avoid the use of third party property and engage in early negotiations. There is also a concern that having an issued permit prior to negotiations with private owners could potentially give the utility additional standing in an eminent domain hearing.
4. One commentor was generally not in favor of the code changes. Specifically, they were concerned that changes to the ARPA designation requirements and wetland

code could result in PSE being less careful in retaining and protecting trees and native vegetation. They were also concerned that the code changes were being requested simply to allow PSE to avoid applying for permits they *should* be required to obtain (example: Putting overhead and underground primary utilities in a setback could be done now with a variance permit).

IV. APPLICABLE COMPREHENSIVE PLAN GOALS AND POLICIES AND BRIEF STAFF DISCUSSION:

1. WHO CAN APPLY

- GOAL LU-17 - Strive to ensure that basic community values and aspirations are reflected in the City's planning program while recognizing the rights of individuals to use and develop private property in a manner that is consistent with City regulations. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

Issuing a permit for utility development on land that the utility has not yet negotiated the use of appears to go against the goal of not taking private property for public use without just compensation having been made.

However, requiring a utility to go through the process of acquiring easements and potentially even put a landowner through an eminent domain proceeding for land access when the project and location requirements may change during the review process does not appear to protect landowners from arbitrary action.

- GOAL U-6 - Ensure that permits and approvals for utility facilities are processed in a fair, timely manner and in accord with development regulations and this Plan.

Requiring PSE to negotiate with private owners for easements prior to application when plans may shift during the review process, resulting in a need for additional negotiations after permit issuance, does not support a timely permitting process.

- GOAL U-7 - Ensure that all utility providers give timely public notice and solicit community input on the siting of proposed facilities and on any other substantive projects before seeking City approval.

If the utility were allowed to be an applicant prior to negotiations with landowners, community input would be entirely through the permit process, which may not capture the same feedback as a broader dialogue between PSE and the community on high level

siting alternatives and trade-offs. Standard public notice requirements as part of the permit process are oriented toward site-specific projects, rather than linear projects—therefore, the public notice may be less than optimal for the purpose of community input on facility siting.

2. DEVELOPMENT STANDARDS – AQUIFER RECHARGE PROTECTION AREA

- Policy WR 2.9 - Recognizing that the Island aquifer system is a Sole Source Aquifer as designated by EPA, consider creation and application of one or more aquifer conservation zones for appropriate areas of the Island and institute an added level of development and re-development permit review to prevent or mitigate potential pollutant-generating activities or activities that could affect stormwater runoff and aquifer recharge associated with a proposed land use. The Island's aquifers are protected through critical area regulations and Revised Code of Washington (RCW) 36.70A.550.

Municipal code implements this policy by requiring a designation of an Aquifer Recharge Protection Area (ARPA) when a project reaches a certain size in zone R-0.4, R-1, and R-2. Providing a blanket exemption from ARPA designation would be less supportive of the comprehensive plan's policies to protect aquifer recharge than a more narrowly construed exemption. An exemption that includes an alternate path to protecting groundwater recharge, as proposed in the draft ordinance (and described below) would better support the comprehensive plan's policies regarding aquifer recharge protection.

- GOAL U-1 - Ensure that reliable utility services are available to all Bainbridge Island residents.

The utility provider's ability to negotiate easement rights do not extend to the ability to designate an ARPA. Without a utility exemption from ARPA designation requirements, larger utility projects in zoning districts R-0.4, R-1, and R-2 would not be able to move forward.

- GOAL U-5 - Ensure that new or major renovations to existing utility facilities are designed to minimize adverse impacts on residents and the environment.

An exemption from ARPA that includes a vegetation mitigation plan (as described below and as proposed in the draft ordinance) would support this goal.

3. PROHIBITED ACTIVITIES (WETLANDS)

- Policy EN 10.2 - Encourage the retention of existing trees and vegetation and the

planting of new trees and vegetation that provides natural filtration of suspended particulate matter, removes carbon dioxide and improves air quality.

Without a way to properly maintain and upgrade existing systems, it would be necessary for PSE to consider installation of new linear infrastructure. Assuming a new corridor free of category I and II wetlands could be identified (which has not been possible to date), this would require clear cutting large swaths of forested area and creating major ground and vegetation disturbance. Therefore, this policy is best supported through allowing maintenance and upgrade projects within Category I and II wetlands per PSE's request.

- Policy EN 19.1 - Encourage protection, restoration and maintenance of existing vegetation that has environmental, wildlife habitat and aesthetic qualities including tree groves, significant tree stands, forested hillsides and vegetation associated with wetlands, stream corridors, riparian areas, steep slopes and areas subject to erosion.

The staff recommended draft ordinance, described below, includes requirements for maintenance and upgrade projects in Category I and II wetlands to demonstrate no net loss and mitigation sequencing, which encourages protection and restoration of vegetation and habitat. By allowing new construction only within or adjacent to existing right-of-way where ground disturbance has already occurred, the staff recommended language encourages the least disturbance to wetland vegetation while allowing needed utility expansions to move forward.

- Policy WR 2.4 - Assess the impacts of proposed activities and development on the flow of springs and streams and levels of wetlands that are either sustained by groundwater discharge or contribute recharge to groundwater, and require an assessment of anticipated hydrologic impacts. Activities or development may be restricted if the report indicates any adverse impacts.

Both new projects and non-exempt maintenance/upgrade projects will require a wetland report with the critical area permit application that provides an assessment of impacts to the wetland and appropriate mitigation requirements.

- GOAL WR-3 - Achieve no net loss of ecological functions and processes necessary to sustain aquatic resources including loss that may result from cumulative impacts over time.

Both new projects and maintenance/upgrade projects will require demonstrating mitigation sequencing and no net loss with the required critical area permit.

- GOAL U-14 - Ensure adequate, cost effective, reliable, and environmentally responsible electric service to the citizens of Bainbridge Island.
- Policy U 14.3 - Encourage the electric service provider to improve reliability, with particular attention to adding transmission redundancy and mitigating impacts on service from storms or other natural events.

PSE has not been able to identify a route for the required new infrastructure to meet current or future demands that does not require going through Category II wetlands. Additionally, they need to be able to maintain and upgrade existing infrastructure for both capacity and safety reasons. Therefore, these goals and policies are only supported if PSE's request related to wetlands is accommodated.

4. STANDARD LOT DIMENSIONAL STANDARDS & PERMITTED HEIGHT MODIFICATIONS

- GOAL U-6 - Ensure that permits and approvals for utility facilities are processed in a fair, timely manner and in accord with development regulations and this Plan.

Current code and practice that requires a new conditional use permit for a single one- to three-foot diameter pole along an existing corridor may be disproportionate to the impact, causing an overly lengthy review.

Staff recommended language adding clarity on allowed height modifications and permitting requirements for linear utility projects supports a consistent and fair review process.

5. PERMITTED SETBACK MODIFICATIONS

- Policy EN 10.2 Encourage the retention of existing trees and vegetation and the planting of new trees and vegetation that provides natural filtration of suspended particulate matter, removes carbon dioxide and improves air quality.

Requiring the utility to divert overhead or underground infrastructure in order to accommodate setbacks would cause greater land and vegetation disturbance than necessary. Therefore, this policy is best supported if PSE's request related to setbacks is accommodated.

- GOAL U-6 - Ensure that permits and approvals for utility facilities are processed in a fair, timely manner and in accord with development regulations and this

Plan.

Overhead and underground accessory utilities are already allowed in setbacks. Overhead and underground primary utilities are traditionally found either in right-of-way or in setbacks directly adjacent to right-of-way, so requiring an additional variance permit may be disproportionate to the impact, causing an overly lengthy review.

- GOAL U-3 - Ensure that utility services are adequate to meet current demands, and that utility providers plan for future demands.

This goal is best supported if PSE's requests are accommodated, since the requests relate to the upgrade projects PSE has planned to address current and future demands on electric service.

V. RECOMMENDATIONS & ANALYSIS

The staff proposed ordinance balances the needs of PSE with feedback from the community and Planning Commission, a careful review of the Comprehensive Plan, and staff analysis. The following code recommendations are incorporated into the draft (see Attachment 1):

1. NO CHANGE TO WHO CAN APPLY

PSE's request stems from the fact that linear electric utility infrastructure is typically installed on easements for the benefit of the public, over potentially many dozens of properties. Additionally, project details may change during the review process, and PSE may not be able to precisely identify needed rights before going through the land use and environmental permit processes. Current code requires PSE to obtain rights to property prior to having a final, approved, plan set, and may cause PSE to acquire rights to property that ends up being unnecessary.

Current code is, however, in line with the definition of applicant in other municipalities. It may be in the interest of private property owners to negotiate property rights prior to permit submittal. Additionally, since not all permit applications require a public notice, there is a possibility that the first time a property owner hears about a project that impacts their property would be after a permit has already been issued, if PSE's request were to be granted.

Several alternatives were developed and analyzed during the public process that are not ultimately recommended to move forward. One such alternative is to allow PSE to inform impacted property owners of the project prior to application but allow

them to apply for land use permits prior to acquiring rights to the property. In this case, the land use permit would not be issued until such rights are acquired. This alternative was ultimately not recommended due to the possibility of an appeal after land use permit issuance that could change the placement requirements of the project—for the utility applicant, the risks remain the same as current code.

Another alternative is to allow PSE to submit and receive issued land use permits without acquiring the rights to the property, but to require property owner authorization before submitting a building permit application for the project. This alternative was ultimately not recommended because there exists a subset of PSE projects that do not require building permits such as adding a small number of poles that do not disturb enough ground to require a grade and fill permit.

Ultimately, no action on this portion of PSE's request can satisfy PSE's intent while still affording private property owners the ability to negotiate property rights prior to the permitting of work to be completed on their land. However, it also subjects those same property owners to potentially unnecessary easement negotiations if a project location ends up changing during permit review or through an appeal. Absent a better solution, staff proposes no action on this portion of the request, and this section of the code is absent from the draft ordinance.

2. ADD AN EXEMPTION FROM ARPA DESIGNATION REQUIREMENTS FOR UTILITY DEVELOPMENT ON LAND NOT OWNED BY THE UTILITY WHEN COMBINED WITH A VEGETATION RESTORATION PLAN.

BIMC requires that any proposed development or activity requiring a site assessment review located in zoning designation R-0.4, R-1, R-2 also requires the designation of an ARPA with limited exceptions. Groundwater recharge is of particular concern for the City because the Island's drinking water is supplied solely by groundwater. If a project proposes ground disturbance that presents a potential impact on aquifer recharge, ARPA is the primary vehicle to mitigate that impact in code. However, PSE's ground disturbance typically extends across many properties, over which PSE has no authority beyond acquiring easements specifically for the purpose of the placement and maintenance of utility infrastructure. Without an exemption, PSE would not be able to move forward with projects for new and upgraded infrastructure in zoning districts R-0.4, R-1, or R-2. The comprehensive plan is supportive of aquifer recharge protections, but does not specify that this must be done specifically through the designation of an ARPA. Staff proposes using a

vegetation restoration plan in lieu of the ARPA designation for utility projects that will be conducted on land not owned by the utility in zoning districts R-0.4, R-1, and R-2.

3. ALLOW ONLY NEW DISTRIBUTION AND TRANSMISSION UTILITY CORRIDORS (NOT ALL PRIMARY UTILITIES) IN CATEGORY II WETLANDS WHEN WITHIN OR ADJACENT TO EXISTING ROAD RIGHT-OF-WAY. REQUIRE A CRITICAL AREA PERMIT AND THE DEMONSTRATION OF MITIGATION SEQUENCING.

As an island, the City's Category I and II wetlands are relatively rare and vulnerable to the effects of development and the prohibition on primary utilities in these wetlands clearly protects the functions and values of these critical areas. However, as noted in the Best Available Science review provided by the applicant, linear utilities such as transmission and distribution line corridors are functionally different than utilities such as wastewater facilities, substations, etc. While these corridors do disturb vegetation, they do not add noise, light, or ongoing pollution, and only have periodic human disturbance in the form of maintenance which, if installed next to existing road right-of-way, can be done from the hard surface of the existing pavement. The disturbance is typically limited to poles one- to three-feet in diameter and spaced 150-200 feet apart for distribution and 300-400 feet for transmission lines and vegetative clearance around the infrastructure needed for safety. Moreover, the placement of electric linear infrastructure does not have unlimited flexibility. It is required to connect to specific existing locations (such as substations) both within the community and to infrastructure outside the City limits. PSE has been unable to locate a path for the proposed new linear infrastructure that entirely avoids Category II wetlands, but they are able to follow a path through Category II wetlands that has already been disturbed by road right-of-way.

To control the potential for negative impacts to the Category II wetlands, new infrastructure will only be allowed within or adjacent to existing road right-of-way and a critical area permit and demonstration of mitigation sequencing are included as requirements in the proposed draft ordinance.

ALLOW ADDITIONAL MAINTENANCE ACTIVITIES FOR ONLY DISTRIBUTION AND TRANSMISSION UTILITY CORRIDORS (NOT ALL PRIMARY UTILITIES) WITH A CRITICAL AREA PERMIT AND THE DEMONSTRATION OF MITIGATION SEQUENCING.

PSE's electrical linear systems have been in place in some capacity since the 1960s and

resulted in the placement of infrastructure in locations that are now regulated as critical areas. As infrastructure ages, it must be repaired, replaced and upgraded to provide reliability and comply with current standards. Critical area regulations were not in place at the time of installation of much of the electricity infrastructure serving Bainbridge Island residents today. Without a way to properly maintain and upgrade existing systems, the utility would need to consider installation of entirely new linear infrastructure (assuming an as yet unidentified corridor free of Category I and II wetlands could be found), which could require clear cutting large swaths of forested area and major ground disturbance.

Maintaining and upgrading distribution and transmission lines can include replacing equipment with equipment of different sizes and maintaining safety clearances if vegetation becomes incompatible with the lines or equipment in a way that would not meet the definition of an exempt activity. However, tree and tree assemblages in wetlands and their buffers are an important part of how the state wetlands rating system categorizes wetlands. To control the potential for negative impacts to wetlands, exceptions for maintenance and upgrade activities are proposed to be narrowly allowed with a critical area permit and a demonstration of mitigation sequencing and no net loss.

4. MOVE HEIGHT ALLOWANCES FOR DISTRIBUTION AND TRANSMISSION LINES TO THE DIMENSIONS TABLE.

When reviewing current municipal code, determining height and permit requirements for a distribution or transmission utility project takes review of potentially five sections of code. This can be simplified by including height allowances for transmission and distribution poles in the dimensions table rather than pointing to the modifications table. Current policy does not require an additional conditional use permit in order to use the allowed height modifications, so this would not be changing the permitting requirements, just simplifying the review.

ADD A DEFINITION FOR “UPGRADE”.

Code states that an upgrade to an existing transmission or distribution line is considered a permitted use that can be done without a conditional use permit, but does not currently provide a definition of upgrade. The definition in the staff recommended ordinance is: activities that involve a level of intensification or expansion of existing infrastructure. This can involve replacement of existing infrastructure, but also replacing equipment with equipment that meets different

operational standards and/or adds capacity to the system.

ALLOW ADDING A NEW POLE ALONG AN EXISTING CORRIDOR WITHIN 20 FEET OF THE EXISTING INFRASTRUCTURE TO BE CONSIDERED PART OF AN UPGRADE, AND A PERMITTED USE.

Requiring only those permits that will add value to the review of the project is important to providing a fair and timely review process. Allowing a new pole along an existing corridor that is the same height as the poles around it is not likely to have a large enough impact to justify requiring a new conditional use permit. It is possible that a view may be slightly impacted, but a one- to three-foot diameter pole added along an existing corridor within 20 feet of the existing infrastructure is unlikely to have a major impact to line of site.

IF A PERMIT IS REQUIRED FOR HEIGHT MODIFICATIONS, REQUIRE A CONDITIONAL USE PERMIT, NOT A SITE PLAN REVIEW.

Review of the different code sections reveals a discrepancy that can be rectified with the staff recommended ordinance. There is a section that requires poles taller than the allowed height to apply for a site plan review. However, the code sections that provide the conditions under which additional height can be allowed are found in the conditional use permit code. The specific criteria for conditional use permits related to additional height are more applicable to the situation; therefore, the staff recommended ordinance replaces the references to site plan review with a conditional use permit.

POLES THAT WILL BE PLACED MORE THAN 20 FEET FROM EXISTING INFRASTRUCTURE WILL STILL REQUIRE CONDITIONAL USE PERMIT.

A pole placed more than 20 feet from the existing infrastructure would be considered not a part of the existing line. Primary utilities are a conditional use in every zoning district within Bainbridge Island with the exception of the Business Industrial district, so any project larger than adding a pole to an existing line (outside of the Business Industrial district) would still require a conditional use permit.

5. ALLOW OVERHEAD AND UNDERGROUND PRIMARY UTILITIES IN SETBACKS WHEN THE UTILITY IS NOT THE PRINCIPAL USE OF THE SITE. Overhead and underground accessory utilities are already allowed in setbacks. Overhead and underground primary utilities are similar in character to overhead and underground accessory utilities and are traditionally found either in right-of-way or in setbacks directly adjacent to right-of-way. Requiring the utility to divert overhead or underground infrastructure in order to accommodate a 5-, 10- or even 25-foot

setback seems unnecessarily burdensome and would cause greater land and vegetation disturbance. Additionally, setbacks are meant to restrict structures inside the parcel from impacting adjacent parcels. They are not intended to prohibit infrastructure from the outside entering the property. PSE's requested language was modified slightly in the staff recommended ordinance to ensure clarity.

VI. CONCLUSIONS

To support Bainbridge Island's comprehensive plan utility goals, adjustments to code are necessary to allow for PSE proposed projects to increase capacity and system redundancy. These projects include constructing, extending, maintaining, and upgrading existing and new facilities both at site-specific locations (such as substations), and for linear infrastructure spanning multiple parcels (such as transmission and distribution lines). However, such adjustments must carefully balance the City's goals regarding the environment and natural resources. Ordinance 2024-04 Utility Regulations as proposed by staff strikes a balance between the needs of the community for utility services and protecting the special features and critical areas of the City of Bainbridge Island.

ORDINANCE NO. 2024-04

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to requirements for primary utility development permits, amending BIMC Section 16.20.100.E.1, Section 16.20.050, Section 16.20.140.G.2, Section 16.20.140.H.5, Section 16.20.190, Section 18.09.030.F.2, Table 18.12.020-2, Table 18.12.020-3, and Table 18.12.040.

WHEREAS, Goal U-14 of the Utility Element of the City's Comprehensive Plan includes a commitment to plan together with the electric service provider to undertake energy efficiency improvements and other alterations to provide capacity for future growth and encourages the electric service provider to improve reliability, with particular attention to adding transmission redundancy and mitigating impacts on service from storms or other natural events; and

WHEREAS, Puget Sound Energy (PSE) has requested several amendments to Bainbridge Island's Municipal Code in order to continue to maintain, upgrade, and install new electric infrastructure that supports reliability and capacity needs for the City of Bainbridge Island; and

WHEREAS, primary utilities are defined in the City's municipal code to include both parcel-based facilities such as electrical substations as well as linear facilities such as electrical distribution or transmission lines that may involve many parcels; and

WHEREAS, in accordance with BIMC.2.16.180, Puget Sound Energy applied for a request to amend the Bainbridge Island municipal code in April 20, 2022;

WHEREAS, City planning staff and PSE engaged in collaborative discussion of the scope of the request; and

WHEREAS, an updated application for legislative review of land use regulations was submitted by Puget Sound Energy on February 6, 2024; and

WHEREAS, the Planning Commission considered the Puget Sound Energy application and draft Ordinance No. 2024-04 on February 22, 2024, March 14, 2024, March 28, 2024, April 25, 2024; May 23, 2024; and

WHEREAS, after timely and proper notice the Planning Commission held a public hearing on Ordinance No. 2024-04 on XXXX, 2024, and XXXX; and

WHEREAS, the Planning Commission moved to XXXXX related to amendments to the BIMC code sections 16.20.100.E.1, 16.20.050, 16.20.140.G.2, 16.20.140.H.5, 16.20.190, and 18.09.030.F.2 and tables 18.12.020-2, 18.12.020-3 and 18.12.040 to the City Council; and

WHEREAS, notice was given on July 3, 2024, to the Office of Community Development at the Washington State Department of Commerce in conformance with RCW 36.70A.106; and

WHEREAS, on July 3, 2024, the City's SEPA Responsible Official issued a Determination of Nonsignificance in accordance with State Environmental Policy Act regulations (WAC XXX); and

WHEREAS, on XXXX the City Council discussed the Planning Commission recommendation on Ordinance No. 2024-04.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 16.20.100.E.1 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

1. Any proposed development or activity requiring a site assessment review (SAR) pursuant to Chapters 15.19 and 15.20 BIMC located within the R-0.4, R-1 or R-2 zoning designations requires designation of an ARPA; except, designation of an ARPA is not required for the following:

- a. Removal of invasive species;
- b. Construction of public trails provided the standards set forth in BIMC 16.20.110.G.5.a through e are met;
- c. Replacement of hard surfaces; and
- d. Development and activities located on properties protected in perpetuity by a legal instrument acceptable to the city attorney wherein at least 65 percent of the site meets the development standards for aquifer recharge protection areas of this section; and
- e. Activities related to the installation, upgrade, and maintenance of primary utility facilities, when located on property not owned in fee by the utility, provided the applicant submits a vegetation restoration plan for approval by the City Arborist unless the vegetation management and mitigation provisions within BIMC 16.12 and/or BIMC 16.20 provide greater net functions and values within the shoreline or for a critical area. A proposed vegetation restoration plan shall include:
 - i. Tree inventory showing all trees to be removed within the project area including location, number, and size of proposed trees to be

removed. Size shall be provided in both diameter at breast height (DBH) in inches and estimated canopy square footage.

ii. A minimum of the following ratios for each tree removed: 2:1 for trees removed that are up to 24 inches at diameter breast height (DBH), 3:1 for trees between 25 inches and 47 inches DBH, and 4:1 for trees 48 inches DBH and larger, or demonstrate equal canopy coverage replacement within 30 years. Replacement trees may be planted at a nearby location. Additional tree planting may be required based on site specific conditions, to the satisfaction of the City Arborist.

iii. Shrubs and other vegetation may be substituted for trees in locations where trees are infeasible or inappropriate due to compatibility with utility use, pending review and approval by the City Arborist.

iv. Replacement vegetation shall demonstrate an emphasis on the use of native and/or climate resilient species.

Section 2. Section 16.20.050 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

A. Existing Structures and Related Improvements. Structures and related improvements that were legally built or vested prior to the effective date of the ordinance codified in this chapter that do not meet the requirements of this chapter may continue to exist in their present form, and may be altered, including remodeled, reconstructed, or expanded, if such alteration complies with the provisions of this section and all other applicable sections of this chapter.

B. Existing buildings that were legally built or vested prior to the effective date of the ordinance codified in this chapter may be altered only one time within the lifetime of the structure, and:

1. The expansion of the footprint is outside a landslide hazard area or landslide hazard area setback unless required for safety or seismic upgrades;
2. Any expansion of the footprint is located only within a critical area buffer. No expansion of the footprint is allowed within a wetland or fish and wildlife habitat conservation area;
3. Any expansion of the footprint within a critical aquifer recharge area is located outside the aquifer recharge protection area pursuant to BIMC 16.20.100.E.
4. Cantilevers over critical areas are not allowed;

5. The expansion of the footprint at ground level does not exceed 500 square feet;
6. Any expansion of the footprint is used only as indoor living space or to accommodate accessibility;
7. Any expansion of the footprint is no closer to the critical area than the existing footprint; and
8. If a building is harmed or destroyed by more than 50 percent of its square footage, the building must be reconstructed in compliance with the requirements of this chapter.

C. Existing property improvements other than buildings, including driveways, parking areas, yards and landscaped areas, play areas, storage areas, decks less than five feet in height, patios, and similar improvements that were legally established or vested prior to the effective date of the ordinance codified in this chapter may be altered if:

1. Any alteration is in substantially the same location as the original property improvement;
2. Any expansion of the footprint is located only within the required buffer. No expansion of the footprint is allowed within the critical area itself and cantilevers over critical areas are not allowed;
3. Any expansion of the footprint is no closer to the critical area than the existing footprint; and
4. Any expansion of the footprint within a critical aquifer recharge area is located outside the aquifer recharge protection area pursuant to BIMC 16.20.100.E.

D. Existing electric transmission and distribution lines that traverse or are directly located in wetlands, may be altered, maintained and upgraded in ways that do not meet the precise terms of an exempt activity in BIMC 16.20.040 if:

1. The applicant demonstrates that the proposed alterations, maintenance or upgrades provide the least impact to regulated wetlands necessary in order to provide utility services to the public;
2. The alteration, maintenance or upgrade is the minimum necessary and there is no practicable alternative location or construction activity with less adverse impact on the functions and values of the critical area;
3. Replaced poles shall not be moved more than 20 feet from the original location. New poles added as part of an upgrade must be installed within a 20 foot distance of the existing distribution and/or transmission line infrastructure.

- a. If the applicant can demonstrate a lower overall impact to the wetland, new or replaced poles may be located farther than 20 feet from existing infrastructure with a minor conditional use permit.
- 4. Proposed vegetation removal is unavoidable and is demonstrated to be a present or future danger to the transmission or distribution lines. Vegetation removal shall follow the procedure under BIMC 16.20.090.C. Any area of disturbance shall be revegetated with appropriate native vegetation at not less than preconstruction functions and values or greater, upon completion of construction or within a timeframe proposed to and approved by the Director. The Director retains the right to require additional mitigation if the proposed revegetation does not sufficiently protect the functions and values of the wetland and its buffer. The utility shall ensure that such vegetation survives or is replanted if the replanting fail within a minimum of five years;
- 5. The alteration, maintenance or upgrade does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and
- 6. The alteration, maintenance or upgrade avoids and minimizes the impact on critical areas in accordance with required mitigation sequencing under BIMC 16.20.030 and demonstrates no net loss as defined in BIMC 16.20.190.A.59, and is consistent with best available science.
- 7. The Director may require additional mitigation measures if they are deemed necessary in accordance with the required mitigation sequencing described in BIMC 16.20.030.

~~D.~~ E. Buffer modifications pursuant to BIMC 16.20.110 and 16.20.140 shall not be granted for existing development.

~~E.~~ F. Alterations permitted by this section must comply with other applicable city code or land use review requirements and require submittal of a critical areas permit application in accordance with the permit and review procedures required for the affected critical area(s). (Ord. 2018-01 § 2 (Exh. A), 2018)

Section 3. Section 16.20.140.G.2 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

2. The following development, uses and activities are prohibited in Category I and II wetlands:

- a. Fish hatchery;
- b. Golf course;
- c. Mineral extraction;
- d. Public facility;
- e. Public communications tower;

- f. New public road/street;
- g. New private access road or driveway;
- h. Stormwater retention/detention facility; or
- i. Primary utility. Exceptions for electric transmission and distribution lines may apply under BIMC 16.20.050.D for existing development or under BIMC 16.20.140.H.5 for new development.

Section 4. Section 16.20.140.H.5 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5. Utilities. Installation of utilities within wetlands or their required buffers may be allowed when the following standards are met:

a. Construction of new utilities outside the road right-of-way or an existing utility corridor may be permitted in wetlands or wetland buffers, only when no reasonable alternative location is available and the utility meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required in the filing and approval of applicable permits and special reports required by this chapter.

b. Sewer or On-Site Sewage Utility. Construction of sewer lines or on-site sewage systems may be permitted in wetland buffers only when:

i. The applicant demonstrates it is necessary to meet state and/or local health code minimum design standards (not requiring a variance for either horizontal setback or vertical separation); and/or

ii. There are no other practicable or reasonable alternatives available and construction meets all other applicable requirements of this section. Joint use of the sewer utility corridor by other utilities may be allowed.

c. New utilities shall not be allowed when the wetland or buffer has known locations of federal- or state-listed endangered, threatened, monitored or sensitive species, heron rookeries or nesting sites of raptors which are listed as species of concern, except in those circumstances where an approved habitat management plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer.

d. New utility construction and maintenance shall protect the wetland and buffer environment by utilizing the following methods:

i. New utilities shall be aligned to avoid tree removal to the greatest extent practicable.

ii. Any area of disturbance resulting from installation of a utility shall be revegetated with appropriate native or equivalent vegetation at

preconstruction densities or greater, immediately upon completion of construction, or as soon thereafter as possible, if due to seasonal growing constraints. The utility or landowner responsible for installation shall ensure that such vegetation survives.

iii. Any access for maintenance shall be provided as much as possible at specific points, rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than 15 feet; and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.

iv. The director may require additional mitigation measures.

v. Utility maintenance shall include the following measures to protect the wetland and buffer environment:

A. Painting of utility equipment such as power towers shall not be sprayed or sandblasted. Lead-based paints are prohibited.

B. No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology and applied by a licensed applicator in accordance with the safe application practices on the label.

e. Construction of new distribution and transmission utility lines in Category III and IV wetlands shall follow the provisions in BIMC 16.20.140.H.5.a through d. Construction of new distribution and transmission lines may be permitted in Category II wetlands and their buffers provided all the other applicable sections of this chapter are met, and:

i. The applicant demonstrates that the inability to impact Category II wetlands would unnecessarily restrict the ability to provide utility services to the public;

ii. There is no practicable alternative location with less adverse impact on the functions and values of the impacted Category II wetland.

iii. Construction of the utility where impacts to a Category II wetland cannot be avoided is within or directly adjacent to an existing road right-of-way;

iv. The construction of new distribution and transmission utility lines does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and

v. The construction of new distribution and transmission utility lines avoids and minimizes the impact on critical areas in accordance with required mitigation sequencing and demonstrates no net loss as described in BIMC 16.20.030, and is consistent with best available science.

Section 5. Section 16.20.190 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

A. For the purposes of this chapter, the following definitions shall apply:

1. “Accessibility” means that a building or structure can be independently used by people with a variety of disabilities.
2. “Adverse impact” means a condition that creates, imposes, aggravates, or leads to inadequate, unsafe, or unhealthy conditions on a site.
3. “Agricultural activities” means the normal actions associated with the production of crops such as plowing, cultivating, minor drainage, and harvesting; and/or raising or keeping of livestock, including operation and maintenance, and repair of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance, and repair of existing serviceable agricultural structures, facilities, or improved areas.
4. “Alteration” means a human-induced action that changes the existing conditions of a critical area or its buffer and results in the modification of the existing topography, stability, vegetation, hydrology, wildlife or wildlife habitat.
5. “Alteration, structure” means a change, modification or adjustment.
6. “Anadromous fish” means fish whose life cycle includes time spent in both salt and fresh water.
7. “Applicant” means a person, corporation, or organization that files an application for a land use or development permit with the city and that is either the owner of the land on which that proposed activity would be located, or the authorized agent of such a person.
8. “Aquifer recharge protection area” means a portion of a development site comprised of native or equivalent vegetation in which existing vegetation, topography and supporting soils are free of development, uses or activities detrimental to the aquifer recharge of the total site area.
9. “Arborist” means an individual engaged in the profession of arboriculture who, through experience, education, and related training, possesses the competence to

provide for or supervise the management of trees and other woody plants. Must be concurrently an International Society of Arboriculture (ISA) certified arborist to perform any role required of a certified arborist.

10. “Arborist, ISA certified” means an arborist holding a current International Society of Arboriculture (ISA) certified arborist credential.

11. “Arborist, tree risk assessment qualified (TRAQ)” means an arborist who has successfully completed the International Society of Arboriculture (ISA) TRAQ training course and assessment and holds a valid ISA TRAQ credential.

12. “Bank stabilization” means modification used for the purpose of preventing erosion, protecting channels, and retaining uplands.

13. “Biodiversity areas and corridors” means areas of habitat that are relatively important to various species of native fish and wildlife.

a. Biodiversity Areas.

- i. The area has been identified as biologically diverse through a scientifically based assessment conducted over a landscape scale (e.g., ecoregion, county- or city-wide, watershed, etc.). Examples include but are not limited to WDFW local habitat assessments, Pierce County biodiversity network, and Spokane County’s wildlife corridors and landscape linkages; or
- ii. The area is within a city or an urban growth area (UGA) and contains valuable fish or wildlife habitat and is mostly comprised of native vegetation. Relative to other vegetated areas in the same city or UGA, the mapped area is vertically diverse (e.g., multiple canopy layers, snags, or downed wood), horizontally diverse (e.g., contains a mosaic of native habitats), or supports a diverse community of species as identified by a qualified professional who has a degree in biology or closely related field and professional experience related to the habitats or species occurring in the biodiversity area. These areas may have more limited wildlife functions than other priority habitat areas due to the general nature and constraints of these sites in that they are often isolated or surrounded by highly urbanized lands.

b. Corridors. Corridors are areas of relatively undisturbed and unbroken tracts of vegetation that connect fish and wildlife habitat conservation areas, priority habitats, areas identified as biologically diverse, or valuable habitats within the city.

14. “Best available science” (BAS) means scientifically valid information derived in accordance with WAC 365-195-900 through 365-195-925, or as amended, that is used to develop and implement critical areas policies or regulations.

15. “Best management practices” (BMPs) means conservation practices or systems of practices and management measures that:

- a. Control soil loss and protect water quality from degradation caused by nutrients, animal waste, toxins, and sediment;
- b. Minimize adverse impacts to surface water and groundwater flow, and to the chemical, physical, and biological characteristics of critical areas;
- c. Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and
- d. Provide standards for proper use of chemical herbicides within critical areas.
- e. BMPs are defined by the United States Department of Agriculture, the State of Washington Department of Agriculture, the Washington State Department of Ecology, Washington State Department of Health, Kitsap conservation district, and other professional organizations.

16. “Bog” means a low-nutrient, acidic wetland with organic soils and characteristic bog plants, as described in Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-29, October 2014).

17. “Buffer” means a designated area contiguous to a wetland or stream intended to protect the wetland or stream and be an integral part of the wetland or stream ecosystem.

18. “Coppicing” means managing of strongly regenerative species of trees and shrubs by an initial heading cut (leaving a stump) and allowing new shoots to grow to maintain live roots. Shoots may be reduced to their point of origin at appropriate intervals of time without disturbing the resulting coppice head (stump).

19. “Critical aquifer recharge area” means areas with a critical recharging affect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

20. “Critical areas” means aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands.

21. “Critical facilities” means facilities that are essential to the health and welfare of the community, including services that protect life and property. Such facilities include, but are not limited to, hospitals, emergency clinics, police and fire stations, emergency vehicle and equipment storage facilities, emergency operations centers, aviation control centers, and utility facilities such as sewage treatment plants and electric transmission substations.

22. “Critical habitat” means a habitat identified by U.S. Fish and Wildlife Service or the National Marine Fisheries Service as habitat necessary for survival of endangered or threatened species.

23. “Cutting, vegetation” means the removal of the main trunk or stem of a small tree for the purposes of controlling aggressive or weedy species.
24. “Designated centers” means those areas of the Island referred to as Winslow, Lynwood Center, Island Center, Rolling Bay, Day Road and Sportsman Triangle and shown on Figure LU-3 in the city’s 2017 comprehensive plan.
25. “Development” means any action that would require land use review or other approval from the city or other local, state or federal jurisdiction. “Development” includes, but is not limited to: land division; construction, reconstruction, structural alteration, relocation, or enlargement of any structure; clearing or grading; and changes to surface or groundwaters.
26. “Development area” means the area of land disturbing activity on a site.
27. “Director” means the director of the city’s planning and community development department or his/her designee.
28. “Educational or scientific activities” means controlled and/or supervised scientific activities or educational activities that are associated with an educational or scientific program that result in no adverse impacts to critical areas or their buffers.
29. “Engineering geologist” means a practicing engineering geologist who has at least four years of professional employment as an engineering geologist with experience in landslide evaluation, and a Washington State specialty license in engineering geology as specified in Chapter 18.220 RCW.
30. “Erosion hazard area” means those areas containing soils which, according to the United States Department of Agriculture Natural Resource Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration areas.
31. “Estuarine, wetland” means a vegetated wetland that is predominantly tidal, as described in Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-29, October 2014).
32. “Existing development” means a development that was lawfully constructed, approved or established prior to the effective date of the ordinance codified in this chapter.
33. “Fish” means species of the vertebrate taxonomic groups Cephalospidomorphi and Osteichthyes.
34. “Fish and wildlife habitat conservation areas” means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the

ecosystem and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

“Fish and wildlife habitat conservation areas” does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

35. “Fish habitat” means habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat.

36. “Fisheries biologist” means a person with experience and training in fisheries who is able to submit substantially correct reports on fish population surveys, stream surveys and other related data analyses of fisheries resources. “Substantially correct” means that technical or scientific errors, if any, are minor and do not delay or affect the site plan review process. Qualifications of a fisheries biologist include:

- a. Either:
 - i. Certification by the American Fisheries Society; or
 - ii. Bachelor of Science degree in fisheries or the biological sciences from an accredited institution and five years of professional fisheries experience; and
- b. The prior successful completion of at least three habitat management plans.

37. “Frequently flooded areas” means lands subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, lakes, coastal areas, wetlands and areas where high ground water forms ponds on the ground surface. (See Chapter 15.16 BIMC, Flood Damage Prevention.)

38. “Functions and values” means the natural processes and beneficial roles performed or provided by critical areas including, but not limited to, water quality and quantity protection and enhancement, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, providing flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, protecting aesthetic value, and providing recreational and educational opportunities. These roles are not listed in order of priority.

39. “Geologically hazardous areas” means areas susceptible to significant erosion, sliding, or other geological events. They pose a threat to the health and safety of citizens when used as sites for incompatible commercial, residential or industrial development. Geologically hazardous areas include erosion hazard areas, landslide hazard areas, and seismic hazard areas.

40. “Geotechnical engineer” means a practicing geotechnical/civil engineer who has a valid Washington engineering license and a valid certificate of registration in civil engineering, at least four years of professional employment as a geotechnical engineer with experience in landslide evaluation, and appropriate training and experience as specified in Chapter 18.43 RCW.

41. “Habitat management plan” (HMP) means a report prepared by a professional wildlife biologist or fisheries biologist which discusses and evaluates critical fish and wildlife habitat functions and identifies and evaluates measures necessary to maintain, enhance and improve terrestrial and/or aquatic habitat on a proposed development site.

42. “Habitat of local importance” means an area representing either high quality habitat for native terrestrial or aquatic species or habitat which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape and which is not adequately protected by other city, state or federal policies, laws, regulations, or nonregulatory tools that prevent degradation of the habitat or its associated species. These may include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors such as breeding areas or human-made ponds.

43. “Hazard tree” means a tree that has significant structural defects that are likely to lead to failure and possibly cause injury or damage as identified in a report from an International Society of Arboriculture (ISA) tree risk assessment qualified (TRAQ) arborist. In the case of steep slopes, a hazard tree can also be a tree that is a hazard to stability of the slope, as determined by a geotechnical engineer.

44. “Hazardous substances” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as specified in RCW 70.105.010.

45. “Hedge” means a line of closely-spaced trees and/or shrubs intentionally planted and/or maintained along a property boundary or landscape border for privacy, screening, safety, or similar function, which typically requires ongoing pruning or shearing to maintain its intended function and/or reasonable use of nearby developed areas.

46. “Hydric soil” means soil which is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

47. “Hydrogeologist” means a practicing hydrogeologist who has at least four years of professional employment as a hydrogeologist with experience in the specific subject area in which they are providing a report, and a Washington specialty license in hydrogeology as specified in Chapter 18.220 RCW.

48. “Hydrophyte or hydrophytic vegetation” means plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

49. “Invasive/exotic species” means (a) nonnative (or alien) to the ecosystem under consideration and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health, or as amended by the United States Department of Agriculture National Invasive Species Information Center (NISIC).

50. “Land disturbing activity” means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity. Stormwater facility maintenance is not considered “land disturbing activity” if conducted according to established standards and procedures.

51. “Land divisions” means any division of land subject to the city’s subdivision design standards (Chapter 17.12 BIMC).

52. “Landslide hazard areas” means areas which are at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors. Landslide hazard areas include the following:

- a. Areas characterized by slopes greater than 15 percent having springs or groundwater seepage and having impermeable soils (typically silt and clay) overlain or frequently interbedded with permeable granular soils (predominantly sand and gravel);
- b. Any area potentially unstable due to rapid stream incision or stream bank erosion;
- c. Any area located on an alluvial fan, debris flow deposit, or in a debris flowpath, presently or potentially subject to impacts or inundation by debris flows or deposition of stream-transported sediments;
- d. Any area with a slope of 40 percent or greater and with a vertical relief of 10 or more feet except areas composed of competent consolidated rock;
- e. Any area designated or mapped as class U, UOS, or URS by the Department of Ecology Coastal Zone Atlas and/or mapped as a landslide or scarp on the USGS Surface Geology Map of Bainbridge Island (Haugerud, 2001).

53. “Landslide hazard area setback” means an area contiguous to a landslide hazard area sufficient in depth to meet the development standards set forth in BIMC 16.20.130 as determined by a geological hazards assessment prepared in accordance with BIMC 16.20.180, Critical area reports.

54. “Liquefaction” means a process in which a water-saturated soil, upon shaking, suddenly loses strength and behaves as a fluid.

55. “Low impact development (LID)” means a stormwater and land use management strategy that strives to mimic predisturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

56. “Low impact development best management practices (LID BMPs)” mean distributed stormwater management practices, integrated into a project design, that emphasize predisturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to: bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, minimal excavation foundations, vegetated roofs, and water reuse.

57. “Native or equivalent vegetation” means species which are indigenous to the Puget Sound lowlands ecoregion; or a species that is equivalent in providing the same site-specific functional arrays as would the native species. “Functional arrays” may include forage, floodwater restraint, hiding habitat, or other physical or biologic roles in the ecosystem, that singly or in combination correspond to those of the native species. As with natives, the role of an equivalent species may vary depending on the site and its surrounding ecosystem. Invasive/exotic species shall not be considered equivalent species.

58. “Natural pruning system” means a pruning system intended to maintain a tree’s characteristic growth pattern and adaptations that may allow for changes in appearance to achieve certain specified objectives per ANSI A300 (Part 1 – 2017).

59. “No net loss” means the maintenance of the aggregate total of the city’s critical areas functions and values over time. The no net loss standard requires that the impacts of a proposed use and/or development, whether permitted or exempt from permit requirements, be identified and mitigated on a project-by-project basis, so that as development occurs critical areas functions and values stay the same.

60. “Normal maintenance” means those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal maintenance does not include:

- a. Use of fertilizer or pesticide application in wetlands, fish and wildlife habitat conservation areas, or their buffers;
- b. Redigging ditches in wetlands or their buffers to expand the depth or width beyond the original ditch dimensions;
- c. Redigging existing drainage ditches to drain wetlands on lands not classified as existing and ongoing agriculture under BIMC 16.20.040 (Exemptions).

61. “Normal repair” means activities to restore a structure or use to a state comparable to original condition, including but not limited to size, shape,

configuration, location and external appearance, within a reasonable period after decay or partial destruction.

62. “Ordinary high water mark” means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining freshwater shall be the line of mean high water.

63. “Pollarding” means a pruning system that maintains crown size by initial heading of branches on young trees, followed by removal of shoots to their point of origin at appropriate intervals without disturbing the resulting pollarding head.

64. “Pruning” means the selective removal of plant parts to achieve defined objectives.

65. “Pruning amount” means the quantity of plant parts removed at one pruning, expressed in terms of a number of branches or other parts removed, and/or percentage of the crown or buds removed on an entire tree or specific branches.

66. “Ravine” means a V-shaped landform generally having little to no floodplain and normally containing steep slopes, which is deeper than 10 vertical feet as measured from the centerline of the ravine to the top of the slope. Ravines are typically created by the wearing action of streams. The top of the slope is determined where there is a significant change in the slope to generally less than a 15 percent slope.

67. “Reasonable alternative” means an activity that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.

68. “Reasonable use exception (RUE)” is a means of relief that is available for a property that is encumbered to such an extent by critical areas and/or critical area buffers that application of this chapter would deny all reasonable use of the subject property, as further defined by the decision criteria of BIMC 16.20.080.

69. “Redevelopment” means, on a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

70. "Removal, vegetation" means to eliminate the presence or hazard of unwanted vegetation.
71. "Seismic hazard areas" means areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, or tsunamis. The following areas are considered seismic hazard areas:
- a. Seismic Landslide Hazard Areas. Slopes which are stable in nonearthquake periods, but fail and slide during ground shaking;
 - b. Liquefaction Hazard Areas. Areas of cohesionless, loose or soft saturated soils of low density in association with a shallow groundwater table that are subject to settlement and/or liquefaction from ground shaking; or
 - c. Fault Hazard Areas. Areas of known surface rupture or significant surface deformation as a result of an active fault movement, including 50 feet on either side.
72. "Shrub" means a woody perennial plant, usually with several stems that may be erect or close to the ground, generally smaller than a tree.
73. "Significant tree" means a deciduous tree greater than 12 inches in diameter at four feet high and an evergreen tree greater than 10 inches in diameter at four feet high.
74. "Site" means the entire lot, series of lots, or parcels on which a development is located or proposed to be located, including all contiguous undeveloped lots or parcels under common ownership.
75. "Species of local importance" means those species that are of local concern due to their population status or their sensitivity to habitat alteration.
76. "Streams" means those areas in the city of Bainbridge Island where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other artificial watercourses unless they are used by fish or used to convey streams naturally occurring prior to construction.
77. "Stream types" means a streams classification system based on fish usage and perennial or seasonal water regime as found in WAC 222-16-030 and meeting the standards listed below:
- a. "Type F stream" means a stream that has fish habitat. Waters having the following characteristics are presumed to meet the physical criteria for fish use: Stream segments having a defined channel of two feet or greater within the bankfull width and having a gradient of 16 percent or less. Also, stream segments having a defined channel of two feet or greater within the bankfull

width and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size based on hydrographic boundaries.

b. “Type Np” means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. “Perennial streams” are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

c. “Type Ns” means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an aboveground channel system to marine waters, Type F, or Np waters.

78. “Tree” means a woody perennial plant with single or multiple trunks, which typically develop a mature size of over several inches diameter, and 10 or more feet in height.

79 “Upgrade” means activities that involve a level of intensification or expansion of existing infrastructure. This can involve replacement of existing infrastructure, but also replacing equipment with equipment that meets different operational standards and/or adds capacity to the system.

~~79~~ 80. “Wetland” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, estuaries, marshes, bogs, ponds less than 20 acres, including their submerged aquatic beds and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, stormwater facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. “Wetlands” include those legally established artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

~~80~~ 81. “Wetland boundary” means the boundary or outer edge of a wetland as delineated in accordance with the federal wetland delineation manual and applicable regional supplements (as updated), as required by WAC 173-22-035.

~~81~~ 82. “Wetland category” means category as defined in Washington State Wetland Rating System for Western Washington – 2014 Update (Ecology Publication No. 14-06-029, October 2014), or as revised and adopted by the department.

~~82~~ 83. “Wetlands specialist” means a person with experience and training in wetland issues who is able to submit substantially correct reports on wetland delineations, classifications, functional assessments and mitigation plans. “Substantially correct” means that errors, if any, are minor and do not delay or affect the site plan review process. Qualifications of a wetlands specialist include:

- a. Either:
 - i. Certification as a professional wetland scientist (PWS) or wetland professional in training (WPIT) through the Society of Wetland Scientists; or
 - ii. Bachelor of Science degree in the biological sciences from an accredited institution and five years of professional field experience; and
- b. The prior successful completion of at least three wetland reports.

~~83~~ 84. “Wildlife biologist” means a person with experience and training in the principles of wildlife management and with practical knowledge in the habits, distribution and environmental management of wildlife. Qualifications include:

- a. Either:
 - i. Certification as a professional wildlife biologist through the Wildlife Society; or
 - ii. Bachelor of Science or Bachelor of Arts degree in wildlife management, wildlife biology, ecology, zoology, or a related field from an accredited institution and five years of professional field experience; and
- b. The prior successful completion of at least three habitat management plans.

~~84~~ 85. “Wildlife habitat” means a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These include areas of relative density or species richness, breeding habitat, winter range, and movement corridors. These also include habitats of limited availability or high vulnerability to alteration, such as cliffs, streams and wetlands.

~~85~~ 86. “Zone of influence” means an area, usually upslope from a geologically hazardous area, where changes in land use and hydrology can affect the stability of the geologically hazardous area. The “zone of influence” is defined as 300 feet upslope from slopes greater than 40 percent, and 200 feet upslope from slopes greater than 15 percent but less than 40 percent that are determined to be geologically hazardous areas. (Ord. 2018-01 § 2 (Exh. A), 2018)

Section 6. Section 18.09.030.F.2 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

2. Utility, Primary.

a. Primary utility facilities and equipment are subject to standards in BIMC 16.12.030.C.7, Utilities (Primary and Accessory), and BIMC 16.20.~~130.C.11~~, critical areas regulations.

b. Replacement, maintenance or upgrade of existing poles and equipment within or adjacent to an existing utility corridor or right-of-way is considered a permitted (“P”) use. A new pole added along an existing distribution or transmission line that is within 20 feet of the existing infrastructure and does not exceed the height of both adjacent poles is considered part of an upgrade to that utility corridor. New distribution or transmission line poles that exceed the height of both adjacent poles require minor conditional use approval.

i. Replacement, maintenance or upgrade of a distribution utility pole or a transmission utility pole exceeding the height ~~and/or location standards~~ established in ~~Table 18.12.040~~ Table 18.12.020-2 and Table 18.12.020-3 or moving more than 20 feet from the original location shall require minor site plan review-minor conditional use approval in accordance with BIMC 2.16.040 prior to installing the ~~replacement~~ pole.

Section 7. Table 18.12.020-2 of the Bainbridge Island Municipal Code is hereby amended as shown in Exhibit A.

Section 8. Table 18.12.020-3 of the Bainbridge Island Municipal Code is hereby amended as shown in Exhibit B.

Section 9. Table 18.12.040 of the Bainbridge Island Municipal Code is hereby amended as shown in Exhibit C.

Section 10. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 11. This ordinance shall take effect and be in force five (5) days from its passage and publication as required by law.

PASSED by the City Council this XXX day of XXX, 2023.

APPROVED by the Mayor this XXX day of XXX, 2023.

Joe Deets, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, MMC, City Clerk

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NUMBER:

2024-04

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Exhibit A to Ordinance No. 2024-04

EXCERPT Table 18.12.020-2 Standard Lot Dimensional Standards for Residential Zone Districts

ZONING DISTRICT DIMENSIONAL STANDARD	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14
MAXIMUM BUILDING AND STRUCTURE HEIGHT [4]										
Note: Bonus may not be available in the shoreline jurisdiction										
All lots										
Base	30 ft.	30 ft.	25 ft.				30 ft.	35		
Bonus for Nonresidential Uses If Conditional Use Permit Conditions Met	35 ft.	35 ft.	30 ft.				35 ft.	40 ft.	40 ft. See BIMC 18.12.03 0.B	
<u>Distribution utility poles</u>	55 feet in height above grade. Alternative height limits may apply if additional conditional use permit provisions of BIMC Title 2.16.050.F are met. See BIMC 18.09.030.F.2 for use standards.									
<u>Transmission utility poles</u>	Up to a 25 percent increase above existing pole height above grade with a maximum height of 100 feet. Alternative height limits may apply if additional conditional use permit provisions of BIMC Title 2.16.050.F are met. See BIMC 18.09.030.F.2 for use standards.									
Exemption	Alternative height limits may apply for nonresidential uses if additional conditional use permit provisions of BIMC Title 2 are met. Some encroachments through height limits are permitted under BIMC 18.12.040.									
Shoreline Jurisdiction	See Table 16.12.030-2, Dimensional Standards Table, and BIMC 16.12.030.B.3.i, Regulations – Shoreline Structure Setback View Requirement.									

Exhibit A to Ordinance No. 2024-04

[4] For community and educational facilities (as listed in Table 18.09.020), spires, towers and other vertical features with horizontal cross-sections no more than five percent of the footprint of the primary structure may have a maximum height of 10 feet above the maximum base height, and shall be reviewed through a conditional use permit.

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Exhibit B to Ordinance No. 2024-04

EXCERPT Table 18.12.020-3 Standard Lot Dimensional Standards for Mixed Use Town Center and “Other” Zone Districts

ZONING DISTRICT	Winslow Mixed Use Town Center					HSR I and II	NC	B/I	WD-I
	Central Core Overlay	Madison Avenue Overlay	Ericksen Avenue Overlay	Gateway Overlay	Ferry Terminal Overlay [See BIMC 18.12.030.C]				
DIMENSIONAL STANDARD									
MAXIMUM BUILDING AND STRUCTURE HEIGHT [5]									
Note: Bonus may not be available in the shoreline jurisdiction									
Base	35 ft.; 25 ft. max. south of Parfitt	25 ft.; 35 ft. north of High School Road	25 ft.	35 ft.	BIMC 18.12.030.C standard height north of Winslow Way; 35 ft. south of Winslow Way	35 ft.	35 ft.	35 ft.	35 ft. except that Chapter 16.12 BIM C applies within shoreline jurisdiction
Bonus 1 if parking under building [6]	45 ft.; 35 ft. south of Parfitt	35 ft.; 45 ft. north of High School Road	35 ft.	45 ft.	BIMC 18.12.030.C optional height north of Winslow Way; 45 ft. south of Winslow Way	45 ft.			
Bonus 2 for Nonresidential Uses with Major Conditional Use Permit							45 ft.	45 ft.	45 ft.
Distribution utility poles	55 feet in height above grade. Alternative height limits may apply if additional conditional use permit provisions of BIMC Title 2.16.050.F are met. See BIMC 18.09.030.F.2 for use standards.								

Exhibit B to Ordinance No. 2024-04

<u>Transmission utility poles</u>	<u>Up to a 25 percent increase above existing pole height above grade with a maximum height of 100 feet. Alternative height limits may apply if additional conditional use permit provisions of BIMC Title 2.16.050.F are met. See BIMC 18.09.030.F.2 for use standards.</u>
Bonus 3 Structure Height	Alternative height limits may apply if the conditional use permit provisions of BIMC Title 2 are met. Some encroachments through height limits are permitted under BIMC 18.12.040.

[5] When property adjoins a lower density residential zone, except in the ferry terminal district, north of Winslow Way, for the first 30 feet of the building from the property line of an adjoining lower density residential zone, the building height shall be the building height of the adjoining lower density residential zone. Optional building height allowed in the adjoining lower density residential district through a conditional use permit may be requested for projects within the mixed use town center and high school road zones through the site plan review process. For building height requirements in the ferry terminal district, north of Winslow Way, reference BIMC [18.12.030.C](#).

[6] The bonus height is available when parking is located underground or under the occupiable space of the planned building. If parking is located under 50 percent or less of the occupiable space, the bonus may only be used for a portion of the building footprint twice as large as the area with parking located beneath.

[7] The bonus density is available when provisions of BIMC [18.21.050](#) are met and all bonus FAR is applied to the residential component of the mixed use development.

Exhibit C to Ordinance No. 2024-04

EXCERPT Table 18.12.040: Permitted Setback/Height Modifications

Type of Encroachment	Encroachment Permitted	Conditions
Permitted Setback Modifications		
Fence or combined fence and berm up to 6 feet high	In any required setback subject to applicable regulations in BIMC Title 15	Except as provided in BIMC 18.12.040.B and Chapter 16.12 BIMC
Nonscreening fences or combined nonscreening fence and berm up to 8 feet high	In any required setback subject to applicable regulations in BIMC Title 15	Except as provided in Chapter 16.12 BIMC
Chimneys, flues, awnings, bay windows, and greenhouse windows	Up to 18 inches into any required setback	
Covered porches, bay windows and eaves within the Ericksen Avenue overlay district	Up to 5 feet into the front yard	Bay windows must be cantilevered outward from the wall, and may not result in any portion of the building floor area extending into the setback
Any structures, including but not limited to uncovered steps, porches, and decks less than or equal to 30 inches in height	Up to 2 feet into front and side setbacks. Up to 5 feet into required rear setbacks.	

Exhibit C to Ordinance No. 2024-04

Eaves	May extend up to 24 inches in any required setback except shoreline structure setback	
At or near grade structures such as uncovered patios, sidewalks, and driveways	In any required setback	May not exceed 4 inches in height
Signs	In any required setback	Must conform to Chapter 15.08 BIMC
Overhead or underground <u>Primary Utilities</u> and <u>Accessory Utilities</u> when they are not the <u>principal use of the site</u>	In any required setback, perimeter or roadside buffer	Must conform to Chapters 16.12 and 16.20 BIMC. Does not apply to above ground utilities such as propane tanks.
Composting bins	In side or rear setback areas	
Bioretention/rain gardens	In any required setback	In accordance with Chapter 15.20 BIMC
Rain barrels/cisterns	In any required setback	In accordance with Chapter 15.20 BIMC
Wall-mounted on-demand hot water heaters	Up to 18 inches into side or rear setbacks	Permitted if buffered or enclosed to prevent noise impacts to neighboring properties
Below-ground geothermal equipment	In any required setback, perimeter or roadside buffer	Must conform to Chapters 16.12 and 16.20 BIMC. Permitted if any excavated areas are

Exhibit C to Ordinance No. 2024-04

		promptly relandscaped after installation is complete.
Rockeries and retaining walls less than 4 feet in height	In any required setback	Rockeries and retaining walls greater than 4 feet in height may be permitted with qualified geotechnical engineer determination, and city concurrence, that it is necessary for slope stabilization.
Public communications tower	In any required setback subject to applicable regulations in BIMC Title 15	Must conform to Chapters 16.12 and 16.20 BIMC
Permitted Height Modifications		
Small wind energy generators	Up to 18 inches above the maximum building height in the district	
Solar panels	Up to 18 inches above the maximum building height in the district	
Noncommercial, nonparabolic antennas affixed to noncommercial communication towers	Up to 50 feet in height above grade	
One flagpole per parcel	Up to 45 feet in height above grade	

Exhibit C to Ordinance No. 2024-04

Public communications tower	Up to 120 feet in height above grade	A building permit is required for a public communications tower. A conditional use permit shall be required for a public communications tower to be constructed between 71 feet and 120 feet above grade. A public communications tower shall not exceed 120 feet in height.
<u>Distribution utility poles</u>	<u>Up to 55 feet in height above grade</u>	<u>Replacement poles over 55 feet in height, see BIMC 18.09.030.F.2.b. For new distribution utility facilities or corridors, see Table 18.09.020. Poles shall not be moved more than 20 feet from the original location unless permitted under BIMC 18.09.030.F.2.b.</u>
<u>Transmission utility poles</u>	<u>Up to a 25 percent increase above existing pole height above grade with a maximum height of 100 feet</u>	<u>Replacement poles over the 25 percent increase or 100 feet in height, see BIMC 18.09.030.F.2.b. For new transmission utility facilities or corridors, see Table 18.09.020. Poles shall not be moved more than 20 feet from the original location unless permitted under BIMC 18.09.030.F.2.b.</u>
<u>Utility structures existing on the effective date of the ordinance codified in this subsection</u>	<u>Existing height</u>	<u>May also be replaced or modified; provided, that the structure is not larger or taller than the original structure and is not</u>

Exhibit C to Ordinance No. 2024-04

		<u>moved more than 20 feet from its original location.</u>
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Proposed Code Amendment

BIMC 2.16.020

D. Who Can Apply.

1. A property owner, a contract purchaser, or an agent of the owner with authorized written proof of agency may apply for any type of permit.
2. A resident who is not the owner of the dwelling may apply for permits and licenses pertaining to a home occupation.
3. A public or private electric utility provided:
 - a. The utility documents its ownership rights (e.g., an easement or other property right) or provides documentation of owner authorization for all properties included in the scope of work covered under the permit(s); or
 - b. The electric utility demonstrates that it has attempted to directly contact all property owners whose properties are included in the scope of work covered under the permit(s) for a project proposal. An attempt to make contact shall:
 - i. Be accomplished through a notice sent by the applicant via certified mail to affected property owners at addresses listed on the property tax records of Kitsap County; and
 - ii. Be mailed after a public participation meeting, if required, and in no case later than 30 days prior to the submission of application; and
 - iii. The notice shall state that the utility will be filing an application or applications with the City, that the owner's property may be affected by the project, and that the application may include work to be performed on their property. The notice shall provide a contact for the utility with whom property owners can address questions regarding the project proposal.
 - c. In all cases, an electric utility must submit documentation of property ownership or property owner authorization for properties included within the scope of the permit(s) prior to the issuance of the last permit required for project construction.
4. Any person may request an interpretation of the zoning code, shoreline master program, or subdivision regulations. The director of planning and community development may issue interpretations of the zoning code, shoreline master program, or subdivision regulations as needed, and shall post issued interpretations on the city website.



Code Amendment Support Regulatory Context and Code Comparison Analysis

Background

Puget Sound Energy's (PSE) electrical infrastructure delivers an essential service to the Bainbridge Island community through the provision of power to homes and businesses. Much of the electrical infrastructure on the Island, including the existing Winslow Tap, Port Madison Tap and Foss Corner-Port Madison transmission lines and the Port Madison and Winslow substations, was originally constructed in the 1950s and 60s when Bainbridge Island was part of rural unincorporated Kitsap County. In the 1960s, the area that is now the City of Bainbridge Island had a population under 1,000. Today's population is near 25,000. As the Island's population has grown resulting in a greater demand for electricity, the regulatory environment in which PSE installs, maintains, and upgrades electrical infrastructure has become more complex.

Over the last three years, PSE has worked with the City of Bainbridge Island to identify and request code amendments needed to ensure compliance with the Comprehensive Plan, including Goal U-1 to ensure that reliable utility services are available to all residents of Bainbridge Island and to fulfill PSE's obligation under state law to serve the community with reliable power. In April 2022, PSE submitted a code amendment request to process two code amendments under the City's critical areas ordinance (BIMC 16.20); one pertaining to the requirements to dedicate an ARPA in low density residential zoning districts (BIMC 16.20.100) and one pertaining to the prohibition of primary utilities in Category I and II wetlands (BIMC 16.20.140.G) (see *Code Amendment Request Narrative and Comprehensive Plan Compliance* document and *Best Available Science* Technical Memorandum under City of Bainbridge Island File #PLN52234 LDR) . The City and PSE have also identified two additional needed amendments under the zoning code dimensional standards. The first is within the setback permitted modification table (BIMC Table 18.12.040) and it does not include an allowance for PSE to install essential utility infrastructure within zoning setbacks. The second includes the combination of permitted height modifications for poles in BIMC Table 18.12.040 and an associated height exemption provision in BIMC Table 18.12.020-2 that provide inconsistent processes for exceeding the height of a zoning district. Prior to 2022, the City has not interpreted the exemption provision in BIMC Table 18.12.020-2 that requires structures over the height of the zoning district to apply to utility poles. These amendments are needed to support the installation, upgrade and maintenance of PSE's linear distribution and transmission line infrastructure. Additionally, parcel-based facilities must connect to linear facilities in order to serve the community. These amendments will ultimately support the operation of the electrical system on Bainbridge Island. A fifth code amendment request has also resulted from the City's application of BIMC 2.16.020.D to preclude

PSE from submitting permits on property not owned by PSE without written authorization from the underlying property owner. PSE expects that all of the amendments will support the evolving needs of the community as we work towards the delivery of clean energy and meeting the City's Climate Action Plan goals. Flexibility is needed to provide the community with the necessary physical infrastructure to deliver energy.

The purpose of this memo is to provide additional information in support of the requested code amendments, including:

- Background to outline PSE's electrical utility facility operational and regulatory context, and
- A comparative analysis of other jurisdiction codes similar to the codes under consideration for the amendment requests. The jurisdictions selected have one or more characteristics similar to Bainbridge Island.

Linear Transmission and Distribution Infrastructure Operations

Bainbridge Island receives power through two 115 kV transmission lines that cross Agate Pass from Kitsap County. The transmission lines deliver electricity to the three distribution substations on the Island which lower the voltage and send the electricity through a system of 12.5 kV distribution lines and lower voltage service lines to homes and businesses, which are served via lower voltage service lines. Higher voltages are used to move power through transmission lines from generation sources to distribution substations for efficiency over long distances. Lower voltages are used to safely transfer the power through distribution and service lines to homes and businesses. Engineering standards for transmission and distribution facilities vary due to differing voltage standards. Transmission line standards generally result in taller poles with greater distances (or spans) between each pole due to greater clearances required for the conductor from the ground, structures, vegetation and other fixed objects. Distribution lines typically use shorter poles and less distance between poles. Distribution lines may also be located underground and include associated equipment such as transformers and vaults that occur at certain intervals along the alignment. Individual poles locations along a defined corridor and the location of vaults, switches and transformers used with underground distribution lines are based on engineering design and safety standards.

Utility poles are part of expected visual infrastructure in urban and rural environments. In an urban setting, poles are often located within planter strips between the paved street surface and sidewalks or along improved gravel shoulders. On Bainbridge Island, a majority of the roads are lined with maintained vegetation within the road right-of-way, but lacking in improved shoulders and urban features such as curb, gutter, sidewalks and planter strips. Therefore, PSE's poles are often located within the unimproved, maintained vegetation portion of the road right-of-way. PSE must meet safety clearances such as local control zone regulations in order to avoid conflicts with cars and bicycle traffic, which pushes infrastructure to the edge of the legal limits of the road right-of-way, often requiring additional operating rights on adjacent property. Underground distribution infrastructure tends to also be located within unimproved shoulders, as City policy includes a preference for wet utilities to be under the paved surface and dry utilities to be on the outer edge of the right-of-way. Generally, vaults and pad mount transformers that support underground distribution are generally located on easement adjacent to right-of-way, but

are occasionally located within right-of-way in a location that does not interfere with motorized and non-motorized uses. Similar to other utilities such as water, sewer, and communications, the siting of the facilities is based on where the services are transferred from the source of the resource (transmission lines over Agate Pass to substations) to where the it is needed (substations to customers), therefore siting opportunities can be limited.

Regulatory Context

PSE is a regulated utility with a duty to serve our customers with safe, adequate, and efficient power. PSE must comply with state and federal regulations administered by various authorities, including the Washington State Utility and Transportation Commission (WUTC) and the North American Electric Reliability Corporation (NERC). In addition to state and federal requirements that focus on PSE's service to customers, local zoning, environmental and construction codes and standards also apply to PSE's linear infrastructure. A summary of the regulatory context for these linear facilities is outlined below.

State Regulatory Authority

WUTC. The WUTC oversees the provision of electrical service by PSE. The WUTC requires that PSE make its electrical service available to all residents and businesses within the service area in a safe, efficient and reliable manner. This "duty to serve" is codified in state law (RCW 80.28.010). Providing safe and reliable electrical service to our customers, including Bainbridge Island, means minimizing service interruptions and outages. The WUTC controls the rates that can be charged by PSE and has the authority to levy fines against the company for failure to comply with regulatory requirements. Tariffs outlining PSE's services and rates are filed with the WUTC.

Infrastructure projects, including installation of new transmission and distribution lines as well as maintenance and upgrading of existing facilities, can result in costs being borne by customers through rates. For costs to be recovered by PSE, the WUTC makes determinations as to whether the costs incurred were prudent and reasonable. Improvement projects are constructed based on need and designed to keep costs down while meeting safety and reliability requirements. Even after completion of a project that was carefully planned and engineered, the WUTC can decide that certain costs were not prudent and deny PSE the ability to recover those costs through rates. This is a significant incentive for PSE to undertake projects only when necessary and carefully manage costs.

Tariffs. As a regulated utility, tariffs outlining PSE's services and rates are on file with the WUTC. Any changes to the tariffs require review and approval by the WUTC. Although the tariffs are not regulations, PSE is required to comply with the tariff provisions. Tariffs can interact with local jurisdiction regulations. For example, a tariff may apportion utility improvement costs associated with a local requirement to underground electrical lines.

Federal Regulatory Authority

NERC. PSE's transmission system is subject to reliability standards set by the North American Electric Reliability Corporation (NERC), which is subject to oversight by the Federal Energy Regulatory Commission (FERC). The role of NERC is to develop and enforce reliability standards, monitor the transmission systems across the United States, Canada and parts of Mexico, and assess adequacy of systems based on 10-year forecasts and summer and winter forecasts. NERC annually assesses PSE's entire electrical transmission system to ensure standards are met and like the WUTC, NERC has the authority to levy significant fines if it determines PSE is not meeting its standards and has the authority to require the implementation of mitigation to correct violations. At times, NERC reliability requirements change, resulting in the need for PSE to upgrade its infrastructure to meet the new regulations.

Operational Standards

NESC. PSE must follow the National Electrical Safety Code (NESC) standards for installation, operation, and maintenance of transmission and distribution lines. These standards contain the minimum engineering criteria needed for functioning systems to be reliable and resilient. The standards are updated every 5 years to reflect changes in technology and industry practices, and PSE must make changes to its system to meet the new standards. This often means that repair and maintenance activities result in nominally taller poles, different cross arm and/or insulator configurations, and/or greater clearance requirements from structures and other fixed objects. Different standards apply to distribution infrastructure than to transmission infrastructure due to the different voltage of electricity passing through the conductor and greater spacing (or spans) between transmission poles resulting in longer conductor length.

Vegetation Management. A significant factor in PSE's ability to provide safe and reliable power to our customers is the need to manage vegetation along our transmission and distribution corridors. State law provides for the ability to cut or remove vegetation that poses a hazard to the safe operation of PSE infrastructure. PSE has adopted standards for safely managing vegetation that has the potential to interfere with the reliable operation of its electrical infrastructure in order to avoid interruptions and outages.

Eminent Domain. PSE's preference is to acquire needed operating rights on private property through negotiations with property owners. Under state law, PSE can exercise the right of eminent domain if negotiations prove unsuccessful (RCW 80.32.060). PSE works with property owners to only acquire property necessary for the installation and operation of its facilities while limiting impacts to the property. As noted under WUTC authority, it is in PSE's best interest to only acquire the property necessary to install and operate our improvements and to manage costs.

Local Regulations

PSE must also comply with local codes and standards when siting, installing, upgrading and maintaining electrical infrastructure. Due to the linear nature of PSE's transmission and distribution lines, local codes focused on parcel-based development with primary uses where people live or work may not contemplate or incorporate practical regulatory performance standards for the location and operation of PSE's infrastructure. Often, different regulations apply to different portions of a facility depending upon specific locations that are crossed. This includes different zoning and overlay districts, critical areas, shoreline jurisdiction, and areas under the purview of functional plans adopted by local jurisdictions such as transportation improvement plans, parks and recreation plans or subarea plans.

Franchise: PSE has a franchise agreement with the City of Bainbridge Island. The franchise agreement is a contract that outlines the terms in which PSE can use City rights-of-way to locate electrical utility infrastructure to serve the Bainbridge community. Although the franchise is not a regulation, franchise terms can impact installation considerations by the utility. Franchise terms may not align with other City standards and regulations. For example, as discussed later in this document, a utility corridor may extend outside the franchise right-of-way into a zoning setback on private property. Or poles and conductor clearances may need to be located within unimproved portions of a road right-of-way that contain vegetation, critical areas, and buffers to meet safety clearances from traffic.

Local Regulatory Considerations

Local regulations can differ in how electrical utilities are characterized and regulated. PSE encounters differing regulatory standards depending upon specific jurisdiction codes and policies. Electrical utility projects are not common projects encountered by jurisdiction development review staff and jurisdiction development codes are generally focused on primary uses on parcels, not linear facilities that cross several properties and zoning districts and have limited rights unrelated to the primary use of the property. Most utility facilities, including electrical utility facilities, are located within road rights-of-way. PSE's electrical facility operational rights can also extend onto adjacent property. Most jurisdiction standards assume utility placement entirely within improved road right-of-way or as services that are part of parcel-based development such as commercial site plans or subdivisions and do not necessarily contemplate stand-alone utility projects that cross various regulatory environments. Therefore, codes and standards may have gaps that reflect these notions, making implementation of codes and standards in the review of an electrical utility project cumbersome and impractical.

Linear electrical facilities are often located within road right-of-way under a franchise agreement with a jurisdiction collated with other utilities. Unlike sewer or water lines that are often given priority to locate underneath paved services, PSE infrastructure is generally located along the edges of the franchise area, whether above or below ground, with operational rights often extending onto the adjacent property.

Occasionally, PSE poles are installed on private property, but more often conductor clearances, vegetation management, and equipment such as vaults and transformers require operational rights outside the road right-of-way in the form of an easement. Examples of infrastructure that PSE for which PSE acquires easements are included in the *PSE Structures and Equipment* photo glossary. For examples of operational needs that extend outside of road right-of-way associated with poles and conductor, see the *Typical Roadside Utility Line* exhibit.

When PSE's linear infrastructure is not located in public road right-of-way and is instead situated along multiple properties not adjacent to road right-of-way, operational rights are generally in the form of a series of easements that make up a utility corridor. In some instances, other utilities or features are located within the same easement area, including trails, private access roads or other compatible uses. To limit impacts on the primary use of the property, PSE facilities on private property are often located as close as possible to property lines and in areas that are often rendered undevelopable to the property owner, including building setback areas.

Local Regulation Summary

Within PSE's service territory, Bainbridge Island is unique in its character as an incorporated city that includes the entirety of the Island that is separated from a major City by ferry access only. The population of Bainbridge Island is approximately 25,000 and the majority of Bainbridge Island maintains a rural character outside of designated concentrations of non-residential and higher density residential including Winslow, Island Center and Lynnwood Center. The City of Bainbridge Island regulates PSE's transmission and distribution infrastructure as primary utilities and only differentiates between voltages of infrastructure for the purposes of regulating pole height.

The code comparison table includes sample code references from 10 jurisdictions within PSE's service territory with one or more characteristics similar to Bainbridge Island. For example, another Island city within PSE's service territory is the City of Mercer Island; however a major highway (I-90) crosses the Island and connects two major jurisdictions, the cities of Seattle and Bellevue. Mercer Island's population is just over 25,000, but the island area is smaller than Bainbridge Island with approximately 13 square miles verses 65 square miles. Other islands served by PSE include Vashon and Whidbey. Vashon Island is under the jurisdiction of unincorporated King County and Whidbey Island is predominantly under the jurisdiction of unincorporated Island County, however includes incorporated areas such as Oak Harbor, Coupeville, and Langley. Below is a general summary of Bainbridge's code requirements applicable to utility infrastructure in the categories of zoning height regulations, zoning setback regulations, and critical area regulations applicable to wetlands and considerations for each category. Under each Bainbridge Island summary is a comparative summary of the codes examples found in the code comparison table from the other 10 jurisdictions.

Zoning Dimensional Requirements

Building/Structure Setbacks

Bainbridge Island code. The Bainbridge Island zoning code regulates encroachments allowed within zoning setbacks through a table of allowances (BIMC 18.12.040). The table includes an allowance for overhead or underground accessory utilities. In 2021, the City interpreted this to mean that primary utilities are prohibited in setbacks because they are not included as an allowance within the table. It is not clear if this prohibition is only applicable to physical infrastructure such as poles, guys, anchors and vaults or if it includes easement area and rights for conductor clearances and vegetation management activities.

Primary utilities located in zoning setbacks is a common occurrence on Bainbridge Island. Examples of this include one or more poles along a distribution or transmission line within franchise right-of-way extending onto the adjacent property; guy anchors, wires or stub poles on private property adjacent to road rights-of-way; equipment supporting underground distribution lines, including vaults and transformers; and distribution and transmission lines crossing setbacks to connect to a substation. As noted above, facilities on private property are often located in setbacks to limit impacts to the property's primary use and also because a majority of lines are located in right-of-way, but certain elements or supporting equipment can extend onto private property. PSE operating rights within setback areas also include aerial rights for conductor clearances, access, and vegetation management rights.

Other jurisdiction summary. The 10 jurisdictions differ in their treatment of placement of utility facilities in zoning setbacks. Most codes apply setbacks to buildings and only regulate whether building features or appurtenances associated with the primary use of the property can extend into a setback. Two of the jurisdiction codes acknowledge utility poles as an allowed encroachment in setbacks. Most codes focus on addressing encroachments that are features of the primary use/building and extending outward from the building towards the property lines. Even Bainbridge Island's zoning code acknowledges this in BIMC 18.12.050 noting that setbacks extend from a building to a street. The other jurisdiction codes do not address or prohibit locating a pole on easement in a setback area as an extension of the utility placement in road right-of-way or as a subordinate use in cross country corridors. Most codes are silent as to whether utility poles are an allowed encroachment, but the jurisdictions do not interpret the lack of allowance to mean poles are prohibited in setbacks. None of the codes reviewed specifically prohibit utility poles or other utility features in zoning setbacks.

Under state law, PSE's duty to serve customers requires that the installation and operation of PSE infrastructure cannot be precluded. This necessity is recognized under state law granting PSE the right to exercise eminent domain. By power of eminent domain, PSE has the right to acquire property rights necessary for the installation and operation of our facilities if no other alternative location is feasible, including within zoning setbacks. However, there is no known instance of any jurisdiction denying PSE the ability to locate infrastructure within a zoning setback regardless of whether the local code allows poles in setback areas.

Building/Structure Height

Bainbridge Island code. The same table that provides allowances for encroachments into setbacks in BIMC 18.12.040 also includes modifications to height limits for certain structures, including utility poles. The table provides for height allowances within operational ranges for distribution and transmission poles that are above the building height limits for all zoning districts. These operational heights are based on engineering standards and clearances. The standard typical length for a distribution poles is 40-45 feet, resulting in 34 – 38.5 feet of the pole extending above grade when the pole is embedded in the ground. For transmission poles, heights above grade can typically vary from 60 - 100 feet, but can go higher if design considerations warrant a taller pole, including the collocation of communication lines or the need to increase pole height to cross other right-of-way features such as street lights. An example at the tallest end of the spectrum are the poles supporting the transmission lines crossing Agate Pass, which are 140 feet in height due to the span length and in order to meet regulatory clearances from the Agate Pass Bridge. Operationally, poles generally must exceed the height limits of the underlying zoning districts on Bainbridge Island, particularly in residential zones. BIMC 18.12.020 contains a provision that alternative height limits may apply for nonresidential uses that exceed the maximum building and structure height allowances if conditional use permit provisions in Title 2 are met. BIMC 18.12.040 provides a provision for replacement poles to go through minor site plan review. The City of Bainbridge Island has recently interpreted the conditional use permit requirement in BIMC 18.12.020 to apply to the addition of poles along an existing corridor since the language in Table BIMC 18.12.040 reference replacement poles. In almost every case, operational pole height needs will exceed the base heights allowed in each zoning district in BIMC 18.12.020 and adding poles along existing corridors does not expand or intensify the underlying use.

Other jurisdiction summary. In most cases, height restrictions within zoning dimensional standards are specific to buildings only. A few codes provide exceptions to height standards for utility poles, and none require a permit review process to exceed the underlying zoning height dimensional standard. None of the other codes reviewed include specific height thresholds for distribution and transmission line poles.

PSE determines operational pole height based on NESC standards. As a regulated utility whose costs are scrutinized and passed onto rate payers, PSE does not have incentives to install poles taller than necessary. Heights applicable to buildings do not appropriately transfer to the engineering needs of utility poles. Based on PSE's duty to serve our customers under state law, the installation of poles of appropriate operational heights cannot be precluded by a jurisdiction. The requirement for a lengthy discretionary review process to add a pole to an existing, established use and to maintain and upgrade infrastructure to support an essential public service appears unnecessary and inconsistent with the general approach to regulating utility poles.

Critical Areas - Wetlands

Bainbridge Island Code. The Bainbridge Island critical areas regulations pertaining to wetlands (BIMC 16.20.140) include a provision that prohibits certain uses, activities and developments with Category I and II wetlands, including primary utilities. This provision does not consider that there may be no other

option for the installation of new linear utilities than to cross wetlands, including Category II wetlands that extend into unimproved road right-of-way. It also does not consider the need to upgrade existing utilities within Category I and II wetlands when the upgrade does not qualify as repair and maintenance under the critical areas exemptions. See PSE's *Code Amendment Request Narrative and Comprehensive Plan Compliance* and HDR's *Best Available Science* Technical Memorandum submitted in April 2022 under File #PLN52234 LDR for further discussion.

Other jurisdiction summary. None of the jurisdiction codes reviewed prohibit utilities in wetlands, aside from King County (Vashon Island) not allowing utilities in Category I wetlands. If utilities are not an allowed alteration outright, all jurisdictions provide an allowance through a public utility or alteration exception process, including King County. These exception processes recognize the need to provide essential utilities while balancing environmental protection through appropriate mitigation measures.

Critical Areas – Aquifer Recharge Protection Areas

Bainbridge Island Code. The Bainbridge Island critical areas regulations (BIMC 16.20.100.E.1) require the designation of an Aquifer Recharge Protection Area (ARPA) when development occurs on property located within the R-0.4, R-1 and R-2 zoning districts and Site Assessment Review (SAR) is required. The code does not distinguish between development by a fee owner of a parcel who may develop and use the entire parcel, and development by an easement holder, like PSE, who only has rights to use a portion of the property for a specified use or activity and does not hold fee interest in the property. PSE does not have rights on private property outside of its easement areas, apart from rights of ingress and egress granted under state law, and PSE cannot meet the requirement to dedicate and record an ARPA on property title. See PSE's *Code Amendment Request Narrative and Comprehensive Plan Compliance* document.

Other jurisdiction summary. Bainbridge Island is the only jurisdiction to regulate aquifer recharge areas based on zoning district and not by limiting or assigning performance standards to land uses and activities that can potentially impact groundwater. No other jurisdiction requires dedication of an ARPA or similar conservation easement to protect groundwater. Therefore, other jurisdiction Aquifer Recharge Protection Area codes are not documented in the code comparison table.

Who Can Apply

Bainbridge Island Code. BIMC 2.16.020.D.1 identifies who can apply for any type of permit that requires review and approval under Bainbridge Island code. The code states that, "A property owner, a contract purchaser, or an agent of the owner with authorized written proof of agency may apply for any type of permit." This code section does not appear to contemplate PSE's unique status as an essential utility provider. When PSE facilities are located on easement, PSE is not a property owner as defined in BIMC 18.36.030, as PSE does not have a fee interest in the property. PSE is also not acting as an agent of the underlying property owner, as electric lines and equipment are for the benefit of the public.

Additionally, PSE may not be able to identify the rights needed for a project until after the City approves discretionary permits and the design can be completed.

Other jurisdiction summary. Of the 10 jurisdictions in the comparison table, six require an applicant to be an owner or have written authorization/consent from the owner(s). Two jurisdictions specifically identify public or private utilities as applicants, one jurisdiction does not have a definition of applicant outside the subdivision and wireless provisions in the code, and one allows any person or entity to be an applicant.

In the past ten years, PSE has worked with three other jurisdictions (Pierce County, Bellevue, and Kirkland) that have codes similar to Bainbridge Island that have all processed PSE's permit applications for new transmission line projects, pending PSE's acquisition of easements along the transmission line route. These jurisdictions have accepted a letter from PSE describing its unique status as a regulated utility with the ability to use eminent domain to acquire rights for electrical facility installation and operation under RCW 80.32.060 in lieu of requiring evidence of PSE's easement rights or owner consent. These jurisdictions have processed and issued land use and environmental permits but withheld issuance of ministerial construction permits until PSE has acquired all necessary easement rights and permissions. This process allows for a timely and efficient permit review process while preserving and resolving property rights considerations before any construction may occur. Additionally, PSE recently submitted permits to construct a portion of a new transmission line corridor within unincorporated King County. As the County acknowledges utilities as applicants, PSE was able to submit permits, but the permits were not approved for construction until proof of easement was provided.

Code Comparative Analysis Tables

Jurisdiction: Island County
Size: 517 square miles
Population: 87,432 (2021)

USE DEFINITIONS		
Transmission Lines:		
Utilities, major means public facilities that serve a broader geographic area of the county. Major utilities include generating plants, privately owned refuse collection and transfer stations, processing, recycling or disposal facilities, electrical transmission substations, electrical and gas transmission lines, and similar facilities of public agencies or utilities. Major utilities do not include a throughput transmission facility or communication tower.		
Distribution Lines:		
Utilities, minor means public facilities that serve a localized geographic area of the county. Minor utilities include utility facilities that are necessary to support established uses and involve only minor structures such as, telephone switching facilities, electrical distribution substations, electrical and gas distribution lines and pumphouses. Minor utilities do not include throughput transmission facilities or communication tower.		
SETBACKS		
Definitions		
Yard means an open space, other than a court, on the lot on which a building is situated lying between the front, rear, or side wall of a building and the nearest lot line.		
Applies to:	Buildings	
Are poles included in code:	No	
Allowed Encroachments		
Only addressed in Freeland Zoning Code (Chapter 17.06).	accommodation for disabled, rain barrels and cisterns, uncovered and unenclosed decks or entry stairs, porch encroachment, other architectural features and appurtenant structures.	
HEIGHT		
Definitions		
Height, building shall be defined and measured as provided by the most recent edition of the International Building Code (IBC) and the International Residential Code (IRC).		
Applies to:	Buildings	
Are poles included in code:	No	
Exceptions		
Chimneys, smokestacks, fire or parapet walls, ADA-required elevator shafts, flagpoles, utility lines and poles, water tanks, skylights, silos, communication sending and receiving devices, HVAC and similar equipment, and spires associated with places of worship are exempt from height requirements. (not included under every zoning district; however building height is specified)		
WETLANDS		
Transmission or distribution Lines Prohibited in Wetlands? No		
Allowances		

ICC 17.02B.300 Exempt activities	A. Exemptions 1. No permit is required under this chapter which meets the precise terms of the exempt activities. 2. For development proposals that do not meet the precise terms of an exempt activity, the Planning Director may, through a Type I process, determine whether or not a development should be classified as an exempt activity.
	B. Fish and wildlife habitat conservation areas and wetlands.
	5. Utility repair. Normal and routine maintenance or repair of existing utility facilities or rights-of-way.
	6. Utility construction in improved right-of-way. Installation, construction, relocation, operation, normal maintenance or repair, or alteration of all utility lines, equipment, or appurtenances, not including substations, in improved and maintained road rights-of-way. Replacement may be considered an exempt activity if it is the normal method of repair. Relocation of utility lines, equipment, or appurtenances shall occur as far as feasible from the critical areas and its buffer.
ICC 17.02B.310 –C. Wetlands permitted alterations.	3. Public transportation and utility projects. Alteration of a wetland or wetland buffer for a public transportation or utility project that cannot be avoided as required by chapter 17.02B.080.B shall be approved only under specific conditions.
Definitions	
Critical area permit means a permit issued pursuant to the requirements of this chapter. Critical area permits include: exemption authorizations, permitted alteration permits, and critical area variances.	
Maintenance or repair means usual acts to prevent a decline, lapse, or cessation from a lawfully established condition or restores a development to a state comparable to its original condition, including but not limited to maintaining the same size, shape, configuration, location and appearance, provided such restoration is commenced within a reasonable period of time. Replacement of a structure is not considered normal maintenance or repair, except where specifically authorized by this chapter or section 17.03.230. With respect to structures, repairs that exceed fifty (50) percent of the value of the structure over any three-year period shall constitute replacement and shall not be considered maintenance or repair.	
Applicant	
ICC 17.03.040: Definitions	Applicant means any person who files an application subject to to review under titles 16 or 17 who is either the person(s) identified in the assessor's records as the owner of the property on which the proposed activity would be located or the authorized agent of such person.

Jurisdiction: City of Langley
Size: 1.6 square miles
Population: 1,150 (2021)

USE DEFINITIONS		
“Utilities” means those services provided for private or public use, including electric power lines, gas lines, telephone lines, television cables, sewer lines, water lines, and drainage facilities.		
“Structure” means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground, not including utility poles and related pad-mounted or ground-mounted distribution equipment, residential fences less than six feet high, retaining walls, rockeries and other similar improvements of a minor character less than four feet high.		
SETBACKS		
Definitions		
“Encroachment” means any structural element that encroaches.		
“Setback” means the minimum distance required by this title for buildings and/or structures to be set back form the street, side or rear lot lines, rights-of-way or access easements.		
Applies to:	Buildings and structures	
Are poles included in code?	No	
Allowed Encroachments		
All parts of the structure or building including, without limitation, cornices, eaves, canopies, sun shades, gutters, chimneys and flues shall be considered in calculating the location of the structure or building in determining compliance with the setback requirements of this section.		
HEIGHT		
Definitions		
“Building height,” for the purposes of this title, except for Chapter 18.26, means the vertical distance measured from the grade to the highest point of the roof (see exemptions in definition of “grade” below), provided, however, that “building height,” for the purposes of Chapter 18.26 means the vertical extent of a building measured in stories.		
“Grade” means the average of the existing or finished ground level, whichever is lower, at the center of all walls of a building or beneath the proposed structure, whichever is applicable. This following items are exempt when making height determinations: 1. Radio and television aerials and flagpoles. 2. Other Features. Open rails, planters, skylights and chimneys may exceed the height limits by four feet or may extend four feet above the ridge of a pitched roof. 3. Wireless communication antenna arrays up to a height of 15 feet from the highest point of the roof.		
Applies to:	Buildings	
Are poles included in code?	No	
Exceptions		
Height modification allowed in commercial zones applies to building height.		
Wetlands		
Transmission or distribution lines prohibited in wetlands? Yes - alteration of Category I wetlands is prohibited (LMC 16.20.080.B.a.(1)).		
Allowances		
LMC 16.20.075 Wetlands and streams – exemptions.	D. Maintenance, operation and reconstruction of existing roads, streets, utilities and associated structures undertaken pursuant to public works director approved best management practices; provided, that activities shall not increase the impervious area and that disturbed areas are restored to their preexisting condition.	
	H. Construction of new utility facilities or improvements to existing utility facilities that take place within existing improved right-of-way or existing impervious surface that does not increase the amount of impervious surface, or the use of trenchless technology such as boring or tunneling, that would not disturb the habitat.	
LMC 16.20.080 Wetlands and streams -	1. If the application of the wetland and stream provisions of this chapter would prohibit a street, road or utility line proposal by a public agency or utility or the installation of the necessary utilities for a development proposal by a public agency or utility, the agency, utility or private applicant may apply for an exception pursuant to this section. Projects affecting Category I and II wetlands, Type 1 or 2 streams or otherwise requiring review and decision by the hearing examiner shall be decided by the hearing examiner.	
C. Public Agency and Utility Exceptions.		
Definitions		
“Alterations of a wetland or stream” means the placement or erection of any solid material or structure; the discharge or disposal of any dredge material or waste, including filling, grading, channelization, removing, dredging, draining, extraction of any materials; the discharge of any dredge material or waste, including filling, grading; the removal or harvesting of trees or other vegetation; or the modification for use as a stormwater retention/detention facility.		

“Repair or maintenance” means an activity that restores the character, scope, size and design of a serviceable area, structure or land use to its previously authorized and undamaged conditions. Activities that change the character, size or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

Applicant	
LMC 18.36.010 Applications.	C. Required Submittals. For each application, the required submittals include the following: 1. The applicant, owner or owner's representative names and addresses, a certificate of ownership issued by a title insurance company authorized to do business in the state and indication of the person to be contacted regarding the application.

Jurisdiction: Vashon Island
Size: 36.9 square miles
Population: 10,400 (2020)

USE DEFINITIONS		
Regional utility corridor. A right-of-way tract or easement other than a street right-of-way which contains transmission lines or pipelines for utility companies. Right-of-way tracts or easements containing lines serving individual lots or developments are not regional utility corridors.		
Utility corridor. A narrow strip of land containing underground or above-ground utilities and the area necessary to maintain those utilities. A "utility corridor" is contained within and is a portion of any utility right-of-way or dedicated easement.		
Utility facility. A facility for the distribution or transmission of services, including:		
A. Telephone exchanges;		
B. Water pipelines, pumping or treatment stations;		
C. Electrical substations;		
D. Water storage reservoirs or tanks;		
E. Municipal groundwater well-fields;		
F. Regional surface water flow control and water quality facilities;		
G. Natural gas pipelines, gate stations and limiting stations, limited to local distribution service and excluding fossil fuel facilities;		
H. Propane, compressed natural gas and liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users, limited to local distribution service and excluding fossil fuel facilities;		
I. Wastewater pipelines, lift stations, pump stations, regulator stations or odor control facilities; and		
J. Communication cables, electrical wires and associated structural supports.		
SETBACKS		
Definitions		
Setback. The minimum required distance between a structure and a specified line such as a lot, easement or buffer line that is required to remain free of structures.		
Applies to:	Structures	
Are poles included in code?	yes	allowed encroachment below
Allowed Encroachments		
KCC 21A.12.170 Setbacks – projections and structures allowed. Provided that the required setbacks from regional utility corridors of KCC 21A.12.140, the adjoining half-street or designated arterial setbacks of KCC 21A.12.160 and the sight distance requirements of KCC 21A.12.210 are maintained, structures may extend into or be located in required setbacks, including setbacks as required by KCC 21A.12.220.B, as follows:		
H. Telephone, power, light and flag poles.		
I. The following may project into or be located within a setback, but may only project into or be located within a five foot interior setback area if agreement documenting consent between the owners of record of the abutting properties is recorded with the records and licensing services division prior to the installment or construction of the structure:		
1. Sprinkler systems, electrical and cellular equipment cabinets and other similar utility boxes and vaults.		
HEIGHT		
Applies to:	Structures	
Are poles included in code?	yes	exception below
Exceptions		
KCC 21A.12.180 Height – exceptions to limits. The following structures may be erected above the height limits of KCC 21A.12.030-050.		
B. Fire or parapet walls, skylights, flagpoles, chimneys, smokestacks, church steeples, crosses, spires, communication and transmission and receiving structures, utility line towers and poles, and similar structures.		
WETLANDS		
Transmission or distribution lines prohibited in wetlands? No		
Allowances		
KCC 21A.24.070 Alteration exception.	A. The director may approve alterations to critical areas, critical area buffers and critical area setbacks, except for flood hazard areas, not otherwise allowed by this chapter as follows:	
	1. Except as otherwise provided in subsection A.2. of this section, for linear alterations, the director may approved alterations to critical areas, critical area buffers and critical area setbacks only when all of the following are met.	
	a. there is no feasible alternative to the development proposal with less adverse impact on the critical area;	
	b. the proposal minimizes the adverse impact to critical areas to the maximum extent practical;	
	c. the approval does not require the modification of a critical area development standard established by this chapter;	
	d. the development proposal does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest;	
KCC 21A.24.045 Allowed alterations.	e. the linear alteration: (1) connects to or is an alteration to a public roadway, regional light rail transit line, public trail, a utility corridor or utility facility or other public infrastructure owned or operated by a public utility; or (2) is required to overcome limitations due to gravity.	
	Construction of new utility corridor or utility facility	
	- Allowed within existing roadway if conducted consistent with regional road maintenance guidelines.	
	- Limited to pipelines, cables, wires and support structures of utility facilities within utility corridors if there is no alternative location with less adverse impact on the critical area and critical area buffer and meet performance criteria (including maintenance roads).	
	Construction of new residential utility service distribution line	
	- Allowed within existing roadway if conducted consistent with regional road maintenance guidelines.	
	- Allowed for residential utility service distribution lines to residential dwellings, including, but not limited to, well water conveyance, septic system conveyance, water service, sewer service, natural gas, electrical, cable and telephone if there is no alternative location with less adverse impact on the critical area or the critical area buffer and the residential utility service distribution lines meet performance criteria to the maximum extent practical.	
	Maintenance, repair or replacement of utility corridor or utility facility	
	- Allowed within existing roadway if conducted consistent with regional road maintenance guidelines.	
	- Limited to pipelines, cables, wires and support structures of utility facilities within utility corridors if there is no alternative location with less adverse impact on the critical area and critical area buffer and meet performance criteria (including maintenance roads).	
- Allowed for onsite private individual utility service connections or private or public utilities if the disturbed area is not expanded and no hazardous substances, pesticides or fertilizers are applied.		
Definitions		
Alteration. any human activity that results or is likely to result in an impact upon the existing condition of a critical area or its buffer. "Alteration" includes, but is not limited to, grading, filling, dredging, channelizing, applying herbicides or pesticides or any hazardous substance, discharging pollutants except stormwater, grazing domestic animals, paving, constructing, applying gravel, modifying topography or removing vegetation or any other human activity that results or is likely to result in an impact to existing vegetation, hydrology, fish or wildlife or their habitats. "Alteration" does not include passive recreation such as walking, fishing or any other similar activities.		
Roadway. The maintained areas cleared and graded within a road right-of-way or railroad prism. For a road right-of-way, "roadway" includes all maintained and traveled areas, shoulders, pathways, sidewalks, ditches and cut and fill slopes. For a railroad prism, "roadway" including the maintained railbed, shoulders, and cut and fill slopes. "Roadway" is equivalent to the "existing, maintained, improved road right-of-way or railroad prism" as defined in the regional road maintenance guidelines.		
Applicant		
KCC 21A.06.070 Applicant.	Applicant: a property owner, a public agency or a public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such an easement under RCW 8.08.040, or any person or entity designated or named in writing by a property or easement owner to be the applicant, in an application for a developmnet proposal, permit or approval.	

Jurisdiction: Mercer Island
Size: 12.9 square miles
Population: 25,442 (2021)

USE DEFINITIONS		
<i>Utilities</i> : Facilities providing infrastructure services by a public utility regulated by the state through fixed wires, pipes, or liens. Such facilities may include water, sewer, storm water facilities (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication lines, cable communication lines, electrical lines and other appurtenances associated with these utilities. "Utilities" does not include wireless communication facilities, but do include wireless facilities.		
<i>Utility pole</i> : A structure designed and used primarily for the support of electrical wires, telephone wires, or television cable and may also include lighting. A new utility pole originally constructed for the purpose of providing support for a wireless communication facility (WCF) shall be regulated as a new antenna support structure.		
SETBACKS		
Definitions		
Setback : The distance between a development and other feature such as a property line or critical areas buffer.		
Applies to:	Buildings	
Are poles included in code?	No	
Allowed Encroachments		
Intrusions into required yards (residential): Minor building elements, hardscape and driveways, fences, retaining walls, rockeries, garages and other accessory buildings, heat pumps, air compressors, air conditioning units, and other similar mechanical equipment, architectural features, other structures less than 30" above grade.		
HEIGHT		
Definitions		
<i>Building height</i> : 1. Outside of the Town Center: The vertical distance from the average building elevation to the highest point of the roof structure excluding appurtenances. A mezzanine shall not be counted as a story for determining allowable number of stories when constructed in accordance with the requirements of the construction codes set forth in MICC title 17. 2. Within the Town Center: Building height within the Town Center (TC) zone shall be calculated pursuant to MICC 19.11.030(A).		
Applies to:	Buildings	
Are poles included in code?	No	
Exceptions		
Residential : antennas, lighting rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, solar panels, and other similar appurtenances may extend to a maximum of five feet above the height allowed for the main structure.		
Commercial : Rooftop building appurtenances, including but not limited to mechanical equipment, chimneys, and roof access structures, may extend up to ten feet above the maximum building height allowed. Rooftop appurtenances shall be located at least ten feet from the exterior edge of any building and shall not cover more than ten percent of the rooftop area.		
WETLANDS		
Transmission or distribution prohibited in wetlands? No		
Allowances		
MICC 19.07.120 – Exemptions	E.2. Repair and maintenance of existing utility facilities. Repair, maintenance, reconstruction and replacement of utility structures and conveyance systems and their associated facilities, including but not limited to service lines, pipes, mains, poles, equipment and appurtenances, both above and below ground. Exempt, but must follow mitigation sequencing to avoid and minimize. D. 2 Minor expansion of utility structures and conveyance systems and their associated facilities including service lines, pipes, mains, poles, equipment and appurtenances, both above and below ground, following consultation with the code official.	
MICC 19.07.190 – Wetlands	C.3. Prohibited activities. The following uses are prohibited within any wetland or associated buffer: removal, excavation, grading, or dredging of material; draining flooding or disturbing the wetland, water level or water table: construction, reconstruction, demolition, or expansion of any structure.	
MICC 19.07.150 – Public agency exception.	If the application of this chapter would prohibit a development proposal by a public agency, the agency may apply for an exception pursuant to this section. The code official may approve alterations to critical areas, buffers and critical area setbacks by an agency or utility when those alterations are not otherwise able to meet all of the standards in this chapter, and when the criteria in subsections (B)(1) through (B)(5) of the section are demonstrated to be met.	
Definitions		
<i>Ordinary repairs and maintenance</i> : An activity in response to the effects of aging or ordinary use, wear and tear that restores the character, scope, size, footprint or design of a servicable area, structure, or land use to its previously existing, authorized or undamaged condition; however, this is not intended to allow total replacement, substitution or reconstruction of a nonconforming structure. Activities that change the character, size, footprint or scope of a project beyond the original shall not be considered ordinary repairs and maintenance and shall result in loss of nonconforming status.		
Applicant		
MICC 19.15.060 - Application	A. The department shall not commence review of any application until the applicant has submitted the materials and fees specified for a complete applications. An application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of the applicable development regulations. The applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. All land use applications shall include, at a minimum, the following: 8. Verification that the property affected by the application is in the exclusive ownership of the applicant, of that the applicant has a right to develop the site and that application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (A)(9) of this section shall satisfy the requirements of this subsection; 9. For Type II, III and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.	

Jurisdiction: City of Duval
Size: 2.47 square miles
Population: 8,410 (2021)

USE DEFINITIONS		
"Utility" means enterprises or facilities serving customers by means of an integrated system of collection, transmission, distribution and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer, included are systems for the delivery of electricity, natural gas, cable communications, telecommunications, and water and sewer disposal.		
Transmission Lines		
"Subregional Utility" means any above ground structures or facilities (other than buildings, unless buildings are used as storage incidental to the operation of such structures or facilities) owned by a governmental entity, or any entity defined as public utility for any purpose by RCW 80.04.015 and is used in connection with production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil or electric signals when these facilities are serving a wider customer base than a local neighborhood.		
SETBACKS		
Definitions		
"Setback" means the minimum required distance between a structure and a lot line, easement or buffer line that is required to remain free of structures.		
"Structure" means object constructed or installed by man, included but not limited to buildings, towers, smokestacks, overhead transmission line, etc., excluding fences retaining walls three feet or less in height, and decks eighteen (18) inches or less above grade/paved area.		
Applies to:	Structures	
Are poles included in code?	Yes	allowed encroachment
Allowed Encroachments		
DMC 14.64.170 - Nonresidential land uses in residential zones.	Except for utility facilities and uses, all nonresidential uses located in residential zones (R4-R20) shall be subject to the following requirements: C. Buildings and structures shall conform to setback requirements set out in DMC 14.12-14.16.	
HEIGHT		
Definitions		
"Structure" means object constructed or installed by man, included but not limited to buildings, towers, smokestacks, overhead transmission line, etc., excluding fences retaining walls three feet or less in height, and decks eighteen (18) inches or less above grade/paved area.		
Applies to:	Structures and buildings	
Are poles included in code?	Yes	exception to limits
Exception		
DMC 14.64.140 - Heights - Exceptions to limits	The following structures may be erected above the height limits to the minimum height necessary to support the use as determined by the director: A. Roof structures housing or screening elevators, fire access stairways, tanks, ventilating fans or similar equipment required for building operation and maintenance, and B. Fire or parapet walls, skylights, flagpoles, chimneys, smokestacks, church steeples, communication transmission structures, private amateur radio facilities, utility line towers and poles, and similar structures.	
WETLANDS		
Transmission or distribution prohibited in wetlands?	Yes, Category I wetlands. Public Agency and Utility Exception provision provides allowance.	
Allowances		
DMC 14.42.050 Allowed Activities	A. Maintenance, operation, and/or repair of existing dikes and drainages, existing stormwater facilities rights-of-way, trails, road, utilities, and buildings within sensitive areas, provided that activity does not further alter, impact, or encroach upon the sensitive area or buffer or further affect the process and functions of sensitive areas, and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair and provide further that: 1. The applicant shall submit a written description of the maintenance activity to the director with all of the following general information: a. Type, timing, frequency and sequence of the above maintenance activity to be conducted; b. Type of equipment to be used (hand or mechanical); c. Manner in which the equipment will be used; d. Best management practices to be used; and e. Any chemical applications to be used. 2. The applicant's written description may be valid for up to 5 years provided that there is no significant change, as determined by the director, to the activities submitted in the written description for the maintenance activity or to the natural environment.	
DMC 14.42.070 -Exceptions	A. Public Agency and Utility Exception. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section: 1. The public agency and utility exception shall apply to the department and include a sensitive area study, including mitigation plan, if necessary; and any other project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21 RCW). 2. The director may approve alterations to sensitive areas, buffers and sensitive area setbacks by an agency or utility not otherwise allowed by this chapter if the following criteria are met: a. There is no other reasonable alternative to the activity or proposed development with less impact on the sensitive area; and b. The activity or development proposal is designed to avoid, minimize, and mitigate the impact on environmentally sensitive areas consistent with the avoidance and mitigation sequencing requirements in this chapter, and, if applicable: c. The proposed development or activity is of linear nature and is on an existing corridor or connects to public lands, trails, utility corridors, rights-of-way or other public infrastructure, or is required for functional reasons such as gravity flow.	
DMC 14.42.220 - Wetland alterations	The following activities may be permitted in wetlands and/or wetland buffers when all the requirements of this section have been fulfilled: C. Utility lines in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible conveyance alternative is available. Utility lines shall be constructed to minimize physical, hydrological and ecological impacts to the wetland, and meets all of the following: 1. The utility line is located as far from the wetland edge as possible and in manner that minimizes disturbance of soils and vegetation; 2. Wetland alteration is only allowed when consistent with applicability of subbasin management groups. 3. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation. 4. Buried utility lines shall be constructed in a manner that prevents adverse impacts to subsurface drainage. This may include the use of trench plugs or other devices as needed to maintain hydrology.	
Definitions		
"Maintenance and repair" means work required to keep existing improvements in their existing operational state. This does not include any modification that changes the character, scope, or size of the original structure, facility, utility or improved area.		
"Utilities" means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.		
Applicant		
DMC 14.06.010 A definitions	"Applicant" means a person who applies for any permit or approval to do anything governed by this code and who is the owner of the subject property, the authorized agent of the owner, or the City.	

Jurisdiction: City of Snoqualmie
Size: 7.42 square miles
Population: 13,810 (2021)

USE DEFINITIONS		
"Public Utilities" is not defined.		
SETBACKS		
Definitions		
"Setback" means the distance buildings, structures or uses must be removed from a lot line, and in the case of a building, is measured from the property line to a building's closest vertical wall.		
Applies to:	Buildings and structures	
Are poles included in code?	No	
Allowed Encroachments		
Residential zones: SMC 17.15.040.J: The following architectural features on principal buildings and uses may encroach up to three feet into setbacks, provided, no feature shall encroach into the setback closer to the property line than where fire-resistive construction is required; planter boxes, fireplace structures not wider than 8 feet, not more than one bay window, no more than one garden window, and other similar features.		
Commercial/Industrial zones: No code provision.		
HEIGHT		
Definitions		
"Height" as applied to a building or structure means the vertical distance measured from the average elevation of the proposed finished grade around the building or structure to the highest point of a flat roof and the mean		
Applies to:	Buildings and structures	
Are poles included in code?	No	
Exception		
Commercial/Industrial zones: SMC 17.20.040: Church spires, church towers, flagpoles, antennas, clerestories, and fire towers of a safe height may be permitted as a conditional use.		
Residential zones: SMC 17.15.040: Church spires, church towers, flagpoles, antennas and fire towers of a safe height may be permitted as a conditional use.		
WETLANDS		
Transmission or distribution prohibited in wetlands?	No	
Allowances		
SMC 19.12.040 Allowed Activities.	A.5. Normal and routine maintenance or repair of existing utility or street rights-of-way or utility structures including drainage facilities. Utility or street rights-of-way shall be maintained in a manner that meets the objective of safe and efficient use of the right-of-way, while eliminating the use of chemical herbicides within the corridors. Normal and routine maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.	
	B. Public Agency or Utility Exception. If the application of this chapter would prohibit a development proposal by a public agency or utility, the agency or utility may apply for an exception pursuant to this section. After holding a public hearing, a hearing examiner may approve the exception if he/she finds that there is no other practical alternative to the proposed development with less impact on critical areas and their buffers, and the proposal minimizes the impact on critical areas and their buffers. Any decision of the hearing examiner is final unless appealed.	
SMC 19.12.170 Wetlands	H. Permitted Uses and Alterations. Subject to the requirements of the underlying zoning designation and other applicable codes and ordinances, the following uses and alterations shall be permitted within wetlands and their buffers, in accordance with the standards set forth in this section. Mitigation per the requirements of this chapter shall be required for any impact to the critical area from these permitted uses and alterations.	
	4. Public Utilities. Public utilities may be permitted in the wetland and wetland buffer, provided no practical alternative exists and adequate provision is made to	
Definitions		
"Alteration" means any human-induced action that changes the existing condition of a critical area. Alterations include, but are not limited to: grading; filling; dredging, draining; channelizing; cutting; pruning; topping; clearing;		
Applicant		
	Snoqualmie does not define applicant or who may apply under development review section of the code. Applicant is defined under subdivision and wireless sections of code (not a consistent definition).	

Jurisdiction: City of Woodinville
Size: 5.63 square miles
Population: 13,425 (2021)

USE DEFINITIONS		
"Street/utility pole" means telephone, utility/electric, cable television, or street light poles located in public right-of-way.		
"Regional utility corridor" means a right-of-way tract or easement which contains transmission lines or pipelines for utility companies, excluding distribution lines contained within street rights-of-way or lines serving individual lots or developments.		
"Utilities" means services, facilities and infrastructure that produce, transmit, carry, store, process or dispose of electrical power, gas, water, sewage, communications, oil, stormwater and the like. This includes:		
(a) Primary: facilities and infrastructure that are provided by a public agency, utility, or franchise which produce, transmit, convey, store, process, or dispose of essential utility services throughout the area. These include, but are not limited to, water storage tanks and lines, reservoirs and booster stations, wastewater interceptors, sewage pump stations and lines, electrical transmission substations and high-tension and distribution power lines, natural gas pipelines, and associated equipment, and including telecommunication facilities provided by a public or private entity.		
(b) Accessory: on-site utilities that connect directly to uses and are considered part of the primary use.		
SETBACKS		
Definitions		
"Setback" means the minimum distance from the property line, access easement boundary, critical area buffer boundary, or other buffer line to where a structure may be built.		
"Setback area" means the area of a lot or building site between the property line and the limits set by City regulations within which no permanent structure may intrude unless allowed otherwise by law.		
Applies to:	Structures	
Are poles included in code?	No	Above ground utilities in this context refers to ancillary equipment such as transformers, meters, vents, and other related equipment (WMC 15.39.010(4)).
Allowed Encroachments		
WMC 21.32.030(5). The following buildings and structures may protrude into setback areas: (a) Utilities, provided above ground utilities are screened pursuant to WMC15.39.010(5).		
HEIGHT		
Definitions		
"Height" means the vertical distance measured from the designated grade elevation to the highest point of a structure or otherwise allowed, excluding elements specially exempt from height calculations.		
Applies to:	Structures	
Are poles included in code?	No	
Exceptions		
WMC 21.32.040(6) Building and Structure Height Exceptions. The following structures may be erected above the height limits set forth in subsections (2), (3) and (4) of this section.		
List does not include utility poles.		
WETLANDS		
Transmission or distribution prohibited in wetlands?	Yes	Public entity critical area exception allows impacts to wetlands.
Allowances		
WMC 21.51.040 Complete Exemptions.	1. (c) Modifications to local collection and distribution utility lines, mains, equipment, appurtenances, including electrical facilities with an associated voltage of 55,000 volts or less, not including substations; public sewer local collection; public water local distribution; natural gas, cable communications; or telephone facilities. Modifications to local collection and distribution utilities may be allowed in critical areas or their buffers, as follows:	
	(i) Normal and routine maintenance or repair of existing utility structures; and	
	(ii) Replacement, operation, repair, modification, installation, relocation, or construction when such facilities are located within an improved public road right-of-way or City authorized private roadway.	
WMC 21.51.320 Wetlands - Permitted activities.	(1) Alterations. Alterations to wetlands and their buffers may be allowed if the City determines that there is no practical alternative location with less adverse impacts on the wetland or its buffer, subject to mitigation requirements set forth in this chapter.	
	(b) Public and private utilities. Utilities may be allowed in wetland buffers if the following criteria are met. (see code for criteria)	
	(c) Drilling for Utilities or Utility Corridors under a Wetland.	
	(d) Utility Joint Use. Joint use of an approved utility corridor by other utilities may be allowed.	
WMC 21.51.060 Relief from critical area regulations.	(2) If the application of this chapter would prohibit a development proposal by a public agency or public utility, the public agency or public utility may apply for a public entity critical area exception pursuant to WMC 21.84.030.	
Definitions		
"Alteration, critical area" except when specified otherwise by this title, means any development or human-induced action which changes and/or impacts the existing condition of a critical area or buffer.		
"Alterations" do not include walking, fishing, other types of passive recreation, or other similar activities.		

Applicant	
WMC 12.30.020 Definitions (Public Utility and Telecommunications Right-of-Way Use)	"Applicant" means any person or entity that applies for permit pursuant to this chapter. "Public right-of-way" means any highway, street, alley, or other public right-of-way, or easement for motor vehicle under the jurisdiction and control of the City which has been acquired, established, dedicated, or devoted to such purposes, but only to the extent of the City's right, title, interest, or authority to grant a permit to occupy and use such streets and easements for telecommunications and utility facilities. "Public utility" as used herein, means a company or entity engaged in any business or service regularly supplying the public with some commodity or service which is a public need and consequence, such as natural gas, electricity, water or sanitary sewer, including any business subject to regulation as to rates and service by the Utilities and Transportation Commission under the provisions of RCW Title 81.
WMC 21.82.010, 020, 030, 040, 050, 060, 070, 080, 090, 100, 110, 120, 130, 150, 160	Any owner may apply for [insert permit type].
WMC 21.82.140	Any applicant may apply for a transportation infrastructure deviation.
WMC 21.11A.020 "A" definitions	"Applicant" means a person who files an application for permits or development approval who is either the property owner or a primary proponent of a project, which can include a contract purchaser, or authorized agent of the property owner.

Jurisdiction: City of Port Orchard
Size: 8.5 square miles
Population: 15,979 (2021)

USE DEFINITIONS		
"Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunication services and water, and for the disposal of sewage.		
POMC 20.39.260 Utilities. (1) Defined. Public or private infrastructure serving a limited area with no on-site personnel (minor utility) or serving the general community with on-site personnel (major utility). Utilities include the following:		
(a) Minor utilities, including on-site stormwater retention or detention facility, neighborhood serving telephone exchange/switching center, gas/electric/telephone/cable transmission lines, water and wastewater pump station or lift station, gas gates, reservoir, control structure, drainage well, water supply, water well.		
(b) Major utilities, including aeration facility, electrical substation, electric or gas generation plant, filter bed, transmission towers, waste treatment plant, water pumping facility, water tower or tank.		
SETBACKS		
Definitions		
"Setback" means the minimum required distance between a structure or portion thereof and a lot line of the lot on which it is located, or another line as described in a particular section		
Applies to:	Buildings and structures	
Are poles included in code?	No	Not included as an allowed encroachment under utilities.
Allowed Encroachments		
POMC 20.40.040 Setback encroachments. (5) Mechanical Equipment and Utility Lines.		
(b) Minor structures accessory to utilities (such as hydrants, manholes, transformers, and other cabinet structures and related fence(s) may encroach into a required rear or side		
(c) Minor utilities below and covered by the ground may encroach into a required setback.		
HEIGHT		
Definitions		
"Building height" means, except when otherwise specified in this code, the vertical distance from grade plane to the average height of the highest roof surface.		
Applies to:	Buildings and structures	
Are poles included in code?	No	Not included as an allowed encroachment.
Exceptions		
POMC 20.40.050 (2) Height encroachments. encroachments. Any height encroachment not listed below is prohibited except where the director determines that encroachment is similar to a permitted encroachment listed below. (see code for list of encroachments)		
WETLANDS		
Transmission or distribution prohibited in wetlands?	No	
Allowances		
POMC 20.162.032 Exemptions	(3) The following land use, development, building activities, and uses shall be exempt:	
	(b) Operation Maintenance and Repair. Operation maintenance or repair of existing structures not requiring permits or city approval, only if activity does not further alter or increase the impact to critical areas or their buffers.	
	(f) Activities within Improved Right-of-Way. Construction of new utility facilities, improvements, or upgrades to existing utility facilities that take place within existing improved rights-of-way or existing impervious surfaces that do not increase the amount of impervious surface.	
POMC 20.162.034 Exceptions	(1) Public agencies. Public agencies may make an application for exception to the director for construction of items such as roads, utilities, infrastructure, and associated facilities.	
POMC 20.162.056 Additional development standards for regulated uses.	(7) Utilities in Wetlands or Wetland Buffers.	
	(a) Construction of new utilities outside the road right-of-way or existing utility corridor may be permitted in wetlands or wetland buffers, only when no reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required in the filing and approval of applicable permits and special reports required by this chapter.	
	(c) New utility corridors shall not be allowed when the regulated wetland or buffer has known locations of federal or state listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidate or state monitor, except in those circumstances where an approved habitat management plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer.	
	(d) New utility construction and maintenance shall protect the regulated wetland and buffer environment by utilizing the following methods:	
	(i) New utility corridors shall be aligned when possible to avoid cutting trees greater than 12 inches in diameter at breast height (four and one-half feet), measured on the uphill side.	
	(ii) New utility corridors shall be revegetated with appropriate native vegetation at preconstruction densities or greater, immediately upon completion of construction, or as soon thereafter as possible, if due to seasonal growing constraints. The utility shall ensure such vegetation survives.	
	(iii) Any additional utility corridor access for maintenance shall be provided as much as possible at specific points, rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than 15 feet; and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.	
	(iv) The department may require other additional mitigation measures.	
	(e) Utility corridor maintenance shall include the following measures to protect the regulated wetland and buffer environment:	
	(i) Where feasible, painting of utility equipment such as power towers shall not be sprayed or sandblasted, nor should lead-based paint be used.	

	(ii) No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the EPA and Ecology. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label. Within wetlands, applicator must be licensed to use aquatic herbicides.
Definitions	
"Alteration" means any human-induced action that changes the existing condition of a critical area. Alterations include but are not limited to grading; filing; grubbing; dredging; draining; channelizing; cutting; pruning; limbing or topping; clearing, relocating or removing vegetation, except noxious weeds identified by the Washington Department of Agriculture or the Kitsap County cooperative extension; applying herbicides or pesticides or any other hazardous or toxic substance; discharging pollutants, except stormwater; grazing domestic animals; paving; construction; application of gravel; modifying for surface water management purposes; or any other human activity that changes the existing vegetation, hydrology, wildlife or wildlife habitat. Alteration does not include walking, passive recreation, fishing or other similar activities.	
"Public utility" means a business or service, either governmental or having appropriate approval from the state, which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, sewer and/or wastewater, water, transportation, or communications.	
"Utilities" means facilities and/or structures which produce or carry electric power, gas, sewage, water, communications, oil, publicly maintained stormwater facilities, etc.	
"Utility corridor" means areas identified in the comprehensive plan for utility lines, including electric, gas, sewer, water lines; and public right-of-way and other dedicated utility right-of-way on which one or more utility lines are currently located. The term "other dedicated utility right-of-way" means ownership, easements, permits, licenses or other authorizations affording utilities the right to operate and maintain utility facilities on private property.	
Applicant	
POMC 20.12.010 Definitions	"Applicant" means the owner of land proposed for land development or use or its representative who shall have express written authority to act on behalf of the owner. Written consent shall be required from the legal owner of the property.

Jurisdiction: City of Oak Harbor
Size: 12.32 square miles
Population: 24,709 (2021)

USE DEFINITIONS		
"Public utility" means a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas and transportation of persons and freight.		
SETBACKS		
Definitions		
"Setback and yard requirements" are the distances that buildings or uses must be removed from their lot lines. Setbacks shall be measured, where applicable, from proposed or actual public		
Applies to:	Buildings and uses	
Are poles included in code?	No	
Allowed Encroachments		
accessory buildings allowed in rear yards.		
HEIGHT		
Definitions		
"Building height" means the vertical distance from the average natural grade level to the highest point of the coping of a flat roof or the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roofed. "Average natural grade" shall be defined as the average elevation of the highest and lowest corners of the building.		
Applies to:	Buildings	
Are poles included in code?	No	
Exceptions		
OHMC 19.28.030 Height limits - Exceptions. Buildings and structures shall not exceed the height limitations as specified for the use district in which they are located unless specifically excepted as set out in OHMC 19.28.040 and 19.28.050. Additional height, not to exceed 10 feet, may be used for multifamily and commercial uses permitted in the underlying zone for the projects that are in accordance with low impact development (LID) through the implementation of the LID performance standards or on-site stormwater BMP lists.		
WETLANDS		
Transmission or distribution prohibited in wetlands?	No	
Allowances		
OHMC 20.12.040 Exempt activities.	(2) Operation, maintenance, repair, modification, addition to, or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase the impacts to, or encroach further within, a critical area or buffer and there is no increased risk to life or property as a result of action. Operation and maintenance include vegetation management performed in accordance with best management practices; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of a structure or utility, and do not directly impact species or habitat protected under Chapter 20.25 OHMC.	
OHMC 20.12.050 Public agency and utility exceptions.	(1) If the application of critical areas regulations in this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.	
Definitions		
"Development" means a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any other project of a temporary or permanent nature which modifies structures, land, or shorelines and which does not fall within the allowable exemptions contained in the Oak Harbor Municipal Code.		
Applicant		
OHMC 19.48.032 Requirements for application submittal	The applicant shall submit the following items: (2) A verified statement by the applicant that property affected by the application is in the exclusive ownership of the applicant, of that the applicant has submitted the application with the consent of all owners of the affected property.	

Jurisdiction: Town of Coupeville
Size: 1.95 square miles
Population: 1,957 (2021)

USE DEFINITIONS	
"Public utility" means a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, sanitary sewer and storm sewer systems for persons and freight.	
SETBACKS	
Definitions	
"Setback" means the lot area between the lot lines and the building area.	
Applies to:	Structures
Are poles included in the code?	No
Allowed Encroachments	
CTC 16.12.030 - Setback standards	E. Projections into required setbacks. The following structures may project into required front, rear or side yards: 1. Paved terraces may project into required front, rear or side setbacks provided that no structures placed there shall violate other requirements of this title. 2. Unroofed landings, decks and stairs may project into required front and rear setbacks only, provided no portion shall extend higher than forty-two (42) inches above the finished grade level. 3. Window sills, belt courses, cornices, eaves and similar incidental architectural features may project not more than 2 feet into any required setback. 4. Open fire escapes may project not more than four feet six inches into any required setback.
HEIGHT	
Definitions	
"Height" means the measurement from the vertical datum to the highest point of the roofline. On any building constructed seaward of mean high higher water, the vertical datum shall be the elevation of the extreme high tide, as shown on the official United States tide table for the year in which the permit is issued.	
Applies to:	Structures
Are poles included in the code?	No
Exceptions	
CTC 16.12.050 B. Exemptions.	The height limitations contained in this title do not apply to spires, belfries, cupolas, chimneys, antennas, water tanks, ventilators, elevator housing, other structures placed above the roof level, or when a height in excess of twenty-eight (28) feet is necessary to comply with the Ebey's Landing National Historical Reserve Design Guidelines for alterations of historic buildings and structures, provided, however, that no structure or portion of any structure hereafter erected shall interfere with Federal Aviation Administration Regulations on airport approaches.
Wetlands	
Transmission or distribution prohibited in wetlands?	No
Allowances	
CTC 16.34.120 - Exemptions	2. Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems. If the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.
CTC 16.34.150 - Allowed activities	C.4. Minor Utility Projects. Utility projects which have minor or short-duration impacts to critical areas, as determined by the town planner in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s), provide that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria: a. There is no practical alternative to the proposed activity with less impact on critical areas; b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and c. The activity involves disturbance of an area less than seventy-five (75) square feet.
CTC 16.34.130 - Exception - Public agency and utility	A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.
Definitions	
<i>Repair or maintenance</i> - Any activity that restores the character, size, scope and design of a serviceable area, structure or land use to its previously authorized and undamaged condition. Activities that change the character, size or scope of a project beyond the original design and drain, dredge, fill, flood or otherwise alter critical areas are not included in this definition.	
Applicant	
dit	"Applicant" means a person or entity that has applied for a project permit.

Additional Jurisdictions

Pierce County	PCC 18.30.020.A	Permits and Approvals Required	The property owner or authorized agent shall obtain applicable permits and approvals prior to commencing development.
Bellevue	LUC 20.25.030.A	Who May Apply	The property owner, authorized agent of the owner, or Regional Transit Authority authorized by LUC 20.25M.010.C to apply for permits may apply for any type of Process I, Process II, or Process III land use decision.
Kirkland	KZC 145.15	Who May Apply	Any person may, personally or through an agent, apply for a decision regarding property he/she owns.

Technical Memorandum



To: Kerry Kriner (PSE)
From: Tobin Story, PWS (HDR), Kirk Moughamer (HDR)
Date: January 25, 2023
Subject: Bainbridge Island Code Amendment – Best Available Science

1.0 Introduction

Puget Sound Energy (PSE) is proposing to amend Bainbridge Island Municipal Code (BIMC) 16.20.140.G.2, which prohibits a list of development, uses and activities in Category I and II wetlands, including primary utilities. BIMC 18.36.030 includes utility lines, both distribution and transmission, under the definition of “Utility, primary”. PSE installs, operates, and maintains electrical utility lines along public road rights-of-way and cross-country corridors throughout Bainbridge Island. This includes above ground transmission lines and both above and below ground distribution lines. Existing distribution and transmission lines cross through and/or span over wetlands in some areas, including within and adjacent to public road rights-of-way. The ability to maintain, upgrade or install new electric facilities is needed to continue to provide reliable electric service to PSE’s customers on Bainbridge Island, however, the linear nature of these lines makes it impractical to avoid wetlands entirely. The PSE requested code amendment includes provisions for the maintenance, repair, and upgrade of PSE transmission and distribution facilities in and adjacent to road rights-of-way and in existing cross country corridors that cross through Category I or II wetlands. The proposed amendment does not allow for the establishment of new cross country transmission or distribution corridors through Category I or II wetlands.

The purpose of this technical memorandum is to discuss PSE’s existing electrical system and summarize relevant science-based information applicable to the development of the proposed code amendment. Revised Code of Washington (RCW) 36.70A.172 requires that cities and counties include “the best available science in developing policies and development regulations to protect the functions and values of critical areas.” The intent of the code amendment is to facilitate maintaining, upgrading and constructing new distribution and transmission facilities to provide essential electric service to Bainbridge Island, while following best available science and limiting impacts to wetland resources. This would include:

- Maintaining and upgrading existing aerial transmission and distribution lines in and adjacent to improved road rights-of-way.
- Maintaining and upgrading existing aerial transmission and distribution lines within cross country corridors on easements.
- Maintaining and upgrading existing underground distribution lines in and adjacent to improved road rights-of-way or within cross country corridors on easements.
- Installing new aerial distribution and transmission lines within or adjacent to road rights-of-way; or as an overbuild or underbuild to an existing aerial primary utility within cross country corridors on easement.

- Installing new underground distribution lines within or adjacent to improved road rights-of-way or within cross country corridors on easements.

2.0 Regulatory Review

The City updated its Critical Areas Regulations in BIMC Chapter 16.20 in February 2018 (Ordinance 2018-01). Prior to the February 2018 update, BIMC prohibited underground utility lines in Category I wetlands and permitted aerial utility lines in Category I and II wetlands and underground utility lines in Category II wetlands. Primary utilities are defined in BIMC 18.36.030 as *facilities that produce, transmit, carry, store, distribute, or process electric power, gas, water, sewage, or information and do not meet the definition of an accessory utility. Primary utilities include solid waste handling and disposal facilities, wastewater treatment facilities, utility lines, electrical power generating or transfer facilities, radio cellular telephone and microwave towers, and gas distribution and storage facilities.*

Primary utilities on Bainbridge Island currently operated by PSE include electrical distribution and transmission lines (including fiber communication lines) and electrical substations. Following the 2018 update primary utilities are prohibited in Category I and II wetlands (BIMC 16.20.140.G). Outside of Category I and II wetlands, installation of utilities within wetlands may be allowed, subject to the provisions of BIMC 16.20.140.H.5.

HDR evaluated *Wetland Guidance for CAO Updates: Western Washington Version* (Washington State Department of Ecology 2016). HDR found that BIMC 16.20.140.G.2 generally exceeds the minimum standards for Critical Area Regulations as outlined in the Ecology 2016 guidance, which lists allowed uses including normal and routine maintenance and repair of existing facilities within existing ROW, but does not specifically list prohibited wetland uses.

3.0 Existing PSE Infrastructure on Bainbridge Island

Based on the breadth of uses included within the definition of primary utility, linear facilities such as transmission and distribution lines stand out as being functionally different than the other primary utilities that are typically installed within a single parcel of land. Electrical substations, water treatment plant infrastructure, solid waste facilities, and other parcel-based developments intrinsically require more space and can result in greater impacts to wetlands, including more substantial permanent wetland impacts. Permanent impacts, particularly wetland fill, result in a loss of wetland area and corresponding loss of hydrologic, water quality and habitat functions. By comparison, linear facilities can span over or be directionally bored under wetlands, avoiding wetland fill and the corresponding permanent loss of hydrologic, water quality and habitat functions.

This code amendment focuses on three categories of work which PSE may perform: 1. Maintenance of existing linear transmission and distribution facilities, 2. Upgrading/expanding existing linear transmission and distribution facilities, and 3. Constructing new linear transmission and distribution facilities in or adjacent to road ROW. The permanent fill footprint of PSE electric utility corridors is typically limited to poles, which are generally spaced 150-200 feet apart for distribution lines and 300-400 feet apart for transmission lines with the pole footprints typically ranging from 1-3 feet in diameter. The situation is similar for an underground distribution line which could be installed by trenching or horizontal directional boring. Where wetlands need to be avoided directional boring would allow for the avoidance of impacts, while trenching would result in temporary disturbances. A typical underground distribution line requires an underground vault approximately every 500 feet, which are generally installed immediately adjacent to a stable surface like a road shoulder to provide

access. For aerial and underground linear facilities, wetland soil and vegetation compatible with these facilities can remain undisturbed or be temporarily removed and replaced back into the wetland. In either case, the wetland will continue to provide habitat, hydrologic, and water quality functions. Linear facilities can be placed on the disturbed edge of a wetland or wetland buffer in the area abutting existing roadways (see Exhibit 1).

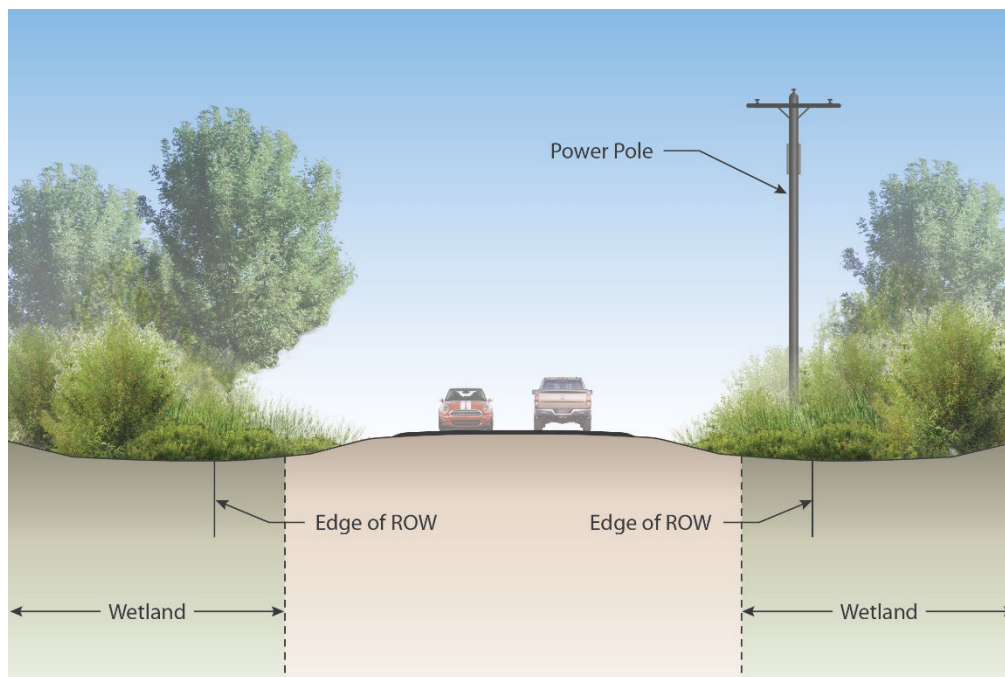


Exhibit 1. An aerial distribution pole along the disturbed wetland edge of a road right-of-way.

The majority of PSE's existing linear utility infrastructure on Bainbridge Island is located within or adjacent to public road right-of-way via operating rights granted by a franchise agreement with the City (see Exhibits 2, 3 and 4). In some instances, particularly pertaining to transmission lines, PSE has acquired easements on property adjacent to the road rights-of-way for conductor (wire) safety, vegetation management clearances, and guy anchors. When these linear facilities are located within a road right-of-way and cross a wetland, they are generally installed within the limits of existing right-of-way disturbance along the edge of the roadway shoulder. The adjacent roadside areas and roadside ditches within the right-of-way often qualify as wetland, even though they are located within the existing area of disturbance of the right-of-way (see Exhibit 1).

Some portions of existing transmission corridors are not located along road rights-of-way but extend along cross-country corridors on easements (see Exhibit 5). PSE's existing cross-country transmission lines were installed when Bainbridge Island was part of rural Kitsap County in the 1960s and 70s prior to modern environmental regulations. Many of the existing road rights-of-way that are currently used as joint utility corridors had not been developed at the time; therefore there were not necessarily opportunities to co-locate within road rights-of-way. PSE's cross country transmission corridors typically range from 50-60 feet in width; generally the width of an arterial road right-of-way. Within PSE cross-country corridors, typical wetland vegetation including salmonberry (*Rubus spectabilis*), hardhack (*Spiraea douglasii*), willow species (*Salix spp.*), and many native emergent species are compatible with transmission line clearances and can generally be left in

transmission line corridors to contribute to wetland functions. PSE cross-country corridors on Bainbridge Island typically do not have permanent access roads in regulated wetlands. When accessing through wetland areas for vegetation management and utility infrastructure repair and maintenance, PSE uses BMPs to avoid and minimize temporary impacts and allow wetland functions to continue.



Exhibit 2. An aerial distribution line along NE Bergman Road.



Exhibit 3. An aerial transmission line along NE Day Road



Exhibit 4. Vaults for an underground distribution line along Blakely Ave NE



Exhibit 5. A cross country aerial transmission line viewed from Agate Pass Road NE

4.0 Review of Best Available Science Documents

HDR conducted a review of best available science (BAS) documents, including current agency guidance regarding code amendments and BAS reviews, documents related to wetland functions

and values, documents related to the impact of development on those functions, and documents specific to wetlands within the City of Bainbridge Island. HDR also used general information available through the following:

- Ecology Best Available Science website, located at <https://ecology.wa.gov/Water-Shorelines/Wetlands/Tools-resources/Best-available-science>
- Ecology Wetland Guidance for Critical Areas Ordinance Updates, located at <https://apps.ecology.wa.gov/publications/documents/1606001.pdf>

A complete list of references is included at the end of this technical memorandum; the following are considered the most relevant sources of BAS:

- Wetlands in Washington State – Volume 1: A synthesis of the Science (Sheldon et al. 2005)
- Wetlands in Washington State – Volume 2: Guidance for Protecting and Managing Wetlands (Granger et al. 2005)
- Wetland Mitigation in Washington State: Part 1: Agency Policies and Guidance – Version 2 (Ecology, U.S. Army Corps of Engineers Seattle District and U.S. EPA Region 10 2021)
- Update on Wetland Buffers: The State of the Science (Hruby 2013)
- City of Bainbridge Island Critical Areas Ordinance Update – Best Available Science Review (2018)
- Citations of Recommended Sources of Best Available Science (Washington State Office of Community Development 2002)
- Direct and Indirect Impacts of Urbanization on Wetland Quality (Wright et al. 2006)

5.0 Discussion of BAS Documents

Based on a review of the above documents, HDR focused on the following key points related to the proposed code amendment:

1. **Existing Wetland Functions and Values.** Wetland habitat functions and values in the immediate vicinity of disturbances, such as adjacent to improved public roadways, are comparatively less relative to wetland habitat functions and values farther from such disturbances.
2. **Limited Frequency and Intensity of Disturbance in Existing Cross-Country Corridors.** Operation and maintenance of PSE distribution and transmission cross corridors typically does not result in significant ongoing impacts to habitat, hydrologic, and water quality wetland functions and values due to lack of frequent disturbance. Vegetation management in such corridors typically occurs on a three year cycle timeline and is selective, which allows shrub and emergent vegetation compatible with conductor clearances to remain intact.
3. **Limited Additional Impact from Expanded, Improved, or New Facilities in and adjacent to existing ROW.** Vegetation management and moderate corridor expansion along existing utility corridors, and especially within and adjacent to road rights-of-way, result in limited additional functional impact due to the ongoing use, operation and maintenance along these corridors, particularly the relatively lower quality of habitat in the vicinity of road rights-of-way.

Avoidance, minimization, and compensatory mitigation measures by PSE can serve to further reduce and mitigate for impacts to wetlands.

These points are discussed in more detail below.

5.1 Existing Wetland Functions and Values

Wetland functions are the physical, biological, chemical, and geologic interactions among different components of the environment that occur within a wetland. Wetland functions typically fall into three broad categories: biogeochemical, hydrologic, and maintenance of food webs and habitats (Sheldon et al. 2005). The functions performed by a wetland are controlled by a wide variety of factors, including those within the wetland itself and those in the surrounding landscape. Urban development in a landscape often results in decreased wetland functions through mechanisms including modification of water movement, human intrusion, introduction of chemical contaminants, increased noise, increased impervious surface area near the wetland, and fragmentation of habitat (Sheldon et al. 2005). Human access and land uses adjacent to wetlands influence the use and habits of wildlife through such factors as noise and light intrusion, as well as degradation of upland habitats (Hruby 2013). Existing roadways in particular tend to concentrate human use, resulting in increasing noise, light intrusion, pollution, and fragmenting contiguous blocks of habitat. PSE facilities located along road rights-of-way contribute no additional noise, lights, or pollution beyond what is inherent in the road right-of-way. They do not result in daily human use and require only infrequent periodic maintenance.

In addition to the landscape scale and cumulative effects on wetland function noted above, additional effects of urbanization on wetland function are directly related to proximity to disturbance. Often, the areas of wetland most affected, and therefore the areas with the least potential function, are those directly bordering the disturbance. For example, existing disturbances including highways and surface streets have been documented to impact wetland plants and wildlife species. In one study, plant species richness in wetlands decreased relative to increases in paved road density, with the most impact on species richness found within 0.6 mile of paved roads (Findlay and Houlahan 1997), which would fully encompass the extent of PSE facilities in road rights-of-way. Other studies focus on the impact of invasive plants in wetlands, noting that invasive plants are more prevalent adjacent to roadways, where they have both a dispersal and an invasion advantage (Zedler and Kercher 2004). This is evident in wetlands throughout Puget Sound, where roadside habitat is frequently of relatively low-quality monocultures of invasive species, including reed canarygrass (*Phalaris arundinacea*) and Himalyan blackberry (*Rubus armeniacus*), which dominate roadsides while providing extremely limited habitat for native wildlife species (Wisconsin RCG Management Working Group 2009; Bennett 2004). Wetland wildlife species show similar trends, with decreased amphibian and bird species' diversity in the immediate vicinity of roadways. Amphibian species' richness and abundance are related significantly to the density of paved roads within 1.2 miles of the wetland edge (Findlay and Houlahan 1997). Bird species richness in wetlands decreases within 0.6 mile of urbanization (Richter and Azous 1997). The 2014 Ecology wetland rating system does not take this variability into account, as the habitat score is based on a series of questions in the habitat functions section and relies on indicators of habitat function that are fixed and visible throughout most of the year. Therefore, the habitat score is related to the amount of different habitat niches present in a wetland as a whole and is not related directly to the species that use those niches (Hruby 2014), nor the specific portions of the wetland they may use.

Literature related to habitat impacts of cross-country transmission lines in wetlands is limited and primarily applicable to large-scale transmission corridors with a large permanent impact footprint. PSE cross-country transmission infrastructure on Bainbridge Island is located within 50-60 foot wide corridors. Tree canopy is managed for conductor clearances, however a shrub understory is often present. As such, the habitat and wildlife impacts documented in the literature (Jackson et al. 1994) are unlikely to occur to the same extent with PSE infrastructure. That said, the majority of observed impacts to wildlife and habitat are associated with construction of new cross-country corridors, not operation and maintenance or expansion of existing corridors. As with PSE corridors in road rights-of-way, cross-country corridors contribute no noise, no light, no pollution, do not introduce daily human use, and require only periodic maintenance. If impacted for construction or maintenance activities, the shrub understory is typically restored post-impact or allowed to remain intact. As such, PSE's typical operation and maintenance activities within existing corridors, and even minor corridor expansion is unlikely to introduce significant, long-term disturbance to wetland habitat functions, and very unlikely to disrupt wetland hydrologic and water quality functions.

In general, although Category II wetlands may in theory provide higher habitat values than Category III or IV wetlands, the portion of Category II wetlands within the road rights-of-way and within or adjacent to existing cross-country transmission corridors is already subject to the effects of human disturbance, and therefore is likely to provide more limited habitat value than the habitat score alone would indicate.

5.2 Minimal Additional Disturbance

PSE's future activities related to Category II wetlands fall into two categories: Maintaining and upgrading existing facilities and constructing new facilities. The proposed code amendment focuses on allowing maintenance and upgrades to existing facilities in Category II wetlands as well as allowing installation of new facilities in Category II wetlands, where they are located within or adjacent to existing road right-of-way; including the overbuilding of existing distribution lines with new transmission lines. It also includes the installation of underground distribution facilities in and along the road right-of-way that may be bored under or trenched through wetlands. For clarity, this PSE requested code amendment would not permit the establishment of new cross country transmission or distribution corridors through Category II wetlands.

The nature of PSE's activities differs for corridors in or adjacent to road right-of way and cross-country corridors. For corridors located in or adjacent to road right-of way, PSE's maintenance, upgrade and installation activities are primarily conducted from the hard surface of pavement, minimizing surface impacts to wetlands. These activities include vegetation removal or trimming for line clearance or to support new installations. Occasional facilities maintenance and repair occurs, with trucks and other heavy equipment generally working from paved surfaces. Activities may occasionally include pole replacement or new pole installation in or adjacent to road rights-of-way. PSE aerial distribution and transmission lines are generally located at the edge of the right-of-way boundary and set back from the fog line for clearances and safety considerations. In areas where wetlands are present, this generally puts poles in the unimproved portion of the road right-of-way, with the conductor spanning over the wetland area between pole locations. For cross-country corridors, PSE's activities include a similar level of vegetation removal and trimming, but also include temporary access routes where permanent access does not exist. When crossing wetlands these temporary access routes typically require cutting of shrub vegetation to enable the temporary placement of mats to cross wetlands and minimize wetland impacts. Generally, temporary access

routes can be designed to avoid significant trees and vegetation removal. Post-construction, the mats are removed and the wetland vegetation is allowed to recover.

Given the previously disturbed nature of these existing corridors and road rights-of-way, additional anticipated impacts on wetland function from PSE maintenance, repairs, upgrades and new facility installations are minimal (see Section 5.1). Whereas impacts from filling or draining a wetland can result in permanent and near-complete loss of wetland functions (Sheldon 2005), the vegetation disturbance typical of PSE's activities may temporarily influence wetland functions but is highly unlikely to result in total loss of functions since the impacts are generally minimal and occur in previously disturbed corridors. This conclusion is further supported by mitigation guidance from the U.S. Army Corps of Engineers and Ecology, which allows for reduced mitigation ratios for vegetation conversion (e.g., forest to scrub/shrub or emergent) in wetlands on the basis that a majority of functions are retained (Ecology, U.S. Army Corps of Engineers, and U.S. Environmental Protection Agency Region 10 2021). In general, hydrologic and water quality functions are largely retained in PSE utility corridors due to the temporary nature of impacts and minimal fill placement associated with pole installation.

Habitat functions are impacted differently depending on the existing vegetation community at the time of the impact. For wetlands with emergent or scrub-shrub communities, impacts typically include brushing for work clearance. If access is required, temporary access mats and appropriate BMP's are installed and removed post construction, resulting in impacts that fit the definition of short-term temporary impacts (Ecology et al. 2021). Impacts of this type do not result in ground disturbance, removal of shrub roots, or placement of permanent fill. In these types of wetlands impacted areas typically recover to pre-construction conditions within one growing season. Impacts of this nature result in negligible habitat function loss.

A utility corridor may cross a Category II forested wetland and require trimming and/or clearing of trees in the wetland, which would constitute a permanent conversion impact that will not be restored because many trees are not compatible with overhead transmission and distribution lines (Ecology et al. 2021). When a forested wetland is permanently converted to an emergent or shrub wetland, some habitat functions are permanently lost or reduced, but other functions remain. As evidence of this, regulatory agencies generally accept one-half of the otherwise recommended mitigation ratios for permanent conversion impacts. While little research that specifically quantifies the impact of vegetation clearing for utility corridor use has been conducted, Adamus (2014) details potential impacts to forested wetlands based on forest practices tree harvest and creation of logging roads. The potential impacts documented by Adamus (2014) have a moderate to low probability of occurrence, even in former undisturbed forested wetland. These potential impacts represent a 'worst-case' scenario for large scale logging of forested wetlands in undisturbed forest and are unlikely to occur with the small-scale tree removal and vegetation clearing necessary for PSE utility corridors, particularly in an urbanized system in which Category II forested wetlands are already bisected by paved roads and utility corridors.

In addition to the results from direct wetland impacts discussed above, habitat functions may also be impacted indirectly outside the footprint of direct wetland impacts (Ecology et al. 2021). Clearing of forest or shrub vegetation, including vegetation in upland buffers adjacent to a wetland, may affect wildlife movement, increase light or noise pollution entering the wetland, or potentially allow sediment or pollutants that were previously filtered by the removed vegetation to enter the wetland. Indirect wetland impacts are limited due to the nature of PSE's activities. PSE's typical maintenance and upgrade activities do not result in fill in wetlands, and for new overhead construction projects fill

is normally limited to the required pole footprint. In the case of underground construction, fill would generally coincide the improved portion of the road right-of-way, limiting indirect impacts to wetlands. PSE's typical maintenance, upgrade and installation activities do not result in changes to land use or topography, and consequently do not change the flow or fluctuation of water, do not result in impacts to drainage, and do not divert surface or groundwater. PSE activities typically do not result in increased stormwater runoff, and applicable BMPs are included as appropriate to protect resources. Therefore, additional indirect impacts on wetland function from PSE maintenance, repairs, upgrades and new facility installations are anticipated to be minimal additional disturbance to wetlands.

5.3 Avoidance and Minimization

When PSE maintains or upgrades an existing utility line or installs a new line, they follow federal, state, and local requirements to avoid and minimize wetland impacts to the extent feasible in accordance with the following preferred mitigation sequence, as outlined in the Interagency Guidance on Wetland Mitigation in Washington State (Ecology et al. 2021) and BMC 16.20.030:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
6. Monitor the impact and take appropriate corrective measures.

A typical PSE transmission or distribution project may include the following avoidance and minimization measures:

For corridors within or adjacent to road right-of-way:

- PSE conducts typical ongoing maintenance and operations work from the improved roadway to the greatest degree possible, minimizing wetland impacts.
- For new pole installation or replacement, PSE adjusts pole locations to avoid direct impacts to wetlands wherever operationally feasible.

For maintenance, repair and upgrades in cross-country corridors:

- Engineering and environmental constraints are evaluated by PSE during the initial project reconnaissance and subsequent design phase to avoid and/or minimize impacts associated with both placement of transmission/ distribution infrastructure and temporary or permanent access routes. PSE engineers use information from wetland delineations to adapt project components to avoid wetlands and buffers wherever feasible.
- Where pole replacement or installation must occur in a wetland, PSE employs appropriate BMPs such as temporary timber mats to avoid permanent access road related impacts and designs temporary access routes to minimize impacts to wetlands.

For all PSE transmission and distribution corridors:

- Clearing, land disturbance, and construction impacts are confined to the minimum area necessary to complete the project.
- During construction, appropriate erosion control measures from the Western Washington Stormwater Manual specific to construction activities are implemented to avoid erosion and sedimentation impacts.
- Following construction, temporarily impacted areas are replanted and/or allowed to recover to pre-construction conditions.

6.0 Application of Best Available Science

The inherently linear nature of transmission and distribution lines can make it impractical to avoid wetlands entirely. The goal of this code amendment is to enable PSE to install, upgrade and maintain transmission and distribution facilities while minimizing associated impacts to Category II wetlands by locating those facilities in and along areas that are already impacted by existing development, including existing road rights-of-way and existing cross-country utility corridors. Additional measures to limit impacts include adding additional conductors to existing distribution lines (single phase to multi-phase lines) or replacing existing distribution poles with poles that can also accommodate transmission lines, resulting in incremental or no additional impacts on wetlands. Where impacts must occur, it is preferable to locate them in areas that are previously disturbed by existing uses or adjacent to existing disturbance where the wetlands currently provide the most limited habitat functions. The code amendment will not allow for the construction new facilities in areas that overlap with Category I wetlands or allow for new cross-country transmission and distribution lines in Category II wetlands.

In addition, wetland impacts from vegetation removal, trimming, and occasional facilities maintenance, repair, and replacement do not represent a total loss of wetland functions. Impacts from PSE activities are primarily vegetation management and conversion impacts, rather than fill or soil-disturbance impacts. PSE transmission and distribution corridors that cross through wetlands can retain native shrub and herbaceous species that are similar to those found outside the corridor, meaning that they do not represent a total loss of habitat functions nor a break in connected habitat corridors. In addition, PSE projects follow mitigation sequencing and actively seek to avoid and minimize impacts to wetlands wherever possible. Where complete avoidance is not feasible, permanent wetland impacts from PSE projects are typically very minor. PSE mitigates for permanent wetland impacts from project activities in accordance with applicable federal, state, and local regulations in order to achieve no-net-loss of wetland functions.

7.0 References

- Adamus, P. 2014. Effects of Forest Roads and Tree Removal in or Near Wetlands of the Pacific Northwest: A Literature Synthesis. Cooperative Monitoring Evaluation and Research Report CMER 12-1202. Washington State Forest Practices Adaptive Management Program. Washington Department of Natural Resources, Olympia, WA.
- Bennett, M. 2004. Restoration of Himalayan blackberry (*Rubus discolor*)-dominated riparian zones in interior southwest Oregon: A thorny issue. *In: Proceedings of the 16th annual Society for Ecological Restoration International Conference*, Victoria, BC, Canada, August 24-26.
- City of Bainbridge Island. 2021. Critical Areas Mapping.
<https://cityofbi.maps.arcgis.com/apps/webappviewer/index.html?id=69e8fb8e73ea44029468811910a28fd4>. Accessed April 2021.
- Ecology (Washington State Department of Ecology). 2016. Wetland Guidance for CAO Updates: Western Washington Version. Washington State Department of Ecology Publication #16-06-001.
- Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. 2021. Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 2). Washington State Department of Ecology Publication #21-06-003.
- Granger, T., T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S. Stanley, and E. Stockdale. 2005. Wetlands in Washington State – Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology Publication #05-06-008, April 2005. Olympia, WA.
- Jackson, J., E. Pentecost, and J. Muzzarelli. 1994. Transmission Line Environmental Assessment Guidance Document. United States Department of Energy. Environmental Assessment Division.
- Houlahan, J., and C. Findlay. 1997. The Effects of Adjacent Land Use on Wetland Amphibian Species Richness and Community Composition. *Canadian Journal of Fisheries and Aquatic Science* 60:1078-1094.
- Hruby, T. 2013. Update on Wetland Buffers: The State of The Science. Final Report, October 2013. Washington State Department of Ecology Publication #13-06-11. Olympia, WA
- Hruby, T. 2014. *Washington State Wetland Rating System for Western Washington: 2014 Update*. Washington Department of Ecology Publication #14-06-029. Olympia, WA.
- Richter, K., and A. Azous. 1997. Bird Communities in Relation to Watershed Development in *Wetlands and Urbanization, Implications for the Future*. Olympia, WA.
- Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale. 2005. Wetlands in Washington State – Volume 1: A Synthesis of the Science.

- Washington State Department of Ecology Publication #05-06-006, March 2005. Olympia, WA.
- Washington State Office of Community Development. 2002. Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas. Olympia, WA.
- Wisconsin Reed Canary Grass Management Working Group. 2009. Reed Canary Grass (*Phalaris arundinacea*) Management Guide: Recommendations for Landowners and Restoration Professionals.
- Wright, T., J. Tomlinson, T. Schueler, K. Cappiella, A. Kitchell, and D. Hirschman. 2006. Direct and Indirect Impacts of Urbanization on Wetland Quality. Wetlands and Watersheds Article 1. Prepared for Office of Wetlands, Oceans, and Watersheds. U.S. Environmental Protection Agency. <https://www.nrc.gov/docs/ML0915/ML091520194.pdf>
- Zedler, J., and S. Kercher. 2004. Cases and Consequences of Invasive Plants in Wetlands: Opportunities, Opportunists, and Outcomes. *Critical Reviews in Plant Science* 23(5):431-452. Accessed online at http://www.des.ucdavis.edu/faculty/Rejmankova/Reading_Dec6-10.pdf



Code Amendment Request Narrative and Comprehensive Plan Consistency

Puget Sound Energy (PSE) is requesting that the City of Bainbridge Island (City) amend sections of the Municipal Code (BIMC) through the Legislative Review of Land Use Regulations process in BIMC 2.16.180 to facilitate maintaining, upgrading and installing new electrical distribution and transmission lines on Bainbridge Island. The amendments are focused on supporting PSE’s linear infrastructure (i.e. distribution and transmission lines and associated equipment and activities and not primary use of a site by a utility facility, such as a substation. These amendments include changes to language within the following sections of code:

- BIMC 16.20 – Critical Areas,
- BIMC 18.12- Dimensional Standards, and
- BIMC 2.16 – Land Use Procedures.

Although these amendments are being requested by PSE for the benefit of providing reliable electrical service to the community, all linear primary utilities are regulated by these code provisions, including water, stormwater, sewer, and communication facilities (see definition of “Utility, primary” in BIMC 18.36) and so these facilities may also be constrained by these code provisions. It should be noted that these amendments will not allow PSE to create a condition that does not now exist on Bainbridge Island today. The standard operation of PSE’s electrical system that has been in place in some capacity since the 1940s has resulted in the placement of infrastructure in locations that are now regulated as critical areas, zoning setbacks, and pole heights that exceed the regulatory height of buildings.

Amendment Requests

BIMC 16.20 Critical Areas: The code sections that PSE seeks to amend within the Critical Areas regulations focus on development, use and activity prohibitions in Category I and II wetlands (BIMC 16.20.140.G.2) and the required designation of Aquifer Recharge Protection Areas (ARPAs) based on certain development triggers (16.20.100.E.1). To continue to maintain, upgrade and install new linear electrical utility infrastructure to improve reliability and serve the electrical needs of the Bainbridge Island community, PSE is requesting an amendment to BIMC 16.20.100.E.1 to include a provision that utility corridors on easement on property not owned by PSE not be subject to the ARPA dedication requirement. PSE is also requesting an amendment to BIMC 16.20.140.G.2 to provide an allowance for

the maintenance and upgrade of existing infrastructure in Category I and II wetlands and installation of new linear utility infrastructure along or adjacent to road right-of-way within Category II wetlands.

Dimensional Standards – BIMC 18.12. PSE is requesting amendments within the dimensional standards section of the code related to pole height and linear utilities in zoning setbacks. These amendments seek to provide clarity on the interpretation of these code sections. There is a discrepancy in review processes between BIMC 18.12.020 and 18.12.040 for distribution and transmission line poles when a pole is replaced or a new pole is added within an existing utility corridor. The dimensional tables in BIMC 18.12.020 state that conditional use permit review is required for nonresidential uses that exceed the height limits provided for buildings and structures. There is a reference to some encroachments allowed in BIMC 18.12.040, which allows replacement poles over certain thresholds to be approved through minor site plan review. The code amendment seeks to resolve the discrepancy in permit review processes and ensure there are no gaps in the regulations.

BIMC 18.12.040 also regulates allowances for encroachment into zoning setbacks. Table 18.12.040 includes an allowance for overhead and underground accessory utilities, but does not provide an allowance for primary utilities. The presence of distribution and transmission line infrastructure within and overhanging setback areas is commonplace on Bainbridge Island and essential to utility operation. Other city standards as well as safety considerations require placement of overhead and underground electric utility infrastructure at the edge of road right-of-way or on adjacent private property. Additionally, transmission and distribution lines must cross setbacks to connect to substations. The code amendment would allow encroachment by linear primary utilities as well as accessory utilities.

Land Use Procedures – BIMC 2.16. PSE is requesting an amendment to BIMC 2.16.020.D, which identifies who can apply for a permit. BIMC 2.16.020.D states in pertinent part: “A property owner, a contract purchaser, or an agent of the owner with authorized written proof of agency may apply for any type of permit.” Read alone, BIMC 2.16.020.D does not appear to contemplate PSE as a permissible applicant for a range of common utility activities. PSE is requesting to modify the language in BIMC 2.16.020.D to allow PSE to apply for permits for essential utility projects on property where PSE is not the underlying property owner.

Background

PSE provides electrical service to Bainbridge Island through a system of transmission lines, distribution lines, and substation. The Bainbridge electrical system is comprised of approximately 13 miles of transmission lines, 3 substations that step down the voltage from transmission voltage (115 kV) to distribution voltage (12.5 kV), and approximately 320 miles of overhead and underground distribution lines. Like other utility infrastructure on the island, PSE has installed these facilities in response to need and growth over time. As the community grows, some infrastructure is upgraded and new infrastructure is installed. Additionally, as infrastructure ages, it must be repaired, replaced and upgraded provide reliability and comply with newer standards. Due to the linear nature of PSE’s

distribution and transmission line infrastructure and the necessity to link defined locations in the system, it not possible to completely avoid crossing features that are located throughout the City, such as critical area crossings, specific zoning districts, and setback areas. Finally, as Washington State, the City and PSE work to achieve greenhouse gas reduction goals, additional electrical facilities will likely be needed to provide for the electrification of building, the transportation sector (ranging from cars to ferries) and other emerging needs.

Ranges of Regulated Activities

Activities that PSE needs to perform on the electrical system on Bainbridge Island include maintaining and repairing or upgrading existing infrastructure or installing new infrastructure. These activities can be regulated by provisions in Bainbridge Island code depending upon intensity and level of impact. Based on these ranges of activities, there is no “one size fits all” regulatory approach for each category. The general parameters of these activities include:

Repair and maintenance: The electrical infrastructure on Bainbridge Island varies in age. A normal part of repair and or maintenance needs of this infrastructure is to replace equipment, poles, and conductor as well as to maintain safety clearances from equipment and wires through trimming and removing incompatible vegetation. Operational standards and field conditions can change over time; therefore, when infrastructure is replaced, equipment can change in size, poles size or height can increase incrementally, and accessory components attached to poles can change size or configuration. PSE also cannot control the natural growth of vegetation in the field over time. Existing incompatible trees are trimmed and/or removed as part of maintenance. Trees can grow and become incompatible with the lines or equipment that haven’t historically been maintained. All of these factors can result in a repair or maintenance activity going over the threshold of an “exempt” activity under Bainbridge Island codes and regulations.

Upgrades: A number of activities fall under the category of infrastructure upgrades. These activities generally involve a level of intensification or expansion of existing infrastructure. This can involve replacement of existing infrastructure, but also adding equipment or replacing equipment with equipment that meets different operational standards and/or adds capacity to the system.

New Installation: New installations are more extensive than upgrading existing facilities and include adding a new distribution or transmission lines to the system. New installations can vary in intensity. Adding a new power line does not necessarily entail establishing a new corridor. Distribution lines can be aerial or underground and depending on location of need, can be collocated with other utilities within or adjacent to road right-of-way. New transmission lines can involve the establishment of a new corridor cross country, installation of new poles within or adjacent to road right-of-way, or collocating with existing above ground distribution infrastructure by replacing select poles with taller poles that can support both distribution and transmission lines (referred to as “overbuilding”).

BIMC 16.20 – Critical Areas

PSE's linear utility infrastructure is generally located within or adjacent to public road right-of-way or sometimes within easements that cross private and public property. Poles, conductor, underground distribution conduit and cables and other equipment have been installed over time to serve community needs and customer demand. When PSE's above ground distribution and transmission poles are located within road right-of-way, they are placed to avoid conflict with other uses in the right-of-way including motorized and non-motorized uses, other above and below ground utilities, among other features. In many cases, this pushes PSE's poles to the very edge of the right-of-way (which is often unimproved) or onto private property. Even when poles are not physically located on private property, there can be a need for PSE to acquire easements on property adjacent to the right-of-way to accommodate required clearance for overhead conductors. These easements vary in size based on operational need and allow for the conductor on the poles to overhang the adjacent property or to accommodate for the swinging of the wire due to wind and heat. These easements also allow PSE to maintain vegetation and meet clearance standards from the conductor. PSE also acquires easements to support guys and anchors and for vaults and ground mounted equipment to support underground distribution lines when placement in the right-of-way is not possible.

Additionally, because PSE's infrastructure (above and below ground) is often located in the unimproved portion of the right-of-way and may at times require easements on adjacent properties, PSE is unable to avoid properties that are zoned R-0.4, R-1, or R-2, impacts to critical areas such as wetlands that are located within or adjacent to the unimproved portion of the road right-of-way, or placing utility infrastructure in zoning setbacks. Much of the unimproved road right-of-way or frontage area on low density residential lots contains tree canopy screening. PSE often must selectively trim or remove vegetation in these areas that conflict with safe conductor clearances. The majority of impact caused to a wetland or vegetative screen by a linear utility line is due to the need to maintain vegetation from the conductor, not from the poles or other equipment. For underground distribution lines, vaults, pad mount transformers or similar equipment may need to be placed on private property within easements adjacent to road right-of-way even if the lines are located within road right-of-way. Under City of Bainbridge Island Public Works policy and the terms of PSE's franchise, wet utilities such as sewer and water have a preference to be sited under improved right-of-way (pavement) and dry utilities such as electric lines are generally pushed out into the unimproved portion of right-of-way in the road shoulder.

BIMC 16.20.040 Exemptions contains a provision applicable to the maintenance of utility infrastructure in regulated critical areas. This exemption applies both to the requirements of BIMC 16.20.140.G.2 pertaining to the prohibition of primary utilities in Category I and II wetlands and BIMC 16.20.100.E.1 pertaining to the dedication of ARPAs. BIMC 16.20.040.A.6 states, "[n]ormal and routine repair and maintenance of existing utility structures within a right-of-way or existing utility corridor or easement, including the cutting, removal and/or moving of vegetation above the ground that utilizes best management practices and does not expand the use, activity or structure further into a critical area." The City's interpretation of this code section has varied over time, but has generally been limited to allowing replacement of existing poles, conductor and equipment with like or similar appurtenances, as

well as routine management of vegetation within existing corridors. However, the constrained nature of this interpretation has resulted in, what PSE believes, are unintended and illogical results.

More specifically, depending upon the scope of maintenance or upgrade activities along a utility corridor, maintaining existing infrastructure can result in additional impacts to a critical area. This could be due to changes to engineering standards over time, the need to modify pole position and conductor span length to meet regulations and standards (such as control zone), or the need to modify pole size to support upsized conductor, fiber lines, communication utility lines, or other infrastructure changes. There can also be unintended regulatory consequences. For example, PSE analyzed lessening impacts to Category II wetlands along an existing transmission corridor constructed in the 1960s. This would entail reducing the number of poles physically located in the wetlands by increasing the span length (distance) between poles. The overall net impact to wetlands would have been reduced by having fewer poles in wetland areas. However, to accomplish this, one of the poles that would have to be replaced in a wetland would have to be nominally larger in diameter to support the increased span length between poles. The City concluded this was not allowed in a Category II wetland, as it did not qualify as “normal and routine repair and maintenance” since the ground area impact of the pole would increase in that location, even though the overall net impact in Category II wetlands would decrease by removing poles in other locations. Therefore, PSE had to replace the existing poles in their existing locations to meet the exemption and could not provide the alternative net benefit to wetlands due to the existing prohibition in BIMC 16.20.040.G.2. Adoption of PSE’s proposed code amendments would allow for greater flexibility in minimizing and avoiding impacts to Category II wetlands, in addition to allowing continued operation of the electrical system on the Island.

It should be noted that based on the City’s GIS data, Category I wetlands are not a common occurrence on Bainbridge Island. This is particularly the case in areas adjacent to road rights-of-way where PSE’s proposed amendment would most often apply. PSE is aware of only one occurrence where an existing transmission line facility spans a Category I wetland. Based on available mapped data there are no other known occurrences; however PSE would like to reserve the right to maintain and upgrade any existing infrastructure found to overlap with a Category I wetland should such conditions be encountered on a project-specific basis in the future. Maintenance impacts generally consist of replacing existing aging infrastructure and maintaining vegetation to meet safety clearances around power lines. Some temporary impacts could occur during maintenance access, but these impacts would be restored. In most cases, maintenance activities fall under the critical areas exemptions in BIMC 16.20.040, however there are some instances where maintenance may result in minor new unavoidable impacts to critical areas. See “Bainbridge Island Code Amendment Best Available Science Review” document for additional discussion on the wetland code amendment and potential impacts.

Existing and Proposed Code Provisions

In 2018, the City of Bainbridge Island updated the Critical Areas regulations in BIMC 16.20. As part of that update, BIMC 16.20.100 Aquifer Recharge Areas was added to the Critical Areas regulations and

BIMC 16.20.140.G.2 was modified to add prohibitions for overhead primary utilities in Category I wetlands and overhead and underground primary utilities in Category II wetlands.

BIMC 16.20.100: Aquifer Recharge Areas

In 2018, the City of Bainbridge Island adopted an update to the Critical Areas regulations including provisions regulating aquifer recharge areas. The entire island is designated as an aquifer recharge area due to its status as a sole source aquifer. As a means of implementing new state stormwater regulations that emphasize the use of Low Impact Development (LID), the City adopted a new requirement that when development occurs on property located within the R-0.4, R-1 and R-2 zoning districts, up to 65 percent of the site be designated an Aquifer Recharge Protection Area (ARPA). The code regulates any proposed development or activity requiring site assessment review (SAR) that is located within the R-0.4, R-1, or R-2 zoning districts and requires these activities to designate an ARPA that is recorded on a property title. The triggers for SAR review include over 800 square feet of new hard surface, grading or clearing activities over 7,000 square feet or 35% of a site (whichever is smaller), and underground utilities not under existing hard surface.

The code does not distinguish between development and activities by a fee owner of a parcel who may develop and use the entire parcel versus development/activities by an easement holder who only has rights to use a portion of the property for a specified use or activity and does not hold fee interest in the property. PSE's easement rights grant PSE use of a limited portion of a parcel for the purpose of installing, operating and maintaining linear electrical distribution and transmission infrastructure. The easement area is based upon operational needs determined by PSE. Other than rights of ingress and egress granted under state law, PSE does not have rights on private property outside of its easement areas and cannot record restrictions on title that will overburden a property for purposes that are not consistent with and for the benefit of utility operational needs. Therefore, PSE as a regulated utility cannot meet the aquifer recharge area requirement to set aside 65 percent of a property owner's site within an ARPA.

PSE is requesting that the City amend BIMC 16.20.100.E.1 to add a provision that excludes utility installation, upgrade and maintenance activities on property not owned by the utility. Accordingly, PSE would comply with ARPA dedication requirements on its own property when applicable. However where PSE's interest in the property is limited to a utility easement, the requirement would be waived as to PSE's use but still apply to the parcel owner. Although this amendment is being requested by PSE, such a provision would also benefit other utilities. Suggested language includes adding a subsection e. that states, "Activities related to the installation, upgrade and maintenance of utility facilities and corridors, when located on property not owned by the utility provider." See Attachment 1: Proposed Code Language.

BIMC 16.20.140.G.2: Prohibited Activities in Category I and II Wetlands

Prior to the Critical Areas regulation amendments adopted in 2018, the Wetlands section of the Critical Areas code included a use table that specified whether uses and activities were allowed outright, permitted subject to development standards, allowed with special use permit approval, or prohibited

when located within a wetland or wetland buffer (see Table 8 below). The regulations at that time specified that overhead utility lines were allowed in Category I-III wetlands and buffers with special use permit approval and permitted subject to development standards in Category IV wetlands. For underground utility lines, the regulations stipulated these were prohibited in Category I wetlands, but allowed in Category I wetland buffers and allowed with special use permit approval in Category II – IV wetlands and their buffers.

Table 8: Regulated Uses and Activities in Regulated Wetlands and Buffers

	Category I		Category II		Category III		Category IV	
	W	B	W	B	W	B	W	B
32. Utility Line-Overhead	S	S	S	S	S	S	P	P
33. Utility Line - Underground	X	S	S	S	S	S	S	S

P = Permitted Subject to Development Standards and Underlying Permit, S = Special Use Permit Required, X = Prohibited

Publicly available supporting documentation for the 2018 code amendments indicate that the formatting of Table 8 was changed to a list for ease of reading the regulations, but does not include an explanation as to why overhead utilities were determined to be prohibited in Category I wetlands and both overhead and underground utilities were determined to be prohibited in Category II wetlands. PSE's consultant has provided best available science documentation to support an allowance for linear new utility lines to be located within Category II wetlands where impacts can be limited and an allowance for the repair and upgrades of existing utility facilities in Category I and II wetlands (see *Bainbridge Code Amendment BIMC 16.20.140.G: Prohibited Activities – Best Available Science*, HDR, January 2023 memo).

In order to continue to maintain and upgrade existing linear infrastructure located in cross-country corridors (generally existing transmission lines) and maintain, upgrade and install new linear facilities within and adjacent to road right-of-way, PSE is requesting an amendment to BIMC 16.20.140.G.2 to narrow the prohibition on new primary utilities in Category II wetlands based on balancing the needs of the community with Best Available Science to support limited impacts to these critical areas. Although PSE is requesting this code amendment, it has the potential to impact all linear primary utilities, including sewer and water line within unimproved portions of road right-of-way. See for example, the storm sewer lines mapped in the City of Bainbridge Island's SAR Web Application which shows the location of utilities and critical areas.

PSE is proposing to amend the language in BIMC 16.20.140.G.2 to limit the primary utility prohibition to new utility facilities in Category I wetlands and in Category II wetlands where a new utility facility is not placed within or adjacent to road right-of-way (i.e. no new cross country corridors). This will allow for

the continued maintenance and upgrade of existing facilities in cross country corridors where they cross Category I and II wetlands and for the establishment of new facilities in Category II wetlands only where impacts can be limited to the area within or adjacent to road right-of-way; which is often already disturbed and of diminished ecological value. As noted earlier in this document, PSE is only aware of one instance of an existing primary utilities located within Category I wetlands based on mapped data, but would like to reserve the right to maintain and upgrade existing facilities should Category I conditions be encountered in the field on a project specific basis. See Attachment 1: Proposed Code Language.

BIMC 18.12 Dimensional Standards

The Permitted Height Modifications section of Table 18.12.040 was amended in 2014 (Ordinance 2014-05) to adopt land use review pole height thresholds. At this time, PSE was in the process of replacing the steel transmission tower that held the two transmission lines crossing Agate Pass from Kitsap County with two steel monopoles. These 140-foot monopoles are of a greater height compared to other poles on the Island due to the length of the crossing and the need to meet safety clearances from Agate Pass Bridge. Table 18.12.040 at that time did not allow poles over 50 feet in height and no variance requests were allowed. The adopted code language distinguishes between distribution and transmission line poles and allows incremental increases in pole height and changes in location without land use review and imposes thresholds for requiring minor site plan review. What was not contemplated at that time was the occasional need to add a pole or poles along an existing distribution or transmission corridor to facilitate system upgrades. The City interprets the exemption language in BIMC Table 18.12.020-2 and 18.12.020-3 to require conditional use approval for any new pole installation that is over the height of the underlying zoning district, particularly since the language in Table 18.12.040 is focused on replacement poles, however the current language is not specific to new uses. To clarify the discrepancy between the language in Table 18.12.020-2 and 18.12.020-3 and Table 18.12.040 regarding land use review, additional language to clarify the intent of those code sections is proposed. Additionally, the language in the last row of Table 18.12.040 was meant to be replaced with the adopted language regarding distribution and transmission pole height. This language was proposed to be stricken as part of the 2014 amendments, but inadvertently left in the final adopted ordinance.

Also within Table 18.12.040, under Permitted Setback Modifications, the language pertaining to an allowance for accessory utilities in zoning setbacks inadvertently prohibits primary utilities in setback. Linear distribution and transmission conductor (wires) along road rights-of-way often extend over adjacent setback areas and occasionally poles are placed within setbacks to avoid conflicts with and provide clearance from uses within the road right-of-way. Even when underground distribution lines are placed within road right-of-way, ancillary equipment such as vaults and pad mounted transformers can be placed within easement areas that overlap with zoning setbacks. Alternatively, distribution and transmission lines can extend perpendicularly through setbacks, particularly when they are going into or out of a substation facility to connect with linear infrastructure within road right-of-way. PSE is requesting the language be amended to reflect the common presence of overhead or underground linear infrastructure within zoning setbacks, however this language will not allow parcel-based primary utility facilities that occupy a site as a primary use to extend into zoning setbacks. Like other proposed

amendments, other linear primary utilities defined under BIMC 18.36.030 will fall under this amendment, including water, sewer, storm, and communication lines. See Attachment 1: Proposed Code Language.

BIMC 2.16.020.D – Who Can Apply

In many instances, PSE is not, and likely never would be, a property owner as defined under BIMC 18.36.030. The code defines “owner” as “the party or parties having the fee interest in land”. For many common utility activities and projects, particularly related to linear utility facilities, PSE holds or acquires easement rights to use a portion of a property, not fee interests which would have a more intrusive effect on the use of the property by the owner. Further, PSE is not acting as an agent of the owner. PSE’s projects and activities are essential infrastructure projects to fulfill a state mandate to provide reliable, safe, and reasonable cost energy to the community.

The existing code does not acknowledge the discretionary nature of many permit review processes and how that relates to the process of acquiring rights for utility infrastructure. PSE may not be able to precisely identify needed rights before going through land use and environmental permit processes, as the City may request slight shifts in pole placement or the location of other infrastructure which can impact easement size and configuration. Therefore, requiring PSE to acquire rights before a permit is applied for may result in PSE acquiring rights it does not need or in having insufficient rights, both of which have the potential to negatively impact Bainbridge Island property owners and is not in the best interest of PSE rate payers. These discretionary permit processes often include public notice requirements, including public hearings for some levels of review. These processes provide community transparency and provide the opportunity for public review and comment on a project, even beyond the impacted property owners within a project area.

It does not make practical sense to preclude the City’s electric service provider from being an “applicant” to apply for permits for its essential infrastructure projects. Certain code provisions arguably provide the City with flexibility to process PSE’s applications without property owner authorization, including BIMC 2.16.020.J.1.d and BIMC 2.16.020.J.2.a which provide the Director with discretion to waive submittal requirements deemed unnecessary for the review of an application and provide the ability for the City to deem an application complete when materials submitted are sufficient for accurate review, even if additional information may be required or project modifications made. The requested amendment allows PSE to apply for permits and acquire rights, but preserves the City’s authority to not issue construction permits until proof of rights is provided by PSE. See Attachment 1: Proposed Code Language.

BIMC 2.16.180: Legislative review of land use regulations.

BIMC 2.16.180 applies to the adoption of amendments to the BIMC related to land use procedures and regulations. Although the code does not contain specific decision criteria for legislative review of land

use regulations, it does specify consideration of the Comprehensive Plan. Comprehensive Plan policies that support the requested code amendments include:

Goal U-1: Ensure that reliable utility services are available to all Bainbridge Island residents.

Response: Continuing to maintain, upgrade, and install new linear distribution and transmission facilities on the island is cornerstone to ensuring the ability to provide reliable electric service to the community. This will become increasingly true as the use of electricity expands in the transportation sector and to support other emerging technologies. The inability to upgrade or install infrastructure in unavoidable locations or for PSE to apply for permits is inconsistent with PSE's state mandate to serve the community with safe, reliable, and cost efficient energy.

Goal U-3: Ensure that utility services are adequate to meet current demands, and that utility providers plan for future demands.

Response: Providing adequate utility service means that PSE must continue to maintain, upgrade and install new linear distribution and transmission facilities in geographic areas that meet the need. Installing, upgrading and maintaining linear infrastructure can mean impacts to critical areas or placement of utility infrastructure or management of vegetation in the roadway or along private property frontage due to the need to install and maintain infrastructure between two connected points (generally substations). In order to ensure that utility services are adequate, PSE needs clarity regarding its ability to apply for permits.

Goal U-5: Ensure that new or major renovations to existing utility facilities are designed to minimize adverse impacts on residents and the environment.

Response: The ability apply for permits and to maintain and upgrade existing utility facilities will minimize impacts to residents and the environment, as these facilities can remain in place. Allowing for installation of new utility facilities within and adjacent to road rights-of-way will minimize impacts as these areas are generally already disturbed by the adjacency with the motorized roadway and use areas of properties that are set aside from use by primary structures.

Goal U-6: Ensure that permits and approvals for utility facilities are processed in a fair, timely manner and in accord with development regulations and this Plan and **Policy LU-6.5:** Process applications for development approval on Bainbridge Island within the timelines established in the City's land development regulations in order to ensure affordability, fairness, citizen notification and predictability in the land development process.

Response: There is a need for clarity and modifications to the code to allow submittal and review of PSE project permits. The ability to provide essential facility upgrades and installations within the community is currently being hindered by the inability for permits to be submitted and reviewed in a timely manner. PSE submitted its application materials for the Winslow Tap 115 KV Transmission Line Rebuild Project on February 9, 2023. The application has not been processed within the timelines established in the City's code due to lack of clarity in BIMC 2.16.020.D as well as needed modifications to other provisions in the code hindering this and other projects from being approved.

Policy U-14.3: Encourage the electric service provider to improve reliability, with particular attention to adding transmission redundancy and mitigating impacts on service from storms or other natural events.

Response: PSE needs the ability to continue to maintain, upgrade and install new infrastructure to ensure reliable power can be provided to meet the needs of the community. Due to the linear nature of PSE's facilities and the need to provide connections between two defined points, limited impacts to wetlands and encroachment onto private property are often unavoidable. PSE needs the ability to not only install new infrastructure, but continue to maintain and upgrade existing infrastructure that was installed within these areas prior to existing regulations. In limited circumstances, upgrading a facility can entail adding one or more poles within an existing power line alignment may be required to maintain the engineering integrity of the system.

Approval of the requested code amendments will not absolve PSE or other linear utility providers from meeting other applicable sections of the BIMC. For example, the ARPA amendment would exempt linear utility facilities on property not owned by the utility from having to designate an ARPA. However, other applicable aquifer recharge area related protections will still apply, including compliance with stormwater standards and regulations. In terms of allowing for limited impacts from new primary utilities within Category II wetlands, mitigation sequencing and other applicable critical areas standards will still apply to any project that impacts a Category II wetland. The dimensional and application amendments intend to clarify language in the code to reduce impractical impediments and allow for timely processing of essential energy project permits.

BIMC 16.20.100 Proposed Code Language

BIMC 16.20.100 Aquifer recharge areas

E. Development Standards – Aquifer Recharge Protection Area (ARPA)

1. Any proposed development or activity requiring a site assessment review (SAR) pursuant to Chapters 15.19 and 15.20 BIMC located within the R-0.4, R-1, or R-2 zoning designations requires designation of an ARPA; except, designation of an ARPA is not required for the following:
 - a. Removal of invasive species;
 - b. Construction of public trails provided that standards set forth in BIMC 16.20.110.G.5. a through e are met;
 - c. Replacement of hard surfaces; ~~and~~
 - d. Development and activities located on properties protected in perpetuity by a legal instrument acceptable to the city attorney wherein at least 65 percent of the site meets the development standards for aquifer recharge protection areas of this section-; and
 - e. Activities related to the installation, upgrade and maintenance of utility facilities and corridors, when located on property not owned by the utility provider.

BIMC 16.20.140 Proposed Code Language

BIMC 16.20.140 Wetlands

G. Prohibited Activities

1. The following development, uses and activities are prohibited in wetlands:
 - a. Draining, excavation, placement of fill material and flooding not associated with an exempt or regulated use;
 - b. Forest Practices – Class IV general or conversion options harvest plan;
 - c. New or expanded agriculture; or
 - d. On-site sewage facility.
2. The following development, uses and activities are prohibited in Category I and II wetlands:
 - a. Fish hatchery;
 - b. Golf course;
 - c. Mineral extraction;
 - d. Public facility;
 - e. Public communication tower;
 - f. New public road/street;
 - g. New private access road or driveway;
 - h. Stormwater retention/detention facility; or
 - i. New primary utility not within or directly adjacent to an existing road right-of-way in Category II wetlands. New primary utilities are prohibited in Category I wetlands.

BIMC 18.12.020 Proposed Code Language

BIMC 18.12.020 Table of dimensional standards.

Tables 18.12.020-2 and 18.12.020-3 set forth applicable dimensional standards. Where a property is located in more than one zone district, units permitted by density calculations in each zone district must be constructed on the portion of property located within that zone district and required setbacks for each zone district must be met. Permitted densities are not “blended” across the zone district line.

Table 18.12.020-2 Standard Lot Dimensional Standards for Residential Zone Districts

[Numbers in brackets indicate additional requirements listed at the end of the table]

ZONING DISTRICT DIMENSIONAL STANDARD	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14
MAXIMUM BUILDING AND STRUCTURE HEIGHT [4]										
Note: Bonus may not be available in shoreline jurisdiction										
All lots										
Base	30 ft.	30 ft.		25 ft.				30 ft.	35	
Bonus for Nonresidential Uses if Conditional Use Permit Conditions are Met	35 ft.	35 ft.		30 ft.				35 ft.	40 ft.	40 ft. See BIMC 18.12.030.B
Exemption	Alternative height limits may apply for nonresidential uses if additional conditional use permit provisions of BIMC Title 2 are met. Some encroachments through height limits are permitted under BIMC 18.12.040 <u>without conditional use permit approval</u> .									
Shoreline Jurisdiction	See Table 16.20.030-2, Dimensional Standards Table, and BIMC 16.12.030.B.3.i, Regulations – Shoreline Structure Setback View Requirement.									

[4] For community and educational facilities (as listed in Table 18.09.020), spires, towers and other vertical features with horizontal cross-sections no more than five percent of the footprint of the primary structure may have a maximum height of 10 feet above the maximum base height, and shall be reviewed through a conditional use permit.

Table 18.12.020-3 Dimensional Standards for Mixed Use Town Center and “Other” Zone Districts

ZONE DISTRICT	Mixed Use Center					HRS I and II	NC	B/I	WD-I
	Central Core Overla y	Madiso n Avenue Overlay	Erickson Avenue Overlay	Gateway Overlay	Ferry Terminal Overlay [See BIMC 18.12.030.C]				
DIMENSIONAL STANDARD									
MAXIMUM BUILDING AND STRUCTURE HEIGHT [5]									

Note: Bonus may not be available in shoreline jurisdiction									
Base	35 ft.; 25 ft. max. south of Parfitt	25 ft.; 35 ft. north of High School Road	25 ft.	35 ft.	BIMC 18.12.030.C standard height north of Winslow Way; 35 ft. south of Winslow Way	35 ft.	35 ft.	35 ft.	35 ft. except that Chapter 16.12 BIMC applies within shoreline jurisdiction
Bonus 1 if parking under building [6]	45 ft.; 35 ft. south of Parfitt	35 ft.; 45 ft. north of High School Road	35 ft.	45 ft.	BIMC 18.12.030.C optional height north of Winslow Way; 45 ft. south of Winslow Way	45 ft.			
Bonus 2 for Nonresidential Uses with Major Conditional Use Permit							45 ft.	45 ft.	45 ft.
Bonus 3 Structure Height	Alternative height limits may apply if the conditional use permit provisions of BIMC Title 2 are met. Some encroachments through height limits are permitted under BIMC 18.12.040 <u>without conditional use permit approval</u> .								

BIMC 18.12.040 Proposed Code Language

BIMC 18.12.040 Modifications to required setbacks and height

A. Permitted Setback/Height Modifications. Minimum and maximum setbacks and maximum heights established in Tables 17.12.070-1, 18.12.020-2, and 18.12.020-3 and in BIMC 18.12.030 may be encroached as set forth in Table 18.12.040 and may also be modified by applicable provisions of adopted fire codes, the shoreline master program, and/or the building code. These modifications are not permitted in required perimeter or roadside buffers.

Table 18.12.040: Permitted Setback/Height Modifications

Type of Encroachment	Encroachment Permitted	Conditions
Permitted Setback Modifications		
Fence or combined fence and berm up to 6 feet high	In any required setback subject to applicable regulations in BIMC Title 15	Except as provided in BIMC 18.12.040.B and Chapter 16.12 BIMC
Nonscreening fences or combined nonscreening fence and berm up to 8 feet high	In any required setback subject to applicable regulations in BIMC Title 15	Except as provided in Chapter 16.12 BIMC
Chimneys, flues, awnings, bay windows, and greenhouse windows	Up to 18 inches into any required setback	
Covered porches, bay windows and eaves within the Ericksen Avenue overlay district	Up to 5 feet into the front yard	Bay windows must be cantilevered outward from the wall, and may not result in any portion of the building floor area extending into the setback
Any structures, including but not limited to uncovered steps, porches, and decks less than or equal to 30 inches in height	Up to 2 feet in front and side setbacks. Up to 5 feet into required rear setbacks.	
Eaves	May extend up to 24 inches into any required setback except shoreline structure setback	
At or near grade structures such as uncovered patios, sidewalks, and driveways	In any required setback	May not exceed 4 inches in height
Signs	In any required setback	Must conform to Chapter 15.08 BIMC
Overhead or underground <u>primary or accessory utilities that are not the primary use of the site</u>	In any required setback, perimeter or roadside buffer	Must conform to Chapters 16.12 and 16.20 BIMC. Does not apply to above ground utilities such as propane tanks.
Composting bins	In side or rear setback areas	
Bioretention/rain gardens	In any required setback	In accordance with Chapter 15.20 BIMC
Rain barrels/cisterns	In any required setback	In accordance with Chapter 15.20 BIMC

Wall-mounted on-demand hot water heaters	Up to 18 inches in side and rear setbacks	Permitted if buffered or enclosed to prevent noise impacts to neighboring properties
Below-ground geothermal equipment	In any required setback, perimeter or roadside buffer	Must conform to Chapters 16.12 and 16.20 BIMC. Permitted if any excavated areas are promptly relandscaped after installation is complete.
Rockerries and retaining walls less than 4 feet in height	In any required setback	Rockerries and retaining walls greater than 4 feet in height may be permitted with qualified geotechnical engineer determination, and city concurrence, that is necessary for slope stabilization.
Public communication towers	In any required setback subject to applicable regulations in BIMC Title 15	Must conform to Chapters 16.12 and 16.20 BIMC
Permitted Height Modifications		
Small wind energy generators	Up to 18 inches above the maximum building height in the district	
Solar panels	Up to 18 inches above the maximum building height in the district	
Noncommercial, nonparabolic antennas affixed to noncommercial communication towers	Up to 50 feet in height above grade	
One flagpole per parcel	Up to 45 feet in height above grade	
Public communications tower	Up to 120 feet in height above grade	A building permit is required for a public communication tower. A conditional use permit shall be required for a public communications tower to be constructed between 71 feet and 120 feet above grade. A public communications tower shall not exceed 120 feet in height.
Distribution utility poles	Up to 55 feet in height above grade	Replacement poles over 55 feet in height, see BIMC 18.09.030.F.2.b. For new distribution utility facilities or corridors, see Table 18.09.020. Poles shall not be moved more than 20 feet from the original location <u>or a new pole added along an existing distribution line corridor</u> unless permitted under BIMC 18.09.030.F.2.b.
Transmission utility poles	Up to a 25 percent increase above existing pole height above grade with a maximum height of 100 feet	Replacement poles over the 25 percent increase or 100 feet in height, see BIMC 18.09.030.F.2.b. For new transmission utility

		facilities or corridors, see Table 18.09.020. Poles shall not be moved more than 20 feet from the original location or <u>a new pole added along an existing transmission line corridor</u> unless permitted under BIMC 18.09.030.F.2.b.
Utility structures existing on the effective date of the ordinance codified in this subsection	Existing height	May also be replaced or modified, provided, that the structure is not larger or taller than the original structure and is not moved more than 20 feet from its original location.

BIMC 2.16.020 Proposed Code Language

BIMC 2.16.020 General provisions.

A. Jurisdiction. Jurisdiction of the department director or the hearing examiner is limited to those issues where ordinance or other appropriate authority grants the authority to issue a decision, recommendation, or issue an order.

B. State Environmental Policy Act May Apply. The State Environmental Policy Act (SEPA) and the Bainbridge Island SEPA ordinance (Chapter 16.04 BIMC) may also apply to applications processed under this section. For a consolidated land use application subject to Chapter 43.21C RCW and Chapter 16.04 BIMC, the SEPA threshold determination shall be issued and any required public comment period shall be completed prior to a public hearing.

C. Types of Land Use Applications. Land use applications are classified into four major categories based on the review process: (1) administrative, (2) quasi-judicial decisions by a hearing examiner, (3) quasi-judicial decisions by city council, and (4) legislative approvals. The specific types of applications in each category are show in the table in BIMC 2.16.010.

1. Administrative land use decisions are made by a department director pursuant to the process in BIMC 2.16.030, and pursuant to specific standards in BIMC 2.16.040 through 2.16.090 as applicable.
2. Quasi-judicial decisions by a hearing examiner are made pursuant to the process in BIMC 2.16.100, and pursuant to specific standards in BIMC 2.16.110 through 2.16.120 as applicable.
3. Quasi-judicial decisions by city council are made pursuant to the process in BIMC 2.16.130, and pursuant to specific standards in BIMC 2.16.140 through 2.16.160 as applicable. This category includes consolidated project review, which is an option available for a land use proposal that requires more than one related land use permit, and in which decisions are made pursuant to BIMC 2.16.170. In some cases, consolidated project reviews may be quasi-judicial decisions by a hearing examiner.
4. Legislative approvals are non-site specific decisions related to land use in the city but not related to a specific land use application filed by a property owner. These decisions are made pursuant to BIMC 2.16.180, and pursuant to specific standards in BIMC 2.16.180 through 2.16.210 as applicable.

D. Who Can Apply

1. A property owner, a contract purchaser, or an agent of the owner with authorized written proof of agency may apply for any type of permit.
2. A resident who is not the owner of the dwelling may apply for permits and licenses pertaining to a home occupation.
3. A public or private utility that provides written documentation of their authority to exercise eminent domain under RCW 80.32.060.
- 3 4. Any person may request an interpretation of the zoning code, shoreline master program, or subdivision regulations. The director of planning and community development may issue interpretations of the zoning

code, shoreline master program, or subdivision regulations as needed, and shall post issued interpretations on the city website.

Marlene Schubert

From: Kathy Hansen <kathy.hansen206@gmail.com>
Sent: Thursday, May 12, 2022 10:36 AM
To: PCD
Subject: Support for Puget Sound Energy's Comprehensive Plan Amendment and Site-Specific Rezone Applications
Attachments: Support for PSE Comprehensive Plan Amendment and Site-Specific Rezone Applications.docx.pdf

CAUTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF BAINBRIDGE ISLAND EMAIL SYSTEM -Take caution NOT to open attachments or links unless you know the sender AND you were expecting the attachment or the link.

Dear Ms. Tayara,

Please find the attached in support of Puget Sound Energy's Comprehensive Plan Amendment and Site-Specific Rezone proposals:

- PSE Municipal Code Amendment PLN52234 LDR
- PLN52101 REZ/CPA – Port Madison Substation site
- PLN52149 REZ/CPA – Winslow Substation site
- PLN51703 REZ/CPA – Murden Cove Substation site

Thank you,

Kathleen Hansen

1525 Fort Ward Hill Rd NE

Bainbridge Island, WA 98110

206-201-3414

May 12, 2022

City of Bainbridge Island
Attn: Kelly Tayara
280 Madison Avenue North
Bainbridge Island, WA 98110

**Re: Comment in support of Puget Sound Energy's Comprehensive Plan
Amendment and Site-Specific Rezone Applications**

Dear Ms. Tayara:

I am writing in support of Puget Sound Energy's:

- PSE Municipal Code Amendment PLN52234 LDR
- PLN52101 REZ/CPA – Port Madison Substation site
- PLN52149 REZ/CPA – Winslow Substation site
- PLN51703 REZ/CPA – Murden Cove Substation site

After listening and commenting at the Planning Commission meeting held on January 13, 2022 and reading the various applications and SEPA checklists, it makes sense to align the zoning to the particular use. The designation of an electric substation as residential only works to hinder the electric improvements that Bainbridge Islanders need and want. The current residential designation is inappropriate for uses now and any planned or future use.

Granting these applications would allow Puget Sound Energy to move forward more quickly with long-overdue electric improvements, would result in similar Business/Industrial designations with adjacent properties and circumvent the need to find new and additional properties to locate additional substations. Commenters with just about everything related to the city, mention retaining vegetation and trees. A larger setback would be required for a Business Industrial designation that would afford even greater protections to area residents.

Searching for alternative sites would only create more delays, more disruption to the environment and create the need for PSE to move infrastructure to another location. Islanders have already gone through the process of discussing a preferred route and that alone has taken several years. Puget Sound Energy has

done its due diligence in finding appropriate solutions to our current energy problems while planning to remain flexible in order to address future needs.

Keep in mind, PSE is not meeting many of its service reliability metrics and a VP confirmed that we have some of the worst reliability in the entire PSE system. This is not a badge of honor. As a city we are not presently poised to meet current or future electric needs. Please approve Puget Sound Energy's Comprehensive Plan Amendment and site-specific rezone applications for the three substations. This past summer we submitted to City Council the signatures of hundreds of residents who signed in support of PSE efforts to improve electric reliability. My HOA, the Rich Passage Estates Homeowners Association sent a similar public comment. Those of us on the South end of Bainbridge serviced by the Winslow Substation don't need or want yet another decade of delay.

Respectfully,

Kathleen Hansen
1525 Fort Ward Hill Rd NE
Bainbridge Island, WA 98110

Marlene Schubert

From: Tom Hansen <tom.hansen206@gmail.com>
Sent: Thursday, May 12, 2022 10:55 AM
To: PCD
Subject: Public Comment for PSE Proposals
Attachments: Support for PSE_CompPlanAmmendement&RezoneApplications.docx

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Dear Ms. Tayara,

Please find the attached public comment in support of Puget Sound Energy's Comprehensive Plan Amendment and Site-Specific Rezone proposals:

- PSE Municipal Code Amendment PLN52234 LDR
- PLN52101 REZ/CPA – Port Madison Substation site
- PLN52149 REZ/CPA – Winslow Substation site
- PLN51703 REZ/CPA – Murden Cove Substation site

Tom Hanen
1525 Fort Ward Hill Rd NE
Bainbridge Island, WA 98110
206-201-3414 / 281-728-4929

City of Bainbridge Island
Attn: Kelly Tayara
280 Madison Avenue North
Bainbridge Island, WA 98110

**Re: Comment in support of Puget Sound Energy's Comprehensive Plan
Amendment and Site-Specific Rezone Applications**

Dear Ms. Tayara:

I am writing in support of PSE applications for rezoning the Murden Cove, Port Madison, and Winslow substations from various R-x designations to B/I designations.

- PLN52101 REZ/CPA – Port Madison Substation site
- PLN52149 REZ/CPA – Winslow Substation site
- PLN51703 REZ/CPA – Murden Cove Substation site

The past and current uses, originally permitted by Kitsap County, are inconsistent with current and future uses as rezoned by the City of Bainbridge Island. PSE's responses clearly meet the City's Policy and Goals (shown below):

Electrical Utility Goals and Policies

- Ensure that reliable utility services are available to all Bainbridge Island residents
- Ensure that utility services are adequate to meet current demands, and that utility providers plan for future demands
- Ensure that new or major renovations to existing utility facilities are designed to minimize adverse impacts on residents and the environment
- Ensure adequate, cost effective, reliable, and environmentally responsible electric service to the citizens of Bainbridge Island

Business/Industrial Policies

- The Business/Industrial (B/I) District is for light manufacturing development as well as other uses that add to the diversity of economic activity on the Island
- Applications for development approval within the B/I district must show that adequate water, wastewater, transportation, fire and storm drainage services are available to serve the development
- Performance standards for the B/I district address odor, lighting, noise, vibration, signage, traffic volumes, ingress and egress, parking, delivery and loading areas, and pedestrian and vehicle circulation, to create safe, efficient, compatible conditions among a variety of on-site uses and to protect adjacent residential neighborhoods

- B/I uses must be visually screened year-round from the adjacent non-industrial properties and roadways, especially scenic highway SR 305. The visual screening could be achieved through a combination of vegetation and building setback that would add depth to the buffer

The City of Bainbridge Island should proceed to issue a Determination of Non-significance (DNS) threshold determination for this request..

Additionally, I support PSE's request for a change to Critical Area regulations contained in BMC 16.20.140.G.2 and 16.20.100.E.1 in order to allow for continued maintenance, upgrade and installation of linear electrical distribution and transmission infrastructure.

- PSE Municipal Code Amendment PLN52234 LDR

A blanket restriction regarding Category II wetlands would restrict a public utility from maintaining, upgrading or constructing transmission and distribution infrastructure to meet island utility current and future needs as required by State law.

"In general, although Category II wetlands may in theory provide higher habitat values than Category III or IV wetlands, the portion of Category II wetlands within the road rights-of-way and within or adjacent to existing cross-country transmission corridors is already subject to the effects of human disturbance, and therefore is likely to provide more limited habitat value than the habitat score alone would indicate."

Installing new aerial distribution and transmission lines within or adjacent to road rights-of-way; or as an overbuild or underbuild to an existing aerial primary utility within cross country corridors on easement within Category II wetlands is the best way to minimize the environmental impact while meeting the need for reliable energy and helping to reduce the Island's Carbon Footprint.

PSE is required to apply the best science available and follow all laws.

"When PSE maintains or upgrades an existing utility line or installs a new line, they follow federal, state, and local requirements to avoid and minimize wetland impacts to the extent feasible in accordance with the following preferred mitigation sequence, as outlined in the Interagency Guidance on Wetland Mitigation in Washington State (Ecology 2006) and BMC 16.20.030: 1. Avoid the impact altogether by not taking a certain action or parts of an action; 2. Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts; 3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment; 4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action; 5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and 6. Monitor the impact and take appropriate corrective measures."

The City of Bainbridge Island should proceed to issue a Determination of Non-significance (DNS) threshold determination for this request.

PSE has been both transparent and thorough in its public engagement for its Electric Reliability Projects. Personally, I have been skeptical, questioning, and have requested data all through the process and independently formed my own opinions. For those of us that have and continue to participate in community meetings and read the detail material that has been submitted we support PSE. The public comments that do not support electric reliability improvements largely come from individuals who have not participated, naively form an opinion without objectively informing themselves on the details or have been made their comment from a "Not In My Neighborhood" perspective. Many of the comments have acted like "nail strips" to derail the projects. I truly believe that the majority of Islanders are not engaged because of their busy lives or the pandemic but want reliable electricity. The bottom line is that the electric infrastructure on the island is decades old and as a resident of the south end of the island, I do not want to wait decades more for electric reliability improvements.

Tom Hansen
1525 Fort Ward Hill Rd NE
Bainbridge Island, WA 98110



**Washington State
Department of Transportation**

WSDOT Ferries Division (WSF)
2901 3rd Avenue, Ste. 500
Seattle, WA 98121-3014
206-515-3400
TTY: 1-800-833-6388
www.wsdot.wa.gov/ferries

December 15, 2023

City of Bainbridge Island
Office of Planning & Community Development
280 Madison Avenue N
Bainbridge Island, WA 98110

Dear Planning Director Charnas [or other project contact]:

As you know, Washington State Ferries (WSF) is converting its ferry system, the largest in the country, to hybrid-electric power by 2040. As the biggest contributor of greenhouse gas emissions among Washington state agencies, WSF burns approximately 19 million gallons of diesel fuel to support tens of millions of passengers every year. This innovative electrification program will drastically reduce greenhouse gas emissions in our region and save millions in fuel costs. Under this program, WSF is building new ferries, converting ferries, and electrifying ferry terminals.

WSF is partnering with Puget Sound Energy (PSE) as part of this effort, and the parties signed a Memorandum of Understanding in May 2023. This partnership includes the electrification of eight ferry terminals in PSE's service area, beginning with the Bainbridge Island terminal. The Bainbridge ferry run will be the first electrified run (along with Colman Dock on the Seattle side from Seattle City Light). To provide electricity for ferry charging, PSE will need to supply higher capacity electric service to the ferry terminal via PSE's electric grid on Bainbridge Island. PSE anticipates building one to two underground distribution feeders and other improvements between the Murden Cove Substation and the Bainbridge ferry terminal.

We understand that PSE is working with the City to obtain necessary approvals, including code amendment approval, for the Murden Cove Substation improvements, and that PSE and the City are meeting to discuss the permitting process and timeline going forward. Please note that to meet WSF's electrification schedule, PSE's improvements must be completed by Q3 2026. WSF supports PSE's permitting efforts, and we look forward to working with the City and with PSE to achieve our ferry electrification efforts on schedule.

WSF would welcome the opportunity to brief City of Bainbridge Island officials on our System Electrification Plan and the associated Bainbridge Island terminal improvements.

Sincerely,

Matt Von Ruden

Matt von Ruden
System Electrification Program Administrator

From: [Joanne Mendenhall](#)
To: [Renee Argetsinger](#)
Subject: FW: Project # PLN52234 LDR, Puget Sound Energy's proposal for legislative code amendments
Date: Thursday, February 22, 2024 3:05:55 PM
Attachments: [image001.png](#)
[image002.png](#)

From: Jennifer Sutton <jsutton@bainbridgewa.gov>
Sent: Thursday, February 22, 2024 2:52 PM
To: Patricia Charnas <pcharnas@bainbridgewa.gov>; Joanne Mendenhall <jmendenhall@bainbridgewa.gov>; HB Harper <hharper@bainbridgewa.gov>
Cc: PCD <PCD@bainbridgewa.gov>
Subject: FW: Project # PLN52234 LDR, Puget Sound Energy's proposal for legislative code amendments

Looping you in on comment below.

JENNIFER SUTTON, AICP

she | her

Senior Planner



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206.780.3772 (desk)

206.798.4657 (cell)

From: Cullen Brady <cullen@bi-landtrust.org>
Sent: Thursday, February 22, 2024 2:44 PM
To: PCD <PCD@bainbridgewa.gov>; Yesh Subramanian <Yesh.Subramanian@cobicommittee.email>; Sarah Blossom <Sarah.Blossom@cobicommittee.email>; Ariel Birtley <ariel.birtley@cobicommittee.email>; Peter Schaab <peter.schaab@cobicommittee.email>; Sean Sullivan <sean.sullivan@cobicommittee.email>; Benjamin Deines <Benjamin.Deines@cobicommittee.email>; Ashley Mathews <amathews@bainbridgewa.gov>
Cc: gina@bi-landtrust.org; Jennifer Sutton <jsutton@bainbridgewa.gov>; Blair King <bking@bainbridgewa.gov>
Subject: Project # PLN52234 LDR, Puget Sound Energy's proposal for legislative code amendments

Some people who received this message don't often get email from cullen@bi-landtrust.org. [Learn why this is important](#)

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Dear City of Bainbridge Island Planning Commission,

The Bainbridge Island Land Trust is providing the following comments on project number PLN52234 LDR, Puget Sound Energy's proposal for legislative code amendments to support its electrical distribution and transmission line infrastructure. These comments reflect the Land Trust's continued pursuit of its mission: *to conserve and steward the diverse natural environments of Bainbridge Island for the benefit of all*. The Land Trust encourages the City to carefully analyze and assess PSE's proposed code amendments to ensure that changes are appropriately scaled to increase efficiency of permitting for utility work that is truly essential to providing the Island with reliable power without enacting overly broad exemptions from our natural resource protection regulations.

1. Proposed code amendments should be consistent with the Comprehensive Plan. The utilities element of the Comprehensive Plan includes goals to ensure that utility services are environmentally responsible, sustainable, and designed to minimize adverse impacts on the environment:

2. PSE's proposed code amendments would apply to all primary utilities (including data, water, power, sewage, etc.) not only PSE's planned projects. The City should consider more narrowly focused code amendments limited to what is essential for PSE to provide reliable electrical service.

3. Allowing primary utilities in Category II wetlands is too broad and not in line with the Washington Department of Ecology's current guidance (Ecology, 2018 and 2022):

Exceptions for public actions are typically addressed differently from exemptions or allowed uses. This category is generally reserved for public agency projects that may have inherent constraints on aspects like location and methodology. One example would be public utilities. If the application of the critical areas regulations would prohibit a development proposal by a public agency or utility, the critical areas ordinance may allow the agency or utility to apply for an exception. Exceptions should include criteria for review and approval and may be similar to those found in variance provisions or through a reasonable use exemption process. Exceptions should address mitigation sequencing.

This approach would include criteria for review specific to this use and address mitigation sequencing (first avoiding, then reducing, minimizing impacts) and cumulative impacts. Ecology's 2022 critical areas guidance includes sample language for a public agency or utility exception that could be easily adapted based on PSE's anticipated project needs and a best available science review.

Thank you for the opportunity to provide input on this code amendment request.

Sincerely,

Cullen Brady

Cullen Brady (he/him)
Executive Director
Bainbridge Island Land Trust

cullen@bi-landtrust.org
(206) 842-1216 (office)

(206) 291-5549 (cell)

bi-landtrust.org



Law Office of Kim McCormick, PLLC

February 22, 2024

Planning Commission
City of Bainbridge Island
280 Madison Avenue N
Bainbridge Island, WA 98110

Re: Public Comment – PSE Winslow Tap Transmission Line Rebuild – Municipal Code
Amendment Request for BIMC 2.16 – PLN 52234 LDR

Dear Planning Commissioners Blossom, Birtley, Subramanian, Schaab, Sullivan and
Deines:

I represent Woody Stables, LLC (Woody Stables), the property owner of Kitsap County tax parcels 4175-000-019-0406; 4175-000-021-0204; and 4175-000-019-0901, which are listed as affected by the PSE Winslow Tap Transmission Rebuild, PLN52116 SPR/CAP/SSDE (PSE Project). Puget Sound Energy (PSE), the proponent of the PSE Project, has submitted applications to the City of Bainbridge Island (City) for minor site plan and design review, a critical areas permit, a Shoreline Substantial Development Exemption and a code amendment request. On September 22, 2023, Woody Stables provided comments to the City with respect to the State Environmental Protection Act (SEPA) review, the proposed Minor Site Plan and Design Review and Critical Areas Permit proposed for the project. A copy of those comments is attached to this letter.

The three tax parcels referenced above are part of a well-established working equestrian facility previously known as Cottingham Farm and recently renamed Bulrush Farm, which has been operating under one of the earliest farm plans ever issued by the Kitsap County Conservation District. Woody Stables acquired the property in November 2020. This is a site that has been identified for protection for equestrian and agricultural uses.

The PSE Project would undermine these uses. As part of the PSE Project, PSE is proposing to:

(1) access the Winslow Tap transmission line through the middle of Bulrush Farm horse pastures using a purported “existing gravel access” that is actually a horse trail that does not connect to the transmission line corridor and was originally proposed for a short plat with 10 homes that was never built;

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(2) create a new “proposed permanent access” and gate on Bulrush Farm to provide access to the transmission line corridor through the farm;

(3) create three “dispersion areas” on Bulrush Farm for stormwater management associated with the transmission line rebuild that would flow into a Type-F stream located on the farm; and

(4) remove at least nine (9) trees from Bulrush Farm property as part of the PSE Project.

Taken together, the PSE Project would effectively convert this working equestrian farm into a home for major utility facilities.

To support this conversion of Bulrush Farm, PSE is now proposing a code amendment to BIMC 2.16 that would allow it to apply to the City for permits for the PSE Project without first demonstrating that it has the legal right to conduct the proposed activities on land it does not own or have a right to use. PSE states the code amendment is necessary to avoid delay, threatens the exercise of eminent domain and states that its “preference is to acquire needed operating rights on private property through negotiations with property owners.” Yet Woody Stables has been trying to engage PSE in a discussion regarding the PSE Project since early 2021, to no avail.

This important legal issue must be resolved before permit application because it has the potential to significantly impact the scope of the PSE Project and the City’s SEPA and other permit reviews. If the private property locations of the PSE Project proposed components and access changes because PSE does not have a right to use that property, the project description and scope will change. Such changes affect the City’s review of all aspects of the PSE Project, including environmental impacts, SEPA compliance and site plan review and conditional use permit requirements. As BIMC 2.16 currently requires, the legal access and ownership issues must be resolved before, not after, permit application.

Woody Stables does not believe that PSE has legal rights and has not granted permission to PSE to undertake any of the activities proposed for the PSE Project on Bulrush Farm. The horse trail that PSE now mischaracterizes as an “existing gravel access” does not connect or provide access to the Winslow Tap transmission line, and is nothing more than a trail used to access horse pastures. The proposed “permanent access,” gate and dispersion areas are all located on Bulrush Farm, as are the trees proposed for removal. PSE has not initiated any discussions with Woody Stables with respect to any of these proposed activities, despite being notified repeatedly by Woody Stables that it must

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obtain that permission to undertake any activities on Bulrush Farm. Woody Stables also will strenuously oppose any attempt by PSE to exercise eminent domain over Bulrush Farm.

Woody Stables has owned Bulrush Farm since November 2020. Beginning in early 2021, Woody Stables has been responding to repeated attempts by PSE to use Bulrush Farm to access the Winslow Tap transmission corridor. PSE has not provided evidence of any legal right to such use. To the contrary, on April 30, 2021, Woody Stables executed a Right of Entry Permit (ROE Permit) for tax parcel 4175-000-019-0406 to allow PSE access across the farm for the purpose of completing field survey, environmental, vegetation and geotechnical activities in connection with planned pole replacement on the PSE transmission line. The ROE Permit was for 30 days, anticipated that work would be completed in 2-3 days and expired in May 2021.

On May 13, 2021, PSE representatives arrived at the farm unannounced and spoke with an independent contractor civil engineer, hired by Woody Stables to work onsite, about planned activities under the ROE Permit. On May 18, 2021, Woody Stables advised PSE by letter that Woody Stables did not agree to any activities under the ROE Permit other than those specified – field surveys and environmental, vegetation and geotechnical activities for the purpose of planned pole replacement on the PSE transmission line easement. The Woody Stables letter stated that those activities must all take place on the PSE transmission line easement and that PSE does not have permission from Woody Stables to conduct any of the activities on the farm. The letter further noted that the farm is a working equestrian facility that could be significantly affected and disrupted by some of the PSE proposals and that discussions would need to take place between PSE and Woody Stables to determine whether and to what extent Woody Stables would be agreeable to allow any such proposals.

On May 18, 2021, PSE crews arrived at the farm and conducted tree surveys on farm property. Woody Stables advised PSE again, by letter dated May 20, 2021, that this work was not authorized by Woody Stables. The letter stated in pertinent part:

“We can only assume this was done as part of a new PSE proposal to construct a dispersion trench and flowpath on Cottingham Farm property, in working horse pastures, to handle runoff from a new gravel road PSE apparently is proposing to build in the transmission line easement. That work would require heavy equipment, large trucks and a significant amount of construction activity and disturbance to bring in rock and other materials to build the road, dispersion trench and flowpath, and would result in ongoing disturbance from use of the road. Woody Stables learned about these PSE proposals for the first time last

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week and has not authorized any of them. As stated in our earlier letter, Woody Stables signed the Permit in good faith to allow PSE to access its transmission line to conduct the activities outlined in the Permit on the transmission line easement. Woody Stables has not given PSE permission to conduct any of those activities on Cottingham Farm property.

“If PSE is proposing any activities on Cottingham Farm property, or has any future proposals that would impact Cottingham Farm, discussions must take place between PSE and Woody Stables to determine whether and to what extent Woody Stables would be agreeable to any of those proposals.”

On May 21, 2021, PSE attorneys responded to Woody Stables, asserting “PSE has used the Cottingham Farms property to access the Winslow Tap transmission line since its construction in 1960. . . . PSE is currently in the design phase of the Winslow Tap project and has not yet finalized the details around the property rights it may need from landowners adjacent to the corridor. Once PSE has finalized its plan, a real estate representative will follow-up with Woody Stables.”

PSE has not contacted Woody Stables to discuss the PSE Project proposals affecting the farm. Nor did PSE respond to a letter from Woody Stables dated January 19, 2022, reiterating that PSE and its work crews do not have authorization to access the transmission line through the farm. That letter was in response to the unannounced arrival at the farm of an Asplundh work crew to trim trees in the PSE transmission line corridor. The Woody Stables letter reiterated:

“As we have stated in our prior correspondence to PSE on May 18, 2021, and May 20, 2021, Woody Stables has not given PSE or Asplundh permission to use Bulrush Farm to access the PSE transmission line corridor or to conduct any activities proposed by PSE or Asplundh on Bulrush Farm property. Further, there is no dedicated easement that allows PSE to access the transmission line corridor from the Bulrush Farm parcels.

“If PSE is proposing to access its transmission line through Bulrush Farm or is proposing any activities on Bulrush Farm property or in the transmission line corridor that would impact Bulrush Farm, discussions must first take place between PSE and Woody Stables to determine whether and to what extent Woody Stables would be agreeable to any of those proposals. Further, Woody Stables has not received a copy of the tree survey conducted on May 18, 2021, notwithstanding our request in our May 20, 2021, correspondence, and has no

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way to determine whether the tree trimming work proposed by Asplundh will include any trees or vegetation on Bulrush Farm. Woody Stables has not given PSE or Asplundh permission to conduct any of these activities on Bulrush Farm property.”

Because PSE has not contacted Woody Stables to discuss the PSE Project, Woody Stables has no idea what “delays” PSE suggests must be avoided as it has not acted with any diligence in this matter. In fact, it has been a one way process, with Woody Stables constantly attempting to engage PSE and being completely ignored by PSE in that process. To the extent this is a problem for PSE, it is caused by PSE’s lack of diligence, which should not be rewarded by granting an unwarranted code amendment.

Finally, it is impermissible under SEPA to piecemeal analysis of these code amendments separately from the proposed project as a whole. The current code amendments are part of the larger project and therefore should be analyzed together with the various permits PSE is proposing to obtain. The City has an obligation under SEPA to study the entire project before proceeding with piecemeal elements like the proposed code amendments.

For the reasons described herein, Woody Stables urges the Planning Commission to recommend denial of the PSE request to amend BIMC 2.16. PSE is seeking to use its “benign” amendment proposal to undertake a major land use change on a working and long established agricultural equestrian site. The Planning Commission should not support this effort.

Sincerely,

Kimberly McCormick

Kimberly McCormick
Attorney for Woody Stables, LLC

Attachment (1)

Law Office of Kim McCormick, PLLC

September 22, 2023

City of Bainbridge Island
Planning and Community Development
Planning Director Patricia Charnas
280 Madison Avenue N
Bainbridge Island, WA 98110
pcd@bainbridgewa.gov

Re: Public Comment – PSE Winslow Tap Transmission Line Rebuild - PLN52116
SPR/CAP/SSDE

Dear Planning Director Charnas:

I represent Woody Stables, LLC (Woody Stables), the property owner of Kitsap County tax parcels 4175-000-019-0406; 4175-000-021-0204; and 4175-000-019-0901, which are listed as affected by the PSE Winslow Tap Transmission Rebuild, PLN52116 SPR/CAP/SSDE (PSE Project). Puget Sound Energy (PSE), the proponent of the PSE Project, has submitted permit applications to the City of Bainbridge Island (COBI) for minor site plan and design review, critical areas permit and a Shoreline Substantial Development Exemption. This letter provides comments with respect to the COBI State Environmental Protection Act (SEPA) review, pursuant to WAC 197-11-800, and the proposed Minor Site Plan and Design Review and Critical Areas Permit proposed for the project.

The three tax parcels referenced above are part of a well-established working equestrian facility previously known as Cottingham Farm and recently renamed Bulrush Farm, which has been operating under one of the earliest farm plans ever issued by the Kitsap County Conservation District. Woody Stables acquired the property in November 2020. As part of the PSE Project, Puget Sound Energy (PSE) is proposing to:

- (1) access the Winslow Tap transmission line through the middle of Bulrush Farm horse pastures using an “existing gravel access” that is actually a horse trail that does not connect to the transmission line corridor and was originally proposed for a short plat with 10 homes that was never built;
 - (2) create a new “proposed permanent access” and gate on Bulrush Farm to provide access to the transmission line corridor through the farm;
 - (3) create three “dispersion areas” on Bulrush Farm for stormwater management associated with the transmission line rebuild that would flow into a Type-F stream located on the farm; and
 - (4) remove at least nine (9) trees from Bulrush Farm property as part of the PSE Project.
- Tree Removal and Access Plan, Winslow Tap Project, pgs. 13-14; Critical Areas Mapbook, Winslow Tap Project, pgs. 10-12); Puget Sound Energy/Winslow Tap Access Improvements,

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Drainage Memorandum, Figure 2: Threshold Discharge Map, TDA C-Sands Ave, Equestrian Facility, Meadowmeer Golf Course, pg. 6.

As an initial matter, Woody Stables does not believe that PSE has legal rights and has not granted permission to PSE to undertake any of the activities proposed for the PSE Project on Bulrush Farm. The “existing gravel access” does not connect or provide access to the Winslow Tap transmission line, and is nothing more than a trail used to access horse pastures. The proposed “permanent access,” gate and dispersion areas are all located on Bulrush Farm, as are the trees proposed for removal. PSE has not initiated any discussions with Woody Stables with respect to any of these proposed activities and has been notified repeatedly by Woody Stables that it must obtain that permission to undertake any activities on Bulrush Farm. Woody Stables also will strenuously oppose any attempt by PSE, as referenced in PSE’s letter to Annie Hiller, Planner, City of Bainbridge Island, dated January 23, 2023, to exercise eminent domain pursuant to RCW 80.32.060 over Bulrush Farm to obtain easements for the PSE Project.

As discussed herein, the PSE Project is likely to have significant adverse environmental impacts and does not meet the criteria for issuance of a Determination of Non-significance (DNS) under SEPA, WAC 197-11-800 and WAC 197-11-355. The PSE Project proposes to rebuild a transmission line located in a 4.5-mile corridor and includes pole and conductor replacement, installation of temporary and permanent access roads, installation of permanent stormwater features, and vegetation clearing including tree removal. Critical Areas Report, Puget Sound Energy Winslow Tap 115kV Transmission Line Rebuild Project, HDR Engineering Inc., January 19, 2023 (HDR CAR) at 1-4. Unavoidable impacts include 4,360 sf of permanent Category IV wetland impacts, 425 sf of Category III vegetation conversion impacts and 27,970 sf of permanent buffer impacts. HDR CAR at 1. The Site Assessment Review states that the project proposes 61,910 sf of new/replaced hard surface, 109,470 sf of land clearing/disturbance and has a total site area of 1,432,300 sf. PSE also seeks to exempt the project from Bainbridge Island Municipal Code (BIMC) Aquifer Recharge Protection Area (ARPA) regulations, which are applicable to the entirety of the PSE Project area, and allow new permanent access, stormwater improvements and tree removal in Category I and II wetlands, which are currently prohibited, through code amendment requests. HDR CAR at 6, 10.

The PSE Project also does not meet the decision criteria for minor site plan and design review under BIMC 2.16.040.C.1 and should be processed as a major site plan and design review, with opportunity for public hearing and process, including Planning Commission review under applicable BIMC 2.16.040 procedures. PSE tries to characterize this project as simply the replacement of existing transmission and distribution poles. It is obvious, however, from PSE’s own documents that the amount and scope of work required to accomplish that replacement and the extent of the impacts associated with that work require a major site plan and design review under BIMC 2.16.040.C.2, based on the size and complexity of the project, site constraints and the effects on adjacent property owners. Additionally, the major site plan and design review should be done in conjunction with any legislative code amendments requested by PSE to (1) allow primary utilities work, including permanent access, stormwater

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improvements and tree removal, within a Category I or II wetland, which is currently prohibited, and (2) create an exemption from existing Aquifer Resource Protection Area (ARPA) requirements under BIMC 16.20.100 that are applicable to the entire PSE Project area.

Finally, Woody Stables believes the PSA Project requires a major conditional use permit (CUP) under BIMC 18.09.020 and pursuant to BIMC 2.16.110.B, in part because it is proposing a primary utility use in R-0.4 zoning accessed by public and private roads. The PSE Project plainly is not limited to replacement, maintenance or upgrade of existing poles within a utility corridor or right-of-way and therefore is not a permitted use. BIMC 18.09.030.F.2.b. PSE contends it qualifies for a conditional use exemption under BIMC 2.16.050.B.2.b because the PSE Project expands the t-line corridor by less than 25%. The calculations provided in the Memorandum from HDR Engineering, Inc. dated September 6, 2022 (Memorandum), however, do not include:

- The area of public ROWs used for the project;
- The area of a purported “existing gravel access” on Bulrush Farm
- The area of three new dispersion areas located on Bulrush Farm and depicted in Attachment 1, pg. 10 of the Memorandum;
- The areas of permanently impacted wetlands and streams and their buffers.

In other words, PSE has improperly excluded tens of thousands of square feet of project area in its effort to avoid exceeding the 25% threshold. Inclusion of these impacted areas would cause the project footprint to surpass the 25% threshold. In addition, Woody Stables has not granted PSE permission to locate the dispersion areas on Bulrush Farm or use the “existing gravel access,” which is actually a horse trail accessing pastures and does not connect to the PSE Winslow Tap t-line corridor. These areas, including the entire length of the purported “existing” access, must be included in the calculations for the proposed expansion of the PSE corridor before any exemption request from the BIMC conditional use permit requirements can be evaluated. Further, the PSE Project must be considered in its entirety and it does not meet the criteria for a minor conditional use permit or an exemption.

I. SEPA Comments

The activities proposed by the PSE Project, and those relating to the Woody Stables parcels, have not been fully evaluated under SEPA and the evaluation that has occurred demonstrates they are likely to have significant adverse environmental impacts that have not been mitigated. They also will have significant adverse impacts on operations of Bulrush Farm, a working equestrian facility.

With respect to the Woody Stables parcels, the Puget Sound Energy, Winslow Tap Access Improvements Drainage Memorandum prepared for PSE by HDR Engineering Inc. and dated December 20, 2022 (HDR Drainage Memorandum) describes new access roads and access improvements in Project Area 3 Equestrian Facility (Threshold Discharge Area C) that will result in the following surface modifications:

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Segment 1 Access Road - 2609 sf of new and replaced hard surface area and 545 sf of new and replaced pervious surface area

Segment 2 Access Road – 16,410 sf of new and replaced hard surface area and 21,726 sf of new and replaced pervious surface area.

HDR Drainage Memorandum, pg. 2 Overview; pg. 3 Table 1: TDA Surface Modification Totals, pg. 6 Figure 2: Threshold Discharge Maps, TDA C-Sands Ave, Equestrian Facility, Meadowmeer Golf Course.

The Type F stream into which stormwater from all of these impacts will ultimately flow is not identified or evaluated in the HDR CAR. Although the stream includes fish habitat and flows into Murden Cove, a protected shellfish beach, none of the drainage impacts to the stream appear to have been analyzed. Nor is there any proposed mitigation for those impacts.

Further, impacts resulting from the three dispersion areas to be located on Bulrush Farm are not analyzed and it is not clear they are even allowed under existing stormwater management requirements. The HDR Drainage Memorandum describes these areas as including associated pipes and spreaders that are 50-feet-wide by 100-feet-long that do not constitute project impacts. HDR Drainage Memorandum at 42. The HDR Drainage Memorandum discusses dispersion methods for access roads and through vegetated dispersion areas but does not analyze impacts on surrounding areas from those methods. These dispersion areas are proposed for location in a working horse pasture and will effectively take these areas out of use by the farm, in addition to creating drainage issues throughout the pasture as water drains to the Type F stream. None of these impacts have been analyzed or mitigated.

Finally, PSE is proposing impacts to wetlands partially located on Bulrush Farm: BI 5, BI 6 and BI 7. HDR CAR Critical Areas Mapbook at Pgs. 10-11. The impact to BI 5 alone is estimated to be 4,300 sf. It is unclear whether those wetlands have been properly characterized, how much of that impact will occur on those portions of the wetlands located on the farm, or how those impacts will be mitigated.

The SEPA Checklist, HDR CAR and HDR Drainage Memorandum analyses include, without limitation, the following SEPA deficiencies (by paragraph number in the SEPA Checklist):

A. Background

11. Give brief, complete description of your proposal.

PSE describes the project as including “permanent access to select pole locations within the cross country portion of the corridor” but proposes permanent access through Woody Stables parcels that PSE has not demonstrated it legally has. PSE also describes the project as including “associated stormwater improvements to support the permanent gravel access installation” but proposes stormwater improvements be located on Woody Stables parcels and

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drain across those parcels into a Type F stream. The project description is deficient, at least with respect to the Woody Stables portion of the PSE Project.

B. Environmental Elements

1. Earth

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

PSE states “Permanent access and associated drainage improvements will be constructed in 6 locations along the cross country section of the transmission line corridor . . . The permanent access roads will include approximately 8,710 cubic yards of earthwork; approximately 4,700 cubic yards of excavation and 4,010 cubic yards of fill. The total graded area will be approximately 101,550 square feet.”

As described above, PSE has not demonstrated that legal access exists to the Winslow Tap transmission line through Bulrush Farm. The “existing gravel access” referenced by PSE is a horse trail that does not connect to the transmission line corridor. PSE also proposes a new “proposed permanent access” and gate on Bulrush Farm property to provide access to the transmission line corridor through the farm, again without demonstrating any legal right to do so. Finally, PSE proposes to create three “dispersion areas” on Bulrush Farm property for stormwater management associated with the transmission line rebuild that would flow into a Type-F stream located on the farm. PSE’s site plan and design rely on constructing access, a gate and stormwater management facilities for the t-line on Bulrush Farm, without demonstrating any legal right to do so.

3. Water

a. Surface water

PSE states it delineated 15 wetlands and 12 streams within the project corridor and includes a Summary of Wetlands in the Study Area and a Summary of Streams and Other Waters in the Study Area. Nowhere is there any reference to the Type F stream located on Bulrush Farm into which PSE proposes to disperse its stormwater from the three stormwater dispersion areas proposed on the farm. There is no analysis of impacts to the Type F stream and no proposed mitigation. The PSE response also states that 123 trees have been identified to be removed from wetlands and buffers.

c. Water runoff (including stormwater)

PSE states “Stormwater runoff is anticipated to occur from permanent access roads within the corridor. The access road design includes stormwater improvements to support runoff dispersion. Trenches will direct runoff to dispersion trenches located adjacent to the

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project corridor in easements to preserve native vegetation. Dispersed water will infiltrate into the groundwater.”

As discussed, PSE is proposing to construct three dispersion trenches on Bulrush Farm to collect stormwater from the PSE t-line corridor. Drainage from those areas would travel east, across horse pastures, to a Type-F stream on Bulrush Farm that has not been evaluated for impacts. PSE states only that “Where necessary to collect and concentrate runoff from access roads, flow dispersion trenches will be used at natural low points to direct runoff towards existing downstream flow paths.” Existing downstream flow paths on the Woody Stables parcels, according to PSE documents, direct the water to the Type F stream. See HDR Drainage Memorandum, pg. 6 Figure 2 – Threshold Discharge Area Maps TDA-C.

PSE also is proposing to use and improve a purported “existing gravel access” and build a permanent access and gate on Bulrush Farm to access the transmission line corridor from the farm, also without any demonstrated legal right or permission, and without any evaluation of drainage or other impacts associated with those proposed activities to the farm or the Type F stream. PSE states only that “Access roads are the only component of the project that have the potential to affect drainage patterns. The design incorporates natural drainage patterns and discharge locations to the maximum extent practicable.”

4. Plants

PSE proposes to remove approximately 175 trees from wetlands and wetland/stream buffers, with approximately 142 of them located on private property. The cumulative impact of the removal of this number of trees from critical areas is likely to create a significant adverse environmental impact that does not support a Determination of Non-Significance under SEPA.

8. Land and Shoreline Use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties?

As discussed previously, the PSE Project proposes activities on Bulrush Farm that will have a significant adverse impact on the working horse farm. The “existing gravel access”, proposed permanent access and gate, and proposed three (3) dispersion areas are all located on Bulrush Farm in the midst of working horse farm pastures.

PSE, however, states only that “The proposal will not affect current uses on nearby or adjacent properties beyond potential temporary construction impacts.” “The proposal will not affect or be affected by surrounding working farm or forest land normal business operations.” “The project will not result in impact significance; therefore no measures to reduce impacts are proposed to agricultural and forest lands of long-term commercial [sic].” These

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statements are incorrect, based on PSE's own description of its plans for Bulrush Farm, and there is no evaluation of the impact of PSE's proposed activities on the farm.

14. Transportation

PSE states that the "project corridor is accessible via public streets or private access roads." "No improvements to existing roads, streets . . . are required as a result of this project. The project incorporates gravel access to select pole locations within the project corridor or across easements." As discussed above, PSE has not demonstrated that it has legal rights or permission to access the Winslow Tap transmission line corridor across the Woody Stables parcels.

II. BIMC Minor Site Plan and Design Review Decision Criteria

PSE has submitted a Minor Site Plan Review Winslow Tap 115 kV Rebuild Project (Minor Site Plan Review) document explaining why it believes the PSE Project satisfies the decision criteria for a minor site plan review consistent with BIMC 2.16.040.F. Woody Stables believes the decision criteria have not been met, including but not limited to the following decision criteria in BIMC 2.16.040.F:

1. The site plan and design is consistent with all applicable provisions of the BIMC, design guidelines, the comprehensive plan, and applicable subarea and master plans.

PSE restricts its response to the proposed seven (7) pole replacements in an effort to meet the minor site plan review decision criteria. The PSE Project, however, is much larger in scope, as is evident in the voluminous documents filed to support the project. The PSE Project does not meet the criteria for a minor site plan review based on the scope of the project and its impacts. Proposed tree removal alone requires a major site plan review—13 non-exempt trees are proposed for removal from wetlands and 69 non-exempt trees are proposed for removal from wetland buffers. HDR CAR at 38. Direct impacts will occur to five wetlands, and permanent impacts totaling 4,300 sf will occur to Wetland BI 5, partially located on the Bulrush Farm property, from the proposed permanent access road and associated stormwater conveyance. HDR CAR at 42. According to the SEPA Checklist, permanent access roads will include approximately 8,710 cubic yards of earthwork; approximately 4,700 cubic yards of excavation and 4,010 cubic yards of fill. The total graded area will be approximately 101,550 square feet.

In addition, the HDR CAR states that PSE is seeking code amendments to exempt development within PSE easements on properties not owned by PSE from BIMC 16.20.100 ARPA requirements and regulatory prohibitions for proposed primary utilities work in Category I and II wetlands. The site plan and design therefore are not consistent with the BIMC as currently proposed and do not meet the decision criteria for a minor site plan review.

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4. The streets and nonmotorized facilities, as proposed, are adequate to accommodate anticipated traffic.

As discussed above, PSE has not demonstrated legal access through the Woody Stables parcels to the Winslow Tap t-line corridor and has not explained how it will access that stretch of the corridor. Its response assumes that construction and maintenance will occur via the “existing gravel access” it alleges exists on the Woody Stables property, and it proposes to construct a permanent access and gate from the Woody Stables property onto the t-line corridor.

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

a. The site plan and design conforms to the regulations concerning drainage in Chapters 15.20 and 15.21 BIMC

PSE tries to restrict its response to the seven (7) transmission line pole replacements within the Winslow Tap corridor. It is evident from the PSE Project submittal documents that the site plan and design encompass much more than seven (7) transmission line poles and that this project does not qualify for minor site plan and design review. As discussed above, PSE proposes to create access to the t-line corridor through the middle of horse pastures on Bulrush Farm, and to construct three drainage dispersion facilities on Bulrush Farm property in those pastures with drainage dispersing into a Type F stream east of those facilities. The result of this proposed site plan will be to render a large portion of the horse pasture unusable due to continuing vehicle traffic and increased surface water. Impacts from the drainage into the Type F stream are not analyzed and the Type F stream is not even acknowledged.

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 of properties downstream

As discussed above, PSE proposes to create access to the t-line corridor through the middle of horse pastures on Bulrush Farm, and to construct three drainage dispersion facilities on Bulrush Farm property in those pastures with drainage dispersing into a Type F stream east of those facilities. The result of this proposed site plan will be to render a large portion of the horse pasture unusable due to continuing vehicle traffic and increased surface water. Impacts from the drainage into the Type F stream are not analyzed and the Type F stream is not even acknowledged.

c. The streets, nonmotorized facilities, locations of the buildings, structures, and vehicular circulation systems as proposed align with and are otherwise coordinated with streets and nonmotorized facilities serving adjacent properties and are adequate, safe, efficient and consistent with the island-wide transportation plan.

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As discussed above, PSE has not demonstrated it has legal access through the Woody Stables property to the Winslow Tap t-line corridor and has not explained how it will access that stretch of the corridor. Its response assumes that construction and maintenance will occur via the “existing gravel access” it alleges exists on the Woody Stables property, and it proposes to construct a permanent access and gate from the Woody Stables property onto the t-line corridor.

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

As discussed above, PSE proposes to create access to the t-line corridor through the middle of horse pastures on Bulrush Farm, and to construct three drainage dispersion facilities on Bulrush Farm property in those pastures with drainage dispersing into a Type F stream east of those facilities. The result of this proposed site plan will be to render a large portion of the horse pasture unusable due to continuing vehicle traffic and increased surface water. Impacts from the drainage into the Type F stream are not analyzed and the Type F stream is not even acknowledged.

III. History of PSE Attempted Use of Woody Stables Property To Access Transmission Line Corridor

Beginning in early 2021, Woody Stables has been responding to repeated attempts by PSE to use Bulrush Farm to access the Winslow Tap transmission corridor. PSE has not provided evidence of any legal right to such use. To the contrary, on April 30, 2021, PSE executed a Right of Entry Permit (ROE Permit) for tax parcel 4175-000-019-0406 to allow PSE access across the farm for the purpose of completing field survey, environmental, vegetation and geotechnical activities in connection with planned pole replacement on the PSE transmission line. The Permit was for 30 days and anticipated that work would be completed in 2-3 days.

On May 13, 2021, PSE representatives arrived at the farm unannounced and spoke with an independent contractor civil engineer, hired by Woody Stables to work onsite, about planned activities under the ROE Permit. PSE provided nine (9) pages of a preliminary proposal to install an access road and implement environmental protection measures on the PSE transmission line easement that would include potential impacts to the farm. These proposals appeared to include a new permanent easement across the farm through the south and west pastures to access the PSE transmission line.

On May 18, 2021, Woody Stables advised PSE by letter that Woody Stables did not agree to any activities under the ROE Permit other than those specified – field surveys and environmental, vegetation and geotechnical activities for the purpose of the planned pole replacement on the PSE transmission line easement. The Woody Stables letter stated that those activities must all take place on the PSE transmission line easement and that PSE does not have permission from Woody Stables to conduct any of the activities on the farm. The letter also noted that the

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discussion with the civil engineer on May 13, 2021 was the first indication to Woody Stables that PSE was considering requesting a permanent easement across the farm and conducting future activities in the PSE transmission line easement that would impact the farm. The letter further noted that the farm is a working equestrian facility that could be significantly affected and disrupted by some of the PSE proposals and that discussions would need to take place between PSE and Woody Stables to determine whether and to what extent Woody Stables would be agreeable to allow any such proposals.

On May 18, 2021, PSE crews arrived at the farm and conducted tree surveys on farm property. Woody Stables advised PSE again, by letter dated May 20, 2021, that this work was not authorized by Woody Stables. The letter stated in pertinent part:

“We can only assume this was done as part of a new PSE proposal to construct a dispersion trench and flowpath on Cottingham Farm property, in working horse pastures, to handle runoff from a new gravel road PSE apparently is proposing to build in the transmission line easement. That work would require heavy equipment, large trucks and a significant amount of construction activity and disturbance to bring in rock and other materials to build the road, dispersion trench and flowpath, and would result in ongoing disturbance from use of the road. Woody Stables learned about these PSE proposals for the first time last week and has not authorized any of them. As stated in our earlier letter, Woody Stables signed the Permit in good faith to allow PSE to access its transmission line to conduct the activities outlined in the Permit on the transmission line easement. Woody Stables has not given PSE permission to conduct any of those activities on Cottingham Farm property.

“If PSE is proposing any activities on Cottingham Farm property, or has any future proposals that would impact Cottingham Farm, discussions must take place between PSE and Woody Stables to determine whether and to what extent Woody Stables would be agreeable to any of those proposals.”

On May 21, 2021, attorneys for PSE responded to Woody Stables, asserting “PSE has used the Cottingham Farms property to access the Winslow Tap transmission line since its construction in 1960. . . . PSE is currently in the design phase of the Winslow Tap project and has not yet finalized the details around the property rights it may need from landowners adjacent to the corridor. Once PSE has finalized its plan, a real estate representative will follow-up with Woody Stables.” Woody Stables has owned Bulrush Farm since November 2020 and is unaware of any uses of the property by PSE for access to the transmission line corridor other than those documented in the correspondence described herein.

PSE has not contacted Woody Stables to discuss the PSE Project proposals affecting the farm. Nor did PSE respond to a letter from Woody Stables dated January 19, 2022, reiterating that PSE and its work crews do not have authorization to access its transmission line through the farm.

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That letter was in response to the unannounced arrival at the farm of an Asplundh work crew to trim trees in the PSE transmission line corridor. The Woody Stables letter reiterated:

“As we have stated in our prior correspondence to PSE on May 18, 2021, and May 20, 2021, Woody Stables has not given PSE or Asplundh permission to use Bulrush Farm to access the PSE transmission line corridor or to conduct any activities proposed by PSE or Asplundh on Bulrush Farm property. Further, there is no dedicated easement that allows PSE to access the transmission line corridor from the Bulrush Farm parcels.

“If PSE is proposing to access its transmission line through Bulrush Farm or is proposing any activities on Bulrush Farm property or in the transmission line corridor that would impact Bulrush Farm, discussions must first take place between PSE and Woody Stables to determine whether and to what extent Woody Stables would be agreeable to any of those proposals. Further, Woody Stables has not received a copy of the tree survey conducted on May 18, 2021, notwithstanding our request in our May 20, 2021, correspondence, and has no way to determine whether the tree trimming work proposed by Asplundh will include any trees or vegetation on Bulrush Farm. Woody Stables has not given PSE or Asplundh permission to conduct any of these activities on Bulrush Farm property.”

In sum, PSE has not contacted Woody Stables or provided any evidence of any legal right to use Bulrush Farm for the purposes proposed in their PSE Project application and supporting documents.

IV. Conclusion

For the reasons stated herein, Woody Stables requests that the City of Bainbridge Island (COBI) (1) undertake a thorough SEPA review of all elements of the PSE Project that are likely to result in substantial adverse environmental impacts, including a cumulative impacts analysis; (2) initiate a major site plan and design review process in accordance with BIMC requirements; (3) initiate a major conditional use permit process as required by the BIMC; and (4) combine review of any legislative code amendment requests submitted by PSE to COBI regarding the PSE Project with the SEPA review, major site plan and design review, Critical Areas Permit review, conditional use permit review and any other COBI permit reviews associated with the project.

Sincerely,

Kimberly McCormick

Kimberly McCormick
Attorney for Woody Stables, LLC

Marlene Schubert

From: robinette HOME <robinette.holt@gmail.com>
Sent: Monday, March 11, 2024 4:57 PM
To: PCD
Subject: PSE Code Amendment Requests #PLN52234

You don't often get email from robinette.holt@gmail.com. [Learn why this is important](#)

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City of Bainbridge Island
ATTN: Planning Department

Dear Joanne Mendenhall, Planning Commissioners and City Council,

I am writing in response to the code amendment request from Puget Sound Energy (PSE) to support the operation of the electrical system on Bainbridge. The requested amendments will facilitate the installation, upgrade and maintenance of PSE's distribution and transmission line infrastructure, including infrastructure to support the electrification of ferries. I am supportive of PSE's efforts to continue to upgrade and maintain their infrastructure to improve reliability and capacity on the island, and encourage the City to move PSE's requests forward.

- To support electric reliability and capacity on Bainbridge Island, PSE is working to implement the projects identified in PSE's 2019 *Bainbridge Island Electric System Solutions Report*. Along with upgrades at existing substation sites, PSE needs to maintain, upgrade, and install electric transmission and distribution infrastructure to bring power to the substations and bring power from the substations to homes and businesses.
- The transmission upgrades include rebuilding portions of the existing Winslow Tap transmission line, including replacing poles and wires, improving access, and managing vegetation within the corridor.
- PSE is also proposing to construct a new transmission line within an existing distribution line route between Murden Cove and Winslow Substations to provide a redundant power source for each substation should there be an outage on the existing transmission line serving each substation.
- PSE is also proposing a number of distribution upgrades and improvements, including installation of a power source from Murden Cove Substation for Washington State Ferries to electrify their ferry fleet, as well as installing new distribution infrastructure to support providing reliable power to the community.

It is my understanding that PSE has worked with the City to request these code amendments for a significant amount of time, as part of its efforts to advance these projects identified in the 2019 *Solutions Report*. Many of these projects cannot move forward without the code amendments, making the Bainbridge Island electrical system vulnerable to frequent outages and safety hazards. Additionally, PSE will not be able to serve Washington State Ferries with a power source for ferry electrification.

I have lived on Bainbridge for most of my life and plan to continue to do so. I moved to the island when there were 10,000 residents and have seen how we have grown to 26,000+ community members. Improved reliability and capacity on the Island and continued updates to the electric infrastructure have improved with our growth. But some areas like the south end have been left behind and it is imperative that the proposed PSE projects be done. Old infrastructure needs to be addressed in order to improve overall quality of life on the Island, especially as remote work continues to grow, ferries start to charge and more islanders buy EVs. Our demographics are skewing older and we can not ignore how the loss of power affects those who need electricity for their healthcare needs. It truly could be a matter of life and death for a fellow islander.

I strongly support PSE's attempt to maintain and update their infrastructure to improve reliability and capacity on the Island.

I encourage the City to support PSEs code amendment requests to support the operation of the electrical system on Bainbridge.

Thank you from a Bainbridge Island resident of 33 years!

Robinette

--

Robinette B. Holt

robinette.holt@gmail.com

(206) 842-6325

Marlene Schubert

From: Dana Maria <dmariarogers@yahoo.com>
Sent: Friday, March 22, 2024 6:23 AM
To: PCD
Subject: RE: PSE Code Amendment Requests # PLN52234

You don't often get email from dmariarogers@yahoo.com. [Learn why this is important](#)

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City of Bainbridge Island
ATTN: Planning Department
280 Madison Avenue N
Bainbridge Island, WA 98110

Dear Joanne Mendenhall, Planning Commissioners and City Council,

I am writing in response to the code amendment request from Puget Sound Energy (PSE) to support the operation of the electrical system on Bainbridge. The requested amendments will facilitate the installation, upgrade and maintenance of PSE's distribution and transmission line infrastructure, including infrastructure to support the electrification of ferries. I am supportive of PSE's efforts to continue to upgrade and maintain their infrastructure to improve reliability and capacity on the island, and encourage the City to move PSE's requests forward.

It is my understanding that PSE has worked with the City to request these code amendments for a significant amount of time, as part of its efforts to advance the projects identified in the 2019 *Solutions Report*. Many of the projects cannot move forward without the code amendments, making the Bainbridge Island electrical system vulnerable to frequent outages and safety hazards. Additionally, PSE will not be able to serve Washington State Ferries with a power source for ferry electrification.

I have lived on Bainbridge for most of my life and plan to continue to do so. Improved reliability and capacity on the Island and continued updates to the electric infrastructure will improve overall quality of life on the Island. This is important as people buy more EVs and as the ferries start to charge on the island. It is also important because although the perception is that only wealthy people live on Bainbridge, this is absolutely not the case. There are many individuals/families/seniors who cannot afford to buy a generator or replace their food in the freezer and refrigerator when the power goes out for extended periods.

I'm glad to support PSE's attempt to maintain and update their infrastructure to improve reliability and capacity on the Island. I Encourage the City to support PSEs code amendment requests to support the operation of the electrical system on Bainbridge.

Thank you,
Dana M Maria

Sent from my iPhone

From: [Joanne Mendenhall](#)
To: [Renee Argetsinger](#)
Subject: FW: PSE amendments -- wetlands
Date: Monday, April 1, 2024 10:58:18 AM

Public comment for PLN52234 LDR. Thank you Renee!

From: HB Harper <hharper@bainbridgewa.gov>
Sent: Friday, March 29, 2024 2:23 PM
To: Joanne Mendenhall <jmendenhall@bainbridgewa.gov>; Patricia Charnas <pcharnas@bainbridgewa.gov>
Subject: Fwd: PSE amendments -- wetlands

Keeping you in the loop

From: Sarah Blossom <Sarah.Blossom@cobicommittee.email>
Sent: Friday, March 29, 2024 1:51:24 PM
To: HB Harper <hharper@bainbridgewa.gov>
Subject: Fw: PSE amendments -- wetlands

I'm sending this to you because my recollection is that the language you suggested was from Ecology. I'm interested in your thoughts on what Christy has proposed.

Sarah

From: christy carr <chcarr2012@gmail.com>
Sent: Thursday, March 28, 2024 2:18 PM
To: Sarah Blossom <Sarah.Blossom@cobicommittee.email>
Subject: PSE amendments -- wetlands

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Hi Sarah.

I missed the last PC meeting when you were discussing the ARPA and wetlands. I'm hoping it's not too late to stop the train on PSE's ill-formed and generic amendment requests.

I recommend the PC consider creating an utility exception.

Washington Department of Ecology guidance (Ecology, 2018 and 2022) states that

utilities are not typically addressed by exemptions or allowed uses:

Exceptions for public actions are typically addressed differently from exemptions or allowed uses. This category is generally reserved for public agency projects that may have inherent constraints on aspects like location and methodology. One example would be public utilities. If the application of the critical areas regulations would prohibit a development proposal by a public agency or utility, the CAO may allow the agency or utility to apply for an exception. Exceptions should include criteria for review and approval and may be similar to those found in variance provisions or through a reasonable use exemption process. Exceptions should address mitigation sequencing.

The utility exception would include criteria for review specific to this use and address mitigation sequencing and cumulative impacts. Ecology's 2022 critical areas guidance includes sample language for a public agency or utility exception:

Exceptions. If the application of these regulations would prohibit public facilities such as utilities within a wetland and/or buffer due to a specific service provision or design constraint, the agency or utility may apply for an exception. Exceptions applications must address mitigation sequencing, and include information meeting the review criteria according to the following: [or those found in variance provisions if applicable]

- 1. There is no other practical alternative to the proposed development with less impact on the critical areas;*
- 2. The application of the critical area regulations would unreasonably restrict the ability to provide utility services to the public;*
- 3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;*
- 4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with best available science; and*
- 5. The proposal is consistent with other applicable regulations and standards.*

I understand that PSE is a private utility, but it's the only electric utility we have on the island. I believe a best available science (BAS) review of scientific evidence would support a well-crafted utility exception to include private utility projects.

Marlene Schubert

From: Ron Peltier <peppermelly@gmail.com>
Sent: Wednesday, March 27, 2024 11:00 PM
To: PCD
Subject: Fwd: PSE Wants Critical Areas Exemptions

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Please forward to the Planning Commission

Planning Commissioners,
Here are my comments regarding PSE's proposed code amendments to be discussed during your 3/28/24 meeting.

What PSE is proposing:

Exemption from BIMC 16.20.100 Aquifer Recharge Area Protection requirements

PSE claims they can't comply with ARPA because they don't actually own the easements they clear for new power lines. There's a better solution to this ownership problem other than exempting PSE from protecting trees and native vegetation. It's just an excuse to not do something they don't want to do: protect trees and native vegetation.

Special wetland regulations for PSE

Please approach these requested wetlands regulations exemptions carefully and not give PSE too much, while addressing legitimate issues.

No Conditional Use Permits required to exceeding height limits in table 18.12.040 of the Municipal Code

PSE is asking for "alternate height limits" for poles and other structures without having to go through the conditional use process. This would eliminate in depth reviews for poles and structures exceeding height limits and eliminate public comment. This should be rejected.

Setback Encroachment

PSE requests to amend BIMC Table 18.12.040 to allow overhead and underground primary utilities as well as the already allowed accessory utilities in setbacks. PSE wants this change to avoid variance permits. What unintended consequences might this result in? Please reject this.

Height of Poles – BIMC Table 18.12.040

PSE wants height modifications applied to both replacement distribution or transmission poles and to new poles added along an existing distribution or transmission corridor. This can already be done through a conditional use permit.

Please, let's not have clearcuts and PSE erecting 100 ft poles in Islanders backyards with little or no public process.

Thanks for Reading,
Ron Peltier

From: [Patricia Charnas](#)
To: [Renee Argetsinger](#)
Subject: FW: Public comment - PSE Winslow Tap Transmission Line Rebuild - BIMC 2.16.020.D Code Amendment Request - PLN 52234 LDR
Date: Friday, March 29, 2024 7:49:27 AM
Attachments: [BainbridgeCodeAmendmentSupplementalAnalysis \(1\).pdf](#)

From: Kimberly McCormick <kimberly.mccormick@comcast.net>
Sent: Friday, March 29, 2024 7:26 AM
To: Sarah Blossom <Sarah.Blossom@cobicommittee.email>; Ariel Birtley <ariel.birtley@cobicommittee.email>; Yesh Subramanian <Yesh.Subramanian@cobicommittee.email>; Peter Schaab <peter.schaab@cobicommittee.email>; Sean Sullivan <sean.sullivan@cobicommittee.email>; Benjamin Deines <Benjamin.Deines@cobicommittee.email>; Ashley Mathews <amathews@bainbridgewa.gov>
Cc: Patricia Charnas <pcharnas@bainbridgewa.gov>; HB Harper <hharper@bainbridgewa.gov>; Joanne Mendenhall <jmendenhall@bainbridgewa.gov>; James Haney <jhaney@bainbridgewa.gov>
Subject: RE: Public comment - PSE Winslow Tap Transmission Line Rebuild - BIMC 2.16.020.D Code Amendment Request - PLN 52234 LDR

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Good morning Planning Commissioners,

Thank you for the thorough and thoughtful discussion last night regarding the PSE proposed code amendment to BIMC 2.16.020.D. I wanted to bring to your attention the attached Code Amendment Support Regulatory Context and Code Comparison Analysis that was submitted by PSE in support of its permit applications and is in the permit file. This document includes code language consistent with the existing language in BIMC 2.16.020.D in the following jurisdictions within which PSE operates:

Island County	Applicant means any person who files an application subject to the review under titles 16 or 17 who is either the person(s) identified in the assessor's records as the owner of the property on which the proposed activity would be located or the authorized agent of such person.
Vashon Island	Applicant, a property owner, a public utility or a public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such an easement under RCW 8.08.040, or any person or entity designated or named in writing by a property or easement owner to be the applicant, in an application for a development proposal, permit or approval
Mercer Island	8. Verification that the property affected by the application is in the

exclusive ownership of the applicant, or that the applicant has a right to develop the site and that application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (A)(9) of this section shall satisfy the requirement of this subsection;

9. For Type II, III and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.

City of Duvall “Applicant” means a person who applies for any permit or approval to do anything governed by this code and who is the owner of the subject property, the authorized agent of the owner, or the City.

City of Port Orchard “Applicant” means the owner of land proposed for land development or use or its representative who shall have express written authority to act on behalf of the owner. Written consent shall be required from the legal owner of the property.

City of Oak Harbor The applicant shall submit the following items: (2) A verified statement by the applicant that property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all owners of the affected property.

Thank you for continuing to protect the property rights of Bainbridge Islanders as you consider the requested code amendment.

All the best,

Kim McCormick
Attorney for Woody Stables, LLC

Kim McCormick, Attorney at Law
Law Office of Kim McCormick, PLLC
3920 Southern Cross Road NE
Bainbridge Island, WA 98110
(206) 780 9064 (office); (206) 910 4772 (cel)

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Code Amendment Support Regulatory Context and Code Comparison Analysis

Background

Puget Sound Energy's (PSE) electrical infrastructure delivers an essential service to the Bainbridge Island community through the provision of power to homes and businesses. Much of the electrical infrastructure on the Island, including the existing Winslow Tap, Port Madison Tap and Foss Corner-Port Madison transmission lines and the Port Madison and Winslow substations, was originally constructed in the 1950s and 60s when Bainbridge Island was part of rural unincorporated Kitsap County. In the 1960s, the area that is now the City of Bainbridge Island had a population under 1,000. Today's population is near 25,000. As the Island's population has grown resulting in a greater demand for electricity, the regulatory environment in which PSE installs, maintains, and upgrades electrical infrastructure has become more complex.

Over the last three years, PSE has worked with the City of Bainbridge Island to identify and request code amendments needed to ensure compliance with the Comprehensive Plan, including Goal U-1 to ensure that reliable utility services are available to all residents of Bainbridge Island and to fulfill PSE's obligation under state law to serve the community with reliable power. In April 2022, PSE submitted a code amendment request to process two code amendments under the City's critical areas ordinance (BIMC 16.20); one pertaining to the requirements to dedicate an ARPA in low density residential zoning districts (BIMC 16.20.100) and one pertaining to the prohibition of primary utilities in Category I and II wetlands (BIMC 16.20.140.G) (see *Code Amendment Request Narrative and Comprehensive Plan Compliance* document and *Best Available Science* Technical Memorandum under City of Bainbridge Island File #PLN52234 LDR) . The City and PSE have also identified two additional needed amendments under the zoning code dimensional standards. The first is within the setback permitted modification table (BIMC Table 18.12.040) and it does not include an allowance for PSE to install essential utility infrastructure within zoning setbacks. The second includes the combination of permitted height modifications for poles in BIMC Table 18.12.040 and an associated height exemption provision in BIMC Table 18.12.020-2 that provide inconsistent processes for exceeding the height of a zoning district. Prior to 2022, the City has not interpreted the exemption provision in BIMC Table 18.12.020-2 that requires structures over the height of the zoning district to apply to utility poles. These amendments are needed to support the installation, upgrade and maintenance of PSE's linear distribution and transmission line infrastructure. Additionally, parcel-based facilities must connect to linear facilities in order to serve the community. These amendments will ultimately support the operation of the electrical system on Bainbridge Island. A fifth code amendment request has also resulted from the City's application of BIMC 2.16.020.D to preclude

PSE from submitting permits on property not owned by PSE without written authorization from the underlying property owner. PSE expects that all of the amendments will support the evolving needs of the community as we work towards the delivery of clean energy and meeting the City's Climate Action Plan goals. Flexibility is needed to provide the community with the necessary physical infrastructure to deliver energy.

The purpose of this memo is to provide additional information in support of the requested code amendments, including:

- Background to outline PSE's electrical utility facility operational and regulatory context, and
- A comparative analysis of other jurisdiction codes similar to the codes under consideration for the amendment requests. The jurisdictions selected have one or more characteristics similar to Bainbridge Island.

Linear Transmission and Distribution Infrastructure Operations

Bainbridge Island receives power through two 115 kV transmission lines that cross Agate Pass from Kitsap County. The transmission lines deliver electricity to the three distribution substations on the Island which lower the voltage and send the electricity through a system of 12.5 kV distribution lines and lower voltage service lines to homes and businesses, which are served via lower voltage service lines. Higher voltages are used to move power through transmission lines from generation sources to distribution substations for efficiency over long distances. Lower voltages are used to safely transfer the power through distribution and service lines to homes and businesses. Engineering standards for transmission and distribution facilities vary due to differing voltage standards. Transmission line standards generally result in taller poles with greater distances (or spans) between each pole due to greater clearances required for the conductor from the ground, structures, vegetation and other fixed objects. Distribution lines typically use shorter poles and less distance between poles. Distribution lines may also be located underground and include associated equipment such as transformers and vaults that occur at certain intervals along the alignment. Individual poles locations along a defined corridor and the location of vaults, switches and transformers used with underground distribution lines are based on engineering design and safety standards.

Utility poles are part of expected visual infrastructure in urban and rural environments. In an urban setting, poles are often located within planter strips between the paved street surface and sidewalks or along improved gravel shoulders. On Bainbridge Island, a majority of the roads are lined with maintained vegetation within the road right-of-way, but lacking in improved shoulders and urban features such as curb, gutter, sidewalks and planter strips. Therefore, PSE's poles are often located within the unimproved, maintained vegetation portion of the road right-of-way. PSE must meet safety clearances such as local control zone regulations in order to avoid conflicts with cars and bicycle traffic, which pushes infrastructure to the edge of the legal limits of the road right-of-way, often requiring additional operating rights on adjacent property. Underground distribution infrastructure tends to also be located within unimproved shoulders, as City policy includes a preference for wet utilities to be under the paved surface and dry utilities to be on the outer edge of the right-of-way. Generally, vaults and pad mount transformers that support underground distribution are generally located on easement adjacent to right-of-way, but

are occasionally located within right-of-way in a location that does not interfere with motorized and non-motorized uses. Similar to other utilities such as water, sewer, and communications, the siting of the facilities is based on where the services are transferred from the source of the resource (transmission lines over Agate Pass to substations) to where the it is needed (substations to customers), therefore siting opportunities can be limited.

Regulatory Context

PSE is a regulated utility with a duty to serve our customers with safe, adequate, and efficient power. PSE must comply with state and federal regulations administered by various authorities, including the Washington State Utility and Transportation Commission (WUTC) and the North American Electric Reliability Corporation (NERC). In addition to state and federal requirements that focus on PSE's service to customers, local zoning, environmental and construction codes and standards also apply to PSE's linear infrastructure. A summary of the regulatory context for these linear facilities is outlined below.

State Regulatory Authority

WUTC. The WUTC oversees the provision of electrical service by PSE. The WUTC requires that PSE make its electrical service available to all residents and businesses within the service area in a safe, efficient and reliable manner. This "duty to serve" is codified in state law (RCW 80.28.010). Providing safe and reliable electrical service to our customers, including Bainbridge Island, means minimizing service interruptions and outages. The WUTC controls the rates that can be charged by PSE and has the authority to levy fines against the company for failure to comply with regulatory requirements. Tariffs outlining PSE's services and rates are filed with the WUTC.

Infrastructure projects, including installation of new transmission and distribution lines as well as maintenance and upgrading of existing facilities, can result in costs being borne by customers through rates. For costs to be recovered by PSE, the WUTC makes determinations as to whether the costs incurred were prudent and reasonable. Improvement projects are constructed based on need and designed to keep costs down while meeting safety and reliability requirements. Even after completion of a project that was carefully planned and engineered, the WUTC can decide that certain costs were not prudent and deny PSE the ability to recover those costs through rates. This is a significant incentive for PSE to undertake projects only when necessary and carefully manage costs.

Tariffs. As a regulated utility, tariffs outlining PSE's services and rates are on file with the WUTC. Any changes to the tariffs require review and approval by the WUTC. Although the tariffs are not regulations, PSE is required to comply with the tariff provisions. Tariffs can interact with local jurisdiction regulations. For example, a tariff may apportion utility improvement costs associated with a local requirement to underground electrical lines.

Federal Regulatory Authority

NERC. PSE's transmission system is subject to reliability standards set by the North American Electric Reliability Corporation (NERC), which is subject to oversight by the Federal Energy Regulatory Commission (FERC). The role of NERC is to develop and enforce reliability standards, monitor the transmission systems across the United States, Canada and parts of Mexico, and assess adequacy of systems based on 10-year forecasts and summer and winter forecasts. NERC annually assesses PSE's entire electrical transmission system to ensure standards are met and like the WUTC, NERC has the authority to levy significant fines if it determines PSE is not meeting its standards and has the authority to require the implementation of mitigation to correct violations. At times, NERC reliability requirements change, resulting in the need for PSE to upgrade its infrastructure to meet the new regulations.

Operational Standards

NESC. PSE must follow the National Electrical Safety Code (NESC) standards for installation, operation, and maintenance of transmission and distribution lines. These standards contain the minimum engineering criteria needed for functioning systems to be reliable and resilient. The standards are updated every 5 years to reflect changes in technology and industry practices, and PSE must make changes to its system to meet the new standards. This often means that repair and maintenance activities result in nominally taller poles, different cross arm and/or insulator configurations, and/or greater clearance requirements from structures and other fixed objects. Different standards apply to distribution infrastructure than to transmission infrastructure due to the different voltage of electricity passing through the conductor and greater spacing (or spans) between transmission poles resulting in longer conductor length.

Vegetation Management. A significant factor in PSE's ability to provide safe and reliable power to our customers is the need to manage vegetation along our transmission and distribution corridors. State law provides for the ability to cut or remove vegetation that poses a hazard to the safe operation of PSE infrastructure. PSE has adopted standards for safely managing vegetation that has the potential to interfere with the reliable operation of its electrical infrastructure in order to avoid interruptions and outages.

Eminent Domain. PSE's preference is to acquire needed operating rights on private property through negotiations with property owners. Under state law, PSE can exercise the right of eminent domain if negotiations prove unsuccessful (RCW 80.32.060). PSE works with property owners to only acquire property necessary for the installation and operation of its facilities while limiting impacts to the property. As noted under WUTC authority, it is in PSE's best interest to only acquire the property necessary to install and operate our improvements and to manage costs.

Local Regulations

PSE must also comply with local codes and standards when siting, installing, upgrading and maintaining electrical infrastructure. Due to the linear nature of PSE's transmission and distribution lines, local codes focused on parcel-based development with primary uses where people live or work may not contemplate or incorporate practical regulatory performance standards for the location and operation of PSE's infrastructure. Often, different regulations apply to different portions of a facility depending upon specific locations that are crossed. This includes different zoning and overlay districts, critical areas, shoreline jurisdiction, and areas under the purview of functional plans adopted by local jurisdictions such as transportation improvement plans, parks and recreation plans or subarea plans.

Franchise: PSE has a franchise agreement with the City of Bainbridge Island. The franchise agreement is a contract that outlines the terms in which PSE can use City rights-of-way to locate electrical utility infrastructure to serve the Bainbridge community. Although the franchise is not a regulation, franchise terms can impact installation considerations by the utility. Franchise terms may not align with other City standards and regulations. For example, as discussed later in this document, a utility corridor may extend outside the franchise right-of-way into a zoning setback on private property. Or poles and conductor clearances may need to be located within unimproved portions of a road right-of-way that contain vegetation, critical areas, and buffers to meet safety clearances from traffic.

Local Regulatory Considerations

Local regulations can differ in how electrical utilities are characterized and regulated. PSE encounters differing regulatory standards depending upon specific jurisdiction codes and policies. Electrical utility projects are not common projects encountered by jurisdiction development review staff and jurisdiction development codes are generally focused on primary uses on parcels, not linear facilities that cross several properties and zoning districts and have limited rights unrelated to the primary use of the property. Most utility facilities, including electrical utility facilities, are located within road rights-of-way. PSE's electrical facility operational rights can also extend onto adjacent property. Most jurisdiction standards assume utility placement entirely within improved road right-of-way or as services that are part of parcel-based development such as commercial site plans or subdivisions and do not necessarily contemplate stand-alone utility projects that cross various regulatory environments. Therefore, codes and standards may have gaps that reflect these notions, making implementation of codes and standards in the review of an electrical utility project cumbersome and impractical.

Linear electrical facilities are often located within road right-of-way under a franchise agreement with a jurisdiction collated with other utilities. Unlike sewer or water lines that are often given priority to locate underneath paved services, PSE infrastructure is generally located along the edges of the franchise area, whether above or below ground, with operational rights often extending onto the adjacent property.

Occasionally, PSE poles are installed on private property, but more often conductor clearances, vegetation management, and equipment such as vaults and transformers require operational rights outside the road right-of-way in the form of an easement. Examples of infrastructure that PSE for which PSE acquires easements are included in the *PSE Structures and Equipment* photo glossary. For examples of operational needs that extend outside of road right-of-way associated with poles and conductor, see the *Typical Roadside Utility Line* exhibit.

When PSE's linear infrastructure is not located in public road right-of-way and is instead situated along multiple properties not adjacent to road right-of-way, operational rights are generally in the form of a series of easements that make up a utility corridor. In some instances, other utilities or features are located within the same easement area, including trails, private access roads or other compatible uses. To limit impacts on the primary use of the property, PSE facilities on private property are often located as close as possible to property lines and in areas that are often rendered undevelopable to the property owner, including building setback areas.

Local Regulation Summary

Within PSE's service territory, Bainbridge Island is unique in its character as an incorporated city that includes the entirety of the Island that is separated from a major City by ferry access only. The population of Bainbridge Island is approximately 25,000 and the majority of Bainbridge Island maintains a rural character outside of designated concentrations of non-residential and higher density residential including Winslow, Island Center and Lynnwood Center. The City of Bainbridge Island regulates PSE's transmission and distribution infrastructure as primary utilities and only differentiates between voltages of infrastructure for the purposes of regulating pole height.

The code comparison table includes sample code references from 10 jurisdictions within PSE's service territory with one or more characteristics similar to Bainbridge Island. For example, another Island city within PSE's service territory is the City of Mercer Island; however a major highway (I-90) crosses the Island and connects two major jurisdictions, the cities of Seattle and Bellevue. Mercer Island's population is just over 25,000, but the island area is smaller than Bainbridge Island with approximately 13 square miles verses 65 square miles. Other islands served by PSE include Vashon and Whidbey. Vashon Island is under the jurisdiction of unincorporated King County and Whidbey Island is predominantly under the jurisdiction of unincorporated Island County, however includes incorporated areas such as Oak Harbor, Coupeville, and Langley. Below is a general summary of Bainbridge's code requirements applicable to utility infrastructure in the categories of zoning height regulations, zoning setback regulations, and critical area regulations applicable to wetlands and considerations for each category. Under each Bainbridge Island summary is a comparative summary of the codes examples found in the code comparison table from the other 10 jurisdictions.

Zoning Dimensional Requirements

Building/Structure Setbacks

Bainbridge Island code. The Bainbridge Island zoning code regulates encroachments allowed within zoning setbacks through a table of allowances (BIMC 18.12.040). The table includes an allowance for overhead or underground accessory utilities. In 2021, the City interpreted this to mean that primary utilities are prohibited in setbacks because they are not included as an allowance within the table. It is not clear if this prohibition is only applicable to physical infrastructure such as poles, guys, anchors and vaults or if it includes easement area and rights for conductor clearances and vegetation management activities.

Primary utilities located in zoning setbacks is a common occurrence on Bainbridge Island. Examples of this include one or more poles along a distribution or transmission line within franchise right-of-way extending onto the adjacent property; guy anchors, wires or stub poles on private property adjacent to road rights-of-way; equipment supporting underground distribution lines, including vaults and transformers; and distribution and transmission lines crossing setbacks to connect to a substation. As noted above, facilities on private property are often located in setbacks to limit impacts to the property's primary use and also because a majority of lines are located in right-of-way, but certain elements or supporting equipment can extend onto private property. PSE operating rights within setback areas also include aerial rights for conductor clearances, access, and vegetation management rights.

Other jurisdiction summary. The 10 jurisdictions differ in their treatment of placement of utility facilities in zoning setbacks. Most codes apply setbacks to buildings and only regulate whether building features or appurtenances associated with the primary use of the property can extend into a setback. Two of the jurisdiction codes acknowledge utility poles as an allowed encroachment in setbacks. Most codes focus on addressing encroachments that are features of the primary use/building and extending outward from the building towards the property lines. Even Bainbridge Island's zoning code acknowledges this in BIMC 18.12.050 noting that setbacks extend from a building to a street. The other jurisdiction codes do not address or prohibit locating a pole on easement in a setback area as an extension of the utility placement in road right-of-way or as a subordinate use in cross country corridors. Most codes are silent as to whether utility poles are an allowed encroachment, but the jurisdictions do not interpret the lack of allowance to mean poles are prohibited in setbacks. None of the codes reviewed specifically prohibit utility poles or other utility features in zoning setbacks.

Under state law, PSE's duty to serve customers requires that the installation and operation of PSE infrastructure cannot be precluded. This necessity is recognized under state law granting PSE the right to exercise eminent domain. By power of eminent domain, PSE has the right to acquire property rights necessary for the installation and operation of our facilities if no other alternative location is feasible, including within zoning setbacks. However, there is no known instance of any jurisdiction denying PSE the ability to locate infrastructure within a zoning setback regardless of whether the local code allows poles in setback areas.

Building/Structure Height

Bainbridge Island code. The same table that provides allowances for encroachments into setbacks in BIMC 18.12.040 also includes modifications to height limits for certain structures, including utility poles. The table provides for height allowances within operational ranges for distribution and transmission poles that are above the building height limits for all zoning districts. These operational heights are based on engineering standards and clearances. The standard typical length for a distribution poles is 40-45 feet, resulting in 34 – 38.5 feet of the pole extending above grade when the pole is embedded in the ground. For transmission poles, heights above grade can typically vary from 60 - 100 feet, but can go higher if design considerations warrant a taller pole, including the collocation of communication lines or the need to increase pole height to cross other right-of-way features such as street lights. An example at the tallest end of the spectrum are the poles supporting the transmission lines crossing Agate Pass, which are 140 feet in height due to the span length and in order to meet regulatory clearances from the Agate Pass Bridge. Operationally, poles generally must exceed the height limits of the underlying zoning districts on Bainbridge Island, particularly in residential zones. BIMC 18.12.020 contains a provision that alternative height limits may apply for nonresidential uses that exceed the maximum building and structure height allowances if conditional use permit provisions in Title 2 are met. BIMC 18.12.040 provides a provision for replacement poles to go through minor site plan review. The City of Bainbridge Island has recently interpreted the conditional use permit requirement in BIMC 18.12.020 to apply to the addition of poles along an existing corridor since the language in Table BIMC 18.12.040 reference replacement poles. In almost every case, operational pole height needs will exceed the base heights allowed in each zoning district in BIMC 18.12.020 and adding poles along existing corridors does not expand or intensify the underlying use.

Other jurisdiction summary. In most cases, height restrictions within zoning dimensional standards are specific to buildings only. A few codes provide exceptions to height standards for utility poles, and none require a permit review process to exceed the underlying zoning height dimensional standard. None of the other codes reviewed include specific height thresholds for distribution and transmission line poles.

PSE determines operational pole height based on NESC standards. As a regulated utility whose costs are scrutinized and passed onto rate payers, PSE does not have incentives to install poles taller than necessary. Heights applicable to buildings do not appropriately transfer to the engineering needs of utility poles. Based on PSE's duty to serve our customers under state law, the installation of poles of appropriate operational heights cannot be precluded by a jurisdiction. The requirement for a lengthy discretionary review process to add a pole to an existing, established use and to maintain and upgrade infrastructure to support an essential public service appears unnecessary and inconsistent with the general approach to regulating utility poles.

Critical Areas - Wetlands

Bainbridge Island Code. The Bainbridge Island critical areas regulations pertaining to wetlands (BIMC 16.20.140) include a provision that prohibits certain uses, activities and developments with Category I and II wetlands, including primary utilities. This provision does not consider that there may be no other

option for the installation of new linear utilities than to cross wetlands, including Category II wetlands that extend into unimproved road right-of-way. It also does not consider the need to upgrade existing utilities within Category I and II wetlands when the upgrade does not qualify as repair and maintenance under the critical areas exemptions. See PSE's *Code Amendment Request Narrative and Comprehensive Plan Compliance* and HDR's *Best Available Science* Technical Memorandum submitted in April 2022 under File #PLN52234 LDR for further discussion.

Other jurisdiction summary. None of the jurisdiction codes reviewed prohibit utilities in wetlands, aside from King County (Vashon Island) not allowing utilities in Category I wetlands. If utilities are not an allowed alteration outright, all jurisdictions provide an allowance through a public utility or alteration exception process, including King County. These exception processes recognize the need to provide essential utilities while balancing environmental protection through appropriate mitigation measures.

Critical Areas – Aquifer Recharge Protection Areas

Bainbridge Island Code. The Bainbridge Island critical areas regulations (BIMC 16.20.100.E.1) require the designation of an Aquifer Recharge Protection Area (ARPA) when development occurs on property located within the R-0.4, R-1 and R-2 zoning districts and Site Assessment Review (SAR) is required. The code does not distinguish between development by a fee owner of a parcel who may develop and use the entire parcel, and development by an easement holder, like PSE, who only has rights to use a portion of the property for a specified use or activity and does not hold fee interest in the property. PSE does not have rights on private property outside of its easement areas, apart from rights of ingress and egress granted under state law, and PSE cannot meet the requirement to dedicate and record an ARPA on property title. See PSE's *Code Amendment Request Narrative and Comprehensive Plan Compliance* document.

Other jurisdiction summary. Bainbridge Island is the only jurisdiction to regulate aquifer recharge areas based on zoning district and not by limiting or assigning performance standards to land uses and activities that can potentially impact groundwater. No other jurisdiction requires dedication of an ARPA or similar conservation easement to protect groundwater. Therefore, other jurisdiction Aquifer Recharge Protection Area codes are not documented in the code comparison table.

Who Can Apply

Bainbridge Island Code. BIMC 2.16.020.D.1 identifies who can apply for any type of permit that requires review and approval under Bainbridge Island code. The code states that, "A property owner, a contract purchaser, or an agent of the owner with authorized written proof of agency may apply for any type of permit." This code section does not appear to contemplate PSE's unique status as an essential utility provider. When PSE facilities are located on easement, PSE is not a property owner as defined in BIMC 18.36.030, as PSE does not have a fee interest in the property. PSE is also not acting as an agent of the underlying property owner, as electric lines and equipment are for the benefit of the public.

Additionally, PSE may not be able to identify the rights needed for a project until after the City approves discretionary permits and the design can be completed.

Other jurisdiction summary. Of the 10 jurisdictions in the comparison table, six require an applicant to be an owner or have written authorization/consent from the owner(s). Two jurisdictions specifically identify public or private utilities as applicants, one jurisdiction does not have a definition of applicant outside the subdivision and wireless provisions in the code, and one allows any person or entity to be an applicant.

In the past ten years, PSE has worked with three other jurisdictions (Pierce County, Bellevue, and Kirkland) that have codes similar to Bainbridge Island that have all processed PSE's permit applications for new transmission line projects, pending PSE's acquisition of easements along the transmission line route. These jurisdictions have accepted a letter from PSE describing its unique status as a regulated utility with the ability to use eminent domain to acquire rights for electrical facility installation and operation under RCW 80.32.060 in lieu of requiring evidence of PSE's easement rights or owner consent. These jurisdictions have processed and issued land use and environmental permits but withheld issuance of ministerial construction permits until PSE has acquired all necessary easement rights and permissions. This process allows for a timely and efficient permit review process while preserving and resolving property rights considerations before any construction may occur. Additionally, PSE recently submitted permits to construct a portion of a new transmission line corridor within unincorporated King County. As the County acknowledges utilities as applicants, PSE was able to submit permits, but the permits were not approved for construction until proof of easement was provided.

Code Comparative Analysis Tables

Jurisdiction: Island County
Size: 517 square miles
Population: 87,432 (2021)

USE DEFINITIONS		
Transmission Lines:		
Utilities, major means public facilities that serve a broader geographic area of the county. Major utilities include generating plants, privately owned refuse collection and transfer stations, processing, recycling or disposal facilities, electrical transmission substations, electrical and gas transmission lines, and similar facilities of public agencies or utilities. Major utilities do not include a throughput transmission facility or communication tower.		
Distribution Lines:		
Utilities, minor means public facilities that serve a localized geographic area of the county. Minor utilities include utility facilities that are necessary to support established uses and involve only minor structures such as, telephone switching facilities, electrical distribution substations, electrical and gas distribution lines and pumphouses. Minor utilities do not include throughput transmission facilities or communication tower.		
SETBACKS		
Definitions		
Yard means an open space, other than a court, on the lot on which a building is situated lying between the front, rear, or side wall of a building and the nearest lot line.		
Applies to:	Buildings	
Are poles included in code:	No	
Allowed Encroachments		
Only addressed in Freeland Zoning Code (Chapter 17.06).	accommodation for disabled, rain barrels and cisterns, uncovered and unenclosed decks or entry stairs, porch encroachment, other architectural features and appurtenant structures.	
HEIGHT		
Definitions		
Height, building shall be defined and measured as provided by the most recent edition of the International Building Code (IBC) and the International Residential Code (IRC).		
Applies to:	Buildings	
Are poles included in code:	No	
Exceptions		
Chimneys, smokestacks, fire or parapet walls, ADA-required elevator shafts, flagpoles, utility lines and poles, water tanks, skylights, silos, communication sending and receiving devices, HVAC and similar equipment, and spires associated with places of worship are exempt from height requirements. (not included under every zoning district; however building height is specified)		
WETLANDS		
Transmission or distribution Lines Prohibited in Wetlands? No		
Allowances		

ICC 17.02B.300 Exempt activities	A. Exemptions 1. No permit is required under this chapter which meets the precise terms of the exempt activities. 2. For development proposals that do not meet the precise terms of an exempt activity, the Planning Director may, through a Type I process, determine whether or not a development should be classified as an exempt activity.
	B. Fish and wildlife habitat conservation areas and wetlands.
	5. Utility repair. Normal and routine maintenance or repair of existing utility facilities or rights-of-way.
	6. Utility construction in improved right-of-way. Installation, construction, relocation, operation, normal maintenance or repair, or alteration of all utility lines, equipment, or appurtenances, not including substations, in improved and maintained road rights-of-way. Replacement may be considered an exempt activity if it is the normal method of repair. Relocation of utility lines, equipment, or appurtenances shall occur as far as feasible from the critical areas and its buffer.
ICC 17.02B.310 –C. Wetlands permitted alterations.	3. Public transportation and utility projects. Alteration of a wetland or wetland buffer for a public transportation or utility project that cannot be avoided as required by chapter 17.02B.080.B shall be approved only under specific conditions.
Definitions	
Critical area permit means a permit issued pursuant to the requirements of this chapter. Critical area permits include: exemption authorizations, permitted alteration permits, and critical area variances.	
Maintenance or repair means usual acts to prevent a decline, lapse, or cessation from a lawfully established condition or restores a development to a state comparable to its original condition, including but not limited to maintaining the same size, shape, configuration, location and appearance, provided such restoration is commenced within a reasonable period of time. Replacement of a structure is not considered normal maintenance or repair, except where specifically authorized by this chapter or section 17.03.230. With respect to structures, repairs that exceed fifty (50) percent of the value of the structure over any three-year period shall constitute replacement and shall not be considered maintenance or repair.	
Applicant	
ICC 17.03.040: Definitions	Applicant means any person who files an application subject to to review under titles 16 or 17 who is either the person(s) identified in the assessor's records as the owner of the property on which the proposed activity would be located or the authorized agent of such person.

Jurisdiction: City of Langley
Size: 1.6 square miles
Population: 1,150 (2021)

USE DEFINITIONS		
“Utilities” means those services provided for private or public use, including electric power lines, gas lines, telephone lines, television cables, sewer lines, water lines, and drainage facilities.		
“Structure” means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground, not including utility poles and related pad-mounted or ground-mounted distribution equipment, residential fences less than six feet high, retaining walls, rockeries and other similar improvements of a minor character less than four feet high.		
SETBACKS		
Definitions		
“Encroachment” means any structural element that encroaches.		
“Setback” means the minimum distance required by this title for buildings and/or structures to be set back form the street, side or rear lot lines, rights-of-way or access easements.		
Applies to:	Buildings and structures	
Are poles included in code?	No	
Allowed Encroachments		
All parts of the structure or building including, without limitation, cornices, eaves, canopies, sun shades, gutters, chimneys and flues shall be considered in calculating the location of the structure or building in determining compliance with the setback requirements of this section.		
HEIGHT		
Definitions		
“Building height,” for the purposes of this title, except for Chapter 18.26, means the vertical distance measured from the grade to the highest point of the roof (see exemptions in definition of “grade” below), provided, however, that “building height,” for the purposes of Chapter 18.26 means the vertical extent of a building measured in stories.		
“Grade” means the average of the existing or finished ground level, whichever is lower, at the center of all walls of a building or beneath the proposed structure, whichever is applicable. This following items are exempt when making height determinations: 1. Radio and television aerials and flagpoles. 2. Other Features. Open rails, planters, skylights and chimneys may exceed the height limits by four feet or may extend four feet above the ridge of a pitched roof. 3. Wireless communication antenna arrays up to a height of 15 feet from the highest point of the roof.		
Applies to:	Buildings	
Are poles included in code?	No	
Exceptions		
Height modification allowed in commercial zones applies to building height.		
Wetlands		
Transmission or distribution lines prohibited in wetlands? Yes - alteration of Category I wetlands is prohibited (LMC 16.20.080.B.a.(1)).		
Allowances		
LMC 16.20.075 Wetlands and streams – exemptions.	D. Maintenance, operation and reconstruction of existing roads, streets, utilities and associated structures undertaken pursuant to public works director approved best management practices; provided, that activities shall not increase the impervious area and that disturbed areas are restored to their preexisting condition.	
	H. Construction of new utility facilities or improvements to existing utility facilities that take place within existing improved right-of-way or existing impervious surface that does not increase the amount of impervious surface, or the use of trenchless technology such as boring or tunneling, that would not disturb the habitat.	
LMC 16.20.080 Wetlands and streams -	1. If the application of the wetland and stream provisions of this chapter would prohibit a street, road or utility line proposal by a public agency or utility or the installation of the necessary utilities for a development proposal by a public agency or utility, the agency, utility or private applicant may apply for an exception pursuant to this section. Projects affecting Category I and II wetlands, Type 1 or 2 streams or otherwise requiring review and decision by the hearing examiner shall be decided by the hearing examiner.	
C. Public Agency and Utility Exceptions.		
Definitions		
“Alterations of a wetland or stream” means the placement or erection of any solid material or structure; the discharge or disposal of any dredge material or waste, including filling, grading, channelization, removing, dredging, draining, extraction of any materials; the discharge of any dredge material or waste, including filling, grading; the removal or harvesting of trees or other vegetation; or the modification for use as a stormwater retention/detention facility.		

“Repair or maintenance” means an activity that restores the character, scope, size and design of a serviceable area, structure or land use to its previously authorized and undamaged conditions. Activities that change the character, size or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

Applicant	
LMC 18.36.010 Applications.	C. Required Submittals. For each application, the required submittals include the following: 1. The applicant, owner or owner's representative names and addresses, a certificate of ownership issued by a title insurance company authorized to do business in the state and indication of the person to be contacted regarding the application.

Jurisdiction: Vashon Island
Size: 36.9 square miles
Population: 10,400 (2020)

USE DEFINITIONS		
Regional utility corridor. A right-of-way tract or easement other than a street right-of-way which contains transmission lines or pipelines for utility companies. Right-of-way tracts or easements containing lines serving individual lots or developments are not regional utility corridors.		
Utility corridor. A narrow strip of land containing underground or above-ground utilities and the area necessary to maintain those utilities. A "utility corridor" is contained within and is a portion of any utility right-of-way or dedicated easement.		
Utility facility. A facility for the distribution or transmission of services, including:		
A. Telephone exchanges;		
B. Water pipelines, pumping or treatment stations;		
C. Electrical substations;		
D. Water storage reservoirs or tanks;		
E. Municipal groundwater well-fields;		
F. Regional surface water flow control and water quality facilities;		
G. Natural gas pipelines, gate stations and limiting stations, limited to local distribution service and excluding fossil fuel facilities;		
H. Propane, compressed natural gas and liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users, limited to local distribution service and excluding fossil fuel facilities;		
I. Wastewater pipelines, lift stations, pump stations, regulator stations or odor control facilities; and		
J. Communication cables, electrical wires and associated structural supports.		
SETBACKS		
Definitions		
Setback. The minimum required distance between a structure and a specified line such as a lot, easement or buffer line that is required to remain free of structures.		
Applies to:	Structures	
Are poles included in code?	yes	allowed encroachment below
Allowed Encroachments		
KCC 21A.12.170 Setbacks – projections and structures allowed. Provided that the required setbacks from regional utility corridors of KCC 21A.12.140, the adjoining half-street or designated arterial setbacks of KCC 21A.12.160 and the sight distance requirements of KCC 21A.12.210 are maintained, structures may extend into or be located in required setbacks, including setbacks as required by KCC 21A.12.220.B, as follows:		
H. Telephone, power, light and flag poles.		
I. The following may project into or be located within a setback, but may only project into or be located within a five foot interior setback area if agreement documenting consent between the owners of record of the abutting properties is recorded with the records and licensing services division prior to the installment or construction of the structure:		
1. Sprinkler systems, electrical and cellular equipment cabinets and other similar utility boxes and vaults.		
HEIGHT		
Applies to:	Structures	
Are poles included in code?	yes	exception below
Exceptions		
KCC 21A.12.180 Height – exceptions to limits. The following structures may be erected above the height limits of KCC 21A.12.030-050.		
B. Fire or parapet walls, skylights, flagpoles, chimneys, smokestacks, church steeples, crosses, spires, communication and transmission and receiving structures, utility line towers and poles, and similar structures.		
WETLANDS		
Transmission or distribution lines prohibited in wetlands? No		
Allowances		
KCC 21A.24.070 Alteration exception.	A. The director may approve alterations to critical areas, critical area buffers and critical area setbacks, except for flood hazard areas, not otherwise allowed by this chapter as follows:	
	1. Except as otherwise provided in subsection A.2. of this section, for linear alterations, the director may approved alterations to critical areas, critical area buffers and critical area setbacks only when all of the following are met.	
	a. there is no feasible alternative to the development proposal with less adverse impact on the critical area;	
	b. the proposal minimizes the adverse impact to critical areas to the maximum extent practical;	
	c. the approval does not require the modification of a critical area development standard established by this chapter;	
	d. the development proposal does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest;	
	e. the linear alteration: (1) connects to or is an alteration to a public roadway, regional light rail transit line, public trail, a utility corridor or utility facility or other public infrastructure owned or operated by a public utility; or (2) is required to overcome limitations due to gravity.	
KCC 21A.24.045 Allowed alterations.	Construction of new utility corridor or utility facility	
	- Allowed within existing roadway if conducted consistent with regional road maintenance guidelines.	
	- Limited to pipelines, cables, wires and support structures of utility facilities within utility corridors if there is no alternative location with less adverse impact on the critical area and critical area buffer and meet performance criteria (including maintenance roads).	
	Construction of new residential utility service distribution line	
	- Allowed within existing roadway if conducted consistent with regional road maintenance guidelines.	
	- Allowed for residential utility service distribution lines to residential dwellings, including, but not limited to, well water conveyance, septic system conveyance, water service, sewer service, natural gas, electrical, cable and telephone if there is no alternative location with less adverse impact on the critical area or the critical area buffer and the residential utility service distribution lines meet performance criteria to the maximum extent practical.	
	Maintenance, repair or replacement of utility corridor or utility facility	
	- Allowed within existing roadway if conducted consistent with regional road maintenance guidelines.	
	- Limited to pipelines, cables, wires and support structures of utility facilities within utility corridors if there is no alternative location with less adverse impact on the critical area and critical area buffer and meet performance criteria (including maintenance roads).	
	- Allowed for onsite private individual utility service connections or private or public utilities if the disturbed area is not expanded and no hazardous substances, pesticides or fertilizers are applied.	
Definitions		
Alteration. any human activity that results or is likely to result in an impact upon the existing condition of a critical area or its buffer. "Alteration" includes, but is not limited to, grading, filling, dredging, channelizing, applying herbicides or pesticides or any hazardous substance, discharging pollutants except stormwater, grazing domestic animals, paving, constructing, applying gravel, modifying topography or removing vegetation or any other human activity that results or is likely to result in an impact to existing vegetation, hydrology, fish or wildlife or their habitats. "Alteration" does not include passive recreation such as walking, fishing or any other similar activities.		
Roadway. The maintained areas cleared and graded within a road right-of-way or railroad prism. For a road right-of-way, "roadway" includes all maintained and traveled areas, shoulders, pathways, sidewalks, ditches and cut and fill slopes. For a railroad prism, "roadway" including the maintained railbed, shoulders, and cut and fill slopes. "Roadway" is equivalent to the "existing, maintained, improved road right-of-way or railroad prism" as defined in the regional road maintenance guidelines.		
Applicant		
KCC 21A.06.070 Applicant.	Applicant: a property owner, a public agency or a public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such an easement under RCW 8.08.040, or any person or entity designated or named in writing by a property or easement owner to be the applicant, in an application for a developmnet proposal, permit or approval.	

Jurisdiction: Mercer Island
Size: 12.9 square miles
Population: 25,442 (2021)

USE DEFINITIONS		
<i>Utilities</i> : Facilities providing infrastructure services by a public utility regulated by the state through fixed wires, pipes, or liens. Such facilities may include water, sewer, storm water facilities (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication lines, cable communication lines, electrical lines and other appurtenances associated with these utilities. "Utilities" does not include wireless communication facilities, but do include wireless facilities.		
<i>Utility pole</i> : A structure designed and used primarily for the support of electrical wires, telephone wires, or television cable and may also include lighting. A new utility pole originally constructed for the purpose of providing support for a wireless communication facility (WCF) shall be regulated as a new antenna support structure.		
SETBACKS		
Definitions		
<i>Setback</i> : The distance between a development and other feature such as a property line or critical areas buffer.		
Applies to:	Buildings	
Are poles included in code?	No	
Allowed Encroachments		
Intrusions into required yards (residential): Minor building elements, hardscape and driveways, fences, retaining walls, rockeries, garages and other accessory buildings, heat pumps, air compressors, air conditioning units, and other similar mechanical equipment, architectural features, other structures less than 30" above grade.		
HEIGHT		
Definitions		
<i>Building height</i> : 1. Outside of the Town Center: The vertical distance from the average building elevation to the highest point of the roof structure excluding appurtenances. A mezzanine shall not be counted as a story for determining allowable number of stories when constructed in accordance with the requirements of the construction codes set forth in MICC title 17. 2. Within the Town Center: Building height within the Town Center (TC) zone shall be calculated pursuant to MICC 19.11.030(A).		
Applies to:	Buildings	
Are poles included in code?	No	
Exceptions		
Residential: antennas, lighting rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, solar panels, and other similar appurtenances may extend to a maximum of five feet above the height allowed for the main structure.		
Commercial: Rooftop building appurtenances, including but not limited to mechanical equipment, chimneys, and roof access structures, may extend up to ten feet above the maximum building height allowed. Rooftop appurtenances shall be located at least ten feet from the exterior edge of any building and shall not cover more than ten percent of the rooftop area.		
WETLANDS		
Transmission or distribution prohibited in wetlands? No		
Allowances		
MICC 19.07.120 – Exemptions	E.2. Repair and maintenance of existing utility facilities. Repair, maintenance, reconstruction and replacement of utility structures and conveyance systems and their associated facilities, including but not limited to service lines, pipes, mains, poles, equipment and appurtenances, both above and below ground. Exempt, but must follow mitigation sequencing to avoid and minimize. D. 2 Minor expansion of utility structures and conveyance systems and their associated facilities including service lines, pipes, mains, poles, equipment and appurtenances, both above and below ground, following consultation with the code official.	
MICC 19.07.190 – Wetlands	C.3. Prohibited activities. The following uses are prohibited within any wetland or associated buffer: removal, excavation, grading, or dredging of material; draining flooding or disturbing the wetland, water level or water table: construction, reconstruction, demolition, or expansion of any structure.	
MICC 19.07.150 – Public agency exception.	If the application of this chapter would prohibit a development proposal by a public agency, the agency may apply for an exception pursuant to this section. The code official may approve alterations to critical areas, buffers and critical area setbacks by an agency or utility when those alterations are not otherwise able to meet all of the standards in this chapter, and when the criteria in subsections (B)(1) through (B)(5) of the section are demonstrated to be met.	
Definitions		
<i>Ordinary repairs and maintenance</i> : An activity in response to the effects of aging or ordinary use, wear and tear that restores the character, scope, size, footprint or design of a servicable area, structure, or land use to its previously existing, authorized or undamaged condition; however, this is not intended to allow total replacement, substitution or reconstruction of a nonconforming structure. Activities that change the character, size, footprint or scope of a project beyond the original shall not be considered ordinary repairs and maintenance and shall result in loss of nonconforming status.		
Applicant		
MICC 19.15.060 - Application	A. The department shall not commence review of any application until the applicant has submitted the materials and fees specified for a complete applications. An application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of the applicable development regulations. The applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. All land use applications shall include, at a minimum, the following:	
	8. Verification that the property affected by the application is in the exclusive ownership of the applicant, of that the applicant has a right to develop the site and that application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (A)(9) of this section shall satisfy the requirements of this subsection;	
	9. For Type II, III and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.	

Jurisdiction: City of Duval
Size: 2.47 square miles
Population: 8,410 (2021)

USE DEFINITIONS		
"Utility" means enterprises or facilities serving customers by means of an integrated system of collection, transmission, distribution and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer, included are systems for the delivery of electricity, natural gas, cable communications, telecommunications, and water and sewer disposal.		
Transmission Lines		
"Subregional Utility" means any above ground structures or facilities (other than buildings, unless buildings are used as storage incidental to the operation of such structures or facilities) owned by a governmental entity, or any entity defined as public utility for any purpose by RCW 80.04.015 and is used in connection with production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil or electric signals when these facilities are serving a wider customer base than a local neighborhood.		
SETBACKS		
Definitions		
"Setback" means the minimum required distance between a structure and a lot line, easement or buffer line that is required to remain free of structures.		
"Structure" means object constructed or installed by man, included but not limited to buildings, towers, smokestacks, overhead transmission line, etc., excluding fences retaining walls three feet or less in height, and decks eighteen (18) inches or less above grade/paved area.		
Applies to:	Structures	
Are poles included in code?	Yes	allowed encroachment
Allowed Encroachments		
DMC 14.64.170 - Nonresidential land uses in residential zones.	Except for utility facilities and uses, all nonresidential uses located in residential zones (R4-R20) shall be subject to the following requirements: C. Buildings and structures shall conform to setback requirements set out in DMC 14.12-14.16.	
HEIGHT		
Definitions		
"Structure" means object constructed or installed by man, included but not limited to buildings, towers, smokestacks, overhead transmission line, etc., excluding fences retaining walls three feet or less in height, and decks eighteen (18) inches or less above grade/paved area.		
Applies to:	Structures and buildings	
Are poles included in code?	Yes	exception to limits
Exception		
DMC 14.64.140 - Heights - Exceptions to limits	The following structures may be erected above the height limits to the minimum height necessary to support the use as determined by the director: A. Roof structures housing or screening elevators, fire access stairways, tanks, ventilating fans or similar equipment required for building operation and maintenance, and B. Fire or parapet walls, skylights, flagpoles, chimneys, smokestacks, church steeples, communication transmission structures, private amateur radio facilities, utility line towers and poles, and similar structures.	
WETLANDS		
Transmission or distribution prohibited in wetlands?	Yes, Category I wetlands. Public Agency and Utility Exception provision provides allowance.	
Allowances		
DMC 14.42.050 Allowed Activities	A. Maintenance, operation, and/or repair of existing dikes and drainages, existing stormwater facilities rights-of-way, trails, road, utilities, and buildings within sensitive areas, provided that activity does not further alter, impact, or encroach upon the sensitive area or buffer or further affect the process and functions of sensitive areas, and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair and provide further that: 1. The applicant shall submit a written description of the maintenance activity to the director with all of the following general information: a. Type, timing, frequency and sequence of the above maintenance activity to be conducted; b. Type of equipment to be used (hand or mechanical); c. Manner in which the equipment will be used; d. Best management practices to be used; and e. Any chemical applications to be used. 2. The applicant's written description may be valid for up to 5 years provided that there is no significant change, as determined by the director, to the activities submitted in the written description for the maintenance activity or to the natural environment.	
DMC 14.42.070 -Exceptions	A. Public Agency and Utility Exception. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section: 1. The public agency and utility exception shall apply to the department and include a sensitive area study, including mitigation plan, if necessary; and any other project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21 RCW). 2. The director may approve alterations to sensitive areas, buffers and sensitive area setbacks by an agency or utility not otherwise allowed by this chapter if the following criteria are met: a. There is no other reasonable alternative to the activity or proposed development with less impact on the sensitive area; and b. The activity or development proposal is designed to avoid, minimize, and mitigate the impact on environmentally sensitive areas consistent with the avoidance and mitigation sequencing requirements in this chapter, and, if applicable: c. The proposed development or activity is of linear nature and is on an existing corridor or connects to public lands, trails, utility corridors, rights-of-way or other public infrastructure, or is required for functional reasons such as gravity flow.	
DMC 14.42.220 - Wetland alterations	The following activities may be permitted in wetlands and/or wetland buffers when all the requirements of this section have been fulfilled: C. Utility lines in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible conveyance alternative is available. Utility lines shall be constructed to minimize physical, hydrological and ecological impacts to the wetland, and meets all of the following: 1. The utility line is located as far from the wetland edge as possible and in manner that minimizes disturbance of soils and vegetation; 2. Wetland alteration is only allowed when consistent with applicability of subbasin management groups. 3. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation. 4. Buried utility lines shall be constructed in a manner that prevents adverse impacts to subsurface drainage. This may include the use of trench plugs or other devices as needed to maintain hydrology.	
Definitions		
"Maintenance and repair" means work required to keep existing improvements in their existing operational state. This does not include any modification that changes the character, scope, or size of the original structure, facility, utility or improved area.		
"Utilities" means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.		
Applicant		
DMC 14.06.010 A definitions	"Applicant" means a person who applies for any permit or approval to do anything governed by this code and who is the owner of the subject property, the authorized agent of the owner, or the City.	

Jurisdiction: City of Snoqualmie
Size: 7.42 square miles
Population: 13,810 (2021)

USE DEFINITIONS		
"Public Utilities" is not defined.		
SETBACKS		
Definitions		
"Setback" means the distance buildings, structures or uses must be removed from a lot line, and in the case of a building, is measured from the property line to a building's closest vertical wall.		
Applies to:	Buildings and structures	
Are poles included in code?	No	
Allowed Encroachments		
Residential zones: SMC 17.15.040.J: The following architectural features on principal buildings and uses may encroach up to three feet into setbacks, provided, no feature shall encroach into the setback closer to the property line than where fire-resistive construction is required; planter boxes, fireplace structures not wider than 8 feet, not more than one bay window, no more than one garden window, and other similar features.		
Commercial/Industrial zones: No code provision.		
HEIGHT		
Definitions		
"Height" as applied to a building or structure means the vertical distance measured from the average elevation of the proposed finished grade around the building or structure to the highest point of a flat roof and the mean		
Applies to:	Buildings and structures	
Are poles included in code?	No	
Exception		
Commercial/Industrial zones: SMC 17.20.040: Church spires, church towers, flagpoles, antennas, clerestories, and fire towers of a safe height may be permitted as a conditional use.		
Residential zones: SMC 17.15.040: Church spires, church towers, flagpoles, antennas and fire towers of a safe height may be permitted as a conditional use.		
WETLANDS		
Transmission or distribution prohibited in wetlands?	No	
Allowances		
SMC 19.12.040 Allowed Activities.	A.5. Normal and routine maintenance or repair of existing utility or street rights-of-way or utility structures including drainage facilities. Utility or street rights-of-way shall be maintained in a manner that meets the objective of safe and efficient use of the right-of-way, while eliminating the use of chemical herbicides within the corridors. Normal and routine maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.	
	B. Public Agency or Utility Exception. If the application of this chapter would prohibit a development proposal by a public agency or utility, the agency or utility may apply for an exception pursuant to this section. After holding a public hearing, a hearing examiner may approve the exception if he/she finds that there is no other practical alternative to the proposed development with less impact on critical areas and their buffers, and the proposal minimizes the impact on critical areas and their buffers. Any decision of the hearing examiner is final unless appealed.	
SMC 19.12.170 Wetlands	H. Permitted Uses and Alterations. Subject to the requirements of the underlying zoning designation and other applicable codes and ordinances, the following uses and alterations shall be permitted within wetlands and their buffers, in accordance with the standards set forth in this section. Mitigation per the requirements of this chapter shall be required for any impact to the critical area from these permitted uses and alterations.	
	4. Public Utilities. Public utilities may be permitted in the wetland and wetland buffer, provided no practical alternative exists and adequate provision is made to	
Definitions		
"Alteration" means any human-induced action that changes the existing condition of a critical area. Alterations include, but are not limited to: grading; filling; dredging, draining; channelizing; cutting; pruning; topping; clearing;		
Applicant		
	Snoqualmie does not define applicant or who may apply under development review section of the code. Applicant is defined under subdivision and wireless sections of code (not a consistent definition).	

Jurisdiction: City of Woodinville
Size: 5.63 square miles
Population: 13,425 (2021)

USE DEFINITIONS		
"Street/utility pole" means telephone, utility/electric, cable television, or street light poles located in public right-of-way.		
"Regional utility corridor" means a right-of-way tract or easement which contains transmission lines or pipelines for utility companies, excluding distribution lines contained within street rights-of-way or lines serving individual lots or developments.		
"Utilities" means services, facilities and infrastructure that produce, transmit, carry, store, process or dispose of electrical power, gas, water, sewage, communications, oil, stormwater and the like. This includes:		
(a) Primary: facilities and infrastructure that are provided by a public agency, utility, or franchise which produce, transmit, convey, store, process, or dispose of essential utility services throughout the area. These include, but are not limited to, water storage tanks and lines, reservoirs and booster stations, wastewater interceptors, sewage pump stations and lines, electrical transmission substations and high-tension and distribution power lines, natural gas pipelines, and associated equipment, and including telecommunication facilities provided by a public or private entity.		
(b) Accessory: on-site utilities that connect directly to uses and are considered part of the primary use.		
SETBACKS		
Definitions		
"Setback" means the minimum distance from the property line, access easement boundary, critical area buffer boundary, or other buffer line to where a structure may be built.		
"Setback area" means the area of a lot or building site between the property line and the limits set by City regulations within which no permanent structure may intrude unless allowed otherwise by law.		
Applies to:	Structures	
Are poles included in code?	No	Above ground utilities in this context refers to ancillary equipment such as transformers, meters, vents, and other related equipment (WMC 15.39.010(4)).
Allowed Encroachments		
WMC 21.32.030(5). The following buildings and structures may protrude into setback areas: (a) Utilities, provided above ground utilities are screened pursuant to WMC15.39.010(5).		
HEIGHT		
Definitions		
"Height" means the vertical distance measured from the designated grade elevation to the highest point of a structure or otherwise allowed, excluding elements specially exempt from height calculations.		
Applies to:	Structures	
Are poles included in code?	No	
Exceptions		
WMC 21.32.040(6) Building and Structure Height Exceptions. The following structures may be erected above the height limits set forth in subsections (2), (3) and (4) of this section.		
List does not include utility poles.		
WETLANDS		
Transmission or distribution prohibited in wetlands?	Yes	Public entity critical area exception allows impacts to wetlands.
Allowances		
WMC 21.51.040 Complete Exemptions.	1. (c) Modifications to local collection and distribution utility lines, mains, equipment, appurtenances, including electrical facilities with an associated voltage of 55,000 volts or less, not including substations; public sewer local collection; public water local distribution; natural gas, cable communications; or telephone facilities. Modifications to local collection and distribution utilities may be allowed in critical areas or their buffers, as follows:	
	(i) Normal and routine maintenance or repair of existing utility structures; and	
	(ii) Replacement, operation, repair, modification, installation, relocation, or construction when such facilities are located within an improved public road right-of-way or City authorized private roadway.	
WMC 21.51.320 Wetlands - Permitted activities.	(1) Alterations. Alterations to wetlands and their buffers may be allowed if the City determines that there is no practical alternative location with less adverse impacts on the wetland or its buffer, subject to mitigation requirements set forth in this chapter.	
	(b) Public and private utilities. Utilities may be allowed in wetland buffers if the following criteria are met. (see code for criteria)	
	(c) Drilling for Utilities or Utility Corridors under a Wetland.	
	(d) Utility Joint Use. Joint use of an approved utility corridor by other utilities may be allowed.	
WMC 21.51.060 Relief from critical area regulations.	(2) If the application of this chapter would prohibit a development proposal by a public agency or public utility, the public agency or public utility may apply for a public entity critical area exception pursuant to WMC 21.84.030.	
Definitions		
"Alteration, critical area" except when specified otherwise by this title, means any development or human-induced action which changes and/or impacts the existing condition of a critical area or buffer.		
"Alterations" do not include walking, fishing, other types of passive recreation, or other similar activities.		

Applicant	
WMC 12.30.020 Definitions (Public Utility and Telecommunications Right-of-Way Use)	"Applicant" means any person or entity that applies for permit pursuant to this chapter. "Public right-of-way" means any highway, street, alley, or other public right-of-way, or easement for motor vehicle under the jurisdiction and control of the City which has been acquired, established, dedicated, or devoted to such purposes, but only to the extent of the City's right, title, interest, or authority to grant a permit to occupy and use such streets and easements for telecommunications and utility facilities. "Public utility" as used herein, means a company or entity engaged in any business or service regularly supplying the public with some commodity or service which is a public need and consequence, such as natural gas, electricity, water or sanitary sewer, including any business subject to regulation as to rates and service by the Utilities and Transportation Commission under the provisions of RCW Title 81.
WMC 21.82.010, 020, 030, 040, 050, 060, 070, 080, 090, 100, 110, 120, 130, 150, 160	Any owner may apply for [insert permit type].
WMC 21.82.140	Any applicant may apply for a transportation infrastructure deviation.
WMC 21.11A.020 "A" definitions	"Applicant" means a person who files an application for permits or development approval who is either the property owner or a primary proponent of a project, which can include a contract purchaser, or authorized agent of the property owner.

Jurisdiction: City of Port Orchard

Size: 8.5 square miles

Population: 15,979 (2021)

USE DEFINITIONS		
"Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunication services and water, and for the disposal of sewage.		
POMC 20.39.260 Utilities. (1) Defined. Public or private infrastructure serving a limited area with no on-site personnel (minor utility) or serving the general community with on-site personnel (major utility). Utilities include the following:		
(a) Minor utilities, including on-site stormwater retention or detention facility, neighborhood serving telephone exchange/switching center, gas/electric/telephone/cable transmission lines, water and wastewater pump station or lift station, gas gates, reservoir, control structure, drainage well, water supply, water well.		
(b) Major utilities, including aeration facility, electrical substation, electric or gas generation plant, filter bed, transmission towers, waste treatment plant, water pumping facility, water tower or tank.		
SETBACKS		
Definitions		
"Setback" means the minimum required distance between a structure or portion thereof and a lot line of the lot on which it is located, or another line as described in a particular section		
Applies to:	Buildings and structures	
Are poles included in code?	No	Not included as an allowed encroachment under utilities.
Allowed Encroachments		
POMC 20.40.040 Setback encroachments. (5) Mechanical Equipment and Utility Lines.		
(b) Minor structures accessory to utilities (such as hydrants, manholes, transformers, and other cabinet structures and related fence(s) may encroach into a required rear or side		
(c) Minor utilities below and covered by the ground may encroach into a required setback.		
HEIGHT		
Definitions		
"Building height" means, except when otherwise specified in this code, the vertical distance from grade plane to the average height of the highest roof surface.		
Applies to:	Buildings and structures	
Are poles included in code?	No	Not included as an allowed encroachment.
Exceptions		
POMC 20.40.050 (2) Height encroachments. encroachments. Any height encroachment not listed below is prohibited except where the director determines that encroachment is similar to a permitted encroachment listed below. (see code for list of encroachments)		
WETLANDS		
Transmission or distribution prohibited in wetlands?	No	
Allowances		
POMC 20.162.032 Exemptions	(3) The following land use, development, building activities, and uses shall be exempt:	
	(b) Operation Maintenance and Repair. Operation maintenance or repair of existing structures not requiring permits or city approval, only if activity does not further alter or increase the impact to critical areas or their buffers.	
	(f) Activities within Improved Right-of-Way. Construction of new utility facilities, improvements, or upgrades to existing utility facilities that take place within existing improved rights-of-way or existing impervious surfaces that do not increase the amount of impervious surface.	
POMC 20.162.034 Exceptions	(1) Public agencies. Public agencies may make an application for exception to the director for construction of items such as roads, utilities, infrastructure, and associated facilities.	
POMC 20.162.056 Additional development standards for regulated uses.	(7) Utilities in Wetlands or Wetland Buffers.	
	(a) Construction of new utilities outside the road right-of-way or existing utility corridor may be permitted in wetlands or wetland buffers, only when no reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required in the filing and approval of applicable permits and special reports required by this chapter.	
	(c) New utility corridors shall not be allowed when the regulated wetland or buffer has known locations of federal or state listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidate or state monitor, except in those circumstances where an approved habitat management plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer.	
	(d) New utility construction and maintenance shall protect the regulated wetland and buffer environment by utilizing the following methods:	
	(i) New utility corridors shall be aligned when possible to avoid cutting trees greater than 12 inches in diameter at breast height (four and one-half feet), measured on the uphill side.	
	(ii) New utility corridors shall be revegetated with appropriate native vegetation at preconstruction densities or greater, immediately upon completion of construction, or as soon thereafter as possible, if due to seasonal growing constraints. The utility shall ensure such vegetation survives.	
	(iii) Any additional utility corridor access for maintenance shall be provided as much as possible at specific points, rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than 15 feet; and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.	
	(iv) The department may require other additional mitigation measures.	
	(e) Utility corridor maintenance shall include the following measures to protect the regulated wetland and buffer environment:	
	(i) Where feasible, painting of utility equipment such as power towers shall not be sprayed or sandblasted, nor should lead-based paint be used.	

	(ii) No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the EPA and Ecology. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label. Within wetlands, applicator must be licensed to use aquatic herbicides.
Definitions	
"Alteration" means any human-induced action that changes the existing condition of a critical area. Alterations include but are not limited to grading; filing; grubbing; dredging; draining; channelizing; cutting; pruning; limbing or topping; clearing, relocating or removing vegetation, except noxious weeds identified by the Washington Department of Agriculture or the Kitsap County cooperative extension; applying herbicides or pesticides or any other hazardous or toxic substance; discharging pollutants, except stormwater; grazing domestic animals; paving; construction; application of gravel; modifying for surface water management purposes; or any other human activity that changes the existing vegetation, hydrology, wildlife or wildlife habitat. Alteration does not include walking, passive recreation, fishing or other similar activities.	
"Public utility" means a business or service, either governmental or having appropriate approval from the state, which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, sewer and/or wastewater, water, transportation, or communications.	
"Utilities" means facilities and/or structures which produce or carry electric power, gas, sewage, water, communications, oil, publicly maintained stormwater facilities, etc.	
"Utility corridor" means areas identified in the comprehensive plan for utility lines, including electric, gas, sewer, water lines; and public right-of-way and other dedicated utility right-of-way on which one or more utility lines are currently located. The term "other dedicated utility right-of-way" means ownership, easements, permits, licenses or other authorizations affording utilities the right to operate and maintain utility facilities on private property.	
Applicant	
POMC 20.12.010 Definitions	"Applicant" means the owner of land proposed for land development or use or its representative who shall have express written authority to act on behalf of the owner. Written consent shall be required from the legal owner of the property.

Jurisdiction: City of Oak Harbor
Size: 12.32 square miles
Population: 24,709 (2021)

USE DEFINITIONS		
"Public utility" means a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas and transportation of persons and freight.		
SETBACKS		
Definitions		
"Setback and yard requirements" are the distances that buildings or uses must be removed from their lot lines. Setbacks shall be measured, where applicable, from proposed or actual public		
Applies to:	Buildings and uses	
Are poles included in code?	No	
Allowed Encroachments		
accessory buildings allowed in rear yards.		
HEIGHT		
Definitions		
"Building height" means the vertical distance from the average natural grade level to the highest point of the coping of a flat roof or the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roofed. "Average natural grade" shall be defined as the average elevation of the highest and lowest corners of the building.		
Applies to:	Buildings	
Are poles included in code?	No	
Exceptions		
OHMC 19.28.030 Height limits - Exceptions. Buildings and structures shall not exceed the height limitations as specified for the use district in which they are located unless specifically excepted as set out in OHMC 19.28.040 and 19.28.050. Additional height, not to exceed 10 feet, may be used for multifamily and commercial uses permitted in the underlying zone for the projects that are in accordance with low impact development (LID) through the implementation of the LID performance standards or on-site stormwater BMP lists.		
WETLANDS		
Transmission or distribution prohibited in wetlands?	No	
Allowances		
OHMC 20.12.040 Exempt activities.	(2) Operation, maintenance, repair, modification, addition to, or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase the impacts to, or encroach further within, a critical area or buffer and there is no increased risk to life or property as a result of action. Operation and maintenance include vegetation management performed in accordance with best management practices; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of a structure or utility, and do not directly impact species or habitat protected under Chapter 20.25 OHMC.	
OHMC 20.12.050 Public agency and utility exceptions.	(1) If the application of critical areas regulations in this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.	
Definitions		
"Development" means a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any other project of a temporary or permanent nature which modifies structures, land, or shorelines and which does not fall within the allowable exemptions contained in the Oak Harbor Municipal Code.		
Applicant		
OHMC 19.48.032 Requirements for application submittal	The applicant shall submit the following items: (2) A verified statement by the applicant that property affected by the application is in the exclusive ownership of the applicant, of that the applicant has submitted the application with the consent of all owners of the affected property.	

Jurisdiction: Town of Coupeville
Size: 1.95 square miles
Population: 1,957 (2021)

USE DEFINITIONS	
"Public utility" means a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, sanitary sewer and storm sewer systems for persons and freight.	
SETBACKS	
Definitions	
"Setback" means the lot area between the lot lines and the building area.	
Applies to:	Structures
Are poles included in the code?	No
Allowed Encroachments	
CTC 16.12.030 - Setback standards	E. Projections into required setbacks. The following structures may project into required front, rear or side yards: 1. Paved terraces may project into required front, rear or side setbacks provided that no structures placed there shall violate other requirements of this title. 2. Unroofed landings, decks and stairs may project into required front and rear setbacks only, provided no portion than a light handrail shall extend higher than forty-two (42) inches above the finished grade level. 3. Window sills, belt courses, cornices, eaves and similar incidental architectural features may project not more than 2 feet into any required setback. 4. Open fire escapes may project not more than four feet six inches into any required setback.
HEIGHT	
Definitions	
"Height" means the measurement from the vertical datum to the highest point of the roofline. On any building constructed seaward of mean high higher water, the vertical datum shall be the elevation of the extreme high tide, as shown on the official United States tide table for the year in which the permit is issued.	
Applies to:	Structures
Are poles included in the code?	No
Exceptions	
CTC 16.12.050 B. Exemptions.	The height limitations contained in this title do not apply to spires, belfries, cupolas, chimneys, antennas, water tanks, ventilators, elevator housing, other structures placed above the roof level, or when a height in excess of twenty-eight (28) feet is necessary to comply with the Ebey's Landing National Historical Reserve Design Guidelines for alterations of historic buildings and structures, provided, however, that no structure or portion of any structure hereafter erected shall interfere with Federal Aviation Administration Regulations on airport approaches.
Wetlands	
Transmission or distribution prohibited in wetlands?	No
Allowances	
CTC 16.34.120 - Exemptions	2. Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems. If the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.
CTC 16.34.150 - Allowed activities	C.4. Minor Utility Projects. Utility projects which have minor or short-duration impacts to critical areas, as determined by the town planner in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s), provide that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria: a. There is no practical alternative to the proposed activity with less impact on critical areas; b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and c. The activity involves disturbance of an area less than seventy-five (75) square feet.
CTC 16.34.130 - Exception - Public agency and utility	A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.
Definitions	
<i>Repair or maintenance</i> - Any activity that restores the character, size, scope and design of a serviceable area, structure or land use to its previously authorized and undamaged condition. Activities that change the character, size or scope of a project beyond the original design and drain, dredge, fill, flood or otherwise alter critical areas are not included in this definition.	
Applicant	
dit	"Applicant" means a person or entity that has applied for a project permit.

Additional Jurisdictions

Pierce County	PCC 18.30.020.A	Permits and Approvals Required	The property owner or authorized agent shall obtain applicable permits and approvals prior to commencing development.
Bellevue	LUC 20.25.030.A	Who May Apply	The property owner, authorized agent of the owner, or Regional Transit Authority authorized by LUC 20.25M.010.C to apply for permits may apply for any type of Process I, Process II, or Process III land use decision.
Kirkland	KZC 145.15	Who May Apply	Any person may, personally or through an agent, apply for a decision regarding property he/she owns.

Marlene Schubert

From: Myra <seabeckwa@aol.com>
Sent: Friday, April 5, 2024 2:20 PM
To: PCD
Subject: RE: PSE Code Amendment Requests #PLN52234

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City of Bainbridge Island
ATTN: Planning Department
280 Madison Avenue N
Bainbridge Island, WA 98110

Transmitted via email to: pcd@bainbridgewa.gov

RE: PSE Code Amendment Requests #PLN52234

Dear Joanne Mendenhall, Planning Commissioners and City Council,

I am writing in response to the code amendment request from Puget Sound Energy (PSE) to support the operation of the electrical system on Bainbridge. The requested amendments will facilitate the installation, upgrade and maintenance of PSE's distribution and transmission line infrastructure, including infrastructure to support the electrification of ferries. I am supportive of PSE's efforts to continue to upgrade and maintain their infrastructure to improve reliability and capacity on the island, and encourage the City to move PSE's requests forward.

It is my understanding that PSE has worked with the City to request these code amendments for a significant amount of time, as part of its efforts to advance the projects identified in the 2019 *Solutions Report*. Many of these projects cannot move forward without the code amendments, making the Bainbridge Island electrical system vulnerable to frequent outages and safety hazards. Additionally, PSE will not be able to serve Washington State Ferries with a power source for ferry electrification.

I have lived on the island for a long time and currently live in the Winslow core area, which will benefit from the reliability projects. Improved reliability and capacity on the Island and continued updates to the electric infrastructure will improve overall quality of life on the Island. My neighborhood also includes numerous senior living facilities – islanders living there are very negatively impacted by outages. They cannot tolerate the cold during outages, have medical devices that depend on power, and may not be able to afford to replace food in their refrigerator and freezer after an extended outage.

I'm glad to support PSE's attempt to maintain and update their infrastructure to improve reliability and capacity on the Island. I encourage the City to support PSEs code amendment requests to support the operation of the electrical system on Bainbridge.

Thank you,

Marlene Schubert

From: Tom Hansen <tom.hansen206@gmail.com>
Sent: Tuesday, April 23, 2024 1:37 AM
To: PCD
Subject: PSE Code Amendment Requests #PLN52234
Attachments: PSE Code Amendment Requests #PLN52234.docx

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Dear Joanne Mendenhall, Planning Commissioners and City Council,

My public comment is attached.

City of Bainbridge Island
ATTN: Planning Department
280 Madison Avenue N
Bainbridge Island, WA 98110
Transmitted via email to: pcd@bainbridgewa.gov

RE: PSE Code Amendment Requests #PLN52234

Dear Joanne Mendenhall, Planning Commissioners and City Council,

I am writing in response to the code amendment request from Puget Sound Energy (PSE) to support the operation of the electrical system on Bainbridge. The requested amendments will facilitate the installation, upgrade and maintenance of PSE's distribution and transmission line infrastructure, including infrastructure to support the electrification of ferries and to support the City's greenhouse gas (GHG) emission reduction goals. I am supportive of PSE's efforts to continue to upgrade and maintain their infrastructure to improve reliability and capacity on the island, and encourage the City to move PSE's requests forward.

To support electric reliability and capacity on Bainbridge Island, PSE is working to implement the projects identified in PSE's 2019 Bainbridge Island Electric System Solutions Report. Along with upgrades at our existing substation sites, PSE needs to maintain, upgrade, and install linear electric transmission and distribution infrastructure to bring power to the substations and bring power from the substations to homes and businesses. The transmission upgrades include rebuilding portions of the existing Winslow Tap transmission line, including replacing poles and wires, improving access, and managing vegetation within the corridor. PSE is also proposing to construct a new transmission line within an existing distribution line route between Murden Cove and Winslow Substations to provide a redundant power source for each substation should there be an outage on the existing transmission line serving each substation. On the distribution side, PSE is also proposing a number of upgrades and improvements, including installation of a power source from Murden Cove Substation for Washington State Ferries to electrify their ferry fleet, as well as installing new distribution infrastructure to support providing reliable power to the community.

It is my understanding that PSE has worked with the City to request these code amendments for a significant amount of time, as part of its efforts to advance these projects identified in the 2019 Solutions Report. Many of these projects cannot move forward without the code amendments, making the Bainbridge Island electrical system vulnerable to frequent outages and safety hazards. Additionally, PSE will not be able to serve Washington State Ferries with a power source for ferry electrification.

I live on Fort Ward Hill Rd, in the no power zone. Since moving here in 2010 our area has been plagued with a significant number of power outages impacting all 4000+ customers.

I would like to provide a little background for my support of PSE. Following the D. Hittle Report, I undertook my own problem analysis and requested an addition five years of power outages data from PSE broken down by type (transmission/Distribution), Root Cause (vegetation, animal, equipment, etc.), and substation. I was able to combine this data with the D. Hittle report for a high-level ten-year analysis of root causes and a five-year analysis by substation. After a significant amount of questioning and discussion, I confirmed PSE assessment (I am a septic, "In God We Trust, All Others Bring Data"). The bottom line is that the transmission lines at end of life, there is too much vegetation, and unless

something is done after 30 years of trying, we will continue to have unreliable and inadequate power for future needs.

Early in the project to upgrade Bainbridge's electric grid for both reliability and increased capacity, I engaged with PSE, stake holders, and have attended every meeting. I provided feedback on route selection. Attended informational sessions on undergrounding and electromagnetic waves. Have found that PSE has been transparent and engaged with the community, however, the community at large during COVID and currently has not been engaged with PSE. The same concerns that were that have been addressed repeatedly still come up as each individual wakes up. Basically, most islanders have limited understanding how the island gets its electricity, how trees impact undergrounding and reliably, and some are convinced that they are in danger of electromagnetic waves. All were addressed by PSE in previous project phases.

PSE has used industry expert consultants for their technical solutions and their own technical staff to develop the proposed solutions. Things change as each level of the onion is peeled from scoping to engineering design. Because of the lack of engagement and basic understanding to the technical issues, I strongly support letting the experts provide the solutions and the policy makers develop an understanding of the solution. That may take a significant level of engagement on the part of the policy makers. I certainly did for me and I choose to engage because it was important to me. It is also important to all islanders.

I want Bainbridge Island to be a place where myself, my family and children can live and grow in for many years to come. Improved reliability and capacity on the Island and continued updates to the electric infrastructure will improve overall quality of life on the Island. I'm glad to support PSE's attempt to maintain and update their infrastructure to improve reliability and capacity on the Island. I encourage the City to support PSE's code amendment requests to support the operation of the electrical system on Bainbridge.

Tom Hansen
1525 Fort Ward Hill Rd NE
Bainbridge Island, WA 98110

From: [Kimberly McCormick](#)
To: [Ariel Birtley](#); [Sarah Blossom](#); [Alexander Preudhomme](#); [Criss Garcia](#); [Peter Schaab](#); [Sean Sullivan](#); [Benjamin Deines](#)
Cc: [Patricia Charnas](#); [HB Harper](#); [Joanne Mendenhall](#); [Ashley Mathews](#); [Renee Argetsinger](#)
Subject: Planning Commission April 25, 2024 Public Comment Letter - PSE Winslow Tap proposal to amend BIMC 2.16.020.D
Date: Thursday, April 25, 2024 1:18:08 PM
Attachments: [Planning Commission Comment Letter April 25 2024.pdf](#)

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Dear Planning Commissioners,

Woody Stables, LLC, owner of Bulrush Farm, would like to submit the attached comment letter regarding the PSE request to amend BIMC 2.16.020.D as part of the Winslow Tap transmission line project.

Thank you for your consideration of these comments as you discuss the requested code amendment during this evening's Planning Commission meeting.

All the best,

Kim McCormick

Kim McCormick

Attorney for Woody Stables, LLC

Kim McCormick, Attorney at Law
Law Office of Kim McCormick, PLLC
3920 Southern Cross Road NE
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Law Office of Kim McCormick, PLLC

April 25, 2024

City of Bainbridge Island
Planning Commission
280 Madison Avenue N
Bainbridge Island, WA 98110

Re: Public Comment – PSE Winslow Tap Transmission Line Rebuild – Request to Amend
Bainbridge Island Municipal Code Section 2.16.020.D – PLN 52234 LDR

Dear Planning Commission Vice Chair Blossom and Commissioners Birtley, Preudhomme, Garcia, Schaab, Sullivan and Deines:

I represent Woody Stables, LLC (Woody Stables), the owner of Bulrush Farm, a property that will be directly affected by Puget Sound Energy's request to amend BIMC Section 2.16.020.D. As we have explained in detail in our prior comment letters to the Planning Commission (September 22, 2023; February 22, 2024; March 27, 2024), PSE is proposing to create on Bulrush Farm (1) a permanent access road to the Winslow Tap transmission line through working horse pastures; (2) a permanent gate from the farm to the transmission line corridor; and (3) three "dispersion areas" for stormwater management associated with the transmission line rebuild that would flow into a Type-F (fish bearing) stream located on the farm.

The City's current code language in Section 2.16.020.D protects Bainbridge property owners, the City and its taxpayers, and the City should be applauded for its foresight in adopting that language. The existing code provision protects private property owners by encouraging good faith discussions with a potential condemner, and protects the City and its taxpayers with a permit process that reviews environmental impacts and consistency with the Comprehensive Plan and local and state regulations based on a site plan that PSE has a legal right to implement. PSE has not demonstrated any reason why the City should make the proposed change, other than making it easier to exercise eminent domain over third party property.

PSE's proposed code change would harm Bainbridge property owners, the City and its taxpayers by:

- (1) Discouraging PSE from examining ways to avoid the use of third party property before applying for permits;
- (2) discouraging PSE from engaging in early negotiations to voluntarily obtain third party authorization for the use of such property;
- (3) providing an approved City permit for PSE to use as evidence in a subsequent eminent domain proceeding that the land is "required and necessary" for a public purpose; and
- (4) wasting valuable City staff time and resources in reviewing and evaluating the impacts of permit applications based on project descriptions that are likely to change, depending on the outcome of future negotiations or eminent domain proceedings to obtain legal rights to third party properties.

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(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

Law Office of Kim McCormick, PLLC

Bainbridge is not alone in enacting code provisions that protect Bainbridge property owners and the City from this type of harm. As described in the attachment to this letter, PSE included in its Code Amendment Support a document listing jurisdictions in which it operates that have similar code provisions requiring proof of legal right to use private property as a permit application requirement. They include Island County, Vashon Island, Mercer Island, Duvall, Port Orchard and Oak Harbor.

PSE's proposed code change would encourage and facilitate PSE's use of eminent domain to acquire third party property by providing PSE with an approved City permit for a project that includes the use of that property before PSE has legal rights to it. Under state law, PSE must show in eminent domain proceedings that the public interest requires condemnation of the proposed land because the property is "required and necessary for the proposed purposes." RCW 8.20.070. Without an approved permit, PSE would have to demonstrate that there are no feasible options for accomplishing its objectives without using private property. With an approved City permit, PSE can argue that the land is "required and necessary" because it is part of an approved project permit. This removes the incentive for PSE to design its project in a way that avoids the use of private property or reach a negotiated agreement with third party property owners. There is no legal requirement under state law for PSE to obtain a City permit before it can initiate condemnation proceedings.

State law discourages the use of eminent domain to acquire private property. RCW 8.26.180 specifically states that "every reasonable effort shall be made to acquire expeditiously real property by negotiation." Before those negotiations begin, PSE must appraise the property, establish an amount it believes to be just compensation for that property and make an offer to acquire it for that full amount. None of that has occurred with respect to Bulrush Farm.

Finally, the City enacted BIMC 2.16.020.D to protect private property owners and the City by requiring project applicants to demonstrate that they have the legal right to use third party property included in a permit application before the City will accept the application. Notwithstanding this current code requirement, the City accepted PSE's permit applications for the Winslow Tap in February 2023, deemed them complete, initiated and concluded a SEPA public comment period in September 2023, and has continued to keep the applications on file. During that comment period, the City received numerous public comments from Bainbridge property owners objecting to PSE's plans to use their property, all without their permission.

Law Office of Kim McCormick, PLLC

Woody Stables urges the Planning Commission to maintain its existing language in BIMC 2.6.020.D, which protects the City, its taxpayers and its private property owners and establishes a fair process for evaluating project applications.

Sincerely,

Kimberly McCormick

Kimberly McCormick
Attorney for Woody Stables, LLC

cc: Patricia Charnas, Planning Director
HB Harper, Planning Manager
Joanne Mendenhall, Planner
Councilmember Ashley Mathews, Liaison to the City Council

Law Office of Kim McCormick, PLLC

Attachment

Permit Application Code Provisions in Jurisdictions In Which PSE Operates

Island County	Applicant means any person who files an application subject to the review under titles 16 or 17 who is either the person(s) identified in the assessor's records as the owner of the property on which the proposed activity would be located or the authorized agent of such person.
Vashon Island	Applicant, a property owner, a public utility or a public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such an easement under RCW 8.08.040, or any person or entity designated or named in writing by a property or easement owner to be the applicant, in an application for a development proposal, permit or approval
Mercer Island	8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (A)(9) of this section shall satisfy the requirement of this subsection; 9. For Type II, III and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.
City of Duvall	"Applicant" means a person who applies for any permit or approval to do anything governed by this code and who is the owner of the subject property, the authorized agent of the owner, or the City.
City of Port Orchard	"Applicant" means the owner of land proposed for land development or use or its representative who shall have express written authority to act on behalf of the owner. Written consent shall be required from the legal owner of the property.

Law Office of Kim McCormick, PLLC

City of Oak Harbor

The applicant shall submit the following items: (2) A verified statement by the applicant that property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all owners of the affected property.

From: [Kimberly McCormick](#)
To: [Patricia Charnas](#); [HB Harper](#); [Joanne Mendenhall](#)
Cc: [Renee Argetsinger](#)
Subject: PSE Winslow Tap Project - PLN 52116 and PLN 52234 LDR - comments on PSE proposed code amendment to BIMC 2.16.020.D
Date: Thursday, May 16, 2024 9:32:04 AM

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Good morning Planning Director Charnas, Planning Manager Harper and Planner Mendenhall,

During the Planning Commission meeting on April 25, 2024, the Planning Commission asked City staff to bring back revised language regarding Preliminary Staff Recommendation Option 3A for the PSE proposal to amend BIMC 2.16.020.D. Woody Stables, LLC would like to request that City staff consider the following in responding to the Planning Commission's request:

1. With respect to the notice provision, we would like to suggest that notice must be provided to third party property owners at least 6 months before PSE submits any permit application that includes private property that PSE does not have legal authorization to use. The notice must include the full scope and extent of proposed use of private property, and a 6-month timeframe will provide adequate opportunity for property owners to understand what PSE is proposing and participate in discussions with PSE regarding potential alternatives to avoid or minimize the proposed use of their property, before PSE has finalized its proposals and site plans for submission to the City.
2. With respect to the applicability of Planning Staff Option 3A, Woody Stables requests that it apply to all land use permits and not just to building or grading permits. The private property issues that we have been discussing arise as a result of proposed site plans for work that PSE is requesting the City to authorize through the review and issuance of various land use permits. The Winslow Tap transmission line rebuild is seeking site plan review (SPR) and a critical areas permit (CAP), both of which include site plans with significant proposed permanent use of Bulrush Farm property and little public benefit or necessity associated with that proposed use other than convenience. In a meeting with Woody Stables representatives last week, PSE stated that (1) it has no easement rights across Bulrush Farm to access the Winslow Tap transmission corridor, and (2) it has no intention of engaging in discussions with Woody Stables regarding PSE's proposed use of Bulrush Farm until after City permits are issued. This position underscores the need for the City to retain private property rights protections in BIMC 2.16.020.D.

If the City requires PSE to provide documentation of owner authorization or necessary rights to private property before permit application and issuance, as currently required by BIMC 2.16.020.D, PSE has three options: (1) engage with private property owners while it is still possible to consider alternatives that would avoid or minimize the proposed use of their

property, (2) participate in voluntary negotiations with property owners to avoid the necessity for an eminent domain action, and/or (3) commence and complete a condemnation action to acquire legal rights to private property.

In contrast, if Option 3A requires documentation of owner authorization or necessary property rights solely for building or grading permit applications, there is no opportunity for discussions between PSE and property owners to revise site plans in a way that avoids or minimizes the proposed use of private property, because the site plans including use of that property would have been approved prior to submission of building or grading permit applications.

Further, it is possible that work proposed for the Winslow Tap rebuild could be conducted once the City approves the PSE SPR and CAP applications, without the issuance of building or grading permits. In that situation, Option 3A would be largely moot for the Winslow Tap project if it is limited to building and grading permits; would not provide any incentive for voluntary negotiations between PSE and affected landowners; and would assist PSE in bringing condemnation actions to acquire legal rights to private property by providing PSE with already-issued City permits that include that private property.

For these reasons, we believe the City should retain its existing code language in BIMC 2.16.020.D and, at a minimum, recommend Option 3A only if it applies to all permit applications.

Thank you for considering these comments as you draft language for consideration by the Planning Commission.

All the best,

Kim McCormick

Kim McCormick
Attorney for Woody Stables, LLC

Kim McCormick, Attorney at Law
Law Office of Kim McCormick, PLLC
3920 Southern Cross Road NE
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Law Office of Kim McCormick, PLLC

May 23, 2024

City of Bainbridge Island
Planning Commission
280 Madison Avenue N
Bainbridge Island, WA 98110

Re: Public Comment – PSE Winslow Tap Transmission Line Rebuild – Request to Amend
Bainbridge Island Municipal Code Section 2.16.020.D – PLN 52234 LDR

Dear Planning Commission Chair Birtley, Vice Chair Blossom and Commissioners Preudhomme, Deines, Garcia, Schaab and Sullivan:

I represent Woody Stables, LLC (Woody Stables), the owner of Bulrush Farm, a property that will be significantly and detrimentally affected by Puget Sound Energy's request to amend BIMC Section 2.16.020.D.

BIMC 2.16.020.D currently protects private property owners by requiring all permit applicants, including PSE, to provide written proof of legal rights to use private property before filing a permit application. PSE is now asking you to recommend changing that code language, in part to retroactively "cure" its Winslow Tap permit applications, which were filed in January 2023 in contravention of the existing code, and which the City deemed complete and held a SEPA public comment period on in September 2023. PSE contends a former City employee advised them that the applications could be filed notwithstanding the plain language of 2.16.020.D.

Woody Stables urges the Planning Commission to recommend retaining the existing code language requiring proof of legal rights to use private property before permit applications are submitted and any permit decisions are made. The existing language is consistent with the Comprehensive Plan's Utility Element goals and protects the City, its residents and property owners by establishing a fair and balanced process for evaluating utility project applications. The Comprehensive Plan Utility Plan goals include:

- | | |
|----------|--|
| Goal U-5 | Ensure that new or major renovations to existing utility facilities are designed to minimize adverse impacts on residents and the environment. |
| Goal U-6 | Ensure that permits and approvals for utility facilities are processed in a fair, timely manner and in accord with development regulations and this Plan. |
| Goal U-7 | Ensure that all utility providers give timely public notice and solicit community input on the siting of proposed facilities and on any other substantive projects before seeking City approval. |

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Kimberly.mccormick@comcast.net

Law Office of Kim McCormick, PLLC

During a meeting on May 9, 2024, PSE confirmed that it is proposing the following activities that will have significant permanent detrimental impacts to the farm, to provide PSE with convenient access to build a gravel road in the corridor and maintain 4 or 5 of the approximately 80 transmission line poles along the corridor:

- (1) a permanent 12' wide, ½ mile gravel access road to the Winslow Tap transmission line corridor through working horse pastures;
- (2) a permanent 12' x 200' gravel driveway/apron and gate from the farm onto the transmission line corridor; and
- (3) a 12' wide gravel access road along 2 miles of the 4.5-mile transmission line corridor that includes three 50' x 100' "dispersion areas" for stormwater management located on Bulrush Farm that would flow into a Type-F (fish bearing) stream located on the farm.

Further, PSE confirmed at the May 9, 2024 meeting that it was held because Bulrush Farm requested it, and that PSE has no intention of discussing with Bulrush Farm any alternatives that would eliminate, minimize or mitigate the significant detrimental impacts to the farm until **after** the City has approved the PSE permit applications. PSE indicated that they had considered and rejected two potential alternative existing public access routes based on impacts to Category 1 or Category 2 wetlands, notwithstanding that PSE is now asking the City to amend BIMC 16.020.050.D to now allow such wetland impacts.

PSE's plan is to use the eminent domain process to obtain access rights across Bulrush Farm. This is in direct conflict with the letter and intent of the code currently in place. The public benefit of the work proposed by PSE on the farm is minimal in comparison to the significant detrimental and permanent impacts to the farm. For all of these reasons, Woody Stables urges the Planning Commission to retain the existing language in BIMC 2.16.020.D.

Thank you for your thoughtful consideration of these concerns.

Sincerely,

Kimberly McCormick

Kimberly McCormick
Attorney for Woody Stables, LLC

cc: Patricia Charnas, Planning Director
HB Harper, Planning Manager
Joanne Mendenhall, Planner
Councilmember Ashley Mathews, Liaison to the City Council

Marlene Schubert

From: Tom Hansen <tom.hansen206@gmail.com>
Sent: Friday, June 28, 2024 12:00 PM
To: PCD
Subject: Public Comment regarding Puget Sound Energy (PSE) Municipal Code Request—Plan PLN52234
Attachments: Tom Hansen Public Comment -PLN522344 Code Amendments.pdf

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Dear Ms. Mendenhall

Please accept the following Public Comment regarding Puget Sound Energy (PSE) Municipal Code Request—Plan PLN52234:

June 28, 2024

Dear Ms. Mendenhall:

Please accept the following Public Comment regarding Puget Sound Energy (PSE) Municipal Code Request—Plan PLN52234:

After reviewing the Legislative Review of Development Regulations material, I am writing in strong support of the city staff's proposed revision to the code amendments requested by PSE. After legislative review and clarification, there appears to have been a constructive dialog to arrive at these necessary changes. While these are specific to PSE, they would apply to all linear utilities which do not have clear alternatives for providing essential services. The code amendments are as follows:

- The proposal includes changes to: BIMC 16.20.050 and BIMC 16.20.190 to allow additional maintenance and upgrade activities to linear electrical infrastructure already existing in category I and II wetlands;
- BIMC 16.20.100.E.1 to exempt a utility from recording an Aquifer Recharge Protection Area on lands not owned by the utility; BIMC 16.20.140.G.2 and BIMC 16.20.140.H.5 to allow linear electrical infrastructure in category II wetlands when it will be installed in or adjacent to an existing road right of way;
- BIMC 18.09.030.F.2 and BIMC 18.12 to allow primary utilities in setbacks, modify height allowances for linear electrical structures, and clarify when a conditional use permit for height modifications is required.

Additionally, I strongly support the conclusion of Determination of Nonsignificance. The use of existing corridors minimizes environmental impacts.

Continued City constructive involvement in the permitting phases of the project will be required. However, remember that if the project timeline is met, it will have taken nine years to improve Bainbridge Island's electric grid.

Bainbridge deserves Safe and Reliable Electricity. I have two main concerns regarding the failure to deliver the proposed solution.

Safety

The Winslow Tap line is long past its useful life and is extremely vulnerable due to rotting poles in a heavily forested corridor. Failure to maintain the electric grid, equipment, and manage vegetation have been some of the main cause of devastating forest fires. Transmission and Distribution lines cross heavily forested areas making them unsuitable for undergrounding. Data shows that ninety percent of power outages on Bainbridge are caused by vegetation issues. Bainbridge has already experience one near miss with a recent fire along a distribution line on the South end. We were lucky that the small fire was contained resulting only in a traffic congestion problem lasting a few hours. It really could be worse! Replacement ASAP is truly nondiscretionary and requires these code amendments.

Reliability

Bainbridge Island has some of the worst electric reliability in PSE's Service Area. Major upgrades and improvements have been delayed for decades. Only a limited number of small projects have progressed.

PSE is making upgrades to the Port Madison substation to address aging infrastructure (the distribution substation has aging breakers, switches and transformer protection that need to be replaced). The work was started during the construction season in 2023 and is being completed during the construction season in 2024 (now). To perform this work, the substation is in an abnormal configuration - it's bypassed so there is only one feed that supports Murden Cove, Miller Bay, and Kingston substations on the Foss Corner – Port Madison transmission line. Typically, there are two feeds to Port Madison substation and then radial feeds to Murden Cove and Winslow substations.

The recent outage impacting two thirds of the island users could have been prevented. If we had the new Murden Cove - Winslow transmission line in place, we wouldn't have had to put the system in a vulnerable position to perform the work at Port Madison Substation in the first place. The new transmission line would have created a loop between Winslow and Murden Cove substations, allowing us to complete this work and keep two feeds to the five substations.

Similarly, most of the outages over the past fifteen years impacting the entire 4,000 customers on the south end of the island serviced by the Winslow Substation could have been prevented or significantly shortened.

Bainbridge deserves Safe and Reliable Electricity. Please move forward to obtain approval by the City Council for the proposed code amendments.

Respectfully,

Tom Hansen
1525 Fort Ward Hill Rd NE
206-201-3414

Marlene Schubert

From: Kathy Hansen <kathy.hansen206@gmail.com>
Sent: Friday, June 28, 2024 12:22 PM
To: PCD
Subject: Public Comment regarding Puget Sound Energy (PSE) Municipal Code Request—Plan PLN52234
Attachments: Public Comment regarding Puget Sound Energy (PSE) Municipal Code Request—Plan PLN52234-KH.pdf

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Dear Ms. Mendenhall:

Please accept the attached Public Comment regarding Puget Sound Energy (PSE) Municipal Code Request—Plan PLN52234.

Kind regards,

Kathleen D. Hansen
1525 Fort Ward Hill Rd NE
Bainbridge Island

June 27, 2024

Dear Ms. Mendenhall:

Please accept the following Public Comment regarding Puget Sound Energy (PSE) Municipal Code Request—Plan PLN52234:

On October 17, 2019 PSE conducted a community meeting in the Bainbridge High School Auditorium to engage and inform the community regarding needed upgrades to the PSE system. At that time, the plan was: Targeted conservation/demand response tools deployed 2020-2030, Battery in Service 2022, Winslow Tap Rebuild 2023 and the Transmission line loop built 2024.

I am aware that some components are not the same and have been modified as the result of a detailed engineering design (e.g. The battery). By now, the city is likely fully well aware that we have some of the worst electric reliability in the **entire** PSE system. That is **why I am urging the approval of the code amendments that staff has recommended in order to move PSE projects forward.**

Recent outages underscore the need for reliable electricity. On June 3, the outage that affected much of the island was caused by a tree that blew into the transmission line outside of Port Madison substation, taking the Foss Corner-Port Madison line out of service. PSE crews were able to restore Miller Bay and Kingston substations in about thirty minutes. The restoration of Murden Cove substation took a little over two hours while crews switched around the damage and moved the substation to the Winslow Tap transmission line. Area businesses and clinics like a medical practice reported that the outage, which stretched to five hours, resulted in an afternoon of cancelled appointments.

It should be noted that, if we had the new Murden Cove - Winslow transmission line in place, PSE would not have had to put the system in a vulnerable position to perform the work at Port Madison Substation in the first place. The new transmission line would have created a loop between Winslow and Murden Cove substations, allowing them to complete this work and keep two feeds to the five substations.

Furthermore, the proposals are in line with the Goals in the City's Comprehensive Plan with regard to utilities. **My comments are noted in green.**

GOAL U-1

Ensure that reliable utility services are available to all Bainbridge Island residents. **Again, Islanders have some of worst electric reliability in PSE's system. Customers serviced by the Winslow and Murden Cove substations experience more frequent and longer outages due, in part, to an absence of looped-transmission.**

GOAL U-2

Ensure that the utility services are comparable in terms of cost, quality, and technology to services available in similar jurisdictions in the Puget Sound region. **The cost of improvements is spread over the entire PSE system. Seattle City light customers loose power much less frequently. One employee of that utility shared that they have a more aggressive vegetation management program.**

GOAL U-3

Ensure that utility services are adequate to meet current demands, and that utility providers plan for future demands. **PSE has attempted, for decades to make the improvements that leave us woefully behind. The utility needs to “maintain, upgrade and install new linear distribution and transmission facilities in geographic areas that meet the need” both current and future.**

GOAL U-4

Ensure that the provision of utility services is environmentally responsible and sustainable, and encourage utility services that are carbon neutral and do not contribute to climate change. **Electricity is preferred compared to other alternatives, like propane for heating and is required of grid-tied solar customers who want to sell their excess energy with net metering in Washington State. In the city’s 2020 Climate action plan, “there are an unknown but likely substantial number of other sources used for heating homes and powering appliances including: wood-burning stoves; propane generators, furnaces, fireplaces and appliances; and fuel oil in older units.” The need for reliable electricity, for example, is aligned with the city’s 2024 Community Heat Pump Pilot Program.**

GOAL U-5

Ensure that new or major renovations to existing utility facilities are designed to minimize adverse impacts on residents and the environment. **PSE proposes to minimize impacts by allowing for installation of new facilities within and adjacent to road right-of-way to minimize environmental damage. A utility needs to be able to maintain and upgrade existing facilities to minimize impacts to residents and the environment.**

GOAL U-6

Ensure that permits and approvals for utility facilities are processed in a fair, timely manner and in accord with development regulations and this Plan. (The number and scope of approvals seems to be constantly evolving. **By the time the looped transmission is completed, should the plan stay on schedule, that is nine years from when it was first announced.**

GOAL U-7

Ensure that all utility providers give timely public notice and solicit community input on the siting of proposed facilities and on any other substantive projects before seeking City approval. **PSE has done an extensive engagement covering site reviews, alternative pathways (even during the closures of the Pandemic) and mailers to every household, while the City has provided public comment opportunities as required and notified customers who would be impacted by the proposed changes. Seminars conducted by PSE covered topics such as undergrounding and impacts from overhead lines.**

GOAL U-8

Cooperate with other jurisdictions and utility providers in planning and implementing utility facility additions, improvements, maintenance, and emergency response, so that such activities are coordinated for maximum efficiency and public benefit. **Bainbridge is an island unto itself.**

GOAL U-9

Ensure that sufficient city resources are provided to implement the above goals by adopting systems and processes for meaningful and timely review of utility services, and by assigning to the Utility Advisory Committee (UAC) or other city organization the responsibility for advising the City Council on matters regarding all utility services on Bainbridge Island. **Staff recommendations are aligned with the City's goals with respect to this utility and establishes a reasonable path forward to achieve these goals.**

After years of delay with regard to PSE projects, please approve the code amendments needed that would allow PSE to make the improvements that the Island needs. We're not just years behind in terms of electric reliability, we're decades behind.

Thank you,

Kathleen D. Hansen
1525 Fort Ward Hill Rd NE
Bainbridge Island, WA