1454-ORD
4/29/2015

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6226

AN ORDINANCE granting Conditional Use and Shoreline Conditional Use Permits with conditions, on the Application of Puget Sound Energy (PSE) to construct a new 115 kV overhead transmission line connecting the existing Lake Hills Substation with the Phantom Lake Substation as a 2.89 mile route located in the Right-of-Way along SE 16th Street, 148th Avenue SE, and NE 8th Streets in Bellevue, WA, File Nos. 11-131123 LB and 11-131124 WG.

WHEREAS, Puget Sound Energy (PSE) applied for permits on December 11, 2011 to construct a new 115 kV overhead transmission line connecting the existing Lake Hills Substation with the Phantom Lake Substation as a 2.89 mile route located in the Right-of-Way along SE 16th Street, 148th Avenue SE, and NE 8th Streets in Bellevue, WA, File Nos. 11-131123 LB and 11-131124 WG; and

WHEREAS, a Notice of Application and Public Meeting was first published in the Land Use Bulletin on May 3, 2012; and

WHEREAS, the East Bellevue Community Council held public hearings on June 5 and September 4, 2012 and June 4, 2013; and

WHEREAS, on, November 20, 2014, the Bellevue Hearing Examiner commenced a hearing on the application of PSE for Conditional Use and Shoreline Conditional Use Permits, pursuant to notice as required by law; and

WHEREAS, on December 19, 2014, the Hearing Examiner issued Findings of Fact, Conclusions of Law and Recommendation, recommending that the City Council approve the applications with conditions; and

WHEREAS, no appeal of the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation was filed; and

WHEREAS, following discussion on April 20, 2015 the City Council voted to direct staff to return to Council on May 4, 2015 with an Ordinance adopting the Findings, Conclusions and Recommendation of the Hearing Examiner and granting the applications with conditions; and

WHEREAS, the City has complied with the State Environmental Policy Act and the City Environmental Procedures Code, now; therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the Findings of Fact and Conclusions of Law of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Recommendation" on Application File Nos. 11-131123 LB and 11-131124 WG.

Section 2. Based on the foregoing Findings of Fact and Recommendation, the City Council enters the following decision:

The Application of PSE to construct a 115 kV transmission line is hereby approved, subject to the following conditions:

Conditions of Approval

PSE – Lake Hills to Phantom Lake Transmission Line
Conditional Use Permit – File No. 11-131123-LB
Shoreline Conditional Use Permit – 11-131124-WG

Ongoing Compliance Requirements:

1. The applicant shall comply with the terms and conditions included in any associated permit or approval decision issued by the City of Bellevue for the project, including without limitation the MDNS, the Critical Areas Land Use Permit, and the Shoreline Substantial Development Permit.
2. The applicant shall obtain any associated permit, license, or approval required by any state, federal, or other regulatory body with jurisdiction over aspects of the project; any conditions of regulatory agency permits or approvals shall be considered conditions of approval for this project.
3. The applicant shall comply with all professional report conclusions and recommendations submitted in connection with this Conditional Use Permit and associated approvals issued by the City of Bellevue for this project, as approved, referenced, relied-upon, and/or modified by the City.
4. All construction and other activities undertaken by PSE shall comply with applicable provisions of the Bellevue City Code whether or not such provisions are detailed in the Staff Report or conditions of approval set forth herein. The burden remains on the applicant to show compliance with applicable provisions of the City Code, and for this project, compliance with all applicable codes, standards, regulations and ordinances of the City of Bellevue includes but is not limited to those addressing the following subject matter:

    a. Clearing and Grading Code – BCC 23.76
    b. Construction Code – BCC Title 23
    c. Fire Code – BCC 23.11
    d. Land Use Code – BCC Title 20
    e. Noise Control – BCC 9.18
    f. Right-of-Way requirements –
    g. Transportation regulations and policies –
    h. Utility Code – BCC Title 24

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General Conditions:

1. ***Noise & Construction Hours.***
   Authority: BCC 9.18.020.C & BCC 9.18.040.

   a. Noise related to construction is allowed from 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday.
   b. Construction noise is prohibited on all Sundays and Washington State holidays.
   c. Exceptions to the construction noise hours limitation contained in the Noise Control Code *may* only be granted pursuant to BCC 9.18.020.C *when necessary to accommodate construction that cannot be undertaken during exempt hours.*
   d. Prolonged exposure to noise created by extended hour construction activity is likely to have a significant impact on construction. In order to minimize detriment on residential uses in the immediate vicinity of the project, the Contractor shall not rely on City issuance of a blanket exemption from the Noise Control Code during the construction period. Instead, allowances for short-term work outside of normal construction hours shall be limited and will be reviewed on a case-by-case basis to verify necessity and ensure appropriate noise mitigation is utilized to protect surrounding uses and properties.
   e. Written requests for exemption from the Noise Control Code must be submitted two weeks prior to the scheduled onset of extended hour construction activity. Such requests may be required to include a noise analysis prepared by a noise consultant, including recommendations for achieving the noise limitations of the Noise Ordinance for new residential construction.
   f. The use of best available noise abatement technology consistent with feasibility is required during construction to mitigate construction noise impacts to surrounding uses.

2. ***Facility Activation/Completion of Work.***
   Authority: LUC 20.40.425.

   a. The facility shall not be activated until all work included in the project scope (excluding system test prior to complete activation) and shown on the plans and specifications, as conditioned, is completed.
   b. Mitigation and restoration landscaping shall be seasonally installed for optimal plant success (spring or fall). If planting must occur after facility activation date, the applicant shall enter into a surety device for the remaining mitigation and restoration installation work. All restoration and mitigation work must be completed within six months of activation.

3. ***Pole Design.***
   Authority: LUC 20.20.255 and 20.30B.140, Bellevue City Code 14.60.240; Transportation Department Design Manual (TE-1, TE-2, TE-3 and sections 21 and 22).

   a. Poles shall be wooden with wooden davit arms.
   b. Where the alignment is required to turn a corner, the applicant will be allowed to construct a glu-lam pole that doesn't require guying. If steel poles are desired, they must first be reviewed and approved by the City's Land Use Director. Any steel pole will be required to be painted either dark green or dark brown, depending on the adjacent vegetation and neighborhood context.
   c. PSE will be allowed to construct no more than two (2) steel poles in the vicinity of Fire Station 3 and the conductors between these two poles may be facing away from the right-way on the southern side of the poles. The poles shall be painted dark green to better recede against the vegetated background to the south.
   d. All power poles installed under terms of this proposal must meet the City's sight distance criteria.

Conditions to Satisfy Prior to Issuance of Any Engineering / Clearing and Grading Permit for the Project:

1. ***Right-of-Way Use Permit.***
   Authority: Bellevue Right of Way Use Code, Chapter 14.30 BCC.

The applicant is required to apply for a Right-of-Way Use Permit before the issuance of any clearing and grading, building, foundation, or demolition permit. In some cases, more than one Right-of-Way Use Permit may be required, such as one for hauling and one for construction work within the right-of-way. A Right-of-Way Use Permit regulates activity within the city right-of-way, including but not limited to the following:

a. Designated truck hauling routes.
b. Truck loading and unloading activities.
c. Hours of construction and hauling.
d. Continuity of pedestrian facilities.
e. Temporary traffic control and pedestrian detour routing for construction activities
f. Street sweeping and maintenance during excavation and construction.
g. Location of construction fences.
h. Parking for construction workers.
i. Construction vehicles, equipment, and materials in the right-of-way.
j. All other construction activities as they affect the public street system.

In addition, the applicant shall submit for review and approval a plan for providing pedestrian access during construction of this project. Access shall be provided at all times during the construction process, except when specific construction activities

such as public safety, shoring, foundation work, and construction of frontage improvements prevent access. General materials storage and contractor convenience are not reasons for preventing access.

2. ***Off-Street Parking.***
   Authority: Bellevue Right of Way Use Code, Chapter 14.30 BCC.

The applicant must secure sufficient off-street parking for construction workers, equipment, and materials storage before the issuance of a Clearing and Grading Permit.

3. ***Engineering Plans.***
   Authority: Bellevue Transportation Development Code, Chapter 14.60 BCC; Transportation Department Design Manual.

A site plan produced by a qualified engineer must be approved by the City prior to Clearing and Grading permit approval. The applicant will be required to restore all city infrastructure impacted by this project (sidewalks, curb and gutter, etc.). Restoration of ADA ramps must be in conformance with the most updated requirements of the Americans with Disabilities Act, the Transportation Development Code, and the provisions of the Transportation Department Design Manual. The engineering plans must correctly show all transportation-related engineering details, including but not limited to, the design of the guardrails and sight distance. Appropriate standard drawings from the Transportation Department Design Manual must be included in the engineering plans.

4. ***Pavement Restoration.***
   Authority: BCC 14.60.250 and Transportation Department Design Manual, Design Standard No. 23.

The applicant will be required to restore all damaged pavement within city right-of-way caused by construction activities related to this project. Limits and extent of pavement restoration shall be at the discretion of the Transportation Inspector. Trench restoration must meet the requirements of Section 21 of the Design Manual and standard drawings ROW-1 through ROW-5. Exact copies of the appropriate trench restoration drawing(s) must be included in the final engineering plans.

5. ***Safety.***
   Authority: Bellevue Transportation Code, Chapter 14.60 BCC; and Transportation Department Design Manual.

The applicant will be required to provide appropriate clearances from existing overhead signal equipment.

6. ***Utilities.***
   Authority: Bellevue Utility Codes, BCC Title 24.

To avoid conflicts with existing utilities, the applicant must do the following:

a. PSE must call for utilities locates prior to any construction (800-424-5555 or 811).
b. PSE must pothole prior to any work that requires digging in the right-of-way.

7. ***Disturbance and Restoration.***
Authority: LUC 20.25.E.080.U

a. General: In addition to all landscaping areas delineated on the Conceptual Mitigation Plan, the applicant shall fully restore, with appropriate and approved shrubs and groundcover, to the satisfaction of the City of Bellevue, any areas disturbed as a result of construction activities, including mandatory restoration of the areas around each new pole.
b. Restoration in Wetland Buffer: ANY understory damaged within the wetland critical area buffer as a result of construction of the poles or installing the wire will need to be replaced with appropriate trees and/or shrubs that will restore the edge condition while discouraging access and use.

8. ***Final Landscape and Irrigation Plans — Mitigation AND Restoration***
Authority: LUC 20.20.255

a. Final landscape and irrigation plans are required for all required mitigation (including work done in critical areas and critical area buffers) and for restoration of all other construction and tree removal activities along the entire alignment. These plans shall be consistent with the Conceptual Mitigation Plan submitted as part of this application. The final landscape and irrigation plans will be reviewed and approved under the Clearing and Grading Permit.
b. Final plans for the Substation site upgrades, including fencing and landscaping around each substation, shall also be reviewed and approved under the Clearing and Grading Permit, and shall comply with all standards applicable to Electrical Utility Facilities contained in LUC 20.20.255.
c. Final landscape and irrigation plans must also be approved by the Parks Department, which will ultimately assume right-of-way maintenance responsibilities after PSE's five-year maintenance period requirement is satisfied.

9. ***Final Plans for Substation Upgrades.***
Authority: LUC 20.20.255

Lake Hills Substation:

a. Final plans for the Substation upgrade, including landscape plans, review of tree removal/retention, and site changes for equipment installation shall take place under the required Clearing and Grading Permit for the installation of the

entire transmission line. The design shall be reviewed against all the requirements in LUC 20.20.255.

Removal of healthy trees will be allowed only along the northwest corner of the fenced equipment area, where the new line will enter the substation. The remaining existing trees around the Substation are to remain, to ensure compliance with LUC 20.20.255.F.

b. Any work at the Lake Hills Substation that is required to take place in advance of, and is not necessary for the new transmission line may be reviewed under a Land use Exemption to the Substation's original Conditional Use. This work will be limited to the following:

   i. Replacement of the existing wood fence with a new wood fence or fencing with an alternate material that is site-obscuring per applicable LUC requirements;
   ii. Cleaning out of overgrown understory and noxious weeds such as ivy, and replanting with appropriate groundcover and shrubs;
   iii. Redesign of existing driveways and minor relocation of bus stop. Any driveway configuration will be reviewed to ensure that it is as unobtrusive as possible, which may necessitate additional landscaping and angling the driveway(s) off 164th Avenue NE.
   iv. Removal of dead or unhealthy trees as verified by a certified arborist via a Hazardous Tree Form(s) or trees that PSE has determined, subject to approval by the Development Services Director, pose a risk to the substation. NOTE: Any tree removal of healthy trees to provide clearance for the new transmission lines on either substation site will be reviewed under the Clearing and Grading Permit associated with this Conditional Use Permit application and mitigation shall be provided to ensure that the requirements of LUC 20.20.255 are met. All other trees shall remain in place.

<u>Phantom Lake Substation:</u>
Preliminary review of the design concept for the Substation upgrade shall occur under a Land Use Exemption to this Conditional Use approval and shall be part of the review of the entire SE 16th portion of the alignment. Once the design has been approved, review of the final landscape plans shall take place under a separate Clearing and Grading Permit. The design shall be reviewed against all the requirements in LUC 20.20.255.

<u>Both Substations:</u>
All substation upgrades must meet the requirements of LUC 20.20.255.F, including the provision that any fence replacement material shall be site obscuring. (See NOTE in last bullet under Condition 9(b))

10. ***Tree Removal and Mitigation Landscaping within Critical Areas and***

***Critical Area Buffers* (Wetlands/Shorelines).** Authority: LUC 20.25H.055.C.2

A "Clearing and Grading Permit" will be required for any tree removal, trimming and mitigation landscaping within any Critical Areas.

The following requirements shall be followed when removing trees and/or installing mitigation landscaping in any wetland, wetland buffer and/or shoreline overlay district:

a. Tree Removal:
   i. All work shall be done by hand.
   ii. All trees over 12 inches in diameter shall be made into wildlife snags. Details for the snags shall be included in the Final Landscape Plans.
   iii. Stumps shall be left in place to reduce soil disturbance.
b. Landscaping:
   i. Work shall be implemented using the Parks Department "Environmental Best Management Practices."
   ii. Work within a wetland and/or shoreline shall be done by hand.
c. Miscellaneous:
   i. Machinery needed to place the woody debris and for some hauling shall be done in the dry season and use of mats or fabric-reinforced driving surfaces shall be used where necessary.

11. ***Pesticides, Herbicides and Fertilizers.***
Authority: LUC 20.25H.080

Prior to any use of pesticides, herbicides, and/or fertilizers associated with the proposal, the applicant must receive approval from Land Use under the required Clearing and Grading Permit.

Applicant shall submit written information identifying the pesticide, herbicide and/or insecticide is to be used AND written confirmation that the product used has been reviewed and approved by a consulting arborist. Work shall be done in accordance with the City of Bellevue's "Environmental Best Management Practices."

12. ***Maintenance and Monitoring Plan for Restoration and Mitigation Work.***
Authority: LUC 20.25H.220

The applicant shall hire a qualified professional to design and implement maintenance and monitoring plan for the mitigation required for work in critical areas and/or critical area buffers. The contractor shall submit documentation each year for five (5) years to the Land Use Division under the Critical Areas Land Use Permit #11-131125-LO to demonstrate compliance with the conditions of this report.

a. There will be 100% survival of all planted species in the enhancement area at the end of the first year.

b. There shall be a minimum of 80 percent survival rate throughout the monitoring period — years 2-5.
c. Monitoring stations shall be set up and identified.
d. Invasive species will not represent more than 15 percent areal cover.
e. If the applicant can demonstrate an 80 percent survival rate and proper plant establishment, there shall be an option to reduce the monitoring period to three (3) years.

All necessary documentation outlined in the Maintenance and Monitoring Plan shall be sent each year to the following:

City of Bellevue
Development Services Department/Land Use Division
c/o Sally Nichols, Planner
P.O. Box 90012
Bellevue, WA 98009-9012

13. ***Landscape Maintenance Assurance Device for Areas of Restoration and Mitigation.***
Authority: LUC 20.20.520.K.1 & 2 and 20.40.490

To ensure plant establishment, the applicant shall provide a separate landscape assurance device that shall cover 20% of the fair market value of labor and materials for the initial landscape installation of all areas of restoration and mitigation required for this Conditional Use approval. This assurance device will cover the landscape maintenance of the project for a period of five (5) years from the date of final inspection.

14. ***Fee in Lieu.***
Authority: SEPA – WAC 197-11-350, BCC 22.02.035.

a. Trees identified for removal are valued at $856,740. This amount shall be expended as compensation for the removal of 295 City-owned trees (public assets). This money shall be used by PSE exclusively to pay for materials (Plants, soil, irrigation, etc.) needed for the installation of the approved restoration and mitigation landscaping. Verification and all expenditures shall be provided to the City.
b. Any money remaining from the $856,740 after completion of the project may be used by the City of Bellevue Parks Department for additional landscape enhancements along the transmission line route.
c. If any public trees are required to be removed from the SE 16th Street portion of the alignment, an evaluation of the trees using the Trunk Formula Method shall be performed and the City shall be compensated for the loss of this resource.

15. ***Alignment on SE 16th Street.***

Authority: SEPA — WAC 197-11-350, BCC 22.02.035, LUC 20.30.6.175

PSE will not be allowed to run a separate new transmission line down the south side of SE 16th Street. Nor will PSE be allowed to remove trees from this side of the street for this new line. Possible ways to accommodate the second line include but are not limited to co-location of the new line with the existing transmission on the north side of the street or to undergrounding the line in a manner that does not required removal of trees along the south side of the street. The exact methodology for providing the second line and the design of this section of the alignment will be reviewed as a Land Use Exemption to this Conditional Use approval.

16. ***Development Agreement for SE 16th Street Alignment Vesting***
Authority: SEPA - WAC 197-11-350, BCC 22.02.035, Comprehensive Plan Policies UT-43, 51, 53, 71, and 74

In order to extend the vested status of the alignment of SE 16th Street until the City undertakes its Transportation Improvement Project, PSE will need to enter into a Development Agreement with the City of Bellevue. Any development agreement will need to demonstrate public benefit — which in this case will be the co-location of transmission lines, added reliability to the adjacent neighborhoods, and the coordination between the City and PSE regarding streetscape improvements and pole location, as well as location of required mitigation landscaping.

17. **Changes to Pole Location and/or Alignment.**

Any changes to the pole location and/or alignment submitted as part of this Conditional Use shall be reviewed as a Land Use Exemption to this Conditional Use approval prior to construction. See LUC 20.306.175.

Section 3. This Ordinance shall take effect and be in force five (5) days after adoption and legal publication.

Passed by the City Council this 4th day of May, 2015 and signed in authentication of its passage this 4th day of May, 2015.

(SEAL)

Claudia Balducci, Mayor

Approved as to form:

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Lori M. Riordan

Lori M. Riordan, City Attorney

Attest:

Myrna L. Basich

Myrna L. Basich, City Clerk

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