



Memorandum

Date: November 23, 2015

To: Chair Capron, Members of the East Bellevue Community Council

From: Monica A. Buck, Assistant City Attorney

RE: Department of Ecology Review of Shoreline Conditional Use Permit for PSE 115kV Overhead Transmission Line

On June 24, 2015, the Community Council adopted Resolution No. 550 disapproving Bellevue City Council Ordinance No. 6226 approving a Conditional Use Permit and Shoreline Conditional Use Permit for a 115 kV transmission line Puget Sound Energy project in the Lake Hills neighborhood.

PSE appealed this decision to the King County Superior Court and to the Shoreline Hearings Board. Following motions by PSE and the EBCC at the initial hearing, the Superior Court ruled that the EBCC does not have jurisdiction over the Shoreline Conditional Use Permit and ordered the EBCC to amend Resolution No. 550 to remove any reference to the Shoreline Conditional Use Permit. The September 8, 2015 Order required the City to transmit the Bellevue City Council's approval of the permit to the Washington State Department of Ecology (DOE) for review and final disposition. (Attachment A)

The EBCC appealed the Court's September 8 Order and filed a Notice of Stay to postpone compliance with the Order. PSE filed a motion to quash the stay, which was granted by the Superior Court, over the EBCC's objection. On October 12, 2015, the Court ordered the EBCC to amend Resolution No. 550 to eliminate reference to the Shoreline Conditional Use Permit (which it complied with by adoption of Resolution No. 554 on October 19) and ordered the City to direct DOE to continue its review.

Members of the EBCC have expressed interest in sending a comment letter to DOE for consideration during review of the SCUP. Enclosed is a draft letter to the DOE for the EBCC discussion at the December 1st meeting.

Enclosures:

A – Letter from City to DOE re Review of SCUP
B – Draft Letter to DOE



City of Bellevue

DATE: September 18, 2015

TO: Joe Burcar, Washington State Department of Ecology
Jobu461@ecy.wa.gov

FROM: Sally Nichols, Senior Environmental Planner, Development Services
Department
425-452-2727/spnichols@bellevuewa.gov

SUBJECT: Final Decision on the City of Bellevue Development Services Department
Shoreline Conditional Use file # 12-127693-WA and Shoreline
Substantial Development Permit file # 11-131124-WG (associated with
Conditional Use Permit 11-131123-LB) regarding Puget Sound Energy's
(PSE) Lake Hills to Phantom Lake Transmission Line Proposal

Purpose

This memo is prepared in support of the City of Bellevue's (City) PSE Lake Hills to Phantom Lake Transmission Line Shoreline Conditional Use Permit and Shoreline Substantial Development Permit transmittal to the State Department of Ecology (Ecology) for review and filing under RCW 90.58.140.

As detailed in the Background section below, the original transmittal memo and project files (record) were transmitted to and received by Ecology on July 17, 2015. Prior to that date, Puget Sound Energy (PSE) had filed a Land Use Petition and Statutory Writ in King County Superior Court and an appeal to the Shorelines Hearing Board related to the Conditional Use and Shoreline Conditional Use Permits for this proposal. One of the items being challenged by PSE was the East Bellevue Community Council's (EBCC) jurisdiction over the Shoreline Conditional Use Permit.

As noted in the July 2015 submittal to Ecology, the East Bellevue Community Council (EBCC) denied the Conditional Use and Shoreline Conditional Use permits that were originally approved by the Bellevue City Council. The Council decision was based on recommendations from the Development Services Department Director and the Hearing Examiner. On September 4, 2015, PSE brought forward a motion in King County Superior Court asking the superior court to determine that the EBCC did not have jurisdiction to review the Shoreline Conditional Use Permit for this proposal. On September 8, 2014, Judge William Downing issued the attached Order on Resolution of Jurisdictional issues

in which he concluded that the EBCC lacks jurisdiction to review shoreline conditional use permits. Judge Downing further ordered that the City transmit the Bellevue City Council's approval of the permit to the Department of Ecology for review and final disposition. In accordance with Judge Downing's ruling, the City Council's Ordinance No. 6226 and approval of the Shoreline Conditional Use Permit is now the final decision to be reviewed by Ecology.

Therefore, the City requests that this memo and attachments be added to the existing file transmitted and received by Ecology on July 16, 2015, as documentation of the fact that the EBCC did not have authority to review the Shoreline Conditional Use Permit and to deny the City Council's approval of the Shoreline Conditional Use Permit. The only additional records and/or documentation related to the review of the Shoreline Conditional Use Permit are this memo and the attachments.

In addition, the City requests that Ecology move forward with their review of the Shoreline Conditional Use Permit (12-127693-WA), pursuant to WAC 173-27-200. If there are any further rulings from any court which may impact this request, the City will immediately notify Ecology.

Project Description

PSE applied to the City of Bellevue for a Conditional Use Permit, a Shoreline Substantial Development Permit, a Critical Areas Land Use Permit, and SEPA Threshold Determination to construct a new 115 kV overhead transmission line running from the Lake Hills Substation to the Phantom Lake Substation. The purpose of the proposed transmission line is to improve reliability and allow for better use of existing capacity at the community and local level. The new transmission line between the two substations will create a "loop", which means that each substation will be fed by two transmission lines. If one transmission line goes out, the other line will still be able feed the substation and customers. In addition, with the new line, PSE will be able to use each of the substations to its designed capacity without requiring additional substation expansion.

As detailed in the City's decision, the route will begin at the Lake Hills Substation and extend westerly along the south side of NE 8th Street. West of 156th Avenue NE, the line will cross to the north side of the street, passing condominium developments and the wetlands associated with Kelsey Creek at the intersection of NE 8th Street and 148th Avenue NE. From the northwest corner of NE 8th Street, the line will extend in a southerly direction along the west side of 148th Avenue NE, past the commercial area and continue to approximately NE 3rd Street, where it will cross the street to the east side. The line will

City of Bellevue Development Services Department
PSE Lake Hills to Phantom Lake Transmission Line
Shoreline Conditional Use 14-125951-WA
Shoreline Substantial Development Permit 14-126635-WG
September 18, 2015

then remain along the east side of the street until Main Street, where it would cross back to the west side until it reaches SE 16th Street. At SE 16th Street, the line would again cross 148th Avenue NE and continue east on the south side of the street, through a residential area to the existing Phantom Lake Substation.

Per Land Use Code 20.35.200, the Critical Areas Land Use Permit, Shoreline Substantial Development Permit and SEPA Determination are all Process II, administrative approvals made by the Development Services Department Director. The Conditional Use Permit and Shoreline Conditional Use Permit are Process III quasi-judicial decision made by the City Council. City Council approval for the Conditional Use Permit would not be effective until the East Bellevue Community Council (EBCC) voted to approve or deny the ordinance at a public hearing. In addition, the City initially believed that this process would also apply to the Shoreline Conditional Use Permit. However, the Court order referenced in this memo clarifies that review of Shoreline Conditional Use Permit is not subject to EBCC review and that final review of the Shoreline Conditional Use Permit shall be by Ecology.

Background

City review of the PSE Lake Hills to Phantom Lake Transmission Line project (Project) first began September 2011 when the Project was submitted for predevelopment review. A pre-application meeting was held in May of 2011 and applications for the Conditional Use Permit and Shoreline Conditional Use Permit (along with a Shoreline Substantial Development Permit, SEPA review, and a Critical Areas Land Use Permit) were submitted for formal review in December of 2011.

Following receipt of application and completion of project review by City staff, the Development Services Director approved the Critical Areas Land Use Permit and the Substantial Shoreline Development Permit and recommended Approval with Conditions of the Conditional Use and Shoreline Conditional Use Permits. The approvals and recommendation to the Hearing Examiner on the Conditional Use Permits were noticed/published on October 30, 2014. The public hearing before the Hearing Examiner was held on November 20, 2014 and the Hearing Examiner issued his recommendation on December 19, 2014, with an appeal period ending January 2, 2015. The Hearing Examiner recommended Approval with Conditions. No appeals were filed regarding the Hearing Examiner's recommendation. Two study session meetings and a public hearing were then scheduled with the City Council and on May 4, 2015, the City Council adopted Ordinance No. 6266, granting the Conditional Use and Shoreline Conditional Use with conditions. These approvals were submitted to the East Bellevue Community Council for

review. The EBCC considered City Council Ordinance 6266 on June 2 and 24, 2015. On June 24, 2015, the EBCC voted to deny the application for both the Conditional Use Permit and the Shoreline Conditional Use Permit via Resolution 550. As noted above, the EBCC's denial of the Conditional Use Permit was appealed by PSE to the King County Superior Court. Also as noted above, the King County Superior Court determined that the EBCC never had jurisdiction to review the Shoreline Conditional Use Permit; thus making the EBCC's denial of that permit *ultra vires* (void). WAC 173-27-130 (1) states that all applications for a permit or a permit revision shall be submitted to the department upon a final decision by local government. Final decision by local government shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed. **Per this King County Superior Court determination, the final decision on the Shoreline Conditional Use Permit was made by the Bellevue City Council Ordinance 6226, dated May 4, 2015.**

To comply with WAC 173-27-130, the City transmitted the entire Project file, as outlined in the Record Transmittal section of this memo, via certified mail to Ecology, including the EBCC denial Resolution 550, which was initially considered the City's "final decision" on the proposal. The application records were received by Ecology on July 16, 2015, and a copy of Ecology's letter, dated July 17, 2015, verifying receipt of the record is attached to this memo.

Record Transmittal

On July 17, 2015, Ecology acknowledged receipt of the PSE Lake Hills to Phantom Lake Transmission Line Shoreline Conditional Use Permit and Shoreline Substantial Development Permit application records. Within that record were the following items:

- 1) Hearing Examiner Recommendation dated June 20, 2014
- 2) City Council Ordinance 6226, dated May 4, 2015 and published May 7, 2015
- 3) EBCC Resolution 550, dated June 24, 2015
- 4) City Recommendation and Staff Report transmitted to Hearing Examiner, dated May 15, 2014.

Conclusion/Request

The City requests that this memo, dated September 18, 2015, and the attachments listed below be added to the record referenced above and that Ecology's review of the project be initiated.

City of Bellevue Development Services Department
PSE Lake Hills to Phantom Lake Transmission Line
Shoreline Conditional Use 14-125951-WA
Shoreline Substantial Development Permit 14-126635-WG
September 18, 2015

Attachments:

- 1) Letter and Order from King County Superior Court Judge William Downing, dated September 8, 2015.
- 2) Letter from Ecology verifying receipt of the City of Bellevue's decision on PSE's Shoreline Permits, dated July 17, 2015.

Superior Court of the State of Washington
for the County of King

WILLIAM L. DOWNING
Judge, Department No. 43

Seattle, Washington
98104-2312

September 8, 2015

Sara Leverette
Stoel Rives LLP
600 University St.; Ste. 3600
Seattle, WA 98101

Dawn Reitan
Inslee Best Doezie & Ryder
10900 NE 4th St.; Ste. 1500
Bellevue, WA 98009

Cheryl Zakrzewski
City of Bellevue
450 110th Ave. NE
Bellevue, WA 98004

Re: PSE v. EBCC, King County Cause No. 15-2-16919-0 SEA

Dear Counsel:

Thank you for allowing me the additional time that I needed to review the various statutes that were referenced in your most helpful briefing and argument.

At oral argument, Ms. Reitan indicated that EBCC's motivation was simply to see that the "correct mechanism" was being utilized for review of the actions proposed by PSE and approved by the City of Bellevue but disapproved by the East Bellevue Community Council. The Court is now satisfied that LUPA - intended by the legislature to be "the exclusive means of judicial review of land use decisions" - does provide that mechanism. Any review of EBCC's disapproval of PSE's requested conditional use permit shall be conducted under LUPA. The Court is further persuaded that it is consistent with RCW 35.14 and state environmental policy for shoreline conditional use permits to be reviewable through the Department of Ecology and not subject to Community Council approval.

Enclosed is a copy of the Order that has been entered today.

Sincerely,


William L. Downing
cc: court file

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THE HONORABLE WILLIAM DOWNING
Hearing: September 4, 2015 at 9:00 a.m.
(without oral argument)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.

Petitioner/Plaintiff,

v.

EAST BELLEVUE COMMUNITY
COUNCIL, a Community Municipal
Corporation, and CITY OF BELLEVUE, a
First Class City organized pursuant to
Washington Law,

Respondents/Defendants.

No. 15-2-16919-0 SEA

[~~PROPOSED~~] ORDER ON
RESOLUTION OF JURISDICTIONAL
ISSUES

ORDER ON RESOLUTION OF JURISDICTIONAL ISSUES

THIS MATTER having come before the King County Superior Court on a motion to resolve jurisdictional issues, and the Court having reviewed the pleadings and papers filed herein; now, therefore, the Court hereby orders as follows:

1. Puget Sound Energy, Inc.'s ("PSE") appeal of the East Bellevue Community Council's ("EBCC") disapproval of a conditional use permit for the construction of a 115 kV transmission line between the Lake Hills and Phantom Lake electrical substations is governed exclusively by the Land Use Petition Act, Chapter 36.70C RCW.
2. The Court holds that, under the plain language of RCW 35.14.040, the EBCC lacks jurisdiction to review shoreline conditional use permits. To the extent that EBCC

ORDER ON RESOLUTION OF
JURISDICTIONAL ISSUES

- 1 -

STOLL RIVESTER
ATTORNEYS AT LAW
600 University Street, Suite 4000, Seattle, WA 98101
Telephone: 206.461.1000

1 Resolution No. 550 seeks to disapprove PSE's shoreline conditional use permit, such actions
2 are *ultra vires*. Resolution No. 550 is remanded to the EBCC with instructions to eliminate
3 reference to shoreline conditional use permits.

4 3. The City of Bellevue is hereby ordered to transmit the Bellevue City Council's
5 Ordinance No. 6226 to the Washington Department of Ecology for review and final
6 disposition.

7
8 DATED this 8 day of September, 2015.

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11 HONORABLE WILLIAM DOWNING
12 in and for King County Superior Court
13

14 *Presented by:*
15 STOEL RIVES LLP
16 /s/ Sara Leverette
17 Sara Leverette, WSBA No. 44183
18 600 University Street, Ste. 3600
19 Seattle, WA 98101
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office 3190 160th SE Bellevue, Washington 98008-5452 (425) 649-7000

July 17, 2015

Puget Sound Energy
ATTN: Jeff McMeekin
PO Box 97034 - PSE 09 N
Bellevue, WA 98004

Re: City Bellevue Local Permit no. (SDP) 11-131124-WG and (CUP) 12-127693-WA;
2015-NW-2900 SIMULTANEOUS FILING OF Administratively Approved Substantial
Development Permit and Disapproved Shoreline Conditional Use Permit.

Dear Mr. McMeekin:

On July 16, 2015 the Department of Ecology (Ecology) received the City of Bellevue's decision on Puget Sound Energy's (PSE) shoreline permits, which are described as follows:

Administrative conditional approval of Substantial Development Permit (11-131124-WG) to construct a new 115kV overhead transmission line to connect the Lake Hills Substation with the Phantom Lake Substation.

Denial of Shoreline Conditional Use Permit (12-127693-WA) use authorization to construct a new 115kV overhead transmission line to connect the Lake Hills Substation with the Phantom Lake Substation.

What Happens Next?

The City of Bellevue's decision is appealable to the state Shorelines Hearings Board within 21 days from July 16, 2015, the "date of filing." This waiting period allows anyone (including PSE) who disagrees with any aspect of this permit, to appeal the decision to the state Shorelines Hearings Board.

Appeal instructions (Chapter 461-08 WAC) can be found on the Shorelines Hearings Board website at <http://www.eho.wa.gov>. They are also posted on the website of the Washington State Legislature at <http://apps.leg.wa.gov/wac/default.aspx?cite=461-08>

Puget Sound Energy
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The Shorelines Hearings Board will notify PSE by letter if they receive an appeal. You can also contact the Shorelines Hearings Board directly to see if an appeal has been filed. They can be reached at (360) 664-9160 or <http://www.cho.wa.gov>.

Other federal, state and local permits may be required in addition to this shoreline permit.

If you have any questions about this letter, please feel free to contact me at (425) 649-7145 or Joe.Burcar@ecy.wa.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar". The signature is written in a cursive style with a long horizontal flourish at the end.

Joe Burcar, Senior Shoreline Planner
Shorelands and Environmental Assistance Program

cc: Sally Nichols, City of Bellevue

City of
Bellevue



East Bellevue Community Council

Post Office Box 90012 Bellevue, Washington 98009-9012

December 1, 2015

SENT VIA U.S. MAIL AND ELECTRONIC MAIL

Washington State Department of Ecology

Attn: Joe Burcar

PO BOX 47600

Olympia, WA 98504-7600

Re: Final Decision on the City of Bellevue Shoreline Conditional Use file #12-127693-WA regarding Puget Sound Energy's (PSE) Lake Hills to Phantom Lake Transmission Line Proposal

Dear Mr. Burcar:

The East Bellevue Community Council (EBCC) is a community municipal corporation formed under Chapter 35.14 RCW and authorized to approve or disapprove legislation applying to land, buildings or structures within its jurisdiction. On June 2, 2015, the Bellevue City Council transmitted Ordinance No. 6226, approving the Shoreline Conditional Use Permit (SCUP) for an 115kV transmission line project in the Lake Hills neighborhood to the EBCC for approval or disapproval, which is currently under review by the Department of Ecology.

The EBCC held three public hearings on the project in 2012 and 2013, and deliberated for many hours prior to adoption of Resolution No. 550 disapproving Ordinance No. 6226 on June 24, 2015. Enclosed please find a copy of the EBCC's Resolution No. 550 for your consideration in review of the SCUP referenced above.

Sincerely,

Bill Capron, Chair of the EBCC

Enclosure

**EAST BELLEVUE COMMUNITY MUNICIPAL CORPORATION
OF THE CITY OF BELLEVUE, WASHINGTON**

Resolution No. 550

A RESOLUTION of the East Bellevue Community Council disapproving City Council Ordinance No. 6226 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, on the 4th day of May 2015, the City Council of the City of Bellevue, Washington passed Ordinance No. 6226 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; and

WHEREAS, the subject matter of said Ordinance falls within the jurisdiction of the East Bellevue Community Council pursuant to RCW 35.14.040; and

WHEREAS, following East Bellevue Community Council's consideration of this matter on June 2, 2015 and June 24, 2015, the Community Council voted to disapprove Bellevue Ordinance No. 6226.

NOW, THEREFORE, BE IT RESOLVED by the Community Council of the East Bellevue Community Municipal Corporation of the City of Bellevue:

Section 1. The East Bellevue Community Council makes and enters the following findings of fact as contained herein on Exhibit A.

Section 2. Based on the Findings of Fact contained on Exhibit A and entered by the East Bellevue Community Council, the Community Council hereby disapproves Ordinance No. 6226 enacted by the Bellevue City Council on May 4, 2015, and pursuant to RCW 35.14.040, this Ordinance shall not become effective within the area of the East Bellevue Community Council.

Section 2: The Clerk is hereby directed to certify the original of this Resolution, to file the same and to keep the same on file in her office. The Clerk is further directed to distribute certified and conformed copies of the Resolution to the Bellevue City Council, the Planning Department, and the Development Services Department.

Passed by a majority vote of the East Bellevue Community Council on the 24th day of June, 2015, and signed in authentication of its passage this 24th day of June, 2015.

(Seal)



William Capron, Chair

ATTEST



Charmaine Arredondo
Deputy City Clerk

Exhibit A
East Bellevue Community Council's
Findings and Conclusions in Support of Resolution No. 550

1. PSE attempted to engage the public on the tradeoffs with respect to an 115kV transmission line between the Lake Hills and Phantom Lake substations in 2007 and held four public meetings between 2007 and 2011 which did not adequately notify the public of the benefits and costs of the alternatives and the possibility of making no changes to the system. (Hearing Examiner Record at 57C, 149C, 180C).
2. The East Bellevue Community Council (EBCC) held three public courtesy hearings on June 5 and September 4, 2012 and June 4, 2013. Three hearings were held because it was unclear if the public's need for information on this project had been met. At the June 4, 2013 meeting City staff attempted to restrict the discussion to mitigation for a project that had not yet been approved. This was overruled and the entire project was discussed with meaningful public input received. (Hearing Examiner Record at 66C).
3. The Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation that the decision criteria for a Conditional Use Permit (CUP) set forth in Land Use Code (LUC) 20.30B.140 have been met is not supported by material and substantial evidence. Specifically, the conditional use is not consistent with the Comprehensive Plan. LUC 20.30B.140.A (Hearing Examiner Record at 149C, 180C).
4. The Hearing Examiner found in error based on his analysis of record evidence that PSE's licensed engineer credibly established that the proposed transmission line improves reliability to customers served and reliability as a whole. (Hearing Examiner Record at 56-57F).
5. The Hearing Examiner found, based on evidence in the record, that the City of Bellevue and its residents would benefit from a new transmission line, primarily from improved system reliability, and reduction in power outages and their duration, which can be achieved with the "looping" provided with the new line but failed to weigh these benefits against the environmental harm and lack of compliance with the comprehensive plan which would make the residents of East Bellevue worse off than doing nothing. (Hearing Examiner Record at 56-57F)
6. The Hearing Examiner found, based on evidence in the record, that the route selected was most consistent with the City Council's hierarchy of preferred locations found in LUC 20.20.255D(2)(d) which was in error based on the testimony of expert witnesses that did not have a self-interest by being employees or consultants to the proponent. (Hearing Examiner Record at 56-57F).

employees or consultants to the proponent. (Hearing Examiner Record at 56-57F).

7. In this matter the EBCC has full jurisdiction to approve or disapprove land use decisions including CUP applications that apply within the boundaries of its jurisdiction. Chapter 35.14 RCW.
8. PSE has requested to enter into a development agreement with the City of Bellevue to vest their right to construct a second 115kV transmission line along the South side of SE 16th Street at some point in the future if the City constructs the unwanted and unneeded TFP – 158 project. This is expressly prohibited in the Hearing Examiner's report and should not be allowed since the costs (financial and environmental) far exceed the potential benefits of the project. (Hearing Examiner Report at 36, 114D).
9. The Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation that Conditional Use Permit LUC 20.30B.140(B) has been met is not supported by material and substantial evidence. Throughout the documents, NE 8th, and especially 148th Ave are designated as Urban Boulevards, and part of the Enhanced Rights of Way; the routes are continually described as having no existing power lines. (Hearing Examiner Record 139-149C, 192F, 140C). This was not done by accident. 148th Ave was developed as an Urban Boulevard by a visionary City, and involved sacrifice for the greater good by private citizens. Homes were condemned and neighborhoods radically transformed to provide a national example of how major thoroughfares can be a pleasant park for commuters and residents alike. Obviously, a major element of the Urban Boulevard is a lack of visible utilities, such as distribution and transmission wires. The only visible utilities on NE 8th and 148th are light poles.
10. The Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation that Conditional Use Permit LUC 20.30B.140(A) has been met is not supported by material and substantial evidence. This conditional use is inconsistent with the Comprehensive Plan provisions noted below which repeatedly refer to Bellevue's Commitment to a City in a Park, and developing the Urban Boulevard and Enhanced Rights of Way:
 - a. UT-45 page 209 "avoid...locating overhead lines in greenbelt and open spaces..."
 - b. UT-53 page 210 "require all utility...facilities to be aesthetically compatible..."
 - c. UT-19 page 212 refers to city in a park, preserving trees
 - d. UT-42 page 212 Design boulevards to reinforce the image of Bellevue as a "City in a Park"
 - e. S-WI-44 Utilities page 214 serve need enhancing the visual quality of the community

11. The evidence in the record does not support the NE 8th St, and 148th Avenue route. (Hearing Examiner Record at 139-149C). "Understanding Bellevue's Commitment to Street Aesthetics" which cites the Formal Enhanced Right of Way & Urban Boulevards Program whose mission is to "Enhance the visual and functional quality of city streets and gateways... It includes a 4-person Steering Committee of City Directors and Assistant Directors and 8-person Program Team of city staff..." (Hearing Examiner Record at 140C). This fundamental criteria was not regarded consistent with other rules and guidelines. As pointed out in the letter, more than 50,000 people enjoy this park daily, and the whole project will adversely affect this enjoyment; from construction delays to long-term visual pollution.
12. The Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation that Conditional Use Permit LUC 20.30B.140(D) has been met is not supported by material and substantial evidence. The impact of traffic on 148th Avenue NE including costs of adverse impacts to commerce, pollution, and commute time were not considered. (Hearing Examiner Report at p. 86)
13. The Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation that Additional Criteria for Electrical Utility Facilities LUC 20.20.255E.3 has been met is not supported by material and substantial evidence. The record indicates that there have been few outages due to substation or transmission lines. There were 5 power outages in 10 years; 4 by trees, fixed within a day caused by transmission line failure. (Hearing Examiner Record 26F, 19C). Outages are "mostly due to failures of overhead conductors and tree related events." (Hearing Examiner Record 27F). Any claims of improved reliability are statistically insignificant. (Hearing Examiner Record 26F, 19C, 27F, Hearing Examiner Report at p. 11 para 3, stating that the two substations are currently underutilized).
14. The Alternative Siting Analysis required by LUC 20.20.255D was not completed properly because letters submitted by professionals and city staff were not properly considered. Series of letters from professionals and city staff that refer to the benefits of alternative siting that were not considered in selecting 148th Avenue alignment. (Hearing Examiner Record 149C, 179C, 42C, 156C, 56F, 58F).
15. The cost and/or feasibility of alternative sites/undergrounding was not properly considered by the Hearing Examiner. This is inconsistent with the Bellevue Comprehensive Plan which provides that the City needs to approach conversion of distribution lines to underground. (Hearing Examiner Record 5G at p. 54).
16. The project fails to achieve the desired benefit of redundancy because the "loop" cannot be completed as originally proposed (Hearing Examiner Report at pp. iv

and 36). PSE does not intend to construct the segment of the project along SE 16th until an unspecified date in the future. (Hearing Examiner Report at p. 54).