

**CITY OF KIRKLAND HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**PSE Sammamish-Juanita 115kV Electrical Transmission Line
ZON20-00104**

1. FINDINGS OF FACT

1.1 Proposal. Puget Sound Energy (“PSE”) proposes a five-mile transmission line spanning three jurisdictions, Kirkland, Redmond, and unincorporated King County (“Project”). This permit is for the 3.12-mile segment in Kirkland. The Project begins at the Willows Road NE and NE 124th Street intersection and ends at the Juanita Substation.¹ The Totem Substation will be upgraded.² PSE proposes 40 new transmission line poles, one new stub pole, 17 replacement transmission poles, and two replacement distribution poles.

1.2 Hearing. An open record public hearing was remotely held on October 20, 2021. There were no reported technical impediments to citizen participation. The City Planning and Building Department (“Department”), through Ms. Anderer, provided a Project overview. PSE, through Ms. Kriner, added detail. PSE accepted the Staff Report’s proposed conditions. From the public, Mr. Bedford of Bedford Properties, LLC testified. He supported the early siting process PSE used (Stakeholder Advisory Group process initiated in 2011) but unfortunately due to an addressing error was unaware of this early opportunity for participation. He requested that three power poles be moved further from 120th Avenue. Though he appreciates Project siting across the street, this would alleviate visual impacts on the Montessori School at 12345 120th Avenue NE.³ There was no further citizen comment at the hearing. The record was kept open through October 22. No further public comment was received.

1.3 Administrative Record. These exhibits were admitted:

- Exhibit A: Staff Report with Attachments 1-15;
- Exhibit B: Public Comments (Bedford Properties, LLC, 9/29/21 and 12/1/20);
- Exhibit C: Department Power Point;
- Exhibit D: PSE Power Point;
- Exhibit E: PSE E-Mail on Decision Issuance (10/20/21);
- Exhibit F: Hearing Agenda; and,
- Exhibit G: Hearing Notice.

¹ Illustrations detailing line location are throughout the record, including with the Notice of Hearing, Department Power Point, and PSE Power Point.

² Improvements include a dead-end tower, a switch, and bus supports to accommodate the new line in and out of the Totem Substation

³ These concerns are further detailed in Mr. Bedford’s September 29, 2021 comment at Exhibit B.

1.4 Zoning and Surrounding Uses, Overview. The Project runs through multiple land use districts, including City right-of-way, I-405 right-of-way, Commercial Use, Office Use, Cross Kirkland Corridor, Multi-Family Residential, and Single-Family Residential. Zones include public right-of-way, RM 2.4, TL 6A, TL 7B, TL 7A, TL 4B, TL 6B, TL 11, Public Park, RSX 7.2, and RM 3.6.⁴

1.5 SEPA Review and Hearing Notice. The Department issued a Determination of Nonsignificance, which was not appealed.⁵ SEPA review is complete. The hearing was noticed consistent with code, with opportunities for comment detailed.⁶

1.6 Summary of Public Comment Submitted During City Review and Response.

- A request was made for replacement poles in the residential neighborhood near the Juanita Substation to be made of wood and in the same location as each existing pole, with old electrical poles removed. The Applicant stated replacement poles would be made from wood and generally in the same location as existing poles.
- A request for undergrounding poles near Juanita High School and Juanita Substation was made. The Department and PSE responded that the code does not require undergrounding and the poles contain other equipment besides PSE transmission and distribution lines.
- A request was made to route the lines so they cross I-405 at NE 124th instead of NE 116th Street to avoid the existing Montessori School at 12345 120th Avenue NE and a proposed 400 unit residential development at an adjacent vacant lot. KZC 115.107.4.c provides for siting to minimize and mitigate school and residential impacts. Potential I-405 crossing options included NE 118th Street, NE 124th Street, NE 128th Street, and NE 132nd Street. PSE chose the NE 118th Street crossing as this was the option WSDOT agreed to permit. PSE has existing rights to site the line within the Cross Kirkland Corridor and the approach avoids crossing public property to reach I-405.
- Northshore Utility District stated the Project could significantly impact its ability to provide long term sewer service with King County Wastewater Treatment Division within the Totem Lake Area if transmission lines are within the Cross Kirkland Corridor. PSE responded that it has been coordinating with King County since 2013 to address compatibility with the County's easements and underground facilities, and holds easement rights allowing the planned location. As the District does not hold such rights, PSE requested that additional conditions not be imposed, and the Department recommended against same.⁷

⁴ Staff Report, pgs. 4-5. A table on p. 5 identifies the zoning and uses for each segment.

⁵ Staff Report, Attachment 5.

⁶ Notice of Hearing; KZC 150.30.

⁷ Staff Report, pp. 6-8.

1.7 School Impacts. PSE involved the community early in developing siting alternatives and considering school location in relation to the Project. PSE's siting analysis considered Montessori School impacts, which it addressed by locating the proposed line on the east side of 120th Avenue NE (the opposite side from the school).⁸ This concern is further addressed in bullet three above. The line was designed to the extent feasible to avoid schools and residential areas, particularly through input from the Stakeholder Advisory Group process. Factors such as engineering, constructability, ability to acquire easement rights, and compatibility with existing and planned infrastructure affected line route options. The route ultimately selected was the one best meeting code and policy considerations, but there may be limited opportunities for locational adjustments in the area noted during public comment at the hearing.

1.8 Critical Areas. Most wetlands are low-quality Category III or IV, but also Category II, and within ditches along the trail corridor. The permanent wetland impact is 55 square feet, and permanent buffer impact is 60 square feet.⁹ These limited impacts are mitigated.

The Project was designed to avoid and minimize impacts to critical areas and buffers. Pole locations have been adjusted to avoid critical areas and their buffers, and are located to utilize existing paved areas and gravel access to the degree possible. No poles will be located in streams. Temporary work areas will be located to result in the least amount of overlap with critical areas and their buffers. Access routes will avoid critical areas and buffers to the degree possible. The gravel construction access and maintenance road has been designed to utilize the existing railbed and avoid streams, wetlands, and their buffers to the degree possible. Impact minimization techniques will include conducting Project work during the dry season, laying mats over wetland vegetation to prevent damage associated with heavy equipment, implementing best management practices to control erosion and sedimentation, incorporating retaining walls into the access road design, and restoring disturbed work areas in critical areas and buffers following construction.¹⁰

Permanent fill impacts and tree removal on private property will be mitigated through the purchase of mitigation bank credits, with tree removal in the Cross Kirkland Corridor mitigated through payment of an in-lieu fee to the City (KZC 90.145.4).

1.9 Staff Report Incorporation and Conditions. The Staff Report is incorporated. Staff Report conditions should be included without substantive revision to ensure KZC requirements are met and consistency with these findings. The Examiner does add one condition providing for PSE to consider minor locational adjustments regarding the three poles Mr. Bedford identified in public comment. This is not a condition providing for consideration of a route change, but to allow for minor locational adjustments to the three poles referenced, if feasible and if aesthetic impacts on the school would be lessened.

⁸ Staff Report, p. 7.

⁹ AR 1611; PSE Power Point.

¹⁰ AR 1610, Executive Summary.

2. CONCLUSIONS OF LAW

2.1 Review Authority. The Examiner reviews the Project under the IIA Review process, as authorized by code.¹¹

2.2 Public Utility, Electric Transmission Lines (KZC 115.107).

[T]he City may approve an electrical transmission line only if it finds that, based on the siting and design analysis, the applicant has demonstrated that the proposal, to the extent technically and operationally feasible, has been sited and designed to minimize and mitigate impacts to:

- a. Critical areas, critical area buffers, and significant trees as regulated in applicable chapters of the KZC; and
- b. Views from public properties and rights-of-way that are designated in the Comprehensive Plan; and
- c. Schools and residential areas.¹²

An applicant must submit “a siting and design analysis describing how the proposed route and project design was selected,” and justify siting and design under the above criteria, “technologies and design features” to mitigate visual and environmental impacts, and “technologies and design features that would mitigate radio frequency interference with existing high-technology uses” along the route consistent with federal requirements and standards.¹³ The Applicant’s siting and design analysis, along with the critical areas view, demonstrated these criteria are all met. Visual simulations were provided detailing the analysis.

PSE has prepared photosimulations from selected public viewpoints depicting the proposed transmission line along public streets as well as the CKC. These have been provided as part of the project permit submittal.

Additionally, the City has identified gateways within the Totem Lake Business District. One such gateway is identified at the intersection of NE 124th Street and 120th Avenue NE/116th Avenue NE. PSE designed the transmission line to avoid locating a pole on the corner of that intersection and instead set the pole on the north side of NE 124th Street west of the intersection. Additionally, PSE has coordinated with the City to design the transmission line near other gateways along the CKC, including near the pedestrian bridge at the intersection of NE 124th Street, 124th Street NE and Totem Lake Boulevard.¹⁴

¹¹ KZC 115.107.3 (utility review); KZC 150.65 (Type IIA Review Process). Public utility exception review under Ch. 90.45 KZC is a Type I Director Decision. KZC 90.45.2. Per code, this decision was consolidated before the Examiner. KZC 145.10.

¹² KZC 115.107.4.a-c.

¹³ KZC 115.107.5.a-c.

¹⁴ AR 866.

PSE coordinated with the City and other Cross Kirkland Corridor easement holders since 2013 to address compatibility with City Trail Master Plan implementation and other uses in the Corridor. The proposed transmission line alignment avoids directly crossing at the intersection of NE 124th Street and 116th Avenue NE to avoid conflicts with future gateway features.¹⁵

The Project will primarily be within and surrounded by commercial land use districts (0.24 miles of new line along multi-family zoned property frontage and 2.09 miles within commercial districts). Most of the proposed transmission line will be within public road right-of-way and in the joint-use trail corridor.¹⁶

Through the transmission line siting process with the SAG, several routes were considered that went along street rights-of-way near residences and schools within the City of Kirkland. These included routes that went west out of Sammamish Substation instead of east and headed north along 132nd Ave NE and 124th Ave NE by way of NE 90th Street and NE 95th Street. The SAG eliminated these routes because of their location in residential neighborhoods and near schools. There were also engineering siting challenges discovered by PSE for routes along these western segments. The SAG requested that PSE also consider routes that avoided NE 132nd Street and entering Juanita Substation from the north to avoid the NE 132nd Avenue residential area. The SAG provided input that resulted in a preferred route ultimately going through predominantly commercial and industrial areas by exiting Sammamish Substation to the east, going through the Totem Lake Business District, and avoiding NE 132nd Ave by interconnecting with the existing Sammamish – Moorlands #1 transmission line versus installing a new transmission line near single-family residential development near Juanita Substation. The existing transmission corridor from just south of NE 124th Street and NE 128th Street will be rebuilt to accommodate the new transmission line capacity within the existing corridor.¹⁷

In conjunction with this siting assessment, critical areas were extensively reviewed. The Project avoids critical areas and their buffers to the extent feasible and mitigates for impacts consistent with code. This is detailed in Finding 1.8 and Conclusions 2.3 and 2.4.

2.3 Public Agency and Public Utility Exceptions (KZC 90.45). A public agency critical areas exception may be granted based on these criteria:

- a. There is no other practical alternative to the proposed project with less impact on the critical areas or buffer;
- b. Strict application of this chapter would unreasonably restrict or prohibit the ability to provide public utilities or public agency services to the public;

¹⁵ See PSE Power Point, p. 14.

¹⁶ PSE Power Point, p. 14.

¹⁷ AR 866.

c. The proposal minimizes impacts to the critical area or buffer through mitigation sequencing, and through type and location of mitigation, pursuant to KZC 90.145 and 90.150, if applicable, including such installation measures as locating facilities in previously disturbed areas, boring rather than trenching, and using pervious or other low impact materials; and

d. The proposal protects and/or enhances critical area and buffer functions and values, consistent with the best available science and with the objective of no net loss of critical area functions and values.¹⁸

The Applicant documented twelve wetlands and four streams in or near the Project area.¹⁹ The City's consultant peer reviewed the analysis and confirmed these findings,²⁰ and the Applicant submitted a final revised report.²¹ The Project includes new and replacement poles within mapped critical areas and critical area buffers.²²

Under KZC 90.35.3 new and replacement utility structures may be exempted only if within existing improved right-of-way, existing legally improved private roadway, utility corridor, or the Cross Kirkland Corridor and Eastside Rail Corridor. Pole 3/1 in corridor segment 16 and pole 4/10 in corridor segment 23 are within critical areas or their buffers on private property so do not meet the exemption standard. Pole 3/1 will have zero temporary and permanent impacts as it is on a developed and paved area. Pole 4/10 will have 5,215 square feet of temporary wetland and stream impacts, and 15 square feet of permanent wetland and stream impacts.²³

The Project minimized critical area impacts through mitigation sequencing and avoided critical areas and buffers to the extent feasible while meeting permitting and engineering requirements.²⁴ Impacts are minimized by locating facilities in previously disturbed areas, boring rather than trenching and using pervious or other low impact materials. Project plans are at Attachment 2, impacts are fully mitigated, and the approach is consistent with City consulting biologist recommendations (Attachments 8 and 13). The Project will follow these plans and recommendations. As mitigated and based on best available science, there is no net loss of critical area function values. If not approved, the lease impactful transmission line siting approach would be foreclosed. The public agency exception criteria are met.

2.4 Mitigation Sequencing (KZC 90.145). Mitigation sequencing per code requirements was documented.²⁵ The Project avoids temporary and permanent impacts to most critical areas. Impacts are minimized such as through placing access and staging equipment on

¹⁸ KZC 90.45.3.a-c.

¹⁹ Staff Report, p. 10; AR 1633, § 2.3.1. This section details wetland characteristics.

²⁰ Staff Report, p. 10.

²¹ Staff Report, p. 10.

²² Staff Report, p. 10.

²³ This is detailed at AR 1669, Table 5-11. Total temporary wetland and stream impacts are 7,015 square feet. *See* § 6.3 for details on mitigation and Attachment 12.

²⁴ Attachments 9, 11 and 12; Staff Report, p. 11; *see specifically* analysis starting at AR 1654, including §§ 3.5 and 3.6, with avoidance/minimization addressed in § 4.

²⁵ Staff Report, p. 14.

existing gravel or paved surfaces, using temporary timber mats, and preventing damage from heavy equipment. To the extent unavoidable, areas where construction impacts do occur will be restored. A five-year monitoring maintenance plan consistent with KZC 90.160 will be developed. The City's outside critical areas consultant completed a peer review and concurred with the approach to mitigation sequencing.²⁶ The Applicant documented mitigation compliance with KZC 90.145 and with KZC 90.150. On-site mitigation will be completed for temporary impacts, with mitigation bank credits used to address permanent impacts. Vegetation standards cannot be fully met due to safety standards for vegetation near transmission lines and maintenance needs. KZC 90.145 allows for a public agency exception in such cases. The seed mix meets requirements and PSE is not proposing plants which require support materials, such as staking. An erosion control plan will be submitted consistent with code.

2.5 Tree Management (KZC 95). The Applicant submitted an arborist report (Attachment 14) and tree restoration plan (Attachment 15) consistent with code. 292 trees were identified for removal. Tree removal mitigation is based on location:

- On private property, removed trees will be replaced on-site with transmission compatible trees.
- Within right-of-way, removed tree will be replaced in-place per the tree replacement detail (Attachment 15).
- Within the Cross Kirkland Corridor, PSE will pay an agreed fee to the City to replant removed trees at a City selected location.
- Within private property and critical areas or their buffers, PSE will buy credits at an approved mitigation bank to mitigate for tree removal (*see* Attachment 11).
- Within the WSDOT right-of-way, trees removed will be reviewed by WSDOT through the State Utility Permit.

2.6 Process IIA. The application is only approved if "consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and ... with the public health, safety and welfare."²⁷ The Findings and Staff Report detail Project consistency with City development regulations. No area was identified lacking regulatory coverage, but the Project also follows the Comprehensive Plan, which supports the provision of public utilities and infrastructure to support expected growth.

The Project is within the Totem Lake and Juanita neighborhoods. Plan policies provide for siting utility services in a way which is environmentally sensitive, safe, and aesthetically compatibility with surrounding uses (Policy U-1.4). PSE followed the City's mitigation sequencing standards and provided a siting and design analysis identifying strategies used to minimize view impacts. PSE promotes renewable energy through its Green Power program to ensure a portion of the City's electricity needs are matched with Northwest renewables, consistent with Policy U-1.6. Due to engineering and permitting constraints, undergrounding was not feasible

²⁶ Staff Report, p. 14.

²⁷ KZC 150.65(3)(a) and (b).

(Policy U-1.8) and would undercut Policy U-1.9 encouraging joint utility facility use. PSE has worked with surrounding cities and jurisdictional bodies consistent with Policy U-1.10.

The project follows the development regulations and Comprehensive Plan, and is consistent with the public health, safety and welfare, so should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the project subject to these conditions:²⁸

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. The Staff Report's Attachment 3, Development Standards, was provided to familiarize the applicant with some of the additional development regulations. This attachment did not include all the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.

2. As part of the land surface modification permit, the applicant shall submit plans that are consistent with the proposed plans in the Staff Report, Attachment 2, the proposed tree retention and restoration standards in the Staff Report, Attachments 14 and 15, and the proposed mitigation plans in the Staff Report, Attachment 11.

3. Prior to the final inspection of the land surface modification permit, the applicant shall:

a. Submit a signed agreement with the City detailing the fee in lieu of supplemental tree plantings for tree removal within the Cross Kirkland Corridor.²⁹

b. Complete the required wetland and wetland buffer enhancement improvements proposed in the Staff Report, Attachment 11 and incorporate the recommendations found in the Staff Report, Attachments 8.³⁰

c. Submit an as-built plan and report prepared by the applicant's consultant for inspection by the City's consulting qualified critical area professional at the applicant's expense.³¹

4. Trees shall not be removed or altered following approval except as approved by the Planning and Building Department. The Applicant's arborist report (*see* Staff Report, Attachment

²⁸ For details on attachment references and footnoted conclusions, see the Staff Report, pp. 2-3.

²⁹ *See* Staff Report, Conclusion II.E.4.B.2.

³⁰ *See* Staff Report, Conclusions II.E.3.b.1 and II.E.3.b.2.

³¹ *See* Staff Report, Conclusion II.E.3.b.2.

14) and tree restoration plan (*see* Staff Report, Attachment 15) contains specific information concerning tree retention requirements and mitigation standards.

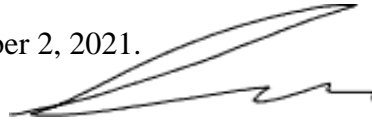
5. The applicant shall submit monitoring reports at required intervals, as outlined in the Staff Report, Attachment 11, to the Planning and Building Department for review by the City's consulting qualified critical area professional at the applicant's expense.³²

6. The record of payment for credits shall be provided to the City in advance of the authorized impacts but no later than issuance of the building or land surface modification permit.³³

7. PSE shall document its consideration of the feasibility of minor locational adjustments to the poles referenced in public comment to further minimize school aesthetic impacts, as addressed at Findings 1.2 and 1.9. Documentation is to be submitted to the Department during or before building permit review.

Unless timely appealed to City Council, this Decision is final.³⁴ The appeal to City Council must be in writing and delivered, along with required fees, to the Planning Department by the code required deadline.

DECISION entered November 2, 2021.



City of Kirkland Hearing Examiner Pro Tem
Susan Elizabeth Drummond

³² *See* Staff Report, Conclusion II.E.2(b)(6).

³³ *See* Staff Report, Conclusion II.E.3(b)(2).

³⁴ *See* Ch. 150.80 KZC for detail. The Staff Report summarizes requirements at p. 22. The Decision may be corrected or clarified during the appeal period. The Council decision must then be appealed within 21 days to Superior Court. Ch. 36.70C RCW.