

- Meetings may be viewed on the [City of Anacortes website](#), on the City of Anacortes [YouTube](#) Channel, or on TV [Channel 10](#).
- The public may also watch, listen to, or participate in the meeting live by visiting <https://us02web.zoom.us/j/89255646791> or by telephoning 1-253-215-8782 and entering Meeting ID 892 5564 6791.
- The public is encouraged to comment via email to cityclerk@cityofanacortes.org or via written comment addressed to City Clerk, P.O. Box 547, Anacortes, WA 98221. Public comments received by the [City Clerk](#) prior to 3:00 p.m. the day of the meeting will become part of the record for the meeting, just as if presented in person.
- Complete guidelines for virtual participation in Anacortes City Council meetings are available [here](#). View the quick video example for connecting to the meeting [here](#).



Anacortes City Council
Municipal Building Council Chambers
904 6th Street

October 2, 2023
6:00 PM

PRELIMINARY AGENDA
[Packet Materials](#) / [Watch Meeting](#)

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Announcements and Committee Reports**
 - a. Fiber Committee (Report)
 - b. Housing Affordability and Community Services Committee (Report)
 - c. Public Works Committee (Report)
 - d. Library Committee (Report)
4. **Public Comment**
5. **Consent Agenda**
 - a. Minutes of September 25, 2023 (Action)
 - b. Approval of claims in the amount of \$604,875.45 (Action)
 - c. Special Event Application: Downtown Trick or Treating (Action)
 - d. Contract Modification: WWTP Odor Control Heat Trace Project - Electrical Components Installation #23-115-SEW-002 (Action)
6. **Closed Record Decision Hearing**
 - a. Appeal Hearing - Port of Anacortes / SDP-2023-0002 (Discussion/Action)
7. **Other Business**
 - a. * Community Action of Skagit County 3rd Quarter Update on Community Action Services available in Anacortes (Presentation)
 - b. * Utility Pole Attachment Make-ready Work for a Section B of the EDA Expansion Aerial Construction Area of the City's Fiber Project (Discussion/Action)
 - c. Resolution 3129: Setting a Date for a Public Hearing on a Vacation Petition (Action)
 - d. Contract Award: R Avenue Long-Term Improvement Project #20-127-TRN-004

Per Resolution 3051, citizens wishing to comment on items not on the agenda may do so under Public Comment. Citizens wishing to comment on items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting.*

The City of Anacortes is committed to making public meetings available and accessible to all members of the community.
For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.

(Discussion/Action)

8. **Adjournment**

Per Resolution 3051, citizens wishing to comment on items not on the agenda may do so under Public Comment. Citizens wishing to comment on items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting.*

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Table
Economics of CAL FIRE Contracted Aircraft

Contract	Aircraft	Availability	Use/hr.	Paid amount	Payload Gallons	hours used	#loads** estimated	Gallons delivered	CPG cost-per-gallon
Fixed Wing									
7CA05084	10 Tanker	\$42,500	\$12,500	\$5,486,163.89	12,000	139.94	47	564,000	\$9.72
7CA05091	LAT	\$20,050	\$7,000	\$2,228,327.77	2,500	117.45	39	97,500	\$22.85
7CA05089	747 Tanker	\$45,000	\$17,000	\$5,986,443.33	18,000	117.23	39	702,000	\$8.53
Rotary Wing, water/retardant transporters									
7CA05086	P3 Orion*	\$24,000	\$7,643	\$3,109,315.73	2,500	125.8	84	210,000	\$14.80
7CA05092	CH-47	\$23,000	\$7,643.19	\$2,834,759.72	2,500	102.7	68	170,000	\$16.68
7CA05093	S-64.	\$27,995	\$7,945.30	\$3,337,134.56	1,380	95.0	63	86,940	\$38.38
7CA05085	UH-60	\$10,200	\$4,230.80	\$1,781,912.33	900	190.6	127	114,300	\$15.59
7CA05090	S-64	\$18,950	\$7,945.30	\$2,477,744.52	1,380	93.6	62	85,560	\$28.95
Rotary wing, Observation									
7CA05094	Bel 214	\$9,000	\$2,245.90	\$914,295.84	observation	40.7	N/A	\$22,464.27	cost-per-hour

Total, contracted aircraft \$34,374,729.15

*Contractor supplies 3 aircraft. The figures are the average for each aircraft

** Although requested is the actual number of loads delivered. This writer estimates an average of 3 hours for fixed wing and 1.5 hours per load for rotary wing aircraft.

Anacortes City Council Minutes - September 25, 2023

Call to Order

Mayor Matt Miller called to order the Anacortes City Council meeting of September 25, 2023 at 6:00 p.m. Councilmembers Jeremy Carter, Ryan Walters, Anthony Young, Bruce McDougall, and Amanda Hubik were present. Councilmembers Christine Cleland-McGrath and Carolyn Moulton participated in the meeting remotely via Zoom.

Pledge of Allegiance

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Mayor Miller shared an update on the recent publication of the fall and winter edition of the A-Town magazine and a recap of the recent Oyster Run event. He then announced that next week is National Week Without Driving and that the Anacortes Senior Activity Center 50th anniversary open house will be held on September 30th from 1-4pm.

Planning Committee

Mr. Walters reported from the Planning Committee meeting held earlier in the evening. The topics discussed included the Week Without Driving, Whatcom Housing Week at whatcomhousingalliance.org, the need for housing, short-term rentals, and the MJB development.

North Star Housing Work Group

Mr. Walters reported from the North Star Housing Work Group meeting held earlier in the afternoon. The topics discussed included improving coordination and alignment, identification of funding sources, revising city development codes to better facilitate housing, identifying city-owned properties that could be used for housing development, and a coming meeting of the North Star Project on November 29th.

Economic Development Committee

Mr. Young reported from the Economic Development Committee meeting held the previous week. The topics discussed included how Anacortes can recognize its economic strengths, opportunities, and how to identify and leverage resident expertise in realizing those opportunities. The committee also discussed childcare availability.

MJB Development

Mayor Miller provided an update on the MJB development, including that the substantial shoreline and long plat permit applications have been deemed complete and that notices would soon be published soliciting public comment. He also mentioned that he had met with MJB representatives the previous Friday and that information would be shared with the Council and public when appropriate.

Follow-on Event Center

Mr. Young commented that the city must come together to find alternatives to replace the Transit Shed as a downtown event center, and he continues to meet with Port officials to discuss the issue.

Public Comment

Mayor Miller invited the public to comment on any item not on the agenda.

Public comment was given as follows:

Pat Gardner of Anacortes expressed support for the Q Avenue crosswalks and recommended that they be lighted, optimism regarding the replacement of the Transit Shed, and hope that there will be more information

forthcoming related to the MJB development.

Consent Agenda

Ms. Moulton removed Item 5.c., Contract Award: O Avenue Sidewalk Infrastructure Improvement Project #23-266-TRN-001, from the Consent Agenda.

Ms. Moulton moved, seconded by Ms. Hubik, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

a. Minutes of September 18, 2023

b. Approval of claims in the amount of \$951,644.25

The following vouchers/checks were approved for payment:

EFT numbers: 107397 through 107443, total \$519,780.04

Check numbers: 107444 through 107460, total \$328,957.10

Wire transfer numbers: 331457 through 331870, total \$102,907.11

d. Contract Modification: 2023 Waterline Replacements #23-039-WTR-001

Contract Award: O Avenue Sidewalk Infrastructure Improvement Project #23-266-TRN-001

Ms. Moulton discussed the O Avenue sidewalk infrastructure improvement project #23-266-TRN-001, detailing the location of the project from 14th Street south to 17th Street. Public Works Director, Andrew Rheame, added that there will be an additional project in the coming years that will provide similar improvements to the south of the project area along O Avenue.

CAROLYN MOULTON moved, seconded by AMANDA HUBIK, to approve O Avenue Sidewalk Infrastructure Improvement Project #23-266-TRN-001. The motion carried unanimously by voice vote.

Public Hearings

Capital Facilities Plan (CFP) 2023-2028 Amendment - Q Avenue Crossings

Mayor Miller opened the public hearing on the proposed amendment to the 2023-2028 Capital Facilities Plan for the Q Avenue Crossings project. Finance Director, Steve Hoglund, presented the CFP amendment referring to a slide presentation that was included in the packet materials for the meeting. He added that no public comments were received regarding the proposed amendment.

Mayor Miller invited the public to comment on the agenda item. No one present wished to address the Council on the agenda item.

Mayor Miller closed the public hearing.

Other Business

Ordinance 4060: 2023 - 2028 CFP Amendment

Finance Director, Steve Hoglund, introduced Ordinance 4060 that would authorize the proposed amendment to the 2023 - 2028 CFP, including \$53,000 for design in 2024 and \$450,000 in 2025 for construction of the Q Avenue Crossings project.

Discussion topics included:

- State grant funding sources for the project and the OpenGov portal information on other CFP projects.

ANTHONY YOUNG moved, seconded by BRUCE MCDOUGALL, to approve Ordinance 4060 amending the 2023-2028 Capital Facilities Plan. Vote: Ayes - ANTHONY YOUNG, CHRISTINE CLELAND-MCGRATH,

Anacortes City Council Minutes - September 25, 2023

RYAN WALTERS, BRUCE MCDOUGALL, CAROLYN MOULTON, JEREMY CARTER, AMANDA HUBIK. Nays - None. Result: Passed

Ordinance 4059: 3rd Quarter Budget Amendment

Finance Director, Steve Hoglund, introduced Ordinance 4059, that would authorize the third quarter budget amendment for fiscal year 2023. He detailed added items including the Ship Harbor walkway study, the lead and copper sampling plan, the 32nd Street and M Avenue project, the City Hall water leak repair and information technology equipment replacement, voter registration costs, and the SoftResources contract for the Enterprise Resource Planning system replacement process.

RYAN WALTERS moved, seconded by ANTHONY YOUNG, to approve Ordinance 4059 amending the 2023 budget. Vote: Ayes - ANTHONY YOUNG, CHRISTINE CLELAND-MCGRATH, RYAN WALTERS, BRUCE MCDOUGALL, CAROLYN MOULTON, JEREMY CARTER, AMANDA HUBIK. Nays - None. Result: Passed

3rd Quarter Finance Update

Finance Director, Steve Hoglund, presented the third quarter Finance Department update, referring to a spreadsheet presentation that was included in the packet materials for the meeting.

Discussion topics included:

- Public utility rates, grant funding for the R Avenue improvement project, the spending of real estate excise tax revenues and the number of units in the multi-family permit that was issued.

Parks and Recreation Update

Parks and Recreation Director, Jonn Lunsford, presented a departmental update, referring to a presentation that was added to the packet materials for the meeting.

Discussion topics included:

- Depot Plaza temporary events tent, discussions with event hosts, seasonal or temporary deployment of the tent, cooperation with the Chamber of Commerce, looking beyond the partial or known list of special events, policy of how the space will be managed, tent capacity, ancillary facilities including restrooms, tables and chairs, creatively holding events without a central event venue.
- Recreation Conservation Office grant funding for the Heart Lake area.
- Possible trail development through Western Washington University property at Shannon Point.
- Cranberry Lake improvements not included in the CFP.

Mayor Miller invited the public to comment on the agenda item.

Pat Gardner of Anacortes expressed support for a downtown venue, pointing out a large building across the street from the Rockfish Grill that could serve as a possible alternative downtown site.

Adjournment

There being no further business, at approximately 7:40 p.m. the Anacortes City Council meeting of September 25, 2023 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the October 2, 2023 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
332287	7/11/2023	INV2674482	COPIERS NORTHWEST, INC	CANON/IRC5560I FINANCE/OPS/WWTP 6/8-7/7/23	\$ 353.96	finance
332295	7/14/2023	1300	SKAGIT COUNTY PUBLIC HEALTH	SENIOR SERVICES PROGRAM 2023 - 2ND QUARTER	\$ 9,937.40	parks1
331949	8/23/2023	71394	COMMERCIAL FIRE PROTECTION INC	FACILITY FIRE EXTINGUISHER SERVICE	\$ 1,169.47	pwfac
331943	8/24/2023	344770B	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 202.74	dshop
331942	8/24/2023	344920A	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 62.27	pwfac
331948	8/29/2023	71165	COMMERCIAL FIRE PROTECTION INC	FACILITY EXTINGUISHER INSPECTIONS	\$ 1,477.23	pwfac
332082	8/31/2023	ReimbCousins	COUSINS, RICHARD	MEDICAL COPAY REIMBURSEMENT, LEOFF 1 RETIREE	\$ 106.07	hr
332206	9/6/2023	09062023KC	ANACORTES SCHOOL DISTRICT #103	ADVERTISING	\$ 1,000.00	fiber
332304	9/6/2023	3800031787	EUROFINS EATON ANALYTICAL, LLC	WTP UCMR5 LAB SAMPLING	\$ 550.00	dwtpt
332085	9/7/2023	0766	FIDALGO CLEANING	CLEANING	\$ 180.00	museum
332300	9/11/2023	0790	FIDALGO CLEANING	APD CLEANING & SUPPLIES (9/11- 9/24)	\$ 800.00	apd
331938	9/11/2023	44599	ZUMAR INDUSTRIES, INC.	STREET SIGNS	\$ 914.60	dshop
331937	9/14/2023	346187	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 406.27	pwfac
332290	9/15/2023	1000884	WBE TECHNOLOGIES LLC	EDA FIBER EXPANSION - MATERIALS - BID ITEMS 16, 22, 26	\$ 32,900.09	fiber
332205	9/15/2023	2023-008	SWINOMISH POLICE DEPARTMENT	LE LEADERS OF THE NW WA SUMMIT; FLOYD, FULLER, PRUIETT, LEETZ	\$ 100.00	apd
331939	9/16/2023	246580	LAKESIDE INDUSTRIES, INC.	ASPHALT STREETS - COVE PROJECT	\$ 24,421.56	dshop
331944	9/16/2023	246863	LAKESIDE INDUSTRIES, INC.	ASPHALT FOR WATER MAINTENANCE	\$ 809.61	wdist
332282	9/18/2023	1000886	WBE TECHNOLOGIES LLC	EDA FIBER EXPANSION - MATERIALS - PARTIAL LINE ITEM 9	\$ 68,413.44	fiber
332186	9/18/2023	1365073	LIFE ASSIST, INC	MEGAMOVERS	\$ 547.48	medic
331933	9/18/2023	848998635	THOMSON REUTERS - WEST	WA COURT RULES 2024	\$ 1,680.96	attorney

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
332296	9/18/2023	87073	GEO-TEST SERVICES, INC	BEN ROOT SKATEPARK MATERIALS INSPECTION - 7/31/23-8/27/23	\$ 1,927.10	parks1
332207	9/18/2023	9333955616	GRAYBAR ELECTRIC COMPANY, INC	GPON SFP	\$ 88.61	fiber
332203	9/19/2023	038 200 0000 2	CASCADE NATURAL GAS CORP.	APD 8/19-9/18/23	\$ 1,066.61	apd
332182	9/19/2023	1364822	LIFE ASSIST, INC	MEGAMOVERS, COLLARS, SHEARS, CATHETER	\$ 1,583.19	medic
332083	9/19/2023	148273	SUMMIT LAW GROUP, PLLC	LEGAL SERVICES RE TEAMSTERS GRIEVANCE, ADA ACCOMMODATION	\$ 675.00	hr
332291	9/19/2023	154 700 0000 9	CASCADE NATURAL GAS CORP.	LIBRARY 8/19-9/18/2023	\$ 605.16	publib
331945	9/19/2023	1642930	WALTON BEVERAGE COMPANY, INC	OPS: BREAKROOM SUPPLIES	\$ 155.50	dshop
332184	9/19/2023	169 400 0000 9	CASCADE NATURAL GAS CORP.	STA 2: 8/19-9/18/23	\$ 26.82	medic
332087	9/19/2023	199 800 0000 4	CASCADE NATURAL GAS CORP.	MUSEUM 8/19-9/18/23	\$ 16.77	museum
332197	9/19/2023	23-27801	EDGE ANALYTICAL, INC	WATER ANALYSIS BACT RAW	\$ 63.00	dwtpt
332198	9/19/2023	23-28608	EDGE ANALYTICAL, INC	WATER ANALYSIS - BACT FINISHED	\$ 19.00	dwtpt
332189	9/19/2023	3137113287	IDEXX DISTRIBUTION, INC	SAMPLE VESSELS	\$ 235.40	dwtpt
331941	9/19/2023	346187A	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 75.24	pwfac
331940	9/19/2023	346375	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 730.27	pwfac
332204	9/19/2023	529224	PROFORCE LAW ENFORCEMENT	FIREARMS	\$ 2,485.58	apd
332183	9/19/2023	674 400 0000 7	CASCADE NATURAL GAS CORP.	STA 1: 8/19-9/18/23	\$ 63.29	medic
331928	9/19/2023	710 300 0000 5	CASCADE NATURAL GAS CORP.	OPS: 8/19-9/18/23	\$ 117.36	dshop
331929	9/19/2023	795 700 0000 4	CASCADE NATURAL GAS CORP.	CITY HALL 8/19-9/18/23	\$ 14.26	finance
332086	9/19/2023	912 800 0000 0	CASCADE NATURAL GAS CORP.	MUSEUM 8/19-9/18/23	\$ 44.61	museum
332209	9/19/2023	9333976151	GRAYBAR ELECTRIC COMPANY, INC	BUILDING FIBER ENTRY BOXES	\$ 1,103.72	fiber
331930	9/19/2023	B17382502	SHI INTERNATIONAL CORP.	ADD AT&T CARRIER TO SMARSH TEXT MESSAGE ARCHIVAL	\$ 1,904.00	infosys
332193	9/19/2023	INV00138164	USA BLUE BOOK	LAB - HYDROCHLORIC ACID, SAMPLE CELS, CALCIUM STANDARD	\$ 880.66	dwtpt
332192	9/19/2023	INV00138334	USA BLUE BOOK	LAB - HYDROCHLORIC ACID	\$ 15.32	dwtpt
332281	9/20/2023	1000897	WBE TECHNOLOGIES LLC	EDA FIBER EXPANSION - MATERIALS - PARTIAL LINE ITEM 9	\$ 68,413.44	fiber
332199	9/20/2023	23-28694	EDGE ANALYTICAL, INC	WATER ANALYSIS - TCR INTOWN	\$ 209.00	dwtpt
332308	9/20/2023	38148	SKAGIT PUBLISHING LLC	PUBLISH AA-421043	\$ 154.28	finance

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
332310	9/20/2023	38149	SKAGIT PUBLISHING LLC	PUBLISH AA-421925	\$ 52.78	legal
332311	9/20/2023	38150	SKAGIT PUBLISHING LLC	PUBLISH AA-423657	\$ 162.40	plan
332283	9/20/2023	877223	CASCADE COLUMBIA DISTRIBUTION	SODIUM HYPOCHLORITE	\$ 12,873.53	dwtp
332302	9/20/2023	9333998279	GRAYBAR ELECTRIC COMPANY, INC	GPON SFOS	\$ 1,240.49	fiber
332194	9/20/2023	INV00139806	USA BLUE BOOK	HACH FLUORIDE REAGENT SPADNS X 12	\$ 741.12	dwtp
331926	9/20/2023	ReimbSchuh	SCHUH, EMILY	TRAVEL REIMBURSEMENT EMILY SCHUH	\$ 147.84	admsrv
332084	9/21/2023	0767	FIDALGO CLEANING	CLEANING	\$ 120.00	museum
332289	9/21/2023	20INV000444410	WASTEQUIP, LLC	DUMPSTER & DROPBOX ORDER	\$ 24,585.74	pw1
332195	9/21/2023	23-26080	EDGE ANALYTICAL, INC	WATER ANALYSIS - BULK WATER WEEKLY	\$ 658.00	dwtp
332196	9/21/2023	23-27034	EDGE ANALYTICAL, INC	WATER ANALYSIS - BULK WATER WEEKLY	\$ 658.00	dwtp
332299	9/21/2023	231573	BLYTHE MECHANICAL, INC	HVAC ON-CALL REPAIR SERVICES - WWTP HVAC REPAIR	\$ 2,979.80	pw1
332312	9/21/2023	38186	SKAGIT PUBLISHING LLC	PUBLISH SVH-425231	\$ 53.80	legal
331947	9/21/2023	LTAC Reimbursement	ANACORTES ARTS FOUNDATION	98221 ARTISTS STUDIO TOUR	\$ 6,000.00	plan
332181	9/22/2023	12P37220	MOTOR TRUCKS, INC	PARTS FOR VEHICLE #605	\$ 652.47	dshop
332293	9/22/2023	19606	ANCHOR QEA, LLC	FORMER WTP MATTER NO. 96	\$ 120,576.07	dwtp
332201	9/23/2023	00005W5A83383	UNITED PARCEL SERVICE, INC	UPS SHIPPING CHARGES; WEEK ENDING 9-23-23	\$ 31.39	apd
332303	9/25/2023	360089837	AWC EMPLOYEE BENEFIT TRUST	COBRA COVERAGE PAYMENT OCT 2023	\$ 921.12	hr
332208	9/25/2023	LTAC 2023	PORT OF ANACORTES	ROCK THE DOCK 2023	\$ 4,000.00	plan
332210	9/25/2023	LTAC 2023.2	PORT OF ANACORTES	SUMMER CONCERT SERIES	\$ 8,000.00	plan
332309	9/26/2023	1644311	WALTON BEVERAGE COMPANY, INC	CITY HALL BREAK ROOM SUPPLIES	\$ 330.00	finance
332307	9/26/2023	2023 LTAC VIC Q3	ANACORTES CHAMBER OF COMMERCE	LODGING TAX FUNDS FOR VISITOR CENTER QUARTER 3	\$ 18,750.00	plan
332305	9/26/2023	2023 Q3 LTAC	ANACORTES CHAMBER OF COMMERCE	2023 LTAC PAYMENT CHAMBER	\$ 54,752.96	plan
332288	9/26/2023	62603130	ROBERT HALF INTERNATIONAL INC.	TEMP POSITION WEEK ENDING 9/22/23	\$ 2,537.60	finance
332284	9/26/2023	Pay App 1	TONKA GROUND WORK	N AVE SEWER LINES REPLACEMENT PROJECT	\$ 115,000.00	pw1
331467	10/7/2023	23-176-FAC-0011	THE PLUMBING GUYS, INC	RETAINAGE RELEASE	\$ 344.00	pw1

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
	Total				\$ 604,875.45	



City Council Agenda Bill

Meeting Date: October 2, **Agenda Item:** 5.c.
2023

Agenda Item Title: Special Event Application: Downtown Trick or Treating

Staff Contact(s): Stephanie Snyder

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
Stephanie Snyder LIBBY GRAGE	Motion

Item Summary: Chamber of Commerce hosting a downtown trick or treat opportunity. Road Closure for safety.

Budget Impact:
0

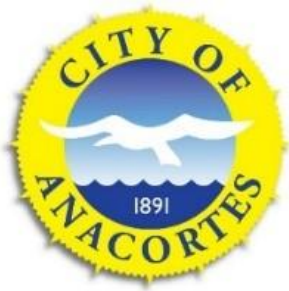
Previous Action:

Recommended Motion: Approve

Alternative Actions: Disapprove

Attachments (listed in order presented):

1. Downtown Trick or Treating Special Event Application
2. Event Map



Special Event Application Processing

Administrator reviews the application for completeness. Administrator contacts the applicant to obtain any missing information and updates the application accordingly, including a legible copy of the Indemnification Agreement if that was not provided. It is recommended that the Administrator also verify that the applicant has entered phone and email correctly! Administrator then sets the target City Council date and routes the application for review by department heads.

View Anacortes Municipal Code [Chapter 7.04, Special Events](#)

Application

Application Date *

9/14/2023

Event Name *

Downtown Trick-or-treating

Event Type

- ☐ Street Fair / Festival
- ☐ Athletic Event
- ☐ Parade
- ☐ Rally / Demonstration
- ☐ Filming
- ☒ Other identified in AMC 7.04.010

Trick-or-treating by the community

Applicant/Organization Name *

ANACORTES CHAMBER OF COMMERCE

Event Contact Person *

SUITE F

Event Contact Phone *

(360) 293-7911

Mailing Address *

819 COMMERCIAL AVE

Event Contact Email *

JESICA@ANACORTES.ORG

Event Website

www.anacortes.org

Estimated Number of Participants/Attendees *

200

Event Description *

The retail shops on Commercial Ave between 11th and 2nd will be handing out candy to kids and families in costumes for Halloween.

Will food vendors participate in this event? *

All Food Vendors must be inspected by the Fire Marshall on site prior to the start of the event.

☐ Yes ☒ No

Date Event Starts *

10/31/2023

Time Event Starts *

4:00:00 PM

Date Event Ends *

10/31/2023

Time Event Ends *

6:00:00 PM

Date Street Closure Starts *

Include requested closures before and after the event hours if required for set up and tear down.

10/31/2023

Time Street Closure Starts *

3:00:00 PM

Date Street Closure Ends *

10/31/2023

Time Street Closure Ends *

7:00:00 PM

Event Location *

List end points of each street that will be closed (e.g. 6th Street from O Ave to Q Ave). Also include location and dimensions of any structures that will be erected and locations of the event that will not be on city street right of way.

Commercial Ave from 10th to 3rd would be closed off, with families walking on the street from 11th to 2nd. 4 major intersections will be manned by chamber staff to let delivery trucks through.

Parking Location

List any public parking areas that the event requests to use for dedicated event parking, including handicapped parking.

NA

Event Map (optional)

Upload one or more maps of the event

[Halloween Trick or Treat Event ...](#) 2.36MB

Indemnification Agreement *

Upload scan of SIGNED indemnification agreement

[doc00776620230914160328.pdf](#) 312.59KB

Download the Indemnification Agreement [here](#).

Signage

Street closure signs will be provided by the City of Anacortes. Applicants must contact City staff one week prior to the event to arrange sign delivery. Event sponsor personnel are responsible for placing street closure signs, which may not be posted more than 72 hours prior to the approved closure, must be removed immediately following the event, and must be returned to city staff the first business day following the event.

Insurance

The applicant may be required to provide public liability insurance subject to the provisions of AMC 7.04.100. Applicants will be notified following application approval of insurance requirements for the specific event.

Electronic Signature Agreement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

I state that I am over the age of 18, that I agree to assume responsibility for the above-described event and to abide by all conditions stipulated by the approval of the application. *

☒ Yes

Signature



Admin Review

Council Meeting Date *

Target date for presentation to City Council; no later than 30 days prior to event

10/2/2023

Staff Review Deadline *

Staff review/approval required no later than 7 days prior to City Council meeting to allow packet preparation

9/25/2023

Administrator comments and conditions of approval

Please approve

Insurance Certificate

Insurance certificate may be required by staff or as a condition of Council approval

Departmental Review

Building Department will provide the following services for this event:

Building Department concerns, objections, or conditions of approval *

None

Fire Department will provide the following services for this event:

N/A

Fire Department concerns, objections, or conditions of approval *

None

Parks Department will provide the following services for this event:

Parks Department concerns, objections, or conditions of approval *

None

Police Department will provide the following services for this event:

regular police patrols

Police Department concerns, objections, or conditions of approval *

None

Public Works Department will provide the following services for this event:

Public Works Department concerns, objections, or conditions of approval *

None

Departmental attachments

Upload any staff memos, guidelines, or requirements that will be in effect for this event.



Legend

● Barricade



Chamber Halloween Trick-or-Treat Event

Monday, October 31st
From 3-6pm



City Council Agenda Bill

Meeting Date: October 2, 2023 **Agenda Item:** 5.d.

Agenda Item Title: Contract Modification: WWTP Odor Control Heat Trace Project - Electrical Components Installation #23-115-SEW-002

Staff Contact(s): Andrew Rheume, Brian Walker

Approved for Submittal to Council by **Action Type**
TIFFANY MATSON Contract Modification

Item Summary: City staff seeks Council consent to issue a contract modification to VECA Electric & Technologies in the amount of \$8,000.00, increasing the total contract price to \$51,500.00, due to an additional run of 160ft of water line that was discovered that needs immediate replacement and was added to the project.

Background:

1. **Reason for Contract Change:** The WWTP has been in the process of replacing the piping freeze protection (heat trace) over the past two years. This year, an additional run of 160ft of water line was discovered to need immediate replacement and was added to the project for an additional \$8000 T&M. \$60,000 was budgeted for this portion of the project. With this additional expense we are still projected to come in under budget.
2. **History:** The heat trace is installed on plumbing throughout the facility to protect against liquids freezing which leads to broken pipes and valving. The WWTP has experienced some failures of the system and is systematically replacing one area at a time, including in the Odor Control Chemical Storage Facility, which has exceeded its life expectancy.
3. **Key Terms:** increase of \$8,000.00, no change to term of agreement.
4. **Competitive Bidding:** In accordance with competitive bid requirements set forth under RCW 35.23.352 the project cost is under the competitive requirements and thus the Project Manager evaluated contractors and chose to contract with Veca Electric & Technologies.

Budget Impact:

Contractor	VECA Electric & Technologies
Original Agreement Amount	\$43,500.00
Current Agreement Amount	\$43,500.00
Change Per This Modification	\$8,000.00
Total After Modification	\$51,500.00
Total % Increase from Original Contract Amount	18.39%
Earmarked Funds	\$60,000.00
BARS #	440.750.535.83.48
Paid on Contract as of 9/25/23	\$0
Budget Amendment Required?	No
Start Date	Contract execution
End Date	12/31/23

Previous Action: Contract [23-115-SEW-001](#) with Heckman Inc. to perform the installation of the insulation for this project was approved at the [4/3/2023](#) City Council meeting.

Recommended Motion: I move that City Council authorize the Mayor to sign a contract modification with VECA Electric & Technologies under Contract 23-115-SEW-002, in the amount of \$8,000.00 increasing the total contract price to \$51,500.00.

Alternative Actions: Not approve the modification.

Attachments (listed in order presented):

1. 23-115-SEW-002 Mod 01



Date October 2, 2023
Page 1 of 1 Page

Contract Title WWTP Odor Control Heat Trace Project - Electrical Components Installation
Contractor VECA Electric & Technologies

BACKGROUND

This modification is issued in accordance with Article 23, Changes/Additional Work. During the performance of the Scope of Work, an additional run of 160ft of water line was discovered that needs immediate replacement and was added to the project. Accordingly, the contract price is increased from \$43,500.00 by \$8,000.00 to \$51,500.00, and the following changes are incorporated under this contract:

ARTICLE 1. Scope Of Work. The following second paragraph is added:

“Per Modification 01, Contractor will add work for an additional run of 160ft of water line. Work includes:

- a) Provide and install 6-splice kits.
- b) Install extra heat trace run between tanks and remove grates to run heat trace.
- c) Run rigid conduit and materials for heat trace on 3 valves.
- d) Help swap out breaker in bucket.”

ARTICLE 2. Contract Price. The first sentence is revised to read:

“The Contractor will perform the scope of work above on a time and materials basis not-to-exceed **Fifty-One Thousand Five Hundred Dollars (\$51,500.00).**”

All other terms of the contract remain unchanged.

CITY OF ANACORTES

VECA ELECTRIC & TECHNOLOGIES

By _____
Matt Miller, Mayor

By _____

Date _____

Date _____

Original Agreement Amount	<u>\$43,500.00</u>	Original Contract Completion Date	<u>12/31/2023</u>
Current Agreement Amount	<u>\$43,500.00</u>	Current Contract Completion Date	<u>12/31/2023</u>
Change Per this Modification	<u>\$8,000.00</u>	Net Change	<u>0 Days</u>
Total After Modification	<u>\$51,500.00</u>	Contract Completion Date After Change	<u>12/31/2023</u>



City Council Agenda Bill

Meeting Date: October 2, **Agenda Item:** 6.a.
2023

Agenda Item Title: Appeal Hearing - Port of Anacortes / SDP-2023-0002

Staff Contact(s): DARCY SWETNAM

Approved for Submittal to Council by **Action Type**

Grace Pollard
John Coleman

Closed Record Appeal Hearing

Item Summary: Closed record appeal hearing requested by the Port of Anacortes regarding the Planning Commission's Shoreline Substantial Development Permit decision with conditions.

Budget Impact:

Previous Action:

Recommended Motion:

Alternative Actions:

Attachments (listed in order presented):

1. Appeal of SDP-2023-0002
2. FINAL Staff Responses
3. Port of Anacortes Appeal
4. CityCouncil 10_2_23



PLANNING, COMMUNITY, & ECONOMIC DEVELOPMENT DEPARTMENT

Mailing Address: P.O. Box 547, Anacortes, WA 98221

Office Location: 904 6th Street, Anacortes WA 98821

Phone: (360) 299-1984

RECIEVED

08/23/2023 4:55 PM

PLANNING COMMISSION DECISION APPEAL OF ADMINISTRATIVE ORDER

Planning Commission Decision issued per AMC Title 20 Application Procedures

An appeal of an Administrative Order issued per AMC Title 20 Civil Enforcement and Penalties must be filed using this form. Attach any additional pages that are needed.

ORDER BEING APPEALED	
DATE OF ORDER: July 11, 2023	IDENTIFICATION OF ORDER ^{DECISION} BEING APPEALED: Approval of Substantial Shoreline Development Permit with Conditions
CITY FILE NUMBER (IF APPLICABLE): SDP-2023-0002	
APPELLANT INFORMATION	
NAME: Port of Anacortes	MAILING ADDRESS: 100 Commercial Avenue
CITY, STATE, ZIP: Anacortes, WA 98221	PHONE #: (360) 293-3134
EMAIL ADDRESS: Brenda.Treadwell@portofanacortes.com	INTEREST IN THE MATTER: Applicant
APPEAL INFORMATION	
A. State the specific reasons why you believe the order is in error.	
Conditions attached to the City of Anacortes' Approval of the SSDP do not align with the Port of Anacortes and the City of Anacortes' Right of Way Use Agreement, dated February 16, 2022, or the City of Anacortes' Shoreline Management Program. See attached narrative for facts upon which the appeal is based, with specific references to the facts in the record.	
B. State the specific relief requested.	
Removal of Condition Nos. 1, 2, and 3 from the approved SSDP.	

C. Identify any applicable Anacortes Municipal Code sections.

AMC 18.16 (Shoreline Master Plan)

AMC 18.16.110 (Appeals of SSDPs)

AMC 19.20.020 (Applicability of Title 19 procedures to development permits issued under Titles 16, 17, and 19 only)

AMC 19.20.180 (Appeal procedures for permits issued under Titles 16, 17, and 19)

AMC 19.12.060 (Supremacy code dictating that Title 18.16 controls when in conflict with provisions of Title 19)

AMC 19.20.200 (Reconsideration of development permit decision)

SIGNATURE

I have read the appeal and believe the contents to be true.

Signature: _____

Date: _____

8/23/2023

Printed Name: _____

Timothy Schermetzler

Complete Appeals procedures and review standards can be viewed at [AMC 20.20.100 Appeals](#).

August 23, 2023

VIA ELECTRONIC MAIL

gracep@cityofanacortes.org

pced@cityofanacortes.org

City of Anacortes
Planning, Community & Economic Development Department
P.O. Box 547
Anacortes, WA 98221

RE: Appeal of Shoreline Substantial Development Permit Approval with Conditions

Permit: SDP-2023-0002 (the “SSDP” or “Permit”)
Project Title: 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue.

Owner/Applicant/Appellant: The Port of Anacortes (the “Port”)
Attn: Brenda Treadwell
100 Commercial Avenue
Anacortes, WA 98221
(360) 293-3134

To Whom It May Concern,

Our firm represents the Port of Anacortes (the “Port”) regarding the above-referenced Permit to execute the above-referenced Project. In accordance with the City of Anacortes Municipal Code (“AMC”) Title 19.20.180, the Port formally submits this appeal of the City of Anacortes (the “City”) Planning Commission’s (the “Planning Commission”) approval of the Permit with conditions. The conditions to the Permit effectively require the Port to perform services to the City that do not align with the Port and City Right of Way Use Agreement for 2nd Street—From “O” Avenue to Shoreline, dated February 16, 2022 (the “Right of Way Use Agreement”)¹ or the City’s Shoreline Management Program (“SMP”).

¹ A copy of the February 16, 2022, Right of Way Use Agreement is attached as **Exhibit A**.

I. APPEAL PROCESS

As a preliminary matter, the Port's reading of the City's municipal code is that an appeal of this Permit under the City's SMP must be made to the Shorelines Hearings Board (the "SHB") pursuant to AMC 18.16.110. The administrative appeal processes in Chapter 19.20 AMC do not apply to the SMP. This conclusion is based on, among other things, the plain language of AMC 18.16.110 directing appeals to the SHB; AMC 19.20.020 – Applicability, which does not incorporate by reference Title 18 AMC, only Titles 16, 17, and 19; and AMC 19.12.060 – Supremacy. The Supremacy code provides in part that, "[i]n the event of a conflict between provisions of this title [Title 19 AMC] and AMC Chapter 18.16, Shoreline Master Plan, the provisions of AMC Chapter 18.16, Shoreline Master Plan, control."

Based upon the Port's interpretation of the relevant AMCs, the Port has concurrently filed an appeal with the SHB to preserve its appeal rights. After receiving this appeal, should the City arrive at the same conclusion as the Port's legal team, that the appropriate venue for appeals is the SHB, not a local administrative appeal under Chapter 19.20 AMC, please contact the Port's legal counsel to discuss reissuance of the City's notice of decision with the correct appeal language. While the Port's legal counsel believes the SHB is the appropriate appeal venue, the Port still hopes that it and the City can come to a resolution to revise the errored conditions in the Permit that will not require the parties to engage in a costly and time-consuming appeal process. Should the City agree to the needed modifications, the Port and the City can enter into an agreed order with the pending SHB Case No. 23-008 to resolve this matter.

If Chapter 19.20 AMC applies to appeals of the Permit, pursuant to AMC 19.20.180.A.2., as the Applicant for the SSDP, the Port has standing to submit this appeal to the City. AMC 19.20.180(F) states that "Appeals must be submitted on forms provided by the Department..." The Port was unable to locate any applicable appeal forms on the Planning Department's website, however on August 20, 2023, Grace Pollard, Senior Planner for the City, provided counsel for the Port with the attached form titled "Appeal of Administrative Order" and instructed that it be submitted with the Port's appeal.

The Port also notes that the attached form directs the Port (as Appellant) not to the Appeals procedures under Title 19 AMC, but to the Appeals procedures and review standards under AMC 20.20.100. This Chapter of the AMC—governing Civil Enforcement and Penalties, neither of which are at issue here—explicitly declares that "[a]ny person subject to an administrative order issued pursuant to this Chapter may appeal it in writing to the Hearing Examiner."² It is unclear to the Port why, after having argued that this appeal ought to be governed by Title 19 AMC, that the City now directs the Port towards the procedures of Title 20 AMC.

II. PROCEDURAL HISTORY

On May 24, 2023, and June 14, 2023, public hearings were held to discuss the Port's application for a Shoreline Substantial Development Permit, required to execute the Project. In the time between those two hearings, the Port reviewed the City's Staff Report regarding the Project.³ After the Port's review, on May 30, 2023, the Port submitted to the City a "Request to Modify Conditions Presented in

² AMC 20.20.100(A)(1) (emphasis added).

³ A copy of the City Staff Report is attached hereto as **Exhibit B**.

City Staff Report” (the “Comment Letter”).⁴ The Comment Letter asked for clarification from the City as to the basis for certain conditions being applied to the Permit, provided recommendations and the reasoning behind those recommendations for revisions to the City’s conditions, and emphasized the Port’s desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the Right of Way Use Agreement.

In response to the Port’s May 30th Comment Letter, on June 6, 2023, the City issued its “Revised Recommendations.” I, along with Port staff, attended the June 14th virtual public hearing to address the Port’s concerns regarding the conditions in the City Staff Report and the Revised Recommendations. However, at the hearing, the Planning Commission did not afford the Port an opportunity to comment on these issues. This resulted in the Planning Commission acting on incomplete and inaccurate information. I, and Port staff, participated online and had our hands raised on the remote hearing, but the Planning Commission did not allow us to speak to address inaccurate information provided by City staff following the Port’s presentation and comments prior to moving to a vote. It is unclear why the City would repeatedly ignore the Port’s efforts to engage. Moreover, as the Applicant and Project Proponent, the Port ought to have been afforded the opportunity to address the Planning Commission and correct the record prior to the Planning Commission’s vote on the Permit.

As a result of the June 14th virtual hearing, on June 23, 2023, the Port issued another letter directly to Darcy Swetnam, the City of Anacortes’ City Attorney.⁵ The Port’s June 23rd letter was written in an effort to further explain how the inaccurate information conveyed to the Planning Commission has resulted in permit conditions that are not in line with the already established Right of Way Use Agreement between the Port and the City. The City, however, did not re-open the public hearing and instead issued a written decision on July 11, 2023.⁶

On July 21, 2023, in accordance with the direction of the City Attorney and AMC 19.20.200, the Port submitted a Request for Reconsideration to the City.⁷ The Request for Reconsideration provided explanation as to specific errors made by the Planning Commission in approving the conditions of the Permit and again asked the Planning Commission to re-evaluate not only the Project being proposed by the Port, but to also take into consideration the surrounding circumstances, with particular focus on the language of the Right of Way Use Agreement, which invalidates the imposed conditions.

The Port’s Request for Reconsideration was placed on the Planning Commission’s agenda for its August 9, 2023, regular meeting. I, along with Port staff, attended the August 9th meeting and were amply prepared to provide the Planning Commission with any additional information it required in making its decision on the Request for Reconsideration. On the afternoon of the August 9th meeting, Port staff was informed that under AMC 19.20.200, they would have no opportunity to present or make an argument for their position to the Planning Commission. It was not conveyed to Port staff, however, that City staff and Ms. Swetnam would be provided with an arguably unlimited amount of time to answer the Planning Commission’s questions and to argue for the City’s position on the Permit. After over an hour of discussion between the Planning Commission and City staff, and

⁴ A copy of the Port’s May 30, 2023, Comment Letter is attached hereto as **Exhibit C**.

⁵ A copy of the June 23, 2023, letter is attached as **Exhibit D** and incorporated herein by reference.

⁶ A copy of the City Planning Commission’s July 11, 2023, Notice of Decision is attached as **Exhibit E**.

⁷ A copy of the Port’s July 21, 2023, Request for Reconsideration is attached as **Exhibit F**.

without comment from the Port, the Planning Commission voted to deny the Port's Request for Reconsideration, therefore necessitating this Appeal.⁸

III. PERMIT CONDITION ERRORS AND REQUESTED RELIEF

As previously conveyed to the Planning Commission, the Revised Recommendations approved by the Planning Commission, along with each of their corresponding errors and requested relief by the Port, are detailed below.

Condition No. 1 – The Port shall produce and submit a Phase 1 design proposal of the “N” Avenue Beach Connection referenced in the Port of Anacortes’ Integrated Approach to Marine Public Access, October 2003, and adopted by reference in the Anacortes Shoreline Master Program for review and approval by the Planning, Community, and Economic Development (the “PCED”) Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach). Considerations for improvements to the pedestrian connection to Q’elech’ilhch Park should include items such as landscaping and an aesthetic treatment to existing Port owned privacy fencing along 3rd Street adjacent to the public sidewalk by way of additional landscaping, art installation(s), or a similar proposed effect approved by the PCED Department.

Error – The imposition of this condition is not consistent with or provided for within the SMP and amounts to an exaction.

Request Relief – Remove Condition No. 1

Condition No. 2 – Per Condition of Approval No. 1, the required Phase 1 plan of “N” Avenue Beach Connection shall be submitted to the Planning, Community, and Economic Development Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission’s authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 2

Condition No. 3 – The Port shall produce and submit the complete “N” Avenue Beach Connection plan to the Planning, Community, and Economic Development Department for review and permit approval prior to or concurrently with the establishment of a new or expanded use or development on Curtis Wharf, the 2nd Street right-of-way, or within the Port’s adjacent Quiet Cove laydown lot (P55354), or within 5 years of subject project completion, whichever is sooner.

⁸ AMC 19.20.200(B)(1).

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission’s authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 3

IV. GROUNDS FOR APPEAL

A. The 2nd Street Right of Way Use Agreement prohibits public access, not the Project.

City Staff inaccurately informed the Planning Commission that the portion of the Project which includes fencing along 2nd Street triggers the need for an alternative plan for public access to the shoreline under the SMP. Rather, public access to the shoreline via 2nd Street was already eliminated when the Port and the City executed the Right of Way Use Agreement in February 2022. More specifically, Section 6.2 of the Agreement states the following:

Except as set forth in Agreement Section 7, the City hereby grants to the Port, and **the Port shall have exclusive use of, the 2nd St. ROW** for the Term of the Agreement for the uses described in Agreement Section 8.⁹

The only rights reserved by the City under this sub-section are the rights to use the subsurface portion of the 2nd Street ROW “for the siting and construction of utility improvements, including a segment of an outfall connection from the City’s wastewater treatment plant to Guemes Channel.”¹⁰ Section 8.1 of the Agreement further makes clear the Port’s authority to restrict access to the 2nd Street ROW:

Under this Agreement, the Port is granted the right of use over, under, upon and across the 2nd St. ROW for the support of industrial and/or commercial uses associated with the Port’s marine terminal facilities... These uses include, without limitation, (i) vehicle access; (ii) product storage operations; (iii) **restricting public traffic and access to the 2nd St. ROW**; and (iv) constructing any improvements the Port deems necessary to support these uses.¹¹

Because it was the Right of Way Use Agreement and not the Permit that restricted public access to the 2nd Street Right of Way, the City has no authority under the SMP to require the Port to provide improvements for an alternative access.

B. The Project does not trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q’elech’ilhch Park.

As explained in the Port’s June 23rd letter to Ms. Swetnam and the Port’s May 30, 2023, Comment Letter, the City Staff Report cites SMP DR-8.6.8 as authority for its public access conditions to the Permit.¹² This development regulation triggers public access where industrial use is proposed. That

⁹ Right of Way Use Agreement, § 6.2 (emphasis added).

¹⁰ *Id.* at § 7.

¹¹ *Id.* at § 8.1 (emphasis added).

¹² See **Exhibit B**, at 9.

is not the case with the Project which is predominantly a paving project. As such, the Planning Commission's cited authority in fact does not apply.

Additionally, as a practical matter, even if the Port were required to provide alternative public access as a result of this Permit, which it should not be so required, the public access along 3rd Street to the shoreline already exists, thereby satisfying this requirement. Condition Nos. 1 through 3 of the Permit requiring the Port to beautify 3rd Street, go above and beyond creating a public access. In this regard, the City seeks through Permit Condition Nos. 1 through 3 to exact from the Port beautification and street improvements to an existing public access that are not authorized within the SMP development regulations.

C. The Permit conditions go beyond the jurisdiction of the City's SMP.

The conditions encompass parcels outside of not only the Project area, but parcels that the Port does not own, as well as some parcels that lie wholly outside of the shoreline jurisdiction. The SMP "shall apply to all the lands and waters in the City of Anacortes that fall under the jurisdiction of the Shoreline Management Act."¹³ The SMP defines its shoreline jurisdiction as follows:

Shorelines include the waters within the City limits together with the lands underlying them and lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark together with any associated wetlands.

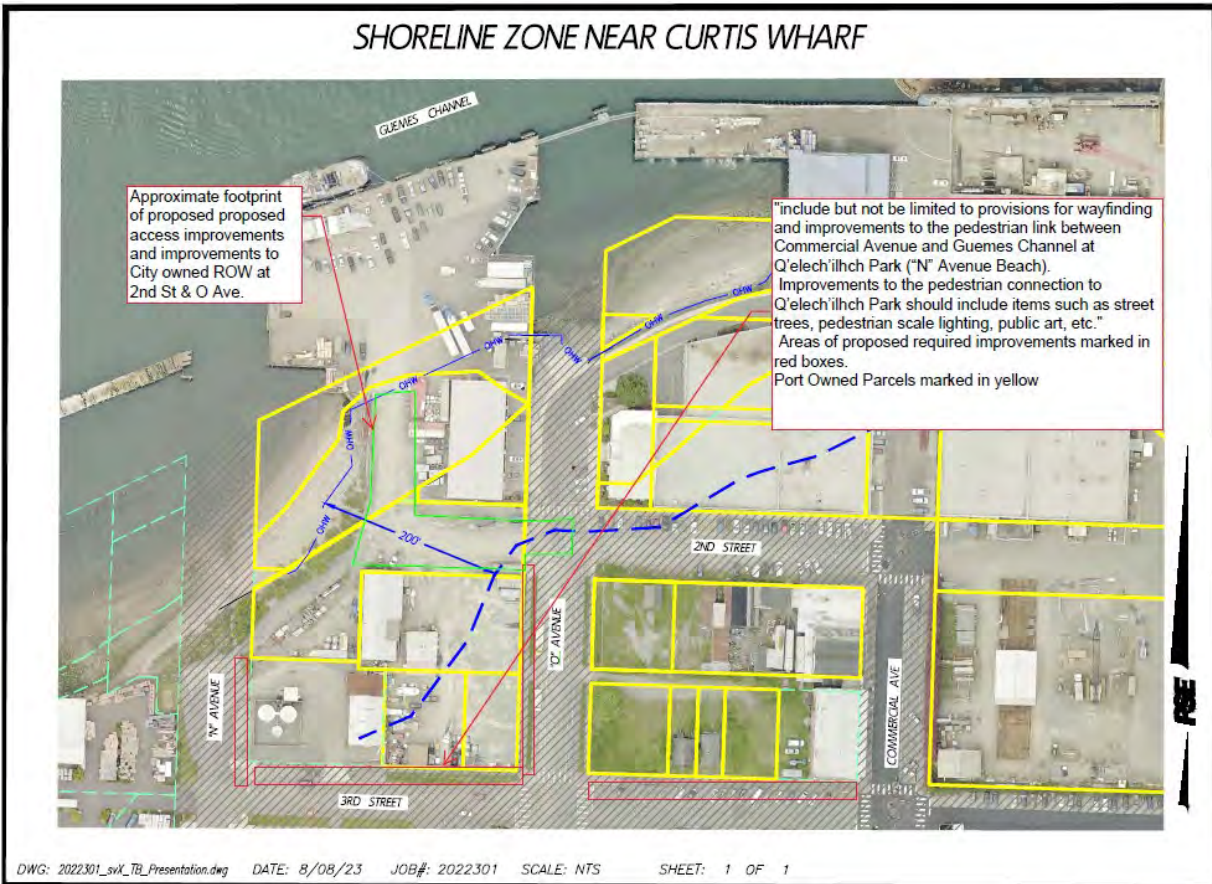
...

Where a substantial development is proposed which would be partly within and partly without shoreline jurisdiction, a shoreline substantial development permit shall be required for the entire development. ***The regulations of this Master Program shall apply only to that part of the development which occurs within shoreline jurisdiction.***¹⁴

The figure below further illustrates the shoreline jurisdiction as it extends two hundred feet (200') from the ordinary high water mark, identified in the figure as "OHW." Parcels owned by the Port are outlined in yellow, and the Port's proposed Project area requiring the SSDP is outlined in green. Moreover, the red boxes indicate the locations in which the City is requiring the Port to conduct certain improvements by means of the Conditions to the Permit. Note that the red-boxed areas do not include any Port-owned parcels and are predominantly outside of the shoreline jurisdiction area.

¹³ The SMP, at § 2.3(A).

¹⁴ *Id.* at § 2.3(A) and (E) (emphasis added).



Because the Project includes parcels which are both within and outside of the SMP jurisdiction, the Port is required to obtain a shoreline substantial development permit for the entire Project. That being said, according to Section 2.3(E) of the SMP, the SMP's regulations shall only apply to parts of the Project that are within the designated shoreline jurisdiction. The City's Revised Recommendations disregard this limitation and require the Port to carry out additional projects that are clearly outside of the SMP's stated jurisdiction. In particular, Conditions No. 1 through 3 of the Permit require the Port to design and construct street improvements along 3rd Street from Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach) to Commercial Avenue, well outside of the shoreline jurisdiction.¹⁵ The City has no authority under the SMP to condition property and parcels that are not part of this Project and outside of the shoreline jurisdiction.

V. CONCLUSION AND NEXT STEPS

It is clear to the Port that the Permit Conditions are purely a result of the City's desire to exact from the Port improvements to the existing public access on 3rd Street beyond what is justified to mitigate for the Project and in some cases wholly outside of the shoreline jurisdiction. Simply put, these conditions are nothing more than a bootstrapped attempt on the part of the City to get the Port to

¹⁵ Revised Recommendations, at 1 (June 6, 2023).

improve City property. If the City was concerned about improvements to 3rd Street, it should have negotiated the same at the time that the Right of Way Use Agreement was executed back in February 2022.

It is both inappropriate and unlawful for the City to now—over a year later—put the burden of designing, funding, and executing the City's desired improvements on the Port by way of an SSDP that does not even concern the 3rd Street area. The City's attempts to shift responsibility for these improvements onto the Port is made even more egregious given that the City's SMP plainly states that the SMP's regulations do not apply to areas of the development project which lie outside of shoreline jurisdiction.

In consideration of the above and the identified factual and procedural errors on the part of the City, the City must revise the Permit Conditions. As indicated above, the Port has also filed an appeal with the SHB, where the Port understands to be the appropriate venue for this appeal. The Port has done so in order to protect its appeal rights under Chapter 18.16 AMC. The Port provides the enclosed administrative appeal in order to preserve its rights given the City's appeal statement in the Notice of Decision and prior communication with the City Attorney directing the Port to a local administrative appeal process.

The Port still wishes to arrive at a negotiated solution to this matter without the need for litigation. To that end, although the Port has already filed an appeal with the SHB, the Port is willing to enter into a tolling agreement to afford the Port and the City an opportunity to negotiate appropriate conditions for the Permit. In the alternative to entering a tolling agreement, should the City like to avoid moving forward with an unnecessary appeal and instead discuss a resolution with the Port, the Port would not object to the City rescinding the Permit and re-opening the public hearing in order to correctly issue the Permit.

The Port appreciates the City's attention to this matter and looks forward to the City's formal response. In the meantime, the Port continues to reserve all rights and remedies.

Sincerely,

CSD ATTORNEYS AT LAW P.S.



Timothy D. Schermetzler

TDS/SBF/lrf

Encls.

cc: Client

Darcy Swetnam, darcys@cityofanacortes.org

City Clerk, cityclerk@cityofanacortes.org

EXHIBIT A

After recording return to:
Office of the City Clerk
City of Anacortes
City Hall
904 6th Street
Anacortes, WA 98221-0547

DOCUMENT TITLE(S):

RIGHT OF WAY USE AGREEMENT 2ND STREET – FROM “O” AVENUE TO SHORELINE

REFERENCE NUMBER(S) FF DOCUMENTS AMENDED, ASSIGNED AND/OR RELEASED:

N/A

GRANTOR:

THE CITY OF ANACORTES

GRANTEE:

THE PORT OF ANACORTES

ABBREVIATED LEGAL DESCRIPTION:

THAT PORTION OF PLATTED 2ND STREET LYING WESTERLY OF THE WEST LINE OF “O” AVENUE AND BETWEEN BLOCKS 66 AND 67 AS DEDICATED ON THE PLAT OF “MAP OF CITY OF ANACORTES” ACCORDING TO THE MAP THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGES 4-7, RECORDS OF SKAGIT COUNTY, WASHINGTON. SITUATE IN THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON.

ASSESSOR PROPERTY TAX PARCEL:

N/A

**RIGHT OF WAY USE AGREEMENT
2ND STREET – FROM “O” AVENUE TO SHORELINE**

1. **AGREEMENT.** This Right of Way Use Agreement (“Agreement”) is between the City of Anacortes (“City”) and the Port of Anacortes (“Port”) for the conveyance of a property interest from the City to the Port. The City and the Port are each a “Party” and collectively “Parties” to this Agreement. The Parties agree as follows.
2. **STRUCTURE AND AUTHORITY.** This Agreement is authorized under Chapter 39.33 RCW, the Intergovernmental Disposition of Property Act.
3. **RECITALS/BACKGROUND**
 - 3.1 In 2018, the Parties and the Economic Development Alliance of Skagit County (“EDASC”) jointly developed and adopted the Anacortes Maritime Strategic Plan (the “Maritime Plan”). The Maritime Plan included goals and objectives to promote and develop a thriving and sustainable marine sector in the City’s jurisdiction. Among many goals and objectives, the Parties agreed to identify and implement policies that would ensure optimal use of industrial and commercial lands for maritime-related business.
 - 3.2 The Port developed a Marine Terminal Modernization Study in 2020 (“Terminal Modernization Study”). The Study identified that an increase in activity at Curtis Wharf will likely require that a small portion of the Second Street right-of-way from the westerly edge of “O” Ave. to its terminus near the water’s edge would require vacation or closure. See Exhibit B for depiction of area (the “2nd St. ROW”).
 - 3.3 The subject portion of 2nd St. ROW provides legal access, in part, to adjacent properties owned by the Port. The property north of the 2nd St. ROW is the Port’s Curtis Wharf Terminal. Port marine terminal operations at Curtis Wharf presently cross the 2nd St. ROW.
 - 3.4 The City’s Shoreline Management Plan (“SMP”) encourages the development of alternative public access plans where public safety is compromised by water dependent transportation shipping and manufacturing uses in proximity to deep shipper berths (see SMP Policies 5.11.1, 5.11.6, 4.5.3).
 - 3.5 Port is engaged in an environmental clean-up of the Quiet Cove environmental site (Washington State Department of Ecology (“Ecology”) Facility Site ID: # 20859; Cleanup Site ID: 12482) (the “Site”). The cleanup levels selected for the Site are based on an unrestricted future land use standard. The Port and Ecology have entered into an Agreed Order providing for site remediation activities, including a portion of the 2nd St. ROW that is included within the Quiet Cove Site boundary. The Port will be responsible for conducting the environmental cleanup selected by Ecology for the 2nd St. ROW that is included within the Quiet Cove Site boundary and releases the City from the costs for the same. The Agreement will enable the Port to examine and consider more permanent remedial action alternatives for the potential environmental cleanup of the 2nd St. ROW.

- 3.6 The 2nd St. ROW is used extensively by the Port and the Port's tenant trucks and vehicles. Closure of the 2nd St. ROW and redirecting the limited public vehicular and pedestrian use of the 2nd St. ROW to the primary access to the public shoreline on "N" Avenue, via 3rd St., will enhance public safety.
 - 3.7 The Agreement allows for product storage south of the 2nd St. ROW on Port property and construction of conveyance equipment on the 2nd St. ROW to the Curtis Wharf Terminal to reduce risk to the public or the marine terminal operations as a result of public access within a marine terminal area.
 - 3.8 Closure of this portion of the 2nd St. ROW will not affect the primary public access to "N" Avenue Park and waterfront.
 - 3.9 The Parties acknowledge that the City has received full value for the property rights granted to the Port herein, which is found, in part, in the Port's release of the City from costs of and liability from environmental remediation incurred for the portion of the 2nd St. ROW located within the Quiet Cove environmental site.
4. **TERM.** This Agreement takes effect and is in force from and after the Effective Date, for a period of thirty (30) years (the "Initial Term"). The Initial Term may be extended with two (2), ten (10) - year renewal terms on mutual agreement of the Parties.
5. **EFFECTIVE DATE.** The Agreement Effective Date is the date of the last signature of the Parties, below.
6. **2nd St. ROW CLOSED - CITY GRANT TO PORT.**
 - 6.1 Under this Agreement, the City closes the 2nd St. ROW, subject to the Port's construction and management of signage and other traffic management regarding access to and use of the 2nd St. ROW.
 - 6.2 Except as set forth in Agreement Section 7, the City hereby grants to the Port, and the Port shall have exclusive use of, the 2nd St. ROW for the Term of the Agreement for the uses described in Agreement Section 8.
7. **CITY RESERVED RIGHTS.** The City reserves the right, privilege, and authority to use the subsurface portion of the 2nd St. ROW for the siting and construction of utility improvements, including a segment of an outfall connection from the City's wastewater treatment plant to Guemes Channel. Notwithstanding the City's reservation described herein, the Port may develop and/or construct improvements on the portion of the 2nd St. ROW subject to City's reservation described herein. In the event that the City constructs or causes to be constructed utility improvements beneath the ROW during the term of this Agreement, the Port shall remove from the ROW any improvements that it has installed when such removal is necessary to accommodate the City's utility construction.

8. PORT USE OF 2nd St. ROW.

- 8.1 Under this Agreement, the Port is granted the right of use over, under, upon and across the 2nd St. ROW for the support of industrial and/or commercial uses associated with Port's marine terminal facilities, including, without limitation, Pier 1, Pier 2, Curtis Wharf, and the Port's properties known as "Quiet Cove." These uses include, without limitation, (i) vehicle access; (ii) product storage operations; (iii) restricting public traffic and access to the 2nd St. ROW; and (iv) constructing any improvements the Port deems necessary to support these uses.
- 8.2 The Port and its contractors use of the 2nd St. ROW shall comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use of the 2nd St. ROW.
- 8.3 Upon the termination of this Agreement, unless otherwise agreed to by the Parties, the Port shall restore 2nd St. ROW within ninety (90) days to its pre-closure state, including but not limited to removing any closure improvements such as gates, barriers, and signage. Any development of the 2nd St. ROW by the City after the termination of this Agreement shall be conducted by the City at no cost to the Port. These obligations shall survive termination of the Agreement.
- 8.4 The Port and its contractors bear all of the costs of their activities under this Agreement relating to the 2nd St. ROW. This obligation shall survive termination of the Agreement.

9. INDEMNIFICATION.

- 9.1 City's Indemnification of Port. To the extent permitted by law, City shall indemnify, save, defend, and hold harmless Port, its officers, agents, and employees from and against any and all claims, demands, judgments, losses, or liability for personal injury (including without limitation death) or property damage (collectively, "Claims") arising out of any willful misconduct or negligent act, error, or omission of City, its officers, agents, or employees in connection with the 2nd St. ROW accruing (i) prior to City's closure of the 2nd St. ROW; or (ii) after termination of this Agreement, except as the Port's restoration obligation in Agreement Section 8.3 may apply. City's obligations under this section shall apply only to the extent of the negligence or willful misconduct of City or its agents and shall not extend to Claims caused by, resulting from, or arising from the sole misconduct or sole negligence of Port, its officers, agents, or employees.
- 9.2 Port's Indemnification of City. To the extent permitted by law, Port shall indemnify, save, defend, and hold harmless City, its officers, agents, and employees from and against any and all Claims arising out of any willful misconduct or negligent act, error, or omission of Port, its officers, agents, or employees in connection with the 2nd St. ROW accruing (i) after City's closure of the 2nd St. ROW during the effective period of the Agreement; or (ii) as a result of the improvements on the 2nd St. ROW installed at Port's direction. Excepted from this section are any and all Claims

arising out of the City's exercise of its reserved rights described herein. Port's obligations under this section shall apply only to the extent of the negligence of willful misconduct of Port or its agents and shall not extend to Claims caused by, resulting from, or arising from the sole misconduct or sole negligence of City, its officers, agents, or employees.

10. **GENERAL.**

- 10.1 Binding Effect. This Agreement, and all rights associated therewith, shall be considered, and construed as covenants running with the land, and shall be binding upon, and inure and extend to the benefit of the successors and assigns of the Parties.
- 10.2 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 10.3 Jurisdiction and Venue. Jurisdiction for any action to enforce the terms of this Agreement shall be in the Superior Court for the State of Washington. Venue for any such action shall be in Skagit County.
- 10.4 Captions. The captions and paragraph headings contained in this Agreement are for the convenience of the Parties and for reference only, and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.
- 10.5 Waiver. No failure by either Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term, or condition.
- 10.6 Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of both Parties. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of, or against the Party preparing the same, shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
- 10.7 Amendments. Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of the Parties or their successors and assigns.
- 10.8 Notices. All notices, demands, requests, consents, and approvals which may, or are required to be given by any Party to any other Party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail, postage prepaid to:

City: City of Anacortes
Attn: Mayor
904 6th Street
P.O. Box 547
Anacortes, WA 98221

Port: Port of Anacortes
Attn: Executive Director
100 Commercial Avenue
Anacortes, WA 98221

- 10.9 Counterparts – Authority. This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument and as if all Parties to the counterparts had signed the same instrument. Electronic facsimile signatures and/or electronically scanned signatures shall be sufficient to demonstrate a Party's assent to this Agreement. Each individual signing this Agreement on behalf of either the City or the Port represents that (i) they have the authority to bind the Party on whose behalf they are signing; and (ii) that all steps necessary for their respective entity to execute this Agreement have been taken, including the conduct of a public hearing under RCW 39.33.020.
- 10.10 Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all written and oral agreements previously made or existing with respect to the subject matter hereof.
- 10.11 Recording. This Agreement may be recorded for record by a Party with Skagit County, Washington at the sole cost and expense of the Port.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the last date set forth below.

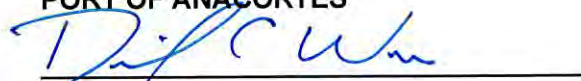
CITY:

PORT:

CITY OF ANACORTES

PORT OF ANACORTES


Matt Miller
Mayor
Date: 16 FEB 22


Daniel Worra
Executive Director
Date: 2-16-22

STATE OF WASHINGTON)
) ss.

COUNTY OF SKAGIT)

On this 16 day of February, 2022, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Matt Miller** to me known to be the **Mayor** of the **City of Anacortes**, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said district, for the uses and purposes therein mentioned, and on oath stated that he/she is duly authorized to execute the same.

GIVEN under my hand and official seal this 16 day of February, 2022.




Print Name: Jennifer G. Tottenham
NOTARY PUBLIC in and for the
State of Washington, residing at Skagit County, WA
My commission expires: 9.28.24

STATE OF WASHINGTON)
) ss.

COUNTY OF SKAGIT)

On this 16 day of February, 2022, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Daniel Worra**, to me known to be the **Executive Director** of the **Port of Anacortes**, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is duly authorized to execute the same.

GIVEN under my hand and official seal this 16 day of February, 2022.




Print Name: Jennifer G. Tottenham
NOTARY PUBLIC in and for the
State of Washington, residing at Skagit County, WA
My commission expires: 9.28.24

RIGHT OF WAY USE AGREEMENT - 7

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF PLATTED 2ND STREET LYING WESTERLY OF THE WEST LINE OF "O" AVENUE AND BETWEEN BLOCKS 66 AND 67 AS DEDICATED ON THE PLAT OF "MAP OF CITY OF ANACORTES" ACCORDING TO THE MAP THEROF, RECORDED IN VOLUME 2 OF PLATS, PAGES 4-7, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON.



Pacific Surveying & Engineering, Inc
land surveying • civil engineering • consulting • environmental
909 Squalicum Way #111, Bellingham, WA 98225
Phone 360.671.7387 Facsimile 360.671.4685 Email info@pseurvey.com

EXHIBIT ' _ '

2nd STREET RIGHT OF WAY WEST OF "O" AVENUE
LEGAL DESCRIPTION

THAT PORTION OF PLATTED 2ND STREET LYING WESTERLY OF THE WEST LINE OF "O" AVENUE AND BETWEEN BLOCKS 66 AND 67 AS DEDICATED ON THE PLAT OF "MAP OF CITY OF ANACORTES" ACCORDING TO THE MAP THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGES 4-7, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON.



EXHIBIT "B" **EASEMENT AREA** **DEPICTION**

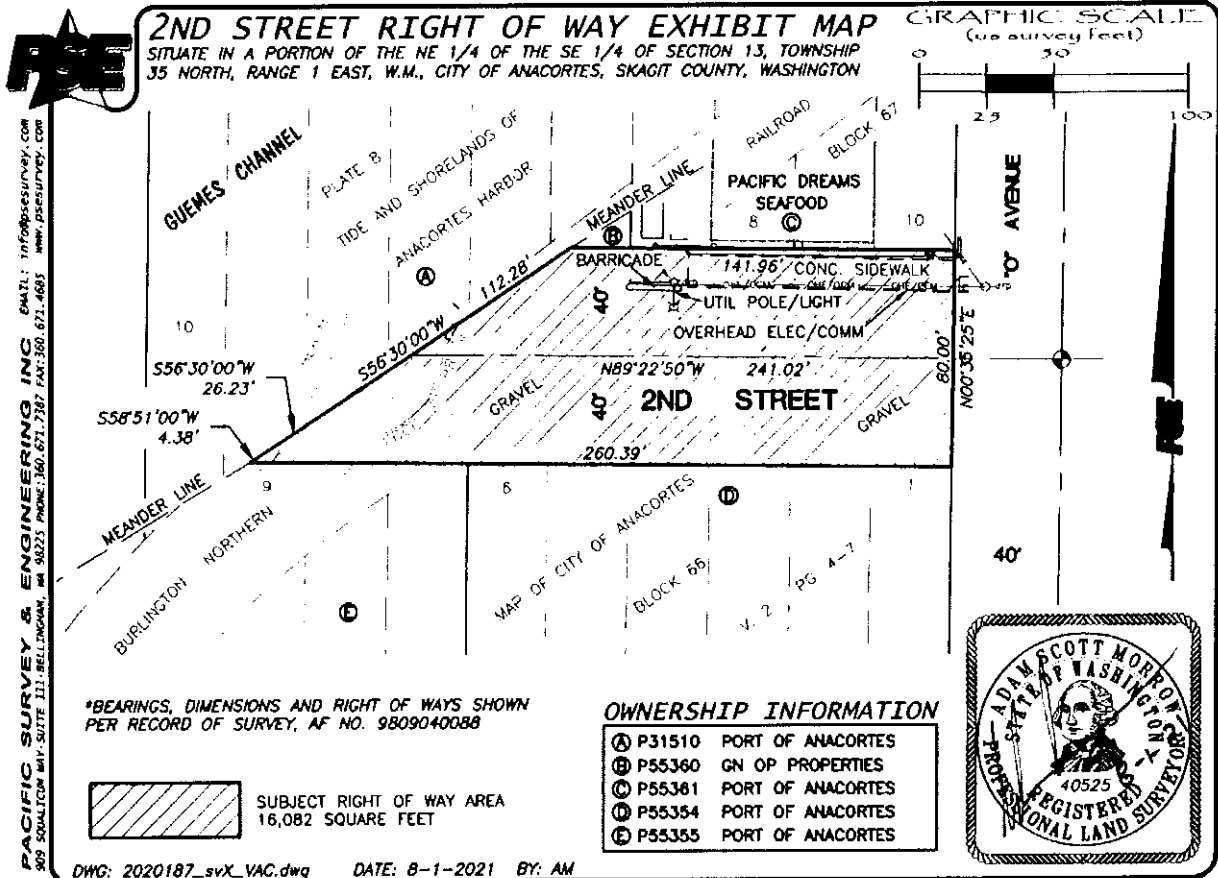


EXHIBIT B



Anacortes Planning, Community & Economic Development Department

904 6TH Street / P.O. Box 547, Anacortes, WA 98221

360.299-1984 - Office Hours: Mon-Fri 8:00 AM – 5:00 PM

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT: STAFF REPORT

File Number	SDP-2023-0002	Date of Report	May 18, 2023
Project Title	MRT-64 2 nd Street and Curtis Wharf Improvements	Related File(s)	PRE-2023-0002
Project Location	Second Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 116 O Avenue.		
Request	The Port of Anacortes has requested a shoreline substantial development permit for the installation and construction of approximately 18,500 square feet of new asphalt at 2 nd Street and the entry to Curtis Wharf. Proposed work includes excavation of existing gravel surface and base materials, backfilling and compaction of clean imported fill and base course materials, installation of updated stormwater conveyances and BMP facilities, paving with asphalt four inches in depth, and installation of a new rolling access gate and an additional length of chain-link fence connecting existing security fence at Quiet Cove and Curtis Wharf. The applicant has stated the new fence and gate is a measure to limit potential conflicts between the public and industrial use tenants at Curtis Wharf. No footprint expansion is proposed under this proposal, all work will be done within existing disturbed/ developed areas. This Shoreline Substantial Development Permit application does not include a proposal to expand an existing use or establish a new use.		
Landowner/Applicant	Port of Anacortes 100 Commercial Ave Anacortes, WA 98821		

SITE INFORMATION

Zoning	Manufacturing and Shipping (MS)	Comprehensive Plan Designation	Manufacturing / Shipping (MS)
Present Use of Property	Port facility including a commercial/industrial pier and 2 nd Street right-of-way.		
Critical Areas	Pursuant to Chapter 6 and Appendix "A" of the Shoreline Master Program (SMP) regulating critical areas, the subject development was reviewed for proximity to critical areas. SMP A-1: Frequently Flooded Areas Based on FEMA's National Flood Hazard Mapping, the subject property is located within FIRM panel 5303170040A. A Flood Development Permit has been		

submitted to the City (FLD-2023-0001) and will be required to be obtained prior to the beginning of construction.

SMP A-3: Geologically Hazardous Areas

Based on the City mapping system, the subject property is in an identified area of tsunami hazard and seismic hazard area; however, the proposed street paving and fence does not have a risk of hazard. Therefore, the provisions of this section would not apply.

SMP A-5: Fish and Wildlife Conservation Areas

Based on the City mapping system, the subject property is adjacent to an identified Critical Areas Habitat Group for smelt spawning and Dungeness Crab; however, the proposed street paving and fencing will not exceed the existing developed footprint of the site, no encroachment into critical areas are proposed or permitted. It is determined that no net loss of critical habitat area will occur.

PROJECT LOCATION & SURROUNDING USES



	Zoning / Comprehensive Plan	Property Use
North	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility
South	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility
West	Light Manufacturing (LM)	Port owned – industrial maritime facility
East	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility

PROCEDURAL

- Type of Review.** According to AMC 19.20.030(1) and 18.16.100(B), shoreline substantial development permit applications for projects valued less than \$1 million are considered a Type 3 review. For Type 3 reviews, the Planning Commission holds the public hearing and renders the final decision regarding the proposed shoreline substantial development permit.
- Project History.**
 - A mandatory preapplication meeting was held on January 31, 2023, with the mandatory preapplication neighborhood meeting held on March 9, 2023.
 - The Port of Anacortes has obtained a Right of Way Use Agreement from the City of Anacortes for this portion of 2nd Street lying westerly of the west line of “O” Avenue (AFN 202206240050). (Exhibit 6)
 - The project site is adjacent to a known cleanup site, Quiet Cove, in-water and sediment remediation are proposed in the next five (5) years and will be conducted in accordance with all applicable requirements. The Port of Anacortes has an Agreed Order with Department of Ecology (No. DE11346) (Exhibit 15)
 - The City of Anacortes’ Shoreline Master Program adopted by reference the *Port of Anacortes Integrated Approach to Marine Public Access, October 2003* plan (Exhibit 19)
- Environmental Review.** The Port of Anacortes, as lead agency, determined the scope of work to be categorically exempt from SEPA Review per WAC 197-11-800(2)(d)(vii) and (2)(d)(viii). (Exhibit 10)
- Public notice and reviewing departments/agencies.** A notice of application with a 30-day public comment period was published in the Anacortes American, posted on the project site and mailed to property owners within 300 ft. (Exhibit 17)

Application Submitted	February 27, 2023
Determination of Completeness	March 10, 2023
Notice of Application & Public Hearing	April 12, 2023
Open Record Public Hearing (Planning Commission)	May 24, 2023

- Reviewing departments/agencies.** The project application was routed for review to applicable agencies and City departments.

REVIEWING DEPARTMENTS & AGENCIES			
City of Anacortes	Local Agencies	State & Federal	Other

• Building • PW – Operations • PW – WWTP • PW – Engineering • PW – Water	N/A	• USACE • DAHP • DOE • WDFW • WA DNR	• Samish Indian Nation • Sauk-Suiattle • Skagit System Cooperative • Stillaguamish Tribe • Swinomish Tribe
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6. **Consideration of written comments and applicant responses.** The notice of application public comment period ended May 11, 2023. In making its recommendation, the Department considered timely received written comments and the applicant’s responses, if any, as required in AMC 19.20.130(C).

6.1. Comments from Public Works Engineering were relayed to the applicant a copy of which can be found in (Exhibit 18).

6.2. No public or agency comments, other than the referenced above, were received for the proposal.

DEPARTMENT REVIEW – FINDINGS OF FACT

1. **Right of Way Use Agreement 2nd Street from “O” Avenue to Shoreline** (AFN 202206240050). This agreement between the City of Anacortes and the Port of Anacortes is for the conveyance of property interest from the City to the Port. Under this agreement the City grants to the Port exclusive use of the 2nd Street right-of-way for the term of the agreement described in Agreement Section 8 which includes the right of use over, under, upon and across the 2nd Street right-of-way including, without limitation vehicle access, product storage operations, restricting public traffic and access to the 2nd Street right-of-way, and constructing any improvements the Port deems necessary. Also included in Agreement Section 8 is stated the Port and its contractors use of the 2nd Street right-of-way shall comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use the 2nd Street right-of-way. (Exhibit 6)

2. **The City of Anacortes Shoreline Master Program (SMP)** contains many goals, policies, and development regulations. Not all are applicable to each Shoreline Substantial Development Permit project proposal. Below, staff has listed some of the goals, policies, and regulations believed to be the most relevant, however all applicable regulations apply even if not noted below.

3. **SMP Chapter 5: Shoreline Environments & Associated Policies and Regulations.** This section contains the shoreline environment designations. The intent of designating shoreline environments is to encourage development that will enhance the present or desired character of the shoreline. Management policies are an integral part of the environment designations and are used for determining uses and activities that can be permitted in each environment. Specific development regulations specify how and where permitted development can take place within each shoreline environment.

3.1. The subject property is located within the **Urban Maritime** shoreline environment designation.

3.1.1. The purpose of the Urban Maritime designation is to preserve a variety of water-dependent, water-oriented, and water-related public, commercial, and industrial uses such as those associated with the Port of Anacortes.

3.2. Management Policies:

- 3.2.1. Use Policy 5.11.1 Encourage expansion of water-dependent and water-related uses.
- 3.2.2. Use Policy 5.11.6 Industrial and commercial development along Urban Maritime shorelines should provide protection of existing ecological functions where practicable and mitigated. It should also provide public access opportunities only where appropriate and where public safety would not be compromised and alternative off-site provision has been made.
- 3.2.3. Public Access Policy 5.11.7 Where desirable and practicable, industrial, and commercial facilities should be designed to facilitate pedestrian waterfront activities. *The Port of Anacortes' Integrated Approach to Marine Public Access, October 2003* is incorporated by reference, and substitutes for uniform public access requirements on individual port actions.

3.3. Development Regulations:

- 3.3.1. DR-5.11.5 Redevelopment and renewal of substandard, degraded, or obsolete urban shoreline areas shall be encouraged in order to make maximum use of the available shoreline resources and to accommodate future water-oriented uses.
- 3.3.2. DR-5.11.7 Ensure that, where applicable, improvements are reviewed for consistency with Design Standards codified in the zoning code.
- 3.3.3. DR-5.11.10 Developments consisting of water-dependent scientific, historical, industrial, commercial, cultural, or educational research uses, public access, water-oriented recreation and ecological restoration are not required to meet the setback requirements, nor are piers, ramps, or docks.

3.4. Shoreline Uses and Modification Matrix and Development Standards:

- 3.4.1. Section 5.12(A)(5) If any part of a proposed development is not eligible for Shoreline Exemption, then a Substantial Development Permit is required for the entire proposed development project.
- 3.4.2. Section 5.12(A)(9) Except as otherwise stated, the comprehensive plan, zoning regulations, subdivision regulations, health regulations, and other adopted regulatory provisions apply within shoreline jurisdiction. In the event the provisions of this SMP conflict with provisions of other responsible local government regulations, the more protective of shoreline resources shall prevail.
- 3.4.3. Per Table 5.1 Shoreline Use and Modification Matrix the following uses are permitted in the Urban Maritime environment designation.
 - 3.4.3.1. Transportation Facilities (i.e. roads and associated facilities i.e. storm drainage); permitted.
 - 3.4.3.2. Industrial and Port Facilities – Water-dependent; permitted.
Industrial and Port Facilities – Water-related; permitted.
 - 3.4.3.3. Fill – upland; permitted.

3.4.4. Per Table 5.2 Shoreline Development Standards Matrix non-water-dependent structures have a minimum twenty-five-foot (25') setback from the ordinary high water mark (OHWM). Water-dependent structures have a zero-foot (0') setback requirement.

4. **SMP Chapter 6: Environmental Protection General Regulations.** The intent of these regulations is to provide policies and regulations that protect the shoreline environment as well as the critical areas found within the shoreline jurisdiction. The Shoreline Management Act (SMA) mandates the preservation of the ecological functions of the shoreline by preventing impacts that would harm the fragile shorelines of the state.
 - 4.1. DR-6.4.2 All shoreline permits shall contain provisions that require developers to comply with all applicable state law requirements regarding preservation of archaeological and historic resources, including provisions to stop work and notify the appropriate agencies should protected resources be uncovered during excavation.
 - 4.2. DR-6.4.9 Chemical pesticides using aerial spraying techniques within the shoreline jurisdiction, including over waterbodies shall be prohibited unless specifically permitted by the Washington Departments of Agriculture or Public Health.
5. **SMP Chapter 7: Shoreline Public Access.** Shoreline public access is the physical ability of the general public to reach and touch the water's edge or the ability to have a view of the water and the shoreline from upland locations. There are a variety of types of public access, including docks and piers, boat launches, pathways and trails, promenades, street ends, picnic areas, beach walks, viewpoints, and others. Inarguably, the economic vitality of the City is bolstered by the public access to and enjoyment of these shorelines.
 - 5.1. General Policy 7.3.1 Seek to maintain and enhance public access, both physical and visual, throughout the City's shoreline. Access should be provided for a range of users including pedestrians, bicyclists, boaters and, to the extent feasible, people with disabilities. Access opportunities should be varied, ranging from urban water walks to viewing platforms of natural areas. Encourage the use of public access facilities to actively educate and inform the public on the importance of environmental protection of the shoreline jurisdiction. Work in partnership with local entities (e.g., Skagit Marine Resources Committee, and others) to implement this policy.
 - 5.2. General Policy 7.3.5 Require new development that impacts public access to mitigate through the provisions of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.
 - 5.3. General Policy 7.3.7 Incorporate public access provisions into the review and approval of all public and private development projects. Exceptions may be considered for the following: (b) Where deemed inappropriate due to health, safety, security, incompatible uses, constitutional or other legal limitations and environmental concerns. In these cases, alternate methods of providing public access shall be considered such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access; and (c) Where a more effective integrated public access plan exists.
 - 5.4. Street Ends Policy 7.3.9 Encourage the use of street ends and other publicly owned or controlled lands to increase public access to shoreline areas.

- 5.5. Street Ends Policy 7.3.10 Develop street end access and viewpoints. Improvements to and linkages between these street-ends should be determined by the physical characteristics of the shorelines, existing development patterns, potential for structural improvements, and other factors relevant to developing a continuous pedestrian system.
- 5.6. Street Ends Policy 7.3.11 Ensure that use of street ends for parking does not physically block public access to the shoreline or degrade the scenic qualities of the City. (See Parking Facilities, Section 8.9 Chapter 8)
- 5.7. Design Policy 7.3.14 Public access improvements should be designed and constructed to: (a) Look and “feel” welcoming to the public and be usable by the greatest number and diversity of people including, to the extent possible the physically handicapped. (b) Connect to public areas, street-ends and other pedestrian or public thoroughfares. (e) Enhance the character of Anacortes, including the historic and economic activity of downtown, marine business and industry, Port activity, and natural areas. (f) Avoid conflicts with water-dependent uses. (h) Require low maintenance design.
- 5.8. Development Regulation (DR) 7.4.1 Developments, uses, and activities shall be designed and operated to avoid significantly blocking, reducing, or adversely interfering with the public’s visual or physical access to the water and the shorelines.
- 5.9. DR-7.4.2 Except as provided in regulations 7.4.4 and 7.4.5, shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present: (b) Where a development or use will interfere with an existing or potential public access way, the development or use shall apply mitigation sequencing principles and provide public access to address the impact. (e) Where a development or use is located on public land or is managed by a public entity, unless access is incompatible with safety, security, or environmental protection.
- 5.10. DR-7.4.3 Required public access shall include the preservation of shoreline views, the establishment of public access easement to and along the shoreline, enhancement of an adjacent street-end or park, or other consideration commensurate with the degree of impact caused by the development.
- 5.11. DR-7.4.4 Public access is not required if the applicant can demonstrate to the satisfaction of the City that constitutional and or statutory limitations would be violated by the provisions of such access.
- 5.12. DR-7.4.5 Alternatives to on-site, physical access to the shoreline may be approved if the applicant can demonstrate to the satisfaction of the City that one or more of the following conditions exist: (a) Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means; (c) Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions; (d) The cost of providing on-site access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development; Provided further, that the applicant has first demonstrated and the City has determined that all reasonable alternatives have been exhausted, including, but not limited to: (g) Regulating access by such means as limiting hours of use to daylight hours, or allowing public access to only a portion of the site. (h) Designing separation of uses and activities, using such means as terracing, hedges, and landscaping.
- 5.13. DR-7.4.6 When on-site public access is not required under DR-7.4.5, alternative shoreline access must result in an equal or greater public benefit. Alternatives may include but are not limited to:

(b) Off-site public access, such as improvements to a nearby street end, an offsite, or a trail system, purchase of land or an easement at a location appropriate for future access improvements. (c) A payment in lieu agreement with the City in accordance with RCW 82.02.020 (relating to fees associated with development).

5.14. DR-7.4.7 Off-site public access, when required, must meet the same standards and requirements as on-site public access.

5.15. DR-7.4.9 When required, public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity, except where the decision maker determines an appropriate mechanism for delayed public access implementation is necessary for practical reasons.

5.16. DR-7.4.15 Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

5.17. DR-7.4.18 Public access landscape design shall use native vegetation in the shoreline setback and predominantly native vegetation (i.e., 80% or greater) in the remainder of shoreline jurisdiction, particularly drought-resistant and, along marine shorelines, saline-tolerant plant species, Landscape plantings may be required where desirable to provide public/private space separation.

6. **SMP Chapter 8: Specific Use Policies and Development Regulations.** This chapter provides specific policies and regulations for specific uses. The performance standards contained herein augment standards established through other land development regulations. Where conflict arises between these and other applicable controls, the regulations that provide more protection to the shoreline area shall apply.

6.1. Industrial and Port Facilities

6.1.1. Policy 8.6.1 Reserve shorelines that are particularly suitable for water-dependent and water-related industrial and port development for these uses.

6.1.2. Policy 8.6.3 Require new industrial and port development to provide physical and visual access to shorelines whenever possible, consistent with constitutional and statutory limitations, and provided such access does not interfere with industrial operations or endanger public health and safety.

6.1.3. Policy 8.6.4 Encourage cooperative use of docks, cargo handling, storage, parking, and other accessory facilities among private or public entities in shoreline industrial and port areas.

6.1.4. Policy 8.6.5 Ensure that land transportation and utility corridors serving ports and water-related industry follow the guidelines provided under the sections dealing with utilities and transportation.

6.1.5. Policy 8.6.6 Only water-dependent industrial and port uses shall be permitted on shorelands with direct frontage on and practical access to navigable waterways.

6.1.6. Policy 8.6.7 Opportunities for public access to the water are required at port and industrial sites, unless such access would interfere with operations or endanger public health and safety, or the proponent otherwise provides for equivalent access elsewhere in the City.

6.1.7. Policy 8.6.9 Industrial uses and redevelopment are encouraged to locate where environmental cleanup and restoration can be accomplished.

6.1.8. Development Regulations (DR) 8.6.8 Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, *Public Access*, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard the *Port of Anacortes' Integrated Approach to Marine Public Access, October 2003* is incorporated by reference into this SMP.

6.2. Transportation Facilities

- 6.2.1. Policy 8.13.12 Design of new roadways or redesigned roadways shall use Low Impact Development provisions when practicable.
- 6.2.2. Development Regulation (DR) 8.13.6 All roads and drainage systems shall be maintained to prevent erosion and/or water quality degradation.
- 6.2.3. DR-8.13.8 Herbicides used for maintenance along roads and drainage systems shall follow the performance standard outlined in Section 6.4.
- 6.2.4. DR-8.13.9 To the greatest extent practicable, organic, nontoxic, methods and BMPs should be utilized for maintenance along roads and drainage systems in the vicinity of critical fish and wildlife habitats.

6.3. Fill

- 6.3.1. Policy 9.7.2 Fill landward of the ordinary high water mark should be permitted when necessary to support permitted uses, and when significant impacts can be avoided or mitigated.
- 6.3.2. Policy 9.7.5 Perimeters of fill should be protected by shoreline stabilization or other design measures, unless it can be demonstrated that there will be environmental or public benefit for not employing any of these methods.
- 6.3.3. Development Regulation 9.7.2 Fill shall be permitted only when in conjunction with a proposal or activity otherwise permitted under the SMP.

CONCLUSIONS OF LAW

1. Via the signed and recorded Use Agreement with the City, the Port has exclusive use of the 2nd Street right-of-way for the term of the agreement described in Agreement Section 8 which includes the right of use over, under, upon and across the 2nd Street right-of-way including, without limitation vehicle access, product storage operations, restricting public traffic and access to the 2nd Street right-of-way, and constructing any improvements the Port deems necessary to support its use.
2. Public access to the shoreline is referenced multiple times in the SMP. The street end of 2nd Street exits onto Q'elech'ilhch Park ("N" Avenue Beach), the Port has received City permission to restrict public traffic and access to this portion of 2nd Street via the Use Agreement, the Port's use of the 2nd Street right-of-way also requires them to comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use the 2nd Street right-of-way. Shoreline Master Program Development Regulation 8.6.8 states: Where

industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development.

3. Road improvements including stormwater facilities is a permitted action.
4. The shoreline permit was reviewed for conformance with all applicable Shoreline Master Program regulations, including but not limited to, the above list.
5. The subject proposal is consistent with the Washington State's Shoreline Management Act, City of Anacortes' 2010 Shoreline Master Program and development regulations listed therein for developments within the Urban Maritime shoreline environment designation.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.
7. Staff reserves the right to supplement the record of the case to respond to matters and information raised subsequent to the writing of this report.

RECOMMENDATION

Based upon the application, Findings of Fact, and Conclusions of the staff report, staff recommends that the Planning Commission approve the shoreline substantial development permit subject to the following conditions of approval:

1. The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach). Improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.
2. The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.
3. The Port shall obtain a fence permit for the proposed rolling gate at 2nd Street as well as the additional chain-link fencing along the shoreline. Permit application shall show the fence and gate designed to preserve visual access down 2nd Street to the shoreline and shall be constructed to meet the standards of AMC 19.66.040.
4. The Port shall obtain construction permits for the street improvements and stormwater facility, shall comply with all applicable codes, manuals, and standards, and shall be reviewed and approved by the Public Works Engineering Division.
5. The Port and the subject project shall comply with all applicable state law requirements regarding preservation of archaeological and historic resources, including provisions to stop work and notify the appropriate agencies should protected resources be uncovered during excavation.
6. Removal of or relocation of all discarded materials including concrete blocks in upland areas beyond the fenced enclosure must be complete prior to completion of the subject project.
7. The scope of the project shall not exceed that as set out in the shoreline permit application and shall be valid only for the improvements described within the application materials, except as modified

by this decision or other jurisdictional agencies. This permit does not include review or approval of any use.

8. All applicable permits (local, state, & federal) shall be secured before any construction activities begin onsite and copies provided to the City of Anacortes' PCED. This includes a local City of Anacortes Flood Development Permit.
9. The applicant/landowner shall comply with federal statutes including but not limited to: Endangered Species Act, Clean Water Act, Marine Mammal Protection Act, and other federal statutes.
10. The project shall comply with all applicable Shoreline Master Program regulations, including but not limited to those listed above.
11. Development shall comply with AMC 18.16.130 regulating the time limit for shoreline permits as follows:
 - 9.1. *Construction, or substantial progress toward completion, must begin within two (2) years after approval of the permit. Substantial progress toward construction shall include, but not limited to, the letting of bids, making of contracts, purchasing of materials involved in development, but shall not include development or uses which are inconsistent with the Shoreline Management Act or the city's master program. In determining the running two-year period hereof, there shall not be included the time during which development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided, that the city may, in its discretion, extend the two-year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.*
 - 9.2. *5-Year Permit Authorization: If construction has not been completed within five years of approval by the City of Anacortes, the city will review the permit, with prior notice to parties of record, and, upon showing of good cause, either extend the permit for one additional year, or terminate the permit. Prior to the city authorizing any permit extensions, it shall notify any parties of record and the Department of Ecology. Note: Only one single extension is permitted.*

EXHIBIT C



May 30, 2023

VIA EMAIL

gracep@cityofanacortes.org

City of Anacortes Planning, Community & Economic Development Department
Attn: Grace Pollard – Senior Planner
904 6th Street
PO Box 547
Anacortes, WA 98221

RE: Request to Modify Conditions Presented in City Staff Report

Permit: SDP-2023-0002
Applicant: Port of Anacortes (the “Port”)
Project Title: MRT-64 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue (the “Project Site”)

Dear Ms. Pollard,

Thank you for sharing the Shoreline Substantial Development Permit (SSDP) Staff Report on the above reference Project with Port staff. The Port appreciates the Planning Commission’s postponement of a decision to its’ next meeting as the Port wanted to take an opportunity to share some feedback on City staff’s recommended conditions to clarify the Port’s responsibilities and ensure the conditions align with the Port and City Right of Way Use Agreement for 2nd Street – From “O” Avenue to Shoreline, dated February 16, 2022 (the “2nd Street ILA”).¹

The Port requests that City Staff recommend, and the Planning Commission adopt, revisions to two of the recommended conditions in the City Staff Report. The City Staff recommended condition, the Port’s proposed revised condition, and the reasoning for the changes are discussed in turn below.

Recommended Condition No. 1 in the Staff Report - The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach). Improvements to the pedestrian connection to Q’elech’ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.

¹ Skagit County AF No. 202206240050 - see Exhibit 6 on the Staff Report.

Revised Condition No. 1 Proposed by the Port – The Port shall provide wayfinder signage to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach) consistent with the requirements in the Right of Way Use Agreement 2nd Street – from “O” Avenue to Shoreline, Skagit County AF No. 202206240050.

Reasoning for the Change – It is unclear in the recommended condition if the requirement that the Port submit an “Alternative Public Access Improvement Plan” means that the Port must amend the Public Access Plan identified in *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003, which is adopted by reference in the City’s SMP. This request is problematic because it could be interpreted as a requirement for the Port to amend or alter an adopted planning document within the SMP. In addition, and perhaps more important with respect to the Project under review, the Project does not propose a new industrial use or development, or otherwise trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q’elech’ilhch Park (“N” Avenue Beach).

The Staff Report cites SMP DR-8.6.8 as the authority for the Condition No. 1. SMP DR-8.6.8 provides as follows (underline emphasis added):

Public Access DR-8.6.8 - Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003 is incorporated by reference into this SMP.

The Project is a resurfacing of approximately 18,500 square feet of the section of the 2nd Street ROW that the City previously agreed to restrict to the Port’s exclusive use in the 2nd Street ILA. Access to the 2nd Street ROW became limited when the City executed the 2nd Street ILA in 2022, not by this Project. Accordingly, this Project is not a new proposed “industrial use” that limited public access such that it triggers DR-8.6.8. This conclusion is further supported by DR-8.6.8’s references to the public access policies in Chapter 7 of the SMP, specifically (underline emphasis added):

Public Access Policies - Policy 7.3.5 Require new development that impacts public access to mitigate through the provision of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.

If the City wanted require the Port, as part of the closure of the 2nd Street ROW, to develop the Public Access Plan according to *the Port of Anacortes’ Integrated Approach to Marine Public Access* referenced in the SMP, then this requirement should have been specifically negotiated as part of the terms to the 2nd Street ILA – the authorization from the City that closed the 2nd Street ROW to general public access. As one of the co-contributors, the Port remains committed to *the Port of Anacortes’*

Integrated Approach to Marine Public Access, October 2003 that is incorporated by reference into the SMP, including the Public Access Plan for the Connection to “N” Avenue Beach. The Port, however, does not believe that the Project is the kind of development that triggers a permit condition requiring the Port to undertake the proposed improvements in the Public Access Plan by itself. Not all of the properties along the 3rd Street between Commercial and N Avenue are part of the Project and some of these properties are not even owned by the Port (The Port does not own 1110 3rd Street (Parcel P55357)² or 220 Commercial Avenue (Parcel P134591)³.

Accordingly, the Port requests Condition No. 1 be revised to reflect the impacts associated with the Project consistent with the 2nd Street ILA.

Recommended Condition No. 2 in the Staff Report - The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Revised Condition No. 2 Proposed by the Port – The signage referred to in Condition No. 1 shall be installed within (1) year of issuance of this Approval.

Reasoning for the Change – The removal of the Alternative Public Access Plan requirement in Condition No. 1 necessitated the changes to Condition No. 2. The reasoning here is largely the same as discussed above.

The Port recognizes that the timeline between production of the Staff Report and the public hearing does not necessarily afford the City and the Port a meaningful opportunity to discuss the City Staff recommended conditions in detail. The Port does, however, desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street ILA. The Port asks that this letter be made part of the record for the Planning Commission. Thank you for your consideration and ongoing efforts to partner with the Port to improve our City.

Sincerely,



Brenda Treadwell,
Director of Planning, Properties & Environment

² Parcel P55357 is owned by Guemes Channel Corp.

³ Parcel P134591 is owned by the Anacortes Housing Authority, Inc.

EXHIBIT D

June 23, 2023

VIA E-MAIL

darcys@cityofanacortes.org

City of Anacortes
Attn: Darcy Swetham – City Attorney
904 6th Street
Anacortes, WA 98221

RE: Request for Reconsideration of Permit Conditions

Permit: SDP-2023-0002
Project Title: 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue.
Owner/Applicant: The Port of Anacortes (the “Port”)

Dear Darcy:

This firm represents the Port regarding the above-identified Permit and Project. The Planning Commission voted to approve the Permit. The Port was, of course, seeking approval of the Permit, however, there are three (3) conditions in the Staff Revised Recommendations which are unlawful, and which must be revised or removed. I am reaching out now, ahead of the Planning Commission’s written decision, to address procedural, factual, and material legal errors in the City’s Staff Revised Recommendations and the hearing itself.

The Port writes this letter to invite a discussion with the City to correct these errored conditions now rather than having to file an appeal after the written decision is issued. The Port would like to set up a meeting with City legal staff to discuss the Permit conditions and the possibility of re-opening the hearing to revise the Permit conditions. Please let me know if the City is willing to engage in a discussion with Port staff prior to the issuance of the written decision of the Planning Commission, and we can look to schedule a meeting with the appropriate representatives. The remainder of this letter addresses some of the Port’s concerns with respect to the Permit conditions.

On May 30th, the Port submitted written comments (the “Comment letter”)¹ on the City issued the Staff Report dated May 18, 2023, (the “Staff Report”) including a request to modify Conditions No. 1 and No. 2 in the Staff Report. In the Port’s May 30th letter, the Port invited City staff to work collaboratively with the Port to revise the proposed conditions ahead of the Planning Commission hearing. City staff did revise the conditions in the Staff Report in the Revised Recommendations dated June 6, 2023,

¹ A copy of this letter is enclosed herewith as **Attachment A**.

(the "Revised Recommendations"), but corrected only one (1) of the several issues raised by the Port in its Comment letter. Unfortunately, City staff failed to send the Port a copy of these Revised Recommendations ahead of the hearing and did not otherwise engage with Port staff before drafting the Revised Recommendations. As a result, the Revised Recommendations continued to include significant errors.

When Port staff and I attempted to address these concerns at the Planning Commission hearing, the Port was not afforded an opportunity to respond to this information and the Planning Commission acted on incomplete and inaccurate information. Myself, and Port staff participating online, had our hands raised at the remote hearing, but the Planning Commission did not allow us to speak prior to moving to a vote.²

Among the inaccurate information conveyed at the hearing was that City Staff informed the Planning Commission that the proposed fencing triggers an alternative plan for public access under the Shoreline Master Program ("SMP") because this Project prevents public access through 2nd Street.³ This is, of course, not accurate. The Project does not prevent public access because public access is already prohibited by the Right of Way Use Agreement Section 6.2, which provides (underline emphasis added):

Except as set forth in Agreement Section 7, the city hereby grants to the Port, and the Port shall have exclusive use of, the 2nd St. ROW for the term of the Agreement for the uses described in Agreement Section 8.

And Section 8.1 of the Right of Way Use Agreement which provides, in part, that the City granted the Port the right to restrict public traffic and access to the 2nd Street ROW in that agreement.

I raised this issue in my initial comments at the hearing, but I was not allowed to address the Planning Commission's questions following my comments, despite my hand being raised. Had the Port been afforded the opportunity to answer the Planning Commission's questions and clarify and correct the statements of City staff, perhaps these errors could have been avoided.

There are several legal errors impacting Revised Conditions No.1 through 3. As raised in the Port's Comment Letter, the development regulation the City SMP that was cited as authority for the public access conditions is Public Access DR-8.6.8, which only triggers public access where industrial use is proposed. The Project is largely a paving project, not an industrial development. Therefore, this provision does not apply.

Another issue raised in the Port's Comment Letter, and by myself at the hearing, was that the conditions concerning public access impacts parcels outside of the Project area, parcels not in the Port's (the applicant's) ownership, and in some cases, parcels outside of the shoreline jurisdiction altogether. Condition No. 1 of the Revised Conditions require the Port to make unspecified

² It is worth noting that the Planning Commission did not clearly close the public hearing section of the meeting, even though regardless of whether the public comment section was closed or not, the Port should have been afforded the opportunity to respond to Planning Commission questions as the applicant and project proponent.

³ Hearing Recording starting at time mark 1:21:10 through 1:26:00.

improvements along 3rd Street to Commercial Avenue, which is well outside of the shoreline jurisdiction.⁴

Conditions No. 1 through No. 3 are further problematic because they authorize the City Planning Staff to condition the Permit at a future date through the City's review and approval of the "Phase 1 design proposal of the "N" Avenue Beach Connection" and a "complete "N" Avenue Beach Connection." The authority to condition a shoreline permit of this type is with the City Planning Commission, not City Planning Staff, yet Conditions No. 1 through No. 3 amount to a delegation of the Planning Commission's authority. Such a delegation is not permitted in the SMP. Furthermore, it is unclear in these Conditions what permit process or rights the Port would have to appeal a City decision on these design proposals for Beach Connection.

From the Port's perspective, if the City was concerned about improvements to the existing public access on 3rd Street, then the City should have raised these concerns when the parties negotiated the Right of Way Use Agreement. The City, however, did not raise these issues at the time of negotiating that agreement. Had this occurred, the Port and the City may have been able to reach an agreement concerning the improvements along 3rd Street. Nevertheless, imposing these requirements on the Port now, in a shoreline permit, and after the Right of Way Use Agreement has been executed, is clearly inappropriate and unlawful.

The Port prefers to work with the City to correct these errored conditions before a written decision is issued and avoid the expense and delay of an appeal. The Port has grant funding paying for a large portion of this Project and delays from an appeal could put the Port at risk of losing these funds. However, if the Port and the City cannot resolve these issues before a written decision is issued, the Port may be forced to file an appeal to preserve its rights while the City and it seek a resolution. If a written decision is issued and an appeal becomes necessary, the Port reserves the right to file an appeal on issues not raised in this letter, and otherwise, the Port continues to reserve all rights and remedies.

I appreciate your attention to this letter and look forward to your response.

Sincerely,

CSD ATTORNEYS AT LAW



Timothy D. Schermetzler

TDS/ale
cc: Client

⁴ See Section 2.3.A and 2.3.E of the SMP regarding the jurisdictional limits of the SMP.

ATTACHMENT A



May 30, 2023

VIA EMAIL

gracep@cityofanacortes.org

City of Anacortes Planning, Community & Economic Development Department
Attn: Grace Pollard – Senior Planner
904 6th Street
PO Box 547
Anacortes, WA 98221

RE: Request to Modify Conditions Presented in City Staff Report

Permit: SDP-2023-0002
Applicant: Port of Anacortes (the “Port”)
Project Title: MRT-64 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue (the “Project Site”)

Dear Ms. Pollard,

Thank you for sharing the Shoreline Substantial Development Permit (SSDP) Staff Report on the above reference Project with Port staff. The Port appreciates the Planning Commission's postponement of a decision to its' next meeting as the Port wanted to take an opportunity to share some feedback on City staff's recommended conditions to clarify the Port's responsibilities and ensure the conditions align with the Port and City Right of Way Use Agreement for 2nd Street – From “O” Avenue to Shoreline, dated February 16, 2022 (the “2nd Street ILA”).¹

The Port requests that City Staff recommend, and the Planning Commission adopt, revisions to two of the recommended conditions in the City Staff Report. The City Staff recommended condition, the Port's proposed revised condition, and the reasoning for the changes are discussed in turn below.

Recommended Condition No. 1 in the Staff Report - The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park (“N” Avenue Beach). Improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.

¹ Skagit County AF No. 202206240050 - see Exhibit 6 on the Staff Report.

Revised Condition No. 1 Proposed by the Port – The Port shall provide wayfinder signage to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach) consistent with the requirements in the Right of Way Use Agreement 2nd Street – from “O” Avenue to Shoreline, Skagit County AF No. 202206240050.

Reasoning for the Change – It is unclear in the recommended condition if the requirement that the Port submit an “Alternative Public Access Improvement Plan” means that the Port must amend the Public Access Plan identified in *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003, which is adopted by reference in the City’s SMP. This request is problematic because it could be interpreted as a requirement for the Port to amend or alter an adopted planning document within the SMP. In addition, and perhaps more important with respect to the Project under review, the Project does not propose a new industrial use or development, or otherwise trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q’elech’ilhch Park (“N” Avenue Beach).

The Staff Report cites SMP DR-8.6.8 as the authority for the Condition No. 1. SMP DR-8.6.8 provides as follows (underline emphasis added):

Public Access DR-8.6.8 - Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003 is incorporated by reference into this SMP.

The Project is a resurfacing of approximately 18,500 square feet of the section of the 2nd Street ROW that the City previously agreed to restrict to the Port’s exclusive use in the 2nd Street ILA. Access to the 2nd Street ROW became limited when the City executed the 2nd Street ILA in 2022, not by this Project. Accordingly, this Project is not a new proposed “industrial use” that limited public access such that it triggers DR-8.6.8. This conclusion is further supported by DR-8.6.8’s references to the public access policies in Chapter 7 of the SMP, specifically (underline emphasis added):

Public Access Policies - Policy 7.3.5 Require new development that impacts public access to mitigate through the provision of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.

If the City wanted require the Port, as part of the closure of the 2nd Street ROW, to develop the Public Access Plan according to *the Port of Anacortes’ Integrated Approach to Marine Public Access* referenced in the SMP, then this requirement should have been specifically negotiated as part of the terms to the 2nd Street ILA – the authorization from the City that closed the 2nd Street ROW to general public access. As one of the co-contributors, the Port remains committed to *the Port of Anacortes’*

Integrated Approach to Marine Public Access, October 2003 that is incorporated by reference into the SMP, including the Public Access Plan for the Connection to "N" Avenue Beach. The Port, however, does not believe that the Project is the kind of development that triggers a permit condition requiring the Port to undertake the proposed improvements in the Public Access Plan by itself. Not all of the properties along the 3rd Street between Commercial and N Avenue are part of the Project and some of these properties are not even owned by the Port (The Port does not own 1110 3rd Street (Parcel P55357)² or 220 Commercial Avenue (Parcel P134591)³).

Accordingly, the Port requests Condition No. 1 be revised to reflect the impacts associated with the Project consistent with the 2nd Street ILA.

Recommended Condition No. 2 in the Staff Report - The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Revised Condition No. 2 Proposed by the Port – The signage referred to in Condition No. 1 shall be installed within (1) year of issuance of this Approval.

Reasoning for the Change – The removal of the Alternative Public Access Plan requirement in Condition No. 1 necessitated the changes to Condition No. 2. The reasoning here is largely the same as discussed above.

The Port recognizes that the timeline between production of the Staff Report and the public hearing does not necessarily afford the City and the Port a meaningful opportunity to discuss the City Staff recommended conditions in detail. The Port does, however, desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street ILA. The Port asks that this letter be made part of the record for the Planning Commission. Thank you for your consideration and ongoing efforts to partner with the Port to improve our City.

Sincerely,



Brenda Treadwell,
Director of Planning, Properties & Environment

² Parcel P55357 is owned by Guemes Channel Corp.

³ Parcel P134591 is owned by the Anacortes Housing Authority, Inc.

EXHIBIT E



NOTICE OF DECISION

SCAN HERE TO VIEW
THE FINAL DECISION:



File Number: SDP-2023-0002

Property Owner: Port of Anacortes

Applicant: Kevin Anderson, Port of Anacortes

Date of Application: February 27, 2023

Project Location: Second Street and Curtis Wharf
116 O Avenue, Anacortes, WA

NOTICE IS HEREBY GIVEN THAT DECISION WAS MADE FOR THE FOLLOWING

PROPOSAL: The Port of Anacortes has requested a shoreline substantial development permit for the installation of roadway improvements and fencing. Proposed work includes excavation of existing 2nd Street gravel surface and base materials, installation of updated and new stormwater conveyances and BMP facilities, backfilling and compaction of clean imported fill and base course materials, approximately 18,500 total square feet of new asphalt paving four inches in depth, and installation of a new rolling access gate across 2nd Street right-of-way on the west side of the 2nd Street & 'O' Avenue intersection, and an additional ~90' length of chain-link fence across 2nd Street right-of-way connecting existing security fence at Quiet Cove to existing fence at Curtis Wharf at the street end. The property is located within "Urban Maritime" Shoreline Environment Designation and is zoned Manufacturing & Shipping (MS). A portion of the proposed development extends beyond shoreline jurisdiction.

Public Hearing: May 24, 2023, continuation to June 14, 2023

Date of Final Decision: July 10, 2023

Notice of Decision Issued: July 11, 2023

Planning Commission Decision: Approved with conditions

The final decision may be viewed by clicking "Current Land Use Projects and Notices" and then opening the appropriate project file number folder at the following link:

<https://www.anacorteswa.gov/161/Planning-Community-Economic-Development>

Appeals: Pursuant to AMC 19.20.030, a local appeal of Type 3-PC Planning Commission Decisions is available to the City Council. Appeals of this decision must be filed in accordance with AMC 19.20.180 by 5:00 PM, 21 days from the date the WA Dept. of Ecology receives the decision.

Project Contact: Grace Pollard, Senior Planner; Phone: (360) 299-1984;
gracep@cityofanacortes.org; City of Anacortes, P.O. Box 547, Anacortes, WA 98221

Notice: Affected property owners may request a change in valuation from the county assessor for property tax purposes notwithstanding any program of revaluation.

EXHIBIT F



PLANNING, COMMUNITY, & ECONOMIC DEVELOPMENT DEPARTMENT

Mailing Address: P.O. Box 547, Anacortes, WA 98221

Office Location: 904 6th Street, Anacortes WA 98821

Phone: (360) 299-1984

REQUEST FOR RECONSIDERATION

AMC 19.20.200 Reconsideration.

A. A party to the underlying decision may seek reconsideration only of a final decision by filing a written request alleging specific errors on a form provided by the Department within 10 days of the date of decision.

B. The decision-maker must consider the request without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

1. If the request is denied, the previous action will become final.
2. If the request is granted, the decision-maker may revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. If the decision is revised and the decision requires a notice of decision, the Department must distribute the revised notice.

APPLICATION INFORMATION	
CITY FILE NUMBER: SDP-2023-0002	PERMIT/ACTION TYPE: Shoreline Substantial Development Permit
SITE ADDRESS: 2 nd Street ROW and Curtis Wharf	
DECISION/DETERMINATION: Approval with Conditions	DATE OF FINAL DECISION/ACTION: July 11, 2023
REQUESTOR CONTACT INFORMATION	
NAME: Timothy Schermetzler, counsel for the Port of Anacortes	MAILING ADDRESS: 1500 Railroad Avenue
CITY, STATE, ZIP: Bellingham, WA 98225	PHONE #: (360) 671-1796 ext. 221 EMAIL ADDRESS: tschermetzler@csdlaw.com

Attach your written request alleging specific errors to this form.

July 21, 2023

VIA ELECTRONIC MAIL

gracep@cityofanacortes.org
pced@cityofanacortes.org

City of Anacortes
Planning, Community & Economic Development
P.O. Box 547
Anacortes, WA 98221

RE: Request for Reconsideration and Appeal of Permit Conditions

Permit: SDP-2023-0002 (the "Permit")
Project Title: 2nd Street and Curtis Wharf Improvements (the "Project")
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue.

Owner/Applicant/Appellant: The Port of Anacortes (the "Port")
Attn: Brenda Treadwell
100 Commercial Avenue
Anacortes, WA 98221
(360) 293-3134

To Whom It May Concern,

Our firm represents the Port of Anacortes (the "Port") regarding the above-referenced Permit to execute the above-referenced Project. I am writing to request that the City of Anacortes (the "City") reconsider its recent approval of the Permit with certain conditions effectively requiring the Port to perform services to the City that do not align with the Port and City Right of Way Use Agreement for 2nd Street—From "O" Avenue to Shoreline, dated February 16, 2022 (the "Right of Way Use Agreement") or the City's Shoreline Management Program ("SMP").

I. APPEAL PROCESS

As a preliminary matter, the Port submitted the enclosed Request for Reconsideration form as instructed by the City Attorney in a July 7, 2023, email and the appeal statement included with the Notice of Decision on the Permit.¹ The Anacortes Municipal Code (the "AMC") does not specify that a Request for Reconsideration pursuant to AMC 19.20.200 tolls the applicable administrative appeal timeline provided in AMC 19.20.180, despite this being the typical practice for administrative appeals

¹ A copy of the July 7, 2023, email from Darcy Swetnam is attached hereto as **Exhibit A**.

of similar municipal entities. In the event that a Request for Reconsideration does not toll the appeal timeline, please accept this letter as an appeal pursuant to AMC 19.20.180.² Furthermore, should the City determine that the deadline to appeal is not tolled by this Request for Reconsideration, please notify the Port and its counsel as soon as possible so that the Port may submit the requisite appeal filing fee.

All that being said, the Port is only submitting this letter and engaging in local administrative appeal processes as a precaution. The Port's reading of the City's municipal code is that an appeal of this Permit under the City's SMP must be made to the Shorelines Hearings Board (the "SHB") pursuant to AMC 18.16.110. The administrative appeal processes in Chapter 19.20 AMC do not apply to the SMP. This conclusion is based on, among other things, AMC 19.20.020 – Applicability, which does not incorporate by reference Title 18 AMC, only Titles 16, 17, and 19; and AMC 19.12.060 – Supremacy. The Supremacy code provides in part that, "[i]n the event of a conflict between provisions of this title [Title 19 AMC] and AMC Chapter 18.16, Shoreline Master Plan, the provisions of AMC Chapter 18.16, Shoreline Master Plan, control."

Based upon the Port's interpretation of the relevant AMCs, the Port intends on filing an appeal with the SHB to preserve its appeal rights. After receiving this letter, should the City arrive at the same conclusion as the Port's legal team that the appropriate venue for appeals is the SHB, not a local administrative appeal under Chapter 19.20 AMC, please contact the Port's legal counsel to discuss reissuance of the City's notice of decision with the correct appeal language. While the Port's legal counsel believes the SHB is the appropriate appeal venue, the Port still hopes that it and the City can come to a resolution to revise the errored conditions in the Permit that will not require the parties to engage in a costly and time-consuming appeal process.

II. PUBLIC HEARING AND PROCEDURAL ERRORS

On May 24, 2023, and June 14, 2023, public hearings were held to discuss the Port's application for a Shoreline Substantial Development Permit ("SSDP"), required to execute the Project. In the time between those two hearings, the Port reviewed the City's Staff Report regarding the Project.³ After the Port's review, on May 30, 2023, the Port submitted to the City a "Request to Modify Conditions Presented in City Staff Report" (the "Comment Letter").⁴ The Comment Letter asked for clarification from the City as to the basis for certain conditions being applied to the Permit, provided recommendations and the reasoning behind those recommendations for revisions to the City's conditions, and emphasized the Port's desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street Right of Way Use Agreement.

² The Notice of Decision includes the following appeal statement, "Pursuant to AMC 19.20.030, a closed record appeal to the City Council is available for Type 3-PC Planning Commission Decisions. Appeals of this decision must be filed in accordance with AMC 19.20.180 within 14-days from the date of issuance of the decision. Pursuant to AMC 18.16.110, appeals of the final decision shall be filed within 21-days from the date the permit decision is filed with Ecology and shall be heard by the Shorelines Hearings Board pursuant to the procedures and timelines of RCW 90.58.180."

³ A copy of the City Staff Report is attached hereto as **Exhibit B**.

⁴ A copy of the Port's May 30, 2023, Comment Letter is attached hereto as **Exhibit C**.

In response to the Port's May 30th Comment Letter, on June 6, 2023, the City issued its "Revised Recommendations." These Revised Recommendations, however, were never sent to the Port ahead of the final June 14th hearing. Therefore, the Port was deprived of any opportunity to engage with the City on the proposed conditions, as the Port had requested in its Comment Letter. Rather, it was not until June 14th, the day of the final hearing, that Port Staff and I first saw the Revised Recommendations posted on the City Planning Commission's website, leaving no opportunity for the Port to further engage with City staff ahead of the hearing.

I, along with Port staff, attended the June 14th virtual public hearing to address the Port's concerns regarding the conditions in the City Staff Report and Revised Recommendations. However, at the hearing, the Planning Commission did not afford the Port an opportunity to comment on these issues. This resulted in the Planning Commission acting on incomplete and inaccurate information. I, and Port staff participated online and had our hands raised on the remote hearing, but the Planning Commission did not allow us to speak prior to moving to a vote. It is unclear why the City would repeatedly ignore the Port's efforts to engage. Moreover, as the Applicant and Project Proponent, the Port ought to have been afforded the opportunity to address the Planning Commission and correct the record prior to the Planning Commission vote on the Permit.

As a result of the June 14th virtual hearing, on June 23, 2023, the Port issued another letter directly to Darcy Swetnam, the City of Anacortes' City Attorney.⁵ The Port's June 23rd letter was written in an effort to further explain how the inaccurate information conveyed to the Planning Commission has resulted in permit conditions that are not in line with the already established ILA between the Port and the City. Those issues are reiterated below.

III. PERMIT CONDITION ERRORS AND REQUESTED RELIEF

Pursuant to AMC 19.20.180.A.2., as the Applicant for the SSDP, the Port has standing to submit this Request for Reconsideration and any subsequent or concurrent Appeal to the City and/or the SHB. Furthermore, the Revised Recommendations approved by the Planning Commission, along with each of their corresponding errors and requested relief by the Port, are detailed below.

Condition No. 1 – The Port shall produce and submit a Phase 1 design proposal of the "N" Avenue Beach Connection referenced in the Port of Anacortes' Integrated Approach to Marine Public Access, October 2003 and adopted by reference in the Anacortes Shoreline Master Program for review and approval by the Planning, Community, and Economic Development (the "PCED") Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach). Considerations for improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as landscaping and an aesthetic treatment to existing Port owned privacy fencing along 3rd Street adjacent to the public sidewalk by way of additional landscaping, art installation(s), or a similar proposed effect approved by the PCED Department.

Error – The imposition of this condition is not consistent with or provided for within the SMP and amounts to an exaction.

⁵ A copy of the June 23, 2023, letter is attached as **Exhibit D** and incorporated herein by reference.

Request Relief – Remove Condition No. 1

Condition No. 2 – Per Condition of Approval No. 1, the required Phase 1 plan of “N” Avenue Beach Connection shall be submitted to the Planning, Community, and Economic Development Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission’s authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 2

Condition No. 3 – The Port shall produce and submit the complete “N” Avenue Beach Connection plan to the Planning, Community, and Economic Development Department for review and permit approval prior to or concurrently with the establishment of a new or expanded use or development on Curtis Wharf, the 2nd Street right-of-way, or within the Port’s adjacent Quiet Cove laydown lot (P55354), or within 5 years of subject project completion, whichever is sooner.

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission’s authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 3

IV. GROUNDS FOR APPEAL

A. The 2nd Street Right of Way Use Agreement prohibits public access, not the Project.

The Port understands that City Staff have informed the Planning Commission that the portion of the Project which includes fencing along 2nd Street triggers the need for an alternative plan for public access to the shoreline under the SMP. This is incorrect. Rather, public access to the shoreline via 2nd Street was already eliminated when the Port and the City executed the 2nd Street Right of Way Use Agreement in February 2022. More specifically, Section 6.2 of the Agreement states the following:

Except as set forth in Agreement Section 7, the City hereby grants to the Port, and **the Port shall have exclusive use of, the 2nd St. ROW** for the Term of the Agreement for the uses described in Agreement Section 8.⁶

The only rights reserved by the City under this sub-section are the rights to use the subsurface portion of the 2nd Street ROW “for the siting and construction of utility improvements, including a segment of an outfall connection from the City’s wastewater treatment plant to Guemes Channel.”⁷ Section 8.1 of the Agreement further makes clear the Port’s authority to restrict access to the 2nd Street ROW:

⁶ 2nd Street Right of Way Use Agreement, § 6.2 (emphasis added).

⁷ *Id.* at § 7.

Under this Agreement, the Port is granted the right of use over, under, upon and across the 2nd St. ROW for the support of industrial and/or commercial uses associated with the Port's marine terminal facilities... These uses include, without limitation, (i) vehicle access; (ii) product storage operations; (iii) **restricting public traffic and access to the 2nd St. ROW**; and (iv) constructing any improvements the Port deems necessary to support these uses.⁸

B. The Project does not trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q'elech'ilhch Park.

As explained in the Port's June 23rd letter to Ms. Swetnam and the Port's May 30, 2023, Comment Letter, the City Staff Report cites SMP DR-8.6.8 as authority for its public access conditions to the Permit.⁹ This development regulation triggers public access where industrial use is proposed. That is not the case with the Project which is predominantly a paving project. As such, the Planning Commission's cited authority in fact does not apply.

Additionally, as a practical matter, even if the Port were required to provide alternative public access as a result of this Permit, which it should not be so required, the public access along 3rd Street to the shoreline already exists, thereby satisfying this requirement. Conditions Nos. 1 through 3 of the Permit requiring the Port to beautify 3rd Street, go above and beyond creating a public access. In this regard, the City seeks through Permit conditions Nos. 1 through 3 to exact from the Port beautification and street improvements to an existing public access that are not authorized within the SMP development regulations.

C. The Permit conditions go beyond the jurisdiction of the City's SMP.

The conditions encompass parcels outside of not only the Project area, but parcels that the Port does not own, as well as some parcels that lie wholly outside of the shoreline jurisdiction. The SMP "shall apply to all the lands and waters in the City of Anacortes that fall under the jurisdiction of the Shoreline Management Act."¹⁰ The SMP defines its shoreline jurisdiction as follows:

Shorelines include the waters within the City limits together with the lands underlying them and lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark together with any associated wetlands.

...

Where a substantial development is proposed which would be partly within and partly without shoreline jurisdiction, a shoreline substantial development permit shall be

⁸ *Id.* at § 8.1 (emphasis added).

⁹ See **Exhibit B**, at 9.

¹⁰ The SMP, at § 2.3(A).

required for the entire development. The regulations of this Master Program shall apply only to that part of the development which occurs within shoreline jurisdiction.¹¹

The Project includes parcels which are both within and outside of the SMP jurisdiction. Therefore, the Port is required to obtain a shoreline substantial development permit for the entire Project. That being said, according to Section 2.3(E) of the SMP, the SMP's regulations shall only apply to parts of the Project that are within the designated shoreline jurisdiction. The City's Revised Conditions disregard this limitation and require the Port to carry out additional projects that are outside of the SMP's stated jurisdiction. In particular, Conditions No. 1 through 3 of the Permit require the Port to design and construct street improvements along 3rd Street from Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach) to Commercial Avenue, well outside of the shoreline jurisdiction.¹² The City has no authority under the SMP to condition property and parcels that are not part of this Project and outside of the shoreline jurisdiction.

V. CONCLUSION AND NEXT STEPS

It is clear to the Port that the Permit Conditions are purely a result of the City's desire to exact from the Port improvements to the existing public access on 3rd Street beyond what is justified to mitigate for the Project and in some cases wholly outside of the shoreline jurisdiction. Simply put, these conditions are nothing more than a bootstrapped attempt on the part of the City to get the Port to improve City property. If the City was concerned about improvements to 3rd Street, it should have negotiated the same at the time that the 2nd Street Right of Way Use Agreement was executed back in February 2022.

It is both inappropriate and unlawful for the City to now—over a year later—put the burden of designing, funding, and executing the City's desired improvements on the Port by way of an SSDP that does not even concern the 3rd Street area. The City's attempts to shift responsibility for these improvements on to the Port is made even more egregious given that the City's SMP plainly states that the SMP's regulations do not apply to areas of the development project which lie outside of shoreline jurisdiction.

In consideration of the above and the identified factual and procedural errors on the part of the City, the City must revise the Permit Conditions. As indicated above, the Port is prepared to appeal this determination in the appropriate venue, which is the SHB. The Port provides the enclosed Request for Reconsideration and local administrative appeal to preserve its rights given the City's appeal statement in the Notice of Decision and prior communication with the City Attorney directing the Port to a local administrative appeal process. Notwithstanding this letter and the enclosed Request for Reconsideration, the Port is preparing an appeal to the SHB to protect its appeal rights under Chapter 18.16 AMC.

The Port still wishes to arrive at a negotiated solution to this matter without the need for litigation. To that end, the Port is willing to enter into a tolling agreement after filing the SHB appeal to afford the Port and the City an opportunity to negotiate appropriate conditions for the Permit. In the alternative

¹¹ *Id.* at § 2.3(A) and (E).

¹² Revised Recommendations, at 1 (June 6, 2023).

to filing an appeal and entering a tolling agreement, should the City like to avoid an unnecessary appeal and instead discuss a resolution with the Port, the Port would not object to the City rescinding the Permit and re-opening the public hearing in order to correctly issue the Permit.

The Port appreciates the City's attention to this matter and looks forward to the City's formal response. In the meantime, the Port continues to reserve all rights and remedies.

Sincerely,

CSD ATTORNEYS AT LAW P.S.



Timothy D. Schermetzler

TDS/SBF/sld

Encls.

cc: Client

Darcy Swetnam, darcys@cityofanacortes.org

City Clerk, cityclerk@cityofanacortes.org

EXHIBIT A

From: [Darcy Swetnam](#)
To: [CSD - Tim Schermetzler](#)
Cc: [John Coleman](#); [Jonn Lunsford](#); [Libby Grage](#); [Grace Pollard](#); [Jordan Boggs](#)
Subject: Your letter requesting reconsideration
Date: Friday, July 7, 2023 11:42:12 AM

Caution: External (darcys@cityofanacortes.org)

First-Time Sender [Details](#)

[Report This Email](#) [FAQ](#) [Protection by INKY](#)

Tim,

I just met with City staff on your letter requesting a meeting to discuss reopening the hearing on the Port's 2nd Street shoreline substantial development permit. City Code provides a process for requesting reconsideration of a final decision at Section 19.20.200 AMC. To allow the Port to proceed with a request for reconsideration, the City will be issuing its final decision on the application and will provide the request for reconsideration form. The request will then be considered by the Planning Commission. We anticipate sending out the relevant documents by early next week.

Thank you,
Darcy

Darcy Swetnam

City Attorney
City of Anacortes
P.O. Box 547
Anacortes, WA 98221
www.cityofanacortes.org
(360) 299-1950

CONFIDENTIALITY NOTE: This e-mail contains information belonging to the City of Anacortes, which may be privileged, confidential and/or protected from disclosure. The information is intended only for the use of the individual entity named above. If you think that you have received this message in error, please e-mail the sender. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.

EXHIBIT B



Anacortes Planning, Community & Economic Development Department

904 6TH Street / P.O. Box 547, Anacortes, WA 98221

360.299-1984 - Office Hours: Mon-Fri 8:00 AM – 5:00 PM

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT: STAFF REPORT

File Number	SDP-2023-0002	Date of Report	May 18, 2023
Project Title	MRT-64 2 nd Street and Curtis Wharf Improvements	Related File(s)	PRE-2023-0002
Project Location	Second Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 116 O Avenue.		
Request	The Port of Anacortes has requested a shoreline substantial development permit for the installation and construction of approximately 18,500 square feet of new asphalt at 2 nd Street and the entry to Curtis Wharf. Proposed work includes excavation of existing gravel surface and base materials, backfilling and compaction of clean imported fill and base course materials, installation of updated stormwater conveyances and BMP facilities, paving with asphalt four inches in depth, and installation of a new rolling access gate and an additional length of chain-link fence connecting existing security fence at Quiet Cove and Curtis Wharf. The applicant has stated the new fence and gate is a measure to limit potential conflicts between the public and industrial use tenants at Curtis Wharf. No footprint expansion is proposed under this proposal, all work will be done within existing disturbed/ developed areas. This Shoreline Substantial Development Permit application does not include a proposal to expand an existing use or establish a new use.		
Landowner/Applicant	Port of Anacortes 100 Commercial Ave Anacortes, WA 98821		

SITE INFORMATION

Zoning	Manufacturing and Shipping (MS)	Comprehensive Plan Designation	Manufacturing / Shipping (MS)
Present Use of Property	Port facility including a commercial/industrial pier and 2 nd Street right-of-way.		
Critical Areas	Pursuant to Chapter 6 and Appendix "A" of the Shoreline Master Program (SMP) regulating critical areas, the subject development was reviewed for proximity to critical areas. SMP A-1: Frequently Flooded Areas Based on FEMA's National Flood Hazard Mapping, the subject property is located within FIRM panel 5303170040A. A Flood Development Permit has been		

	submitted to the City (FLD-2023-0001) and will be required to be obtained prior to the beginning of construction. SMP A-3: Geologically Hazardous Areas Based on the City mapping system, the subject property is in an identified area of tsunami hazard and seismic hazard area; however, the proposed street paving and fence does not have a risk of hazard. Therefore, the provisions of this section would not apply. SMP A-5: Fish and Wildlife Conservation Areas Based on the City mapping system, the subject property is adjacent to an identified Critical Areas Habitat Group for smelt spawning and Dungeness Crab; however, the proposed street paving and fencing will not exceed the existing developed footprint of the site, no encroachment into critical areas are proposed or permitted. It is determined that no net loss of critical habitat area will occur.
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PROJECT LOCATION & SURROUNDING USES



	Zoning / Comprehensive Plan	Property Use
North	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility
South	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility
West	Light Manufacturing (LM)	Port owned – industrial maritime facility
East	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility

PROCEDURAL

- Type of Review.** According to AMC 19.20.030(1) and 18.16.100(B), shoreline substantial development permit applications for projects valued less than \$1 million are considered a Type 3 review. For Type 3 reviews, the Planning Commission holds the public hearing and renders the final decision regarding the proposed shoreline substantial development permit.
- Project History.**
 - A mandatory preapplication meeting was held on January 31, 2023, with the mandatory preapplication neighborhood meeting held on March 9, 2023.
 - The Port of Anacortes has obtained a Right of Way Use Agreement from the City of Anacortes for this portion of 2nd Street lying westerly of the west line of “O” Avenue (AFN 202206240050). (Exhibit 6)
 - The project site is adjacent to a known cleanup site, Quiet Cove, in-water and sediment remediation are proposed in the next five (5) years and will be conducted in accordance with all applicable requirements. The Port of Anacortes has an Agreed Order with Department of Ecology (No. DE11346) (Exhibit 15)
 - The City of Anacortes’ Shoreline Master Program adopted by reference the *Port of Anacortes Integrated Approach to Marine Public Access, October 2003* plan (Exhibit 19)
- Environmental Review.** The Port of Anacortes, as lead agency, determined the scope of work to be categorically exempt from SEPA Review per WAC 197-11-800(2)(d)(vii) and (2)(d)(viii). (Exhibit 10)
- Public notice and reviewing departments/agencies.** A notice of application with a 30-day public comment period was published in the Anacortes American, posted on the project site and mailed to property owners within 300 ft. (Exhibit 17)

Application Submitted	February 27, 2023
Determination of Completeness	March 10, 2023
Notice of Application & Public Hearing	April 12, 2023
Open Record Public Hearing (Planning Commission)	May 24, 2023

- Reviewing departments/agencies.** The project application was routed for review to applicable agencies and City departments.

REVIEWING DEPARTMENTS & AGENCIES			
City of Anacortes	Local Agencies	State & Federal	Other

• Building • PW – Operations • PW – WWTP • PW – Engineering • PW – Water	N/A	• USACE • DAHP • DOE • WDFW • WA DNR	• Samish Indian Nation • Sauk-Suiattle • Skagit System Cooperative • Stillaguamish Tribe • Swinomish Tribe
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6. **Consideration of written comments and applicant responses.** The notice of application public comment period ended May 11, 2023. In making its recommendation, the Department considered timely received written comments and the applicant’s responses, if any, as required in AMC 19.20.130(C).

6.1. Comments from Public Works Engineering were relayed to the applicant a copy of which can be found in (Exhibit 18).

6.2. No public or agency comments, other than the referenced above, were received for the proposal.

DEPARTMENT REVIEW – FINDINGS OF FACT

1. **Right of Way Use Agreement 2nd Street from “O” Avenue to Shoreline** (AFN 202206240050). This agreement between the City of Anacortes and the Port of Anacortes is for the conveyance of property interest from the City to the Port. Under this agreement the City grants to the Port exclusive use of the 2nd Street right-of-way for the term of the agreement described in Agreement Section 8 which includes the right of use over, under, upon and across the 2nd Street right-of-way including, without limitation vehicle access, product storage operations, restricting public traffic and access to the 2nd Street right-of-way, and constructing any improvements the Port deems necessary. Also included in Agreement Section 8 is stated the Port and its contractors use of the 2nd Street right-of-way shall comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use the 2nd Street right-of-way. (Exhibit 6)

2. **The City of Anacortes Shoreline Master Program (SMP)** contains many goals, policies, and development regulations. Not all are applicable to each Shoreline Substantial Development Permit project proposal. Below, staff has listed some of the goals, policies, and regulations believed to be the most relevant, however all applicable regulations apply even if not noted below.

3. **SMP Chapter 5: Shoreline Environments & Associated Policies and Regulations.** This section contains the shoreline environment designations. The intent of designating shoreline environments is to encourage development that will enhance the present or desired character of the shoreline. Management policies are an integral part of the environment designations and are used for determining uses and activities that can be permitted in each environment. Specific development regulations specify how and where permitted development can take place within each shoreline environment.

3.1. The subject property is located within the **Urban Maritime** shoreline environment designation.

3.1.1. The purpose of the Urban Maritime designation is to preserve a variety of water-dependent, water-oriented, and water-related public, commercial, and industrial uses such as those associated with the Port of Anacortes.

3.2. Management Policies:

- 3.2.1. Use Policy 5.11.1 Encourage expansion of water-dependent and water-related uses.
- 3.2.2. Use Policy 5.11.6 Industrial and commercial development along Urban Maritime shorelines should provide protection of existing ecological functions where practicable and mitigated. It should also provide public access opportunities only where appropriate and where public safety would not be compromised and alternative off-site provision has been made.
- 3.2.3. Public Access Policy 5.11.7 Where desirable and practicable, industrial, and commercial facilities should be designed to facilitate pedestrian waterfront activities. *The Port of Anacortes' Integrated Approach to Marine Public Access, October 2003* is incorporated by reference, and substitutes for uniform public access requirements on individual port actions.

3.3. Development Regulations:

- 3.3.1. DR-5.11.5 Redevelopment and renewal of substandard, degraded, or obsolete urban shoreline areas shall be encouraged in order to make maximum use of the available shoreline resources and to accommodate future water-oriented uses.
- 3.3.2. DR-5.11.7 Ensure that, where applicable, improvements are reviewed for consistency with Design Standards codified in the zoning code.
- 3.3.3. DR-5.11.10 Developments consisting of water-dependent scientific, historical, industrial, commercial, cultural, or educational research uses, public access, water-oriented recreation and ecological restoration are not required to meet the setback requirements, nor are piers, ramps, or docks.

3.4. Shoreline Uses and Modification Matrix and Development Standards:

- 3.4.1. Section 5.12(A)(5) If any part of a proposed development is not eligible for Shoreline Exemption, then a Substantial Development Permit is required for the entire proposed development project.
- 3.4.2. Section 5.12(A)(9) Except as otherwise stated, the comprehensive plan, zoning regulations, subdivision regulations, health regulations, and other adopted regulatory provisions apply within shoreline jurisdiction. In the event the provisions of this SMP conflict with provisions of other responsible local government regulations, the more protective of shoreline resources shall prevail.
- 3.4.3. Per Table 5.1 Shoreline Use and Modification Matrix the following uses are permitted in the Urban Maritime environment designation.
 - 3.4.3.1. Transportation Facilities (i.e. roads and associated facilities i.e. storm drainage); permitted.
 - 3.4.3.2. Industrial and Port Facilities – Water-dependent; permitted.
Industrial and Port Facilities – Water-related; permitted.
 - 3.4.3.3. Fill – upland; permitted.

3.4.4. Per Table 5.2 Shoreline Development Standards Matrix non-water-dependent structures have a minimum twenty-five-foot (25') setback from the ordinary high water mark (OHWM). Water-dependent structures have a zero-foot (0') setback requirement.

4. **SMP Chapter 6: Environmental Protection General Regulations.** The intent of these regulations is to provide policies and regulations that protect the shoreline environment as well as the critical areas found within the shoreline jurisdiction. The Shoreline Management Act (SMA) mandates the preservation of the ecological functions of the shoreline by preventing impacts that would harm the fragile shorelines of the state.
 - 4.1. DR-6.4.2 All shoreline permits shall contain provisions that require developers to comply with all applicable state law requirements regarding preservation of archaeological and historic resources, including provisions to stop work and notify the appropriate agencies should protected resources be uncovered during excavation.
 - 4.2. DR-6.4.9 Chemical pesticides using aerial spraying techniques within the shoreline jurisdiction, including over waterbodies shall be prohibited unless specifically permitted by the Washington Departments of Agriculture or Public Health.
5. **SMP Chapter 7: Shoreline Public Access.** Shoreline public access is the physical ability of the general public to reach and touch the water's edge or the ability to have a view of the water and the shoreline from upland locations. There are a variety of types of public access, including docks and piers, boat launches, pathways and trails, promenades, street ends, picnic areas, beach walks, viewpoints, and others. Inarguably, the economic vitality of the City is bolstered by the public access to and enjoyment of these shorelines.
 - 5.1. General Policy 7.3.1 Seek to maintain and enhance public access, both physical and visual, throughout the City's shoreline. Access should be provided for a range of users including pedestrians, bicyclists, boaters and, to the extent feasible, people with disabilities. Access opportunities should be varied, ranging from urban water walks to viewing platforms of natural areas. Encourage the use of public access facilities to actively educate and inform the public on the importance of environmental protection of the shoreline jurisdiction. Work in partnership with local entities (e.g., Skagit Marine Resources Committee, and others) to implement this policy.
 - 5.2. General Policy 7.3.5 Require new development that impacts public access to mitigate through the provisions of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.
 - 5.3. General Policy 7.3.7 Incorporate public access provisions into the review and approval of all public and private development projects. Exceptions may be considered for the following: (b) Where deemed inappropriate due to health, safety, security, incompatible uses, constitutional or other legal limitations and environmental concerns. In these cases, alternate methods of providing public access shall be considered such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access; and (c) Where a more effective integrated public access plan exists.
 - 5.4. Street Ends Policy 7.3.9 Encourage the use of street ends and other publicly owned or controlled lands to increase public access to shoreline areas.

- 5.5. Street Ends Policy 7.3.10 Develop street end access and viewpoints. Improvements to and linkages between these street-ends should be determined by the physical characteristics of the shorelines, existing development patterns, potential for structural improvements, and other factors relevant to developing a continuous pedestrian system.
- 5.6. Street Ends Policy 7.3.11 Ensure that use of street ends for parking does not physically block public access to the shoreline or degrade the scenic qualities of the City. (See Parking Facilities, Section 8.9 Chapter 8)
- 5.7. Design Policy 7.3.14 Public access improvements should be designed and constructed to: (a) Look and “feel” welcoming to the public and be usable by the greatest number and diversity of people including, to the extent possible the physically handicapped. (b) Connect to public areas, street-ends and other pedestrian or public thoroughfares. (e) Enhance the character of Anacortes, including the historic and economic activity of downtown, marine business and industry, Port activity, and natural areas. (f) Avoid conflicts with water-dependent uses. (h) Require low maintenance design.
- 5.8. Development Regulation (DR) 7.4.1 Developments, uses, and activities shall be designed and operated to avoid significantly blocking, reducing, or adversely interfering with the public’s visual or physical access to the water and the shorelines.
- 5.9. DR-7.4.2 Except as provided in regulations 7.4.4 and 7.4.5, shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present: (b) Where a development or use will interfere with an existing or potential public access way, the development or use shall apply mitigation sequencing principles and provide public access to address the impact. (e) Where a development or use is located on public land or is managed by a public entity, unless access is incompatible with safety, security, or environmental protection.
- 5.10. DR-7.4.3 Required public access shall include the preservation of shoreline views, the establishment of public access easement to and along the shoreline, enhancement of an adjacent street-end or park, or other consideration commensurate with the degree of impact caused by the development.
- 5.11. DR-7.4.4 Public access is not required if the applicant can demonstrate to the satisfaction of the City that constitutional and or statutory limitations would be violated by the provisions of such access.
- 5.12. DR-7.4.5 Alternatives to on-site, physical access to the shoreline may be approved if the applicant can demonstrate to the satisfaction of the City that one or more of the following conditions exist: (a) Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means; (c) Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions; (d) The cost of providing on-site access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development; Provided further, that the applicant has first demonstrated and the City has determined that all reasonable alternatives have been exhausted, including, but not limited to: (g) Regulating access by such means as limiting hours of use to daylight hours, or allowing public access to only a portion of the site. (h) Designing separation of uses and activities, using such means as terracing, hedges, and landscaping.
- 5.13. DR-7.4.6 When on-site public access is not required under DR-7.4.5, alternative shoreline access must result in an equal or greater public benefit. Alternatives may include but are not limited to:

(b) Off-site public access, such as improvements to a nearby street end, an offsite, or a trail system, purchase of land or an easement at a location appropriate for future access improvements. (c) A payment in lieu agreement with the City in accordance with RCW 82.02.020 (relating to fees associated with development).

5.14. DR-7.4.7 Off-site public access, when required, must meet the same standards and requirements as on-site public access.

5.15. DR-7.4.9 When required, public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity, except where the decision maker determines an appropriate mechanism for delayed public access implementation is necessary for practical reasons.

5.16. DR-7.4.15 Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

5.17. DR-7.4.18 Public access landscape design shall use native vegetation in the shoreline setback and predominantly native vegetation (i.e., 80% or greater) in the remainder of shoreline jurisdiction, particularly drought-resistant and, along marine shorelines, saline-tolerant plant species, Landscape plantings may be required where desirable to provide public/private space separation.

6. **SMP Chapter 8: Specific Use Policies and Development Regulations.** This chapter provides specific policies and regulations for specific uses. The performance standards contained herein augment standards established through other land development regulations. Where conflict arises between these and other applicable controls, the regulations that provide more protection to the shoreline area shall apply.

6.1. Industrial and Port Facilities

6.1.1. Policy 8.6.1 Reserve shorelines that are particularly suitable for water-dependent and water-related industrial and port development for these uses.

6.1.2. Policy 8.6.3 Require new industrial and port development to provide physical and visual access to shorelines whenever possible, consistent with constitutional and statutory limitations, and provided such access does not interfere with industrial operations or endanger public health and safety.

6.1.3. Policy 8.6.4 Encourage cooperative use of docks, cargo handling, storage, parking, and other accessory facilities among private or public entities in shoreline industrial and port areas.

6.1.4. Policy 8.6.5 Ensure that land transportation and utility corridors serving ports and water-related industry follow the guidelines provided under the sections dealing with utilities and transportation.

6.1.5. Policy 8.6.6 Only water-dependent industrial and port uses shall be permitted on shorelands with direct frontage on and practical access to navigable waterways.

6.1.6. Policy 8.6.7 Opportunities for public access to the water are required at port and industrial sites, unless such access would interfere with operations or endanger public health and safety, or the proponent otherwise provides for equivalent access elsewhere in the City.

6.1.7. Policy 8.6.9 Industrial uses and redevelopment are encouraged to locate where environmental cleanup and restoration can be accomplished.

6.1.8. Development Regulations (DR) 8.6.8 Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, *Public Access*, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard the *Port of Anacortes' Integrated Approach to Marine Public Access, October 2003* is incorporated by reference into this SMP.

6.2. Transportation Facilities

- 6.2.1. Policy 8.13.12 Design of new roadways or redesigned roadways shall use Low Impact Development provisions when practicable.
- 6.2.2. Development Regulation (DR) 8.13.6 All roads and drainage systems shall be maintained to prevent erosion and/or water quality degradation.
- 6.2.3. DR-8.13.8 Herbicides used for maintenance along roads and drainage systems shall follow the performance standard outlined in Section 6.4.
- 6.2.4. DR-8.13.9 To the greatest extent practicable, organic, nontoxic, methods and BMPs should be utilized for maintenance along roads and drainage systems in the vicinity of critical fish and wildlife habitats.

6.3. Fill

- 6.3.1. Policy 9.7.2 Fill landward of the ordinary high water mark should be permitted when necessary to support permitted uses, and when significant impacts can be avoided or mitigated.
- 6.3.2. Policy 9.7.5 Perimeters of fill should be protected by shoreline stabilization or other design measures, unless it can be demonstrated that there will be environmental or public benefit for not employing any of these methods.
- 6.3.3. Development Regulation 9.7.2 Fill shall be permitted only when in conjunction with a proposal or activity otherwise permitted under the SMP.

CONCLUSIONS OF LAW

1. Via the signed and recorded Use Agreement with the City, the Port has exclusive use of the 2nd Street right-of-way for the term of the agreement described in Agreement Section 8 which includes the right of use over, under, upon and across the 2nd Street right-of-way including, without limitation vehicle access, product storage operations, restricting public traffic and access to the 2nd Street right-of-way, and constructing any improvements the Port deems necessary to support its use.
2. Public access to the shoreline is referenced multiple times in the SMP. The street end of 2nd Street exits onto Q'elech'ilhch Park ("N" Avenue Beach), the Port has received City permission to restrict public traffic and access to this portion of 2nd Street via the Use Agreement, the Port's use of the 2nd Street right-of-way also requires them to comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use the 2nd Street right-of-way. Shoreline Master Program Development Regulation 8.6.8 states: Where

industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development.

3. Road improvements including stormwater facilities is a permitted action.
4. The shoreline permit was reviewed for conformance with all applicable Shoreline Master Program regulations, including but not limited to, the above list.
5. The subject proposal is consistent with the Washington State's Shoreline Management Act, City of Anacortes' 2010 Shoreline Master Program and development regulations listed therein for developments within the Urban Maritime shoreline environment designation.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.
7. Staff reserves the right to supplement the record of the case to respond to matters and information raised subsequent to the writing of this report.

RECOMMENDATION

Based upon the application, Findings of Fact, and Conclusions of the staff report, staff recommends that the Planning Commission approve the shoreline substantial development permit subject to the following conditions of approval:

1. The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach). Improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.
2. The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.
3. The Port shall obtain a fence permit for the proposed rolling gate at 2nd Street as well as the additional chain-link fencing along the shoreline. Permit application shall show the fence and gate designed to preserve visual access down 2nd Street to the shoreline and shall be constructed to meet the standards of AMC 19.66.040.
4. The Port shall obtain construction permits for the street improvements and stormwater facility, shall comply with all applicable codes, manuals, and standards, and shall be reviewed and approved by the Public Works Engineering Division.
5. The Port and the subject project shall comply with all applicable state law requirements regarding preservation of archaeological and historic resources, including provisions to stop work and notify the appropriate agencies should protected resources be uncovered during excavation.
6. Removal of or relocation of all discarded materials including concrete blocks in upland areas beyond the fenced enclosure must be complete prior to completion of the subject project.
7. The scope of the project shall not exceed that as set out in the shoreline permit application and shall be valid only for the improvements described within the application materials, except as modified

by this decision or other jurisdictional agencies. This permit does not include review or approval of any use.

8. All applicable permits (local, state, & federal) shall be secured before any construction activities begin onsite and copies provided to the City of Anacortes' PCED. This includes a local City of Anacortes Flood Development Permit.
9. The applicant/landowner shall comply with federal statutes including but not limited to: Endangered Species Act, Clean Water Act, Marine Mammal Protection Act, and other federal statutes.
10. The project shall comply with all applicable Shoreline Master Program regulations, including but not limited to those listed above.
11. Development shall comply with AMC 18.16.130 regulating the time limit for shoreline permits as follows:
 - 9.1. *Construction, or substantial progress toward completion, must begin within two (2) years after approval of the permit. Substantial progress toward construction shall include, but not limited to, the letting of bids, making of contracts, purchasing of materials involved in development, but shall not include development or uses which are inconsistent with the Shoreline Management Act or the city's master program. In determining the running two-year period hereof, there shall not be included the time during which development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided, that the city may, in its discretion, extend the two-year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.*
 - 9.2. *5-Year Permit Authorization: If construction has not been completed within five years of approval by the City of Anacortes, the city will review the permit, with prior notice to parties of record, and, upon showing of good cause, either extend the permit for one additional year, or terminate the permit. Prior to the city authorizing any permit extensions, it shall notify any parties of record and the Department of Ecology. Note: Only one single extension is permitted.*

EXHIBIT C



May 30, 2023

VIA EMAIL

gracep@cityofanacortes.org

City of Anacortes Planning, Community & Economic Development Department
Attn: Grace Pollard – Senior Planner
904 6th Street
PO Box 547
Anacortes, WA 98221

RE: Request to Modify Conditions Presented in City Staff Report

Permit: SDP-2023-0002
Applicant: Port of Anacortes (the “Port”)
Project Title: MRT-64 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue (the “Project Site”)

Dear Ms. Pollard,

Thank you for sharing the Shoreline Substantial Development Permit (SSDP) Staff Report on the above reference Project with Port staff. The Port appreciates the Planning Commission’s postponement of a decision to its’ next meeting as the Port wanted to take an opportunity to share some feedback on City staff’s recommended conditions to clarify the Port’s responsibilities and ensure the conditions align with the Port and City Right of Way Use Agreement for 2nd Street – From “O” Avenue to Shoreline, dated February 16, 2022 (the “2nd Street ILA”).¹

The Port requests that City Staff recommend, and the Planning Commission adopt, revisions to two of the recommended conditions in the City Staff Report. The City Staff recommended condition, the Port’s proposed revised condition, and the reasoning for the changes are discussed in turn below.

Recommended Condition No. 1 in the Staff Report - The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach). Improvements to the pedestrian connection to Q’elech’ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.

¹ Skagit County AF No. 202206240050 - see Exhibit 6 on the Staff Report.

Revised Condition No. 1 Proposed by the Port – The Port shall provide wayfinder signage to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach) consistent with the requirements in the Right of Way Use Agreement 2nd Street – from “O” Avenue to Shoreline, Skagit County AF No. 202206240050.

Reasoning for the Change – It is unclear in the recommended condition if the requirement that the Port submit an “Alternative Public Access Improvement Plan” means that the Port must amend the Public Access Plan identified in *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003, which is adopted by reference in the City’s SMP. This request is problematic because it could be interpreted as a requirement for the Port to amend or alter an adopted planning document within the SMP. In addition, and perhaps more important with respect to the Project under review, the Project does not propose a new industrial use or development, or otherwise trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q’elech’ilhch Park (“N” Avenue Beach).

The Staff Report cites SMP DR-8.6.8 as the authority for the Condition No. 1. SMP DR-8.6.8 provides as follows (underline emphasis added):

Public Access DR-8.6.8 - Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003 is incorporated by reference into this SMP.

The Project is a resurfacing of approximately 18,500 square feet of the section of the 2nd Street ROW that the City previously agreed to restrict to the Port’s exclusive use in the 2nd Street ILA. Access to the 2nd Street ROW became limited when the City executed the 2nd Street ILA in 2022, not by this Project. Accordingly, this Project is not a new proposed “industrial use” that limited public access such that it triggers DR-8.6.8. This conclusion is further supported by DR-8.6.8’s references to the public access policies in Chapter 7 of the SMP, specifically (underline emphasis added):

Public Access Policies - Policy 7.3.5 Require new development that impacts public access to mitigate through the provision of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.

If the City wanted require the Port, as part of the closure of the 2nd Street ROW, to develop the Public Access Plan according to *the Port of Anacortes’ Integrated Approach to Marine Public Access* referenced in the SMP, then this requirement should have been specifically negotiated as part of the terms to the 2nd Street ILA – the authorization from the City that closed the 2nd Street ROW to general public access. As one of the co-contributors, the Port remains committed to *the Port of Anacortes’*

Integrated Approach to Marine Public Access, October 2003 that is incorporated by reference into the SMP, including the Public Access Plan for the Connection to “N” Avenue Beach. The Port, however, does not believe that the Project is the kind of development that triggers a permit condition requiring the Port to undertake the proposed improvements in the Public Access Plan by itself. Not all of the properties along the 3rd Street between Commercial and N Avenue are part of the Project and some of these properties are not even owned by the Port (The Port does not own 1110 3rd Street (Parcel P55357)² or 220 Commercial Avenue (Parcel P134591)³.

Accordingly, the Port requests Condition No. 1 be revised to reflect the impacts associated with the Project consistent with the 2nd Street ILA.

Recommended Condition No. 2 in the Staff Report - The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Revised Condition No. 2 Proposed by the Port – The signage referred to in Condition No. 1 shall be installed within (1) year of issuance of this Approval.

Reasoning for the Change – The removal of the Alternative Public Access Plan requirement in Condition No. 1 necessitated the changes to Condition No. 2. The reasoning here is largely the same as discussed above.

The Port recognizes that the timeline between production of the Staff Report and the public hearing does not necessarily afford the City and the Port a meaningful opportunity to discuss the City Staff recommended conditions in detail. The Port does, however, desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street ILA. The Port asks that this letter be made part of the record for the Planning Commission. Thank you for your consideration and ongoing efforts to partner with the Port to improve our City.

Sincerely,



Brenda Treadwell,
Director of Planning, Properties & Environment

² Parcel P55357 is owned by Guemes Channel Corp.

³ Parcel P134591 is owned by the Anacortes Housing Authority, Inc.

EXHIBIT D

June 23, 2023

VIA E-MAIL

darcys@cityofanacortes.org

City of Anacortes
Attn: Darcy Swetham – City Attorney
904 6th Street
Anacortes, WA 98221

RE: Request for Reconsideration of Permit Conditions

Permit: SDP-2023-0002
Project Title: 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue.
Owner/Applicant: The Port of Anacortes (the “Port”)

Dear Darcy:

This firm represents the Port regarding the above-identified Permit and Project. The Planning Commission voted to approve the Permit. The Port was, of course, seeking approval of the Permit, however, there are three (3) conditions in the Staff Revised Recommendations which are unlawful, and which must be revised or removed. I am reaching out now, ahead of the Planning Commission’s written decision, to address procedural, factual, and material legal errors in the City’s Staff Revised Recommendations and the hearing itself.

The Port writes this letter to invite a discussion with the City to correct these errored conditions now rather than having to file an appeal after the written decision is issued. The Port would like to set up a meeting with City legal staff to discuss the Permit conditions and the possibility of re-opening the hearing to revise the Permit conditions. Please let me know if the City is willing to engage in a discussion with Port staff prior to the issuance of the written decision of the Planning Commission, and we can look to schedule a meeting with the appropriate representatives. The remainder of this letter addresses some of the Port’s concerns with respect to the Permit conditions.

On May 30th, the Port submitted written comments (the “Comment letter”)¹ on the City issued the Staff Report dated May 18, 2023, (the “Staff Report”) including a request to modify Conditions No. 1 and No. 2 in the Staff Report. In the Port’s May 30th letter, the Port invited City staff to work collaboratively with the Port to revise the proposed conditions ahead of the Planning Commission hearing. City staff did revise the conditions in the Staff Report in the Revised Recommendations dated June 6, 2023,

¹ A copy of this letter is enclosed herewith as **Attachment A**.

(the "Revised Recommendations"), but corrected only one (1) of the several issues raised by the Port in its Comment letter. Unfortunately, City staff failed to send the Port a copy of these Revised Recommendations ahead of the hearing and did not otherwise engage with Port staff before drafting the Revised Recommendations. As a result, the Revised Recommendations continued to include significant errors.

When Port staff and I attempted to address these concerns at the Planning Commission hearing, the Port was not afforded an opportunity to respond to this information and the Planning Commission acted on incomplete and inaccurate information. Myself, and Port staff participating online, had our hands raised at the remote hearing, but the Planning Commission did not allow us to speak prior to moving to a vote.²

Among the inaccurate information conveyed at the hearing was that City Staff informed the Planning Commission that the proposed fencing triggers an alternative plan for public access under the Shoreline Master Program ("SMP") because this Project prevents public access through 2nd Street.³ This is, of course, not accurate. The Project does not prevent public access because public access is already prohibited by the Right of Way Use Agreement Section 6.2, which provides (emphasis added):

Except as set forth in Agreement Section 7, the city hereby grants to the Port, and the Port shall have exclusive use of, the 2nd St. ROW for the term of the Agreement for the uses described in Agreement Section 8.

And Section 8.1 of the Right of Way Use Agreement which provides, in part, that the City granted the Port the right to restrict public traffic and access to the 2nd Street ROW in that agreement.

I raised this issue in my initial comments at the hearing, but I was not allowed to address the Planning Commission's questions following my comments, despite my hand being raised. Had the Port been afforded the opportunity to answer the Planning Commission's questions and clarify and correct the statements of City staff, perhaps these errors could have been avoided.

There are several legal errors impacting Revised Conditions No.1 through 3. As raised in the Port's Comment Letter, the development regulation the City SMP that was cited as authority for the public access conditions is Public Access DR-8.6.8, which only triggers public access where industrial use is proposed. The Project is largely a paving project, not an industrial development. Therefore, this provision does not apply.

Another issue raised in the Port's Comment Letter, and by myself at the hearing, was that the conditions concerning public access impacts parcels outside of the Project area, parcels not in the Port's (the applicant's) ownership, and in some cases, parcels outside of the shoreline jurisdiction altogether. Condition No. 1 of the Revised Conditions require the Port to make unspecified

² It is worth noting that the Planning Commission did not clearly close the public hearing section of the meeting, even though regardless of whether the public comment section was closed or not, the Port should have been afforded the opportunity to respond to Planning Commission questions as the applicant and project proponent.

³ Hearing Recording starting at time mark 1:21:10 through 1:26:00.

improvements along 3rd Street to Commercial Avenue, which is well outside of the shoreline jurisdiction.⁴

Conditions No. 1 through No. 3 are further problematic because they authorize the City Planning Staff to condition the Permit at a future date through the City's review and approval of the "Phase 1 design proposal of the "N" Avenue Beach Connection" and a "complete "N" Avenue Beach Connection." The authority to condition a shoreline permit of this type is with the City Planning Commission, not City Planning Staff, yet Conditions No. 1 through No. 3 amount to a delegation of the Planning Commission's authority. Such a delegation is not permitted in the SMP. Furthermore, it is unclear in these Conditions what permit process or rights the Port would have to appeal a City decision on these design proposals for Beach Connection.

From the Port's perspective, if the City was concerned about improvements to the existing public access on 3rd Street, then the City should have raised these concerns when the parties negotiated the Right of Way Use Agreement. The City, however, did not raise these issues at the time of negotiating that agreement. Had this occurred, the Port and the City may have been able to reach an agreement concerning the improvements along 3rd Street. Nevertheless, imposing these requirements on the Port now, in a shoreline permit, and after the Right of Way Use Agreement has been executed, is clearly inappropriate and unlawful.

The Port prefers to work with the City to correct these errored conditions before a written decision is issued and avoid the expense and delay of an appeal. The Port has grant funding paying for a large portion of this Project and delays from an appeal could put the Port at risk of losing these funds. However, if the Port and the City cannot resolve these issues before a written decision is issued, the Port may be forced to file an appeal to preserve its rights while the City and it seek a resolution. If a written decision is issued and an appeal becomes necessary, the Port reserves the right to file an appeal on issues not raised in this letter, and otherwise, the Port continues to reserve all rights and remedies.

I appreciate your attention to this letter and look forward to your response.

Sincerely,

CSD ATTORNEYS AT LAW



Timothy D. Schermetzler

TDS/ale
cc: Client

⁴ See Section 2.3.A and 2.3.E of the SMP regarding the jurisdictional limits of the SMP.

ATTACHMENT A



May 30, 2023

VIA EMAIL

gracep@cityofanacortes.org

City of Anacortes Planning, Community & Economic Development Department
Attn: Grace Pollard – Senior Planner
904 6th Street
PO Box 547
Anacortes, WA 98221

RE: Request to Modify Conditions Presented in City Staff Report

Permit: SDP-2023-0002
Applicant: Port of Anacortes (the “Port”)
Project Title: MRT-64 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue (the “Project Site”)

Dear Ms. Pollard,

Thank you for sharing the Shoreline Substantial Development Permit (SSDP) Staff Report on the above reference Project with Port staff. The Port appreciates the Planning Commission's postponement of a decision to its' next meeting as the Port wanted to take an opportunity to share some feedback on City staff's recommended conditions to clarify the Port's responsibilities and ensure the conditions align with the Port and City Right of Way Use Agreement for 2nd Street – From “O” Avenue to Shoreline, dated February 16, 2022 (the “2nd Street ILA”).¹

The Port requests that City Staff recommend, and the Planning Commission adopt, revisions to two of the recommended conditions in the City Staff Report. The City Staff recommended condition, the Port's proposed revised condition, and the reasoning for the changes are discussed in turn below.

Recommended Condition No. 1 in the Staff Report - The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park (“N” Avenue Beach). Improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.

¹ Skagit County AF No. 202206240050 - see Exhibit 6 on the Staff Report.

Revised Condition No. 1 Proposed by the Port – The Port shall provide wayfinder signage to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach) consistent with the requirements in the Right of Way Use Agreement 2nd Street – from “O” Avenue to Shoreline, Skagit County AF No. 202206240050.

Reasoning for the Change – It is unclear in the recommended condition if the requirement that the Port submit an “Alternative Public Access Improvement Plan” means that the Port must amend the Public Access Plan identified in *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003, which is adopted by reference in the City’s SMP. This request is problematic because it could be interpreted as a requirement for the Port to amend or alter an adopted planning document within the SMP. In addition, and perhaps more important with respect to the Project under review, the Project does not propose a new industrial use or development, or otherwise trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q’elech’ilhch Park (“N” Avenue Beach).

The Staff Report cites SMP DR-8.6.8 as the authority for the Condition No. 1. SMP DR-8.6.8 provides as follows (underline emphasis added):

Public Access DR-8.6.8 - Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003 is incorporated by reference into this SMP.

The Project is a resurfacing of approximately 18,500 square feet of the section of the 2nd Street ROW that the City previously agreed to restrict to the Port’s exclusive use in the 2nd Street ILA. Access to the 2nd Street ROW became limited when the City executed the 2nd Street ILA in 2022, not by this Project. Accordingly, this Project is not a new proposed “industrial use” that limited public access such that it triggers DR-8.6.8. This conclusion is further supported by DR-8.6.8’s references to the public access policies in Chapter 7 of the SMP, specifically (underline emphasis added):

Public Access Policies - Policy 7.3.5 Require new development that impacts public access to mitigate through the provision of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.

If the City wanted require the Port, as part of the closure of the 2nd Street ROW, to develop the Public Access Plan according to *the Port of Anacortes’ Integrated Approach to Marine Public Access* referenced in the SMP, then this requirement should have been specifically negotiated as part of the terms to the 2nd Street ILA – the authorization from the City that closed the 2nd Street ROW to general public access. As one of the co-contributors, the Port remains committed to *the Port of Anacortes’*

Integrated Approach to Marine Public Access, October 2003 that is incorporated by reference into the SMP, including the Public Access Plan for the Connection to "N" Avenue Beach. The Port, however, does not believe that the Project is the kind of development that triggers a permit condition requiring the Port to undertake the proposed improvements in the Public Access Plan by itself. Not all of the properties along the 3rd Street between Commercial and N Avenue are part of the Project and some of these properties are not even owned by the Port (The Port does not own 1110 3rd Street (Parcel P55357)² or 220 Commercial Avenue (Parcel P134591)³).

Accordingly, the Port requests Condition No. 1 be revised to reflect the impacts associated with the Project consistent with the 2nd Street ILA.

Recommended Condition No. 2 in the Staff Report - The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Revised Condition No. 2 Proposed by the Port – The signage referred to in Condition No. 1 shall be installed within (1) year of issuance of this Approval.

Reasoning for the Change – The removal of the Alternative Public Access Plan requirement in Condition No. 1 necessitated the changes to Condition No. 2. The reasoning here is largely the same as discussed above.

The Port recognizes that the timeline between production of the Staff Report and the public hearing does not necessarily afford the City and the Port a meaningful opportunity to discuss the City Staff recommended conditions in detail. The Port does, however, desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street ILA. The Port asks that this letter be made part of the record for the Planning Commission. Thank you for your consideration and ongoing efforts to partner with the Port to improve our City.

Sincerely,



Brenda Treadwell,
Director of Planning, Properties & Environment

² Parcel P55357 is owned by Guemes Channel Corp.

³ Parcel P134591 is owned by the Anacortes Housing Authority, Inc.



CITY OF ANACORTES

PLANNING, COMMUNITY, and ECONOMIC DEVELOPMENT DEPARTMENT

Date: September 29, 2023

To: City Council

From: City Staff

Re: Port of Anacortes' Appeal Request of Shoreline Substantial Development Permit
(SDP-2023-0002)

BACKGROUND / TIMELINE

- May 24th, 2023 the Planning Commission opened the public hearing for Shoreline permit SDP-2023-0002. At the Port's request the Planning Commission agreed to a continuation.
- June 14th, 2023 the Planning Commission approved the Port of Anacortes' application for a Shoreline Substantial Development Permit, subject to conditions for the proposed work on 2nd Street and Curtis Wharf. ([Planning Commission • City of Anacortes • CivicClerk](#))
- July 21, 2023, the Port of Anacortes submitted a timely request for reconsideration of the Planning Commission.
- August 1, 2023 the Port submitted a Notice of Appeal to the Shoreline Hearings Board.
- August 9, 2023 the Planning Commission held a closed-record decision hearing to consider the reconsideration request. The Planning Commission unanimously voted to deny the Port's request. ([Planning Commission • City of Anacortes • CivicClerk](#))
- August 23, 2023 the Port submitted a timely request of appeal of SDP-2023-0002 to City Council for consideration.

AUTHORITY

Per Anacortes Municipal Code (AMC) Chapter [19.20.030](#) an appeal of a Type-3 Planning Commission Decision can be appealed to City Council in a closed-record appeal hearing.

PROCEDURES

The appellate body may provide in its procedures for a decision on the appeal after a hearing where the parties present argument, or new evidence when allowed by this chapter; or after the parties submit written arguments. ([AMC 19.20.180\(H\)](#))

The appellate body must issue a written decision on the appeal supported by written findings and conclusions, and the PCED Department must distribute a revised notice of decision incorporating the decision on appeal. ([AMC 19.20.180\(I\)](#))

Below are the excerpts from the Port’s *Appeal of Shoreline Substantial Development Permit Approval with Conditions* letter dated August 23, 2023. City staff have provided responses following each of the Port’s arguments. (Port exhibits were not copied, please refer to the Port’s original document for provided exhibits.)

I. APPEAL PROCESS

As a preliminary matter, the Port’s reading of the City’s municipal code is that an appeal of this Permit under the City’s SMP must be made to the Shorelines Hearings Board (the “SHB”) pursuant to AMC 18.16.110. The administrative appeal processes in Chapter 19.20 AMC do not apply to the SMP. This conclusion is based on, among other things, the plain language of AMC 18.16.110 directing appeals to the SHB; AMC 19.20.020 – Applicability, which does not incorporate by reference Title 18 AMC, only Titles 16, 17, and 19; and AMC 19.12.060 – Supremacy. The Supremacy code provides in part that, “[i]n the event of a conflict between provisions of this title [Title 19 AMC] and AMC Chapter 18.16, Shoreline Master Plan, the provisions of AMC Chapter 18.16, Shoreline Master Plan, control.”

Based upon the Port’s interpretation of the relevant AMCs, the Port has concurrently filed an appeal with the SHB to preserve its appeal rights. After receiving this appeal, should the City arrive at the same conclusion as the Port’s legal team, that the appropriate venue for appeals is the SHB, not a local administrative appeal under Chapter 19.20 AMC, please contact the Port’s legal counsel to discuss reissuance of the City’s notice of decision with the correct appeal language. While the Port’s legal counsel believes the SHB is the appropriate appeal venue, the Port still hopes that it and the City can come to a resolution to revise the errored conditions in the Permit that will not require the parties to engage in a costly and time-consuming appeal process. Should the City agree to the needed modifications, the Port and the City can enter into an agreed order with the pending SHB Case No. 23-008 to resolve this matter.

If Chapter 19.20 AMC applies to appeals of the Permit, pursuant to AMC 19.20.180.A.2., as the Applicant for the SSDP, the Port has standing to submit this appeal to the City. AMC 19.20.180(F) states that “Appeals must be submitted on forms provided by the Department...” The Port was unable to locate any applicable appeal forms on the Planning Department’s website, however on August 20, 2023, Grace Pollard, Senior Planner for the City, provided counsel for the Port with the attached form titled “Appeal of Administrative Order” and instructed that it be submitted with the Port’s appeal.

The Port also notes that the attached form directs the Port (as Appellant) not to the Appeals procedures under Title 19 AMC, but to the Appeals procedures and review standards under AMC 20.20.100. This Chapter of the AMC—governing Civil Enforcement and Penalties, neither of which are at issue here—explicitly declares that “[a]ny person subject to an administrative order issued pursuant to this Chapter may appeal it in writing to the Hearing Examiner.”² It is unclear to the Port why, after having argued that this appeal ought to be governed by Title 19 AMC, that the City now directs the Port towards the procedures of Title 20 AMC.

I. PCED Staff Response

Per Anacortes Municipal Code (AMC) Title 18 Shoreline Master Plan, Section 18.16.100 - Administrative Authority and Responsibility, code states:

A. Shoreline Administrator. The shoreline administrator is vested with the following authority and responsibility:

- 1. Overall administrative responsibility for this master program.*
- 2. Authority to grant written permit exemptions from shoreline substantial development permit requirements of this master program.*
- 3. Authority to approve or recommend approval, approval with conditions, or denial of applications for shoreline permits and permit revisions in accordance with the policies and regulations of this master program **consistent with AMC Chapter 19.20 Application Procedures.***
- 4. Advising interested citizens and project proponents of the goals, policies, regulations and procedures of this master program.*
- 5. If a nonconforming use is discontinued for a period of twelve months in any consecutive two-year period, it shall lose its nonconforming status, and the continued use of the property shall be required to conform to the provisions of this master program and the Act.*

*B. The decision maker per **AMC 19.20.030 Types of Review** is authorized to approve, approve with conditions, or deny shoreline permits consistent with the procedures in **AMC Chapter 19.20 Application Procedures** is authorized to approve, approve with conditions, or deny shoreline permits consistent with the procedures in **AMC Chapter 19.20 Application Procedures.***

Per AMC Chapter 19.20 – Application Procedures, Table 19.20.030-1 identifies the types of review for all applications and – describes the process for each type of review. (1) The types of applications that are subject to each type of review are listed in the column immediately beneath the heading for each type. (2) The processes required for each type of review are further described by the remainder of the column beneath the heading for each type. (3) The remainder of this chapter describes the required processes for each type of review.

Table 19.20.030-1

Review classification and process matrix.

Types of Review	Type 1 Administrative Ministerial Actions	Type 2 Administrative Decisions	Type 3-HE Hearing Examiner Decisions	Type 3-PC Planning Commission Decisions	Type 4 City Council Decisions
Types of Applications	• Accessory dwelling units • Assessment of impact fees per AMC Chapter 3.93 • Boundary line adjustments • Building, mechanical, and plumbing permits • Clearing and grading permits	• Administrative conditional use permits, including home occupation permits • Binding site plans, less than 10 lots • Critical area permit – Permitted alteration • Level 1	• Critical area variance – Reasonable use exception • Level 2 variances • Zone boundary determination	• Shoreline conditional use and variance permits • Shoreline substantial development permits (SSDP) for projects valued less than \$1,000,000 on site less than three acres	• Binding site plans, 10 or more lots • Conditional use permits, except administrative CUPs • Essential public facilities, Types 1 and 2 • Framework development plans

Types of Review	Type 1 Administrative Ministerial Actions	Type 2 Administrative Decisions	Type 3-HE Hearing Examiner Decisions	Type 3-PC Planning Commission Decisions	Type 4 City Council Decisions
Recommendation By	None	None	Director	Director	Planning Commission
Pre-Decision Open Record Public Hearing	No	No	Yes, before Hearing Examiner	Yes, before Planning Commission	Yes, before Planning Commission
Closed Record Decision Hearing	No	No	No	No	Yes, before City Council
Decision By	Director	Director	Hearing Examiner	Planning Commission	City Council
Notice of Decision	No	Yes	Yes	Yes	Yes
Local Appeal Available To	Hearing Examiner	Hearing Examiner	City Council	City Council	None
Appeal Hearing Type	Open record	Open record	Closed record	Closed record	N/A

Per WAC 173-27 Shoreline Management Permit and Enforcement Procedures [Section 173-27-130 Filing with department](#) [of ecology] (1) ... **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**.

Local appeal of a Type 3 – PC Shoreline Substantial Development Permit is before the City Council in a closed record hearing as is required by code.

Regarding the appeal request form, staff acknowledges an error was made in providing the Appellant with an “Appeal of Administrative Order” form instead of the “Appeal of Administrative Decision” form. This, however, does not compromise the process or filing of the appeal request, and the corrections were noted for the record on the submitted form provided in the agenda packet.

II. PROCEDURAL HISTORY

On May 24, 2023, and June 14, 2023, public hearings were held to discuss the Port’s application for a Shoreline Substantial Development Permit, required to execute the Project. In the time between those two hearings, the Port reviewed the City’s Staff Report regarding the Project.³ After the Port’s review, on

May 30, 2023, the Port submitted to the City a “Request to Modify Conditions Presented in City Staff Report” (the “Comment Letter”).⁴ The Comment Letter asked for clarification from the City as to the basis for certain conditions being applied to the Permit, provided recommendations and the reasoning behind those recommendations for revisions to the City’s conditions, and emphasized the Port’s desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the Right of Way Use Agreement.

In response to the Port’s May 30th Comment Letter, on June 6, 2023, the City issued its “Revised Recommendations.” I, along with Port staff, attended the June 14th virtual public hearing to address the Port’s concerns regarding the conditions in the City Staff Report and the Revised Recommendations. However, at the hearing, the Planning Commission did not afford the Port an opportunity to comment on these issues. This resulted in the Planning Commission acting on incomplete and inaccurate information. I, and Port staff, participated online and had our hands raised on the remote hearing, but the Planning Commission did not allow us to speak to address inaccurate information provided by City staff following the Port’s presentation and comments prior to moving to a vote. It is unclear why the City would repeatedly ignore the Port’s efforts to engage. Moreover, as the Applicant and Project Proponent, the Port ought to have been afforded the opportunity to address the Planning Commission and correct the record prior to the Planning Commission’s vote on the Permit.

As a result of the June 14th virtual hearing, on June 23, 2023, the Port issued another letter directly to Darcy Swetnam, the City of Anacortes’ City Attorney.⁵ The Port’s June 23rd letter was written in an effort to further explain how the inaccurate information conveyed to the Planning Commission has resulted in permit conditions that are not in line with the already established Right of Way Use Agreement between the Port and the City. The City, however, did not re-open the public hearing and instead issued a written decision on July 11, 2023.⁶

On July 21, 2023, in accordance with the direction of the City Attorney and AMC 19.20.200, the Port submitted a Request for Reconsideration to the City.⁷ The Request for Reconsideration provided explanation as to specific errors made by the Planning Commission in approving the conditions of the Permit and again asked the Planning Commission to re-evaluate not only the Project being proposed by the Port, but to also take into consideration the surrounding circumstances, with particular focus on the language of the Right of Way Use Agreement, which invalidates the imposed conditions.

The Port’s Request for Reconsideration was placed on the Planning Commission’s agenda for its August 9, 2023, regular meeting. I, along with Port staff, attended the August 9th meeting and were amply prepared to provide the Planning Commission with any additional information it required in making its decision on the Request for Reconsideration. On the afternoon of the August 9th meeting, Port staff was informed that under AMC 19.20.200, they would have no opportunity to present or make an argument for their position to the Planning Commission. It was not conveyed to Port staff, however, that City staff and Ms. Swetnam would be provided with an arguably unlimited amount of time to answer the Planning Commission’s questions and to argue for the City’s position on the Permit. After over an hour of discussion between the Planning Commission and City staff, and without comment from the Port, the Planning Commission voted to deny the Port’s Request for Reconsideration, therefore necessitating this Appeal.⁸

II. PCED Staff Response

Per the above admission, the Port submitted a Request for Reconsideration in accordance with AMC 19.20.200 which states:

*A. A party to the underlying decision may seek reconsideration only of a final decision by filing a written request alleging **specific** errors on a form provided by the Department within 10 days of the date of decision.*

*B. The decision-maker must consider the request **without public comment or argument by the party filing the request**. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.*

1. If the request is denied, the previous action will become final.

*2. **If the request is granted, the decision-maker may revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals.** If the decision is revised and the decision requires a notice of decision, the Department must distribute the revised notice.*

Staff did not provide argument nor provide new or additional information into the record. The Planning Commissioners' questions were addressed as straightforwardly as possible, and focus was placed on clarifying process.

During the hearing, Timothy Schermetzler, Counsel for the Port, attempted multiple times to interject the proceedings with oral argument and was asked by the presiding Chair each time to stop, upon the third interruption the Chair threatened Counsel with being in contempt at which time Mr. Schermetzler remained quiet for the duration of the hearing.

The Planning Commission addressed this item thoroughly during the closed-record reconsideration hearing and they rejected its validity. The hearing can be viewed here: ([Planning Commission • City of Anacortes • CivicClerk](#))

III. PERMIT CONDITION ERRORS AND REQUESTED RELIEF

As previously conveyed to the Planning Commission, the Revised Recommendations approved by the Planning Commission, along with each of their corresponding errors and requested relief by the Port, are detailed below.

Condition No. 1 – *The Port shall produce and submit a Phase 1 design proposal of the “N” Avenue Beach Connection referenced in the Port of Anacortes’ Integrated Approach to Marine Public Access, October 2003, and adopted by reference in the Anacortes Shoreline Master Program for review and approval by the Planning, Community, and Economic Development (the “PCED”) Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach). Considerations for improvements to the pedestrian connection to Q’elech’ilhch Park should include items such as landscaping and an aesthetic treatment to existing Port owned privacy fencing along 3rd Street adjacent to the public sidewalk by way of additional landscaping, art installation(s), or a similar proposed effect approved by the PCED Department.*

Error – *The imposition of this condition is not consistent with or provided for within the SMP and amounts to an exaction.*

Request Relief – Remove Condition No. 1

III. No. 1 - PCED Staff Response

The Anacortes Shoreline Master Program (SMP) incorporated by reference the Port of Anacortes' 2003 *Integrated Approach to Marine Public Access* plan. Within the document it states: *The Port is required to include public access as part of each development project within 200 feet of the shoreline, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment... This Plan is intended to satisfy the public access requirements associated with development of the Port's marine properties identified in this plan.* Curtis Wharf is identified as one of the properties in the *Integrated Approach to Marine Public Access* with the associated "N" Avenue Beach Connection plan as its intended design to satisfy the public access requirement.

SMP section 8.6 Industrial and Port Facilities, Public Access Development Regulation 8.6.8 states: *Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact.*

The Shoreline Master Program is a regulatory ordinance providing the regulatory parameters within which development may occur and in which the community can ensure that development is carried out in such a way that the public's interest in protecting the shoreline is retained. By law, the City must implement the goals, policies, and regulations of the Shoreline Master Program and cannot simply waive applicable requirements.

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately to the project proposal. Staff stands by the findings of fact, conclusions of law, and recommended conditions of approval from the May 18, 2023 staff report for Shoreline Substantial Development Permit SDP-2023-0002.

Condition No. 2 – Per Condition of Approval No. 1, the required Phase 1 plan of "N" Avenue Beach Connection shall be submitted to the Planning, Community, and Economic Development Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission's authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 2

III. No. 2 - PCED Staff Response

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately to the project proposal. Staff stands by the findings of fact, conclusions of law, and recommended conditions of approval from the May 18, 2023 staff report for Shoreline Substantial Development Permit SDP-2023-0002.

Condition No. 3 – The Port shall produce and submit the complete "N" Avenue Beach Connection plan to the Planning, Community, and Economic Development Department for review and permit approval prior

to or concurrently with the establishment of a new or expanded use or development on Curtis Wharf, the 2nd Street right-of-way, or within the Port's adjacent Quiet Cove laydown lot (P55354), or within 5 years of subject project completion, whichever is sooner.

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission's authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 3

III. No. 3 - PCED Staff Response

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately to the project proposal. Staff stands by the findings of fact, conclusions of law, and recommended conditions of approval from the May 18, 2023 staff report for Shoreline Substantial Development Permit SDP-2023-0002.

IV. GROUNDS FOR APPEAL

A. The 2nd Street Right of Way Use Agreement prohibits public access, not the Project.

City Staff inaccurately informed the Planning Commission that the portion of the Project which includes fencing along 2nd Street triggers the need for an alternative plan for public access to the shoreline under the SMP. Rather, public access to the shoreline via 2nd Street was already eliminated when the Port and the City executed the Right of Way Use Agreement in February 2022. More specifically, Section 6.2 of the Agreement states the following:

Except as set forth in Agreement Section 7, the City hereby grants to the Port, and the Port shall have exclusive use of, the 2nd St. ROW for the Term of the Agreement for the uses described in Agreement Section 8.⁹

The only rights reserved by the City under this sub-section are the rights to use the subsurface portion of the 2nd Street ROW "for the siting and construction of utility improvements, including a segment of an outfall connection from the City's wastewater treatment plant to Guemes Channel."¹⁰ Section 8.1 of the Agreement further makes clear the Port's authority to restrict access to the 2nd Street ROW:

Under this Agreement, the Port is granted the right of use over, under, upon and across the 2nd St. ROW for the support of industrial and/or commercial uses associated with the Port's marine terminal facilities... These uses include, without limitation, (i) vehicle access; (ii) product storage operations; (iii) restricting public traffic and access to the 2nd St. ROW; and (iv) constructing any improvements the Port deems necessary to support these uses.¹¹

Because it was the Right of Way Use Agreement and not the Permit that restricted public access to the 2nd Street Right of Way, the City has no authority under the SMP to require the Port to provide improvements for an alternative access.

IV. A. PCED Staff Response

Per the SMP, all shoreline developments and uses must comply with the standards of the Master Program whether or not a shoreline substantial development permit is required. The fact that the 2nd Street Right of Way Use Agreement did not include specific requirements for public access does not recuse the Port from complying with the policies and regulations of the Shoreline Master Program.

The 2nd Street Right of Way Use Agreement also states in Section 8.2: *The Port and its contractors use of the 2nd St. ROW shall comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use of the 2nd St. ROW.*

Obtaining a Shoreline Substantial Development Permit is a requirement for the proposed development. All developments must comply with the policies and regulations established by the state Shoreline Management Act as expressed through our local Shoreline Master Program adopted by the City of Anacortes. The Port's 2nd Street and Curtis Wharf project is not exempt from shoreline regulations.

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately to the project proposal. Staff stands by the findings of fact, conclusions of law, and recommended conditions of approval from the May 18, 2023 staff report for Shoreline Substantial Development Permit SDP-2023-0002.

B. The Project does not trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q'elech'ilhch Park.

As explained in the Port's June 23rd letter to Ms. Swetnam and the Port's May 30, 2023, Comment Letter, the City Staff Report cites SMP DR-8.6.8 as authority for its public access conditions to the Permit.¹² This development regulation triggers public access where industrial use is proposed. That is not the case with the Project which is predominantly a paving project. As such, the Planning Commission's cited authority in fact does not apply.

Additionally, as a practical matter, even if the Port were required to provide alternative public access as a result of this Permit, which it should not be so required, the public access along 3rd Street to the shoreline already exists, thereby satisfying this requirement. Condition Nos. 1 through 3 of the Permit requiring the Port to beautify 3rd Street, go above and beyond creating a public access. In this regard, the City seeks through Permit Condition Nos. 1 through 3 to exact from the Port beautification and street improvements to an existing public access that are not authorized within the SMP development regulations.

IV. B. PCED Staff Response

Some port and industrial developments are often associated with a number of uses and modifications that are identified separately in the Master Program (ex. fill, transportation facilities (i.e. roads), dredging, and parking). Each use activity was carefully identified and reviewed for compliance with all applicable sections.

The Port's proposal includes updates to the primary access to Curtis Wharf by way of the 2nd Street public right-of-way as well as the entry drive itself to Curtis Wharf and the installation of security fencing and gates to enclose the subject area to meet the United States Coast Guard Maritime Security

requirements. These improvements are not isolated from industrial and port facilities, Development Regulation 8.6.8 is applicable to the subject project.

Per the Port's Integrated Approach to Marine Public Access plan, it was stated that [t]he State's shoreline policies encourage public access planning, where planning will result in a more effective public access system and focus public access at the most desired locations. Creation of a public access system is especially appropriate in this case, where there is an opportunity to provide connections to Guemes Channel... while minimizing interference with existing industrial operations or future economic development opportunities.

An important goal of the Shoreline Management Act is to protect and **enhance public access** to the state's shorelines. With the Port's request that public access to the shoreline via the 2nd Street public right-of-way be barred, enhancing the primary route to N Avenue Beach via 3rd Street, as it was proposed in the Port's own *Integrated Approach to Marine Public Access*, was accepted in lieu of on-site improvements per Development Regulation 7.4.6 which states: When on-site public access is not required..., **alternative shoreline access must result in an equal or greater public benefit.**

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately to the project proposal. Staff stands by the findings of fact, conclusions of law, and recommended conditions of approval from the May 18, 2023 staff report for Shoreline Substantial Development Permit SDP-2023-0002.

C. The Permit conditions go beyond the jurisdiction of the City's SMP.

The conditions encompass parcels outside of not only the Project area, but parcels that the Port does not own, as well as some parcels that lie wholly outside of the shoreline jurisdiction. The SMP "shall apply to all the lands and waters in the City of Anacortes that fall under the jurisdiction of the Shoreline Management Act."¹³ The SMP defines its shoreline jurisdiction as follows:

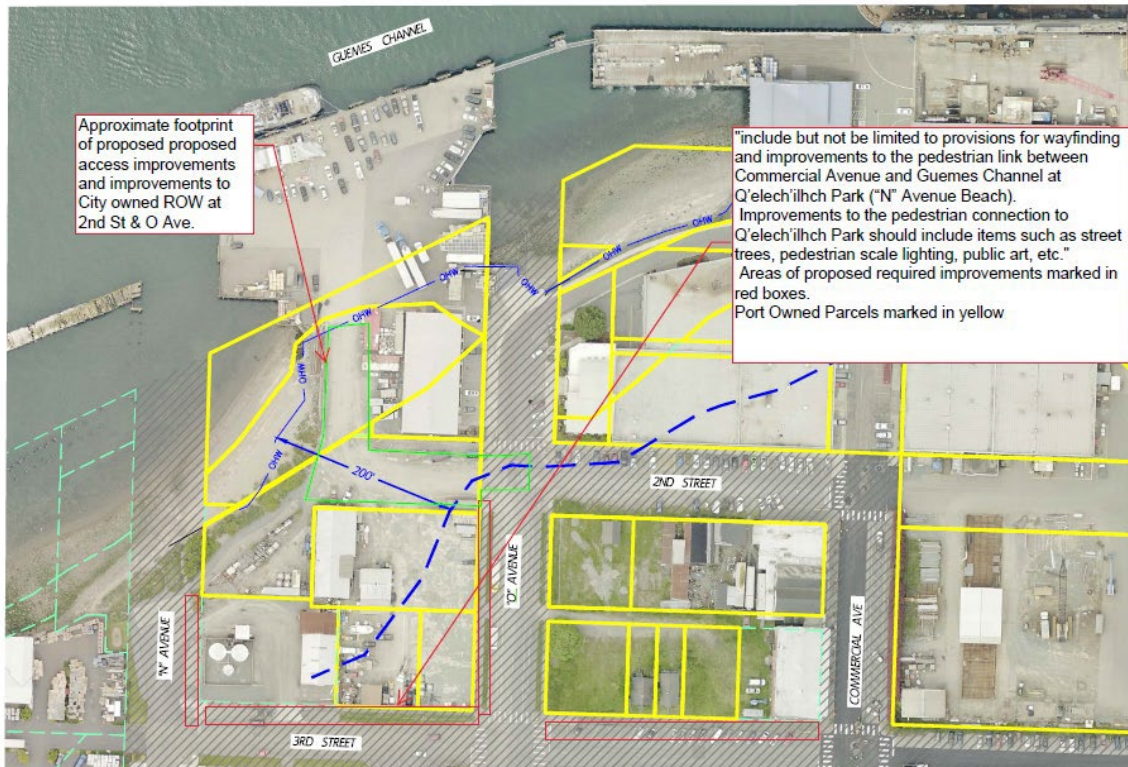
Shorelines include the waters within the City limits together with the lands underlying them and lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark together with any associated wetlands.

...

Where a substantial development is proposed which would be partly within and partly without shoreline jurisdiction, a shoreline substantial development permit shall be required for the entire development. The regulations of this Master Program shall apply only to that part of the development which occurs within shoreline jurisdiction.¹⁴

The figure below further illustrates the shoreline jurisdiction as it extends two hundred feet (200') from the ordinary high water mark, identified in the figure as "OHW." Parcels owned by the Port are outlined in yellow, and the Port's proposed Project area requiring the SSDP is outlined in green. Moreover, the red boxes indicate the locations in which the City is requiring the Port to conduct certain improvements by means of the Conditions to the Permit. Note that the red-boxed areas do not include any Port-owned parcels and are predominantly outside of the shoreline jurisdiction area.

SHORELINE ZONE NEAR CURTIS WHARF



DWG: 2022301_svk_TB_Presentation.dwg DATE: 8/08/23 JOB#: 2022301 SCALE: NTS SHEET: 1 OF 1

Because the Project includes parcels which are both within and outside of the SMP jurisdiction, the Port is required to obtain a shoreline substantial development permit for the entire Project. That being said, according to Section 2.3(E) of the SMP, the SMP's regulations shall only apply to parts of the Project that are within the designated shoreline jurisdiction. The City's Revised Recommendations disregard this limitation and require the Port to carry out additional projects that are clearly outside of the SMP's stated jurisdiction. In particular, Conditions No. 1 through 3 of the Permit require the Port to design and construct street improvements along 3rd Street from Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach) to Commercial Avenue, well outside of the shoreline jurisdiction.¹⁵ The City has no authority under the SMP to condition property and parcels that are not part of this Project and outside of the shoreline jurisdiction.

4. PCED Staff Response

The Shoreline Management Act mandates that the City's SMP make provision for public access to publicly owned shoreline areas. WAC 173-26-221 states that SMPs should require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221(4)(c) demonstrates more effective public access system can be achieved through alternate means, such as focusing public access at the most

desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

The Port of Anacortes Commission's adoption of the 2003 Integrated Approach to Marine Public Access Plan, and the City's incorporation of the plan by reference in SMP Policy 5.10.6 and SMP DR-8.6.8, recognized that a more effective public access system could be achieved through alternative means (e.g. implementation of the 2003 Plan). The Port Commission's resolution adopting the plan states that it is "intended to satisfy the public access requirements associated with development in the Port's marine properties along Fidalgo Bay and Guemes Channel that are adjacent to downtown Anacortes."

Therefore, although some of the improvements may occur outside of shoreline jurisdiction, they are nonetheless required to fulfill the Port's obligations to provide public access consistent with State law and the city's SMP.

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately to the project proposal. Staff stands by the findings of fact, conclusions of law, and recommended conditions of approval from the May 18, 2023 staff report for Shoreline Substantial Development Permit SDP-2023-0002.

V. CONCLUSION AND NEXT STEPS

It is clear to the Port that the Permit Conditions are purely a result of the City's desire to exact from the Port improvements to the existing public access on 3rd Street beyond what is justified to mitigate for the Project and in some cases wholly outside of the shoreline jurisdiction. Simply put, these conditions are nothing more than a bootstrapped attempt on the part of the City to get the Port to improve City property. If the City was concerned about improvements to 3rd Street, it should have negotiated the same at the time that the Right of Way Use Agreement was executed back in February 2022.

It is both inappropriate and unlawful for the City to now—over a year later—put the burden of designing, funding, and executing the City's desired improvements on the Port by way of an SSDP that does not even concern the 3rd Street area. The City's attempts to shift responsibility for these improvements onto the Port is made even more egregious given that the City's SMP plainly states that the SMP's regulations do not apply to areas of the development project which lie outside of shoreline jurisdiction.

In consideration of the above and the identified factual and procedural errors on the part of the City, the City must revise the Permit Conditions. As indicated above, the Port has also filed an appeal with the SHB, where the Port understands to be the appropriate venue for this appeal. The Port has done so in order to protect its appeal rights under Chapter 18.16 AMC. The Port provides the enclosed administrative appeal in order to preserve its rights given the City's appeal statement in the Notice of Decision and prior communication with the City Attorney directing the Port to a local administrative appeal process.

The Port still wishes to arrive at a negotiated solution to this matter without the need for litigation. To that end, although the Port has already filed an appeal with the SHB, the Port is willing to enter into a tolling agreement to afford the Port and the City an opportunity to negotiate appropriate conditions for the Permit. In the alternative to entering a tolling agreement, should the City like to avoid moving forward with an unnecessary appeal and instead discuss a resolution with the Port, the Port would not

object to the City rescinding the Permit and re-opening the public hearing in order to correctly issue the Permit.

The Port appreciates the City's attention to this matter and looks forward to the City's formal response. In the meantime, the Port continues to reserve all rights and remedies.

5. PCED Staff Response

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately to the project proposal. Staff stands by the findings of fact, conclusions of law, and recommended conditions of approval from the May 18, 2023 staff report for Shoreline Substantial Development Permit SDP-2023-0002.

PORT OF
ANACORTES
APPEAL
SDP-2023-0002

October 2, 2023

Introduction

01

Procedural
History

02

Process for
Hearing

03

Applicable
Rules and
Regulations

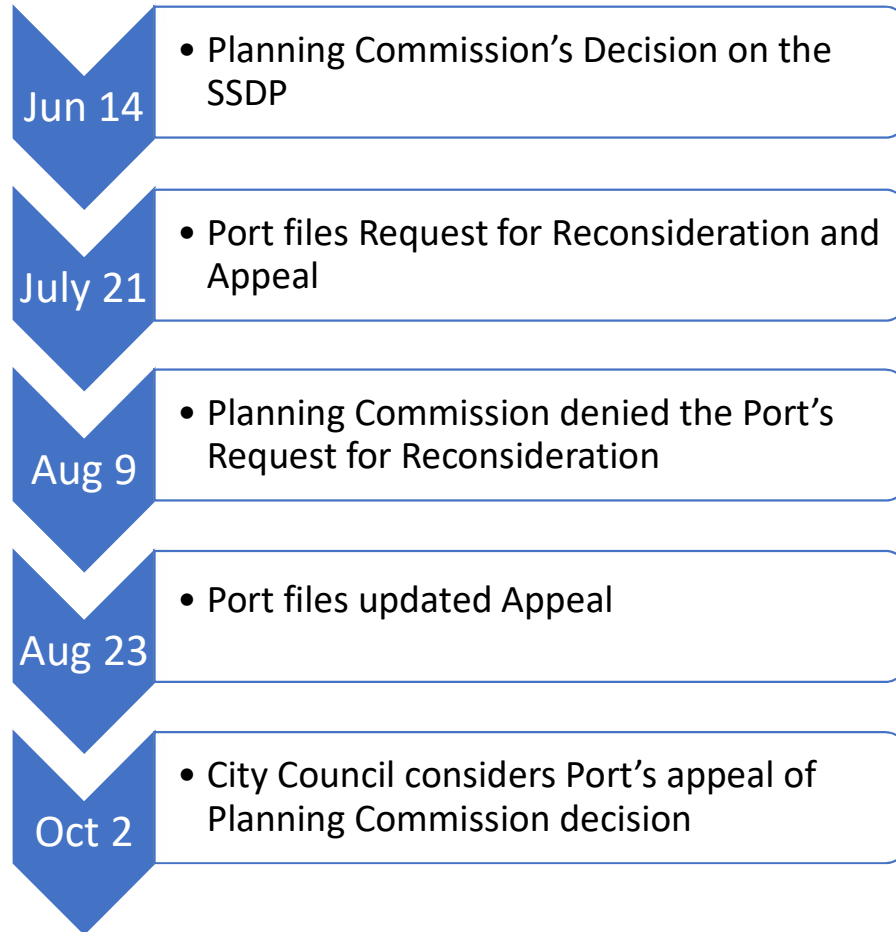


PROCEDURAL HISTORY

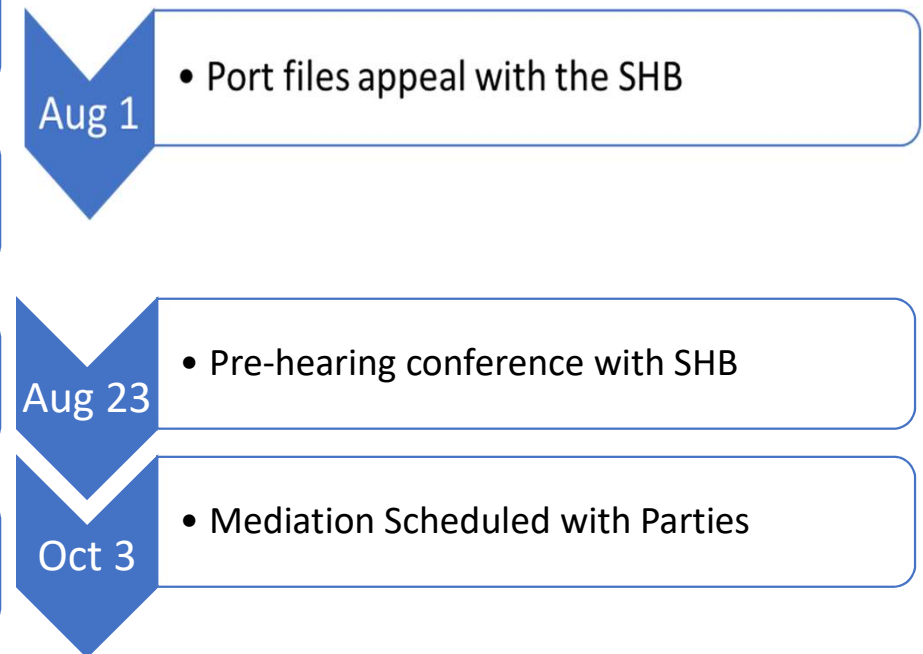
Procedural History

- Port applied for a Shoreline Substantial Development Permit to make improvements at 2nd Street and the entry to Curtis Wharf, including paving, stormwater improvements, and installation of a rolling access gate blocking 2nd Street
- Application was submitted on February 27, 2023
- Application was deemed complete on March 27, 2023
- Planning Commission opened the public hearing on the permit application on May 24, 2023, which was continued
- Planning Commission held the continued public hearing on June 14, 2023, where they approved the Port's application subject to conditions
- Port submitted a request for reconsideration on July 21, 2023
- Port submitted an appeal to City Council on August 23, 2023
- Port appealed the permit to the Shoreline Hearings Board on August 1, 2023

Local Procedures



Shoreline Hearings Board Procedures





PROJECT FOOTPRINT



PROCESS FOR HEARING

Closed Record Appeal Process

- AMC 19.20.030 – appeal of a Type-3 Planning Commission Decision is appealed to City Council
- Appeal type is a Closed Record Appeal
- AMC 19.20.140 – Closed Record Appeal includes:
 - Participation by the applicant and any appellant
 - Facts outside the record are not allowed
 - The standard of review for Council is whether the decision of the Planning Commission is clearly erroneous
 - Burden of proof is on the appellant to demonstrate clear error
 - Swearing in is required before any witness testifies, including City staff
 - May be continued if necessary to a later date

Hearing Procedures

- 1: City staff: introduction of project, appeal, and standards
- 2: Mayor: Appearance of Fairness Doctrine disclosures/swearing parties in
- 3: Port: Presentation of appeal
- 4: City staff: Response to Port's Appeal
- 5: Port: Brief rebuttal if desired
- 6: City Council: Questions and deliberations

Council Options

- Option One: Grant the Port's Appeal:
 - Order staff to amend the Permit (or conditions) OR
 - Remand to Planning Commission with direction to consider additional factual issues
- Option Two: Deny the Port's Appeal
- Option Three: Continue the Hearing for additional information or deliberation



APPLICABLE RULES AND REGULATIONS

Standard of Review/Burden of Proof – per AMC 19.20.140

Table 19.20.030-1
Review classification and process matrix.

Types of Review	Type 1 Administrative Ministerial Actions	Type 2 Administrative Decisions	Type 3-HE Hearing Examiner Decisions	Type 3-PC Planning Commission Decisions	Type 4 City Council Decisions
Types of Applications	• Accessory dwelling units • Assessment of impact fees per AMC Chapter 3.93 • Boundary line adjustments • Building, mechanical, and plumbing permits • Clearing and grading permits	• Administrative conditional use permits, including home occupation permits • Binding site plans, less than 10 lots • Critical area permit – Permitted alteration • Level 1	• Critical area variance – Reasonable use exception • Level 2 variances • Zone boundary determination	• Shoreline conditional use and variance permits • Shoreline substantial development permits (SSDP) for projects valued less than \$1,000,000 on site less than three acres	• Binding site plans, 10 or more lots • Conditional use permits, except administrative CUPs • Essential public facilities, Types 1 and 2 • Framework development plans

Types of Review	Type 1 Administrative Ministerial Actions	Type 2 Administrative Decisions	Type 3-HE Hearing Examiner Decisions	Type 3-PC Planning Commission Decisions	Type 4 City Council Decisions
Recommendation By	None	None	Director	Director	Planning Commission
Pre-Decision Open Record Public Hearing	No	No	Yes, before Hearing Examiner	Yes, before Planning Commission	Yes, before Planning Commission
Closed Record Decision Hearing	No	No	No	No	Yes, before City Council
Decision By	Director	Director	Hearing Examiner	Planning Commission	City Council
Notice of Decision	No	Yes	Yes	Yes	Yes
Local Appeal Available To	Hearing Examiner	Hearing Examiner	City Council	City Council	None
Appeal Hearing Type	Open record	Open record	Closed record	Closed record	N/A

Closed Record Appeal Hearing

Table 19.20.140
Types of hearings and meetings.

	Open Record Pre-decision	Closed Record Decision	Open Record Appeal	Closed Record Appeal
Participation	Any interested party	Applicant and any party of record	The applicant, any appellant, and any party of record	The applicant, any appellant
Facts allowed outside the record	Yes	No	Yes	No
Standard of review	Compliance with AMC Titles 16 , 17 , 18 , 19	De novo	Clearly erroneous	Clearly erroneous
Burden of proof	Applicant	Applicant	Appellant	Appellant

Standard of Review/Burden of Proof – per AMC 19.20.140

- Standard of Review: Clearly Erroneous

In order to find the City's action clearly erroneous, the Council must be “**left with the firm and definite conviction that a mistake has been made.**” *Department of Ecology v. PUD. 1*, 121 Wn.2d 179, 201 (1993).

- Burden of Proof: The Burden of Proof is on the Port to demonstrate that a clear error was made

Shoreline Planning and the Shoreline Management Act

- The Shoreline Management Act (RCW 90.58) governs planning and activity within the State's shorelines
- Pursuant to the Shoreline Management Act, the City is required to adopt a Shoreline Master Program, which the City adopted in conjunction with the Department of Ecology in 2010
- The SMP includes both goals and policies for use, development, protection, and restoration of shorelines in the City. It also includes development regulations that apply to development within the shoreline
- The Shoreline Master Program can also incorporate documents by reference, which then have the effect of the Program, as the City did with the 2003 Port of Anacortes Integrated Approach to Marine Public Access
- The City cannot approve projects that are inconsistent with the requirements of the Shoreline Master Program

Council Options

- Option One: Grant the Port's Appeal:
 - Order staff to amend the Permit (or conditions) OR
 - Remand to Planning Commission with direction to consider additional factual issues
- Option Two: Deny the Port's Appeal
- Option Three: Continue the Hearing for additional information or deliberation



2nd Street/Curtis Wharf Access Improvements

2ND STREET/CURTIS WHARF ACCESS IMPROVEMENTS PROJECT

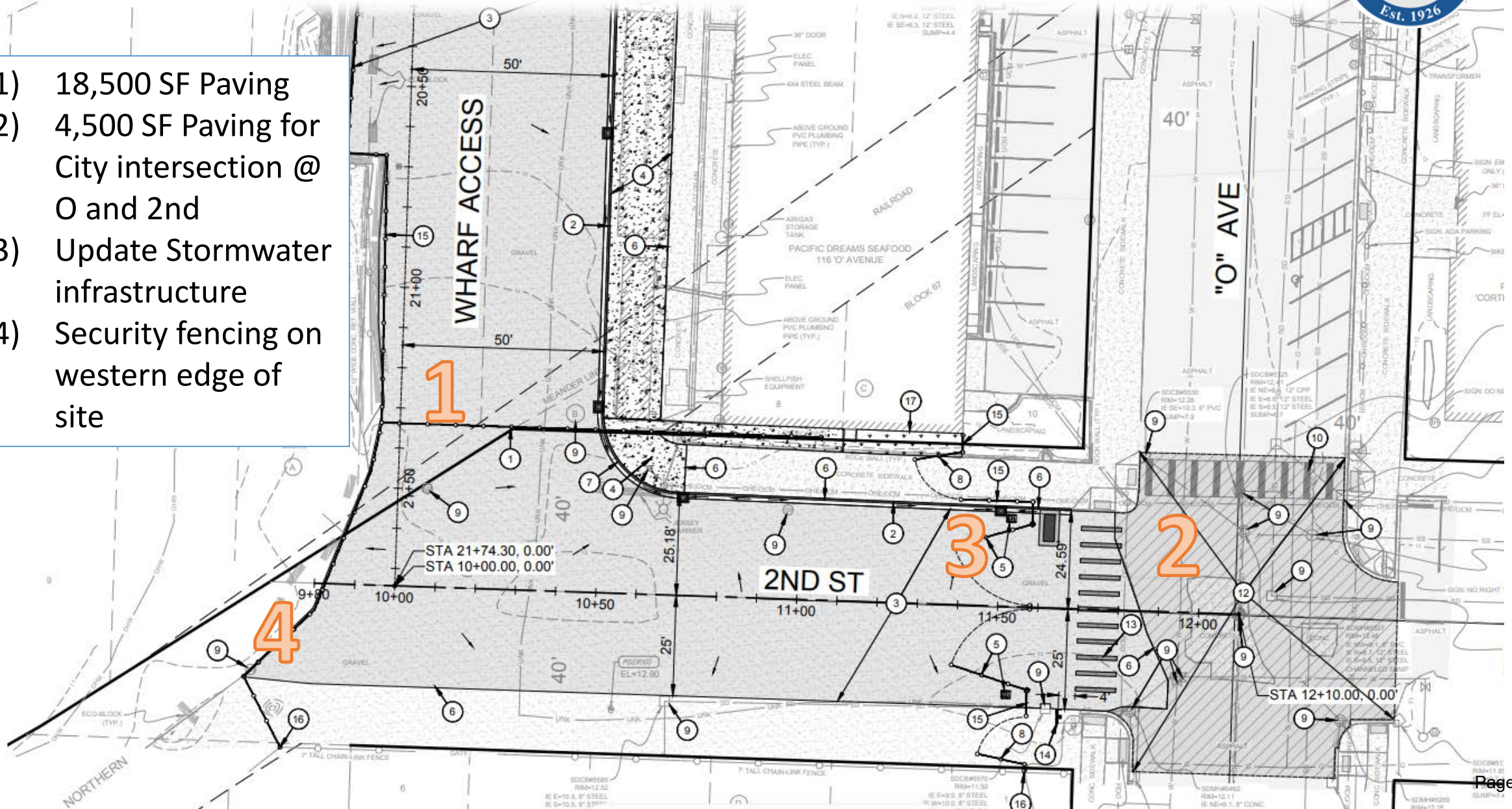
- Curtis Wharf-Active marine terminal and economic driver
- Quiet Cove-cleanup site & temporary lay down
- 2nd Street-Gravel is not a suitable road surface



2ND STREET/CURTIS WHARF ACCESS IMPROVEMENTS



- 1) 18,500 SF Paving
- 2) 4,500 SF Paving for City intersection @ O and 2nd
- 3) Update Stormwater infrastructure
- 4) Security fencing on western edge of site



SHORELINE ZONE NEAR CURTIS WHARF



- Most of the Proposed work is in the shoreline zone
- Project will improve access, safety, stormwater, and dust.
- Existing uses not compatible with pedestrian access



City Council Agenda Bill

Meeting Date: October 2, **Agenda Item:** 7.a.
2023

Agenda Item Title: Community Action of Skagit County 3rd Quarter Update on
Community Action Services available in Anacortes

Staff Contact(s): Emily Schuh

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
Emily Schuh	Presentation

Item Summary: Community Action of Skagit County Presentation. The City and Community Action entered into an agreement in 2023 with the City providing financial support to Community Action to support the opening of a Community Action satellite office in Anacortes to complement the services already provided by the Anacortes Family Center and the Anacortes Housing Authority.

Budget Impact:

Previous Action:

Recommended Motion:

Alternative Actions:

Attachments (listed in order presented):

1. Anacortes City Council 2 October 2023 Presentation



Anacortes City Council

October 2, 2023

Sandi Phinney, Division Director & Dulce Vazquez-Cruz, Resource Centers Manager

The heart of Community Action is creating a spirit of hope by helping people help themselves and each other.



Progress & Updates

- Space Update for Anacortes Resource Center
 - Thank you for your patience!
 - Secured a space at 819 Commercial Avenue
 - Internet and phone connection being set up
 - Signage, small construction updates, and furniture move are in the works
- Data Update
- Dulce Vazquez-Cruz, Resource Center Manager
 - An Anacortes Success Story
 - Staff continue to plan for rotating schedule of other programs & services, including WIC, supportive employment, senior and disabled services, & energy assistance





Services to Anacortes Residents :

Service		Unduplicated People
TOTAL PP		
Housing Intake		89
Rent		
Other Housing Assistance		37
Critical Need (Food, Hygiene, etc)		124
Energy and Utility Assistance		230
Transportation Assistance		11
Basic Food Assistance		229
Employment		9
Information and Referral		
Yardwork, Housework, Shopping		15



Services Q1 & Q2:

Since January, the following number of unduplicated residents have been served:

- **NEW: 15** have received “Care Coordination” services
- **NEW: 38** have been served by the Street Outreach Program
- **NEW: 7** have been served by the Recovery Navigator Program
- **119** Anacortes residents received assistance from a Resource Center (directly in the Anacortes Resource Center, **5** in the last month)
- **239** received Energy Assistance
- **24** were served by the Veteran’s Assistance Fund
- **26** received senior or disabled volunteer services
- **89** individuals (47 HHs) were enrolled in the Housing Interest Pool through Coordinated Entry
- **165** received nutrition education with WIC



How to Help: Help Us Get the Word Out!

You can:

- Tell friends and family about our presence and help spread the word. For services: Anacortes@CommunityActionSkagit.org
- Donate to Community Action with a designation that it is to support services in Anacortes.
- Invite someone from Community Action to talk at a service club or event.
- Volunteer to be a driver or do yard work or in-home care for seniors and those with disabilities.

www.CommunityActionSkagit.org

(360) 416-7585, SandiP@CommunityActionSkagit.org



Questions?

www.CommunityActionSkagit.org

(360) 416-7585

SandiY@CommunityActionSkagit.org

6



City Council Agenda Bill

Meeting Date: October 2, **Agenda Item:** 7.b.
2023

Agenda Item Title: Utility Pole Attachment Make-ready Work for Section B of the EDA Expansion Aerial Construction Area of the City's Fiber Project

Staff Contact(s): Emily Schuh

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
Emily Schuh	Motion

Item Summary: **Item Summary:**

City staff seeks City Council consent to authorize Puget Sound Energy (PSE) to undertake approximately \$230,000 of work necessary to make PSE-owned utility poles ready for City's fiber to be attached. PSE will likely identify additional make-ready costs for other areas within the EDA Expansion phase of the City's Fiber Project, and the Fiber Division will bring those costs to the Council as they become known.

1. Background:

The current design for the EDA Expansion phase of the City's Fiber Project will require attachment to 231 utility poles owned by PSE. The pole attachment agreement which the City entered into with PSE in October of 2019 (19-165-FBR-001) requires the City to pay costs that PSE incurs to make its utility poles ready for any attachments requested by the City.

The City begins the process by having its consultant, NoaNet, submit pole attachment requests to PSE. PSE then prepares and presents to the City its estimated make-ready costs. The City either approves those costs, modifies its requested pole attachments, or cancels its requested pole attachments.

The highlighted portion of the following table pertains to the estimated costs of this request. The table provides an overview of the potential make-ready costs for the entirety of the EDA Expansion phase of the City's Fiber Project:

EDA Expansion Area	Pole Count	Attachments Currently Approved?	Poles Requiring Make Ready	PSE Make Ready Estimate
A	50	No	6	tbd
B	33	No	6	\$230k
C	29	No	tbd	tbd
D	2	Yes	n/a	\$0
E	69	Yes	n/a	\$0
F	10	No	tbd	tbd
G	21	Yes	n/a	\$0
H	17	No	tbd	tbd

If the City does not authorize the PSE make-ready work, the Fiber Division will need to rework the design for Area B of the EDA Expansion phase, changing some planned aerial deployments to underground. The impacts of doing so are:

- Additional costs from our design consultant, NoaNet.
- Likely additional materials costs (conduit & vaults).
- Delays related to (i) the redesign work; (ii) preparation, EDA review & approval, release, and processing of an Invitation To Bid for the additional materials; and (iii) revising the City's Invitation To Bid for the construction work.

2. Key Terms:

- PSE's estimate is valid until December 20, 2023.
- City must provide initial response to PSE no later than October 20, 2023.

3. Competitive Bidding: The City's design for the EDA Expansion phase requires attachments to PSE poles; no opportunity for competitive bidding exists.

Budget Impact:

Utility Pole Owner	Puget Sound Energy
Estimated Make-Ready Cost	\$230,013.73
Earmarked Funds	\$7,830,000.00
BARS #	001.260.594.32.63
Budget Amendment Required?	No
Start Date	Return of letter accepting estimated costs
End Date	n/a

-

Previous Action: City of Anacortes entered into Pole Attachment Agreement with Puget Sound Energy in October 2019 (19-165-FBR-001).

Recommended Motion: I move that City Council authorize the Mayor to approve Puget Sound Energy's estimated make-ready costs of \$230,013.73 for Area B of the EDA Expansion phase of the City's Fiber Project.

Alternative Actions: Not approve the estimated PSE make-ready costs, requiring either a modification or cancellation of the requested attachments and incurring the additional project costs and delays noted above.

Attachments (listed in order presented):

1. PSE Pole Attachment Agreement
2. PSE Pole Attachment Cost Letter Section B
3. 23 1002 Council Slides PSE Make Ready Section B



POLE ATTACHMENT AGREEMENT

BETWEEN

PUGET SOUND ENERGY, INC.

AND

CITY OF ANACORTES

Date: 10/16/2019

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POLE ATTACHMENT AGREEMENT FOR CITY OF ANACORTES

This Agreement, dated as of 10/16/2019, is made by and between **Puget Sound Energy, Inc.**, a Washington corporation ("PSE"), and **City of Anacortes**, a Washington municipal corporation ("City"). In this Agreement PSE and City are sometimes referred to individually as a "Party" and collectively as the "Parties."

PSE and City agree as follows:

SECTION 1. SCOPE AND DEFINITIONS

1.1 This Agreement governs all attachments of City's fiber optic communications system (the "System") and related Equipment now or hereafter made in relation to any utility poles owned in whole by PSE (individually a "Pole", collectively the "Poles"), with or without PSE's consent.

1.2 The Parties hereby acknowledge a Pole Attachment Agreement dated 12/21/2016 between Puget and the City, providing for the attachment of City communication cable to approximately 265 PSE Poles. Said Pole Attachment Agreement is hereby incorporate by reference and any conflicts between this Agreement and the 2016 Agreement shall be controlled by this Agreement. The Parties also acknowledge existing Attachments in the City Central Business District. It is the Parties' intention that any existing Attachments that predate execution of this Agreement be governed by this Agreement.

1.3 When used in this Agreement with the initial letter capitalized, the following terms shall have the following specified meanings:

"Agreement" means this Pole Attachment Agreement between PSE and City together with all exhibits attached hereto.

"Annual Rental Fee" means the fees described in the attached Appendix III.

"Arm" means any wood, fiberglass or steel extension from a Pole used to support Equipment.

"Assignment" as described in Section 24 of this Agreement.

"Attach" (or any conjugation thereof) means to affix, fasten or otherwise attach Equipment to a Pole, either directly or indirectly, including, without limitation, by overlashing or attaching any Equipment to other equipment, cables, attachments or devices affixed, fastened or otherwise attached to a Pole.

"Attachment" will have the meaning given to it on Section 2.1 of the Agreement.

"Attachment Application" a written or electronic application form(s) requesting permission to attach any Equipment to any Pole.

“Attachment Permit” or “Permitted Attachment” will mean a completed permit in the form of Appendix II attached hereto that has been duly and properly executed by PSE or an Attachment authorized in such permit.

"Calendar Year" means any period from January 1 through December 31 of any given year.

“Certificate of Insurance” means a standard ACORD certificate or documentation from an agent authorized by the insurer(s) demonstrating insurance carriers, policy numbers, effective dates, limits of liability and deductible amounts.

"Electronic Notice" will have the meaning given to it in Section 25.2 of the Agreement.

"Equipment" means any coaxial and fiber optic cables, messenger strand, conduit or risers, span guys, down guys, anchors, service drops, mainline, overlash (i.e., any conductor that is overlash on an existing conductor after the initial permit), a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment, other attachments and related equipment made in relation to a utility pole.

"Event of Default" will have the meaning given to it in Section 7.1 of the Agreement.

“Facilities” means any poles, towers, arms, transformers, down guys and anchors, vaults, conduits, handholds, and/or electric system appendices.

"First Trip Costs" means any expenses and costs incurred by PSE for transfer of City's Attachment(s) to a replacement Pole (at the same time PSE is transferring its own facilities to the replacement Pole).

"Indemnitees" means PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its lawful successors and assigns.

"Make-ready" means any and all work relating to the installation of additional Poles, Poles of greater height or strength, additional guying, or re-arrangements of PSE's Equipment or the Equipment of any other party licensed by PSE to use the Poles as required in order for PSE to provide City with access to the Poles.

“NESC” means, at any given point in time, the then-current version of the National Electric Safety Code.

"NJUNS" means the National Joint Utility Notification System or a substantially comparable electronic communication system agreed upon in writing by the Parties.

“Notice of Termination” means any one hundred-eighty (180) calendar day Written Notice by Party requesting Termination of the Agreement to non-terminating Party.

"Plan of Correction" means a mutually agreeable plan to correct any Unauthorized Attachment.

"Pole" will have the meaning given to it in Section 1.1 of the Agreement.

"PSE Pole Attachment Specifications" means, at any given point in time, the then current version of the specifications set forth in the attached Appendix V.

"Return Trip Costs" means any fee assessed by PSE to City when PSE must return to job site to perform transfer work.

"System" will have the meaning given to it in Section 1.1 of the Agreement.

"Termination" cancellation and/or voidance of this Agreement or any Attachments made pursuant thereto.

"Termination of Attachment Notice" means any Written Notice by Party requesting Termination of the Attachment to non-terminating Party.

"Topping Fee" means any fee assessed by PSE to City for removal of the upper portion of any replaced Pole in the event PSE does not transfer City's Attachment(s) to the replacement Pole.

"Unauthorized Attachment" means any Attachment(s) to any Pole(s) by City in violation of the terms and conditions of this Pole Attachment Agreement.

"Work" means any work relating to the attachment, maintenance, repair, relocation, replacement or removal of Equipment and other work performed by City in connection with this Agreement, or the attachment of Equipment to Poles performed by City in connection with this Agreement.

"Written Notice" will have the meaning given to it in Section 25.1 of the Agreement.

SECTION 2. ATTACHMENT

2.1 Any piece of Equipment that occupies space on a Pole will be considered an "Attachment." Any and all City Attachments are subject to this Agreement. Attachments are limited to:

- coaxial and fiber optic cables
- messenger strand
- conduit or risers
- span guys
- down guys
- anchors
- service drops
- mainline
- a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment

2.2 City shall not attach any Equipment to any Pole without PSE's prior written consent in accordance with paragraph 2.3 below, regardless of whether or not City has a valid permit

for Attachments previously attached on such Pole. This Agreement shall not in itself constitute any such consent. Should City fail to obtain a valid permit prior to attaching Equipment to any Pole, in accordance with Section 2.3, City shall be liable for an Unauthorized Attachment in accordance with Section 6.

- 2.3** If City desires to attach any Equipment to any Pole, City shall submit to PSE an "Attachment Application", via the written application form in Appendix II or an "Electronic Notification" as outlined in paragraph 25.2. At a minimum, the pole Attachment Application shall include the information specified in Appendix II, which is attached and incorporated by reference. PSE retains sole discretion to modify the information required in the Attachment Application, upon thirty (30) days Written Notice to City, and such modification shall be effective on the date referenced in the notification.

The Attachment shall be deemed installed on the date the Attachment Permit is approved. However, should City fail to install an Attachment on a Pole for which an Attachment Permit has been granted within six (6) months from the approval date of the Attachment Permit, that Permit shall expire and no Attachment shall be made on that Pole by City until a new Attachment Permit is granted.

If City wishes to remove an Attachment, it must submit a "Termination of Attachment Notice" to PSE via "Electronic Notification" as outlined in paragraph 25.2. If City wished to assign an Attachment to a third party, City must comply with the requirement of Section 24 (Assignment). If City does not submit a Termination of Attachment Notice (and thereafter timely remove the affected Attachment) or an assignment is not made in accordance with Section 24 (Assignment), prior to the beginning of a Calendar Year, the applicable Attachment Permit shall be considered active and City shall be assessed the appropriate Annual Rental Fee.

An Attachment Permit does not relieve City of obligations or liabilities due under this Agreement. Any Attachment made without an Attachment Permit or not in accordance with the specifications listed in the Attachment Permit shall be considered an Unauthorized Attachment.

- 2.4** Unless otherwise directed by PSE, City shall submit each Attachment Application to:

Puget Sound Energy, Inc. | 3380 146th PL SE #310 | Bellevue | WA | 98007 | Pole Services

- 2.5** PSE may deny any Attachment Application for the following reasons:

- (a) insufficient capacity (when all potential accommodations have been reviewed by PSE and communicated to City);
- (b) Facilities are necessary for PSE's sole utility business use;
- (c) City's proposed Attachment violates the National Electrical Safety Code (NESC) or any other applicable code, law, rule or regulation, or unduly compromises safety;
- (d) City's proposed Attachment threatens the reliability of PSE's system;
- (e) City's proposed Attachment does not comply with general applicable engineering standards; or
- (f) City's account is not in good standing.

In the event that PSE gives its written or electronic consent for any Equipment to be Attached to a Pole, City shall Attach such Equipment only in strict accordance with:

- a) such Application;
- b) any conditions or qualifications set forth in PSE's consent; and
- c) the provisions of this Agreement.

City shall have the right to make Attachments to PSE Facilities in accordance with the terms of the Attachment Permit and this Agreement. No application shall be deemed approved without Written Notice or Electronic Notice indicating approval from PSE.

2.6 City shall reimburse PSE for any and all costs and expenses incurred by PSE in connection with the processing and review of each Application (including but not limited to the cost of identifying and estimating the cost of required changes under paragraph 2.7) and in connection with services performed by PSE at the request of City (whether prior to or after the submittal of an Application), including, without limitation, any of the following:

- a) Field engineering review of proposed routes to identify potential problems with the proposed Attachment;
- b) Preparation and provision of drawings or other documents relating to the Poles or any facilities on the Poles;
- c) Engineering review of proposed Attachments to determine the consequences of additional strain on the Poles;
- d) Review of proposed routes to identify easement problems that may limit or preclude the proposed Attachment;
- e) Rights-of-Way services to obtain easements or other rights from private land owners to enable Equipment to be Attached to the Pole;
- f) Transmission poles with no communication attachment or distribution underbuild are not available to attach to;
- g) Transmission pole requests must have a structural pole analysis completed prior to review of approval of attachment at the cost of the applicant; and
- h) PSE may require distribution pole attachment requests have a structural analysis completed prior to review of approval of attachment at the cost of the applicant.

Amounts recoverable by PSE hereunder shall consist of fully allocated costs for labor (including but not limited to all payroll costs and overhead and all applicable engineering, supervision, and administrative overheads), transportation, employee expenses, attorney's fees, reprographic services, supplies, telephone service and other expenses. This paragraph 2.6 shall not obligate or be construed to obligate PSE to perform any service or to take any action whatsoever with respect to an Attachment, an Attachment Application, or any request made by City.

2.7 City understands and acknowledges that nothing in this Agreement grants or purports to grant to City any right or interest of any kind in or to the real property on which any Pole is located and, subject to applicable law, City is solely responsible for seeking and

obtaining all permits, licenses, easements, franchise rights and other rights required from the owner of the underlying property (including, without limitation, PSE) for City to Attach, maintain, repair, relocate or remove any Equipment in relation to any Pole. In no event, however, shall such actions in any way limit or relieve City of its obligations under Section 14 or any other provision of this Agreement.

- 2.8** If, in the judgment of PSE, the accommodation of any proposed Attachment requires the replacement of an existing Pole to provide adequate Pole facilities, PSE will inform City of the required changes and the estimated cost of such changes based on PSE's engineering work standards. If City desires to Attach such Equipment and so notifies PSE within thirty (30) days after PSE informs City of the required changes and estimated cost, PSE shall perform such work and City shall reimburse PSE for the entire expense thereby incurred. If City decides that it does not wish to Attach such Equipment after receiving notification of the required change(s) and estimated cost(s) of such changes, City may decline to do so; provided, however, that City shall still be required to pay the reasonable cost(s) incurred by PSE with respect to providing the change information and estimated cost(s) for the proposed Attachment(s).
- 2.9** Unless otherwise directed by PSE, City shall install guys and anchors necessary to support the additional strain imposed on any Pole by any Attachment in a manner satisfactory to PSE. If PSE installs or replaces guys or anchors to support the strain imposed by such Attachment, City shall reimburse PSE for the entire cost and expense of such installation or replacement (including, but not limited to, the cost of installing or transferring guys to such anchors).
- 2.10** City shall clearly identify all new Attachments at each Pole in distinctive color marking or number marking and as otherwise agreed to by the Parties. In the event that City performs general maintenance to existing Attachments, or takes such other action affecting such existing Attachments, City shall clearly identify such existing Attachments in distinctive color marking or number marking and as otherwise agreed to by the Parties.

In the event City acquires another entity's Equipment, or enters this Agreement with existing Equipment on PSE Facilities, City shall properly identify the newly acquired Equipment in distinctive orange marking and as otherwise agreed to by the Parties within twelve (12) months or within a mutually agreeable earlier timeframe.

If City removes some or all of its Equipment from a Pole, City shall remove all corresponding identification tags, pole tags, and any other method of identification from the Pole.

SECTION 3. MAINTENANCE

City shall maintain all Equipment Attached to any Pole in good and safe condition. City shall maintain current and accurate location maps and records of all such Attachments.

SECTION 4. EMERGENCIES

In the event of an emergency, PSE may relocate any Attachments and take such other action affecting such Attachments, as PSE deems appropriate in the circumstances. The

Parties' respective emergency phone numbers are as follows:

Puget Sound Energy, Inc. | 1-888-225-5773
City of Anacortes | 1-360-428-1598

Each Party shall promptly notify the other of any change in such Party's emergency phone number.

SECTION 5. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES

- 5.1** City understands and agrees that PSE Facilities are essentially for PSE's exclusive use. PSE reserves the right at any time, without City's knowledge or consent, to add to its Facilities, raise the voltage on its circuits or change their character or to remove, replace, or relocate the Facilities. In the event PSE modifies, removes, replaces or relocates its Facilities and such change requires City to remove or relocate City's Equipment, PSE shall provide City with either Written Notice or Electronic Notice. City shall relocate or remove its Equipment, at City's sole expense, within thirty (30) days from the date of PSE's Written Notice or Electronic Notice requesting the relocation or removal of City's Equipment. Following the thirty (30) days, at PSE's discretion, PSE may remove or relocate the Equipment and bill City for the cost of such removal or relocation. If City performs the removal or relocation work, City shall be responsible for any liability or additional costs associated with removing the old Facilities and relocating them.
- 5.2** PSE may in an emergency, relocate, replace, or remove such Attachment and perform any other work in connection with such Attachment that may be required for the maintenance, relocation, replacement, or removal of said Poles, or the facilities thereon or which may be placed thereon, or for the service needs of PSE. All such work shall be performed at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.
- 5.3** If, in the judgment of PSE, an existing Attachment on any Pole interferes with or prevents the attachment of any additional facilities of PSE or any other person or entity having a joint ownership interest with PSE in such Pole, and if such additional facilities could be attached to such Pole by removing the Attachment or by rearranging existing facilities thereon, PSE will so notify City. Such notice shall state what rearrangement of facilities or Pole replacement and transfer of facilities is required to continue the accommodation of the Attachment. If City desires to continue to maintain the Attachment on such Pole and so notifies PSE within thirty (30) days after PSE gives notice to City, City shall make such rearrangement at the sole risk and expense of City. If City does not so notify PSE prior to the end of such thirty (30) day period, PSE shall make such rearrangement at the sole risk and expense of City, and City shall reimburse PSE for the entire expense thereby incurred. If City does not desire to continue to maintain the Attachment on such Pole, City shall remove the Attachment from such Pole within thirty (30) days from the date of PSE's original notice to City. If the Attachment is not removed from the Pole at the end of the thirty (30) day period, PSE may remove the Attachment at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.
- 5.4** If PSE replaces or relocates an existing Pole, PSE will be responsible for transferring its Facilities to the replacement Pole. PSE may, in its discretion, also transfer City's Attachment(s) to the replacement Pole, provided that City has given its prior approval. The

physical transfer will be made at the sole risk and expense of City. If PSE transfers City's Attachment(s) to the replacement Pole at the same time PSE is transferring its own facilities to the replacement Pole, City shall reimburse PSE for any and all costs and expense thereby incurred in connection with such transfer in accordance with Appendix IV, "First Trip Costs" which may be amended from time to time upon written notice to City from PSE.

If PSE replaces or relocates an existing Pole on which there is an Attachment, and PSE does not have City's approval or for any other reason does not transfer City's Attachment(s) to the replacement Pole, then PSE may remove the upper portion of the replaced Pole approximately one (1) foot above the highest communication attachment and City shall transfer its Attachment(s) to the replacement Pole within thirty (30) days and reimburse PSE the "Topping Fee" in accordance with Appendix IV, which may be amended from time to time. If City fails after thirty (30) days' notice to transfer its Attachment(s) from the replaced Pole to the replacement Pole, PSE may have such work performed by a licensed contractor competent to perform such work, and PSE will charge City for such work in accordance with Appendix IV, "Return Trip Costs".

- 5.5** PSE may, in its sole discretion, choose to install an Arm to support facilities on a Pole, whether such Pole is solely owned by PSE or is jointly owned by PSE and another owner. In such case, PSE may require City to relocate any of its Attachments to the Arm in accordance with paragraph 5.2 above.
- 5.6** If at any time PSE determines, in its reasonable judgment, that a Pole is required for the sole use of PSE or is no longer suitable for attachment of City's Equipment because of safety or the other factors set forth in Section 2.5, PSE may require City to remove its Attachments from such Pole upon sixty (60) days' advance notice. In the event City fails to remove its Attachments from the Pole within such sixty (60) day period, PSE may remove such Attachments at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 6. FEES

- 6.1** City shall pay PSE "Annual Rental Fees" when due, in accordance with and incorporated by reference as Appendix III. PSE may adjust the Annual Rental Fee payable by City under this Agreement at any time and from time to time by notice submitted in accordance with Section 25.1
- 6.2** Payment from City for Annual Rental Fees for each Calendar Year and all other PSE invoices are due within thirty (30) days of receipt of the invoice from PSE.
- 6.3** Annual Rental Fees for Attachments permitted on or after the beginning of the current Calendar Year shall be billed after the Attachment Permits for those attachments are approved by PSE; provided, however, that the foregoing will not relieve City from any liability for Attachments made without PSE approval, including, without limitation, payment of any and all Annual Rental Fees with respect thereto. There shall be no abatement or reduction in such fees for Attachments in place for less than the full Calendar Year, for Attachments permitted but not yet actually made or Attachments that are acquired, assigned, or purchased by City during the Calendar Year from another entity.

6.4 Fees for Transferring Communication Equipment (Appendix IV) may be adjusted by PSE from time to time. PSE shall provide to City at least sixty 60 days prior Written Notice before the effective date of the new fees.

6.5 City may overlash its Equipment onto existing Equipment owned by it and such overlash shall not be considered a separate Attachment for purposes of assessing the PSE Annual Rental Fee. City must submit a new Attachment Application prior to overlashing. Such overlash cable shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE prior to City overlashing.

In the event of an emergency or for general maintenance purposes, City may overlash its Equipment without submitting a new Attachment Application prior to overlashing. City must promptly notify PSE pursuant to City overlashing. Such overlash cable shall not exceed four (4) Pole span lengths and shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE pursuant to City overlashing.

In addition, PSE may recover its administrative, engineering and inspection costs associated with approving City's overlashing. Under no circumstances shall City overlash its Equipment onto existing Equipment that is not owned by City, nor shall City allow third parties to overlash its existing Equipment. PSE shall assume that the strand owner also owns the overlash cable, unless otherwise notified by City or a third party. Any overlash that does not comply with this Section shall be considered an Unauthorized Attachment.

6.6 City may attach guy wires to PSE anchors with PSE's prior approval according to paragraph 2.9 above using the method described in the PSE Attachment Specifications.

6.7 Unauthorized Attachments shall be addressed as follows:

- a) within sixty (60) days of receipt of notice specifying the Unauthorized Attachment, City shall correct the Unauthorized Attachment in accordance with this Agreement and send Written Notice to PSE of its compliance; or
- b) within thirty (30) days of receipt of notice specifying the Unauthorized Attachment, City shall submit to PSE a mutually agreeable plan to correct the Unauthorized Attachment ("Plan of Correction") and thereafter City complies with the plan, if accepted by PSE or with another plan approved by PSE. City's Plan of Correction shall, at a minimum, set out the completion date, as well as reasons to support that date.
- c) Notwithstanding Section 6.7 (a & b) above, should PSE determine that the Unauthorized Attachment poses an immediate hazard, PSE may require a shorter period of time to correct the Unauthorized Attachment.
- d) If City has failed to meet the timeline specified in Section 6.7 (a or b) by sixty (60) days or more, PSE may
 - (i) Correct the Unauthorized Attachment and City shall be liable for all costs associated with this correction, or
 - (ii) remove City's Attachments and City shall be liable for all costs associated with this removal.

- 6.8** If the rearrangement of PSE's Facilities or the Equipment of any other party licensed by PSE to use the Facilities are required in order for PSE to provide City with access to the Facilities ("Make-ready"), the costs for such additional Facilities and Make-ready, including, but not limited to, special inspections, pre-construction, engineering, make ready, change out, rearrangement work, shall be at the sole expense of the City, and City agrees to pay all invoices when due.
- 6.9** For the purposes of this Agreement, an account is in good standing if all invoices are paid in accordance with Article 6 (Fees).

SECTION 7. DEFAULT AND REMEDIES

- 7.1** PSE expects City to respond to PSE notices, including timely payment of invoices, and to remove abandoned Equipment, identify Equipment, and provide prior Written Notice of any proposed assignment of Equipment or entity. The occurrence of any one or more of the following events constitutes an "Event of Default" by City:
- a)** City fails to pay any amount due under this Agreement within ten (10) days after receipt of Written Notice of such failure from PSE.
 - b)** City fails to provide prior Written Notice to PSE of intent to assign this Agreement or the Equipment attached to PSE Facilities.
 - c)** City assigns this Agreement, in violation of the terms and conditions of this Agreement, without prior written consent from PSE.
 - d)** A petition is filed by or against City under the Federal Bankruptcy Code or any similar law or statute of the United States or any state (and with respect to any petition filed against City, such petition is not dismissed within sixty (60) days after the filing thereof) or City is adjudged a bankrupt or insolvent, or receiver, custodian or trustee is appointed for City or for any of the assets of City which appointment is not vacated within thirty (30) days of the date of appointment, or City becomes insolvent, is unable to pay its debts and they become due, or makes a transfer in fraud of creditors.
 - e)** City fails to perform or observe any other term or condition of this Agreement and such failure continues for thirty (30) days after Written Notice from PSE; provided, however that if such failure is capable of being cured, but not within such 30-day period, PSE may extend such period as approved in writing by PSE, so long as City commences appropriate curative action and diligently prosecutes such cure to completion.
- 7.2** So long as an Event of Default applicable to this Agreement continues beyond the specified period or, if no period is specified, beyond thirty (30) days, PSE may terminate this Agreement without notice or demand except as expressly required above, revoke all PSE Attachment Permits issued to City, and pursue any other remedy it may have under applicable law. In the event PSE terminates this Agreement pursuant to this Article, City shall disconnect City's Equipment from PSE Facilities within nine (9) months. Should City fail to remove its Equipment within the nine (9) month period, or should City fail to begin such removal promptly after termination and thereafter work diligently and continuously to effect such removal, PSE may remove City's Equipment at City's expense.

SECTION 8. PERFORMANCE OF WORK

- 8.1** The Attachment, maintenance, repair, relocation, replacement, and removal of Equipment and other work performed by City in connection with this Agreement or the Attachment of Equipment to Poles is sometimes collectively referred to herein as the "Work."
- 8.2** City shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. City shall expeditiously and efficiently perform the Work in accordance with the provisions of this Agreement. City shall ensure that all personnel who perform its Work shall be fully experienced and properly qualified to perform the same. City shall not hire any employee of PSE to perform any of the Work.
- 8.3** City shall perform the Work in a workmanlike and skillful manner. City shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first-class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such requirements of the current PSE Pole Attachment Specifications (Appendix V) and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to Pole line construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.
- 8.4** City shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement (including, but not limited to, the requirements of paragraph 8.3). If City fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at City's expense.
- 8.5** City shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. City shall, if so requested by PSE, remove from performance of the Work any personnel whom PSE finds to be incompetent, careless or otherwise objectionable.
- 8.6** Whenever City has knowledge of any actual or potential labor dispute involving its employees which may in any way affect, delay or arise in connection with or as a result of the performance of the Work or this Agreement, City shall immediately notify and submit all relevant information to PSE.
- 8.7** City shall, at all times, keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, City shall promptly remove all rubbish, refuse and other debris and all of its equipment and surplus materials.
- 8.8** City shall give immediate attention to, and shall use its best efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating PSE in any way), all complaints received by City from third parties arising out of or in connection with performance of the Work. City shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, City shall use its best efforts to maintain and promote good public relations for PSE.

SECTION 9. PROTECTION OF PROPERTY AND PERSONS

- 9.1** City shall take all precautions necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, City shall erect and maintain such barricades, signs, flags, flashers, and other safeguards as are required from time to time by PSE. City shall inspect all goods, materials, tools, equipment, and other items to discover any conditions which involve a risk of bodily injury (including death) to persons, or a risk of damage to any property or environment, and shall be solely responsible for discovery and correction of, and protection against, all such conditions.
- 9.2** All property damaged, altered or removed in connection with City's performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by City to at least as good quality and condition as existed prior to such damaging, alteration or removal.
- 9.3** City shall ensure that no utility (including all supply, disposal, distribution and communication systems, and all similar or related facilities, equipment and other property) is damaged, altered, removed or interrupted in connection with the performance of the Work or the operation of the Equipment. If City requires the temporary shutoff of any of PSE's electric circuits or other elements of its or a third party's utility system, City shall request PSE's approval thereof at least forty-eight (48) hours in advance of the time it requires the shutoff. City shall perform the Work requiring the shutoff only after such approval has been obtained and on such days and at such hours as PSE may direct.
- 9.4** Prior to performing any of the Work, City shall obtain from PSE all relevant information as to the nature of the electric circuits attached to the Poles to which such Work relates. City shall ensure that such circuits continue in normal operation at all times during performance of the Work. Without limiting paragraph 9.1, City shall take all precautions which are necessary to prevent bodily injury (including death) and property damage resulting from such circuits in the course of performing the Work.

SECTION 10. COOPERATION AND COORDINATION

- 10.1** City acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. City shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.
- 10.2** If any part of the Work depends upon the results of other work by PSE or others, City shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that renders it unsuitable for performance of the Work. Failure of City to so notify PSE shall constitute an acceptance by City of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

SECTION 11. LIENS

City shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Work. City shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at City's expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 12. COMPLIANCE WITH LAWS

12.1 In the performance of the Work and this Agreement, City shall comply and shall ensure that all contractors of any tier comply with all applicable:

- a) Laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority;
- b) Industry standards and codes; and
- c) PSE Pole Attachment Specification, which is attached and incorporated by reference as Appendix V and may be modified by PSE from time to time.

City shall furnish such documents as may be required to effect or evidence compliance. All laws, regulations, and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference.

12.2 If applicable, City shall comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder (including, but not limited to 41 C.F.R. Part 60-1, 41 C.F.R. Part 60-250 and 41 C.F.R. Part 60-741), all as the same may have been or may be amended. The "equal opportunity clause" of 41 C.F.R. § 60-1.4(b), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 C.F.R. § 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 C.F.R. § 60-741.4 are incorporated herein by this reference. By signing the Agreement, City certifies that segregated facilities (within the meaning of 41 C.F.R. § 60-1.8) are not and will not be maintained or provided for City's employees and that City will not permit its employees to perform Work at any location under City's control where segregated facilities are maintained. City shall obtain a similar certification from any of its subcontractors or suppliers as required by 41 C.F.R. § 60-1.8. This paragraph 12.2 shall apply only if and to the extent required by law or by any agreement now or hereafter entered into between PSE and the United States of America.

SECTION 13. TAXES

City shall pay (except as otherwise required by law) all taxes applicable to or incurred in connection with the Work, the Equipment, or the System of which the Equipment constitutes a part.

SECTION 14. PERMITS AND PROTECTION OF EXISTING RIGHTS

- 14.1** City shall obtain and comply (and shall ensure that all of City's suppliers and subcontractors of any tier comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment and the System in accordance with this Agreement. City shall furnish to PSE such evidence thereof as PSE may request. Compliance with this paragraph 14.1 shall be the sole responsibility of City and a continuing condition of the use of the Poles by City.
- 14.2** City shall release and defend, indemnify and hold harmless PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its successors and assigns (collectively referred to hereafter as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with any violation (or alleged violation) of any contract, permit, license, franchise, right-of-way, easement or other rights of PSE that is based on or relates to any Attachment. Upon the request of PSE, City shall immediately remove any Attachment that violates, is alleged to violate or, in the judgment of PSE, jeopardizes any contract, permit, license, franchise, right-of-way, easement or other rights of PSE. If City fails to remove the Attachment within fifteen (15) days after PSE makes its request, PSE may remove the Attachment at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 15. EXAMINATION OF RECORDS

City shall promptly furnish PSE with such information related to the Work or the Equipment as may from time to time be requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have access to examine all of City's books, documents, papers and records which are related to the Work, the Equipment, or this Agreement, provided the City is required to retain such records pursuant to the Public Records Act at RCW 42.56.

SECTION 16. STATUS OF CITY

- 16.1** City represents and warrants that it is, and that at all times during the Term it shall be properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and the System.
- 16.2** City shall be and operate as an independent entity (not a contractor, agent or representative of PSE) in the performance of the Work and the operation of the Equipment and City's System. In no event shall City be authorized to enter into any agreements or undertakings for or on behalf of PSE or to act as or be an agent or representative of PSE.

SECTION 17. RELEASE, INDEMNITY, HOLD HARMLESS AND LIMITATION OF LIABILITY

- 17.1** City releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Term) out of or in connection with any Attachment, the performance of the Work, the operation of the Equipment or the System by City, the enforcement of this Agreement by PSE, any

default under or breach of this Agreement by City or the acts or omissions of City or any of its suppliers or subcontractors of any tier, the respective successors and assigns of City or any such suppliers or subcontractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on City's behalf in connection with this Agreement. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that City shall not be required to so indemnify any Indemnatee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence of any Indemnatee(s). In connection with any action to enforce this Section 17, City waives any immunity, defense, or protection under any workers' compensation, industrial insurance, or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit Attachments for the fees described in Section 6 only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity, and hold harmless shall be construed broadly in favor of the Indemnitees.

- 17.2** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PSE SHALL NOT HAVE ANY LIABILITY TO CITY FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF CITY FOR SERVICE INTERRUPTIONS, OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, ANY ATTACHMENT, OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

SECTION 18. WORKER'S COMPENSATION AND INSURANCE

- 18.1 Insurance Required.** At all times during the term of this Agreement, City and all persons performing the Work, City or its suppliers or subcontractors, shall keep in force and effect insurance policies as described below:
- a) Workers Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits as required for all employees by Title 51 of the Revised Code of Washington and Employer's Liability Insurance, including Occupational Disease coverage, in the amount of \$1,000,000 for each accident, each employee, and policy limit. City shall require subcontractors to obtain and maintain such insurance.
 - b) Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$ 2,000,000 general aggregate, \$ 2,000,000 products/completed operations aggregate, \$ 2,000,000 personal injury, \$ 2,000,000 each occurrence.
 - c) Automobile Liability Insurance. Commercial automobile policy covering all owned, hired and non-owned autos and commercial vehicles to be used in the performance of the Work. Limits of liability not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.

- d) Umbrella/Excess Liability Insurance. Coverage is to be responsible in excess of the sum employers' liability, commercial general liability, and auto liability. Limits of liability not less than \$ 4,000,000 each occurrence/ \$ 4,000,000 aggregate.
- e) Property Insurance. Each party will be responsible for costs associated with maintaining their own property.

- 18.2** City shall ensure compliance with insurance requirements as outlined above such as will protect the Indemnitees from any and all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the Work or this Agreement or the operation of the Equipment or the System, whether such performance or operation is by City or any of its suppliers or subcontractors of any tier.
- 18.3** No policies of insurance required to be obtained by City or its subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with PSE except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage from injuries to PSE's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by City's subcontractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.4** Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Agreement, City shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.
- 18.5** The requirements of this Agreement as to insurance and acceptability to PSE of insurers and insurance to be maintained by City are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by City under this Agreement.
- 18.6** The Parties acknowledge that the City's participates in a municipal risk pool. City shall provide evidence or confirmation that the coverage provided by such participation provides coverage at least as broad as the requirements outlined in this Section 18.

SECTION 19. RISK OF LOSS

City shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the System and anything used (or to be used or consumed) in connection with the Work.

SECTION 20. REIMBURSEMENT AND PAYMENT

PSE shall invoice City for all amounts payable by City to PSE under this Agreement (including, without limitation, the payments described in Section 6 and all reimbursable costs and expenses described elsewhere in this Agreement) as they become due. City shall pay each such invoice in full within thirty (30) days after City's receipt thereof.

SECTION 21. ATTORNEY'S FEES

The prevailing Party in any suit, action, or arbitration filed or held concerning this Agreement shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

SECTION 22. LATE CHARGES AND INTEREST

22.1 City acknowledges that late payment of any fee or other amounts due to PSE under this Agreement will cause PSE to incur certain administrative, processing accounting costs not otherwise contemplated by this Agreement, the exact amount of which will be extremely difficult, if not impossible, to ascertain. Accordingly, if any fee or other amounts shall not be received by PSE within thirty (30) days after such amounts shall first become due, City shall pay to PSE a late charge, as liquidated damages and not as a penalty, equal to two percent (2%) of such overdue amounts as a reasonable estimate of the administrative, processing and accounting costs PSE will incur by reason of late payment by City. Such late charge is intended to be in lieu of City's liability for such costs, but shall not relieve or release City from liability for any other costs or damages suffered by PSE by reason of late payment. Payment of such late charge shall in no event excuse or cure any default under or breach of this Agreement by City.

22.2 In addition to any late charge under paragraph 22.1, City shall pay to PSE interest, compounded daily, at the rate of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Agreement, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Agreement by City.

SECTION 23. NONWAIVER

The failure of PSE to insist upon or enforce strict performance by City of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

SECTION 24. ASSIGNMENT; SUCCESSORS AND ASSIGNS

City shall not assign, apportion, delegate or sublease any of its rights or obligations under this Agreement or assign this Agreement in whole or in part, by operation of law or otherwise, without the prior written consent of PSE, which consent shall not be unreasonably withheld. Any apportionment, delegation, sublease or assignment or purported apportionment, delegation, sublease or assignment without the prior written consent of PSE shall be voidable by PSE. In any event, no sublease or assignment of this Agreement shall relieve City from any of its liabilities or obligations under this Agreement. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

SECTION 25. NOTICES AND OTHER COMMUNICATIONS

25.1 Written Notice. As referenced elsewhere in this Agreement, PSE and City shall provide notice, approval, consent, instruction, direction or other communication to each other in writing ("Written Notice"). The following notices, requests, demands and other communications hereunder shall be in writing, and shall be deemed given if personally delivered, sent via overnight delivery, or within five days of being deposited in the US Mail with appropriate postage:

- a) Notice of adjustment of the Annual Rental Fee (Appendix III).
- b) Notice of code violation: City's Equipment fails to comply with the requirements of NESC.
- c) Notice of permit violation: City's Equipment fails to comply with the requirements of Appendix V.
- d) Notice of termination of Agreement by either Party.
- e) Notice of failure to respond to an invoice.
- f) Notice in lieu of payment of an invoice.
- g) Notice of consent of assignment of Agreement to a third party.
- h) Notice of rearrangement of City's Equipment by PSE.
- i) Notice of City failure to perform or observe any other term or condition of this Agreement.

Written Notice shall be made to the following addresses and either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this section:

If to:

Puget Sound Energy, Inc.: 3380 146th PL SE #310, Bellevue, WA 98007 / Pole Services

City of Anacortes: 904 6th Street, PO Box 547, Anacortes, WA 98221 / Municipal Fiber Manager

25.2 Electronic Notice. As referenced in this Agreement, PSE and City may provide notice to each other electronically ("Electronic Notice"). The following notices, requests, demands and other communications hereunder shall be in electronic format, via the Internet or NJUNS (National Joint Use Notification System); or other mutually agreed to Joint-Use Notification System:

- a) Attachment Applications
- b) Notice of denial or approval of Attachment Applications
- c) Notice of pole transfers or other work on PSE Facilities
- d) Other notifications and communications as approved by PSE
- e) Termination of Attachment Notice

SECTION 26. VOLUNTARY EARLY TERMINATION

Either Party shall have the right to terminate this Agreement or any Attachment/s made pursuant hereto, for any reason and at any time, upon providing the non-terminating Party with one hundred and eighty (180) calendar days prior Written Notice. Where City or PSE exercises such right, City will remove the impacted Attachments and Equipment from PSE's Facilities at City's expense, within six (6) months from the date of Termination as specified in the Notice of Termination. City will return the poles utilized by City to their original condition, with the exception of normal wear and tear.

SECTION 27. SURVIVAL

The obligations imposed on City under Sections 6, 11, 15, 17, 20, 21, 22, 23, 24, 25, 28, 29, and 30, and paragraph 7.2, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

SECTION 28. REGULATORY APPROVALS

This Agreement and any transfers of property pursuant to this Agreement are subject to the authority of regulatory agencies having jurisdiction over the Parties, or either of them, with respect thereto. Each Party shall promptly submit this Agreement to the regulatory agencies having such jurisdiction over such Party and shall take such additional action as may reasonably be required to promptly obtain any required approvals or other action by such agencies.

SECTION 29. MISCELLANEOUS

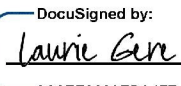
- 29.1** The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement. This Agreement sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to Attachments.
- 29.2** This Agreement may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.
- 29.3** Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.
- 29.4** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 29.5** The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

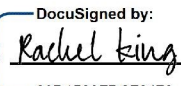
SECTION 30. APPLICABLE LAW

This Agreement shall in all respects be interpreted, construed, and enforced in accordance with the laws of the State of Washington.

City /Accepted and Agreed:
City of Anacortes

PSE /Accepted and Agreed:
Puget Sound Energy, Inc.

By  _____
DocuSigned by:
9C8EE8989EBA4F7...

By  _____
DocuSigned by:
09D1500FDC76473...

Title: Mayor

Title: Supervisor, Account Management

Date: 10/14/2019

Date: 10/16/2019

Address:

904 6th Street (PO Box 547)
Anacortes, WA 98221
Attn: Municipal Fiber Manager

Address:

3380 146th PL SE #310
Bellevue, WA 98007
Attn: Pole Services

APPENDICES

- I** Certificate of Insurance, referenced in § 18 of the Agreement
- II** Pole Attachment Application, referenced at § 2.3 of the Agreement
- III** Annual Rental Fee, referenced at § 6.1 of the Agreement
- IV** Fees for Transferring Communication Equipment, referenced at § 5.4 of the Agreement
- V** PSE Pole Attachment Specifications

Appendix I

INSURANCE REQUIREMENTS

**Attach Certificate of Insurance of
Puget Sound Energy, Inc. Mandatory Requirements**

Appendix II**APPLICATION FOR ATTACHMENT**Application or
Job Number

Date

TO: Puget Sound Energy**Licensee:****Name:****Address:****Email/Phone #:**

Please grant permission to occupy your poles in accordance with the conditions set forth in Pole Attachment Agreement, dated _____

- ☐ Application for rental on _____ distribution poles
- ☐ Application for rental on _____ transmission poles

DESCRIPTION OF WORK:

Overlashing

New Cable

- | | |
|--------------------------|---|
| ☐ | PSE Universal maps attached with requested poles highlighted. |
| ☐ | Licensee's work sketch showing PSE grid numbers is attached. |
| ☐ | Appendix A Attached |
| ☐ | Fiber Specs Attached |
| ☐ | Photos Attached (Optional up to 10 poles) |

POWER SUPPLIES _____ Will be installed. Pole list is attached and power supply specifications are included.

Failure to supply requested information may delay acceptance of the application.

- | | |
|--------------------------|---|
| ☐ | Application or notification accepted. |
| ☐ | Billing of new contacts to be effective _____ |

LICENSOR PUGET SOUND ENERGY
BY _____

PSE Joint Use Coordinator

Date _____

Appendix III

ANNUAL RENTAL FEE Computation of Annual Rate for Poles Owned by PSE

A.	Net Cost of Bare Pole Calculation	PV
	1. Gross Distribution Plant	
	2. Gross Pole Investment (Acct. 364)	
	3. Distribution Plant Accumulated Depreciation	
	4. Depreciation Reserve (Poles)	
	5. Gross Plant Investment (Electric)	
	6. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	7. Accumulated Deferred Taxes (Accts. 190, 281-3) (Poles)	
	8. Net Pole Investment	
	9. Appurtenances Factor	0.85
	10. Net Pole Investment Allocable to Attachments	
	11. Total Number of Poles	
	Net Cost of a Bare Pole	
B.	Carrying Charge Calculation	CC
	1. Total General and Administrative	
	2. Gross Plant Investment (Electric)	
	3. Depreciation Reserve (Electric)	
	4. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	Administrative Carrying Charge	
	5. Account 593 (Maintenance of Overhead Lines)	
	6. Investment in Accts. 364, 365 & 369	
	7. Depreciation (Poles) related to Accts. 364, 365 & 369	
	8. Accumulate Deferred Income Taxes for 364, 365 & 369	
	Maintenance Carrying Charge	
	9. Gross Pole Investment (Acct. 364)	
	10. Net Pole Investment	
	11. Depreciation Rate for Gross Pole Investment	
	Depreciation Carrying Charge	
	12. Taxes (Accts. 408.1 + 409.1 + 410.1 + 411.4 - 411.1)	
	13. Gross Plant Investment (Total Plant)	
	14. Depreciation Reserve (Total Plant)	
	15. Accumulated Deferred Taxes (Total Plant) (190, 281-3)	
	Taxes Carrying Charge	
	16. Rate of Return	
	Return Carrying Charge	
	Total Carrying Charge	
C.	Space Factor Calculation	PR
	1. Occupied Space	1
	2. Usable Space	13.5
	3. Space Factor	
D.	Annual Pole Attachment Rental Rate Calculation	
	1. Net Cost of a Bare Pole	(PV)
	2. Total Carrying Charges	(CC)
	3. Space Factor	(PR)
	Pole Attachment Rental Rate	(PR*CC*PR)

Appendix IV

FEES FOR TRANSFERRING COMMUNICATIONS EQUIPMENT

FIRST TRIP COSTS – Fees for performing transfer work while PSE is in the process of doing its own work.

Crossarms, all types	\$ 145.00
Anchor strand or overhead guy	145.00
Sidewalk anchor guy and pipe	155.00
Drop wire (no splicing)	145.00
Service Conduit	195.00
Messenger and cable bolted to pole or cable arm (no splicing)	150.00
Messenger dead-end	165.00
Cable riser (including pipe and molding – no splicing)	195.00
Cable terminal (no splicing)	155.00

RETURN TRIP COSTS - Cost of performing transfer work when PSE must return to the job site.
The following amounts include travel time.

Crossarms, all types	\$ 235.00
Anchor strand or overhead guy	235.00
Sidewalk anchor guy and pipe	265.00
Drop wire (no splicing)	250.00
Service Conduit	385.00
Messenger and cable bolted to pole or cable arm (no splicing)	235.00
Messenger dead-end	295.00
Cable riser (including pipe and molding – no splicing)	385.00
Cable terminal (no splicing)	265.00

TOPPING FEE \$125.00

Appendix V

POLE ATTACHMENT SPECIFICATIONS

Attached

Conductor-to-Ground Clearances

0700.3001

Scope

This standard describes the requirements for vertical clearance of overhead conductors above ground, roadways, rail, and water.

Design Practice

Clearances for conductors that PSE owns and/or operates shall meet the requirements of WAC 468-34-290 and NESC 232.

Clearances shall be calculated with the conductor temperature and loading conditions that produce the maximum final sag.

See Standard 6450.3000 for information on conductor design temperature and design tensions.

See Standard 6550.6200 for information on how to measure conductor sag.

Joint Use Construction

In joint use construction, the lowest communication conductor shall be considered. Its required clearance, plus the required spacing between the communication and power conductors may force the power conductors to have more than the minimum amount of clearance.

New Construction

If the terrain will be altered under the power line that effect the grade (such as filling, repaving a street, installing sidewalks, or adding landscaping) the clearances required by this standard shall be increased so when the terrain is at final grade, the minimum clearances are met.

Clearance Requirements

Table 1 lists the requirements for most situations that will be encountered. In rare cases, the NESC may allow reduced clearances. If the conductor is at an elevation above 3000 feet and it operates at 115 kV or more, additional clearance is required.

Conductor-to-Ground Clearances**0700.3001****Table 1**

Clearance requirements (all measurements are in feet)

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Interstate highways, state highways, and bridges on those highways (crossing).	24.0 *	24.0	24.0	4 and 15 kV = 30 34.5 kV = 32	34.0	34.0	34.0	34.0
Interstate highways, state highways, and bridges on those highways (longitudinal).	20.0	24.0	24.0	4 and 15 kV = 27 34.5 kV = 32	32.0	32.0	32.0	32.0
Municipal roads, streets, parking lots, alleys, private driveways, horse trails and areas subject to truck traffic (including farmland, orchards, pastures, and forests).	15.5	16.0	16.5	18.5	18.9	19.1	20.1	22.4
Railroad tracks (except electrified railroads using overhead trolley conductors). [†]	23.5	24.0	24.5	26.5	26.9	27.1	28.1	30.4
Pedestrian ways where vehicles are prohibited by regulation or permanent obstructions and not reasonably expected to be used by vehicles.	9.5	12.0	12.5	14.5	14.9	15.1	16.1	18.4
Water areas not suitable for sailboating or where sailboating is prohibited.	14.0	14.5	15.0	17.0	17.4	17.6	18.6	20.9

* This value is 20' for communications cables on joint use structures.

† The railroad company may require greater clearance than shown here.

Continued on next page

Conductor-to-Ground Clearances**0700.3001**

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Water suitable for sailboating (including lakes, ponds, reservoirs, tidal waters, rivers, streams, and canals), that are less than 20 acres.	17.5	18.0	18.5	20.5	20.9	21.1	22.1	24.4
Water suitable for sailboating, but greater than 20 acres, but less than 200 acres.	25.5	26.0	26.5	28.5	28.9	29.1	30.1	32.4
Water suitable for sailboating, but greater than 200 acres, but less than 2000 acres.	31.5	32.0	32.5	34.5	34.9	35.1	36.1	38.4
Water suitable for sailboating, and greater than 2000 acres.	37.5	38.0	38.5	40.5	40.9	41.1	42.1	44.4
Boat ramps and rigging areas.	The clearance shall be 5 ft greater than that required for the water area being served by the boat ramp or rigging area.							

These values are from NESC Table 232-1, except for the state highway clearance that is from WAC 468-34-290.

References

The following Puget Sound Energy documents apply to this standard:

6450.3000 Overhead Distribution Line Design
6550.6200 Conductor Sag Measurement

Sources

IEEE C2-2012
NESC

Rule 232 Vertical clearances of wires, conductors, cables, and equipment above
ground, roadway, rail, or water surfaces

WAC

468-34-290 Vertical clearance

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Scope

This standard establishes the attachment, grounding, structural, and clearance requirements for communications cables and equipment attached to Puget Sound Energy-owned poles.

This standard does not address RF antenna equipment (see Standard 0700.8500).

In This Standard

This standard contains the following topics.

Topic	See Page
Definitions	1
Transmission Pole Loading	3
Cables	4
Guys and Anchors	4
Pole Drilling	6
Unused Facilities	6
Equipment Mounting	6
Risers	7
Underground Service Drops	9
Grounding Requirements	9
Clearance Requirements	10
Streetlight Clearances	15

Definitions

These are definitions of terms used in this standard. *Figure 1* illustrates these terms.

Term	Definition
Communication Worker Safety Zone	See Safety Space.
Communications Space	The space on a pole below the Communication Worker Safety Zone where communications lines are installed. The lower bound of the Communications Space is the lowest point on the pole where communications lines may be installed and maintain adequate pole-to-pole ground clearance.
Covered Streetlight Wire	Insulated streetlight conductor covered with protective molding.
Field Face Quadrant	The quarter section of a pole on the field side of the pole gain.

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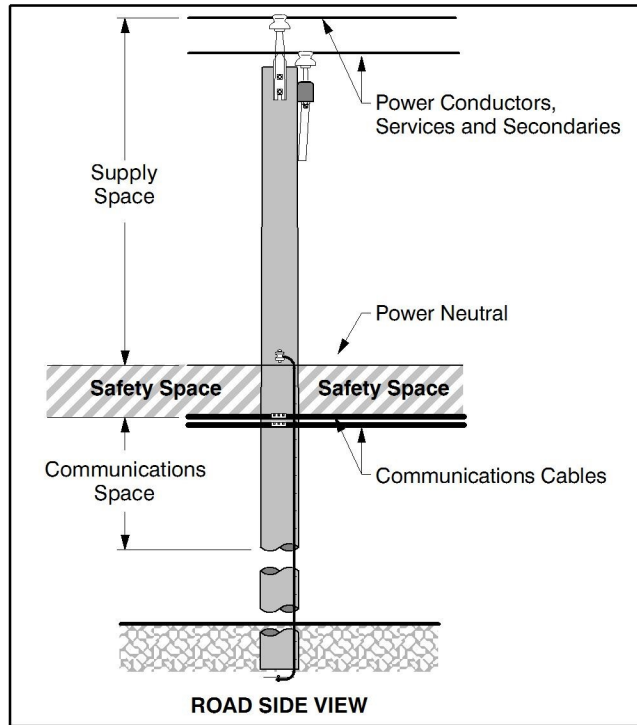
Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Definitions, *continued*

Term	Definition
Joint Utility	For the purposes of this standard, any entity (utility, public agency, communications company, or other) other than Puget Sound Energy that attaches to any Puget Sound Energy-owned facility.
Pole Face	The side or half of the pole that contains the pole gain.
Pole Gain	The notch in the pole that contains the pole manufacturing information. The pole gain is located 12 feet from the butt of the pole.
Road Face Quadrant	The quarter section of a pole on the road side of the pole gain.
Safety Space (or Communication Worker Safety Zone)	The vertical space on a pole below the supply space and above the communications space. This space is intended to provide a safe working clearance for workers in the communications space. It is defined in the NESC, Section 235C4. NOTE: The term “safety space” is used in this standard for purposes of clarity.
Supply Space	The space above the Communication Worker Safety Zone. Except for some streetlights, this is where electric supply equipment and electric supply lines (power lines) are installed. The Supply Space extends to the lower of: ▪ 120 inches down from a 115 or 230 kV transmission line conductor. ▪ 96 inches down from a 19.9/34.5 kV primary line conductor. ▪ 84 inches down from a 2.4/4.0 kV and 7.2/12.47 kV primary line conductor. ▪ The lowest attachment point of a secondary or neutral conductor.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000
Figure 1
Space Allocation on a Pole

Approval Required

Joint utilities must receive written approval from Puget Sound Energy before attaching to Puget Sound Energy-owned poles. This includes overlashing cable to existing bundles on a strand. Joint utilities must also have a signed Joint Use Agreement with PSE. Joint Users must also refer to their Joint Use Agreement for any additional specific requirements.

Codes

All equipment and hardware shall be mounted on the pole in a way that provides adequate climbing and working space. In all cases, clearances and separations as required in the NESC shall be met, both at the pole and midspan.

All poles where attachments are made shall have sufficient structural capacity to support the loadings for all facilities attached. Poles should be reviewed for NESC strength compliance where new or modified facilities are proposed that would increase loading on the pole.

Transmission Pole Loading

PSE will structurally review all proposed attachments to PSE transmission poles. Attachment to transmission poles without distribution underbuild may not be approved.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Cables

Joint utilities' cables shall:

- Attach to the same side of the pole as the power neutral conductor.
- Be installed on the road side of the pole if the power neutral conductor is on a primary crossarm.
- Be tensioned or guyed so the angle of existing structures is not altered and the sag characteristics of the power conductors do not change. All unbalanced tensions must be guyed.
- Meet all applicable NESC clearances at the time of installation or alteration.

When present, PSE-owned fiber shall take the uppermost position on the pole.

Guys and Anchors

The following requirements apply to joint utilities' guys and anchors:

- Each company is responsible for installing the appropriate guying to balance the maximum horizontal tension of its cables/messengers. This includes at deadends, angles, taps, and other such locations. Service drops do not require guying unless deemed prudent by the attaching company.
 - Guys shall be installed with anchors provided and installed by the communications company. Existing PSE anchors may be used only with permission from PSE on a per location basis. Such requests may only be granted if:
 - The communication guy attachment is insulated or grounded.
 - The anchor has sufficient strength. PSE anchors have either 2 or 3 integral "eye" positions depending on the anchor type and this number of attachments shall not be exceeded. ***Installing auxiliary eyes is also not permitted (see Figure 2).***
 - New anchors must be a minimum of 5 feet from existing PSE anchors and the pole (see *Figure 3*).
 - Crossing down guys or fastening two span guys together for ground clearance is not permitted.
 - Pole-to-pole span guying may not utilize a pole as an anchoring device unless a down guy meeting the requirements of this section is installed.
 - Guy markers shall be installed on all communication down guys.
 - Guys must be grounded or insulated.
-

Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

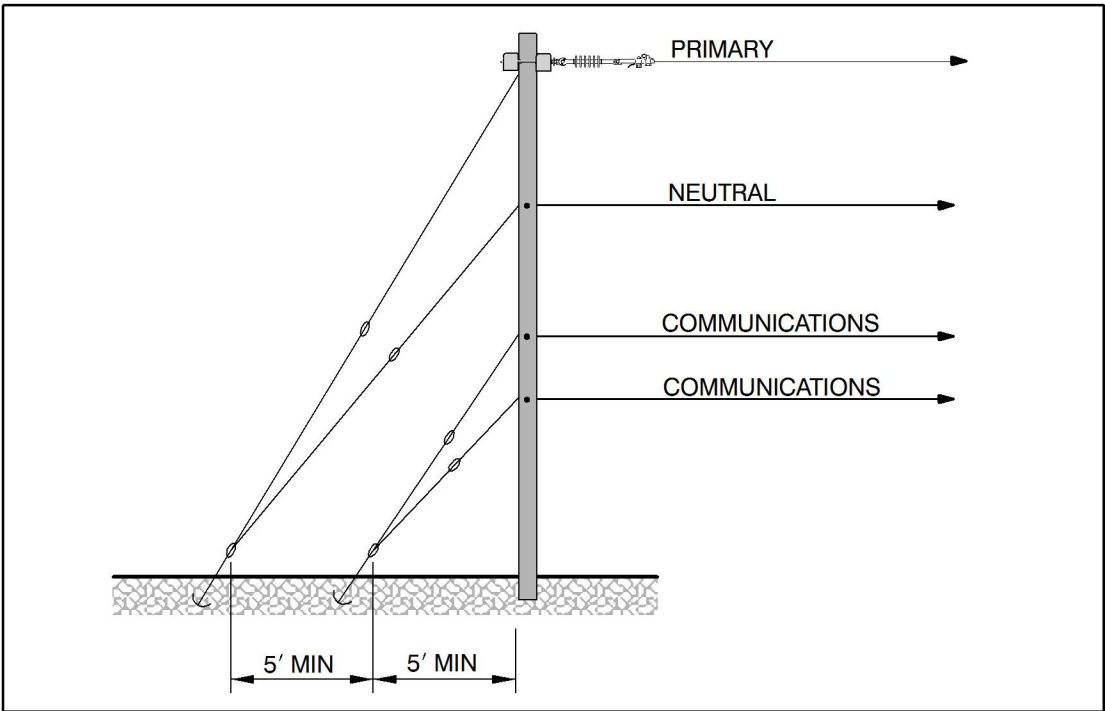
Figure 2

This type of installation is not permitted! PSE anchors have either 2 or 3 integral “eye” positions depending on the anchor type and this number of attachments may not be exceeded.



Figure 3

Anchor Placement



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Pole Drilling

Existing holes shall be used for equipment mounting whenever possible.

When new holes must be drilled in wood poles, they shall be treated with PSE's current approved wood preservative. Treatment shall be applied using a pressure-type oil can or a bottle brush. All communication attachments on PSE steel poles must be banded to the pole unless factory predrilled holes are available. Field drilling is not allowed on steel poles unless approved by PSE on a per case basis.

Refer to PSE Standard 6450.7500 for field treatment requirements for wood poles.

Unused Facilities

Unused communication facilities that are not required for normal service, redundancy, or emergency use shall be removed.

Equipment Mounting

Joint utility-owned communications enclosures mounted more than 8 feet abovegrade on PSE-owned poles shall be no larger than 24 inches wide x 24 inches high x 18 inches deep (24" W x 24" H x 18" D). The joint utility shall provide and install all materials necessary to support a communications enclosure a minimum of **5 inches** from the face of the pole. If the enclosure is to be energized, then the joint utility shall also provide enough supply wire coiled at the weatherhead to reach the transformer secondary connections.

Communications enclosures shall be mounted directly above the pole gain. If this is not possible, they shall be mounted on the road face quadrant of the pole.

NOTE: A city or state electrical inspection is required before PSE connects communications power supply wires to power conductors.

Figure 4 illustrates the attachment requirements for risers and enclosures.

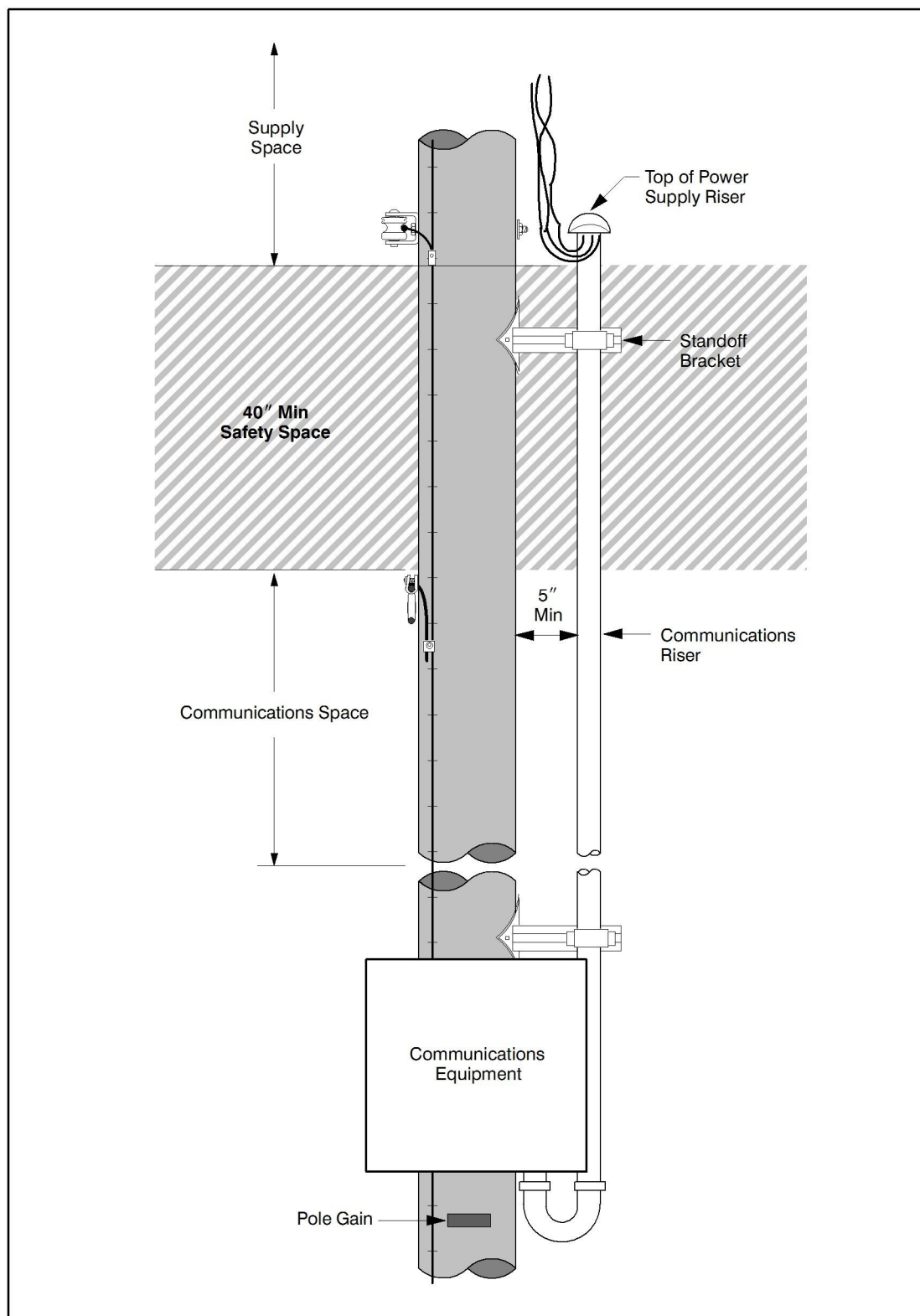
Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Risers, *Continued*

Figure 5

Attachment Requirements for Communications Risers



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Underground Service Drops

Communications drops less than 1/2-inch in diameter may be attached directly to a pole under the following circumstances:

- They shall be securely attached, in accordance with NESC 239D, from the ground to the communications level, using staples or other means to ensure that the cables cannot be pulled away from the pole and become a tripping or snagging hazard to the public or anyone climbing the pole.
- To minimize climbing hazards, they shall only run vertically; they shall not wrap around the pole.
- All vertical runs shall be installed on the same quadrant of the pole. If there are existing conduit risers on the pole, the vertical runs shall be placed within the same quadrant as the existing riser(s).
- Any coils of spare cable will be attached to the pole no less than 8 feet abovegrade.
- Connection blocks will be mounted on the pole in the same quadrant as the drop and shall be no larger than 20 square inches.

Grounding Requirements

Metallic Messenger Bonding

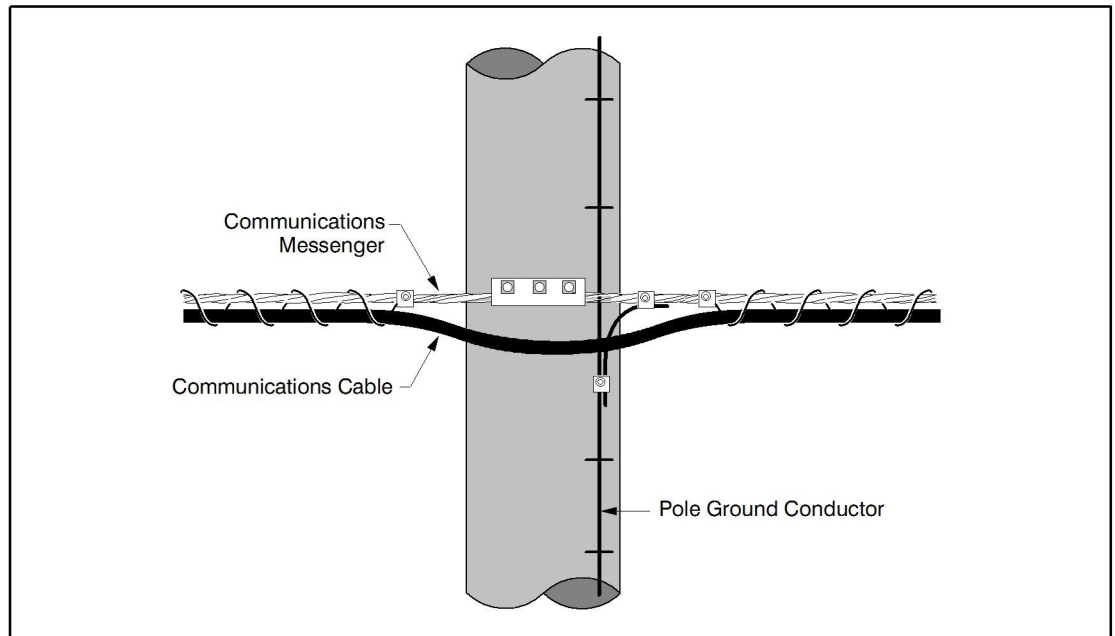
Communications metallic or conductive messengers may be bonded to the pole ground conductor, in accordance with NESC 97G, by the attaching company.

NOTE: Nonmetallic/nonconductive self-supporting messengers (i.e., Kevlar-type) do not require bonding.

Figure 6 illustrates how to construct the grounding.

Figure 6

Grounding Communications Messengers at Supports



Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Clearance Requirements

Transmission
Clearances

PSE does not allow attachments to transmission poles above 100 kV unless the pole has distribution underbuild. For applications to transmission poles with existing distribution underbuild, PSE personnel will determine whether the attachment will be allowed and, if so, provide clearance requirements.

Distribution
Clearances
(up to and
including 34.5 kV)

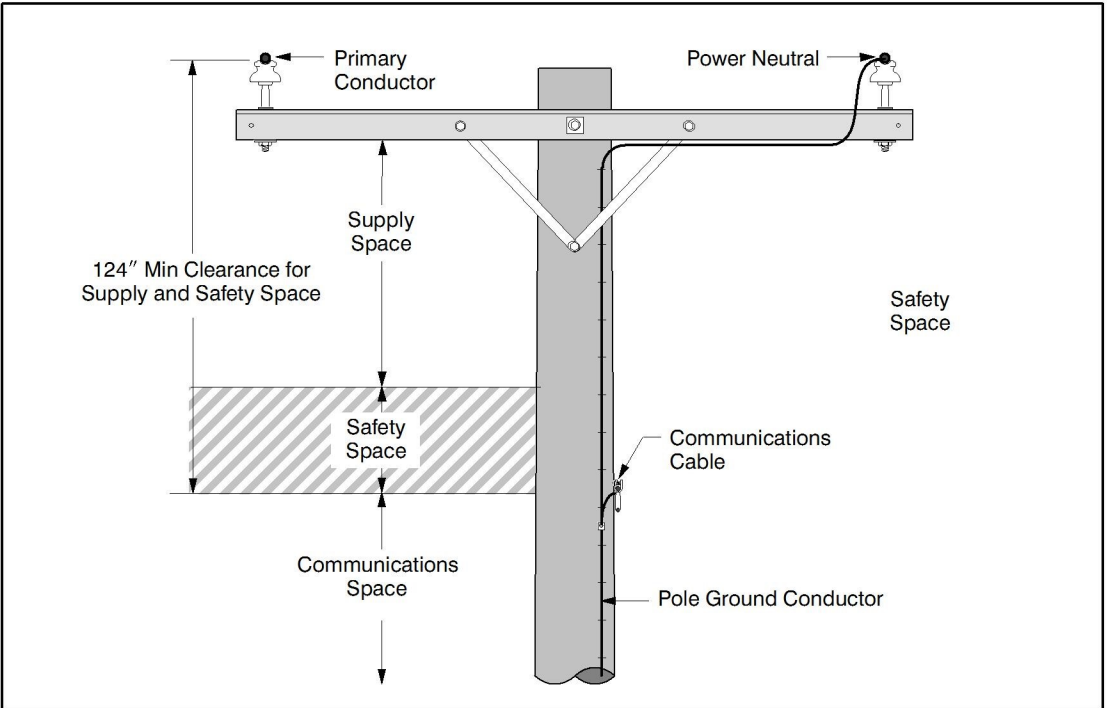
It is the responsibility of the joint utility to determine which clearance listed below applies, based upon the type of supply equipment or construction on the pole.
NOTE: All clearances are measured vertically.

Clearance at
Supports

The minimum clearance at supports between power company equipment and the top of the communications space depends upon the type of construction and equipment on the pole.

If . . .	And . . .	Then . . .
All primary conductors are mounted on a crossarm at the same level (either single or double arm construction),	There is no additional power equipment mounted below the primary arm,	124-inch (10'-4") minimum clearance is required (<i>Figure 7</i> illustrates this clearance). <i>NOTE:</i> This clearance is measured from the tie wire or conductor clamp on the insulator to the top of the communications space. This distance encompasses the supply and safety space and provides room for future installation of supply equipment and/or service conductor.

Figure 7 Clearance Between Power Conductors and Communications Space



Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Supply Equipment

If any of the following supply equipment is mounted on the pole, a minimum clearance of 40 or 30 inches is required, depending upon whether the supply equipment is ungrounded or grounded.

This clearance is measured from the *bottom of the lowest piece* of supply equipment to the top of the communications space.

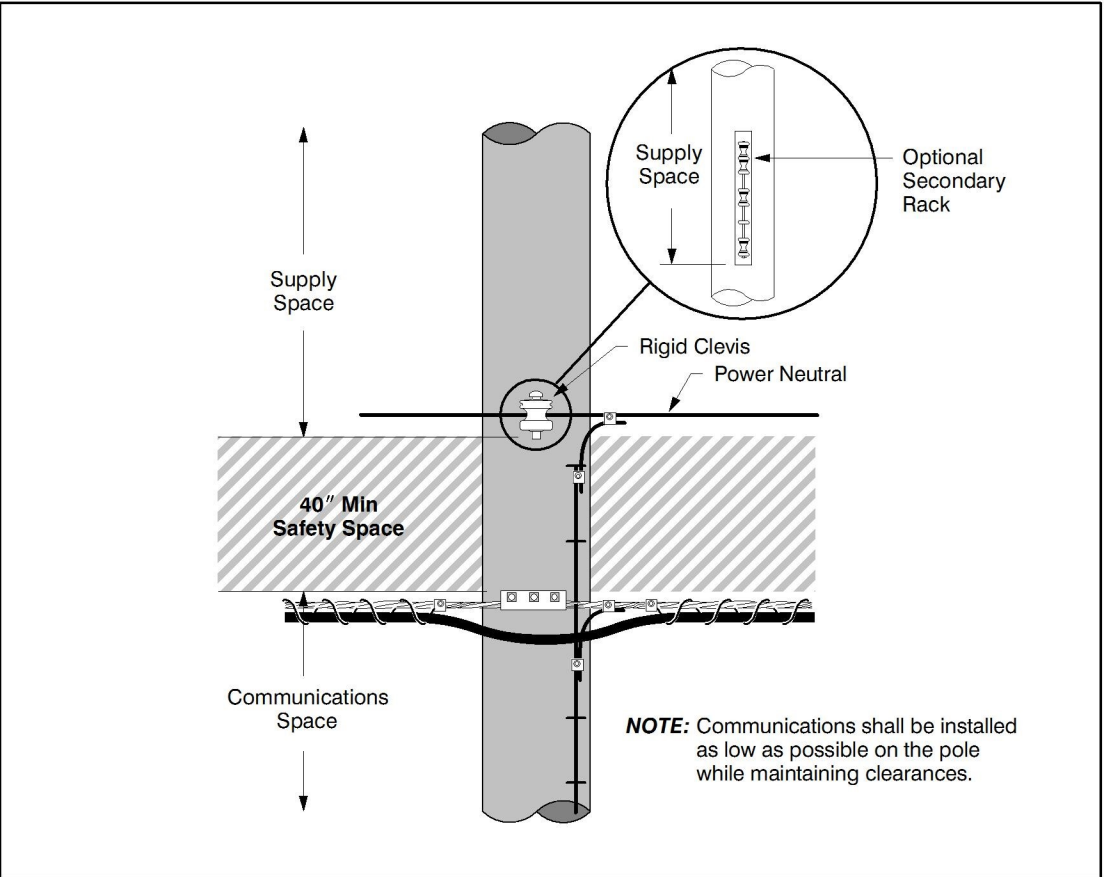
Ungrounded Equipment

Ungrounded equipment has a 40-inch clearance.

Equipment	See Illustration
Rigid clevis	Figure 8
Secondary rack	Figure 8
Exposed supply wire This does not apply to streetlight supply wire drip loops.	Figure 9 and Figure 10
Secondary crossarm brace	None

Figure 8

Clearance Between Ungrounded Supply Equipment and Communications Space



Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Clearance Requirements, *continued*

Figure 9 Clearance Between Supply Conductor Drip Loop and Communications Space

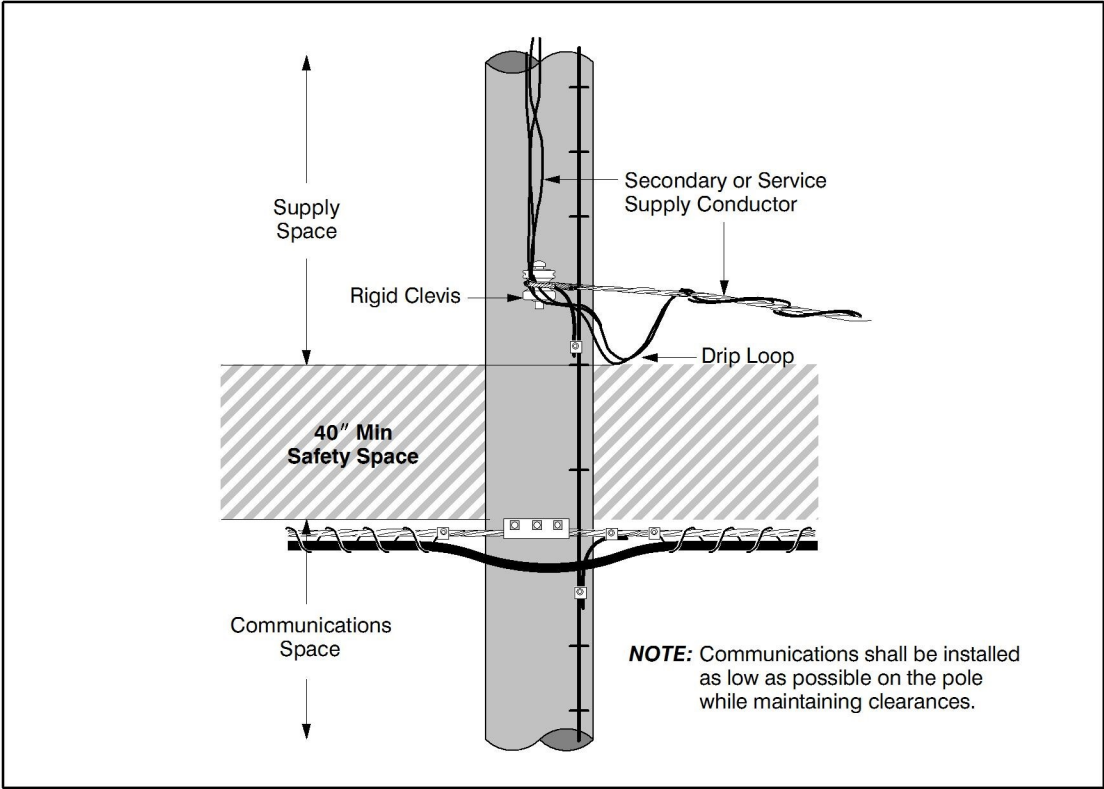
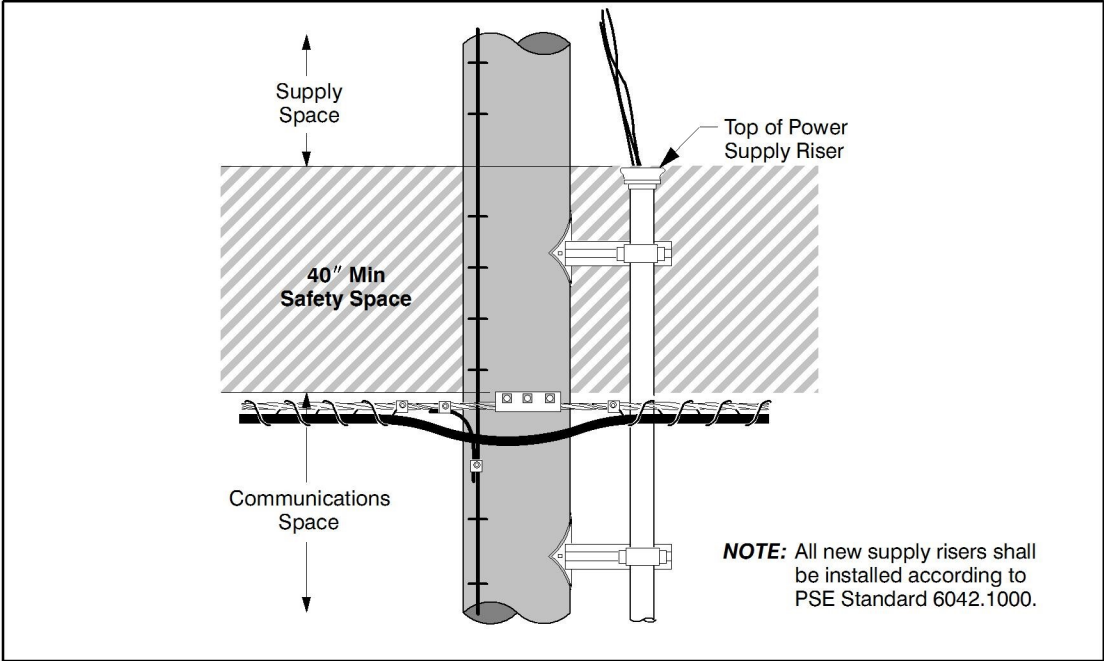


Figure 10 Clearance Between Top of Power Riser and Communications Space



Attachment and Clearance Requirements
for Overhead Joint Utility Construction

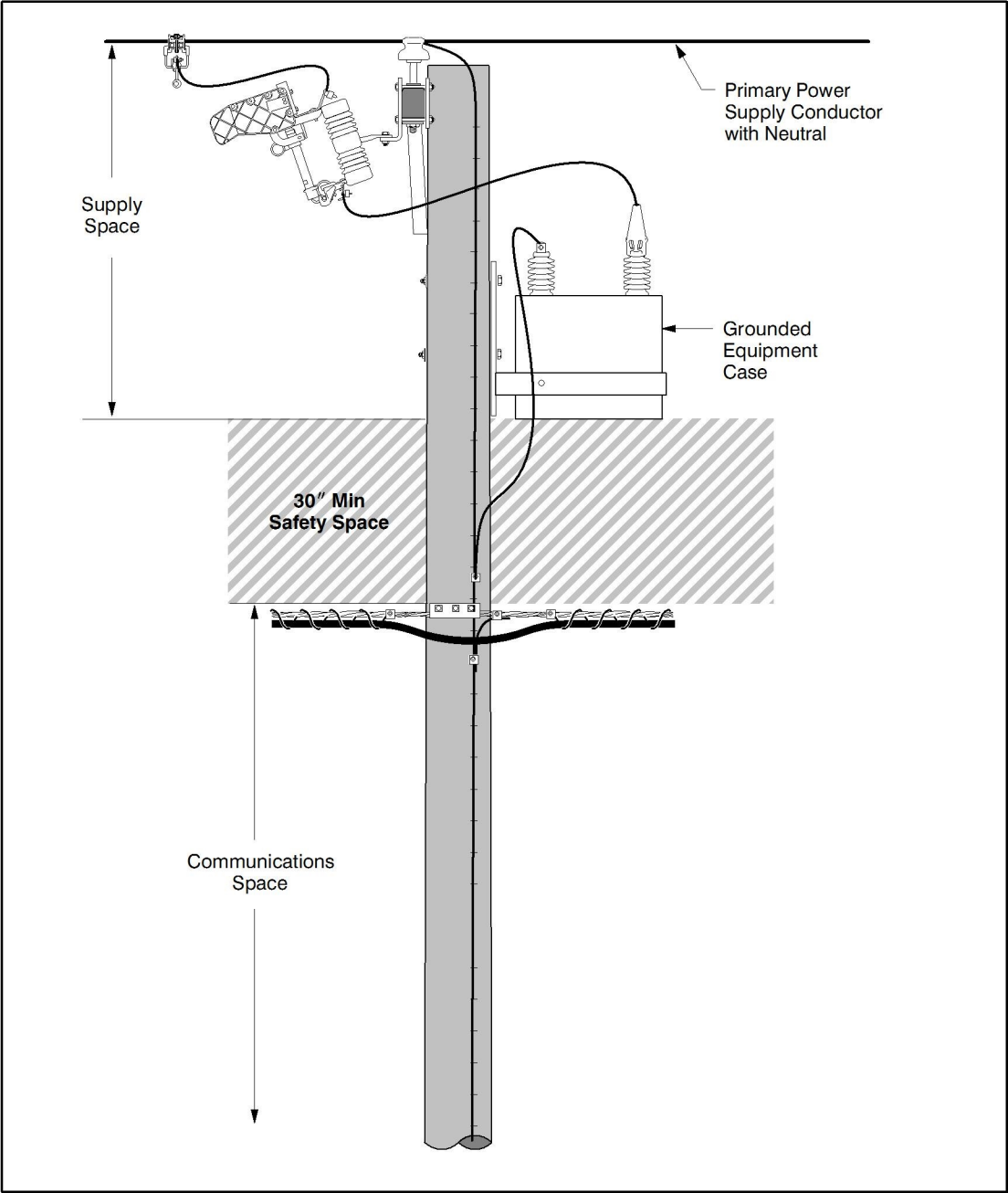
0700.8000

Grounded
Equipment

Grounded equipment has a 30-inch clearance. *Figure 11* illustrates a typical (in this case a capacitor bank) equipment installations.

Figure 11

Clearance Between Grounded Supply Equipment and Communications Space



Clearance Requirements, *continued*

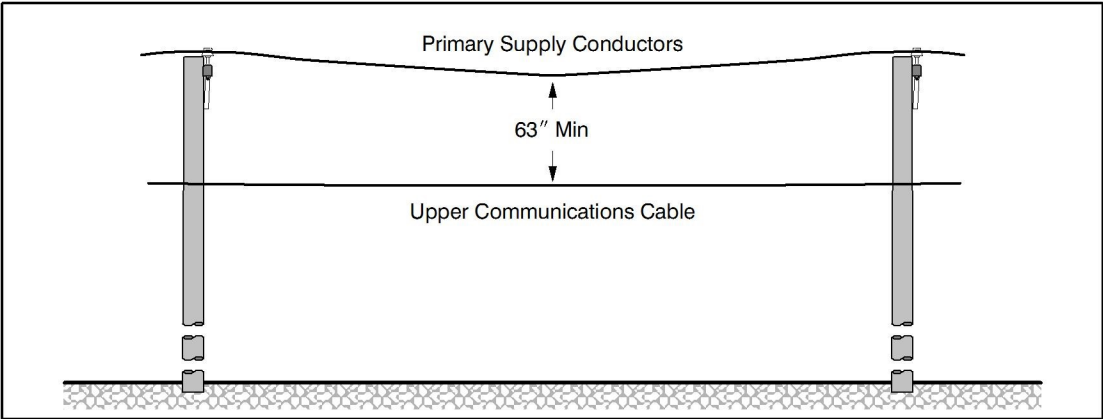
Midspan Clearance The minimum vertical clearance at any point in the span between power conductors and communications cables is **63, 40, or 30 inches**, depending upon the power line voltage. There are no horizontal clearance dimensions that can alleviate vertical clearance requirements between power conductors and communications cables jointly attached to PSE poles.

These midspan clearances must be met with the upper conductor (PSE) and the lower conductor (communications) at their final unloaded sag in the same ambient conditions and with the power conductor at its maximum design operating temperature (75°C for phase, 50°C for neutral, and 75°C for secondary).

NOTE: Meeting the midspan clearance requirements may require increasing the clearance distance at the supports (poles) beyond the minimum values.

Equipment	Voltage	Clearance
Primary supply conductors <i>Figure 12</i>	750 V to 34.5 kV	A 63-inch clearance is required.
Power neutral or triplex <i>Figure 13</i>	0-750 V	A 30-inch clearance is required
Open wire secondary	0–750 V	A 40-inch clearance is required

Figure 12 Midspan Clearance Between Primary Supply Conductors and Communications Cables

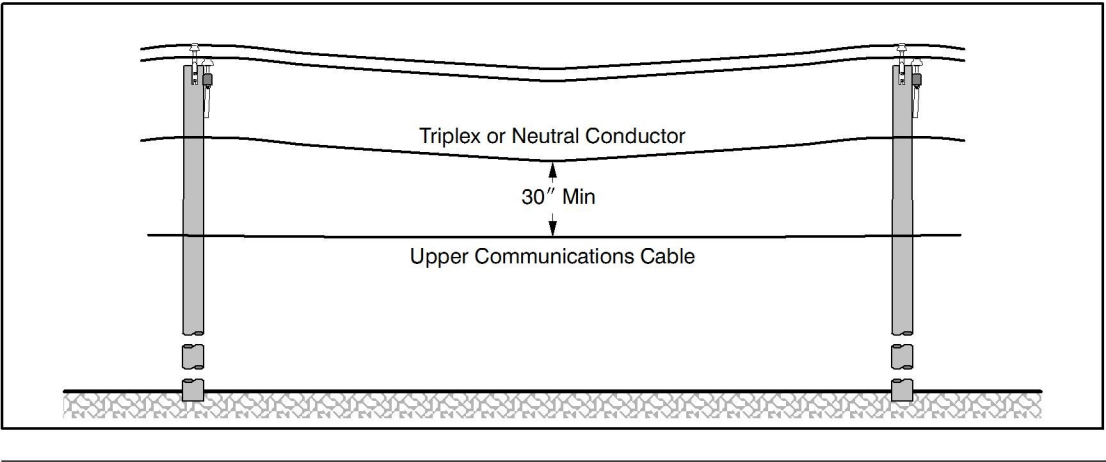


Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Figure 13

Midspan Clearance Between Secondary or Neutral Conductors and Communications Cables



Streetlight Clearances

Special clearances exist between streetlights and communications cables because:

- They may be installed anywhere on the pole, assuming all clearance requirements are met.
- Vertical runs of streetlight supply wire may or may not be covered with protective molding.

All clearances apply 360° around the entire pole.

Cables Installed
Below Streetlights

When communication cables are installed below a streetlight on a pole, **all** of the following minimum clearance requirements shall be met:

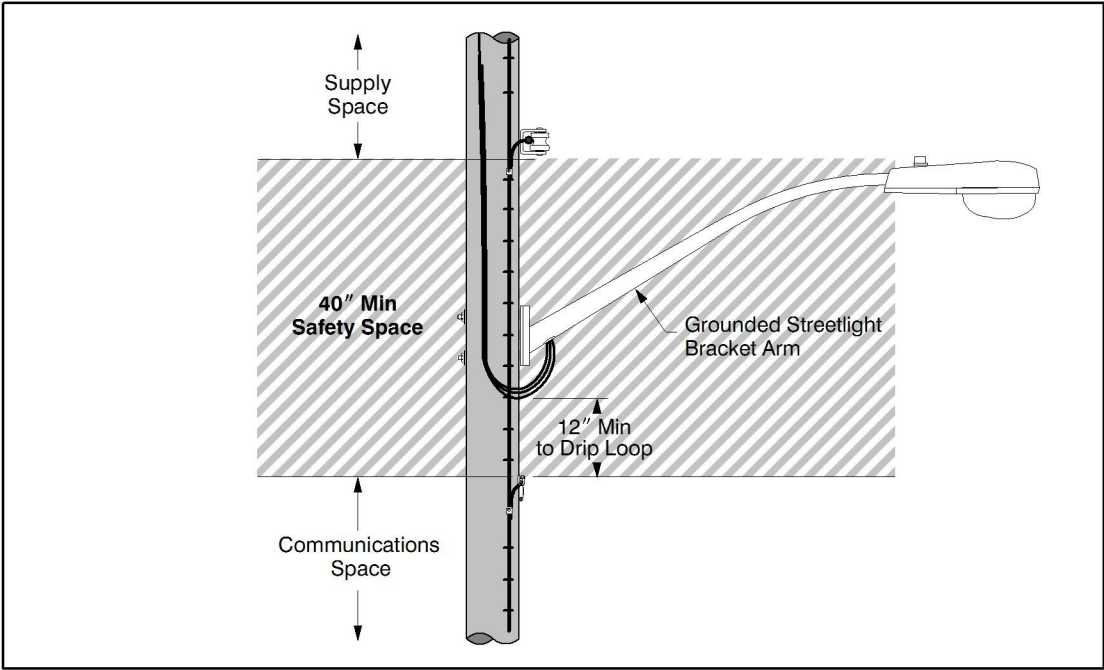
Between the bottom of . . .	This clearance is required
Drip loop of the streetlight supply wire and the top of the communications space.	12 inches *
Supply space and the top of the communications space.	40 inches

* This may be reduced to 3 inches if the loop is covered by a suitable nonmetallic covering that extends at least 2 inches beyond the loop.

Figure 14 illustrates these clearance requirements.

Streetlight Clearances, *Continued*

Figure 14 Clearances for Communications Cables Installed Below Streetlights



Streetlights
Installed Beneath
Communication
Conductors

Proper streetlight mounting heights may require that the bracket be installed beneath the communication conductors.

When this is the case, *all* of the following minimum clearance requirements shall be met:

Between . . .	This clearance is required
Top of the streetlight bracket and the bottom of the communications space.	20 inches
Bottom of the streetlight supply wire molding (where wire is exposed at drip loop) and the bottom of the communications space.	40 inches
Top of the streetlight supply wire molding (where wire is exposed) and the top of the communications space.	40 inches

Figure 15 illustrates these clearance requirements.

⚠ CAUTION!

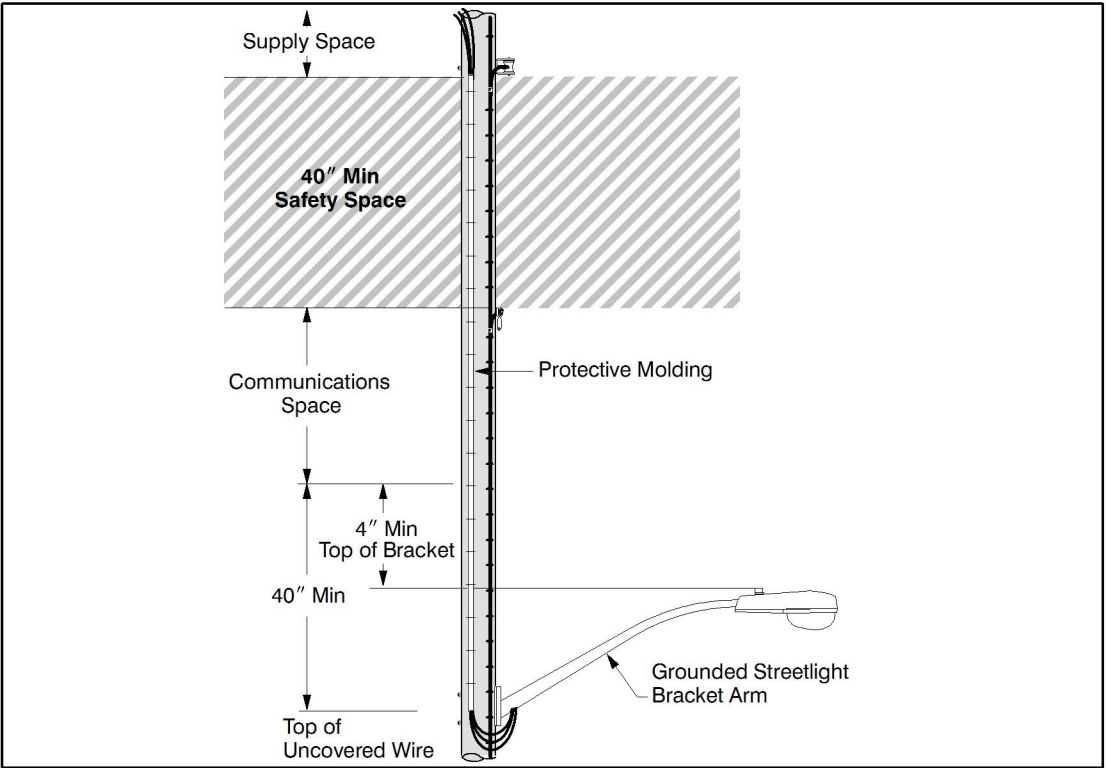
Communications cables shall not be installed above streetlights if the vertical run of streetlight supply wire is not covered with protective molding.

Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Figure 15

Clearances for Communications Cables Installed Above Streetlights



References

The following Puget Sound Energy documents relate to this standard:

0700.8500	RF Antenna Equipment on Power Poles
6042.1000	Conduit Riser
6450.3900	Wood Pole Information
6450.7500	Field Drilling, Roofing, and Treating Wood Poles and Crossarms

Sources

ANSI	O5.1	Wood Poles: Specifications and Dimensions
IEEE C2-2012 NESC	Rule 97G	Bonding of communication systems to electric supply systems
	Rule 235	Clearance for wires, conductors, or cables carried on the same supporting structure
	Rule 235C4	Communication worker safety zone
	Rule 238	Vertical clearance between certain communications and supply facilities located on the same structure
	Rule 239D	Guarding and protection near ground

List of Changes for 0700.8000

Date	Description of Revisions
04/26/19	▪ Added "Communication Worker Safety Zone" to the definitions.



PUGET
SOUND
ENERGY



9/20/23

NOA Net
Mike LaFond
4417 Seville Dr. SE
mlafond@noanet.net

Re: TK #5628894, Order #186065659 – Replace [3] Transmission poles, Replace [1] Distribution Pole, Splice Conductor, Raise Distribution & Neutral, Raise Street Light.

Dear Mike,

Per your request, below is the cost estimate to **Replace [3] Transmission poles, Replace [1] Distribution Pole, Splice Conductor, Raise Distribution & Neutral, Raise Street Light**. This estimate does not include any applicable permit fees or easements if needed.

Upon receipt of this signed agreement, we will release your job and schedule it for construction. Please return this signed agreement to NJUNS or email dan.coffin@pse.com.

Once this work has been completed, a review of the actual costs will be performed. If actual costs are within 10% (+ or -) of the estimated cost, you will be billed the estimated cost below. If the actual costs either exceed, or are below the estimate by 10%, you will be billed the actual cost amount.

Estimate **\$ 230,013.73**

This estimate is valid for (90) ninety days.

If you have any questions or need additional information, please give me a call at 425.424.7799

Sincerely,

Dan Coffin
Associate Engineering Specialist
Communication Sitings & Services
Puget Sound Energy

Acceptance of Work – Engineering Services Agreement Cost Letter

Name	Title	Company	Date
<i>Please sign and date above</i>			

By signing you are confirming you be charged for any services provided. Please read below for details of cancellation and non-response. Once acceptance has been validated the work request cannot be changed without additional cost and/or delays.

Cancellation, Non-Response, and Time of Estimate: Engineering Services Agreement Cost Letter

Effects of cancellation and Non-Response

1. If the project is cancelled an invoice billing will be processed for any services provided up to the point at which the project is cancelled.
2. If no response is received on the cost letter within **(30)** thirty days the project will be canceled and an invoice billing will be processed for any services provided.
3. Estimate is valid for (90) ninety days only. If response time exceeds this time frame a new estimate will need to be executed.

The amount you would be responsible for (known as the Minimum Charge) is all engineering, field visit/site work, and travel to and from the project site up to the time and date of cancellation.

If there is a possibility of cancellation of your agreement with us please notate the NJUNS (National Joint Use Notification System) Pole Attachment ticket and contact the Project Manager assigned to work on the project.

The logo is contained within a dark blue rounded rectangle. On the right side of the rectangle, there are seven horizontal yellow lines of varying lengths, slightly offset from each other, creating a sense of motion or signal. The word "access" is written in a light blue, lowercase, sans-serif font.

access

ANACORTES FIBER INTERNET

PSE Make Ready Estimate
Section B
October 2, 2023

EDA Service Area

- City obtained \$2.25M Grant from US Dept of Commerce Economic Development Administration and \$.5M Grant from Skagit County
- Passes 1815 premises
- Materials Contract under contract
- Construction ITB under development
- Construction 1st qtr 2024 – 2nd qtr 2025
- Customer installations in late 2024



PSE Pole Attachment Agreement

Make-ready Definition

Means any and all work relating to the installation of additional Poles, Poles of greater height or strength, additional guying, or rearrangements of PSE's Equipment or the Equipment of any other party licensed by PSE to use the Poles as required in order for PSE to provide City with access to the Poles.



POLE ATTACHMENT AGREEMENT

BETWEEN

PUGET SOUND ENERGY, INC.

AND

CITY OF ANACORTES

Date: 10/16/2019

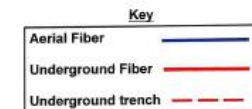
PSE Pole Attachments in EDA Expansion Area

EDA Expansion Area	Pole Count	Attachments Currently Approved?	Poles Requiring Make Ready	PSE Make Ready Estimate
A	50	No	6	tbd
B	33	No	6	\$230k
C	29	No	1	\$1,375
D	2	Yes	n/a	\$0
E	69	Yes	n/a	\$0
F	10	No	tbd	tbd
G	21	Yes	n/a	\$0
H	17	No	tbd	tbd



EDA Expansion Aerial Construction Drawings

City of Anacortes Engineering Services Manager: Tim Hohmann (360) 588-8
 City of Anacortes Project Manager: John Norris (360) 770-4664
 City of Anacortes Stormwater Program Manager: Diane Hennebert (360) 295-
 NoaNet Outside Plant Engineer: Michael LaFond (360) 791-2869
 NoaNet Design: Nick Ulrich (206) 707-5736
 NoaNet Construction Manager: Rob Goede (509) 362-6533
 NoaNet Director: Chris Walker (208) 699-1031



Note: The midspan height call-outs on these prints are for the pole attachment approval process with Puget Sound Energy.



This project is funded in part by U.S. Commerce Department Economic Development Administration grant award 07-



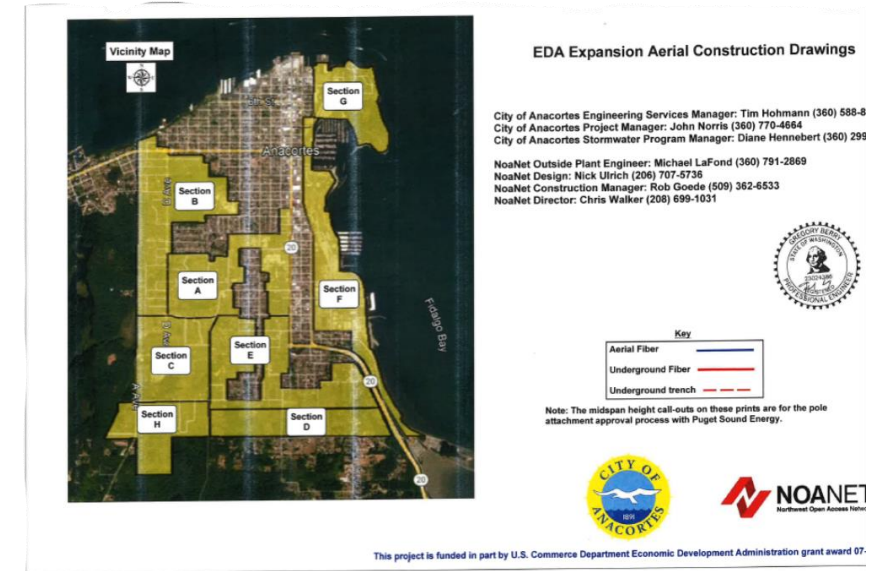
Alternative to Make Ready Expense?

- Rework plans to move to underground installation, but
 - Delay in project (1+ year?)
 - New engineering costs
 - Additional material costs, new RFP requirement

Engineering Services Agreement Cost Letter (Section B)

Staff seeks City Council approval to complete this work

**Cost Estimate
\$230,013.73**



Per your request, below is the cost estimate to **Replace [3] Transmission poles, Replace [1] Distribution Pole, Splice Conductor, Raise Distribution & Neutral, Raise Street Light**. This estimate does not include any applicable permit fees or easements if needed.

Upon receipt of this signed agreement, we will release your job and schedule it for construction. Please return this signed agreement to NJUNS or email dan.coffin@pse.com.

Once this work has been completed, a review of the actual costs will be performed. If actual costs are within 10% (+ or -) of the estimated cost, you will be billed the estimated cost below. If the actual costs either exceed, or are below the estimate by 10%, you will be billed the actual cost amount.

Estimate

This estimate is valid for (90) ninety days.

\$ 230,013.73



Contact Us.

360-588-8300

broadband@cityofanacortes.org



City Council Agenda Bill

Meeting Date: October 2, **Agenda Item:** 7.c.
2023

Agenda Item Title: Resolution 3129: Setting a Date for a Public Hearing on a Vacation Petition

Staff Contact(s): Steve Lange

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
Jordan Boggs	Resolution
STEVE HOGLUND	
DARCY SWETNAM	

Item Summary: Bob Evans submitted a petition for the vacation of a portion of a street right of way at the intersection of O Avenue and 34th Street between tax parcel #P57150 on the west and #P57179 on the east. The street right of way is situated just south of the Evans Funeral Chapel and the abutting properties are owned Bob Evans and his family. RCW 35.79.010 requires a time to be fixed for a public hearing on said matter within 20-60 days of filing. The Resolution will set a date for a public hearing on November 20, 2023 to determine whether the vacation petition application is approved.

Budget Impact:
N/A

Previous Action: N/A

Recommended Motion: I move we adopt Resolution No. 3129 setting a date for a vacation petition to be heard.

Alternative Actions: Decline to set date for public hearing.

Attachments (listed in order presented):

1. Resolution 3129
2. O Ave Vacation Map

RESOLUTION NO. 3129

**A RESOLUTION FIXING A TIME WHEN A PETITION FOR VACATION
MAY BE HEARD AND DETERMINED BY THE CITY COUNCIL IN
SETTING A PUBLIC HEARING DATE.**

WHEREAS, a petition for the vacation of the below described property has been signed by the requisite number of abutting property owners and filed with the City Clerk of the City of Anacortes; and

WHEREAS, RCW 35.79.010 requires a time to be fixed for a public hearing on said matter; now, therefore,

**BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF ANACORTES,
WASHINGTON, AS FOLLOWS:**

Section I. That certain petition asking for the vacation of a portion of O Avenue described in Section II. shall be heard and determined by the City Council and a public hearing shall be heard thereof on the **20th day of November 2023.**

Section II. A portion of a street right of way at the intersection of O Avenue and 34th Street between tax parcel #P57150 on the west and #P57179 on the east. The street right of way is situated just south of the Evans Funeral Chapel and the abutting properties are owned by the Evans family.

**INTRODUCED, PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY
OF ANACORTES on this 2nd day of October 2023.**

Matt Miller, Mayor

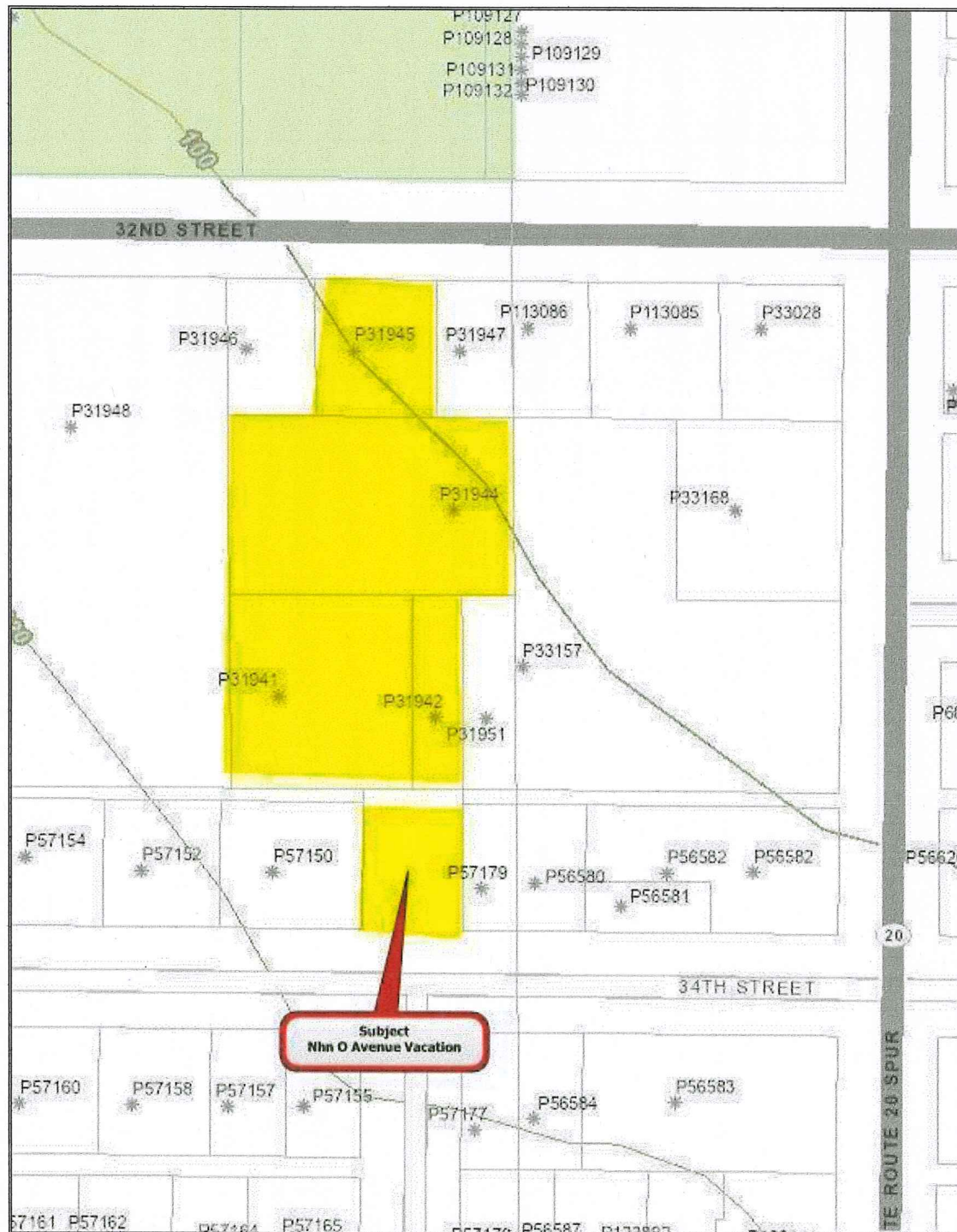
Approved as to form and legality:

Darcy Swetnam, WSBA #40530
City Attorney

ATTEST:

Steven D. Hoglund, City Clerk Treasurer

PLAT MAP





City Council Agenda Bill

Meeting Date: October 2, **Agenda Item:** 7.d.
2023

Agenda Item Title: Contract Award: R Avenue Long-Term Improvement Project #20-127-TRN-004

Staff Contact(s): Andrew Rheaume, Steven Lange

Approved for Submittal to Council by **Action Type**
TIFFANY MATSON Contract Award

Item Summary: City staff seeks City Council consent to award a contract in the amount of \$4,324,831.00 to SRV Construction Inc. to perform the R Avenue Long-Term Improvement Project.

Background:

1. **History:** This project provides for infrastructure improvements along R Avenue between 34th Street and 22nd Street. Work includes installing temporary erosion control measures; removing certain existing features; clearing and grubbing of widened sidewalk areas; sawcutting and removing concrete curbs, gutters, and sidewalks, as well as asphalt pavement; installing stormwater systems for collection, conveyance, and treatment of road runoff; reconstructing road sections of R Avenue; upgrading the existing R Avenue and 30th Street intersection with a new single-lane roundabout; modifying the R Avenue median to reduce vehicle crossing points; relocating pedestrian crossings and bus shelters; installing cement concrete curbs, gutters, driveways, bike ramps, sidewalks, truck aprons, splitter islands, and ADA facilities; paving with HMA; installing Illumination, landscaping, pavement markings, and permanent signing; restoring disturbed areas; roadside cleanup; traffic control; construction and licensed surveying; and other work. The project is approximately 3,600 feet long.
2. **Key Terms:**
 - Contract is for a fixed price of \$4,324,831.00.
 - Physical Completion shall be achieved within 50 Working days,
3. **Competitive Bidding:** On August 30, 2023 the City [solicited bids](#) for the subject project and on September 21, 2023 a bid opening was conducted and 8 bids were received. SRV Construction Inc. was determined to be the lowest responsible bidder. The Engineer's Estimate for this project was \$4,183,151.54.

Bid results are provided as an attachment hereto.

Budget Impact:

Contractor	SRV Construction Inc.
Contract Amount	\$4,324,831.00
Earmarked Funds	\$5,027,164.00
BARS #	105.720.595.30.63
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	50 working days

Previous Action: N/A

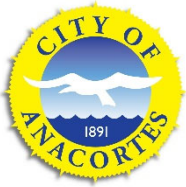
Recommended Motion: I move that City Council authorize the Mayor to sign contract 20-127-TRN-004 with SRV Construction Inc. in the amount of \$4,324,831.00 to perform the R Avenue Long-Term Improvement Project.

Alternative Actions: Not award the contract.

Attachments (listed in order presented):

1. Bid Tabulation
2. 20-127-TRN-004
3. 30th Street Roundabout

CITY OF ANACORTES																					
Engineering Estimate																					
R Avenue Long-Term Improvement Project																					
DATE: September 21, 2023																					
Yellow Highlighted Cells Denote a Difference Between Bid Tab and Bidder's Amount. Bid Tab Based Upon Unit Pricing.																					
		Engineer Estimate				Nordland Construction NW, Inc.		Granite		Interwest Construction Inc.		SRV Construction, Inc.		Tiger Construction		Faber Construction Corp		Taylor's Excavator's Inc.		Strider Construction Company	
ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1 - Min Bid Req - Drawing of Record	1-05.5	1	LS	\$7,360.00	\$7,360.00	\$5,000.00	\$5,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,790.00	\$3,790.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
2 -Roadway Surveying	1-05.5	1	LS	\$53,420.00	\$53,420.00	\$65,000.00	\$65,000.00	\$53,000.00	\$53,000.00	\$48,500.00	\$48,500.00	\$60,500.00	\$60,500.00	\$43,000.00	\$43,000.00	\$12,632.00	\$12,632.00	\$51,000.00	\$51,000.00	\$50,000.00	\$50,000.00
3 -Licensed Surveying	1-05.4 GSP	1	EST	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
4 -ADA Features Surveying	1-05.4 GSP	1	EST	\$22,000.00	\$22,000.00	\$15,000.00	\$15,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$7,600.00	\$7,600.00	\$9,000.00	\$9,000.00	\$15,158.00	\$15,158.00	\$15,000.00	\$15,000.00	\$6,800.00	\$6,800.00
5 - SPCC Plan	1-07.5	1	LS	\$1,200.00	\$1,200.00	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$250.00	\$250.00	\$280.00	\$280.00	\$1,065.00	\$1,065.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
6 - Type B Progress Schedule	1-08.5 GSP	1	LS	\$6,200.00	\$6,200.00	\$5,000.00	\$5,000.00	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00	\$2,500.00	\$2,500.00	\$280.00	\$280.00	\$2,130.00	\$2,130.00	\$1,000.00	\$1,000.00	\$5,000.00	\$5,000.00
7 - Mobilization	1-09.7	1	LS	\$291,954.74	\$291,954.74	\$425,000.00	\$425,000.00	\$434,500.00	\$434,500.00	\$133,000.00	\$133,000.00	\$251,500.00	\$251,500.00	\$200,000.00	\$200,000.00	\$124,081.00	\$124,081.00	\$230,000.00	\$230,000.00	\$300,000.00	\$300,000.00
8 - Repair/Restoration of Public and Private Facilities	1-09.6	1	LS	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00	\$10,440.00
9 - Project Temporary Traffic Control	1-10.5	1	LS	\$88,430.00	\$88,430.00	\$75,000.00	\$75,000.00	\$68,000.00	\$68,000.00	\$63,000.00	\$63,000.00	\$46,350.00	\$46,350.00	\$73,000.00	\$73,000.00	\$46,280.00	\$46,280.00	\$58,000.00	\$58,000.00	\$90,000.00	\$90,000.00
10 -Clearing and Grubbing	2-01.5	1	ACRE	\$11,000.00	\$9,900.00	\$35,000.00	\$31,500.00	\$60,000.00	\$54,000.00	\$27,250.00	\$24,525.00	\$25,000.00	\$22,500.00	\$29,500.00	\$26,550.00	\$56,637.00	\$50,973.30	\$20,000.00	\$18,000.00	\$80,000.00	\$72,000.00
11 -Removal of Structures and Obstructions	2-02.5	1	LS	\$256,830.00	\$256,830.00	\$350,000.00	\$350,000.00	\$150,000.00	\$150,000.00	\$175,000.00	\$175,000.00	\$97,500.00	\$97,500.00	\$300,000.00	\$300,000.00	\$190,009.00	\$190,009.00	\$40,000.00	\$40,000.00	\$200,000.00	\$200,000.00
12 - Sawcutting Asphalt Concrete Pavement	2-02.5	5,530	LF	\$3.00	\$16,590.00	\$5.00	\$27,650.00	\$4.00	\$22,120.00	\$3.10	\$17,143.00	\$2.85	\$15,760.50	\$2.00	\$11,060.00	\$4.00	\$22,120.00	\$4.00	\$22,120.00	\$2.00	\$11,060.00
13 - Sawcutting Cement Concrete Pavement	2-02.5	400	LF	\$4,000.00	\$4,000.00	\$10.00	\$4,000.00	\$10.00	\$4,000.00	\$10.00	\$4,000.00	\$5.00	\$2,000.00	\$5.00	\$2,000.00	\$5.00	\$2,000.00	\$5.00	\$2,000.00	\$4.00	\$1,600.00
14 - Roadway Excavation Incl. Haul	2-03.5	11,300	CY	\$24.00	\$271,200.00	\$35.00	\$395,500.00	\$40.00	\$452,000.00	\$26.75	\$302,275.00	\$21.00	\$237,300.00	\$26.50	\$299,450.00	\$29.00	\$327,700.00	\$36.00	\$406,800.00	\$22.00	\$248,600.00
15 - Pothole Utilities	2-05.5	20	EA	\$600.00	\$12,000.00	\$1,500.00	\$30,000.00	\$450.00	\$9,000.00	\$805.00	\$16,100.00	\$275.00	\$5,500.00	\$540.00	\$10,800.00	\$814.00	\$16,280.00	\$350.00	\$7,000.00	\$525.00	\$10,500.00
16 - Structure Excavation Class B Incl. Haul	2-09.5	750	CY	\$25.00	\$18,750.00	\$35.00	\$26,250.00	\$25.00	\$18,750.00	\$20.50	\$15,375.00	\$15.75	\$11,812.50	\$23.50	\$17,625.00	\$33.00	\$24,750.00	\$36.00	\$27,000.00	\$8.00	\$6,000.00
17 - Shoring or Extra Excavation Class B	2-09.5	2,815	SF	\$1.50	\$4,222.50	\$3.00	\$8,445.00	\$10.00	\$28,150.00	\$1.50	\$4,222.50	\$1.00	\$2,815.00	\$0.25	\$703.75	\$3.00	\$11,260.00	\$2.00	\$5,630.00	\$0.20	\$563.00
18 - Trimming and Cleanup	2-11.5	1	EST	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00	\$5,200.00
19 - Construction Geotextile for Soils Stabilization	12-Feb	10,430	SY	\$2.00	\$20,860.00	\$2.50	\$26,150.00	\$2.50	\$26,075.00	\$3.00	\$31,290.00	\$1.70	\$17,731.00	\$3.00	\$31,290.00	\$3.00	\$31,290.00	\$3.00	\$31,290.00	\$2.40	\$25,032.00
20 - Crushed Surfacing Top Course	4-04.5	6,070	TON	\$32.00	\$194,240.00	\$38.00	\$230,660.00	\$48.00	\$291,360.00	\$40.00	\$291,360.00	\$33.00	\$200,310.00	\$36.50	\$221,555.00	\$37.00	\$224,590.00	\$30.00	\$182,100.00	\$38.00	\$230,660.00
21 - Crushed Surfacing Base Course	4-04.5	8,030	TON	\$25.00	\$200,750.00	\$37.00	\$297,110.00	\$40.00	\$321,200.00	\$39.50	\$317,185.00	\$30.00	\$240,900.00	\$32.00	\$256,960.00	\$37.00	\$297,110.00	\$30.00	\$240,900.00	\$40.00	\$321,200.00
22 - Planing Bituminous Pavement	5-04.5	1,906	SY	\$11.00	\$20,966.00	\$13.00	\$24,778.00	\$4.00	\$9,530.00	\$5.00	\$9,530.00	\$3.50	\$6,671.00	\$8.20	\$15,629.20	\$11.00	\$20,966.00	\$10.00	\$19,060.00	\$6.00	\$11,436.00
23 - HMA Cl. 1/2 In. PG58H-22	5-04.5	4,481	TON	\$127.00	\$569,087.00	\$158.00	\$707,998.00	\$120.00	\$537,720.00	\$160.00	\$716,960.00	\$158.00	\$707,998.00	\$150.00	\$672,150.00	\$182.00	\$815,542.00	\$158.00	\$707,998.00	\$155.00	\$694,555.00
24 - Pigmented and Textured Cement Conc. Pavement	5-05.5	220	CY	\$750.00	\$165,000.00	\$700.00	\$154,000.00	\$680.00	\$150,000.00	\$925.00	\$203,500.00	\$790.00	\$173,800.00	\$790.00	\$173,800.00	\$821.00	\$180,620.00	\$750.00	\$165,000.00	\$752.00	\$165,440.00
25 - Reinforced Grass Median Crossing	5-06.5	585	SF	\$90.00	\$52,650.00	\$30.00	\$17,550.00	\$23.00	\$13,455.00	\$26.00	\$15,210.00	\$30.00	\$17,550.00	\$25.50	\$14,917.50	\$29.00	\$16,965.00	\$27.00	\$15,795.00	\$15.00	\$8,775.00
26 - Drain Pipe, 6-in Diam.	7-01.5	60	LF	\$38.00	\$2,280.00	\$50.00	\$3,000.00	\$60.00	\$3,600.00	\$50.00	\$3,000.00	\$68.00	\$4,080.00	\$56.00	\$3,360.00	\$41.00	\$2,460.00	\$55.00	\$3,300.00	\$30.00	\$1,800.00
27 - Drain Pipe, 8-in Diam.	7-01.5	330	LF	\$46.00	\$15,180.00	\$50.00	\$16,500.00	\$60.00	\$19,800.00	\$50.00	\$16,500.00	\$72.50	\$23,925.00	\$56.00	\$18,480.00	\$53.00	\$17,490.00	\$50.00	\$16,500.00	\$35.00	\$11,550.00
28 - Underdrain Pipe, 6-in Diam.	7-01.5	197	LF	\$20.00	\$3,940.00	\$40.00	\$7,880.00	\$50.00	\$9,850.00	\$50.00	\$9,850.00	\$44.00	\$8,668.00	\$68.50	\$13,494.50	\$55.00	\$9,850.00	\$65.00	\$12,805.00	\$35.00	\$6,895.00
29 - Corrugated Polyethylene Storm Sewer Pipe, 12 In. Diam.	7-04.5	940	LF	\$50.00	\$47,000.0																



THIS AGREEMENT is entered into on _____, between the City of Anacortes Washington hereinafter called City, and SRV Construction Inc. hereinafter called the Contractor.

WITNESSETH:

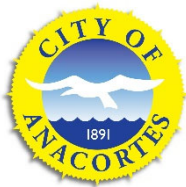
That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

- I. **WORK.** The Contractor shall do all work and furnish all tools, materials, equipment, and transportation required for the **R AVENUE LONG-TERM IMPROVEMENT PROJECT**, in accordance with and as described in the Invitation for Bid entitled the same and dated August 30, 2023, Federal Aid No. STPUS- 6239(002) Incorporated by reference, and made a part hereof, are the Invitation for Bid aforementioned, current Washington State Department of Transportation *Standard Specifications for Road, Bridge, and Municipal Construction M 41-10*, except as modified by the Special Provisions included in this Invitation to Bid. Any changes to the work contracted herein shall be subject to contract modification signed by the Parties.

The City hereby promises and agrees with the Contractor to retain and does retain the Contractor to provide the materials and to do and cause to be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of prices bid and hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself/herself, and for their heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required of the Contractor in the contract.

- II. **PRICE.** The Total Contract Price is **Four Million Three Hundred Twenty-Four Thousand Eight Hundred Thirty-One Dollars (\$4,324,831.00)**. The Contractor's bid schedule is incorporated by reference and attached hereto as Exhibit A.
- III. **TIME.** Unless otherwise stated in the Invitation for Bid, all physical construction activities shall be completed within **50** working days from the first working day following the Notice to Proceed. The Contractor shall supply the materials within the specified period of time after Notice to Proceed has been issued by the City.
- IV. **LIQUIDATED DAMAGES.** Under 1-08.9 of the current WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*, the City is entitled to liquidated damages for each and every calendar day said work remains uncompleted after expiration of the specified time.
- V. **INDEMNIFICATION/HOLD HARMLESS.** The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.



Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

- VI. **INSURANCE.** The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

IN WITNESS WHEREOF the Contractor has executed this instrument on the day and year first below written and the Authorized Official has caused this instrument to be executed by and in the name of the City the day and year first above written.

SRV CONSTRUCTION INC.

CITY OF ANACORTES

MAYOR

Title

Date

Date

CONTRACT 20-127-TRN-004

EXHIBIT A

To: City of Anacortes Anacortes City Hall 904 6th Street Anacortes, WA 98221	BID PROPOSAL FORM					
This certifies that the undersigned has examined the location of: R Avenue Long-Term Improvement Project A City of Anacortes project Located in Anacortes, Washington, Skagit County Project No. PW# 20-127-TRN and that the plans, specifications, and contract governing the work embraced in this improvement, and the method by which payment will be made for said work is understood. The undersigned hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available in accordance with the said plans, specifications, and contract, and the following schedule of rates and prices:						
NOTES: Unit prices for all items, all extensions, and total amount of bid for each Bid Item shall be shown. All entries must be typed or entered in ink. SALES TAX IS TO BE INCLUDED WITH ALL BID ITEMS IN ACCORDANCE WITH THE 2023 STANDARD SPECIFICATIONS, SECTION 1-07.2						
ITEM NO.	ITEM DESCRIPTION	SPEC. REF.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	TOTAL
DIVISION 1 - GENERAL REQUIREMENTS						
1	MIN BID REQ - RECORD DRAWINGS	1-05 SP	1	L.S.	\$ 3,000.00	\$ 3,000.00
2	ROADWAY SURVEYING	1-05.4 SP	1	L.S.	\$ 60,500.00	\$ 60,500.00
3	LICENSED SURVEYING	1-05.4 GSP	1	EST.	\$ 6,000.00	\$ 6,000.00
4	ADA FEATURES SURVEYING	1-05.4 GSP	1	L.S.	\$ 7,600.00	\$ 7,600.00
5	SPCC PLAN	1-07	1	L.S.	\$ 250.00	\$ 250.00
6	TYPE B PROGRESS SCHEDULE	1-08 GSP	1	L.S.	\$ 2,500.00	\$ 2,500.00
7	MOBILIZATION	1-09	1	L.S.	\$ 251,500.00	\$ 251,500.00
8	REPAIR/RESTORATION OF PUBLIC AND PRIVATE FACILITIES	1-09.6 SP	1	EST.	\$ 10,440.00	\$ 10,440.00

9	PROJECT TEMPORARY TRAFFIC CONTROL	1-10 GSP	1	L.S.	\$ 46,350.00	\$ 46,350.00
DIVISION 2 - EARTHWORK						
10	CLEARING AND GRUBBING	2-01 SP	0.9	ACRE	\$ 25,000.00	\$ 22,500.00
11	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	2-02 GSP	1	L.S.	\$ 97,500.00	\$ 97,500.00
12	SAWCUTTING ASPHALT CONC. PAVEMENT	2-02 SP	5,530	L.F.	\$ 2.85	\$ 15,760.50
13	SAWCUTTING CEMENT CONC. PAVEMENT	2-02 SP	400	L.F.	\$ 5.00	\$ 2,000.00
14	ROADWAY EXCAVATION INCL. HAUL	2-03	11,300	C.Y.	\$ 21.00	\$ 237,300.00
15	POTHOLING UTILITIES	2-05 SP	20	EACH	\$ 275.00	\$ 5,500.00
16	STRUCTURE EXCAVATION CLASS B INCL. HAUL	2-09	750	C.Y.	\$ 15.75	\$ 11,812.50
17	SHORING OR EXTRA EXCAVATION CLASS B	2-09	2,815	S.F.	\$ 1.00	\$ 2,815.00
18	TRIMMING AND CLEANUP	2-11	1	EST.	\$ 5,200.00	\$ 5,200.00
19	CONSTRUCTION GEOTEXTILE FOR SOIL STABILIZATION	2-12	10,430	S.Y.	\$ 3.00	\$ 31,290.00
DIVISION 4 - BASES						
20	CRUSHED SURFACING TOP COURSE	4-04 SP	6,070	TON	\$ 33.00	\$ 200,310.00
21	CRUSHED SURFACING BASE COURSE	4-04 SP	8,030	TON	\$ 30.00	\$ 240,900.00
DIVISION 5 - SURFACE TREATMENTS AND PAVEMENTS						
22	PLANING BITUMINOUS PAVEMENT	5-04	1,906	S.Y.	\$ 3.50	\$ 6,671.00

23	HMA CL. 1/2 IN. PG 58H-22	5-04 GSP	4,481	TON	\$ 158.00	\$ 707,998.00
24	PIGMENTED AND TEXTURED CEMENT CONC. PAVEMENT	5-05 SP	220	C.Y.	\$ 925.00	\$ 203,500.00
25	REINFORCED GRASS MEDIAN CROSSING	5-06 SP	585	S.F.	\$ 30.00	\$ 17,550.00
DIVISION 7 - DRAINAGE STRUCTURES, STORM SEWER, SANITARY SEWERS, WATER MAINS, AND CONDUITS						
26	DRAIN PIPE 6 IN. DIAM.	7-01	60	L.F.	\$ 68.00	\$ 4,080.00
27	DRAIN PIPE 8 IN. DIAM.	7-01	330	L.F.	\$ 72.50	\$ 23,925.00
28	UNDERDRAIN PIPE 6 IN. DIAM.	7-01	197	L.F.	\$ 44.00	\$ 8,668.00
29	CORRUGATED POLYETHYLENE STORM SEWER PIPE 12 IN. DIAM.	7-04	940	L.F.	\$ 44.00	\$ 41,360.00
30	CATCH BASIN TYPE 1L	7-05	18	EACH	\$ 2,045.00	\$ 36,810.00
31	ADJUST MANHOLE	7-05	6	EACH	\$ 870.00	\$ 5,220.00
32	CONNECTION TO DRAINAGE STRUCTURE	7-05 SP	23	EACH	\$ 700.00	\$ 16,100.00
33	ADJUST CATCH BASIN	7-05 SP	30	EACH	\$ 850.00	\$ 25,500.00
34	LOCKING SOLID METAL COVER AND FRAME FOR CATCH BASIN	7-05 SP	34	EACH	\$ 630.00	\$ 21,420.00
35	CURB OPENING WITH DISPERSAL PAD	7-05 SP	63	EACH	\$ 140.00	\$ 8,820.00
36	ROUND OVERFLOW CATCH BASIN	7-05 SP	24	EACH	\$ 1,420.00	\$ 34,080.00
37	WATER QUALITY CATCH BASIN	7-05 SP	1	EACH	\$ 21,475.00	\$ 21,475.00

38	BIORETENTION CELL SYSTEMS	7-06 SP	1	L.S.	\$ 144,275.00	\$ 144,275.00
39	ADJUST VALVE CASINGS TO GRADE	7-12 SP	27	EACH	\$ 745.00	\$ 20,115.00
40	RESETTING EXISTING HYDRANTS	7-14	5	EACH	\$ 3,100.00	\$ 15,500.00
41	SERVICE CONNECTION 1 IN. DIAM.	7-15	1	EACH	\$ 1,875.00	\$ 1,875.00
42	ADJUST METER BOX	7-16 SP	14	EACH	\$ 250.00	\$ 3,500.00
DIVISION 8 - MISCELLANEOUS CONSTRUCTION						
43	ESC LEAD	8-01	10	DAY	\$ 115.00	\$ 1,150.00
44	INLET PROTECTION	8-01	82	EACH	\$ 105.00	\$ 8,610.00
45	STREET CLEANING	8-01	72	HOURL	\$ 168.00	\$ 12,096.00
46	WATTLE	8-01	3,030	L.F.	\$ 5.50	\$ 16,665.00
47	EROSION/WATER POLLUTION CONTROL	8-01	1	L.S.	\$ 2,900.00	\$ 2,900.00
48	SWPP PLAN PREPARATION	8-01	1	L.S.	\$ 500.00	500.00
49	SEEDING AND FERTILIZING BY HAND - ECO-LAWN SEED	8-02 SP	5,890	S.Y.	\$ 1.70	\$ 10,013.00
50	SEEDING AND FERTILIZING BY HAND - FLOWERING POLLINATOR SEED	8-02 SP	1,270	S.Y.	\$ 2.25	\$ 2,857.50
51	SEEDING AND FERTILIZING BY HAND - BIOCELL SEED	8-02 SP	1,000	S.Y.	\$ 2.25	\$ 2,250.00
52	HIGH VISIBILITY FENCE	8-02	2,575	L.F.	\$ 3.50	\$ 9,012.50

53	TOPSOIL TYPE A	8-02	82	C.Y.	\$ 96.00	\$ 7,872.00
54	PSIPE PYRAMIDAL EUROPEAN HORNBEAM (2" CALIPER)	8-02	9	EACH	\$ 565.00	\$ 5,085.00
55	PSIPE COLUMNAR TULIP TREE (2" CALIPER)	8-02	7	EACH	\$ 565.00	\$ 3,955.00
56	PSIPE PRINCETON SENTRY GINKGO (2" CALIPER)	8-02	3	EACH	\$ 800.00	\$ 2,400.00
57	PSIPE DOUGLAS FIR (6'-8' HT)	8-02	4	EACH	\$ 210.00	\$ 840.00
58	PSIPE SHORE PINE (6'-8' HT)	8-02	5	EACH	\$ 230.00	\$ 1,150.00
59	PSIPE VANDERWOLF'S PYRAMID LIMBER PINE (6'-8' HT)	8-02	5	EACH	\$ 230.00	\$ 1,150.00
60	PSIPE DWARF JAPANESE WHITE PINE (6'-8' HT)	8-02	8	EACH	\$ 285.00	\$ 2,280.00
61	PSIPE JAPANESE STEWARTIA (2" CALIPER)	8-02	10	EACH	\$ 680.00	\$ 6,800.00
62	PSIPE CORAL DRIFT ROSE (#2 CONTAINER)	8-02	330	EACH	\$ 39.50	\$ 13,035.00
63	PSIPE OREGON IRIS (#1 CONTAINER)	8-02	162	EACH	\$ 18.00	\$ 2,916.00
64	ROADSIDE RESTORATION	8-02 SP	1	EST.	\$ 5,000.00	\$ 5,000.00
65	SANDY LOAM	8-02 SP	114	C.Y.	\$ 84.75	\$ 9,661.50
66	FINE COMPOST	8-02 SP	600	C.Y.	\$ 84.75	\$ 50,850.00
67	WOOD CHIP MULCH	8-02 SP	34	C.Y.	\$ 102.00	\$ 3,468.00

68	TREE ROOT BARRIER	8-02 SP	640	L.F.	\$ 22.60	\$ 14,464.00
69	IRRIGATION SYSTEM	8-03 SP	1	L.S.	\$ 10,500.00	\$ 10,500.00
70	CEMENT CONC. TRAFFIC CURB AND GUTTER	8-04	6,343	L.F.	\$ 32.00	\$ 202,976.00
71	CEMENT CONC. CURB AND GUTTER TRANSITION	8-04 SP	40	L.F.	\$ 90.50	\$ 3,620.00
72	CEMENT CONC. TRAFFIC CURB	8-04	49	L.F.	\$ 56.50	\$ 2,768.50
73	CEMENT CONC. PEDESTRIAN CURB	8-04	1,014	L.F.	\$ 56.50	\$ 57,291.00
74	ROUNDBOUT SPLITTER ISLAND NOSING CURB	8-04	2	EACH	\$ 900.00	\$ 1,800.00
75	ROUNDBOUT CEMENT CONCRETE CURB AND GUTTER	8-04	1,399	L.F.	\$ 34.00	\$ 47,566.00
76	ROUNDBOUT TRUCK APRON CEM. CONC. CURB AND GUTTER	8-04	442	L.F.	\$ 38.00	\$ 16,796.00
77	PRECAST DUAL FACED SLOPED MOUNTABLE CURB	8-04	122	L.F.	\$ 49.75	\$ 6,069.50
78	CEMENT CONC. DRIVEWAY ENTRANCE	8-06	942	S.Y.	\$ 85.00	\$ 80,070.00
79	TUBULAR MARKER	8-07 SP	2	EACH	\$ 300.00	\$ 600.00
80	WOOD FENCE	8-12 SP	90	L.F.	\$ 85.00	\$ 7,650.00
81	REMOVE AND REPLACE MONUMENT CASE AND COVER	8-13 SP	4	EACH	\$ 2,975.00	\$ 11,900.00
82	CEMENT CONC. SIDEWALK	8-14	6,725	S.Y.	\$ 77.50	\$ 521,187.50

83	CEMENT CONC. CURB RAMP TYPE PARALLEL A	8-14	1	EACH	\$ 3,350.00	\$ 3,350.00
84	CEMENT CONC. CURB RAMP TYPE PARALLEL B	8-14	2	EACH	\$ 3,350.00	\$ 6,700.00
85	CEMENT CONC. CURB RAMP TYPE PERPENDICULAR B	8-14	11	EACH	\$ 2,775.00	\$ 30,525.00
86	CEMENT CONC. CURB RAMP TYPE SINGLE DIRECTION A	8-14	18	EACH	\$ 3,350.00	\$ 60,300.00
87	CEMENT CONC. CURB RAMP TYPE SINGLE DIRECTION B	8-14	3	EACH	\$ 3,350.00	\$ 10,050.00
88	CEMENT CONC. CURB RAMP TYPE COMBINATION	8-14	2	EACH	\$ 4,475.00	\$ 8,950.00
89	TEXTURED DETECTABLE EDGE TREATMENT	8-14 SP	253	L.F.	\$ 9.00	\$ 2,277.00
90	CEMENT CONC. BIKE RAMP	8-14 SP	1	EACH	\$ 2,040.00	\$ 2,040.00
91	CEMENT CONC. MEDIAN CROSSOVER	8-14 SP	4	EACH	\$ 6,550.00	\$ 26,200.00
92	CEMENT CONC. CROSSWALK REFUGE AREA	8-14 SP	34	S.Y.	\$ 107.00	\$ 3,638.00
93	DRY UTILITIES, TRENCHING, LAYING, AND BACKFILLING	8-20 SP	1	L.S.	\$ 132,950.00	\$ 132,950.00
94	RECTANGULAR RAPID FLASHING BEACON	8-20 SP	16	EACH	\$ 6,150.00	\$ 98,400.00
95	UTILITY BOX WITH SLIP-RESISTANT LID	8-20.3(6) SP	20	EACH	\$ 1,400.00	\$ 28,000.00
96	PERMANENT SIGNING	8-21	1	L.S.	\$ 60,500.00	\$ 60,500.00
97	PLASTIC LINE	8-22	5,548	L.F.	\$ 5.00	\$ 27,740.00

98	PLASTIC CROSSWALK LINE	8-22	1,896	S.F.	\$ 8.00	\$ 15,168.00
99	PLASTIC WIDE LANE LINE	8-22	250	L.F.	\$ 7.00	\$ 1,750.00
100	PLASTIC STOP LINE	8-22	126	L.F.	\$ 11.00	\$ 1,386.00
101	PLASTIC TRAFFIC ARROW	8-22	6	EACH	\$ 226.00	\$ 1,356.00
102	PLASTIC YIELD LINE SYMBOL	8-22	24	EACH	\$ 68.00	\$ 1,632.00
103	PLASTIC CROSSHATCH MARKING	8-22	337	L.F.	\$ 6.00	\$ 2,022.00
104	REMOVING PAINT LINE	8-22	780	L.F.	\$ 3.40	\$ 2,652.00
TOTAL BID :					4,324,831.00	
NOTES: Unit prices for all items, all extensions, and total amount of bid for each Bid Item shall be shown. All entries must be typed or entered in ink. BID ITEMS IN ACCORDANCE WITH THE 2023 STANDARD SPECIFICATIONS, SECTION 1-07.2						
SALES TAX IS TO BE INCLUDED WITH ALL						



30th Street Roundabout

