

PROTECTIVE COVENANTS

115636

(This is rerecording of 115128 rec 6-6-58 at 11:30
No. 115128

The only change is in the description.

Division No. 2 changed from Division No. 1

Modern Home Builders

CS
CS

115637
115638

CM

115639

CS
CS
CS

115640
115641
115642

DECLARATION OF CANDIDACY

115643

CERT OF APPOINTMENT 7-2-58 at 12:25

115644

4
typewritten

Russell B. Johnson, as Prosecuting Attorney of Island County

Lis Pendens

7-2-58 at 12:29

115645

95 D
~~Stat~~ Typewritten
7-1-58

Ernie Tesch and Dorothy Tesch, hw
vs.

Henry Looff and Ethel Looff, hw and
Donald Looff and Patricia Looff, hw

*Posted to 13-32-1 w.w.m.
Ernie Tesch*

*Walter
being checked
on acct
transp 127*

Is. Co., Wash: Beg at point on S line of lot 2 in sec 13,
twp 32 N, R 2 WMM, said point being on W line of existing
county road and 900 ft mol W of SE corner of lot 2; th N
about 34° E on said road line 1550 ft mol to S line of
existing county road that runs W to sea; th W 80 ft; th S
70.30° W 300 ft to m/l of sea; th SWly on said m/l 1550
ft mol to point W of pobg; th E to tpobg on said road line

Parker Williams
Edward J. North
Attys for Plaintiffs

Parker Williams

SATIS CS

115646

CS
CS

115647
115648

of 176.46 ft and consuming angle of 18°41'43" for 57.58 ft; th S 53°48'25" E for 161.85 ft; th S 32°44'31" W for 228.97 ft; th S 11°58'33" W for 41.01 ft; th S 0°28'44" E for 84.90 ft; th S 8°38'41" E for 46.90 ft; th N 70°20'25" E for 131.35 ft; th angle to right 90°00' to become tangent to curve; th on curve to left having radius of 179.63 ft and consuming angle of 16°31'50" for 51.83 ft; th N 53°48'35" E for 60.0 ft; th angle to left 90°00' to become tangent to curve; th on curve to right having radius of 119.63 ft and consuming angle of 0°40' for 1.39 ft; th S 89°34'25" E for 858.23 ft; th S 0°28'20" W for 18.75 ft; th S 89°34'25" E for 140.0 ft; th N 0°28'20" E for 335.0 ft to S line of said Broad View Addition Division No. 1; th N 89°34'25" W along S line of Broad View Addition, Division No. 1 for 290.0 ft to SW corner of said Broad View Addition Division No. 1; th along Wly boundary of said plat, N 0°28'20" E for 120.0 ft; th S 89°34'25" E for 20.0 ft; th N 0°28'20" E for 180.0 ft to pobj

Record title in

Ralph Freund, also known as Ralph U. Freund, as his separate estate, free from all liens, encumbrances and objections, except as foll:

1. Last half of general taxes for 1958 in sum of \$241.91 (also covers additional prop)
2. Lien of re excise sales tax upon any sale of said premises if unpaid
3. Local improvement assessments, levied by Town of Oak Harbor.
4. Unrec option to purchase said prop in favor of Modern Home Builders, Inc., as disclosed by application for Plat Certificate.

Washington Title Insurance Company
by Carl A. Mawe,
Asst sec

Modern Home Builders

PROTECTIVE COVENANTS 6-6-58 at 11:30
27 Misc 697
Typewritten
5-14-58

115128

Ralph U. Freund and Winifred L. Freund, hw and Modern Home Builders, Inc., a Wash corp, owners of all of prop in Broad View Addition, Division No. 1, to Town of Oak Harbor, do hereby declare foll Protective Covenants, conditions and reservations as established pertaining to all of prop in said Addition

This plat made subj to foll restrictions which run wit land and shall be binding on all parties and all persons claiming unde them for period of 25 years from date these covenants are rec, after which time said covenant shall be automatically extended for successive periods of 10 years, unless instrument signed by majority of then owners of lots has been rec, agreeing to change said covenants in whole or in part.

If parties hereto, or any of them, or their heirs or assigns, shall violate, or attempt to violate, any of covenants herein, it shall be lawful for any other person owning real prop situated in said development or subdivision, to prosecute any proceedings at law or in equity, against the person, or persons, violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other due for such violation.

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of other provisions which shall remain in full force and effect.

1. All lots shall be known and desc as residential lots. No structures erected, altered, placed or be permitted to remain on any residential bldg plot other than one ~~XXXX~~ detached, single family dwelling, not to exceed $1\frac{1}{2}$ stories in height and private garage for not more than 2 cars.
2. ~~No~~ Fence or wall shall be erected, placed or altered on any lot nearer to any st than minimum bldg setback line.
3. No bldg shall be located nearer than 20 ft to front lot line, or nearer than 20 ft to side st line. No bldg except detached garage or other outbldg, located 60 ft or more, from front lot shall be located nearer than 5 ft to any side lot line. Minimum rear yard shall be 25 ft which in all cases shall be opposite narrow side of lot abutting st.
4. No dwelling shall be erected or placed on any lot having width of less than 65 ft at minimum bldg setback line, nor shall any dwelling be erected or placed on any lot having area of less than 7,200 sq ft.
5. No structure of temporary ~~character~~ character, trailer, basement, tent, shack, garage, barn or other outbldg shall be used on any lot at any time as residence either temporarily or permanently.
6. No bldg shall be permitted on any lot at cost of less than \$8,000.00 based upon cost prevailing on date these covenants are rec, it being intention and purp of covenants to assure that all dwellings shall be of quality of workmanship and materials substantially same, or better, than that which can be produced on date these covenants are rec, at minimum cost stated herein for minimum permitted dwelling size. The ground floor area of main structure, exc of one story open porches and garages, shall be not less than 800 sq ft for one story dwelling nor less than 750 sq ft in case of one and one half story structure.
7. Public utility easements over, under and across lots as designated on face of rec plat shall not be used for any purp inconsistent with their use as public utilities easements. Said easements shall become effective if, and when, said utilities are constructed and installed.
8. Any dwelling or ~~structure~~ structure erected or placed on any lot in this subdivision shall be completed, as to external appearance, inc finished painting, within 8 months after date of commencement of construction.

9. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to neighborhood.

10. No animals, livestock, or poultry of any kind shall be kept, raised or bred on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for commercial purp.

11. No bldg shall be erected, placed or altered on any lot until construction plans and specifications and a plan showing location of structure, have been approved by Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade ~~with~~ elevations.

Committee is composed of 3 members, as foll:
Scott T. Norton, Seattle; Walter E. Crane; Everett,
John F. Eubank, Edmonds

who shall serve until successors are appointed and not for period in excess of one year. Majority of committee may designate representatives to act for it. In event of death or resignation of any member of committee, remaining members shall have full authority to designate successor. Neither members of committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, then recorded owners of majority of lots shall have power, through duly rec written instrument to change membership of committee or to withdraw from committee or restore it any of powers and duties. If, at end of one year from date of rec hereof, first named committee has not been replaced then owners of lots in this Addition shall appoint three of their members to serve.

The Committee's approval or disapproval as required in these covenants, shall be in writing. In event committee, or designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event if no suit to enjoin the construction has been commenced prior to completion thereof, approval will not be required and related covenants shall be deemed to have been fully complied with

Ralph U. Freund
Winifred L. Freund

corp seal

Modern Home Builders, Inc.,
R. W. Bishop, Jr., sec

5-19-58 by Ralph U. Freund and Winifred L. Freund bef

John W. Wold, OH, 9-26-58

5-14-58 by R. W. Bishop, Jr., sec of corp bef Virginia B. Ryan,
Seattle, 3-10-60

Modern Home Bldg

PLAT OF BROAD VIEW ADDITION DIVISION NO. 2 OAK HARBOR, WASHINGTON

DESCRIPTION
A portion of the Ulrich Freund Donation Land Claim No. 10, Island County, Washington, described as follows: Commencing at the Northwest corner of the Plat of Broad View Addition, Division No. 1, Oak Harbor, Washington, according to the Plat thereof, recorded in Volume 6 of Plats of page 17 records of Island County, Washington; the true point of beginning, thence N 89°34'25" W along the westerly production of said Plat of Broad View Addition, Division No. 1, for 942.02 feet; thence S 36°11'35" W for 51.51 feet; thence S 35°06'42" E for 156.51 feet; thence angle right 90°00' to become tangent to a curve of 1841.45, for 51.58 feet having a radius of 116.46 feet and consuming an angle of 1841.45; for 51.58 feet; thence S 53°48'25" E for 161.85 feet; thence S 32°44'31" W for 225.91 feet; thence S 11°58'53" W for 41.01 feet; thence S 0°28'44" E for 84.90 feet; thence S 8°38'41" E for 46.90 feet; thence N 10°20'25" E for 131.35 feet; thence angle to the right 90°00' to become tangent to a curve; thence on a curve to the left having a radius of 119.63 feet and consuming an angle of 16°31'50" for 51.83 feet; thence N 53°48'35" E for 60.0 feet; thence angle to the right 90°00' to become tangent to a curve; thence on a curve to the right having a radius of 119.63 feet and consuming an angle of 16°31'50" for 51.83 feet; thence S 0°28'20" W for 18.15 feet; for 139 feet; thence S 89°34'25" E for 858.23 feet; thence N 0°28'20" E for 335.0 feet to the South line of said Broad View Addition, Division No. 1; thence N 89°34'25" W along the South line of Broad View Addition, Division No. 1, for 2900 feet to the Southwest corner of said Plat, N 0°28'20" E for 120.0 feet; thence S 89°34'25" E for 200 feet; thence N 0°28'20" E for 1800 feet to the true point of beginning, and containing 14.181 Acres. OWNERS IN FEE SIMPLE

DEDICATION
KNOW ALL MEN BY THESE PRESENTS that Ralph U. Freund and Winifred L. Freund, husband and wife, owners in fee simple, and Modern Home Builders, Inc., contract purchaser, a corporation existing under the laws of the State of Washington, do hereby declare the Plat of Broad View Addition, Division No. 2 and dedicate to the public for the use of the public forever all streets, roads and alleys shown thereon for any and all public purposes not inconsistent with the use thereof for public highway purposes; and also reserve the right to make all necessary slopes, street cuts and fills upon the lots in the original reasonable grading of the roads, streets and alleys.

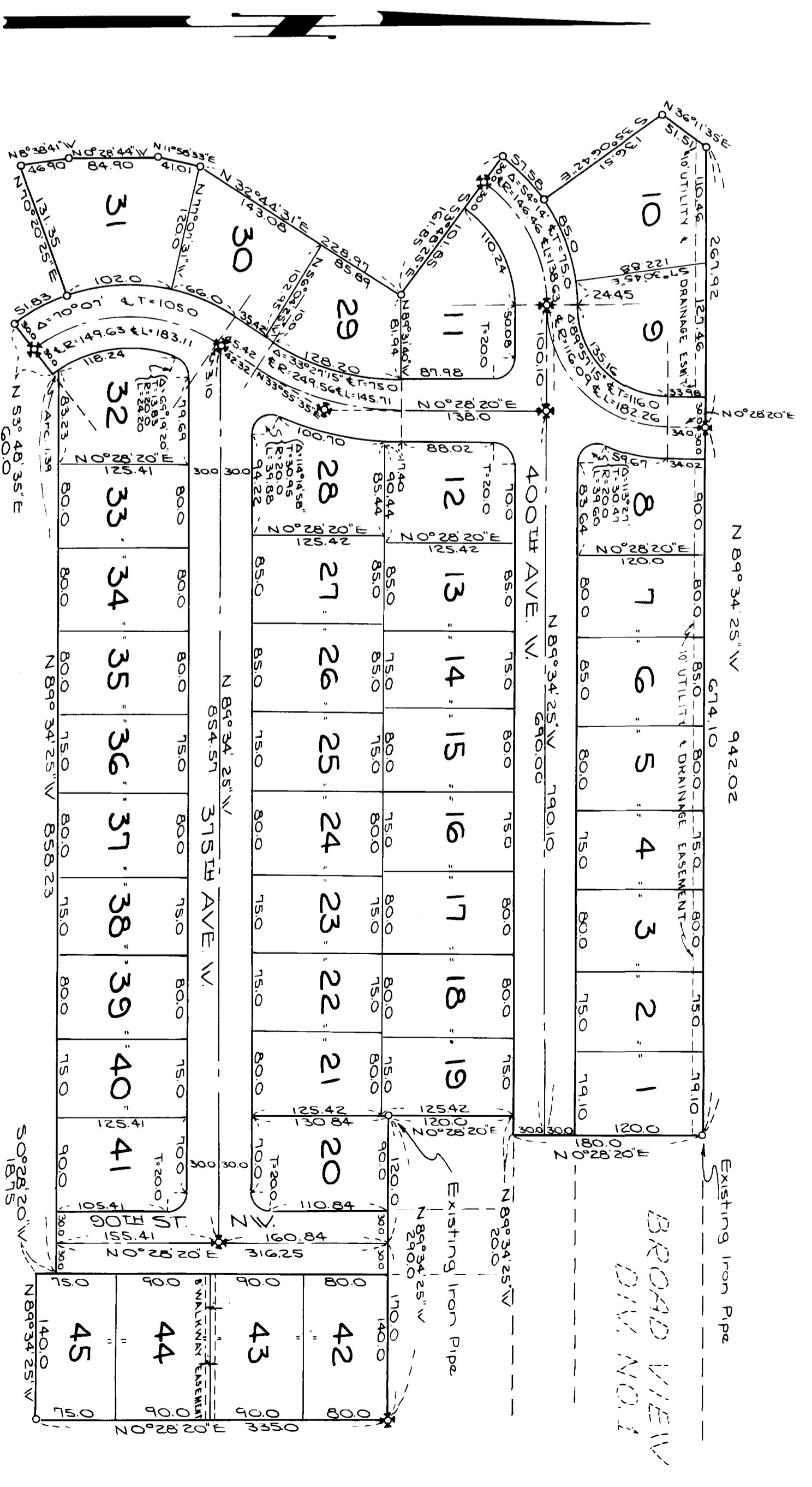
Ralph U. Freund
Winnifred L. Freund
MODERN HOME BUILDERS, INC. (CORP. AUC.)
W. O. Madock
PRESIDENT
W. O. Madock
SECRETARY

ACKNOWLEDGMENT
STATE OF WASHINGTON, SS.
COUNTY OF KING, SS.
This is to certify that on this 12th day of May, 1958, personally appeared before me Ralph U. Freund and Winifred L. Freund, husband and wife, to me known to be the persons who executed the above Dedication, and who acknowledged the same to be their free and voluntary act and deed for the uses and purposes therein mentioned in witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

W. O. Madock
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
My Comm. Expires 12-31-59
Donald M. Nealey
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
My Comm. Expires 12-31-59

SURVEYORS CERTIFICATE
I, hereby certify that the annexed Plat of Broad View Addition, Division No. 2 is based on an actual survey and subdivision of a portion of the Ulrich Freund Donation Land Claim No. 10, that courses and distances are correct, that monuments have been set and lot corners staked on the ground according to the statutes and ordinances.

RESTRICTIONS
Protective covenants covering all lots in this Plat are in accordance with Declaration of Protective Covenants, as filed for record in Volume 1 of Misc. of Page 1, records of Island County, Wash.



Treasurers Certificate

I, hereby certify that all taxes heretofore levied and which have become a lien upon the lands described above, have been fully paid and discharged, according to records of my office, up to and including the year 1959.

APPROVALS
Examined and approved by the Planning Commission of the City of Oak Harbor this 22nd day of May, 1958.
W. O. Madock
CHAIRMAN

Examined and approved by the Engineer of the City of Oak Harbor this 22nd day of May, 1958.
James C. Beckler
ENGINEER

Examined and approved by the Council of the City of Oak Harbor this 3rd day of June, 1958.
Ray McLaughlin
CITY CLERK

115129

RECORDING
Filed for record at the request of Modern Home Builders, Inc. on this 4th day of June, 1958 at 4:15 minutes past 11 o'clock A.M. and recorded in Vol. 6 of Plats of page 25 records of Island County, Wash.

CERTIFICATE OF TITLE
Certificate of Title Recorded in Volume 21 of Miscellaneous Records, Fees 695.696, HT 1153 H.M. on June 6, 1958 UNDER NUMBER'S FILE NO. 115121, ISLAND COUNTY, WASHINGTON.



Act 1111

92021708

1100

92021708

ORDINANCE NO. 930

AN ORDINANCE PROVIDING FOR THE ADDITION OF CHAPTER 19.50 ON AN AVIATION ENVIRONS OVERLAY ZONE TO TITLE NINETEEN OF THE OAK HARBOR MUNICIPAL CODE AND PROVIDING FOR THE ADDITION OF CHAPTER 6.90 ON MANDATORY DISCLOSURE OF NOISE CONDITIONS FOR PROPERTY TO TITLE SIX OF THE OAK HARBOR MUNICIPAL CODE.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new chapter 19.50 to Oak Harbor Municipal Code Title 19 which shall read as follows:

19.50 AVIATION ENVIRONS OVERLAY ZONE

Section 19.50.010 - Title and Purpose. The Aviation Environs Overlay Zone (AE) is hereby created with the following purposes:

- (1) To protect the public health, safety, and welfare by regulating development and land use within noise sensitive areas;
- (2) To ensure compatibility between the Whidbey Island Naval Air Station at Ault Field and surrounding land uses; and
- (3) To protect the air station from incompatible encroachment.

The Aviation Environs Zone (AE) shall serve as an overlay district that applies additional standards and requirements to properties located within an underlying zoning district. In the case of conflicting standards and requirements, the more stringent standards and requirements shall apply.

Section 19.50.020 - Definitions.

- (1) Aviation Environs - The geographic area that is affected by the Whidbey Island Naval Air Station at Ault Field air traffic operations and defined on the basis of those areas immediately affected by the 60 Ldn and greater noise exposure area from the Air Installation Compatible Use Zones Study for NAS Whidbey Island Ault Field. This area is represented on the Oak Harbor Noise Zone Map and designated Aviation Environs (AE) Overlay Zone.
- (2) Day - Night Average Sound Level (Ldn) - A cumulative aircraft noise index that estimates the exposure to aircraft noise at certain

11-13-92

*Resubmitted
City of Oak Harbor
3045 W. 300 W.
O.H. 98277*

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PAGE 0221
City of Oak Harbor
NOV 12 11 34 AM '92

ART HYLAND, AUDITOR
ISLAND COUNTY, WASH.
Deputy
BOOK 0637 PAGE 0221

geographic point and relates the estimated exposure to an expected community response.

- (3) **Ldn Contour** - A line linking together a series of points of equal cumulative noise exposure based on the Ldn metric. Such contours are developed based on aircraft flight patterns, number of daily aircraft operations by type of aircraft and time of day, noise characteristics of each aircraft, and typical runway usage patterns.
- (4) **Noise Zone Map** - A map prepared by the City of Oak Harbor which serves as a geographic interpolation of aviation noise contours as established by the NAS Whidbey Island AICUZ Study program. The boundaries of noise exposure areas on this map follow streets, property boundaries, or utility rights-of-way. This map serves as a geographic representation of the Aviation Environs Overlay Zone.

Section 19.50.030 - Subdistricts.

- (1) The Aviation Environs Overlay Zone is subdivided into two sub-districts that represent the differing levels of noise impact. The noise zones are the following:
 - (a) **Subdistrict A** includes the area within the 60-65 Ldn noise exposure area.
 - (b) **Subdistrict B** includes the area within the 65-75 Ldn noise exposure area.
- (2) The boundaries of the Aviation Environs (AE) Overlay and it's subdistricts, as adopted shall be reviewed and amended whenever the Naval Air Station updates or amends the AICUZ noise contour maps. It shall be the responsibility of the Naval Air Station to notify the City of Oak Harbor of any such update or amendment.
- (3) Subsequent updates to this map may be performed by action of the Planning Commission after conducting a public hearing and after required notification.

Section 19.50.040 - Application. Within the Aviation Environs Overlay Zone, any proposed use or structure is subject to the construction standards and disclosure requirements provided for herein.

Section 19.50.050 - Noise Attenuation Standards. New residential or noise sensitive commercial uses, and reconstruction, remodeling, and/or additions to

existing buildings in noise exposure zones subdistrict A and B of the Aviation Environs (AE) Overlay Zone shall be made to comply with Section 17.30.100 - .215 of Title 17 of the Oak Harbor Municipal Code.

Development Standards. The following development standards shall apply to all proposed uses and structures.

- (1) **Proposed Uses and Structures.** The compatibility table contained in section 17.30.130 identifies development standards that apply to proposed uses and structures with the Aviation Environs (AE) Overlay Zone. All proposed uses and structures must comply with these standards.
- (2) **Interior Day-Night Average Noise Level (Ldn).** All proposed uses and structures must comply with the Noise Level Reduction (NLR) standards as provided in the compatibility table section 17.30.130. Compliance with NLR requirements shall be evidenced prior to issuance of an occupancy permit.

Section 19.50.060 - Exemptions. The provisions of this chapter shall not be deemed applicable to the following when permitted in the underlying district:

- (1) **Existing Buildings.** Uses existing on the effective date of this ordinance shall not be required to change in order to comply with these regulations. The nonconforming use requirements of this zoning ordinance shall govern the applicability of the standards and requirements contained herein.
- (2) **Temporary Uses.** Temporary uses, including but not limited to public celebrations and outdoor entertainment events, so long as the period of operation does not exceed five days. A variance may be requested to extend the time period for a temporary use.
- (3) **Temporary Structures.** Temporary buildings and structures that are not used for residential purposes and that meet said applicable requirements as contained within this zoning ordinance so long as such uses and associated structures are constructed incidental to a permitted use, as per the requirements of this zoning ordinance.
- (4) **Agricultural Structures.** Bona fide agricultural buildings, structures, improvements, and associated nonresidential developments.

11-13-92

- (5) Accessory Uses and Structures. Accessory uses and structures incidental to a permitted principal structure or use and within the intent, purposes, or objectives of these regulations.
- (6) Mobile Homes. Mobile Homes constructed after April 1, 1992, in general, comply with the performance standards of this ordinance and may be located within existing, expanded or new mobile home parks within the AE District (A). Mobile homes constructed prior to April 1992 shall not be located within district (A) unless the Building Official determines that the sound attenuation standards are met or may be met by making modifications to the home. All homes located within the AE District (B) shall comply with these regulations.

Section Two. There is hereby added a new chapter 6.90 to the Oak Harbor Municipal Code Title 6 which shall read as follows:

Section 6.90.010 - Disclosure.

- (1) No person shall sell, lease or offer for sale or lease any property within the noise contours of 60 Ldn or above as shown on the Oak Harbor Noise Zone Map referenced in section 17.30.135 unless the prospective buyer or lessee has been given notice of the fact that the property is an area impacted by noise. A notice in the following form shall meet the requirements of this section.

To: [name of purchasers]

The property as described below is located within a designated noise zone for NAS Whidbey Island. Persons on the premises may be exposed to a significant noise level as a result of airport operations. In addition, Oak Harbor has placed certain restrictions on construction on property within the noise zones. Before purchasing, renting, or leasing the above property, you should review those regulations to determine the restrictions placed on the subject property, if any.

- (2) A copy of this statement is available at City Hall.
- (3) Proof of compliance with this provision may be established by filing notice within the chain of title for the property or by affidavit of service.

Section 6.90.020 - Penalty. Violation of this chapter is punishable as a civil penalty by a fine of up to One Thousand Dollars (\$1,000).

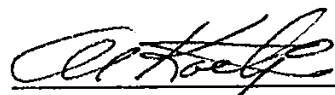
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Section Three. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Four. Effective Date. Section One of this Ordinance shall be in full force and effect ninety (90) days after its passage and publication as required by law. Section Two of this Ordinance shall be in full force and effect sixty (60) days after its passage and publication as required by law.

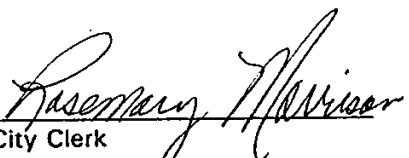
PASSED BY THE CITY COUNCIL and approved by its Mayor this 8th day of September, 1992.

The City of Oak Harbor



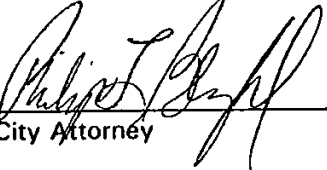
Mayor

Attest:



City Clerk

Approved as to form:



City Attorney

Published: 9-23-92

11-13-92

92021709

1800

ORDINANCE NO. 929

An Ordinance concerning sound transmission control within designated noise zones in the City of Oak Harbor therefore;

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section 1. There is hereby added a new chapter 17.30 to the Oak Harbor Municipal Code which shall be known as "Noise Attenuation Standards" and which shall read as follows:

17.30.100 Purpose. The purpose of these sections is to safeguard life, health, property and public welfare by establishing minimum requirements regulating the design and construction performance standards of buildings for human occupancy in the noise sensitive vicinity of the Whidbey Naval Air Station at Ault Field. To ensure compatibility between the air station and surrounding land uses, and to protect the air station from incompatible encroachment. These sections are not intended to abridge any safety or health requirements required under any other applicable codes or ordinances. This section is intended to be a companion to the adopted zoning overlay ordinance establishing noise zones and requiring notice of disclosure.

17.30.105 Scope. The provisions of this chapter shall apply to all buildings or structures constructed or placed in use for human occupancy on sites within designated noise zones established in accordance with the Aviation Environs (AE) Overlay Zone as established by the Oak Harbor Noise Zone Map. This chapter is intended to supplement the provisions of the Uniform Building Code, Uniform Mechanical Code, Washington State Ventilation and Indoor Air Quality Code and the adopted Washington State Energy Code. In the case of conflict between this chapter and any other applicable codes the more restrictive requirements shall be met.

17.30.110 Application. Additions may be made to existing buildings or structures without making the entire building or structure comply with all the requirements of this chapter for new construction. Additions to structures within the designated noise zones shall be made to comply in the areas being added to the extent that is deemed practical and effective by the Building Official in meeting the intent of this Chapter.

Any change of use in the occupancy or use of a building previously unapproved for human occupancy to human occupancy use or of one previously unused for sleeping purposes to sleeping use shall not be permitted unless the building, structure or portion of the building complies with this chapter.

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City of Oak Harbor
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ART HYLAND, AUDITOR
ISLAND COUNTY, WASH.

The standards shall be applied to construction of new residential or noise sensitive commercial uses and for reconstruction, remodeling, and/or additions to existing buildings of the types mentioned below when the value of the improvement exceeds 50 percent of the value of the existing structures.

Where noise sensitive activities are carried on in only a portion of new or reconstructed commercial building, only those areas judged noise sensitive by the Building Official need to be protected.

Relocated Structures - Structures relocated to an area within the designated noise zones shall comply with all requirements of this chapter.

17.30.115 Details. The plans and specifications shall show in sufficient detail all pertinent data and features of the building and the equipment and systems, as herein governed, including, but not limited to: exterior envelope component materials; STC ratings of applicable component assemblies; R – values of applicable insulation materials; size and type of apparatus and equipment; equipment and system controls and other pertinent data to indicate conformance with the requirements herein.

17.30.120 Fees. The building official is authorized to collect fees for plan review and inspection for noise attenuation. These fees shall be established by table 3-A (other inspections and fees) of the current adopted Uniform Building Code.

17.30.125 Definitions.

- (a) Day - Night Average Sound Level (Ldn) - is a basic measure for quantifying noise exposure, namely: The A-weighted sound level averaged over a 24 hour time period, with a 10 decibel penalty applied to nighttime (10:00 p.m. to 07:00 a.m.) sound levels.
- (b) Noise Level Reduction (NLR) is the amount of noise reduction required through construction and incorporation of sound attenuation material to reduce interior noise level.
- (c) Noise Reduction Coefficient (NRC) is the arithmetic average of the sound absorption coefficients of a material at 250, 500, 1000, and 2000 Hz.
- (d) Sound Transmission Class (STC) is a single number rating for describing sound transmission loss of a wall, partition, window or door.
- (e) The decibel (dB) is the measure of sound pressure or intensity.
- (f) Oak Harbor Noise Zone Map - A map prepared by the City of Oak Harbor and adopted as an aviation environs (AE) overlay zone, which serves as

11-12-92
26-21-11

a geographic interpolation of Aviation Noise Contours as established by the NAS Whidbey Island AICUZ study program. The boundaries of noise exposure areas on this map follow streets, property boundaries, or utility rights-of-way.

- (g) Noise - Aircraft or other noise that interferes with speech and hearing, or is intensive enough to damage hearing, or is otherwise annoying.
- (h) Interior Noise Level - Sound level of noise in any habitable room with windows and doors closed.

17.30.130 Design Requirements. The criteria of these sections establish the minimum requirements for acoustic design of the exterior envelope of buildings and for HVAC systems and its parts. These requirements shall apply to the following uses:

COMPATIBILITY TABLE

LAND USE	SUBDISTRICT	
	A	B
	60-65 Ldn	65-75 Ldn
Residential		
Single and Two family, and Multifamily	Y 25 NLR	Y 30 NLR
Manufactured Housing, Mobile Homes	Y ¹ 25 NLR	Y ¹ 30 NLR
Hotels, Motels and Lodges	Y 25 NLR	Y 30 NLR
Commercial		
Retail	Y ²	Y ³
Business Services	Y ²	Y ³
Personal Services	Y ²	Y ³
Professional Services	Y ²	Y ³
Offices	Y ²	Y ³
Movie Theaters, Restaurants	Y ²	Y ³
R & D Laboratories	Y ²	Y ³
All other Commercial	Y ²	Y ³
Manufacturing		
Manufacturing, Warehousing, Distribution	Y ²	Y ³
Wholesale Commercial	Y ²	Y ³
All Other Manufacturing		
Public and Semi-private		
Hospitals, Nursing Homes	Y 25 NLR	Y 30 NLR
Other Medical Facilities	Y 25 NLR	Y 30 NLR
Educational Facilities, Libraries, Pre-schools	Y 25 NLR	Y 30 NLR

11-12-92

House of Worship, Public Assembly	Y 25 NLR	Y 30 NLR
Government Facilities	Y 25 NLR	Y 30 NLR
Auditoriums, Concert Halls	Y 25 NLR	Y 30 NLR
All Other Public and Semi-Public	Y 25 NLR	Y 30 NLR

1. New modular, factory built or manufactured homes, constructed after the date of this ordinance shall comply with these requirements. Mobile homes may be replaced within existing mobile home parks on existing mobile home spaces without complying with these requirements. Creation of mobile home subdivisions located within the designated noise zones shall be made to comply with all requirements of this chapter.
2. Measures to achieve NLR of 25 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
3. Measures to achieve NLR of 30 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

17.30.135 Designated Noise Zones. Noise determined construction requirements detailed in this sound transmission building code shall be applied to new construction and additions of structures, except for not normally inhabited portions of storage buildings, garages and similar structures as determined by the building official, within the designated noise zones.

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These contours are shown on the Oak Harbor Noise Zone Map, a copy of which is on record in the office of the Director of Planning and Community Development and by this reference is made a part of this regulation.

- (a) A 25 dB noise level reduction shall be required in the 60-65 Ldn noise exposure zone as defined on the Oak Harbor Noise Zone Map.
- (b) A 30 dB noise level reduction shall be required in the 65-75 Ldn noise exposure zone as defined on the Oak Harbor Noise Zone Map.

17.39.140 Air Leakage for All Buildings.

- (a) The requirements of this section shall apply to the design of the exterior envelope of all buildings in the designated noise zones designed for human occupancy. The requirements of this section are not applicable to the separation of interior spaces from each other.

(b) The following locations shall be sealed, caulked, gasketed, or weatherstripped to limit or eliminate air infiltration:

1. Exterior joints around windows and door frames between the window or door frame and the framing.
2. Openings between walls and foundations.
3. Between the wall sole plate and the rough flooring.
4. Openings at penetrations of utility services through walls, floor, and roofs.
5. Between wall panels at corners.
6. All other such openings in the building envelope.

(c) Through the wall, floor, or roof/ceiling penetrations not specifically addressed in these sections shall be designed to limit sound transmission and shall have the same average laboratory sound transmission classification as required for doors.

17.30.145 Compliance. Compliance with 17.30.150 through 17.30.175 shall be deemed to meet requirements for a minimum noise level reduction (NLR) of 25 decibels.

17.30.150 Exterior Walls.

- (a) Exterior walls, other than as described in this section, shall have an average laboratory sound transmission class rating of at least STC – 30; or
- (b) Masonry walls having a weight of at least 25 pounds per square foot do not require a furred (stud) interior wall. At least one surface of concrete block walls shall be plastered.
- (c) Stud walls shall be at least 4 inches in nominal depth and shall be finished on the outside with solid sheathing under an approved exterior wall finish.
 1. Interior surface of the exterior walls shall be of gypsum board or plaster at least 1/2 inch thick, installed on the studs.

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2. Continuous composition board, plywood or gypsum board sheathing at least 1/2 inch thick or equivalent shall cover the exterior side of the wall studs.
3. Sheathing panels shall be covered on the exterior with overlapping building paper.
4. Insulation material at least R - 13 shall be installed continuously throughout the cavity space behind the exterior sheathing and between wall studs. Insulation shall be glass fiber, mineral wool, or foam plastic insulation complying with UBC Standard 42-1.

17.30.155 Exterior Windows.

- (a) Windows other than as described in this section shall have a laboratory sound transmission class rating of at least STC - 28; or
- (b) Windows shall be double glazed with one pane at least 3/16 inch thick. Panes of glass shall be separated by a minimum 1/2" airspace.
- (c) All operable windows shall be weatherstripped and air-tight when closed so as to conform to an air infiltration test not to exceed 0.5 cubic foot per minute per foot of crack length in accordance with ASTM E - 283 - 65 - T.
- (d) Glass shall be sealed in an airtight manner with a nonhardening sealant or a soft elastomer gasket or gasket tape.
- (e) The perimeter of window frames shall be sealed airtight to the exterior wall construction with a sealant conforming to one of the following Federal Specifications: TT - S - 00227, TT - S - 0230 or TT - S - 00153.

17.30.160 Exterior Doors.

- (a) Doors other than as described in this section shall have a laboratory sound transmission class rating of at least STC - 26; or
- (b) All exterior side-hinged doors shall be solid-core wood or insulated hollow metal at least 1 - 3/4" thick and shall be fully weatherstripped.
- (c) Exterior sliding doors shall be weatherstripped with an efficient airtight gasket system with performance as specified in 17.30.155 (c). The

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glass in the sliding doors shall be double glazed with panes at least 3/16" thick.

- (d) Glass, over two square feet in area, in doors shall be sealed in an airtight sealant or in a soft elastomer gasket or glazing tape.
- (e) The perimeter of door frames shall be sealed airtight to the exterior wall construction as described in 17.30.155(e).

17.30.165 Roofs.

- (a) Combined roof and ceiling construction other than described in this section and 17.30.170 shall have an average laboratory sound transmission class rating of at least STC - 39; or
- (b) With an attic or rafter space at least 12" deep, and with a ceiling below, the roof shall consist of 1/2" composition board, plywood or gypsum board sheathing topped by roofing as required.
- (c) Open beam roof construction shall follow the energy insulation standard method for batt insulation.
- (d) Window or dome skylights shall have a laboratory sound transmission class rating of at least STC33.

17.30.170 Ceilings.

- (a) Gypsum board or plaster ceilings shall be 5/8 inch thick. Ceilings shall be substantially airtight with a minimum of penetrations.
- (b) Glass fiber, mineral wool, or foam plastic insulation at least R - 30 shall be provided above the ceiling between joists.

17.30.175 Ventilation.

- (a) A ventilation system shall be installed that will provide the minimum air circulation and fresh air supply requirements for various uses in occupied rooms without the need to open any windows, doors or other openings to the exterior. The inlet and discharge openings shall be fitted with sheet metal transfer ducts of at least 20 gauge steel, which shall be lined with one inch thick coated glass fiber, and shall be at least five feet long with one 90 degree bend.

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- (b) Gravity vent openings in attics shall be as close to code minimum in number and size, as practical.
- (c) Bathroom, laundry and similar exhaust ducts connecting the interior space to the outdoors, shall contain at least a five foot length of internal sound – absorbing duct lining. Exhaust ducts less than five feet in length shall be fully lined and shall also meet the provisions of 17.30.140(c). Each duct shall be provided with a bend in the duct such that there is no direct line – of – sight through the duct from the venting cross – section to the room – opening cross – section. Duct lining shall be coated glass fiber duct liner at least one inch thick. In areas (i.e., shower rooms) which produce moisture, duct lining shall be made of non-absorbent material, commercial kitchen exhaust systems and product conveying duct systems (Chapter 11 U.M.C.) shall be exempt.
- (d) Fireplaces shall be provided with well fitted dampers and tightly fitting glass or metal doors.

17.30.180 Compliance. Compliance with 17.30.185 through 17.30.215 shall be deemed to meet requirements for a minimum noise level reduction (NLR) of 30 decibels.

17.30.185 Exterior Walls.

- (a) Exterior walls, other than as described in this section, shall have an average laboratory sound transmission class rating of at least STC – 35; or
- (b) Masonry walls having a weight of at least 40 pounds per square foot do not require a furred (stud) interior wall. At least one surface of concrete block walls shall be plastered.
- (c) Stud walls shall be at least six inches nominal depth and shall be finished on the outside with solid sheathing under a code approved exterior wall finish.
 1. Interior surface of the exterior walls shall be of gypsum board or plaster or plaster at least 5/8 inch thick, installed on the studs. The gypsum board or plaster may be fastened rigidly to the studs if the exterior is brick veneer or stucco. If the exterior is siding on sheathing, the interior gypsum board or plaster must be fastened resiliently to the studs.

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2. Continuous composition board, plywood, or gypsum board sheathing at least 5/8 inch thick shall cover the exterior side of the wall studs.
3. Sheathing panels shall be covered on the exterior with overlapping building paper.
4. Insulation material at least R - 19 shall be installed continuously throughout the cavity space behind the exterior sheathing and between wall studs. Insulation shall be glass fiber, mineral wool or foam plastic insulation complying with U.B. C. Standard 42-1.

17.30.190 Exterior Windows.

- (a) Windows other than as described in this section shall have a laboratory sound transmission class rating of at least STC - 33; or
- (b) Windows shall be double glazed with panes at least 3/16 inch thick. Panes of glass shall be separated by a minimum 5/8" airspace.
- (c) Double-glazed windows shall employ fixed sash or efficiently weatherstripped, operable sash. The sash shall be rigid and weatherstripped with material that is compressed airtight when the window is closed so as to conform to an infiltration test not to exceed 0.5 cubic foot per minute per foot of crack length in accordance with ASTM E - 283 - 65 - T.
- (d) Glass shall be sealed in an air-tight manner with a non-hardening sealant or a soft elastomer gasket or gasket tape.
- (e) The perimeter of window frames shall be sealed airtight to the exterior wall construction sealant conforming to one of the following Federal specifications: TT - S - 0027, TT - S - 00230 or TT - S - 00153.

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17.30.195 Exterior Doors.

- (a) Doors other than as described in this section shall have a laboratory sound transmission class rating of at least STC - 33; or
- (b) Double door construction is required for all door openings to the exterior. Openings fitted with side-hinged doors shall have one solid core wood or insulated hollow metal door at least 1 - 3/4 inch thick separated by an airspace of at least three inches from another door, which can be a storm door. Both doors shall be tightly fitted and weatherstripped.

- (c) The glass of double glazed sliding doors shall be separated by a minimum 1/2" airspace. Each sliding frame shall be provided with an efficiently airtight weatherstripping material as specified in 17.30.190(c).
- (d) Glass, over two square feet in area, of all doors shall be at least 3/16 inch thick. Glass of double sliding doors shall not be equal in thickness.
- (e) The perimeter of door frames shall be sealed airtight to the exterior wall construction (framing) as indicated in 17.30.190(e).
- (f) Glass in doors shall be sealed in an airtight non – hardening sealant or in a soft elastomer gasket or glazing tape.

17.30.200 Roofs.

- (a) Combined roof and ceiling construction other than described in this section and 17.30.205 shall have an average laboratory sound transmission class rating of at least STC – 44; or
- (b) With an attic or rafter space at least twelve inches deep, and with a ceiling below, the roof shall consist of 5/8 inch composition board, plywood or gypsum board sheathing topped by roofing as required.
- (c) Open beam roof construction shall follow the energy insulation standard method for batt insulation, except use one inch plywood decking with shakes or other suitable roofing material.
- (d) Window or dome skylights shall have a laboratory sound transmission class rating of at least STC – 33.

17.30.205 Ceilings.

- (a) Gypsum board or plaster ceilings shall be at least 5/8 inch thick. Ceilings shall be substantially airtight with a minimum of penetrations.
- (b) Glass fiber, mineral wool, or foam plastic insulation at least R – 30 shall be provided above the ceiling between joists.

17.30.210 Floors. The floor of the lowest occupied rooms shall be slab on fill, below grade, or over a fully enclosed basement or crawl space. All door and window openings in a fully enclosed basement shall be tightly fitted.

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17.30.215 Ventilation.

- (a) A ventilation system shall be installed that will provide the minimum air circulation and fresh air supply requirements for various uses in occupied rooms without the need to open any windows, doors, or other openings to the exterior. The inlet and discharge openings shall be fitted with sheet metal transfer ducts of at least 20 gauge steel, which shall be lined with one inch thick coated glass fiber, and shall be at least five feet long with one 90 degree bend.
- (b) Gravity vent openings in attics shall be as close to code minimum in number and size, as practical. The openings shall be fitted with transfer ducts at least three feet in length containing internal one inch thick coated fiberglass sound – absorbing duct lining. Each duct shall have a lined 90 degree bend in the duct such that there is no direct line – of – sight from the exterior through the duct into the attic.
- (c) Bathroom, laundry, and similar exhaust ducts connecting the interior space to the outdoors, shall contain at least a ten foot length of internal sound absorbing duct lining. Exhaust ducts less than ten feet in length shall be fully lined and shall also meet the provisions of 17.30.140(c). Each duct shall be provided with a lined 90 degree bend in the duct such that there is no direct line – of – sight through the duct from the venting cross – section to the room opening cross – section. Duct lining shall be coated glass fiber duct liner at least one inch thick. In areas (i.e., shower rooms) which produce moisture, duct lining shall be made of non-absorbent material. Commercial kitchen exhaust systems and product conveying duct systems (Chapter 11 U.M.C.) shall be exempt.
- (d) Domestic range exhaust ducts connecting the interior space to the outdoors shall contain a self – closing baffle plate across the exterior termination which allows proper ventilation. The duct shall be provided with a 90 degree bend.


Section 2. Severability. Should any section, paragraph, sentence or word of this Chapter of Codes hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have passed all other portions of this Chapter and of the Codes hereby adopted independent of the elimination herefrom as any such portions as may be declared invalid and accordingly such declaration of invalidity shall not effect the validity of this Chapter as a whole nor any part hereof other than the part so declared to be invalid.

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Section 3. All portions of this amending ordinance shall be in full force and effect as of November 7, 1992.

PASSED by the City Council and approved by its Mayor this 8th day of September, 1992.

THE CITY OF OAK HARBOR



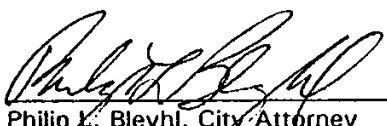
Mayor

ATTEST:



Rosemary Morrison, City Clerk

APPROVED AS TO FORM:



Philip X. Bleyhl, City Attorney

Published 9-23-92

11-12-92



ISLAND COUNTY AUDITOR

ORD

RETURN TO:

City Clerk
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

GRANTOR: City of Oak Harbor
GRANTEE: Puget Sound Energy, Inc.

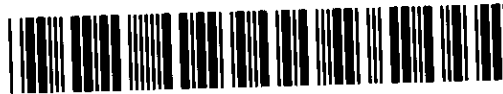
ORDINANCE NO. 1309

AN ORDINANCE GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRIC ENERGY FOR POWER, HEAT AND LIGHT, AND ANY OTHER PURPOSES FOR WHICH ELECTRIC ENERGY MAY BE USED

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

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ISLAND COUNTY AUDITOR

ORD

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Section One. Definitions.

- (1) When used in this franchise (the "Franchise") ordinance, unless otherwise indicated, the following terms shall mean:
 - (a) "Administrator" means the Public Works Superintendent or other person designated by the Mayor, or any successor office with responsibility for management of the public properties within the City of Oak Harbor, or his/her designee. Changes of designation will be sent to PSE in writing.
 - (b) "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.
 - (c) "City" means the City of Oak Harbor, a first class city of the State of Washington, and its successors and assigns.
 - (d) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways, grounds and public places of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, grounds and public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.
 - (e) "Facilities" means, collectively, any and all
 - (i) electric transmission and distribution systems, including but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, fixtures, and communication systems; and

- (ii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.
- (f) "Ordinance" means this ordinance which sets forth the terms and conditions of this Franchise.
- (g) "WUTC" means the Washington Utilities and Transportation Commission or a successor regulatory entity.

Section Two. Facilities Within Franchise Area.

- (1) All other franchises heretofore granted by the City to PSE, or its predecessors in interest of which it has acquired, for utilization of streets, avenues, rights-of-way, roads, alleys, lands or other public places within the City for electrical power are hereby canceled.
- (2) Pursuant to the laws of the State of Washington (including, but not limited to, RCW 35A.47.040 and RCW 80.32.010), the City hereby grants to PSE, subject to the terms and conditions set forth hereinafter, a Franchise for a period of ten (10) years, commencing upon the effective date of this Ordinance.
- (3) The City does hereby grant to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of electric energy for power, heat, light and such other purposes for which electric energy may be used.

Section Three. Non-Interference of Facilities.

- (1) PSE's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as to provide safety of persons and property, and so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington, and the Ordinances, rules and regulations of the City. PSE shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control, unless otherwise specifically provided; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by such City codes and ordinances.



- (2) In the event that the Administrator reasonably determines, after providing written notice to PSE and a reasonable opportunity for PSE to respond to the Administrator's concerns, that any one or more of PSE's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian and/or vehicular traffic, then PSE shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with PSE, including, without limitation, allowing changes to or modifications of the Franchise Area (and other City property), at PSE's expense, if such changes or modifications provide the most effective or economical means of eliminating such interference. Should such interference require relocation of PSE's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section Six "Relocation of Facilities" below.
- (3) Whenever it shall be necessary for PSE to engage in work within the Franchise Area, PSE shall inform the City of where and when such work will be done and who will be doing the work. PSE shall apply for and receive City approval for all necessary City permits to do such work prior to doing the work, and shall, except where expressly provided otherwise herein, comply with all requirements and conditions of such permits, including but not limited to, location restrictions, security regulations as promulgated by the City, State or Federal Government, traffic control, and restoration of the Franchise Area. The City may require PSE to post a bond to ensure satisfactory restoration of the Franchise Area following the completion of PSE's work therein. In lieu of a separate bond for routine individual projects involving work in the Franchise Area, PSE may satisfy the City's bond requirements by posting a single on-going performance bond.
- (4) PSE shall maintain and provide to the City a current list of designated subcontractors who are authorized to do work under subsection (3) above.
- (5) PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE Facilities within the Franchise Area, restore the surface of the Franchise Area and any other City property within the Franchise Area which may be disturbed or damaged by such work as nearly as practical to its condition prior to such work or as otherwise required by the Public Works Department as conditioned by the permit. The Public Works Superintendent shall have final approval of the condition of the Franchise Area restoration. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored by a licensed land surveyor, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications. All work by PSE pursuant to this section shall be performed in accordance with the permit issued by the City, together with the laws of the State of Washington, Oak Harbor Municipal Code and the City of Oak Harbor Public Works Construction Standards as the same now exists or as may hereafter be amended or superseded.



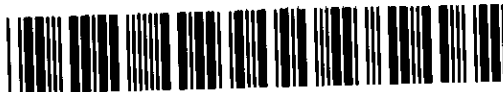
- (6) PSE shall maintain its Facilities within the Franchise Area in accordance with the National Electric Safety Code and the laws of Washington State. In the event PSE becomes or is made aware of any Facility not in compliance with such code or law, PSE shall promptly act to bring such Facility into compliance with same. PSE will cooperate with the City to address any such instances brought to its attention by the City.

Section Four. City Use of Facilities. During the term of this Franchise and with respect to poles which are Facilities, which are wholly owned by PSE and which are within the Franchise Area, the City may, subject to PSE's prior written consent, which consent shall not be unreasonably withheld, install and maintain City-owned overhead wires upon such poles for signal interconnect and communication capabilities or other public purpose with no charge being made for such Facilities attachment. The foregoing rights of the City to install and maintain such wires are further subject to the following:

- (1) Such installation and maintenance shall be done by the City at its sole risk and expense in accordance with all applicable laws (including, but not limited to, RCW 70.54.090), and subject to such reasonable requirements as PSE may specify from time to time (including without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities); and
- (2) PSE shall have no obligation under Section Eight (or arising under the purview of Section Eight) in connection with any City-owned wires so installed or maintained; and
- (3) PSE shall not charge the City a fee for the use of such poles in accordance with Section Four as a means of deriving revenue therefrom; provided, however, nothing herein shall require PSE to bear any cost or expense in connection with such installation and maintenance by the City.

Section Five. Records of Installation and Planning.

- (1) PSE shall provide to the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the approximate location of Facilities at specified locations within the Franchise Area. PSE shall further provide, upon the City's reasonable request, in connection with the City's design of new streets and intersections and major renovations of existing streets and intersection, field markings of PSE's underground Facilities within the Franchise Area, if such Facilities can be so field marked with reasonable accuracy using devices designed to respond to the presence of PSE's underground Facilities, pursuant to all applicable law, regulations and industry standards.
- (2) When the City reasonably determines it to be necessary for design of City improvement within the Franchise Area, PSE will verify the exact location of its underground Facilities



within the Franchise Area in connection with the design of such City improvement by excavating (e.g., pot holing) at no expense to the City.

- (3) PSE shall provide to the City, annually or at the time of upgrades, copies of PSE's available long term plans for additions and improvements to its transmission and distribution systems within the City.

Section Six. Relocation of Facilities.

- (1) Whenever the City causes a public works improvement to be undertaken within the Franchise Area, and such public works improvement requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Subsection (2) below), the City shall:
 - (a) provide PSE, within a reasonable time prior to the commencement of such public works improvement, written notice requesting such relocation; and
 - (b) provide PSE with reasonable plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to Subsection (1), the City shall bear the entire cost of such subsequent relocation. As used in this section, the term "public works improvement" is a capital improvement of the public right-of-way by or on behalf of the City for the primary benefit of the City and its general constituents, including, but not limited to, City roads/streets and City utility facilities. If, during the construction of any such public works improvement, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of PSE's Facilities within the Franchise Area, the City shall give PSE notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, PSE shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

- (2) Whenever:
 - (a) any public or private development within the Franchise Area, other than a public works improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or



- (b) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City;

then in such event, PSE shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

- (3) Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a required relocation for purposes of Subsection (2) above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).
- (4) Nothing in Section Six "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the relocation of any Facilities then existing pursuant to easements or such other rights not derived from this Franchise.

Section Seven. Undergrounding of Facilities.

- (1) PSE acknowledges that the City desires to promote a policy of undergrounding of Facilities within the Franchise Area. The City acknowledges that PSE provides electrical services on a non-preferential basis subject to and in accordance with tariffs on file with the WUTC. Subject to and in accordance with such tariffs, PSE will cooperate with the City in the formulation of policy and development regulations concerning undergrounding of PSE's Facilities within the Franchise Area.
- (2) New Facilities of 15kV or less, constructed by PSE during the term of this Franchise, shall be located underground.
- (3) If, during the term of this Franchise, the City shall direct PSE to underground existing Facilities (of 15kV or less) within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable tariffs on file with the WUTC. This section shall govern all matters related to undergrounding of PSE Facilities (i.e., conversion or otherwise) within the Franchise Area.

Section Eight. Indemnification. PSE shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of PSE, its agents, servants or employees in exercising the rights granted to PSE in this Franchise; provided, however, that in the event any such claim or demand is presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole



cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is brought against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section Nine. Compliance with Federal, State and Local Regulations.

- (1) PSE shall comply with all federal, state and local laws or regulations applicable to the exercise of Franchise functions or Franchise obligations. Upon written inquiry, PSE shall provide a specific reference to either federal, state or local law or the WUTC order or action, if any, establishing a basis for PSE's actions related to a specific Franchise issue.
- (2) PSE is hereby notified that there are asbestos cement pipes within the Franchise Area and that PSE needs to comply with applicable statutes, regulations and standards relating to the handling of such, if encountered by PSE.
- (3) This Franchise shall not limit, and the City hereby reserves, all lawful powers and Franchise authority available to it under its general police authority; provided, however, such authority shall be exercised in a manner consistent with this Franchise.

Section Ten. Reservation of Easement in Event of Vacation. In the event the City vacates any portion of the Franchise Area during the term of this Franchise, the City shall, in its vacation procedure, reserve a public utility easement for PSE's Facilities, unless it is determined by the City Council not to do so for good and/or lawful cause.

Section Eleven. Moving Buildings Within the Franchise Area. If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with PSE for the temporary adjustment of PSE's wires to accommodate the moving or removal of said building or other object. Such necessary arrangements with PSE shall be made, to PSE's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, PSE shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

- (1) the moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with PSE's business;



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- (2) where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route approved by the City; and
- (3) the person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save PSE harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.
- (4) in the event that adjustment of any PSE wire would not otherwise be necessitated for the moving or removal of such building or other object except for the height of such wire being below the applicable minimum vertical distance of the National Electric Safety Code, then such wire shall be adjusted and thereafter positioned in the accordance with current applicable PSE standards at PSE's expense.

Section Twelve. Pesticides and Hazardous Materials.

- (1) In maintaining its Facilities (including, without limitation, vegetation management activities), PSE shall not apply any pesticide, herbicide, or hazardous material within the Franchise Area without prior written approval of the City. Approval shall not be unreasonably withheld by the City, but must be in conformance with the City's Wellhead Protection Plan and the manufacturer's specifications for use and frequency of use of the specific pesticide, herbicide or hazardous material. If PSE shall first obtain the City's approval to apply a specific product in accordance with a defined procedure on an ongoing basis throughout the Franchise Area, it shall not thereafter be necessary for PSE to obtain the City's approval on each occasion the product is applied in accordance with such procedure. PSE shall notify the City of any accident by PSE involving PSE's use of hazardous materials within the Franchise Area.
- (2) Upon notice or discovery of a significant release of any hazardous substance caused by PSE or expressly authorized by PSE to occur upon the Franchise Area and Facilities covered by this Franchise, PSE shall notify the City within twenty-four (24) hours of discovery. If the encountered or suspected hazardous substances are not the result of acts or omissions of PSE, the City shall, at its own expense, determine if the material is hazardous, in accordance with applicable law. If the materials should prove to be hazardous, then the City shall, at its own expense, if possible, remove, dispose, or otherwise handle such hazardous substances, as necessary, in accordance with applicable law. If hazardous substances are removed, the City also shall provide substitute



nonhazardous material to replace the removed material for PSE to use in its operation, if necessary. Upon approval by the City to proceed, PSE shall proceed with the operations at its own cost, with no recourse against the City for the cost of schedule delays incurred due to the delay in operation. If the encountered or suspected hazardous substances within the Franchise Area are the results of the acts or omissions of PSE, then the City's characterization of the substances involved and the removal, disposal, or other handling costs incurred in connection with the removal, disposal, or handling of the hazardous substances will be at PSE's expense. Any environmental mitigation requirements imposed, by operation of applicable law or otherwise, as a result of the exercise or any right or obligation of PSE hereunder shall be the sole responsibility and expense of PSE.

Section Thirteen. Default and Revocation.

- (1) If PSE willfully violates or fails to comply with any of the provisions of this Franchise, and thereafter through willful misconduct or gross negligence fails to correct such violation or noncompliance within thirty (30) days, or less if the City determines an emergency situation exists, after written notice of such violation or noncompliance is given to PSE by the City, then PSE shall, upon the City's adoption of an ordinance declaring an immediate forfeiture of this Franchise, forfeit all rights conferred hereunder; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said thirty (30) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the Superior Court having jurisdiction compelling PSE to comply with the provisions of this ordinance and to recover damages and costs incurred by the City by reason of PSE's failure to comply.
- (2) In addition to the general provisions of subsection (1), the following circumstances shall be grounds for City revocation by ordinance of this Franchise:
 - (a) Attempt by PSE to evade any material provision of this Franchise or to practice any fraud or deceit upon the City.
 - (b) Material misrepresentation of fact by PSE in the application for or negotiation of this Franchise.
 - (c) Assignment of this Franchise for the benefit of PSE's creditors in case of PSE insolvency.



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- (3) If the City fails to comply with any provision of this Franchise, PSE may, without limiting any other right or remedy available to PSE under contract or applicable law, elect to obtain an order from the Superior Court having jurisdiction compelling the City to comply with the provisions of this ordinance.

Section Fourteen. Alternative Remedies. No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by PSE, or to seek and obtain judicial enforcement of PSE's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section Fifteen. Non-exclusive Franchise. This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, under and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section Sixteen. Franchise Term. This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

Section Seventeen. Assignment. PSE shall not have the right to assign its rights, benefits and privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section Eighteen. Subletting. PSE shall not sublet use of its Facilities within the Franchise Area without the prior written consent of the City. Such consent shall not be unreasonably withheld. Prior to the date of any sublet, the sublettee shall file written notice with the City of the proposed sublet and shall apply for all applicable licenses and franchises together with its written acceptance of all terms and conditions of this Franchise. The sublettee may not use the Facilities until all approvals, licenses and franchises are granted and in effect.

Section Nineteen. Severability. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions



of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise 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.

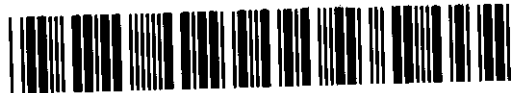
Section Twenty. Modification and Amendment.

- (1) This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of Washington State.
- (2) If, during the term of this Franchise, there becomes effective any change in federal or state law including changes approved by the WUTC which:
 - (a) affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or
 - (b) pre-empts or otherwise renders null and void any term or condition of this Franchise which has theretofore been negotiated in good faith;

then, in such event, either party may, within one hundred and eighty (180) days of the effective date of such change, notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the City and acceptance of such Ordinance by PSE, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, the Franchise shall remain in full force and effect.

Section Twenty-one. Notification. PSE shall notify the City in writing within five (5) days of filing any proposed tariff or schedule that would effect the terms of this franchise or any rights of the City thereunder. The intent of this section is to provide the City with timely notice of its opportunity to comment on, or become a party to, WUTC consideration of such filing if the City so chooses.

Section Twenty-two. Effective Date. This Ordinance shall be effective on June 13, 2002, having first been submitted to the City Attorney, having been published as required by



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law; having been passed at a regular meeting of the legislative body of the City by a majority of the whole of such legislative body, and having been approved by the Mayor of the City.

CITY OF OAK HARBOR

By Patricia A. Cohen
Patricia A. Cohen, Mayor

Attest:

Rosemary Morrison
Rosemary Morrison, City Clerk

Approved as to Form:

Philip L. Bleyhl
Philip L. Bleyhl, City Attorney

Published: June 8, 2002



STATE OF WASHINGTON)
) ss.
COUNTY OF ISLAND)

I, ROSEMARY MORRISON, the duly appointed, qualified City Clerk of the City of Oak Harbor, a First Class City, situated in the County of Island, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 1309, an ordinance of the City of Oak Harbor, entitled:

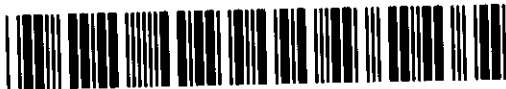
ORDINANCE NO. 1309

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, heat, light and any other purpose for which energy can be used; and to charge and collect tolls, rates and compensation for such energy and such uses.

I further certify that said Ordinance No. 1309 was introduced on the 21st day of May, 2002; was submitted to the City Attorney on the 14th day of May, 2002, was published as provided by law at least once in a newspaper of general circulation in the City of Oak Harbor; was approved by a majority of the entire legislative body of the City of Oak Harbor at a regular meeting on the 4th day of June, 2002, and was approved by the Mayor of the City of Oak Harbor on the 5th day of June, 2002.

WITNESS my hand and official seal of the City of Oak Harbor, this 24th day of June, 2002.

Rosemary Morrison
Rosemary Morrison, City Clerk
City of Oak Harbor, State of Washington



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HONORABLE MAYOR AND CITY COUNCIL
CITY OF OAK HARBOR, WASHINGTON

In the matter of the application of Puget	:	
Sound Energy, Inc., a Washington	:	Franchise Ordinance No. <u>1309</u>
corporation, for a Franchise to construct,	:	
operate and maintain Facilities in, upon,	:	
over under, along, across and through the	:	ACCEPTANCE
Franchise Area of the City of Oak Harbor,	:	
Washington	:	

WHEREAS, the City Council of the City of Oak Harbor, Washington, has granted a Franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 1309, bearing the date of June 5, 2002; and

WHEREAS, a copy of said Ordinance granting said Franchise was received by Puget Sound Energy, Inc. on June 12, 2002, from said City of Oak Harbor, Island County, Washington.

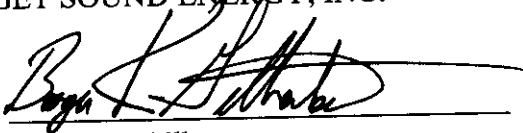
NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Oak Harbor, Island County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by the undersigned thereunto duly authorized on this 18th day of June, 2002.

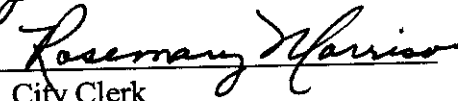
ATTEST:

PUGET SOUND ENERGY, INC.



By: 
_____ Booga K. Gilbertson
Director, System Planning & Performance

Copy received for City of Oak Harbor
on June 21, 2002.

By: 
_____ City Clerk