



# Whatcom County

COUNTY COURTHOUSE  
311 Grand Avenue, Ste #105  
Bellingham, WA 98225-4038  
(360) 778-5010

## Agenda Bill Master Report

File Number: AB2023-286

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<b>File ID:</b>	AB2023-286	<b>Version:</b>	1	<b>Status:</b>	Approved
<b>File Created:</b>	04/13/2023	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Climate Action and Natural Resources Committee			<b>Final Action:</b>	04/25/2023
<b>Agenda Date:</b>	04/25/2023	<b>Enactment #:</b>	RES 2023-008		

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Primary Contact Email: SBatdorf@co.whatcom.wa.us

### TITLE FOR AGENDA ITEM:

Resolution authorizing the County Executive to grant an easement to Puget Sound Energy across park property within an existing access easement agreement

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Puget Sound Energy has requested that Whatcom County grant a private electrical easement across Park property to service a private adjacent parcel at South Fork Park. The proposed easement lies entirely within an existing access easement agreement and will not result in any additional private encroachment onto public property.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
04/25/2023	Council Climate Action and Natural Resources Committee	RECOMMENDED FOR APPROVAL	
		Aye: 2 Donovan, and Galloway	
		Nay: 1 Elenbaas	
04/25/2023	Council	APPROVED	
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner	
		Nay: 0	

**Attachments:** Memorandum, Resolution, Easement, Site Map

PROPOSED BY: Parks

INTRODUCED: 4/25/2023

RESOLUTION NO. 2023 - 008

GRANTING AN EASEMENT TO PUGET SOUND ENERGY

WHEREAS, Whatcom County is the owner of South Fork Park; and,

WHEREAS, an adjoining property has requested from Puget Sound Energy to utilize an existing easement, Whatcom County Auditor's File No. 1489772 that crosses South Fork Park to provide electrical service to their property; and,

WHEREAS, said existing easement does not allow for the installation, maintenance, and operation of utilities; and,

WHEREAS, Puget Sound Energy has requested that Whatcom County grant an easement to them so that they can provide electrical services to the adjoining property; and,

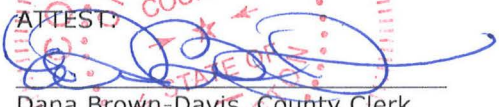
WHEREAS, the proposed easement lies entirely within the existing easement and will not result in any additional private encroachments onto public property; and

WHEREAS, the Parks Department recommends approval of the utility easement for no compensation.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Executive is authorized to execute an easement for Puget Sound Energy as shown in Exhibit A.

APPROVED this 25th day of April, 2023

ATTEST:

  
Dana Brown-Davis, County Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

  
Brandon Waldron, Chief Civil Deputy Prosecutor

EXHIBIT - A



**RETURN ADDRESS:**

Puget Sound Energy, Inc.  
Attn: Real Estate/Right of Way  
1660 Park Lane  
Burlington, WA 98233

*M*  
*5-10-23*



**EASEMENT**

REFERENCE #: N/A  
GRANTOR: WHATCOM COUNTY  
GRANTEE: PUGET SOUND ENERGY, INC.  
SHORT LEGAL: GOVT LOTS 1, 2, 6 & 7, E2 NE QTR, SEC 8-37N-5E,  
AND SW NW QTR, AND PTN GOVT LOTS 3 & 5, SEC 9-37N-5E  
ASSESSOR'S TAX #: 370508 415365 0000 / PID 36699,

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **WHATCOM COUNTY**, a Washington municipal corporation ("Owner"), hereby grants and conveys to **PUGET SOUND ENERGY, INC.**, a Washington corporation ("PSE"), for the purposes hereinafter set forth, a nonexclusive perpetual easement over, under, along, across and through the following described real property in Whatcom County, Washington (the "Property"):

**SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.**

Except as may be otherwise set forth herein, PSE's rights shall be exercised upon that portion of the Property the ("Easement Area") described as follows:

A RIGHT OF WAY TEN (10) FEET IN WIDTH WITH FIVE (5) FEET ON EACH SIDE OF A CENTERLINE DESCRIBED AS FOLLOWS:

**THE CENTERLINE OF GRANTEE'S FACILITIES AS NOW CONSTRUCTED, TO BE CONSTRUCTED, EXTENDED OR RELOCATED LYING WITHIN THE ABOVE DESCRIBED PARCEL.**

**SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF**

**1. Purpose.** PSE shall have the right to use the Easement Area to construct, operate, maintain, repair, replace, improve, remove, upgrade and extend one or more utility systems for the purposes of transmission, distribution and sale of electricity. Such systems may include:

**Underground facilities.** Conduits, lines, cables, vaults, switches and transformers for electricity; fiber optic cable and other lines, cables and facilities for communications; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing.



Following the initial construction of all or a portion of its systems, PSE may, from time to time, construct such additional facilities as it may require for such systems.

**2. Access.** PSE shall have a reasonable right of access to the Easement Area over and across the Property to enable PSE to exercise its rights granted in this easement.

**3. Easement Area Clearing and Maintenance.** PSE shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Area.

**4. Restoration.** Following the initial installation, repair or extension of its facilities, PSE shall, to the extent reasonably practicable, restore landscaping and surfaces and portions of the Property affected by PSE's work to the condition existing immediately prior to such work. PSE shall use good faith efforts to perform its restoration obligations under this paragraph as soon as reasonably possible after the completion of PSE's work.

**5. Owner's Use of Easement Area.** Owner reserves the right to use the Easement Area for any purpose not inconsistent with the rights herein granted, provided, however, Owner shall not perform the following activities without PSE's prior written consent: (1) excavate within or otherwise change the grade of the Easement Area; (2) construct or maintain any buildings, structures or other objects on the Easement Area; and/or (3) conduct any blasting within 300 feet of PSE's facilities.

**6. Indemnity.** PSE agrees to indemnify Owner from and against liability incurred by Owner as a result of PSE's negligence, or the negligence of PSE's employees, agents or contractors in the exercise of the rights herein granted to PSE, but nothing herein shall require PSE to indemnify Owner for that portion of any such liability attributable to the negligence of Owner, its employees, agents or contractors or the negligence of third parties.

**7. Attorneys' Fees.** The prevailing party in any lawsuit brought to enforce or interpret the terms of this Easement shall be entitled to recover its reasonable attorneys' fees and costs incurred in said suit, including on appeal.

**8. Successors and Assigns.** This Easement is binding upon and will inure to the benefit of the successors and permitted assigns of the parties. PSE may not assign or otherwise transfer any of its rights, obligations or interest under this Easement without the prior written consent of Owner, which consent may not be unreasonably withheld. Notwithstanding the foregoing, PSE may assign this Easement to an affiliate or in connection with a merger, acquisition, corporate reorganization, sale of assets or other change in control.

**9. Complete Agreement; Amendment; Counterparts.** This Easement contains the entire agreement of the parties with respect to this subject matter and supersedes all prior writings or discussions relating to the Easement. This Easement may not be amended except by a written document executed by the authorized representatives of Owner and PSE. This Easement may be executed in counterparts, each of which shall be treated as an original for all purposes and all executed counterparts shall constitute one agreement.

**10. Warranty and Representation of Authority.** The parties each represent to the other that the person or persons executing this Easement have authority to do so and to bind the parties hereunder. All consents, permissions and approvals related to this Easement, and the obligations hereunder, have been obtained. Owner further warrants to PSE that it has the necessary right, title and interests in the Property to grant the easement rights set forth herein.

**12. Severability.** Invalidation of any of the provisions contained in this Easement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other

provisions thereof or the application thereof to any other person and the same shall remain in full force and effect. If a provision is found to be unenforceable or invalid, that provision shall be modified or partially enforced to the maximum extent permitted by law to effectuate the purpose of this agreement.

**13. Non-Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

[signatures follow next page]



## Exhibit "A"

Government Lots 1, 2, 6 and 7, the East half of the Northeast quarter of Section 8, Township 37 North, Range 5 East of W.M., Except that portion of the Northwest quarter of the Northeast quarter lying Northerly of Mosquito Lake Road No. 272, And Except right-of-way for Mosquito Lake Road No. 272, lying along the Northerly line thereof, Together With the Southwest quarter of the Northwest quarter, Section 9, Township 37 North, Range 5 East of W.M., Government Lot 3, and Government Lot 5 all in Section 9, said township and range; Except that portion lying East and South of a line defined as follows:

Beginning at the Northeast corner of said Government Lot 5, said section township and range, Whatcom County, Washington; thence West along the North line of said Government Lot 5 a distance of 385.00 feet; thence South parallel to the East line of Government Lots 3 and 5 of said section to the Nooksack River and the point of ending.

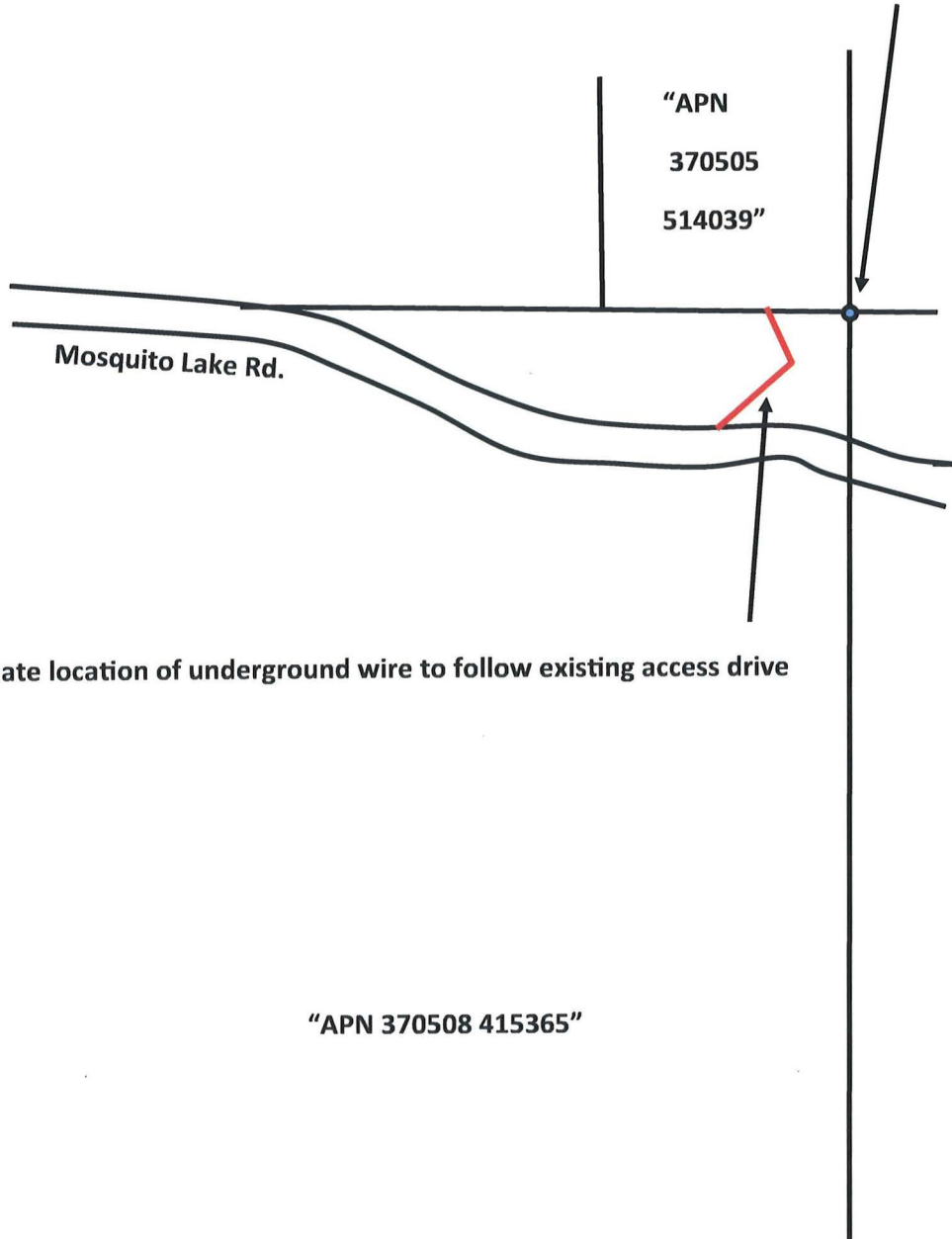
Situate in Whatcom County, Washington.





Exhibit "B"

NE Corner Section 8 -37N -5E



Approximate location of underground wire to follow existing access drive

"APN 370508 415365"