

Testimony to EFSEC regarding TUUSSO Energy, LLC Columbia Solar Photovoltaic Project
December 12, 2017

Good evening,

My name is Paul Jewell, I am a Kittitas County Commissioner and Chairman of the Kittitas County Board of Commissioners. I am speaking to you tonight on behalf of the Board.

I have three points for your consideration this evening:

My first point is regarding the applicants request for expedited review. It is Kittitas County's position that this application does not meet the requirements necessary to qualify for the 180-day expedited review process.

RCW 80.50.075 – Expedited processing of applications states in part that the council may grant an applicant expedited processing of an application for certification upon a finding that the project is found under RCW 80.50.090(2) to be consistent and in compliance with the city, county, or regional land use plans or zoning ordinances.

Kittitas County enacted a six month moratorium on all new applications for solar developments in unincorporated areas on March 13th of this year via Ordinance 2017-002. The moratorium was then extended through Ordinance 2017-004 on July 18 for an additional six months.

At the time the application was submitted by TUUSSO, October 16, 2017, moratorium on all new applications was and remains in effect. A moratorium was and is the local land use plan and zoning ordinance in effect. Therefore, it is not possible for the council to make a finding that the application is consistent and compliant with county regulations as required by law.

The request for expedited processing must be denied.

The second item I have for your consideration is the recent Superior Court decision in the case One Energy Development LLC and Iron Horse Solar LLC vs. Kittitas County et al.

This case was about Kittitas County's denial of a conditional use permit for a 47.5 Acre solar photovoltaic project on high quality irrigated farmland.

The permit was denied by the Board on the basis that the proposed land use, a large-scale industrial facility which was presented as the largest energy producing solar facility in the state at the time, was not compatible with the rural character of the area.

In the decision, the court found that the County had substantial discretion in determining the facilities effect on the character of the surrounding neighborhood and whether it met standards established in our development regulations and our comprehensive plan.

In this case, an application very similar to the one before you today, it was found that the proposed facility did not meet our requirements for maintaining rural character and the permit was denied.

My third and final point for your consideration is the County's value statement regarding the siting of solar photovoltaic projects in rural areas.

This value statement was considered and approved by the Board of County Commissioners in Resolution 2017-192. The resolution was developed from a recommendation by the county's solar facility siting citizen advisory committee which was formed and is working hard to develop recommended development regulations for the siting and construction of these types of facilities in the county. The committee has not yet completed its work, we hope it will soon, but it has agreed on some key principles that I present to you this evening. Those principles are:

1. High quality agricultural land in Kittitas County is a limited resource and should be protected.
2. Commercial solar facilities may be allowed on high quality irrigated land, but only subject to the highest level of review and scrutiny, and with the requirement for an Alternatives Analysis that considers whether the proposed use can be reasonably accommodated on lands other than high quality irrigated agricultural land.
3. Reasonable and economically-viable alternatives do exist in Kittitas County for commercial solar facilities on lands other than high quality irrigated agricultural land.
4. Conditions should be required for commercial solar facilities to mitigate impacts to surrounding properties.

I have copies of the moratorium ordinances, the Superior Court decision, and the resolution to submit for the record.

Thank you.

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

Ordinance No. 2017- 004

An Ordinance Extending a Moratorium on Accepting Applications for Solar Projects That Qualify As Major Alternative Energy Facilities within Kittitas County

- WHEREAS,** Strong interest has developed in the creation of solar projects within Kittitas County and its agricultural areas; and
- WHEREAS,** Agricultural industry provides a large portion of the economic base within Kittitas County; and
- WHEREAS,** Major alternative energy facilities include hydroelectric plant, solar farm, or wind farm as indicated within KCC 17.61.010(9); and
- WHEREAS,** Concern has been expressed in public hearings and public comments that solar projects that qualify as major alternative energy facilities are planned for lands used for agriculture; and
- WHEREAS,** RCW 36.70A.390 allows adoption of a moratorium on land use activities for sixty (60) days without holding a public hearing; and
- WHEREAS,** On January 10, 2017, the Board of County Commissioners unanimously called for an immediate moratorium on all applications for solar projects that qualify as major alternative energy facilities; and
- WHEREAS,** A public hearing must be held within sixty (60) days of the moratorium's enactment and findings of fact must be made to support the action; and
- WHEREAS,** After due notice the Board of Commissioners held a public hearing on March 9, 2017 at 6 p.m. where public testimony was received in regards to the moratorium; and
- WHEREAS,** After consideration of the staff report, public comment, and evidence submitted, the Board ordered that all applications for solar projects that qualify as major alternative energy facilities not be accepted for (6) months from January 10, 2017; and

Ordinance 2017- 004
July 18, 2017

WHEREAS, According to RCW 36.70A.390, a moratorium may be effective for up to one (1) year when a work plan is developed for related studies; and

WHEREAS, A work plan has been developed and is attached as Exhibit "A"; and

WHEREAS, After due notice the Board of Commissioners held a public hearing on July 10, 2017 at 6 p.m. where public testimony was received regarding the moratorium; and

WHEREAS, After consideration of the staff report and work plan, public comment, and evidence submitted, the Board decided that the moratorium for solar projects that qualify as major alternative energy facilities shall be extended for an additional six months.

NOW THE BOARD FINDS:

1. A potentially high number of proponents for solar farms have shown interest in the development of solar energy facilities within the Kittitas County valley.
2. Large numbers of large solar energy facilities may have an impact upon the agricultural activity within the valley, which is a prime industry within the County.
3. The Board desires standards and/or criteria for the placement of such facilities.
4. A work plan has been developed for adoption of such standards and/or criteria within one year of placement of the moratorium. The work plan is attached as Exhibit "A".

NOW, THEREFORE, BE IT HEREBY ORDERED, that the moratorium on applications for solar projects that qualify as major alternative energy facilities shall continue for one (1) year from January 10, 2017.

ADOPTED this 18th day of July, 2017.

**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON
ABSENT**

Paul Jewell, Chairman



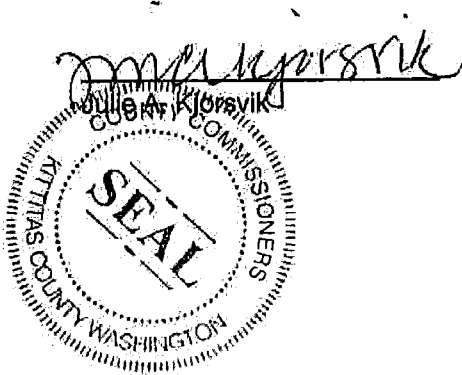
Laura Osladacz, Vice-Chairman



Obie O'Brien, Commissioner

Ordinance 2017- 004
July 18, 2017

ATTEST
CLERK OF THE BOARD



APPROVED AS TO FORM:

Neil Caulkins,
Deputy Prosecuting Attorney

Ordinance 2017- 024
July 18, 2017

Exhibit "A":
Solar Moratorium Work Plan

Solar Moratorium Work Plan

Task			Target Date	Notes
Staff Review	Staff review of existing Comprehensive Plan & development regulations		July 18, 2017	In progress
	Staff review of potential siting criteria and regulations (other jurisdictions)		July 18, 2017	In progress
	Staff meetings w/ industry representatives		July 18, 2017	5/5 meeting w/ Puget Sound Energy 6/27 meeting w/ Origis Energy
	Form Citizen Advisory Committee		August 1, 2017	Issue press release, accept applications, appoint committee
Citizen Advisory Committee Meetings	Meeting #1 Meet w/ industry representatives and concerned citizen groups		August 15, 2017	Agenda: <ul style="list-style-type: none"> • Present issues • Industry presentation <ul style="list-style-type: none"> ◦ Industry criteria for siting/areas that aren't feasible ◦ Potential mitigation • Presentation from concerned citizen groups • Questions/discussion on presented information Meeting Goals: <ul style="list-style-type: none"> • Orientation • Building common ground for future discussions • Identify areas of needed study
	Meeting #2		September 5, 2017	Agenda: <ul style="list-style-type: none"> • Review study information to date • Discussion of siting criteria and development regulations • Consider draft regulations Meeting Goal: <ul style="list-style-type: none"> • Provide direction for studies, data collection, mapping, draft regulations

Task			Target Date	Notes
	Meeting #3		September 26, 2017	Agenda: <ul style="list-style-type: none"> Review study information Review Community Open House feedback Review draft regulations Meeting Goal: <ul style="list-style-type: none"> Review and revise draft regulations
Inventory, Studies, Analysis	Inventory of existing conditions		August 2017	Existing transmission lines & substations Existing capacity Existing agricultural lands Other
	Studies identified by working group and industry representatives		August-October 2017	Siting criteria Mitigating impacts to rural environments Permitting Employment Tax implications Other
	Analysis of study information		August-October 2017	
Community Open House	Receive community input regarding issues and study information to date		September 19, 2017	
Draft Regulations	Finalize draft regulations		October 31, 2017	
Public Review and Comment on Draft Regulations	Publish Draft Regulations for Comment		November-December 2017	
Planning Commission Hearing			November 14, 2017	
SEPA			November 14, 2017	
BOCC Hearing			December 19, 2017	

Solar Moratorium Work Plan Timeline							
	June	July	August	September	October	November	December
Staff Review							
Citizen Advisory Committee Meetings							
Inventory, Studies, Analysis							
Community Open House							
Draft Regulations							
Public Review and Comment on Draft Regulations							
Planning Commission Hearing							
SEPA							
BOCC Hearing							

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

Ordinance No. 2017- 002

**An Ordinance Enacting a Six Month Moratorium on Accepting Proposals for Solar
Projects That Qualify As Large Scale Alternative Energy Systems within the Kittitas
County**

- WHEREAS,** Strong interest has developed in the creation of solar projects within the Kittitas County and its agricultural areas; and
- WHEREAS,** Agricultural industry provides a large portion of the economic base within Kittitas County; and
- WHEREAS,** Major Alternative Energy Facilities include hydroelectric plant, solar farm, or wind farm as indicated within KCC 17.61.010(9)
- WHEREAS,** Concern has been expressed in public hearing and public comment that solar projects that would qualify as major alternative energy facilities are planned for lands used for agriculture; and
- WHEREAS,** Kittitas County is in the process of updating its current Comprehensive Plan and development regulations; and
- WHEREAS,** Advisory groups meeting on issues in the update of the Plan have expressed interest and concern over the rising number of major alternative energy facilities siting regarding solar power; and
- WHEREAS,** The update of the Comprehensive Plan and implementing regulations is expected to occur in 2017.
- WHEREAS,** RCW 36.70A.390 allows adoption of a moratorium on land use activities for sixty (60) days without holding a public hearing; and
- WHEREAS,** The Board of County Commissioners at a specific hearing to hear a conditional use permit request involving the establishment of a solar farm denied the request, and unanimously called for an immediate moratorium on all applications involving major alternative energy systems; and

Ordinance 2017-002
March 10, 2017

WHEREAS, Public hearing must be held within sixty (60) days of the moratorium's enactment and findings of fact must be made to support the action. A moratorium may last six (6) months and be extended for up to one (1) year when accompanied by a work plan for moratorium research; and

WHEREAS, A resolution on the requested moratorium was passed and signed by the Board of County Commissioners on Tuesday, February 7, 2017 requesting the moratorium for sixty (60) days from January 10, 2017; and

WHEREAS, Notice of public hearing was made in the official newspaper of the County on February 23, 2017 and March 2, 2017 and posted on the County website on February 23, 2017; and

WHEREAS, After due notice a public hearing was held on March 9, 2017 at 6 p.m. where public testimony was received by the Board in regards to the proposal; and

WHEREAS, After consideration of evidence presented, received public comment and the staff report, the Board can make a decision regarding the moratorium.

NOW THE BOARD FINDS:

1. The Kittitas County Comprehensive Plan is being updated and planned for adoption by August of 2017.
2. A potentially high number of proponents for solar farms have shown interest in the development of solar energy systems within the Kittitas County valley.
3. Large numbers of large solar energy systems may have an impact upon the agricultural activity within the valley, which is a prime industry within the County.
4. The Board desires standards and/or criteria for the placement of such facilities.
5. Such siting criteria will be placed within the Comprehensive Plan objectives and policies in several of its elements.
6. Deciding such criteria at this time supersedes and undermines the development of the Comprehensive Plan

NOW, THEREFORE, BE IT HEREBY ORDERED, that all application for solar projects that would qualify as major alternative energy systems not be accepted for application for (6) months from January 10, 2017 or until the Comprehensive Plan and the implementing regulations for the County are adopted by the Board of County Commissioners.

ADOPTED this 13th day of March, 2017.

Ordinance 2017- 002
March 10, 2017

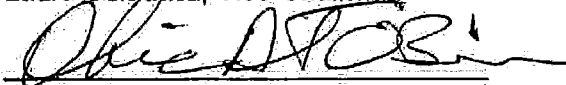
**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**



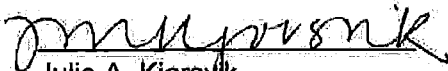
Paul Jewell, Chairman




Laura Osiadacz, Vice-Chairman



Obie O'Brien, Commissioner


Julie A. Kjorsvik

APPROVED AS TO FORM:


Neil Caulkins,
Deputy Prosecuting Attorney

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

RESOLUTION NO. 2017-192

**A RESOLUTION RECOMMENDING KITTITAS COUNTY VALUES REGARDING
PLACEMENT OF SOLAR FACILITIES BE CONSIDERED DURING EFSEC REVIEW OF
TUUSSO ENERGY, LLC COLUMBIA SOLAR PHOTOVOLTAIC PROJECT**

WHEREAS, On January 10, 2017, the Board of County Commissioners unanimously called for an immediate moratorium on all applications for solar projects that qualify as major alternative energy facilities; and

WHEREAS, According to RCW 36.70A.390, a moratorium may be effective for up to one (1) year when a work plan is developed for related studies; and

WHEREAS, A work plan has been developed that calls for a citizen advisory committee to assist in the process of developing standards and/or criteria for siting these projects; and

WHEREAS, On August 15, 2017, the Board of Commissioners formed the Solar Facilities Citizen Advisory Committee; and

WHEREAS, The Solar Facilities Citizen Advisory Committee has met five times and conducted one community open house for the purposes of gathering information and making recommendations regarding standards and/or criteria for siting of solar facilities that qualify as major alternative energy systems in Kittitas County;

WHEREAS, During these meetings, the Solar Facilities Citizen Advisory Committee has agreed on the following values:

1. High-quality irrigated agricultural land in Kittitas County is a limited resource, and should be protected.
2. Commercial solar facilities may be allowed on high-quality irrigated agricultural land, but only subject to the highest level of review and scrutiny, and with the requirement for an Alternatives Analysis that considers whether the proposed use can be reasonably accommodated on lands other than high-quality irrigated agriculture land. "Alternatives Analysis" means a study prepared by an applicant for a Solar Power Production Facilities (SPPF) that demonstrates why a particular Tier 3 (high-quality agriculture land) site is justified and why other Tier 1 or Tier 2 (not high-quality agriculture land) areas cannot reasonably accommodate the proposed SPPF. Economic factors may be considered along with other relevant factors in determining

that the use cannot reasonably be accommodated in other areas. Under this test, the following questions must be answered:

- a. Does the property meet the criteria for Tier 1 or Tier 2 designation?
 - b. Can the proposed SPPF be reasonably accommodated on other Tier 1 or Tier 2 properties?
 - c. Can the proposed SPPF be reasonably accommodated on Tier 3 land that is already irrevocably committed to uses other than irrigated agriculture?
 - d. Can the proposed use be reasonably accommodated inside an urban growth area? If not, why not?
3. Reasonable and economically-viable alternatives do exist in Kittitas County for commercial solar facilities on lands other than high-quality irrigated agricultural land.
 4. Conditions should be required for commercial solar facilities to mitigate impacts on surrounding properties; and

WHEREAS, TUUSSO Energy, LLC has submitted an application to the Energy Facility Site Evaluation Council (EFSEC) to develop, construct, and operate the Columbia Solar Photovoltaic Project, which would consist of five sites near Ellensburg with a combined maximum generating capacity of 25 megawatts; and


WHEREAS: The Board of County Commissioners request that EFSEC consider the values recommended by the Solar Facilities Citizen Advisory Committee during consideration of the TUUSSO applications.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners recommends that EFSEC consider the following values when considering the TUUSSO Energy, LLC Columbia Solar Photovoltaic Project: 1) High-quality irrigated agricultural land in Kittitas County is a limited resource, and should be protected; 2) Commercial solar facilities may be allowed on high-quality irrigated agricultural land, but only subject to the highest level of review and scrutiny, and with the requirement for an Alternatives Analysis that considers whether the proposed use can be reasonably accommodated on lands other than high-quality irrigated agriculture land; 3) Reasonable and economically-viable alternatives do exist in Kittitas County for commercial solar facilities on lands other than high-quality irrigated agricultural land; and 4) Conditions should be required for commercial solar facilities to mitigate impacts on surrounding properties.

ADOPTED this 12th day of December, 2017



**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**


Paul Jewell, Chairman



ATTEST

CLERK OF THE BOARD - Deputy

Jandy Buchholz
Julie A. Kjorsvik

Laura Osiadacz
Laura Osiadacz, Vice-Chairman

Obie O'Brien
Obie O'Brien, Commissioner

APPROVED AS TO FORM:

Neil Caulkins
Neil Caulkins,
Deputy Prosecuting Attorney

DEC - 4 2017

FILED

J. Flanagan & Tenney

NOV 30 2017

VAL BARSCHAW, CLERK
KITITAS COUNTY WASHINGTONIN THE SUPERIOR COURT OF WASHINGTON
KITITAS COUNTYONE ENERGY DEVELOPMENT LLC; and
IRON HORSE SOLAR LLC ,

Cause No. 17-2-00075-5

Plaintiffs,

vs.

MEMORANDUM DECISION

KITITAS COUNTY, a municipal
corporation; and KITITAS COUNTY
BOARD OF COMMISSIONERS; and
"SAVE OUR FARMS! SAY NO TO IRON
HORSE!"; and CRAIG CLERF AND
PATRICIA CLERF, husband and wife

Defendants.

INTRODUCTION

Oral argument on Petitioner's Land Use Petition Act (LUPA) appeal occurred on September 7, 2017. Timothy McMahon appeared for the plaintiffs. Kenneth Harper appeared for the Defendant Kittitas County and the Kittitas County Board of Commissioners. James Carmody appeared for Defendants Save our Farms and Craig and Patricia Clerf. After hearing all arguments, the Court took the matter under advisement in order to review the record and the pleadings submitted by all parties. The Court has reviewed the voluminous hearing records, state statutes, county code provisions, court cases, and all arguments presented.

DISCUSSION

1. Factual Background At issue is the granting or denial of a Conditional Use Permit for property owned by William Hanson, located east of the town of Kittitas on four flat parcels of land in the center of the Kittitas Valley, in the midst of farmland. Currently the land is used for farming a rotation of crops, including timothy hay and alfalfa. The soil is productive and the adjacent and nearby neighbors are also engaged in farming. The property owner proposed to lease his property to One Energy Development LLC and to convert the farmland into a 47.5 acre solar PV facility in an area which is zoned there and all around it as Agriculture 20 (A-20). The project is named the Iron Horse Solar LLC project. The land use designation for the property and the surrounding properties is Rural Working Land.

The Kittitas County Code provides that a solar farm--which is designated by the County code in KCC 17.61.010(9) as a "major alternative energy facility"--is allowed in the A-20 zoning area only as a conditional use. KCC 17.61.020(4)(b).¹ Thus, in order to operate in this A-20 area, this solar PV facility must first

¹ The term Solar Farm is used both in the Kittitas County Code and in the application for conditional use permit. However, the facility involved is not a farm. It is a facility that is non-agricultural and industrial in nature.

1 be granted a conditional use permit for this particular property
2 by the Kittitas County Board of Commissioners.

3 During the ongoing application process for approval of the
4 facility, One Energy had to also abide by the Kittitas County
5 SEPA process as well. The SEPA review and the project permit
6 review were consolidated into one procedure, pursuant to KCC
7 15A.01.010. The SEPA issues went before a Hearing Examiner, who
8 conducted an open record adjudicative hearing on October 20,
9 2016. Public comment and testimony and submission of evidence
10 were taken at this hearing. The Hearing Examiner's job was both
11 to decide the merits of the administrative appeal of the State
12 Environmental Policy Act threshold determination and issuance of
13 the Mitigated Determination of Nonsignificance (MDNS), and to
14 make a recommendation to the Board of County Commissioners about
15 the issuance of the conditional use permit (CUP).
16
17

18 The Hearing Examiner did do this. It denied the SEPA
19 appeal, affirming the MDNS, and it also recommended that the BOCC
20 approve the CUP application with conditions. The proposal had
21 engendered considerable public interest, particularly among
22 adjacent and other nearby landowners, and they participated as
23 allowed by providing letters, testimony, and various documents
24 for consideration.
25

26 After the decision and recommendation of the Hearing
27
28
29

1 Examiner, the Board of County Commissioners held a closed record
2 hearing pursuant to KCC 15A.01.040(3)(a) to make a decision as to
3 the granting of the conditional use permit. The closed record
4 hearing meant that the commissioners were given the full
5 administrative record available to the Hearing Examiner, and were
6 able to discuss their questions and opinions about the various
7 issues presented, to deliberate, and eventually to issue a
8 written decision in the form of Resolution 2017-022, dated
9 February 7, 2017. The Commissioners, by a vote of two to one,
10 denied the Iron Horse project conditional use permit application.
11

12 In Resolution 2017-022, the commissioners listed the
13 following substantive statements:
14

15 "1. Open space, the natural landscape, and vegetation would
16 not predominate over the built environment on the subject parcels
17 if the proposal were approved in this location. (RCW
18 36.70A.030(15)
19

20 2. The proposed use in the proposed location is not
21 essential or desirable to the public convenience and is
22 detrimental or injurious to the public health, peace, or safety,
23 or to the character of the surrounding neighborhood. (KCC
24 17.60A.015(1))
25
26

27 3. The proposed use in the proposed location would not
28 ensure compatibility with existing neighboring land uses. (KCC
29

1 17.60A.015(5).

2 4. The proposed use in the proposed location does not
3 preserve the "rural character" as defined in the Growth
4 Management Act. (RCW 36.70A.030(15)) KCC 17.60A.015(7)(B)).
5

6
7
8 This appeal timely followed on February 23, 2017 with the
9 filing of the Land Use Petition.
10

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12
13
14 **2. Standard of Review:** The Land Use Petition Act, LUPA,
15 provides the exclusive means for judicial review of a land use
16 decision (with some exceptions). *Woods v. Kittitas County*, 162
17 Wn. 2d 597 (2007)

18 RCW 36.70C.130 sets forth the standards for granting relief
19 in a LUPA appeal. The court may grant relief only if the party
20 seeking relief has carried the burden of establishing that one of
21 the six standards set forth in RCW 36.70C.130(1) has been met.
22

23 The standards are as follows:

- 24 (a) The body or officer that made the land use decision
25 engaged in unlawful procedure or failed to follow a
26 prescribed process, unless the error was harmless;
27 (b) The land use decision is an erroneous interpretation
28 of the law, after allowing for such deference
29 as is due the construction of the law by a local
jurisdiction with expertise;
(c) The land use decision is not supported by evidence that
is substantial when viewed in light of the whole record

before the court;

(d)The land use decision is a clearly erroneous application of the law to the facts;

(e)The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f)The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1).

One Energy, in its brief, argues that it can establish five out of the six standards, (a) through (e). The court will discuss each in this decision.

Deference must be given to the decisions and factual determinations of the local decision making authority. In this case, the BOCC enacted in KCC 15A.01.040 (4)(d) a model in which the Hearing Examiner shall make only recommendations to the BOCC regarding the granting of conditional use permits. Decision making authority over the granting of conditional use permits is retained by the BOCC in the code. This reviewing court, thus, must give substantial deference to the decisions of the BOCC, not to the Hearing Examiner, which makes findings and decisions regarding SEPA, but not the decision regarding conditional use permits. Evidence, and all logical inferences from that evidence, are viewed in the light most favorable to the party that prevailed in front of the BOCC—in this case the defendants.

Plaintiff did not cite persuasive authority which would support giving that deference to the Hearing Examiner because of

1 a perceived or real deficiency in the Findings of Fact found by
2 the legal decision maker, and this Court declines to find that
3 the Hearing Examiner was the highest fact finder in this case.
4

5 For the reasons set forth below, this Court finds that the
6 plaintiff has not established any of the standards necessary to
7 overrule the determination of the Board of County Commissioners.
8
9
10
11

12 **3. Analysis:**

13 Analysis of plaintiff's Statement of Issues is organized
14 around specific LUPA standards of review.
15

16 **I. THIS LAND USE DECISION WAS NOT OUTSIDE THE AUTHORITY OR**
17 **THE JURISDICTION OF THE KITTITAS COUNTY BOARD OF COMMISSIONERS**
18 **UNDER RCW 36.70C.130(1)(e) .**
19
20

21 One Energy argues as part of standard (1)(e) that the BOCC
22 acted outside of its authority by disregarding the Hearing
23 Examiner's findings. This Court disagrees.
24

25 The Board's role in the conditional use permit process is to
26 determine whether the applicant has met the requirements of the
27 conditional use using KCC 17.60A.015 Review criteria. The
28 Hearing examiner did not have the authority to permit and
29

1 authorize a conditional use.

2 The plaintiffs have not carried a burden of proving that the
3 land use decision was outside the authority or jurisdiction of
4 the body making the decision: in this case, the Kittitas County
5 Board of County Commissioners. As both petitioner and defendant
6 indicate, the SEPA review and the CUP review were consolidated
7 into one hearing, so that the public and the parties and all
8 interested persons could present testimony or submit evidence at
9 one time for consideration of the various land use decisions by
10 the various land use decision makers.
11

12 Nevertheless, as noted earlier, the Kittitas County Board of
13 Commissioners retained decision making authority with regard to
14 the granting or denial of Conditional use permits in KCC
15 15A.01.040 (4)(d). The code provisions regarding this procedure
16 are set out in the relevant parts of KCC 15A.01.040:
17

18 "3. Board of County Commissioners. In addition to its
19 legislative responsibilities under KCC Title 15B, the
20 board shall review and act on the following subjects
pursuant to this title:

- 21 a. Recommendations of the Hearing Examiner or Planning
22 Commission. Decision-making process by the board shall
23 consist of a public meeting or meetings wherein the
24 board reviews the written record transmitted from the
25 Hearing Examiner for Quasi judicial matters and the
26 Planning Commission for Legislative matters and issues
27 a written decision in resolution or ordinance form.
During such meeting(s), appropriate county staff will
28 present the record to the board, providing information
as necessary to ensure county code compliance. No new
29 comment or information will be allowed by the board
during the decision-making process.
- b. Appeals of administrative SEPA actions regarding an
action without an underlying permit.

- c. Open record appeal of administrative SEPA actions when the board of county commissioners hears the appeal of the associated administrative permit decision.
- d. Appeal of administrative determinations such as short plats, variances, and code interpretations.
- e. Shoreline substantial development permits that are included in consolidated permit applications that are subject to Board review and action.
- f. Review and provide initial local County approval, denial, or approval with conditions for shoreline conditional use permits and shoreline variances that are in consolidated permits applications that are subject to Board review and action.

4. Hearing Examiner - Recommendation. The Hearing Examiner shall review and make recommendations to the board of county commissioners on the following applications and subjects:

- a. All Quasi judicial review processes including:
 - i. applications for preliminary plats
 - ii. Rezone applications.
- b. Other actions requested or remanded by the board of county commissioners.
- c. Development agreements.
- d. Conditional use permits pursuant to the zoning code, KCC Title 17
- e. In the case of an open record appeal of administrative SEPA actions when the Hearing Examiner makes a recommendation to the board of county commissioners on the underlying permit, the Hearing Examiner shall decide the SEPA appeal.

Integration of the hearings by statute, for purposes of taking evidence, does not equate to mandating the rubber stamping of the Hearing Examiner's recommendation. This court has found no case law requiring the BOCC to "engage with the findings and conclusions produced by the Hearing Examiner," or to "refute,

1 challenge, or reply to" the explanations of the Hearing Examiner.

2 Moreover, the decision facing the Hearing Examiner regarding
3 the SEPA appeal involved a different decision with different
4 considerations than the decision facing the Commissioners. As
5 defendants point out, the SEPA review of the MDNS is a threshold
6 determination and does not bind any decision maker on a challenge
7 to the conditional use permit.

8 The Commissioners were the only decision makers who did have
9 authority or jurisdiction to make this land use decision.
10
11 Standard (1)(e) has not been met.

12
13 **II. THE BOARD OF COUNTY COMMISSIONERS DID NOT FAIL TO**
14 **FOLLOW THEIR PRESCRIBED PROCESS IN MAKING THEIR LAND USE**
15 **DETERMINATION UNDER RCW 36.70C.130(1) (a) .**
16

17
18 The actual procedure that was followed involved an open
19 public hearing, the submission of testimony and evidence, and the
20 following consideration of all of the record of the open hearing
21 at the commissioner's closed hearing. This procedure tracked the
22 requirements set out in the code provision above. The plaintiff
23 has not identified any procedural errors in the process
24 undertaken in this case up to the point of the issuance of the
25 Resolution 2017-022.
26

27 One Energy argues that the Findings of Fact in the
28 Resolution are substantively insufficient, to the extent that
29

1 there were essentially **no findings** of any substantive fact, which
2 they then argue is a failure to follow KCC 15A.06.020, and thus
3 a violation of Standard (1)(a). They argue that this failure to
4 make findings means that deference must be given to the Hearing
5 Examiner, which was the highest previous entity that made
6 specific findings, so that the Hearing Examiner became the
7 highest level finder of fact.
8

9 The defendant from Save our Farms counters that a finding of
10 facts is indeed set forth in Resolution 1017-022, that the
11 findings, even if conclusory, are sufficient as a matter of law
12 to show the bases upon which the commissioners made their
13 decision. The defendant adds that they were supported by
14 substantial evidence (which will be taken up in another
15 argument).
16

17 The defendant Kittitas County likewise argues that even if
18 findings lack specificity or are conclusory, appellate review may
19 proceed where the record of the oral decision enables the
20 appellate court to review the decision making process. It argues
21 that in this case, the oral record was extensive and clear as to
22 the final factors upon which the commissioners based their
23 decision. They also apparently argue that the actual criteria
24 for conditional use permit review involve subjective general
25 criteria which would not be conducive to empirical facts and thus
26 are admittedly not so detailed as the hearing examiner's facts,
27 though they are at least legally sufficient. While it is true
28
29

1 that the criteria are by nature general and to an extent,
2 subjective, the court believes more specific findings are
3 possible, desirable, and preferable in such a situation.

4 However, although the court notes deficiencies in the
5 findings, this court disagrees with the plaintiff and ultimately
6 agrees with the defendant that the findings made were legally
7 sufficient.
8

9
10 The findings are embodied in Resolution 2017-022. As
11 plaintiff points out, the bulk of the facts are procedural facts
12 and recitations of the laws/code provisions/definitions which the
13 Commissioners had to consider. The last four statements of the
14 resolution, quoted above, which are characterized by the
15 plaintiff as conclusions of law, are in reality both findings and
16 conclusions. They are the only substantive factual statements
17 listed, and constitute the ultimate reasons that the County
18 commissioners gave to explain their denial of the conditional use
19 permit.
20
21

22 This Court finds these are marginally sufficient as findings
23 of fact. They lack detail and any citation to the record itself.
24 However, broad as they are, they are sufficiently specific to
25 permit the Court to review the record and understand the
26 decision. The oral record of the Commissioners' deliberations
27 and decision was extensive, and the voluminous record as a whole
28
29

1 does allow this Court to review the decision for sufficiency of
2 evidence. A common sense reading of "findings" requirements here
3 should prevail. Although the Court was tempted to remand the
4 case to the Board of Commissioners to set out facts with greater
5 specificity, the Court is able to understand the reasoning of the
6 commissioners without so requiring. Thus it would be a pointless
7 gesture to send the matter back for improved findings, and the
8 Court is not inclined to engage in a pointless gesture.
9

10
11 Therefore, plaintiffs have not shown that the Commissioners
12 failed to follow the prescribed process as in Standard (1)(a).
13

14 **III. The Resolution 2017-022 is not an erroneous interpretation**
15 **of law under RCW 36.70C.130 (1)(b).**
16

17
18 The Board found in Finding Number 4, that "the proposed use
19 in the proposed location does not preserve the rural character as
20 defined in the Growth Management Act, RCW 36.70A.030(15) and KCC
21 17.60A.015 (7)(B)." Resolution 2017-022. The definition for
22 rural character referenced in the County Code from the RCW is:
23

24 "(16) "Rural character" refers to the patterns of land use
25 and development established by a county in the rural element
26 of its comprehensive plan:

27 (a) In which open space, the natural landscape, and
28 vegetation predominate over the built environment;

29 (b) That foster traditional rural lifestyles, rural-based
economies, and opportunities to both live and work in rural
areas;

(c) That provide visual landscapes that are traditionally
found in rural areas and communities;

1 (d) That are compatible with the use of the land by wildlife
and for fish and wildlife habitat;

2 (e) That reduce the inappropriate conversion of undeveloped
land into sprawling, low-density development;

3 (f) That generally do not require the extension of urban
governmental services; and

4 (g) That are consistent with the protection of natural
surface water flows and groundwater and surface water recharge
5 and discharge areas." RCW 36.70A.030(16).

6 This standard must be reviewed after allowing for such
7 deference as is due the construction of a law by a local
8 jurisdiction with expertise. In this case, the Board is the
9 local decision maker and the Board is also the source of the
10 ordinance that sets out the permit criteria, referencing this
11 RCW. The Board is the governing legislative body in a largely
12 rural county, which has considerable experience in discussing and
13 determining rural character. And the Board is singly tasked with
14 deciding the issuance of Conditional Use Permits, and thus must
15 deal with these standards and definitions on a regular basis.
16 Some deference is due to the Kittitas County Commissioners on
17 this issue. But even if deference was not due, the Court finds
18 that the Board did not misinterpret the law.
19
20
21

22 Plaintiffs contend that the commissioners misapplied the
23 "rural character" provision of the Kittitas County Code
24 provision. They cite to the fact that two solar farms have
25 already been approved, and neither was appealed with respect to
26 conformance with the rural element of the comprehensive plan.
27 The argument appears to be that the very inclusion of solar farms
28
29

1 as a conditional use in the A-20 zone declares that solar
2 facilities are consistent with rural character.

3 However, conditional uses are not the same as permitted
4 uses. Conditional uses are uses that would not be allowed in
5 specific zones unless the proponent applicant of the particular
6 use can demonstrate to the satisfaction of the finder of fact
7 that there is compliance with each of the conditional use permit
8 criteria at that particular site. Solar farms are only allowed
9 in A-20 as a conditional use. Therefore, each individual solar
10 farm must meet every one of the criteria for a conditional use in
11 a site specific review and evaluation before it can be granted a
12 conditional use permit. Preserving rural character is one of the
13 conditions that must be met, and the burden of showing that it
14 does so at this specific site rests with the applicant proponent
15 of the solar farm.
16

17 There is nothing inconsistent about a finding that major
18 alternative energy facilities may but also may not preserve rural
19 character as it applies to a specific project in a specific
20 place, even in the same zoning. One component of rural character
21 refers to "patterns of land use and development established by a
22 county in the rural element of its comprehensive plan: (a) in
23 which open space, the natural landscape, and vegetation
24 predominate over the built environment." There could be an almost
25 infinite number of configurations of project and siting that
26 could yield vastly different results from each other.
27
28
29

1 Additionally, since compliance with the Comprehensive Plan
2 is made part of the local conditions which must be met for a
3 conditional use permit, the applicant is mandated to show
4 compliance with the Comprehensive Plan. *Cingular Wireless, LLC*,
5 131 Wn. App. 756 (2006). This court finds it is not error for
6 the Commissioners to consider rural character as it is discussed
7 in the comprehensive plan during the site specific analysis. The
8 definition in the Growth Management Act at RCW 36.70A.030 is:
9

10 "Rural character" refers to the patterns of land
11 use and development established by a county in the
12 rural element of its comprehensive plan:

13 (a) In which open space, the natural landscape, and
14 vegetation predominate over the built environment;

15 (b) That foster traditional rural lifestyles,
16 rural-based economies, and opportunities to both live
17 and work in rural areas;

18 (c) That provide visual landscapes that are
19 traditionally found in rural areas and communities;

20 (d) That are compatible with the use of the land by
21 wildlife and for fish and wildlife habitat;

22 (e) That reduce the inappropriate conversion of
23 undeveloped land into sprawling, low-density
24 development;

25 (f) That generally do not require the extension of
26 urban governmental services; and

27 (g) That are consistent with the protection of
28 natural surface water flows and groundwater and
29 surface water recharge and discharge areas

30 It is not an erroneous interpretation of law, specifically rural
31 character, to consider whether a massive industrial project of
32 this nature, encompassing 47.5 acres, eight feet high with large
33 mechanized racks to follow the sun, set in the middle of treeless
34 productive farm fields preserves rural character, interferes with
35 visual compatibility of the surrounding area, or contains a built

1 environment which predominates over the natural landscape.

2 Plaintiffs point out that this facility of 47.5 acres is but
3 a small percentage of agricultural land in Kittitas County. The
4 court finds that this is true and would be relevant to an issue
5 of whether overall agriculture production in the valley is
6 threatened by the project. However, in discussing rural
7 character, the relevant criteria for the Commissioners in KCC
8 17.60A.015 were:
9

10 1. "The proposed use is essential or desirable to the
11 public convenience and not detrimental or injurious to
12 the public health, peace, or safety or to the
character of the surrounding neighborhood. ...

13 5. The proposed use will ensure compatibility with
existing neighboring land uses.

14 6. The proposed use is consistent with the intent and
15 character of the zoning district in which it is located.

16 7. For conditional uses outside of Urban Growth Areas,
the proposed use:

17 A. Is consistent with the intent, goals, policies, and
18 objectives of the Kittitas County Comprehensive Plan,
19 including the policies of Chapter 8, Rural and
Resource Lands;

20 B. Preserves "rural character" as defined in the Growth
Management Act (RCW 36.70A.030(15));

21 C. Requires only rural government services; and

22 D. Does not compromise the long term viability of
23 designated resource lands. "

24 The relevant inquiry is the effect on the character of the
25 "surrounding neighborhood" and not necessarily the entire county.
26 The plaintiffs' suggestion that the built environment be compared
27 to all agricultural land in the county is misplaced.
28
29

1 It would be illogical to determine whether the built
2 environment predominates over open space, natural landscape and
3 vegetation by considering and comparing the footprint of a
4 development of any sort to all the agricultural land in a county.
5 Under that analysis, a square mile of skyscrapers in the middle
6 of one hundred square miles of farm fields would not qualify as
7 predominating over the natural landscape. Yet it would clearly
8 not be in keeping with rural character. This is obviously not the
9 intent of the zoning codes, the Growth Management Act provisions,
10 or twenty plus years of other land use decisions. In determining
11 what the "built environment" factor means, this Court has found
12 no case setting out firmly the parameters of this inquiry, either
13 with regard to which land is to be used for comparison to the
14 built environment, or to what percentage should be considered
15 dispositive. We are left with a common sense analysis.

16 The plaintiff has not shown that the Commissioners engaged
17 in an erroneous interpretation of the law surrounding rural
18 character, under Factor 1) (b).
19
20
21
22
23
24

25 **IV. The Resolution is supported by substantial evidence in light**
26 **of the entire record, pursuant to RCW 36.70C.130(1)(c).**
27
28
29

1 Plaintiff claims under the Standard for Granting Relief, RCW
2 36.70C.130(1)(c), that the resolution was not supported by
3 evidence that is substantial when viewed in light of the whole
4 record before the court. This is a sufficiency of evidence
5 claim. Plaintiff has specifically objected in this capacity to
6 **Finding 2**, *The proposed use in the proposed location is not*
7 *essential or desirable to the public convenience, and is*
8 *detrimental or injurious to the public health, peace, or safety,*
9 *or to the character of the surrounding neighborhood, and also to*
10 **Finding 3**, *The proposed use in the proposed location would not*
11 *ensure compatibility with existing neighboring land uses.*
12
13
14

15 The legal standard on any claim of sufficiency of evidence
16 for the commissioners' findings under this provision is for the
17 reviewing court to consider all evidence and reasonable
18 inferences "in the light most favorable to the party who
19 prevailed in the highest forum that exercised fact-finding
20 authority." *Cingular Wireless, LLC v. Thurston County*, 131 Wn.
21 App. 756 (2006)
22

23 Plaintiff contends again in this section that the fact-
24 finder is the Hearing Examiner. In fact, however, as in previous
25 issue discussions, the fact-finder entitled to the inference is
26 the Board of County Commissioners. The Board's role in the
27 conditional use permit process is to determine whether the
28 applicant has met the requirements of the conditional use using
29

1 KCC 17.60A.015 Review criteria. The Hearing examiner did not
2 have that authority to permit and authorize a conditional use.
3 The Board in that instance does not exercise appellate
4 jurisdiction but original jurisdiction.
5

6 Under the substantial evidence standard, there must be a
7 sufficient quantum of evidence in the record to persuade a
8 reasonable person that the declared premise is true. *Phoenix*
9 *Development, Inc. v. City of Woodinville*, 171 Wn. 2d 820 (2011).
10 In addition, the court reserves credibility determinations for
11 the fact finder and does not review them on appeal. *J.L.*
12 *Storedahl & Sons, Inc. v. Cowlitz County*, 125 Wn. App. 1 (2004).
13
14

15 It is worth noting that the following analysis has nothing
16 whatever to do with the views of the Court itself as to the
17 beneficial nature of solar projects in general or this project in
18 particular. All parties need to remember that this Court, as a
19 reviewing appellate court cannot substitute its own judgment for
20 the judgment of the Kittitas County Commissioners. It was for
21 the commissioners to determine whether the review criteria under
22 KCC 17.60A.015 for a conditional use permit were met. It is
23 possible for there to be substantial evidence on BOTH sides of
24 any issue. It is for the finder of fact, in this case the BOCC,
25 to weigh the evidence and decide the matter. The Court will
26 uphold the decision under this prong if it is supported by
27
28
29

1 substantial evidence when viewed in light of the whole record.

2 It is also worth noting that more detailed and comprehensive
3 findings from the commissioners would have assisted all parties
4 and the court greatly in considering this appeal. However,
5 having found that they are sufficiently specific to at least
6 enable the court to consider the nature and amount of evidence
7 that supports them, the court will discuss each one here.
8

9
10 *Regarding Finding 2:* In reviewing the evidence in the
11 record, and taking that evidence in the light most favorable to
12 the defendants, this Court finds there is substantial and
13 sufficient evidence for the commissioners to find the proposed
14 solar facility is not essential or desirable to the public
15 convenience, and that it is detrimental or injurious to the
16 character of the surrounding neighborhood.
17

18 There was no evidence this Court could find in the record
19 that the facility was in fact essential to the public
20 convenience. The plaintiff instead focused on desirability.
21 There was much discussion of the beneficial nature of clean,
22 renewable energy. Both the proponents of the site and most of
23 the opponents of the site agreed in general with the beneficial
24 nature of clean energy in the abstract. However there was no
25 testimony to the need for placement of this project at this
26 location, other than an assertion that the energy would be sold
27 to PSE, which entity provides some, though not all, of the
28
29

1 electricity in the Kittitas Valley. Evidence of the project's
2 desirability was countered by much discussion from opponents
3 about the better suitability of land in other locations in the
4 county for the purpose of a solar farm. Although there was
5 testimony in the record as to potential property tax revenue and
6 a projected amount of clean energy that could be added to the
7 local power grid, the commissioners were not compelled to declare
8 it desirable when weighed against the rest of the testimony in
9 the record.
10

11 The solar project was described by proponents as the largest
12 solar farm in the State of Washington. Opponents to the
13 facility were concerned with the aesthetics of thousands of steel
14 racks of panels, up to eight feet high, which are supported by
15 steel pillars, driven 6 to 8 feet into the ground throughout 47.5
16 acres of prime growing land, as well as accompanied by boxes and
17 instruments of electrical equipment. Local persons were concerned
18 with the sixty acre parcels being surrounded by a huge chain link
19 fence, eight feet high with strands of barbed wire at the top,
20 and there were many comparisons with heavy industry or prisons.
21 The impact on the view from the surrounding neighborhood at this
22 flat mid-valley location is undeniable. The Commissioners were
23 entitled to consider the aesthetics of such a facility. There
24 was testimony from a local realtor about property values
25 diminishing. The commissioners were entitled to believe this
26 testimony over the assertions of the plaintiff that studies from
27
28
29

1 some eastern states show no change in property values around
2 solar farms. Neighbors were concerned with potential issues with
3 weeds in a sensitive timothy hay-growing area, and there was
4 testimony about spraying. Taken in the light most favorable to
5 the county, the Commissioners were entitled to consider this
6 testimony about the difficulties with weed control and to weigh
7 that over the plaintiff's testimony about weeds. There were
8 assertions about glare, about noise, and about the impact to
9 wildlife from neighbors who have seen wildlife on that particular
10 property, which commissioners were entitled to believe despite
11 the SEPA findings.
12

13 There were pages of letters, maps, and photographs
14 discussing the local opposition to the siting of the solar
15 facility. There was testimony from numerous nearby landowners as
16 to the character of the surrounding area, and to the potential
17 impact of this clearly non-agricultural, heavily industrial
18 property use to the people of this particular area. It was
19 undisputed that the character of the surrounding area is
20 farmland. The site itself is prime farmland and has been farmed
21 for years. Plaintiffs suggest without evidence that this is true
22 of all A-20 property, and that the opposition was not site
23 specific; this Court finds that the opposition to the project was
24 completely site specific. The character of every parcel of A-20
25 land is not before the court. Only this set of parcels is before
26 the Court, and this neighborhood. Considering all facts and
27
28
29

1 inferences in the light most favorable to the Commissioners, a
2 fair minded person could make the finding that the proposed use
3 in the proposed location is not desirable to the public
4 convenience, and is detrimental to the character of the
5 surrounding neighborhood. There was substantial evidence in the
6 record as a whole to support the finding.
7

8
9 This holding is consistent with the holding in *Cingular*
10 *Wireless, LLC v. Thurston County*, 131 Wn. App. 756 (2006), in
11 which the Court found that the testimony of area residents amply
12 demonstrated that a cell tower would adversely impact views of
13 Mt. Rainier and open vistas of rural farmland. In noting that no
14 other structures pierced the natural skyline in that area, the
15 court held that the record contained sufficient evidence of
16 incompatibility with neighborhood character and adverse aesthetic
17 impacts to support the hearing examiner's decision in that case.
18
19

20 In this court's review, however, there is not substantial
21 evidence sufficient to show that the project is detrimental or
22 injurious to the public health, peace, or safety. The complaints
23 about the facility involved the nature of the area and its effect
24 on nearby farmers. Despite questions about the potential for
25 broken panels to leach harmful chemicals into the soil, there was
26 not sufficient evidence produced that this was a likely event.
27 The court will strike that portion of Finding and Conclusion 2.
28
29

1
2
3 *Regarding Finding 3:* Some opposition to the project
4 declared the site to have incompatibility with existing
5 neighboring land uses. Plaintiffs argued in their submission to
6 the County that the solar farm would have no impact on the
7 ability of neighboring farmers to continue to farm. The
8 testimony and discussion concerning special problems of weed
9 control around timothy hay were most germane to this finding.
10 There were also concerns expressed in the record regarding water
11 control. Although the aesthetic issues relevant to Finding 2 do
12 not impact the ability of neighbors to farm, the evidence, taken
13 in the light most favorable to the Commissioners, is marginally
14 sufficient for the Commissioners to make the finding and
15 conclusion that the proposed use does not ensure compatibility
16 with neighboring land uses.
17
18
19

20 The plaintiff's contention that *J.L. Storedahl &sons, Inc.*
21 *v. Clark County* (143 Wn.app. 920 (2008) and *Lakeside Industries*
22 *v. Thurston County* (119 Wn. App. 886 (2004) require the adoption
23 of the Hearing Examiner's facts is incorrect. In both *Storedahl*
24 and *Lakeside* the Board of Commissioners sat as an appellate body.
25 In *Storedahl*, the Board did not follow legislatively established
26 re-zone criteria for the review of the rezone. In *Lakeside* the
27 Hearing Examiner had the authority to make the actual decision
28
29

1 and the Board heard the appeal.

2 Plaintiff has not shown insufficient evidence under Factor
3 (1)(c).

4
5
6 **V. Resolution 2017-022 is not a clearly erroneous application of**
7 **Kittitas County's conditional use permit criteria from KCC**
8 **17.60A.015, as listed in standard RCW 36.70C.130(1)(d).**
9

10 Plaintiff contends that the discussion which the
11 Commissioners indulged in regarding the general suitability of
12 solar facilities in the A-20 zone showed that they erroneously
13 relied upon the precedential effect of their decision. Plaintiff
14 correctly points out that the comprehensive plan and ensuing
15 development regulations should not be revisited during a project
16 review.
17

18 A finding is clearly erroneous under subsection (d) when,
19 although there is evidence to support it, the reviewing court on
20 the record is left with the definite and firm conviction that a
21 mistake has been committed. *Norway Hill Pres. & Prot. Association*
22 *v. King County Council*, 87 Wn. 2d 267 (1976)
23

24 The commissioners did express reservations about siting such
25 a facility in the A-20 designation. However, it is also clear
26 from the oral record when Commissioner Jewell pointed it out,
27 that they knew they could not make their decision on this case
28 based on a rethinking of conditional uses in A-20 generally. The
29

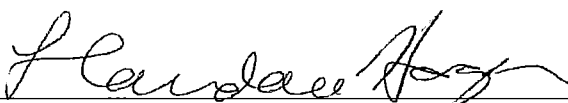
1 Court is satisfied that the commissioners were analyzing this
2 particular project at this particular site rather than changing
3 the conditional use criteria when making the findings that they
4 made. The Court is not left with a definite and firm conviction
5 that plaintiff's alleged mistake was committed.
6

7 This determination is made despite the later moratorium
8 placed on the future siting of solar PV facilities. It appears
9 that the commissioners realized the question of suitability for
10 large scale solar energy facilities to be placed in an A-20 zone
11 is a matter that the commissioners must take up outside any
12 particular project review.
13
14
15
16

17 CONCLUSION

18 For the above stated reasons, the Board of County
19 Commissioner's decision to deny One Energy Development and Iron
20 Horse Solar the conditional use permit in Resolution 2017-022 is
21 upheld. The plaintiff has failed to establish that any of the six
22 standards set forth in RCW 36.70C.130(1) have been met.
23

24
25 Dated this 30th day of November, 2017.

26
27
28 
29 Judge Hooper