BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of TUUSSO ENERGY-Columbia Solar Project, APPLICANT.	EFSEC Docket No. EF-170823 APPLICANT'S SUPPLEMENTAL LEGAL MEMORANDUM

On behalf of the Applicant, TUUSSO Energy, LLC, Stoel Rives LLP submits this Supplemental Legal Memorandum, addressing five issues raised by Kittitas County at the December 12, 2017 Land Use Hearing.

DATED: December 21, 2017.

STOEL RIVES LLP

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ISSUE NO. 1

Is the County's Moratorium Relevant to EFSEC's Land Use Consistency Review?

RESPONSE: No.

The County's moratorium is not relevant to EFSEC's land use consistency review process. The law is clear, established by the Supreme Court in the EFSEC Whistling Ridge Energy Project case.

The County's moratorium is not a land use plan or ordinance and so lacks relevance to EFSEC's land use consistency determination. EFSEC's expedited review process requires that the Columbia Solar Projects be consistent with the County's land use plans *or* zoning ordinances. "'Zoning ordinance' means an ordinance of a unit of local government *regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW ....*" RCW 80.50.020(22) (emphasis added).

In March 2017, the Kittitas County Board of Commissions adopted a Moratorium on Accepting Applications for Solar Projects that Qualify as Major Alternative Energy Facilities ("moratorium"). *See* Kittitas County, Ordinance No. 2017-002 (Mar. 13, 2017) (attached); Kittitas County, Ordinance No. 2017-004 (July 18, 2017) (extending moratorium to one year from January 10, 2017). The moratorium prevents the County from accepting "all applications for solar projects that would qualify as major alternative energy systems." *Id.* The moratorium does not, however, suspend or modify existing permitted uses or conditional use criteria, nor does it impose interim zoning ordinances. Tellingly, the moratorium does not prevent the County from processing an application submitted prior to the adoption of the moratorium under the existing code.

The Washington Supreme Court holds that ordinances affecting the processing of land use-related documents are not themselves zoning ordinances or land use regulations. In *Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, the Court held that a moratorium on the acceptance of SEPA checklists was not a land use regulation.[1] 178 Wn.2d 320, 346, 310 P.3d 780 (2013). The Court explained that

> the moratorium does not regulate how land is *used.* Rather, it regulates the county's processing of SEPA checklists and is not land use regulation within the definition provided by [the Energy Facilities Sites Location Act, Ch. 80.50 RCW].

[1] *See also Save Our Scenic Area v. Skamania County*, 183 Wn.2d 455, 465, 352 P.3d 177 (2015) (explaining that moratoria are a "'temporary suspension of established regulations'" that "'do[] not repeal, amend, or contradict'" the existing regulations (citation omitted)).

Id. The Court continued that "even if the moratorium were a land use regulation … it would not be inconsistent with the project because the moratorium only restricts *the county's* acceptance and processing of SEPA checklists." *Id.* at 347 (emphasis added).

> Under the county's code, a SEPA checklist is "not needed if ... SEPA compliance has been initiated by another agency." SCC 16.04.070(A). Here, EFSEC initiated SEPA review and the county will not need to accept or process a SEPA checklist. Since the county will neither accept nor process any SEPA checklists, the moratorium is not implicated.

Id.

So too here the County's moratorium does not disturb their existing code and does not (and could not) restrict *EFSEC* from processing applications under the EFSLA. Moreover, as EFSEC is undertaking a land use consistency review process, the County will not be required to accept an application and so the moratorium is not implicated by TUUSSO's application for expedited review. The work by the County's solar task force is also immaterial to the Council's decision. The work has been underway for a year. As noted above, the BOCC recently extended the moratorium through 2018. The task force's work is unresolved, far from an adopted, codified form that would become part of the County's comprehensive plan and zoning.

ISSUE NO. 2

Does EFSEC Need to Find "Compliance" and "Consistency" with the Shoreline Management Act and the County's Shoreline Management Program (SMP) to Make a Finding of Land Use Compliance and Consistency?

RESPONSE: No.

Minor work to repair an access road within the Typha site would require a shoreline permit. Shoreline permits are neither a "land use plan" nor a "zoning ordinance" within the meaning of RCW 80.50.020(22). Moreover, EFSEC jurisdictional facilities are exempt from Shoreline Management Act permits.

First, as noted above, for the purpose of EFSEC review, a "'[z]oning ordinance' means an ordinance of a unit of local government *regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW ....*" RCW 80.50.020(22) (emphasis added). Shoreline Management Act Master Programs are adopted pursuant to Chapter 90.58 RCW, for the specific purpose of regulating certain activities within the shoreline area. While Shoreline permits are an important consideration for project review, their issuance is not a factor for the Council's findings that the project satisfies EFSEC's criteria for expedited permitting.

Second, the Typha site's issuance of shoreline permits, if required, would be routine and consistent with the County's criteria for Shoreline Conditional Use and Substantial Development Permits. Consequently, EFSEC can find that the Typha project meets the County's requirements regulating shoreline permitting. *See* ASC Appendix J-3-37 through 69, including accompanying compliance narrative.

Third, EFSEC jurisdictional projects are exempt from shoreline permits. The Kittitas County Code exempts from shoreline permits "[a]ny project with a certification from the governor pursuant to RCW Chapter 80.50." KCC 17B.07.030(2)(*l*). This exemption reflects the following:

- RCW 90.58.140(9): "The holder of a certification from the governor pursuant to chapter 80.50 RCW [Energy Facilities - Site Locations] shall not be required to obtain a permit under this section."

- WAC 173-27-045: "Developments not subject to the Shoreline Management Act. Certain developments are not required to meet requirements of the Shoreline Management Act as follows: ... (2) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under chapter 90.58 RCW."

- WAC 173-27-040(2)(*l*): "The following developments shall not require substantial development permits: ... (l) Any project with a certification from the governor pursuant to chapter 80.50 RCW."

Although the Columbia Solar Projects are defined as "exempt" projects under the Shoreline Management Act—thus not requiring a development permit—the Projects still "must otherwise comply with applicable provisions of the act and the local master program." WAC 173-27-030(7). For this reason, TUUSSO has submitted a Shoreline Permit Application to EFSEC, and is filing a JARPA, to ensure that the Typha site fully complies with any environmental controls derived from the Shoreline Management Act and the Kittitas County SMP.

ISSUE NO. 3

Is the OneEnergy Iron Horse Superior Court Decision Relevant to EFSEC's Land Use Consistency Review?

RESPONSE: No.

> ***OneEnergy Development v. Kittitas County* was wrongly decided, may be appealed, and is not a model for evaluation of consistency with Kittitas County Code. As discussed below, the decision related only to the Iron Horse Project, is legally unsound, and is not binding on EFSEC.**

A. Introduction

Early this year, the Kittitas County Board of Commissioners ("BOCC") evaluated another proposed solar PV facility in Kittitas County, the Iron Horse solar project ("Iron Horse"). The BOCC ignored a detailed and extensive decision and recommendation made by the County's Hearings Examiner, who conducted an adjudicatory proceeding and denied a SEPA appeal (which was not appealed and is final). The BOCC denied the conditional use permit ("CUP") for Iron Horse, and the applicants timely appealed to the Kittitas County Superior Court. In a Memorandum Decision, the trial court upheld the BOCC's decision. *One Energy Dev. v. Kittitas County*, No. 17-2-00075-5 (Nov. 30, 2017).

At the December 12, 2017 land use hearing, Commissioner Jewell submitted the local trial court's Memorandum Decision to EFSEC. While the reason for doing so was unclear, apparently Commissioner Jewell intended the Memorandum Decision to serve as some indication regarding whether the Columbia Solar Projects meet the Council's criteria for expedited review. We emphasize, first, that the trial court took pains to limit its decision to the Iron Horse Project and site, stating: "[o]nly this set of parcels is before the Court, and this neighborhood." Memorandum Decision, at 23. Hence, and aside from its legal flaws, the Memorandum Decision has no relevance in the TUUSSO Columbia Solar Projects EFSEC proceedings.

Moreover, apart from the factual distinctions between Iron Horse and the Columbia Solar Projects,[2] the Memorandum Decision is a poor indicator of project consistency with Kittitas County Code. First, the trial court is not the proper authority to evaluate project consistency. As the trial court judge explained:

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[2] TUUSSO's Application for Site Certification ("ASC") was filed in compliance with the detailed requirements of Chapter 463-60 WAC. As compared to Kittitas County's CUP application requirements, Chapter 463-60 WAC sets a high bar for project applicants. TUUSSO's ASC contains extensive, detailed reports and analyses showing how the Columbia Solar Projects will be fully compliant with Kittitas County's CUP criteria, including criteria designed to address the Growth Management Act's seven factors of "rural character" intended to inform and guide the adoption of comprehensive plans and zoning ordinances.

> It is worth noting that the following analysis has nothing whatever to do with the views of the Court itself . . . . All parties need to remember that this Court, as the reviewing appellate court cannot substitute its own judgment for the judgment of the Kittitas County Commissioners. . . . It is possible for there to be substantial evidence on BOTH sides of any issue.

Memorandum Decision, at 20. Second, the BOCC did not provide factual findings to explain or support its denial of the Iron Horse CUP. This was a problem anticipated by one of the BOCC members, Commissioner Jewell, who stated in the BOCC's closed-record hearing:

> I have concern that in order to make this finding or to make this decision the board will have to task staff with making appropriate findings. I have concern that they're going to be able to do that in this particular instance. I'm not sure that the Board of County Commissioners has given proper justification that the staff could use in findings to make a denial.

Iron Horse Hr'g Tr. 59:21-60:3 (Jan. 10, 2017).

The trial court's decision to uphold the BOCC's denial of the CUP application, despite a total absence of factual findings, was in error, and the court further erred by undertaking its own fact-finding efforts to supplement the BOCC's decision. Due to the lack of findings made by the BOCC and the legal deficiencies in the trial court's analysis, explained more fully below, the Memorandum Decision is not relevant to EFSEC's review here.

B. Background

Iron Horse was a 47.5 acre solar PV facility, proposed to be developed within the A-20 zoning district in Kittitas County. The project applicant, OneEnergy Renewables ("OneEnergy"), submitted the initial SEPA checklist and CUP application to Kittitas County Community Development Services ("CDS") in November 2015, and submitted a revised application packet in March 2016. In August 2016, CDS issued a Mitigated Determination of Non-Significance ("MDNS"). CDS's SEPA determination was appealed.

In accordance with Kittitas County Code, in October 2016, the Kittitas County Hearing Examiner conducted an open record adjudicative hearing to review and decide the merits of the MDNS appeal and to make a substantive recommendation on the CUP application. *See* KCC 15A.01.040(4)(e). The Hearing Examiner created the full administrative record through admission of and weighing of testimony and submission of evidence. *See* KCC 15A.02.060. On November 8, 2016, the Hearing Examiner issued its Findings of Fact, Conclusions of Law denying the SEPA appeal and affirming the MDNS and separately recommending that the BOCC find that the application complies with all applicable zoning requirements, and approve the CUP application with conditions.

The Hearing Examiner's SEPA decision was not appealed and is final. Pursuant to Kittitas County Code, the BOCC considered the Hearing Examiner's recommendation on the CUP application in a closed record hearing (meaning no additional evidence or testimony was

allowed or considered) on December 20, 2016 and January 10, 2017. On February 9, 2017, the BOCC issued a Notice of Decision denying the CUP application. OneEnergy subsequently appealed.

C. Errors in the Trial Court's Decision

The trial court's decision to uphold the BOCC's decision was legally deficient several times over: the court erred by upholding the BOCC's decision despite the absence of factual findings; the court wrongly set aside the Hearing Examiner's findings; despite protests to the contrary, the court undertook fact-finding of its own; and the court wrongly interpreted the "rural character" conditional use criterion.

1. The BOCC did not make factual findings to support its decision, and therefore should have been reversed by the trial court.

As a threshold matter, the BOCC's decision should have been reversed due to the BOCC's failure to support denial of the CUP application with any findings of fact. Kittitas County Code requires the BOCC to "in making an order, requirement, decision or determination, include in a written record of the case the findings of fact upon which the action is based." KCC 15A.06.020.

"[A] finding of fact is the assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect." *Citizens to Pres. Pioneer Park LLC v. City of Mercer Island*, 106 Wn. App. 461, 473, 24 P.3d 1079 (2001). Where an answer to a question requires "making, and reasoning from, determinations of fact," the answer is a legal conclusion, not a simple finding of fact. *State v. Niedergang*, 43 Wn. App. 656, 660, 719 P.2d 576 (1986).

The BOCC manifested its decision in Resolution 2017-022. The trial court found that the last four statements of Resolution 2017-022,[3] quoted below, were "marginally sufficient" findings of fact:

1. Open space, the natural landscape, and vegetation would not predominate over the built environment on the subject parcels if the proposal were approved in this location (RCW 36.70A.030(15)).
2. The proposed use in the proposed location is not essential or desirable to the public convenience and is detrimental or injurious to the public health, peace, or safety, or to the character of the surrounding neighborhood (KCC 17.60A.015(1)).
3. The proposed use in the proposed location would not ensure compatibility with existing neighboring land uses (KCC 17.60A.015(5)).

[3] Resolution 2017-022 also included a number of procedural facts and recitations of applicable law and code provisions. These statements did not form a basis for the BOCC's decision to deny the CUP application, and the court agreed that the only "substantive" statements in Resolution 2017-022 were the four statements quoted herein.

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

The BOCC's statements cannot be described as findings of fact because they have no meaning independent of their legal assertions. The statements are restatements of Kittitas County's conditional use criteria, and nothing more. Read alone, the BOCC's statements could as easily apply to a landfill project, a solid waste transfer station, an open pit surface mine, or a wastewater treatment plant as to Iron Horse. Because the statements are mere legal assertions that might be about *any* project, the trial court erred by classifying them as findings of fact.

The BOCC's failure to make any factual findings is an independently sufficient basis for reversing the BOCC's decision. Washington courts have consistently reversed land use decisions where the local governing body disregarded its own procedures by not making findings of fact to justify or explain its decision.[4] Neither the trial court nor the project opponents identified a single case where a reviewing court deferred to a local governing body's conclusions when the governing body was required to support its decision with findings and did not do so.

Courts have explained that factual findings "are necessary in order to establish the basis upon which the decision was made, and to provide a procedural safeguard against arbitrary and capricious action." *Pentagram Corp. v. City of Seattle*, 28 Wn. App. 219, 229, 622 P.2d 892 (1981). Given that the BOCC's decision to deny the CUP application was unsupported by factual findings, the court erred by upholding it.

2. The trial court exceeded its authority by setting aside the Hearing Examiner's findings.

Although the BOCC did not make any factual findings to support its decision, the trial court declined to defer to (or even consider) the findings made by the Hearing Examiner.

Washington courts have, in numerous contexts, held that findings made by the presiding officer of a tribunal remain in effect when the final decision-maker is authorized to make findings of fact, supplanting or modifying the presiding officer's findings, but fails to do so. *See, e.g., Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 894, 83 P.3d 433 (2004) ("Here, the Board did not alter any of the hearing examiner's findings of fact. Accordingly, the Board acted as an appellate body in its review and it was bound by the hearing examiner's findings of fact.").

Despite the strong precedent to the contrary, the court declined to uphold the Hearing Examiner's findings on the basis that the Hearing Examiner made a *recommendation* to the

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[4] *See, e.g., J.L. Storedahl & Sons, Inc. v. Clark County*, 143 Wn. App. 920, 931-33, 180 P.3d 848 (2008) (reversing a board of county commissioners' decision when the board failed to make required factual findings); *Marantha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990) (reversing a county council decision when the council violated its own procedures by not stating facts to support its order).

BOCC, rather than a *decision*. Specifically, the court relied on the fact that Kittitas County Code empowers the BOCC to make its own findings of fact and to disagree with the findings of the Hearing Examiner.

The difficulty with the court's reasoning is that, although the BOCC was empowered to exercise fact-finding authority and to disagree with the Hearing Examiner's findings, the BOCC did not do so. The Court of Appeals has explained repeatedly that, even if a decision-maker has fact-finding authority, if the decision-maker fails to exercise that authority, the hearing examiner's findings are controlling. *Marantha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990); *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 619 n.5, 820 P.2d 217 (1992). Given that the BOCC did not make any factual findings, the Hearing Examiner's findings (approving issuance of the CUP) should have remained in effect.

3. The trial court made findings to support the BOCC's decision, and those findings were not supported by the record.

Rather than upholding the Hearing Examiner's findings of fact, the trial court acted on its own initiative to find support in the administrative record for the BOCC's decision. The court's fact-finding exercise is directly contrary to the Court of Appeals' direction that, "[i]n the absence of written findings and conclusions, we cannot presume that any of these reasons were the basis upon which the [local government body] made its decision, or that it otherwise acted reasonably." *Pentagram*, 28 Wn. App. at 230.

The hazards of allowing a court to supply after-the-fact rationales for a local decision-maker's action is illustrated by a trial court's findings, which, in many cases, disagree with or are not supported by testimony made at the BOCC's closed record hearing. The trial court provided the following justifications for the BOCC's denial of the CUP application, all of which are belied by the commissioners' statements in the record:

> Local persons were concerned with the sixty acre parcels being surrounded by a huge chain link fence, eight feet high with strands of barbed wire at the top, and there were many comparisons with heavy industry or prisons.

Memorandum Decision, at 22.

Contrary to the trial court's statement here, Kittitas County planning staff testified in the closed-record hearing before the BOCC that chain link fences are common throughout rural areas of Kittitas County.

> The impact on the view from the surrounding neighborhood at this flat mid-valley location is undeniable.

Memorandum Decision, at 22.

None of the commissioners in the BOCC hearing discussed how the "flat mid-valley location" of the Project was related to the Project's possible aesthetic effects.

> There was testimony from a local realtor about property values diminishing. The commissioners were entitled to believe this testimony over the assertions of the plaintiff that studies from some eastern states show no change in property values around solar farms.

Memorandum Decision, at 23.

In the BOCC's closed-record hearing, there was no discussion of impacts to property values. Thus, there is no evidence that the commissioners "believe[d]" the local realtor's testimony over studies to the contrary. Moreover, the realtor's testimony regarding property values was made *before the Hearing Examiner*. The Hearing Examiner noted, in its findings, that "no data was presented to support" assertions regarding diminishing property values. Given that none of the commissioners discussed in the hearing Iron Horse's potential effect on property values—let alone called into question the Hearing Examiner's weighing of testimony and evidence—the court had no basis for supplanting the Hearing Examiner's conclusion with the court's own opinion.

4. The trial court wrongly interpreted the definition of "rural character."

Finally, the trial court's analysis of the potential impact on "rural character" does not warrant deference, because the court misunderstood the applicable standard. "Rural character" is a statutorily defined term that "refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan" that achieve certain listed rural characteristics. RCW 36.70A.030(16). Visual compatibility and predominance of open space, natural landscape, and vegetation are two among seven characteristics that help define "rural character." *Id.*

The trial court's discussion of the rural character standard is generally muddled. However, the following statement by the court highlights the court's confusion:

> It would be illogical to determine whether the built environment predominates over open space, natural landscape and vegetation by considering and comparing the footprint of a development of any sort to all the agricultural land in a county. Under that analysis, a square mile of skyscrapers in the middle of one hundred square miles of farm fields would not qualify as predominating over the natural landscape.

Memorandum Decision, at 18.

Unlike solar facilities, which are expressly authorized conditional uses under Kittitas County Code, "skyscrapers" are not a permitted use. Presumably, Kittitas County would not authorize skyscrapers as conditional uses because of their potential to impact the visual landscape and predominate over the current natural landscape. The Iron Horse CUP application did not ask the BOCC to evaluate "the footprint of a development of any sort"; rather, the

application asked the BOCC to evaluate a specific solar facility, which (unlike a skyscraper) was a conditionally authorized use at the proposed location.

As well as confusing the difference between allowed and disallowed uses, the court's discussion jumbles project use and project size. The court does not explain whether the hypothetical project use (skyscrapers) or the hypothetical project size (a square mile) is the basis for the hypothetical project's failure to comply with Kittitas County Code. Given the court's difficulty in applying the rural character criteria, the court's analysis is not a model for project evaluation.

ISSUE NO. 4

Will EFSEC's Approval of the Columbia Solar Projects Create a Precedent That Will Cause or Encourage Future Solar PV Facilities in Kittitas County?

RESPONSE: No.

Attached is a letter from Jason Evans (Applicant) regarding the contention of "solar sprawl" in the agricultural community. The future of additional solar PV facilities in Kittitas County is significantly constrained by Puget Sound Energy's local grid system. Further, EFSEC's review itself will not likely encourage other applicants.

Irrigated Farm Land: The attached letter from Mr. Evans explains that within Kittitas County, Puget Sound Energy ("PSE") is the only utility with an overall cost of electricity that makes solar a viable and even attractive addition to their mix of generation. As a result, all utility-scale solar in Kittitas County is very likely to be developed for the sale of power to PSE. Due to key grid constraints and market factors, there is a knowable limitation to the number of solar PV facilities that can be accommodated on agricultural lands.

Large, Utility Scale Projects: There may be additional opportunities for larger, utility scale projects on unirrigated lands such as shrub steppe areas, which will likely face challenges due to habitat concerns. Due to acreage limitations, it is extremely unlikely that large projects (e.g., well over 100 acres) would be proposed within the Valley. The Teanaway project, touted by opponents as a "better" location, faced habitat challenges, resulting in high costs for mitigation, explaining in part why this project has not been built. (*See* Teanaway decision, appended to this document at **Issue No. 5**). Even there and in other remote locations, potentially costly transmission line extensions and upgrades to PSE's system, balanced against siting opportunities in other counties, could limit solar development, due to cost and other feasibility considerations. At this time, any such projects are considered highly speculative.

Precedent for Future EFSEC Projects: It is unlikely that other project developers will rush to seek EFSEC authorizations. EFSEC is an expensive and difficult place to seek energy permits. EFSEC permitting is feasible only with sufficient project scale, and for solar projects, only if expedited (*see* Jason Evans' PowerPoint and oral testimony). Moreover, if Kittitas County completes its code update in the foreseeable future, other solar PV facilities that could seek expedited review will be judged for land use compliance and consistency against the new County code. This greatly diminishes EFSEC's role in future Kittitas County projects, and the risk and costs of extended review (in order to seek preemption of the County's new code) would likely be cost prohibitive and extremely unlikely.

ISSUE NO. 4

Letter from Jason Evans
December 22, 2017

TUUSSO ENERGY

December 22, 2017

Ms. Roselyn Marcus, EFSEC Chair,
Energy Facility Site Evaluation Councilmembers, and
Stephen Posner, EFSEC Manager
1300 S. Evergreen Park Drive SW
PO Box 43172
Olympia, WA 98504-3172

RE: Response to Solar Sprawl Concerns

Dear Ms. Marcus, Councilmembers, and Mr. Posner,

During EFSEC's public meeting on December 12, 2017, several members of the public voiced concern that approval of the Columbia Solar Projects would lead to a proliferation of solar power plants "waiting in the wings." The fear expressed was that the irrigated farmland of the Kittitas Valley would soon be overrun by "renewable energy sprawl." This concern, while clearly genuine, is unjustified. The economic and engineering realities influencing solar development in Kittitas County prevent the proliferation people fear.

Background

Between 2010 and 2016, approximately 24,000 MW of utility-scale solar was installed in the US. The market is heavily concentrated in sunny southern states with generous state incentives, such as California and North Carolina. Six states currently account for 80% of the market.

The Solar Energy Industry Association's US Solar Insight Report reviewed 40 states with solar development activity or potential. In spite of favorable public policy, principally the state's Renewable Portfolio Standard (RPS), Washington State had the least amount of utility-scale solar installations through 2016; a total of under one megawatt.

There are several reasons for this minimal solar investment in Washington, which will continue to limit solar power development here:

1. Weaker levels of solar insolation make solar power more expensive than in southern states, especially to the west of the cascades where the majority of electric consumers live. While solar insolation levels are higher in the central and eastern parts of the state, transmission capacity over the Cascades is severely limited.
2. Electricity prices in the Pacific Northwest are among the lowest in the country thanks to our inexpensive hydroelectric power, making solar less competitive by contrast.
3. Washington's strong wind resources make wind power a cheaper pathway for utilities to comply with the state's Renewable Portfolio Standard.

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Within Kittitas County, Puget Sound Energy (PSE) is the only utility with an overall cost of electricity that makes solar a potentially viable addition to the company's mix of generation assets. As a result, the utility-scale solar power developed in Kittitas County will almost certainly be sold only to Puget Sound Energy.

Utility-scale solar projects in PSE territory can be broadly classified into two types of projects: distribution-scale and transmission-scale.

Distribution-scale projects, such as the Columbia Solar Projects, are designed to interconnect to the existing distribution infrastructure. The solar plant injects the power it generates at 12kV, and, based on guidance from Puget Sound Energy, these projects are limited in size to 5MW (about 40 acres). In contrast, transmission-scale projects interconnect to the high-voltage transmission infrastructure either at 115kV or 230kV. The proposed Teanaway Solar Reserve is an example of this type of project. These transmission-scale projects will be substantially larger since they must be able to absorb the far more significant interconnection costs associated with high-voltage transmission.

Challenges Facing Distribution-Scale Solar Projects

The power purchase agreements TUUSSO Energy signed with PSE are based on the utility's 2016 Electric Tariff. While reportedly, five other solar projects (including the 1 MW Osprey Project) have also signed power purchase agreements under this (or an earlier) Tariff, there's no guarantee which – if any of them – will be built. Each of the project sponsors faces unique financing, engineering and siting challenges.

The 2017 Electric Tariff currently being used by Puget Sound Energy for distribution-scale solar projects reduced the 2016 pricing by approximately 30%. This Tariff makes developing solar projects anywhere served by PSE, including Kittitas County, economically infeasible. Moreover, if the price of natural gas remains low, the current Tariff is unlikely to increase. As a result, it is very unlikely that project developers without existing contracts with PSE will be able to build distribution-scale solar projects in Kittitas County.

Finally, the current distribution infrastructure in PSE's Kittitas County territory will only accommodate a very limited number of 5 MW solar projects. PSE reports that it can only interconnect a very few additional solar projects after TUUSSO Energy proceeds before its existing low-voltage distribution infrastructure is tapped out. As a result, in the unlikely circumstances that additional project developers do move ahead, no more than ~400 acres of distribution-scale solar projects will be built within the Kittitas Valley.

Incidentally, it is for these reasons that TUUSSO has no plans to expand beyond its proposed Columbia Solar Projects in the county.

Challenges Facing Transmission-Scale Solar Projects

There are reportedly a number of transmission-scale solar projects under development in Kittitas County, with more power on the drawing boards than PSE will need. Based on PSE's 2017 Integrated Resource Plan, it anticipates adding only 266 MW of solar by 2023. As is typically the case, there are likely far more project developers in early-stage development than there will be completed projects. This happens because developers must first secure sites and complete initial due diligence, in order to participate in utility-procurement cycles. However, once the utility's power purchase agreements have been awarded, many of the unsuccessful projects will drop away.

For transmission-scale solar projects, one of the biggest challenges facing developers is to find sufficient land at an acceptable price to put under lease. Based on our experience in the Valley, it will be next to impossible to find a single landowner with irrigated farmland in Kittitas Valley who is willing and able to lease the minimum required for a typical

transmission-scale project, 200-1000 acres. As a result, it is very unlikely that transmission-scale solar projects will target the irrigated farmland of Kittitas County. Rather, it is far more likely these projects will be proposed for construction on less populated, non-irrigated lands -- locations that could face additional challenges due to wildlife habitat concerns.

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For these and other reasons, concerns expressed that the Columbia Solar Projects will spur run-away solar development are vastly over-stated. Based on PSE's forecasted demand, at most 2,000 additional acres would be theoretically dedicated to solar projects in Kittitas County over the next six years, and this estimate is likely high given the counter-vailing factors described above. As a result, it is likely that far less than 2,000 acres will be hosting solar arrays, and that these solar projects would be proposed primarily on less valuable farmland / shrub steppe habitat areas in the upper or lower parts of Kittitas County.

Best regards,

Jason Evans
Vice President, TUUSSO Energy

Cc:
Tim McMahan, Partner, Stoel Rives LLP
Joy Potter, President, Potter Consulting Group LLC
Greg Poremba, Ph.D., Senior NEPA/SEPA Energy Project Manager, SWCA Environmental Consultants

ISSUE NO. 5

Can the "Rural Character" Criteria in the CUP Ordinance Be Considered by EFSEC in Evaluating Land Use Consistency?

RESPONSE: Yes, but only in a manner consistent with Washington law. RCW 36.70A.030(16). *See* Applicant's Legal Memorandum re Land Use, pp. 14-20. Kittitas County has appropriately applied the rural character criteria in the past, providing a template for EFSEC's decision.

Submitted with this Memorandum are decision documents cataloging Kittitas County's entire history of authorizing solar PV facilities in rural areas of Kittitas County. Most important of these is the County Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval concerning the Iron Horse Solar Farm (November 9, 2016). This final SEPA appeal decision and accompanying recommendation of approval reflect how the County evaluates "rural compatibility" and "rural character" in a fashion that is faithful to the overall CUP criteria, as well as the requirements of the Growth Management Act ("GMA"). Kittitas County understands its CUP criteria, and has until recently applied it objectively to an array of rural land uses, including solar PV facilities. (*See* Hearing Examiner's Recommended Findings of Fact, Decision and Conclusions of Approval, Iron Horse Solar Farm, in particular, Findings 15 - 19; 23.6 through 23.7 (all subsections).

These decision documents illustrate how Kittitas County has historically applied its CUP criteria in a purposeful, objective fashion, in compliance with the GMA and Washington law governing project permit review. The County has and can lawfully apply these criteria, when it chooses to do so.

During the TUUSSO EFSEC land use hearing, Commissioner Jewell candidly described the County's multi-year efforts to comply with the GMA as "sordid," indicating (without support from the County's code) that the CUP process for solar siting was considered a "placeholder," allowing a "case-by-case" evaluation of the desirability of siting solar facilities in rural areas. Commissioner Jewell's testimony would suggest that all conditional uses allowed in the rural areas (by CUPs) are subject to ad hoc rules that can be subjectively applied on a case-by-case basis.

This testimony is belied by well-established Washington case law. The Supreme Court has explained, "the regulation of land use must proceed under an express written code and not be based on ad hoc unwritten rules so vague that a person of common intelligence must guess at the law's meaning and application." *City of Seattle v. Crispin*, 149 Wn.2d 896, 905, 71 P.3d 208 (2003), *as amended on denial of reconsideration* (Sept. 2, 2003). Importantly, "case-by-case approval procedure . . . provide[s] no fixed standards for an applicant or a reviewing court." *Lakeside Indus.*, 119 Wn. App. at 898.

Moreover, Commission Jewell's testimony at the land use hearing before EFSEC was in sharp contrast to the Commissioner's testimony during the closed record deliberation of the Iron Horse facility. Commissioner Jewell's testimony at the Iron Horse hearing, as set forth below,

provides more accurate guidance as to the application of the rural character criteria. On December 20, 2017 Commissioner Jewell testified:

> [O]ur development regulations are compliant with the Growth Management Act because they are . . . consistent with our comprehensive plan. Our comprehensive plan has been challenged numerous times over a very long period of time and was found compliant in -- oh, I guess it was June or July of 2014[.]
>
> So at this time we assume and operate as if our development regulations are consistent with the requirements of [RCW Ch.] 36.70.A and the requirements specifically for rural character.
>
> And as you know, our code states . . . that large alternative energy facilities like this are allowed as conditional uses in this particular zone. That has to be considered under the law as consistent with the Growth Management Act at this time.

Iron Horse Hr'g Tr. 32 (Dec. 20, 2016). Commissioner Jewell further explained:

> [T]he argument that you brought to the table is that it doesn't fit the rural character. The problem with that argument, at least in my opinion, is that our code defines it [solar farms] as an allowed use -- as an allowed conditional use in the zone. Our code is compliant with the Growth Management Act where the rural character requirements are set out. So it's difficult to make that argument.

Iron Horse Hr'g Tr. 45 (Dec. 20, 2016).

On January 10, 2017, during the second day of closed-record hearings held by the BOCC, Commissioner Jewell restated his understanding that:

> So that living document [the comprehensive plan and zoning code] is really where you deal with those issues [referring to precedent for building solar facilities in the Agriculture 20]. You cannot deal with those issues on a project-by-project, case-by-case, permit-specific level.

Iron Horse Hr'g Tr. 52:13-16 (Jan. 10, 2017).

> [B]ecause our land use tables call major alternative energy facilities out as a conditional use in this zone, and those have been reviewed by the Growth Management Hearings Board and have been found compliant with the GMA including the provisions for protecting rural character, which are referenced in that code. They simply are -- if the impacts can [b]e adequately mitigated, they are protect[ive] of rural character, again, as defined by our code.

Iron Horse Hr'g Tr. 56:4-13 (Jan. 10, 2017).

In the Iron Horse proceedings, Commission Jewell attempted to persuade his fellow Commissioners to accept the Hearing Examiner's recommendations, vigorously arguing that refusing to do so would be legally unsound, and could not be reasonably justified by findings and conclusions prepared by planning department staff. It is particularly illogical and legally flawed for a decision-making body to determine whether a project comports with the County's "rural character" by allowing "character" to serve as a proxy for differing opinions of visual impacts.

We emphasize that the TUUSSO Columbia Solar Projects stand on their own, evaluated pursuant to applicable local regulatory criteria, based on significant objective data and other information in the ASC. Jason Evans and SWCA provided testimony concerning the substantial work done to evaluate each of the on the Project sites. As outlined by Mr. Evans and Mr. Poremba, after applying a number of siting criteria to find the best, least impactful sites, the Project sites were carefully scrutinized *and changed* in response to information learned from the following reports and analyses:[5]

- Vegetation Management Analysis, ASC, Appn. B;
- Habitat Analysis, ASC, Appn. C;
- Visual/Aesthetic Assessment Report, ASC, Appn. D;[6] and
- Solar Glare Report, ASC, Appn. E.

EFSEC's substantive requirements and analyses for submittal of an ASC are far more rigorous than those ever applied by Kittitas County. The Council's ASC requirements are designed to require proactive efforts to consider and minimize impacts prior to filing an ASC, and to then lay the foundation for conditions to mitigate probable impacts. TUUSSO deliberately used these analyses prior to ASC filing as tools to ensure that the Projects are sited at the "right" locations, with layouts scaled back, and screening and vegetation management and mitigation deliberately calculated to minimize impacts, and to enable the Project sites to comport with the local rural character, without any loss or damage to surrounding farming operations.

The "rural character" criteria must be applied to the Columbia Solar Projects in a reasoned and objective manner, so as to provide "fixed standards for an applicant or a reviewing court." *Lakeside Indus.*, 119 Wn. App. at 898. Otherwise, the Supreme Court has explained, "reviewing courts are unable to judge whether an applicant has met the reasonable conditions for issuance of a permit." *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782,

---

[5] These reports were key to siting and design decisions. The ASC also includes separate, site specific analyses for each Project site (Critical Areas, Cultural Resources, Permit Application forms; Geotechnical Engineering studies; and Drainage reports), along with a SEPA Checklist, Shoreline Management Permit Application, and site plans, designs, and drawings.

[6] The visual/aesthetic modelling and work are based on methodologies accepted by EFSEC in prior proceedings. *See* Kittitas Valley Wind Project, Wild Horse Wind Project, Desert Claim Wind Project, Whistling Ridge Energy Project.

797, 903 P.2d 986 (1995). If "rural character" is viewed through a purely subjective lens, then Kittitas County's conditional use criteria are meaningless. The County's permitting history shows that solar PV facilities can be protective of the rural character and that the "rural character" standard can be applied in an objective manner.

The code does not require that surrounding land uses essentially be mandatory, vast extensions of park-like front yards for residents opposing solar farms. The touted "risk" of any material loss of farms in Kittitas County due to solar PV facilities is not credible, and has already been addressed in the County's GMA-compliant Comprehensive Plan and Zoning Code, which allows many rural economic activities, *other than rural residential sprawl*, which is prohibited by the GMA. Solar facilities do not suffer the damage to rural areas by the permanent conversions to low-density residences, which demand urban service extensions, and immediately upon construction, pose an existential threat to ongoing surrounding farming operations. Solar "sprawl" is a specious and pejorative term that in no way reflects the recent damage (now corrected after years of loss and litigation) done by Kittitas County in allowing and enabling vast land conversions and consequential conflicts between farmers and low-density rural residential development (*see* Mr. Clerf's Land Use Hearing testimony).

EFSEC heard testimony from farmers who intend to rely on the County's code, wishing to supplement their farm incomes with opportunities *enabled by the BOCC* in establishing solar PV facilities as an allowed use in rural areas. Land use compatibility in this context must be based on substantive, objective criteria, such as: (1) whether a particular rural land use could force surrounding farms to convert to non-farming uses; (2) whether the land use would interfere with accepted farm practices; (3) whether the rural land use would require extensions of public services such as water, wastewater, fire, schools, etc.; and (4) whether the land use would otherwise damage surrounding agricultural activities by such actions as dividing fields, spreading weeds, impeding farm-to-market traffic, etc. Absent these kinds of impacts, the land use should be determined by EFSEC to be compliant and consistent with local zoning.

CONCLUSION

The situation for EFSEC boils down to this: EFSEC is in the position of independently deciding whether the Columbia Solar Projects are compliant and consistent with the County's CUP criteria. The County's code is capable of a reasonable and objective application to these projects. The Siting Council has all the information it needs at this time to make this decision. Additional time for this decision beyond the expedited process (***which is essential for this applicant***) does not make this job any easier, and would likely not result in any different decision.

We urge the Council to find that the Projects are compliant and consistent with the County's code, which was enacted for the specific purpose to enable a multitude of rural land uses, including solar PV facilities.

ISSUE NO. 5

Decisions Made by Kittitas County Regarding Solar PV Projects Proposed in Rural Areas

1. Notice of Decision, Dated February 11, 2017
Iron Horse Solar Farm Conditional Use Permit
(CU-15-00006)

KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES
411 N. Ruby St., Suite 2, Ellensburg, WA 98926
CDS@CO.KITTITAS.WA.US
Office (509) 962-7506
Fax (509) 962-7682
"Building Partnerships – Building Communities"

NOTICE OF DECISION

To: Interested Parties
Applicant

From: Jeff Watson, Staff Planner

Date: February 11, 2017

Subject: Iron Horse Solar Farm Conditional Use Permit (CU-15-00006)

Pursuant to RCW 36.70B.130 and KCC 15A.06, notice is hereby given that on February 7, 2017 the Kittitas County Board of County Commissioners **denied** the Iron Horse Solar Farm Conditional Use Permit (CU-15-00006). The project was a proposed 47 acre photovoltaic solar farm located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers 17-19-01000-0028 and 17-19-01000-0042.

Copies of the Kittitas County Board of Commissioners Resolution 2017-022 and related file documents may be examined at Kittitas County Community Development Services, 411 N. Ruby Suite 2, Ellensburg, WA 98926. (509) 962-7506 or on the Kittitas County website http://www.co.kittitas.wa.us/cds/land-use/default.aspx.

Issuance of this land use decision may be appealed by parties with standing, by filing a land use petition (LUPA) in Superior Court, and serving said petition on all required parties pursuant to RCW 36.70C and KCC 15A.08, within twenty-one days of the issuance of the land use decision. The last day to file a LUPA is February 28, 2017.

If you have any questions, please do not hesitate to contact our office at (509) 962-7506.

2. Board of County Commissioners,
County of Kittitas, WA

Conditional Use Permit Denial -
Resolution No. 2017-022, Dated February 7, 2017

Iron Horse Solar Farm Conditional Use Permit
(CU-15- 00006)

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

CONDITIONAL USE PERMIT
DENIAL

IRON HORSE SOLAR FARM CONDITIONAL USE PERMIT (CU-15-00006)

RESOLUTION

NO. 2017- 022

WHEREAS, according to Kittitas County Code Title 15A, relating to Hearings and Title 17.60A Conditional Uses, an open record hearing was held by the Kittitas County Hearing Examiner on October 20, 2016, for the purpose of considering a conditional use permit known as Iron Horse Solar Farm CU-15-00006 and described as follows:

> The construction and operation of a 47.5acre photovoltaic solar power generation facility on approximately 68 acres in the Agriculture 20 zone. The subject property is accessed off Caribou Road and located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers17-19-01000-0023, 17-19-01000-0028, 17-19-01000-0042, and 17-19-01000-0043. Proponent: OneEnergy Development LLC authorized agent for Bill Hanson, landowner.

WHEREAS, public testimony was heard, in favor of and against the proposal; and,

WHEREAS, due notice of the hearing had been given as required by law, and the necessary inquiry has been made into the public interest to be served by such use; and,

WHEREAS, the Hearing Examiner recommended approval of said proposed conditional use; and,

WHEREAS, a closed record public hearing was held by the Board of County Commissioners on December 20, 2016 and January 10, 2016 to consider the Hearing Examiner's recommendation on this matter; and,

WHEREAS, the Kittitas County Board of Commissioners make the following FINDINGS OF FACT and CONCLUSIONS AT LAW concerning said proposed conditional use:

1. OneEnergy Development LLC authorized agent for Bill Hanson, landowner, submitted a conditional use application for a Major Alternative Energy Facility on approximately 68 acres.

The subject property is zoned Agriculture 20. This "Utility" (KCC 17.61.010{1}) is subcategorized as a major alternative energy facility (KCC 17.61.010{9}), and as such requires approval of a conditional use for the zone 17.61.020(4)(b).

2. This proposal is located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers17-19-01000-0023, 17-19-01000-0028, 17-19-01000-0042, and 17-19-01000-0043. Access as proposed is provided for via an existing permit with Kittitas County.

3. The Kittitas County Comprehensive Plan's Land Use Element designates the subject property as Rural Working and the zoning for this proposal is Agriculture 20.

4. Kittitas County Code provides under Chapter17.60A.015 provides review criteria for conditional use permits which states that:

   The Director or Board, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements have been met:

   1) The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
   2) The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that
      a) The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
      b) The applicant shall provide such facilities; or
      c) The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
   3) The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
   4) The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
   5) The proposed use will ensure compatibility with existing neighboring land uses.
   6) The proposed use is consistent with the intent and character of the zoning district in which it is located.
   7) For conditional uses outside of Urban Growth Areas, the proposed use:
      a) Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;

b) Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15));
c) Requires only rural government services; and
d) Does not compromise the long term viability of designated resource lands.

5. The Washington State Growth Management Act mandates the county to develop a comprehensive plan, and that within that plan a Rural Element be devised which "include measures that apply to rural development and protect the rural character of the area as established by the County." These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, reduce sprawl and protect against conflict with the use of agricultural, forest and mineral resource lands (RCW 36.70A.070). "Rural Character" is defined in the Act thus:

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

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

   (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;

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

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

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

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

6. The conditional use permit application was submitted to Community Development Services (CDS) on November 12th, 2015. On December 17th, 2015 the application was deemed incomplete following a mandated pre-application meeting between county staff and representatives of the applicant. Materials required at that time included a transportation concurrency application. On March 3rd, 2016 revised project materials were submitted by the applicant who included the required information as well as an updated narrative and SEPA checklist. The application was deemed complete on May 12th, 2016. The Notice of Application for the conditional use permit was issued on May 23rd, 2016. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments with regard to the proposal

was on June 7th, 2016.

7. Kittitas County acted as the lead agency for the SEPA Environmental Checklist and threshold determination. As per WAC 197-11-355 and KCC 15A.04.010 the county utilized the optional DNS process. Notice was given that the County was expecting to issue a Determination of Non-Significance, and that the notice of application comment period (14 days) may be the only opportunity to provide comment on the environmental impacts of the proposal.

8. The SEPA checklist was reviewed by staff in conjunction with the project narrative. On June 27th, 2016 the application was placed on hold by the applicant and review was temporarily suspended. On July 15th, 2016 the applicant requested that review continue and submitted supplemental documentation with respect to comments received.

9. After a detailed review of the SEPA checklist, the project narrative, supplemental submission, and proposed mitigation measures the SEPA official determined that there would be no significant adverse environmental impacts under the provisions of WAC 197-11-350. A Mitigated Determination of Non-Significance (MDNS) was issued for this project on August 10th, 2016.

10. The appeal period for the SEPA determination ended on August 24th, 2016 at 5:00 p.m. A timely appeal was filed with the BOCC on August 24th, 2016 by "Save Our Farms! Say No to Iron Horse". The appeal was heard before the Kittitas County Hearing Examiner on Thursday October 20th, 2016. The Hearing Examiner issued a decision on November 8th, 2016 which, based on listed findings, held *that* "...the August 10, 2016 SEPA determination by the responsible official in the above referenced matter is affirmed in every respect".

11. The Hearing Examiner open record public hearing for the SEPA appeal and the Conditional Use Permit was held on October 20th, 2016. Representatives of the applicant presented materials and testified at the hearing. Members of the public testified. On November 9th, 2016, the Kittitas County Hearing Examiner returned a recommendation that the Iron Horse Solar Farm Conditional Use Permit (CU-15-00006) be approved with the staff recommended conditions plus an additional two conditions.

12. The Board of County Commissioners conducted a closed record meeting on December 20th, 2016 and continued the meeting to January 10th, 2017 for the purpose of considering the Iron Solar Farm Conditional Permit (CU-15-00006). A motion was made and seconded that the conditional use permit be denied; the motion carried on a vote of 2-1 with the following conclusions:

NOW THEREFORE, BE IT HEREBY RESOLVED that the Kittitas County Board of Commissioners hereby deny the approval of the **Iron Horse Solar Farm Conditional Use Permit (CU-15-00006)** and adopt the above Findings of Fact, and Conclusions of Law.

1. Open space, the natural landscape, and vegetation **would not predominate** over the built environment on the subject parcels if the proposal were approved in this location **(RCW 36.70A.030(15))**.
2. The proposed use in the proposed location **is not** essential or desirable to the public convenience and is detrimental or injurious to the public health, peace, or safety, or to the character of the surrounding neighborhood **(KCC 17.60A.015(1))**
3. The proposed use in the proposed location **would not** ensure compatibility with existing neighboring land uses **(KCC 17.60A.015(5))**.
4. The Proposed use in the proposed location **does not** preserve the "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15)) **(KCC 17.60A.015(7)(B))**.

DATED this 7th day of February, 2017 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

OPPOSED

Paul Jewell, Chairman

Laura Osiadacz, Vice Chairman

Obie O'Brien, Commissioner

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

ATTEST:
CLERK OF THE BOARD

Julie A Kjorsvik

APPROVED AS TO FORM:

Greg Zempel WSBA #19125

3. Letter from Kottkamp &Yedinak PLLC, Dated November 9, 2016

Hearing Examiners Decision re CU 15-00006 Signed by Andrew L. Kottkamp

KOTTKAMP & YEDINAK
435 Orondo Ave. | Wenatchee, WA 98801
PO Box 1667 | Wenatchee, WA 98807

Attorneys
Andrew L. Kottkamp
Nicholas A. Yedinak
Sean R. Esworthy

November 9, 2016

Mr. Jeff Watson
Kittitas County Community
Development Services
411 N. Ruby Street
Ellensburg, WA 98926

Re: CU 15-00006 Iron Horse Solar Farm Condition Use Decision
CU 15-00006 Iron Horse Solar Farm SEPA Appeal Decision

Dear Mr. Watson:

Enclosed please find the Hearing Examiner's decisions regarding CU 15-00006, Iron Horse Solar Farm.

Should you have any questions, please call.

Sincerely,

KOTTKAMP & YEDINAK, PLLC

Kelly Servian
Legal Assistant to Andrew L. Kottkamp

Enclosures

KITTITAS COUNTY
LAND USE HEARING EXAMINER

IN THE MATTER OF	)	
	)	
	)	**SEPA APPEAL DECISION**
CU-15-00006 SEPA APPEAL	)	
Iron Horse Solar Farm	)	

I. FINDINGS OF FACT

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on October 20, 2016, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and Decision as follows:

1. One Energy Development LLC authorized agent for Bill Hanson, landowner, has submitted a conditional use application for a Major Alternative Energy Facility on approximately 68 acres. The subject property is zoned Agriculture 20. This "Utility" (KCC 17.61.010(1)) is subcategorized as a major alternative energy facility (KCC 17.61.010(9)), and as such is an allowed conditional use for the zone (KCC 17.61.020(4)(b)).

2. This proposal contains 4 parcels, located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers17-19-01000-0023, 17-19-01000-0028, 17-19-01000-0042, and 17-19-01000-0043.

3. Site Information:

Total Property Size:	68 acres
Total project size:	42.5 Acres
Number of Lots:	4; no new lots are being proposed
Domestic Water:	None required or planned at this time
Sewage Disposal:	None required or planned at this time
Fire Protection:	Kittitas Valley Fire and Rescue
Irrigation District:	Kittitas Reclamation District

4. Site Characteristics:

North:	Private residential, farming and grazing
South:	Private residential, farming and grazing
East:	Private residential, farming and grazing
West:	Private residential, farming and grazing

The subject property is generally flat disturbed farmland.

5. Access: The site is accessed from Caribou Road. Kittitas County Public Works has conditioned that the access be constructed to commercial standards.

6. The Comprehensive Plan designation is "Rural Working."

7. Zoning and Development Standards: The subject property is located within the Agriculture 20 zone. The agriculture (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses, and protect the rights and traditions of those engaged in agriculture. The Agriculture 20 zone allows for an array of permitted and conditional uses. This project is being proposed under KCC 17.61 Utilities as a major alternative energy facility, an allowed conditional use for the zone.

10. The conditional use permit application was submitted to Community Development Services (CDS) on November 12, 2015. On December 17, 2015 the application was deemed incomplete following a mandated pre-application meeting between county staff and representatives of the applicant. Materials required at that time included a transportation concurrency application and a stormwater management plan. On March 3, 2016, revised project materials were submitted by the applicant which included the required information as well as an updated narrative and SEPA checklist. The application was deemed complete on May 12, 2016. The Notice of Application for the conditional use permit was issued on May 23, 2016. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on June 7, 2016.

11. Kittitas County acted as the lead agency for the SEPA Environmental Determination. A Mitigated Determination of Non-Significance (MDNS) was issued for this project on August 10, 2016. The appeal period for this SEPA determination ended on August 24, 2016 at 5:00 p.m.

12. On August 24, 2016, "Save Our Farms! Say No to Iron Horse" (hereinafter "Appellants") timely filed an appeal of the SEPA decision.

13. Staff conducted an administrative critical area review in accordance with KCC 17A and found that this proposal is adjacent to a type 2 fish bearing stream. Kittitas County agreed with the comments provided by The Washington State Department of Fish and Wildlife regarding Caribou Creek's designation as a Type 2 Fish Bearing Stream and will enforce the recommended 100' buffer as well as require a Riparian Planting Plan developed in conjunction with and approved by the WDFW.

14. The Kittitas County Comprehensive Plan designates the subject property as Rural Working Land. Uses within this designation generally encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with rural environment and supporting agriculture and/or forest activities. Areas in this designation often have low population densities with larger parcel size compared to Rural Residential areas. Agriculture and forestry activities are generally less in scope than in the Resource lands.

15. The Washington State Growth Management Act mandates the county to develop a comprehensive plan, and that within that plan a Rural Element be devised which *"include*

measures that apply to rural development and protect the rural character of the area as established by the County." These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, reduce sprawl and protect against conflict with the use of agricultural, forest and mineral resource lands (RCW 36.70A.070). "Rural Character" is defined in the Act thus:

"Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:
(a) In which open space, the natural landscape, and vegetation predominate over the built environment;
(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;
(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
(f) That generally do not require the extension of urban governmental services; and
(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

16. Significant and undisputed facts with respect to whether a solar farm is rural in character and a compatible use, are that the proposed use is allowed in this zone as a conditional use, and that the Kittitas County Board of Commissioners and the Growth Management Hearings Board have both found that Major Alternative Energy Facilities are consistent with rural areas. A conditional use permit, through a public hearing process, allows the county to consider uses which may be essential or desirable, but which are not allowed as a matter of right within a zoning district. The conditional use permit provides flexibility within a zoning ordinance and allows the county to control certain uses which could have detrimental effects on the area. The current Kittitas County Comprehensive Plan and Development Code have been subjected to years of scrutiny, discussion, litigation, and adaptation by numerous state and local, public and private entities. Notwithstanding that scrutiny, Major Alternative Energy Facilities continue to reside in the county code as conditional uses in the Agriculture 20, Forest and Range, Commercial Agriculture and Commercial Forest zones. Two major solar facilities have successfully navigated the conditional use process and achieved approval without appeal with respect to their conformance to rural element of the Comprehensive Plan. The Teanaway Solar Reserve Conditional Use Permit (CU-09-00005) was approved in August of 2010. The county at that time, was not in compliance with the Growth Management Act (Case No. 07-1-0004c) placing the Comprehensive Plan in a state of constant scrutiny and review. On February 11, 2013, The BOCC signed Ordinance 2013-001, mandating changes to the Comprehensive Plan and the development code (Titles 15A, 16, and 17) to bring county into Compliance with the GMA. On August 13, 2014, The Growth Management Hearings Board declared:

"that with the adoption of new restrictions on allowed rural uses and standards applicable in certain rural zones, Kittitas County has complied with the requirements of the Growth Management Act."

17. Nearly one year later the BOCC signed Resolution 2015-106 unanimously approving the Osprey Solar Farm (CU-14-00003) and in the stated findings of fact declared:

"The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan."

and:

"This proposal is consistent with the Kittitas County Zoning Code as proposed under KCC 17 .61 Utilities as a major alternative energy facility, a conditional use for the Agriculture 20 zone."

18. The identified use, Major Alternative Energy Facility, in various sizes, have been found to be compliant and consistent with both the comprehensive plan and the development code, by both the Board of County Commissioners and the Growth Management Hearings Board, notwithstanding the review and scrutiny of dozens of governmental and non-governmental agencies, entities, and individuals.

19. **Goals Policies and Objectives:** Kittitas County has established goals, policies, and objectives (GPOs) to guide activities within the rural working lands and utilities in general. These goals and policies were developed in response to identified needs within the county, and support the County Wide Planning Policies. The following GPOs assist with the assessment of this application:

19.1 GPO 8.1 Rural lands are characterized by a lower level of services; mixed residential, agricultural and open space uses; broad visual landscapes and parcels of varying sizes, a variety of housing types and small unincorporated communities.

19.2 GPO 8.3 The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.

19.3 GPO 8.4 Development in rural areas is subject to agricultural and forestry activities that may take place as a right on adjacent properties.

19.4 GPO 8.8 A certain level of mixed uses in rural areas and rural service centers is acceptable and may include limited commercial, service, and rural industrial uses.

19.5 GPO 8.11 Policies will reflect a "right to farm" in agricultural lands.

19.6 GPO 8.13 Encourage development activities and establish development standards which enhance or result in the preservation of rural lands.

19.7 GPO 8.14C Development shall be located distances from streams, rivers, lakes, wetlands, critical areas determined necessary and as outlined within existing Shorelines Management Program, the Critical Areas Ordinance and other adopted resource ordinances in order to protect ground and surface waters.

19.8 GPO 8.15 Uses common in rural areas of Kittitas County enhancing rural character, such as agriculture uses in Lower Kittitas and rural residential uses and recreation uses in Upper Kittitas shall be protected from activities which encumber them.

19.9 GPO 8.16 Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, tourism, outdoor recreation, and other open space activities.

19.10 GPO 8.17 Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.

19.11 GPO 8.21 Kittitas County will provide criteria within its zoning code to determine what uses will be permitted within rural zone classifications in order to preserve rural character.

19.12 GPO 8.21B Functional separation and setbacks found necessary for the protection of water resources, rural character and/or visual compatibility with surrounding rural areas shall be required where development is proposed. The first sentence of this policy shall not apply to agricultural activities as defined in RCW 90.58.065(2(a). When required by the county shoreline master program or critical area regulations, buffers shall be provided.

19.13 GPO 8.37 Conveyance instruments including plats and short plats, development permits and building permits, within 500 feet of land designated as Rural Working lands or Resource Lands shall contain a notice to potential buyers and residents as directed within RCW 36.70A.060(1)(b).

19.14 GPO 8.44A Commercial/Industrial development in rural areas shall be compatible to the rural environment, and must be developed as determined necessary to not significantly impact surface and groundwater.

19.15 GPO 8.44 Growth and development in rural lands will be planned to minimize impacts upon adjacent natural resource lands.

19.16 GPO 8.44C New commercial/industrial development shall be required to meet standards or any measures found needed to protect existing surface and groundwater users from impairment and contamination.

19.17 GPO 8.48 In addition to the notice requirements in RCW 36.70A.060(1)(b), non-farming residents should be informed on the practices of farming so that they are aware of the non-urban activities and impacts that occur in the agricultural environment.

19.18 GPO 6.7 Decisions made by Kittitas County regarding utility facilities will be made in a manner consistent with and complementary to regional demands and resources.
GPO 6.9 Process permits and approvals for all utility facilities in a fair and timely manner, and in accordance with development regulations that ensure predictability and project concurrency.

19.19 GPO 6.10 Community input should be solicited prior to county approval of utility facilities, which may significantly impact the surrounding community.

19.20 GPO 6.13 The County should coordinate with utility providers.

19.21 GPO 6.23 Kittitas County reserves the right to review all applications for utilities placed within or through the County for consistency with local policies, laws, custom and culture.

19.22 Webster's dictionary defines compatible as *"able to exist together without trouble or conflict"*. The project as proposed is consistent with the above GPO's with respect to rural lands and utility location and review. Staff can find no issues, inconsistencies, incompatibilities, or contradictions between this project as proposed and the Kittitas County Comprehensive Plan.

20. The proposal contains an associated floodplain with Caribou Creek (FIRM panels 5300950580B & 5300950557B).

21. Kittitas County acted as the lead agency for the SEPA Environmental Checklist and threshold determination. As per WAC 197-11-355 and KCC 15A.04.010 the county utilized the optional DNS process. Notice was given that the County was expecting to issue a Determination of Non-Significance, and that the Notice of Application comment period (14 days) may be the only opportunity to provide comment on the environmental impacts of the proposal. The checklist was reviewed by staff in conjunction with the project narrative. On June 27, 2016 the application was placed on hold by the applicant and review was temporarily suspended. On July 15, 2016 the applicant requested that review continue and submitted supplemental documentation with respect to comments received. After a detailed review of the SEPA checklist, the project narrative, supplemental submission, and proposed mitigation measures the SEPA official determined that there would be no significant adverse environmental impacts under the provisions of WAC 197-11-350. With respect to the specific elements outlined in the SEPA checklist, the Hearing Examiner finds as follows:

21.1 **Earth**

The site is generally flat and the surface is a disturbed (farmed) range of local soils. Approximately 44 cubic yards of top soil is expected to be moved, and 95 cubic yards of gravel imported. The project will create approximately 8,700 square feet of impermeable surface (9%) of the development. There are no indications of unstable soils within the project area. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, a fugitive Dust Control Plan as well as a Grading Permit is required prior to final approval. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to earth.

21.2 **Air**

Solar farms do not consume, process, combust with, alter, or pollute the air. There will be no emissions or odors associated with the operations of the facility. Construction activities and equipment may generate emissions and fugitive dust. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the

project narrative and the supplemental materials, a fugitive Dust Control Plan is required prior to final approval. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, will be no significant adverse environmental impacts related to air.

21.3 **Water**

Caribou Creek runs through and along the western boundary of the project/property. An irrigation ditch is located along the east boundary of the project site. There are no wetlands identified within the project/property. No dredging or filling will occur within the stream or canal. No surface water or groundwater withdrawals or diversions will be associated with the project. No septic or waste discharge systems are associated with the project. The project site will contain 9% impermeable surface. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials the following mitigation measures have been required:

1. A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.
2. The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the Washington State Department of Fish and Wildlife (WDFW).
3. The applicant will need to consult and comply with the requirements set forth in the KRD General Guidelines prior to final approval of the Conditional Use Permit.
4. The irrigation canal on the east side of the project shall have a 30 foot buffer from all project related development and operations. Weed, vegetation, and fire control measures shall prevail.
5. No part of the project shall disrupt existing surface water rights or existing irrigation easements.
6. A floodplain development permit will be required for the construction of the fence within the floodplain.
7. If the final development plan calls for the placement of panels in the floodplain a Floodplain Development Permit will be required.
8. No flood control structures may be constructed on the project parcel.
9. An on-site Stormwater Management Plan that conforms to the specifications of the most current version of the Stormwater Management Manual for Eastern Washington is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. The Stormwater Management Plan shall be submitted to and approved by Kittitas County Public Works prior to final approval.
10. A Construction Storm water Permit may be required if over 1 acre of ground is disturbed for the project and there is a potential for discharge to waters of the state. This includes dewatering for foundation and utility trenching, access route, laydown, impervious pad construction and footings/foundations.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to Water.

21.4 **Plants**

The project site is currently covered with non-native agricultural crops. There are no known endangered or threatened species on the site. There are no known noxious weeds currently on the site. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, a vegetation management plan approved by the Washington Department of Fish and Wildlife (WDFW) and the Kittitas County Noxious Weed Board is required prior to final approval. In addition, no vegetation control measures shall be utilized which might jeopardize the project site's future ability to return to productive agricultural use. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to plants.

21.5 **Animals**

A variety of birds and animals are known to exist on or near the site. No endangered species are known to exist on the site. A sage grouse was sighted 22 years ago three miles away from the site which is not considered to be an active lek (an area in which two or more males of a species perform courtship displays). The site is not known to be a migration route. There are no known invasive animal species on site. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.
2. The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the Washington State Department of Fish and Wildlife (WDFW).
3. The applicant shall develop an Incidental Avian Monitoring Plan in conjunction with, and approved by, the WDFW. The plan and program shall be required to be in effect for a period of five years. The plan will designate thresholds and metrics to establish if additional monitoring is required beyond a period of five years.
4. A WDFW representative shall be provided ongoing access to the site for the purposes of assessing, monitoring, and analyzing wildlife activities and behavior.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to animals.

21.6 **Energy**

The project will require energy to power security lighting and metering. The facility will not impact the potential use of solar energy on adjacent sites. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that there will be no significant adverse environmental impacts related to energy.

21.7 **Environmental Health**

There is no known contamination at the site. Photovoltaic panels do not contain or emit hazardous chemicals or conditions. There will be no toxic or hazardous chemicals stored, used, or produced, during development, construction, or operation of the facility.

Electromagnetic fields generated by the inverters will dissipate to safe levels long before reaching the external boundaries of the project. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. Facility management will provide on-site training to KVFR and other emergency services personnel to assist in pre-incident planning and safe operations once the facility is producing electricity.
2. Fire Department key access will be provided for site access and any control panels. A site plan is to be provided for emergency responders prior to the site producing electricity.
3. A Fugitive and Construction Dust Control Plan utilizing best management practices found in the Dust Palliative Selection and Application Guide and the Eastern Washington Stormwater Management Manual (Chapter 7) shall be developed; the plan shall be submitted to and approved by Kittitas County Community Development Services prior to final approval.
4. Broken, damaged, or non-functional panels will be disposed of through consultation with Kittitas County Solid Waste in a safe and environmentally responsible fashion.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to environmental health.

21.8 **Noise**

There is no existing noise that will affect the project. Noise generated by the inverters will be within legal parameters by the time they reach the property's edge. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the applicant shall limit development and construction practices during building of this project. Construction shall only occur between the hours of 7:00 am to 7:00 pm to minimize the effect of construction noise on nearby residences. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to noise.

21.9 **Land Use and Shoreline**

The current use of the site is agricultural. All surrounding zoning and land use is identified as agricultural and rural working respectively. The construction and operation of the solar facility is compatible with this zoning. The project will not encumber, constrain, or interfere with surrounding land uses. No designated agricultural or forestland of long term significance will be converted to other uses. The project will neither affect nor be affected by working farm or forest land. There are no existing structures on the development site. No structures will be demolished as a result of the project. The project does not fall under the provisions of the Shoreline Master Program. Caribou Creek is considered a critical area by Kittitas County. There will be no people residing on or working in the completed project on a permanent basis. Occasional maintenance would be performed on site. The project will not displace any people. The use is a conditional use under Kittitas County Code. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.
2. The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the WDFW.
3. The applicant shall obtain a conditional use permit in order to operate the facility.
4. Financing of the decommissioning options must be approved by the county, and may include but not be limited to assignment of funds, a bond, or other financial measures equaling one hundred and twenty five percent (125%) of the estimated cost of the decommissioning efforts.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to land use and shorelines as mitigated.

21.10 **Housing**

No housing units will be provided or destroyed. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that there will be no significant adverse environmental impacts related to housing.

21.11 **Aesthetics**

The top of the panels would stand no higher than eight feet. The project will not obstruct any views in the immediate vicinity. The view from adjacent properties would be altered from hay fields to solar panels. This change in view is not materially different than that change in view caused most recently by wind turbines, cellular towers and in the past by electrical power poles and transmission lines. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined there will be no significant adverse environmental impacts related to aesthetics.

21.12 **Light and Glare**

Glare produced by the project would not be greater than common natural features and materials. Glare would be transitory and only be focused on a particular point or place for a brief time frame as the sun traverses the sky and the panels follow its location. Glare does not present a safety hazard and any interruption of views will minimal and brief. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties and associated roads and streets.
2. No portion of the solar panels and arrays shall exceed 8 feet in height at any time during the operation cycle.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that there will be no significant adverse environmental impacts related to light and glare.

21.13 **Recreation**

There are no recreational opportunities in the immediate vicinity. The proposed project will not displace any existing recreational facilities. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that there will be no significant adverse environmental impacts related to recreation.

21.14 **Historic and Cultural Preservation**

No historic or cultural resources have been identified on or near the project site. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, should ground disturbing or other activities related to the proposed project result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State DAHP. Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to historical and cultural preservation.

21.15 **Transportation**

Neither the site nor the geographic area is served by public transit. The project would not require nor would it eliminate any parking spaces. There would be no impacts to water, rail, or air transportation. Total trips are estimated to be less than 20 trips per day during the 3 month construction window, and near zero during the operational time frame because the site will be unmanned. The project will not affect or be affected by the movement of agricultural or forest products in the area. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. The access approach must be designed and constructed to commercial standards, as shown in the WSDOT Design Manual Exhibits 1340-1 and 1340-2. A Kittitas County Access Permit is required prior to driveway construction. Access driveways will need to be designed to meet standards.
2. A road standards variance application will be required for additional approaches being requested. Current road standards allow for a single access to a parcel of land or to contiguous parcels of land under the same ownership.
3. If any creek or irrigation waterway is to be crossed by bridge, it will need to be engineered and posted for 75,000lb capacity.
4. The project shall comply with all aspects of the International Fire Code Appendix D including twenty (20) foot wide access roads.
5. Addressing shall be clearly visible from the road.
6. All gates shall be a minimum of 12' wide; if gates are locked, keys or equivalent shall be provided to all emergency services.

7. The Kittitas Reclamation District has a recorded right of way and associated service road abutting Caribou Creek (and by inference the project site) on the west side of the stream. This right of way is not on the subject parcels and as such will not be availed to any use for the project development, construction, or operation without explicit permission from the District.

8. The primary transporter route will use Interstate 90; exit 115 to take Main St. North to Clerf Road and continue east on Clerf Road before turning North on Caribou Road to access the Site via an access road on the west side of Caribou Road. The applicant will make every effort to minimize traffic and its impacts to other State, County, and City streets and roads.

9. Under no circumstances shall construction or operational traffic related to the project utilize private roads.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to transportation.

21.16 **Public Services**

The project would not result in an increased need for fire, police, school, public transit, health care or other public services. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. A vegetation management plan to be maintained in accordance with the Fire Prevention Plan in the Project Narrative.

2. A site plan is to be provided for emergency responders prior to the site producing electricity. Facility management will provide on-site training to KVFR and other emergency services personnel to assist in pre-incident planning and safe operations once the facility is producing electricity.

3. Fire department key access will be provided for site access and any control panels.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official properly determined that, as mitigated, there will be no significant adverse environmental impacts related to public services.

22. The following findings related to compliance within Conditional Use criteria are also applicable to the SEPA Determination.

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

22.1.1 The State of Washington has enacted aggressive legal and policy standards in pursuit of more renewable energy generation within its borders. Washington's Renewable Portfolio Standard ("RPS") mandates that fifteen percent (15%) of Washington's electricity be generated from renewable energy sources by 2020, with a ramp-up of increasing targets, including the next tranche of nine percent (9%) by 2016. This Project will help the State meet these objectives and create

more clean energy generation in Washington. This Project will deliver all of its output to the electricity grid through the PSE distribution system.

22.1.2 The Project will be the largest solar project in Washington and is desirable to the public convenience because it will fortify the County's electric grid with clean, local power. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations.

22.1.3 This Project will generate approximately 10,379 MWh of clean electricity each year, which is enough to power more than 950 average American homes and result in an annual emissions reduction of over 15.7 million pounds of C02e (equivalent to removing roughly 1,500 passenger vehicles from the road).

22.1.4 RCW 19.285 Energy Independence Act in its declaration of policy states that:

"Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington State and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies."

22.1.5 RCW 82.16.110 in its findings and intent conveys:

"The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington State has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington State."

22.1.6 RCW 80.60.005 concurs in its findings:

"The legislature finds that it is in the public interest to:

(1) Encourage private investment in renewable energy resources;

(2) Stimulate the economic growth of this state; and

(3) Enhance the continued diversification of the energy resources used in this state."

22.1.7 The applicant has stated that 40 to 60 jobs will be created during the construction phase of the project, and that where feasible, local labor will be hired. No taxpayer money is being used for the project and the property tax revenue increase for the life of the project is estimated at $873,048. This Project will generate approximately 10,379 MWh of clean electricity each year, which is enough to power more than 950 average American homes and result in an annual emissions reduction of over 15.7 million pounds of CO2e (equivalent to removing roughly 1,500 passenger vehicles from the road). Mr. Hanson is utilizing his property in his best interests. The property is subjected to no permanent change, damage, or encumbrance.

22.1.8 Webster's dictionary defines detrimental as "causing damage or injury; obviously harmful". A multitude of concerns were raised within the comment letters with respect to the potential detrimental effects of the proposed Solar Farm. In the Environmental section above the applicant has provided substantive and empirical data, studies, and research which demonstrated to the satisfaction of the SEPA Official of Kittitas County that there would be no adverse environmental impacts as a result of the construction and operation of the project. Outside of the environmental realm other concerns expressed within the comment letters that the project may be detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood include:

22.1.8.1 **Loss of farmland and/or dangerous precedent to oversaturation of solar farms:** The application has been considered on its own merits. The discussion at hand is about this project, in this place, by this person, at this time. That being said, the Kittitas County Comprehensive Plan lists 516,797 acres of land as being designated as agricultural use. The proposed solar farm project acreage to be removed represents 0.0009% of that acreage. The removal is temporary, and the land, as per the MDNS, will be restored to an agriculturally productive level upon decommissioning of the project. The property belongs to a private individual entering into a private contract, with a private corporation for a permitted conditional use. Nothing within the county code or comprehensive plan establishes or even contemplates an appropriate or acceptable threshold for "how much is enough" or "how much is too much" when it comes to Major Alternative Energy Facilities. The conditional use is deemed appropriate for 1,425,612 acres within the county. To date there are 13.6 acres of land approved for development as a Major Alternative Energy Facility in Kittitas County.

The SEPA checklist, which was made a part of the MDNS, allowed for a detailed assessment of impact to agricultural uses and proposed specific mitigation measures. This checklist (Exhibit 7) included a legally sufficient review and analysis of specific and material agricultural impacts. There was no impact to the actual day to day, farm to market, agricultural activities that could not be mitigated.

22.1.8.2 **Loss of farming jobs:** No data or research was presented with respect to this assertion. According to the application, the property owner retains 500+ acres of land in production; a reduction of less than 10% in the working area of the farm could conceivably manifest itself in a loss of hours for some individuals employed by the applicant. The extent which the loss of those hours would cause damage or injury is not discernable. As mentioned above there are over a half million acres of agriculturally designated lands in the county. By applying a proportional perspective one could only conclude that the damage to the agricultural workforce bottom line would be negligible.

22.1.8.3 **Aesthetics and appearance:** The specifics on the potential injuries in this realm range from diminished property values, to diminished view quality, to loss of tourism, to change in historical character. No data or research was presented to support these assertions. There is no doubt that the conversion from 47 acres of green hayfield to 47 acres of glass, aluminum, and silicon represents a change in appearance. The applicant submitted some empirical and research data which indicates that there is "*...no impact in home values due to the adjacency to the solar farm as well as no impact to adjacent vacant, residential, or agricultural land.*" and that there was "*no negative impact on the adjoining properties.*" Another study espoused that "*A review of literature nationwide shows little evidence that solar arrays influence nearby property values.*" Notwithstanding the above, staff acknowledged that this issue is perhaps the most challenging characteristic to quantify and address. The applicant points out that "*Given the fact that solar PV facilities are a relatively new land use, limited peer-reviewed studies exist regarding potential impacts on the values of adjacent and surrounding properties.*" It is undeniable that aesthetic appeal or lack thereof with respect to anything is subjective. There can be no doubt that some unknown percentage of the population would find the appearance of the proposed project unappealing.

22.2.1 The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:

A. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or

B. The applicant shall provide such facilities; or

C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.

22.2.1.1 The city of Kittitas is a small community with a population of approximately 1,450 people. The town has a rural character with deep roots in agriculture. The City of Ellensburg lies just 10 miles west and is home to a much larger population of approximately 18,175 people and Central Washington University.

22.2.1.1. This project will be serviced by existing facilities including but not limited to, existing roads, highways, and police and fire protection.

22.2.1.2. Any additional facilities required by this Project will be provided by OER. These facilities may include utility infrastructure on Clerf Road, appropriate access improvements to comply with public works or Washington Department of Transportation, additional safety training for the local fire department and all necessary equipment.

22.2.1.3 The power generated from this Project will primarily be absorbed in PSE's service areas in and near Kittitas. The total Project capital investment is estimated to be approximately $11.2 million. Beyond generating a source of renewable energy, this Project will deliver numerous economic benefits through direct capital investment in the local and regional economy.

In addition to local hired project development technical support and the spike of local spending during the construction period and a hired regional labor force. The Project will generate a consistent revenue stream over the operation life through recurring annual lease payments, which will bring revenue to the landowner as a different commercial enterprise. Property taxes, which will generate revenue for Kittitas County, that will contribute to the provision of improved roads, quality education, police, fire, and other municipal needs that would benefit the entire community; and long-term operations and maintenance expenses spent regionally.

22.2.1.2 The applicant has demonstrated that there would be no negative economic impacts to the county. The applicant has stated that 40 to 60 jobs will be created during the construction phase of the project, and that where feasible local labor will be hired. No taxpayer money is being used for the project and the property tax revenue increase for the life of the project is estimated at $873,048. There would be

no significant detrimental effects to or increased demands on public services. Existing off sight roads and infrastructure are sufficient to service both the construction and operational phases of the project. As mitigated, the project would not result in an increased need for fire, police, school, public transit, irrigation, refuse, water or septic systems, health care or other public services. As mitigated, there are no costs or detriments for economic benefit to offset.

22.3 The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.

22.3.1 OER is dedicated to using best management practices during all phases of development, construction, and operations. This Project will comply with any and all relevant development standards laid out by Kittitas County code.

22.3.2 As mitigated and conditioned the project will be in full compliance with all relevant Titles and chapters of Kittitas County Code including but not limited to:

KCC Title 8 Health, Welfare, and Sanitation
KCC Title 9 Public Peace, Safety, and Morals
KCC Title 10 Vehicles and Traffic
KCC Title 12 Roads and Bridges
KCC Title 13 Water and Sewers
KCC Title 14 Buildings and Construction
KCC Title 15 Environmental Policy
KCC Title 17 Zoning
KCC Title 17A Critical Areas
KCC Title 20 Fire and Life Safety

22.4 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.

22.4.1 OER employs a rigorous site selection process to mitigate, to the largest extent feasible, negative environmental impacts while partnering with landowners and local residents to generate positive community impacts and economic development for Kittitas County. The development process for this Project began in 2013 and OER has been working through the due diligence process to ensure the least amount of impacts while developing the Project to achieve successful financing and operations. OER has been and will continue to work to mitigate impacts. OER has a history of developing well-sited projects that avoid sensitive habitats.

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

22.5.1 The project will be compatible with all neighboring land use. The project will have very limited visual or auditory impacts, keeping with the rural nature of the City of Kittitas.

22.5.2 As mitigated the use will be compatible with neighboring land uses.

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

22.6.1 The Parcel is currently zoned AG-20. Kittitas County Code states that alternative energy facilities may be authorized in this zoning. This Project is a clean energy generator defined in Chapter 17.61 as a "'Major alternative energy facility' means a hydroelectric plant, solar farm, or wind farm that is not a minor alternative energy facility." The Project is consistent with the intent and character of the zoning district. As defined in 17.61.020 Permitted and Conditional Uses, "Major alternative energy facilities may be authorized in the Agriculture-20, forest and range, commercial agriculture, and commercial forest zones as follows: ... All other major alternative energy facilities may be authorized as a conditional use."

22.6.2 The use is consistent with the intent and character of the zoning district in which it is located.

22.7 For conditional uses outside of Urban Growth Areas, the proposed use:

22.7.1 Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;

22.7.1 Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, specifically GPO 6.36, which states an intent to develop a criteria and design standard for siting solar farms in the county.

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

22.7.2.1 Preserves "rural character" as defined in the Growth Management Act by fitting into the patterns established by the county in RCW 36.70A.030 (15). The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. Native grasses will be planted beneath the panels. The low-lying natures and native grasses will perpetuate the visual landscapes of open space and vegetation that are traditionally found in rural area.

22.7.2.2 The project is compatible with use of the land by local wildlife. OER will continue to work with WDFW to address concerns related to existing wildlife habitat. Additionally, this Project will continue the protection of natural surface water and groundwater flows and surface water recharge and discharge areas. This Project will not inhibit traditional rural lifestyles, rural-based economies,

and opportunities to both live and work in rural areas as local farming practices will continue and no job opportunities will be lost. The Project will not require an extension of urban governmental services.

22.7.3 Requires only rural government services.

22.7.4.1 The Project requires only rural government services such as but not limited to, police and fire protection services.

22.7.4.2 Existing off sight roads and infrastructure are sufficient to service both the construction and operational phases of the project. As mitigated, the project would not result in an increased need for fire, police, school, public transit, irrigation, refuse, water or septic systems, health care or other public services. As mitigated, there are no costs or detriments for economic benefit to offset.

22.7.4 Does not compromise the long term viability of designated resource lands.

22.7.4.1 This Project does not compromise the long term viability of the agricultural resource value of this parcel. This Project will temporarily remove a maximum of 47.5 acres for a term to be no longer than 36 years from agricultural production. The landowner will have the ability to continue using the remainder of the land holdings for agricultural uses for the duration of this term. Within one year from the date the lease expires or terminates, all solar facilities and related infrastructure shall be removed and the land shall be returned to its original state at which time the land can return to an agricultural resource.

22.7.4.2 There are no resource lands adjacent to or impacted by the proposed project.

This proposal is consistent with the Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As mitigated and conditioned, believes that the proposal meets or exceeds all of the criteria listed under KCC 17.60A.015 specifically, and Title 17 generally.

23. Consistency with the provisions of KCC 17A, Critical Areas:
Staff conducted an administrative critical area review in accordance with KCC 17A and found that this proposal has two environmental elements that warrant additional scrutiny:

23.1 **Caribou Creek:** Caribou Creek, a Type 2 fish bearing stream, is located along the west side of the project site. The stream has been altered from a naturally meandering streambed to a straight line bed running directly south to Clerf Road along the west edge of the property. As mentioned in the environmental review, under the recommendations of the WDFW, the county has imposed a 100 foot buffer from the ordinary high water mark. No development, structures, excavation, or clearing of existing vegetation may

occur within the buffer. Additionally under the provisions of the MDNS a Riparian Planting Plan shall be developed in conjunction with and approve by the WDFW which will improve habitat and assist with lowering stream temperatures.

23.2 **Floodplain:** There is an associated floodplain with Caribou Creek (FIRM panels 5300950580B & 5300950557B). A floodplain development permit will be required for the construction of the fence within the floodplain. Furthermore should the final site plan contemplate photovoltaic panel installation within the floodplain, a permit will be required.

24. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.

25. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.

26. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.

27. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.

28. The proposed conditional use will comply with all required performance standards specified in the Kittitas County Code.

29. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified in the Kittitas County Code.

30. An open record Appeal hearing was held on October 20, 2016.

31. At the hearing the following exhibits were admitted into the record:

31.1 Exhibit 1 KC CDS Receipt;
31.2 Exhibit 2 Original SEPA Checklist;
31.3 Exhibit 3 Original Application Packet;
31.4 Exhibit 4 Pre-Application Conference Summary;
31.5 Exhibit 5 Deem Incomplete Letter;
31.6 Exhibit 6 Revised Application;
31.7 Exhibit 7 Revised SEPA Checklist;
31.8 Exhibit 8 Planners Notes;
31.9 Exhibit 9 Site Plan;
31.10 Exhibit 10 Transportation Concurrency;
31.11 Exhibit 11 Deem Complete;
31.12 Exhibit 12 Prior Survey;
31.13 Exhibit 13 Regional Land Use Map;
31.14 Exhibit 14 Critical Areas Checklist;
31.15 Exhibit 15 Floodplain, Floodway, Streams, and Wetlands Map;
31.16 Exhibit 16 Vicinity Map
31.17 Exhibit 17 LiDAR Hillshade Elevation Model Map;

31.18 Exhibit 18 Oblique Air Photo;
31.19 Exhibit 19 Vertical Air Photo;
31.20 Exhibit 20 Land Use Action Signs Map;
31.21 Exhibit 21 Affidavit of Posting Signed;
31.22 Exhibit 22 Adjacent Property Owners Notification Map;
31.23 Exhibit 23 Adjacent Properties Mailing Labels;
31.24 Exhibit 24 Notice of Application Legal;
31.25 Exhibit 25 Notice of Application;
31.26 Exhibit 26 Notice of Application Email;
31.27 Exhibit 27 Site Visit Photos;
31.28 Exhibit 28 Correspondence with Authorized Agent;
31.29 Exhibit 29 Correspondence All Others;
31.30 Exhibit 30 Comment Letter – Charles;
31.31 Exhibit 31 Comment Letter – Woodworth;
31.32 Exhibit 32 Comment Letter – Williams R;
31.33 Exhibit 33 Comment Letter –Wenger;
31.34 Exhibit 34 Comment Letter – Stull;
31.35 Exhibit 35 Comment Letter – Kittitas County Public Works;
31.36 Exhibit 36 Comment Letter - Pfeifer;
31.37 Exhibit 37 Comment Letter – NW Energy Coalition;
31.38 Exhibit 38 Comment Letter - McKendrick;
31.39 Exhibit 39 Comment Letter – Kittitas Reclamation District;
31.40 Exhibit 40 Comment Letter - Johnson;
31.41 Exhibit 41 Comment Letter – Gigstead;
31.42 Exhibit 42 Comment Letter – Craig;
31.43 Exhibit 43 Comment Letter – Cooper T.;
31.44 Exhibit 44 Comment Letter – Cooper F.;
31.45 Exhibit 45 Comment Letter – Climate Solutions;
31.46 Exhibit 46 Comment Letter – Clerf R.;
31.47 Exhibit 47 Comment Letter – Clerf J.;
31.48 Exhibit 48 Comment Letter – Chalrton/Weekes;
31.49 Exhibit 49 Comment Letter – Carr;
31.50 Exhibit 50 Comment Letter – Allphin R.;
31.51 Exhibit 51 Comment Letter – Allphin J.;
31.52 Exhibit 52 Comment Letter - Washington Fish and Wildlife;
31.53 Exhibit 53 Comment Letter – Washington Wool Growers;
31.54 Exhibit 54 Comment Letter – Warm Springs Ranch;
31.55 Exhibit 55 Comment Letter – Sierra Club;
31.56 Exhibit 56 Comment Letter – Sherman;
31.57 Exhibit 57 Comment Letter – Pentico;
31.58 Exhibit 58 Comment Letter – Miller;
31.59 Exhibit 59 Comment Letter – Lower;
31.60 Exhibit 60 Comment Letter – Jackson;
31.61 Exhibit 61 Comment Letter – Hubbard S.;
31.62 Exhibit 62 Comment Letter – Hubbard E.;
31.63 Exhibit 63 Comment Letter – Graham;
31.64 Exhibit 64 Comment Letter – Eslinger;
31.65 Exhibit 65 Comment Letter – Clean Tech Allaince;
31.66 Exhibit 66 Comment Letter – Caraway;

31.67 Exhibit 67 Comment Letter – Black;
312.68 Exhibit 68 Comment Letter – Adams;
31.69 Exhibit 69 Comment Letter – Walter;
31.70 Exhibit 70 Comment Letter – Meeks;
31.71 Exhibit 71 Comment Letter – Hein and Lee;
31.72 Exhibit 72 Comment Letter Hahn;
31.73 Exhibit 73 Comment Letter – Clerf Sherre;
31.74 Exhibit 74 Comment Letter - Clerf Shelley;
31.75 Exhibit 75 Comment Letter – Busch;
31.76 Exhibit 76 Comment Letter - Williams B;
31.77 Exhibit 77 Comment Letter – McNichol;
31.78 Exhibit 78 Comment Letter – Kenner;
31.79 Exhibit 79 Comment Letter – Hunt;
31.80 Exhibit 80 Comment Letter – Allred;
31.81 Exhibit 81 Comment Letter – Ridgeway;
31.82 Exhibit 82 Comment Letter - Kittitas County Public Health;
31.83 Exhibit 83 Comment Letter – Morgan & Son;
31.84 Exhibit 84 Comment Letter – McMeans;
31.85 Exhibit 85 Comment Letter – McCune;
31.86 Exhibit 86 Comment Letter – Martinez;
31.87 Exhibit 87 Comment Letter – Evans;
31.88 Exhibit 88 Comment Letter – Busch;
31.89 Exhibit 89 Comment Letter – Gremel;
31.90 Exhibit 90 Comment Letter – Kittitas County Building Dept.;
31.91 Exhibit 91 Comment Letter - Kittitas County Fire Marshal;
31.92 Exhibit 92 Comment Letter – Bates;
31.93 Exhibit 93 Comment Letter - Washington State Department of Health;
31.94 Exhibit 94 Comment Letter – Kittitas Valley Fire and Rescue;
312.95 Exhibit 95 Request to Place on Hold Applicant;
31.96 Exhibit 96 Late Comment Letter – Ecology;
31.97 Exhibit 97 Transmittal of Comments;
31.98 Exhibit 98 Applicant Supplemental Materials;
31.99 Exhibit 99 Request to Resume Processing;
31.100 Exhibit 100 Late Comment Letter – Kittitas County Weed Dept.;
31.101 Exhibit 101 Request for Notification – Yakima Herald Republic;
31.102 Exhibit 102 Correspondence Staff to HE;
31.103 Exhibit 103 Notice of Decision and Hearing Publication Confirmation;
31.104 Exhibit 104 Correspondence Williams R.;
31.105 Exhibit 105 Notice of Decision and Hearing Mailing Labels;
31.106 Exhibit 106 Notice of Decision and Hearing Affidavit of Mailing;
31.107 Exhibit 107 Notice of Decision and Hearing Email;
31.108 Exhibit 108 Correspondence Martinez;
31.109 Exhibit 109 Notice of Decision and Hearing;
31.110 Exhibit 110 SEPA MDNS;
31.111 Exhibit 111 HE Agenda;
31.112 Exhibit 112 HE Staff Report;
31.113 Exhibit 113 Appeal Letter;
31.114 Exhibit 114 Order Striking Hearing;
31.115 Exhibit 115 Email Cancelling Hearing;

31.116 Exhibit 116 Declaration of Representation;
31.117 Exhibit 117 Correspondence;
31.118 Exhibit 118 Appeal Documentation Transmittal Email Applicant;
31.119 Exhibit 119 Applicant Witness List;
31.120 Exhibit 120 Applicant Appeal Response with Appendices;
31.121 Exhibit 121 Appeal Documentation Transmittal Appellant;
31.122 Exhibit 122 Appellant Witness List;
31.123 Exhibit 123 Appellant Opening Memorandum;
31.124 Exhibit 124 Notice of Appeal and Hearing Request for Publication;
31.125 Exhibit 125 Notice of Appeal and Public Hearing Memo;
31.126 Exhibit 126 Notice of Appeal and Public Hearing Publication Confirmation;
31.126 Exhibit 127 Appellant's Response Memorandum;
31.128 Exhibit 128 Teanaway Solar Reserve Notice of Decision;
31.129 Exhibit 129 Teanaway Solar Reserve MDNS;
31.130 Exhibit 130 One Energy Response Final Legal;
31.131 Exhibit 131 One Energy Response Docs;
31.132 Exhibit 132 Appellant Memo RE: CUP;
31.133 Exhibit 133 Applicant's Legal Response to Appellant Memo RE: CUP;
31.134 Exhibit 134 SEPA Appeal Order on Prehearing Conference;
31.135 Exhibit 135 SEPA Appeal Comments John Clerf;
31.136 Exhibit 136 SEPA Appeal Email of Record;
31.137 Exhibit 137 Appeal and Cup Hearing Agenda;
31.138 Exhibit 138 Correspondence RE SEPA Hearing Process;
31.139 Exhibit 139 Correspondence RE SEPA Hearing Process 2;
31.140 Exhibit 140 Letter/Statement from Hearing – Clerf;
31.141 Exhibit 141 Hearing Sign-in Sheet SEPA;

32. Appearing for Appellant was attorney James Carmody.

33. The following members of the public testified at this hearing:

33.1 Patricia Clerf;
33.2 Craig Clerf;
33.3 Ron Cline;
33.4 Marlene Pfeifer;
33.5 Sherre Clerf;
33.6 Scott Downs;
33.7 Greg Carr;
33.8 Cheryl Pentico;
33.9 Thomas Houghton;
33.10 Stan Blazynski;
33.11 Dwight Bates;
33.12 Jerry Gilmore;
33.13 Andrea Eklund;
33.14 Paul Boguslawski;
33.15 Jake Steign;
33.16 Carol Martinez; and
33.17 Roger Clerf.

34. Appearing on behalf of the applicant was attorney Tim McMahon. Testifying on behalf of the applicant was the following individual:

34.1 Tayler Steele.

35. Analysis of alternative sites for this project is not required for this project.

36. In considering the entire record on appeal, the probable, significant environmental impacts were adequately considered.

37. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.

2. A mitigated determination of non-significance (MDNS) involves changing or conditioning a project to eliminate its significant adverse environmental impacts.

3. To overturn a MDNS an Appellant must demonstrate that the decision was clearly erroneous.

4. A finding is clearly erroneous when, although there is evidence supported, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed.

5. For a MDNS to survive judicial scrutiny, the record must demonstrate that environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with the State Environmental Protection Act (SEPA).

6. The decision to issue an MDNS must be based on information sufficient to evaluate the proposal environmental impacts.

7. An agency's decision to issue a MDNS and not to require an Environmental Impact Statement must be accorded substantial weight.

8. If, in the course of formulating an MDNS, the lead agency determines that a proposal continues to have probable significant adverse environmental impacts, even with mitigation measures, an Environmental Impact Statement must be prepared.

9. If a MDNS is issued and an appealing party proves that the project will still produce significant adverse environmental impacts, then the MDNS decision must be held to be clearly erroneous and an Environmental Impact Statement must be prepared.

10. A MDNS does not require that all environmental impacts be totally eliminated.

11. "Probable" means likely or reasonable likely to occur, as in "[A] reasonable probability of more than a moderate effect on the quality of the environment."

12. The term "probable" is used to distinguish likely impacts from those that merely have a possibility of occurring but are remote or speculative.

13. The Responsible Officials SEPA decision is reviewed under the clearly erroneous standard.

14. A threshold determination that an Environmental Impact Statement is not required is subject to review under the "clearly erroneous" standard, which means that the threshold determination should only be overturned where, in light of the entire record, the Hearing Examiner is left with a definite and firm conviction that a mistake has been committed.

15. The responsible official did not make a mistake in making the SEPA Determination of a Mitigated Determination of Non-Significance.

16. Analysis of alternative sites for this project is not required for this project.

17. A cumulative impact analysis is only required where there is evidence that the project under review is dependent upon a subsequent proposed development that will result in additional impacts.

18. There is no evidence that this project is dependent upon any subsequent proposed development that would result in additional impacts.

19. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

Based upon the above Findings of Fact and Conclusions of Law, the August 10, 2016 SEPA determination by the responsible official in the above referenced matter is **AFFIRMED** in every respect.

Dated this 8th day of November, 2016.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

KITTITAS COUNTY
LAND USE HEARING EXAMINER

IN THE MATTER OF	)	**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND CONDITIONS OF APPROVAL**
	)	
	)	
CU-15-00006	)	
Iron Horse Solar Farm	)	

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on October 20, 2016, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. One Energy Development LLC authorized agent for Bill Hanson, landowner, has submitted a conditional use application for a Major Alternative Energy Facility on approximately 68 acres. The subject property is zoned Agriculture 20. This "Utility" (KCC 17.61.010(1)) is subcategorized as a major alternative energy facility (KCC 17.61.010(9)), and as such is a conditional use for the zone (KCC 17.61.020(4)(b)).

2. This proposal contains 4 parcels, located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers 17-19-01000-0023, 17-19-01000-0028, 17-19-01000-0042, and 17-19-01000-0043.

3. Site Information:

Total Property Size:	68 acres
Total project size:	42.5 Acres
Number of Lots:	4; no new lots are being proposed
Domestic Water:	None required or planned at this time
Sewage Disposal:	None required or planned at this time
Fire Protection:	Kittitas Valley Fire and Rescue
Irrigation District:	Kittitas Reclamation District

4. Site Characteristics:

North:	Private residential, farming and grazing
South:	Private residential, farming and grazing
East:	Private residential, farming and grazing
West:	Private residential, farming and grazing

The subject property is generally flat disturbed farmland.

5. Access:
The site is accessed from Caribou Road; Kittitas County Public Works has conditioned that the access be constructed to commercial standards.

6. The Comprehensive Plan designation is "Rural Working."

7. Zoning and Development Standards:
The subject property is located within the Agriculture 20 zone. The agriculture (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture. The Agriculture 20 zone allows for an array of permitted and conditional uses. This project is being proposed under KCC 17.61 Utilities as a major alternative energy facility, an allowed conditional use for the zone.

8. Conditional Uses:
This application is consistent with KCC 17.60A. There are a number of requirements that must be me. Conditional use permits are required to have a public hearing before the Hearing Examiner for a recommendation and then a closed record hearing before the Board of County Commissioners (BOCC), where the BOCC will make the final decision.

9. The conditional use permit application was submitted to Community Development Services (CDS) on November 12th, 2015. On December 17th, 2015 the application was deemed incomplete following a mandated pre-application meeting between county staff and representatives of the applicant. Materials required at that time included a transportation concurrency application and a stormwater management plan. On March 3rd, 2016 revised project materials were submitted by the applicant who included the required information as well as an updated narrative and SEPA checklist. The application was deemed complete on May 12th, 2016. The Notice of Application for the conditional use permit was issued on May 23rd, 2016. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on June 7th, 2016.

10. Kittitas County acted as the lead agency for the SEPA Environmental Checklist. A Mitigated Determination of Non-Significance (MDNS) was issued for this project on August 10th, 2016. The appeal period for this SEPA determination ended on August 24th, 2016 at 5:00 p.m.

11. A SEPA Appeal was timely filed. A decision affirming the SEPA determination was issued on November 9, 2016.

13. Staff conducted an administrative critical area review in accordance with KCC 17A and found that this proposal is adjacent to a Type 2 Fish Bearing Stream. Kittitas County agreed with the comments provided by The Washington State Department of Fish and Wildlife regarding Caribou Creek's designation as a Type 2 Fish Bearing Stream and will enforce the recommended 100' buffer as well as require a Riparian Planting Plan developed in conjunction with and approved by the WDFW.

14. The Kittitas County Comprehensive Plan designates the subject property as Rural Working Land. Uses within this designation generally encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with rural environment and supporting agriculture and/or forest activities. Areas in this designation often have low population densities with larger parcel size compared to Rural Residential areas. Agriculture and forestry activities are generally less in scope than in the Resource lands.

15. The Washington State Growth Management Act mandates the county to develop a comprehensive plan, and that within that plan a Rural Element be devised which *"include measures that apply to rural development and protect the rural character of the area as established by the County."* These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, reduce sprawl and protect against conflict with the use of agricultural, forest and mineral resource lands (RCW 36.70A.070). "Rural Character" is defined in the Act thus:

> *"Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:*
>
> *(a) In which open space, the natural landscape, and vegetation predominate over the built environment;*
>
> *(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;*
>
> *(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;*
>
> *(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;*
>
> *(f) That generally do not require the extension of urban governmental services; and*
>
> *(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.*

16. An important fact as to whether the proposed solar farm is rural in character and a compatible use can be found in the fact that that the proposed use is an allowed conditional use, and that the Kittitas County Board of Commissions and the Growth Management Hearing Board have both found that a Major Alternative Energy Facility is consistent with the rural character of an agricultural zone. A conditional use permit, through a public hearing process, allows the county to consider uses which may be essential or desirable, but which are not allowed as a matter of right within a zoning district. The conditional use permit provides flexibility within a zoning ordinance and allows the county to control certain uses which could have detrimental effects on the area. The current Kittitas County Comprehensive Plan and Development Code have been subjected to years of scrutiny, discussion, litigation, and adaptation by numerous state and local, public and private entities. Notwithstanding that scrutiny, Major Alternative Energy Facilities continue to reside in the county code as conditional uses in the Agriculture 20, Forest and Range, Commercial Agriculture and Commercial Forest zones. Two major solar facilities have successfully navigated the conditional use process and achieved approval without appeal with respect to their conformance to rural element of the Comprehensive Plan. The Teanaway Solar Reserve Conditional Use Permit (CU-09-00005) was approved in August of 2010. The county at that time, was not in compliance with the Growth Management Act (Case No. 07-1-0004c) placing the Comprehensive Plan in a state of constant scrutiny and review. On February 11th, 2013, The BOCC signed Ordinance 2013-001, mandating changes to the Comprehensive Plan and the development code (Titles 15A, 16, and 17) to bring county into Compliance with the GMA. On August 13th, 2014, The Growth Management Hearings Board declared:

"That with the adoption of new restrictions on allowed rural uses and standards applicable in certain rural zones, Kittitas County has complied with the requirements of the Growth Management Act."

17. Nearly one year later the BOCC signed Resolution 2015-106 unanimously approving the Osprey Solar Farm (CU-14-00003) and in the stated findings of fact declared:

"The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan."
and:
"This proposal is consistent with the Kittitas County Zoning Code as proposed under KCC 17.61 Utilities as a major alternative energy facility, a conditional use for the Agriculture 20 zone."

18. The identified use, Major Alternative Energy Facility, in various sizes, have been found to be compliant and consistent with both the comprehensive plan and the development code, by both the Board of County Commissioners and the Growth Management Hearings Board notwithstanding the review and scrutiny of dozens of governmental and non-governmental agencies, entities, and individuals.

19. **Goals Policies and Objectives:** Kittitas County has established goals, policies, and objectives (GPOs) to guide activities within the rural working lands and utilities in general. These goals and policies were developed in response to identified needs within the county, and support the County Wide Planning Policies. The following GPOs assist with the assessment of this application:

19.1 GPO 8.1 Rural lands are characterized by a lower level of services; mixed residential, agricultural and open space uses; broad visual landscapes and parcels of varying sizes, a variety of housing types and small unincorporated communities.

19.2 GPO 8.3 The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.

19.3 GPO 8.4 Development in rural areas is subject to agricultural and forestry activities that may take place as a right on adjacent properties.

19.4 GPO 8.8 A certain level of mixed uses in rural areas and rural service centers is acceptable and may include limited commercial, service, and rural industrial uses.

19.5 GPO 8.11 Policies will reflect a "right to farm" in agricultural lands.

19.6 GPO 8.13 Encourage development activities and establish development standards which enhance or result in the preservation of rural lands.

19.7 GPO 8.14C Development shall be located distances from streams, rivers, lakes, wetlands, critical areas determined necessary and as outlined within existing Shorelines Management Program, the Critical Areas Ordinance and other adopted resource ordinances in order to protect ground and surface waters.

19.8 GPO 8.15 Uses common in rural areas of Kittitas County enhancing rural character, such as agriculture uses in Lower Kittitas and rural residential uses and recreation uses in Upper Kittitas shall be protected from activities which encumber them.

19.9 GPO 8.16 Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, tourism, outdoor recreation, and other open space activities.

19.10 GPO 8.17 Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.

19.11 GPO 8.21 Kittitas County will provide criteria within its zoning code to determine what uses will be permitted within rural zone classifications in order to preserve rural character.

19.12 GPO 8.21B Functional separation and setbacks found necessary for the protection of water resources, rural character and/or visual compatibility with surrounding rural areas shall be required where development is proposed. The first sentence of this policy shall not apply to agricultural activities as defined in RCW 90.58.065(2(a). When required by the county shoreline master program or critical area regulations, buffers shall be provided.

19.13 GPO 8.37 Conveyance instruments including plats and short plats, development permits and building permits, within 500 feet of land designated as Rural Working lands or Resource Lands shall contain a notice to potential buyers and residents as directed within RCW 36.70A.060(1)(b).

19.14 GPO 8.44A Commercial/Industrial development in rural areas shall be compatible to the rural environment, and must be developed as determined necessary to not significantly impact surface and groundwater.

19.15 GPO 8.44 Growth and development in rural lands will be planned to minimize impacts upon adjacent natural resource lands.

19.16 GPO 8.44C New commercial/industrial development shall be required to meet standards or any measures found needed to protect existing surface and groundwater users from impairment and contamination.

19.17 GPO 8.48 In addition to the notice requirements in RCW 36.70A.060(1)(b), non-farming residents should be informed on the practices of farming so that they are aware of the non-urban activities and impacts that occur in the agricultural environment.

19.18 GPO 6.7 Decisions made by Kittitas County regarding utility facilities will be made in a manner consistent with and complementary to regional demands and resources.
GPO 6.9 Process permits and approvals for all utility facilities in a fair and timely manner, and in accordance with development regulations that ensure predictability and project concurrency.

19.19 GPO 6.10 Community input should be solicited prior to county approval of utility facilities, which may significantly impact the surrounding community.

19.20 GPO 6.13 The County should coordinate with utility providers.

19.21 GPO 6.23 Kittitas County reserves the right to review all applications for utilities placed within or through the County for consistency with local policies, laws, custom and culture.

19.22 Webster's dictionary defines compatible as *"able to exist together without trouble or conflict"*. The project as proposed is consistent with the above GPO's with respect to rural lands and utility location and review. Staff can find no issues, inconsistencies, incompatibilities, or contradictions between this project as proposed and the Kittitas County Comprehensive Plan.

20. The proposal contains an associated floodplain with Caribou Creek (FIRM panels 5300950580B & 5300950557B). A floodplain development permit will be required for the construction of the fence in within the floodplain. Furthermore, should the final site plan contemplate photovoltaic panel installation within the floodplain, a permit will be required.

21. Kittitas County acted as the lead agency for the SEPA Environmental Checklist and threshold determination. As per WAC 197-11-355 and KCC 15A.04.010 the county utilized the optional DNS process. Notice was given that the County was expecting to issue a Determination of Non-Significance, and that the notice of application comment period (14 days) may be the only opportunity to provide comment on the environmental impacts of the proposal. The checklist was reviewed by staff in conjunction with the project narrative. On June 27th, 2016 the application was placed on hold by the applicant and review was temporarily suspended. On July 15th, 2016 the applicant requested that review continue and submitted supplemental documentation with respect to comments received. After a detailed review of the SEPA checklist, the project narrative, supplemental submission, and proposed mitigation measures the SEPA official determined that there would be no significant adverse environmental impacts under the provisions of WAC 197-11-350. With respect to the specific elements outlined in the SEPA checklist the following factual determinations are helpful in considering this conditional use application:

21.1 **Earth:**
The site is generally flat and the surface is a disturbed (farmed) range of local soils. Approximately 44 cubic yards of top soil is expected to be moved, and 95 cubic yards of gravel imported. The project will create approximately 8,700 square feet of impermeable surface (9%) of the development. There are no indications of unstable soils within the project area. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, a fugitive Dust Control Plan as well as a Grading Permit is required prior to final approval. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to earth.

21.2 **Air**
Solar farms do not consume, process, combust with, alter, or pollute the air; there will be no emissions or odors associated with the operations of the facility. Construction

activities and equipment may generate emissions and fugitive dust. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, a fugitive Dust Control Plan is required prior to final approval. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to air as mitigated.

21.3 Water

Caribou Creek runs through and along the western boundary of the project/property. An irrigation ditch is located along the east boundary of the project site. There are no wetlands identified within the project/property. No dredging or filling will occur within the stream or canal. No surface water or groundwater withdrawals or diversions will be associated with the project. No septic or waste discharge systems are associated with the project. The project site will contain 9% impermeable surface. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials the following mitigation measures have been required:

1. A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.
2. The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the Washington State Department of Fish and Wildlife (WDFW).
3. The applicant will need to consult and comply with the requirements set forth in the KRD General Guidelines prior to final approval of the Conditional Use Permit.
4. The irrigation canal on the east side of the project shall have a 30 foot buffer from all project related development and operations. Weed, vegetation, and fire control measures shall prevail.
5. No part of the project shall disrupt existing surface water rights or existing irrigation easements.
6. A floodplain development permit will be required for the construction of the fence within the floodplain.
7. If the final development plan calls for the placement of panels in the floodplain a Floodplain Development Permit will be required.
8. No flood control structures may be constructed on the project parcel.
9. An on-site Stormwater Management Plan that conforms to the specifications of the most current version of the Stormwater Management Manual for Eastern Washington is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. The Stormwater Management Plan shall be submitted to and approved by Kittitas County Public Works prior to final approval.
10. A Construction Storm water Permit may be required if over 1 acre of ground is disturbed for the project and there is a potential for discharge to waters of the state. This includes dewatering for foundation and utility trenching, access route, laydown, impervious pad construction and footings/foundations.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to Water.

21.4 **Plants**

The project site is currently covered with non-native agricultural crops. There are no known endangered or threatened species on the site. There are no known noxious weeds currently on the site. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, a vegetation management plan approved by the Washington Department of Fish and Wildlife (WDFW) and the Kittitas County Noxious Weed Board is required prior to final approval. In addition, no vegetation control measures shall be utilized which might jeopardize the project site's future ability to return to productive agricultural use. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to plants.

21.5 **Animals**

A variety of birds and animals are known to exist on or near the site. No endangered species are known to exist on the site. A sage grouse was sighted 22 years ago three miles away from the site which is not considered to be an active lek (an area in which two or more males of a species perform courtship displays). The site is not known to be a migration route. There are no known invasive animal species on site. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.
2. The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the Washington State Department of Fish and Wildlife (WDFW).
3. The applicant shall develop an Incidental Avian Monitoring Plan in conjunction with, and approved by, the WDFW. The plan and program shall be required to be in effect for a period of five years. The plan will designate thresholds and metrics to establish if additional monitoring is required beyond a period of five years.
4. A WDFW representative shall be provided ongoing access to the site for the purposes of assessing, monitoring, and analyzing wildlife activities and behavior.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to animals.

21.6 **Energy**

The project will require energy to power security lighting and metering. The facility will not impact the potential use of solar energy on adjacent sites. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that there will be no significant adverse environmental impacts related to energy.

21.7 **Environmental Health**

There is no known contamination at the site. Photovoltaic panels do not contain or emit hazardous chemicals or conditions. There will be no toxic or hazardous chemicals stored, used, or produced, during development, construction, or operation of the facility. Electromagnetic fields generated by the inverters will dissipate to safe levels long before reaching the external boundaries of the project. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. Facility management will provide on-site training to KVFR and other emergency services personnel to assist in pre-incident planning and safe operations once the facility is producing electricity.
2. Fire Department key access will be provided for site access and any control panels. A site plan is to be provided for emergency responders prior to the site producing electricity.
3. A Fugitive and Construction Dust Control Plan utilizing best management practices found in the Dust Palliative Selection and Application Guide and the Eastern Washington Stormwater Management Manual (Chapter 7) shall be developed; the plan shall be submitted to and approved by Kittitas County Community Development Services prior to final approval.
4. Broken, damaged, or non-functional panels will be disposed of through consultation with Kittitas County Solid Waste in a safe and environmentally responsible fashion.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to environmental health.

21.8 **Noise**

There is no existing noise that will affect the project. Noise generated by the inverters will be within legal parameters by the time they reach the property's edge. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the applicant shall limit development and construction practices during building of this project. Construction shall only occur between the hours of 7:00 am to 7:00 pm to minimize the effect of construction noise on nearby residences. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to noise.

21.9 **Land Use and Shoreline**

The current use of the site is agricultural. All surrounding zoning and land use is identified as agricultural and rural working respectively. The construction and operation of the solar facility is compatible; it will not encumber, constrain, or interfere with surrounding land uses. No designated agricultural or forestland of long term significance will be converted to other uses. The project will neither affect nor be affected by working farm or forest land. There are no existing structures on the development site. No structures will be demolished as a result of the project. The project does not fall under the provisions of the Shoreline Master Program. Caribou Creek is considered a critical area by Kittitas County. There will be no people residing on or working in the completed project on a permanent basis. Occasional maintenance would be performed on site. The project will not displace any people. The use is a conditional use under Kittitas County

Code. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.
2. The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the WDFW.
3. The applicant shall obtain a conditional use permit in order to operate the facility.
4. Financing of the decommissioning options must be approved by the county, and may include but not be limited to assignment of funds, a bond, or other financial measures equaling one hundred and twenty five percent (125%) of the estimated cost of the decommissioning efforts.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to land use and shorelines.

21.10 **Housing**

No housing units will be provided or destroyed. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that there will be no significant adverse environmental impacts related to housing.

21.11 **Aesthetics**

The top of the panels would stand no higher than eight feet. The project will not obstruct any views in the immediate vicinity. The view from adjacent properties would be altered from hay fields to solar panels. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that there will be no significant adverse environmental impacts related to aesthetics. The Hearing Examiner has recommended an additional condition to screen the project with vegetation to mitigate any view of the facility that is perceived by neighbors and the traveling public to be inconsistent with the rural character of the surrounding area.

21.12 **Light and Glare**

Glare produced by the project would not be greater than common natural features and materials. Glare would be transitory and only be focused on a particular point or place for a brief time frame as the sun traverses the sky and the panels follow its location. Glare does not present a safety hazard and any interruption of views will minimal and brief. In addition to and in conjunction with the measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties and associated roads and streets.
2. No portion of the solar panels and arrays shall exceed 8 feet in height at any time during the operation cycle.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to light and glare.

21.13 **Recreation**

There are no recreational opportunities in the immediate vicinity. The proposed project will not displace any existing recreational facilities. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that there will be no significant adverse environmental impacts related to recreation.

21.14 **Historic and Cultural Preservation**

No historic or cultural resources have been identified on or near the project site. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, should ground disturbing or other activities related to the proposed project result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State DAHP. Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to historical and cultural preservation.

21.15 **Transportation**

Neither the site nor the geographic area is served by public transit. The project would not require nor would it eliminate any parking spaces. There would be no impacts to water, rail, or air transportation. Total trips are estimated to be less than 20 trips per day during the 3 month construction window, and near zero during the operational time frame; the site will be unmanned. The project will not affect or be affected by the movement of agricultural or forest products in the area. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. The access approach must be designed and constructed to commercial standards, as shown in the WSDOT Design Manual Exhibits 1340-1 and 1340-2. A Kittitas County Access Permit is required prior to driveway construction. Access driveways will need to be designed to meet standards.
2. A road standards variance application will be required for additional approaches being requested. Current road standards allow for a single access to a parcel of land or to contiguous parcels of land under the same ownership.
3. If any creek or irrigation waterway is to be crossed by bridge, it will need to be engineered and posted for 75,000lb capacity.
4. The project shall comply with all aspects of the International Fire Code Appendix D including twenty (20) foot wide access roads.
5. Addressing shall be clearly visible from the road.

6. All gates shall be a minimum of 12' wide; if gates are locked, keys or equivalent shall be provided to all emergency services.

7. The Kittitas Reclamation District has a recorded right of way and associated service road abutting Caribou Creek (and by inference the project site) on the west side of the stream. This right of way is not on the subject parcels and as such will not be availed to any use for the project development, construction, or operation without explicit permission from the District.

8. The primary transporter route will use Interstate 90; exit 115 to take Main St. North to Clerf Road and continue east on Clerf Road before turning North on Caribou Road to access the Site via an access road on the west side of Caribou Road. The applicant will make every effort to minimize traffic and its impacts to other State, County, and City streets and roads.

9. Under no circumstances shall construction or operational traffic related to the project utilize private roads.

Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to transportation.

21.16 **Public Services**

The project would not result in an increased need for fire, police, school, public transit, health care or other public services. In addition to and in conjunction with the content and measures described by the applicant in the SEPA Checklist, the project narrative and the supplemental materials, the following mitigation measures are required:

1. A vegetation management plan to be maintained in accordance with the Fire Prevention Plan in the Project Narrative.

2. A site plan is to be provided for emergency responders prior to the site producing electricity. Facility management will provide on-site training to KVFR and other emergency services personnel to assist in pre-incident planning and safe operations once the facility is producing electricity.

3. Fire department key access will be provided for site access and any control panels.

22. Based on the information provided in the SEPA Checklist, the project narrative and the supplemental materials the SEPA Official determined that, as conditioned, there will be no significant adverse environmental impacts related to public services.

23. The following conditional use criteria have been satisfied as follows:

23.1 The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood because:

23.1.1 The State of Washington has enacted aggressive legal and policy standards in pursuit of more renewable energy generation within its borders. Washington's Renewable Portfolio Standard ("RPS") mandates that fifteen percent (15%) of Washington's electricity be generated from renewable energy sources by 2020, with a ramp-up of increasing targets, including the next tranche of nine percent (9%) by 2016. This Project will help the State meet these objectives and create

more clean energy generation in Washington. This Project will deliver all of its output to the electricity grid through the PSE distribution system.

23.1.2 The Project will be the largest solar project in Washington and is desirable to the public convenience because it will fortify the County's electric grid with clean, local power. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations.

23.1.3 This Project will generate approximately 10,379 MWh of clean electricity each year, which is enough to power more than 950 average American homes and result in an annual emissions reduction of over 15.7 million pounds of C02e (equivalent to removing roughly 1,500 passenger vehicles from the road).

23.1.4 RCW 19.285 Energy Independence Act in its declaration of policy states that:

"Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington State and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies."

23.1.5 RCW 82.16.110 in its findings and intent conveys:

"The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington State has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington State."

23.1.6 RCW 80.60.005 concurs in its findings:

> *"The legislature finds that it is in the public interest to:*
>
> *(1) Encourage private investment in renewable energy resources;*
>
> *(2) Stimulate the economic growth of this state; and*
>
> *(3) Enhance the continued diversification of the energy resources used in this state."*

The applicant has stated that 40 to 60 jobs will be created during the construction phase of the project, and that where feasible, local labor will be hired. No taxpayer money is being used for the project and the property tax revenue increase for the life of the project is estimated at $873,048. This Project will generate approximately 10,379 MWh of clean electricity each year, which is enough to power more than 950 average American homes and result in an annual emissions reduction of over 15.7 million pounds of CO2e (equivalent to removing roughly 1,500 passenger vehicles from the road). Mr. Hanson is utilizing his property in his best interests. The property is subjected to no permanent change, damage, or encumbrance.

23.1.7 Webster's dictionary defines "detrimental" as "causing damage or injury; obviously harmful". A multitude of concerns were raised within the comment letters with respect to the potential detrimental effects of the proposed Solar Farm. The applicant has provided substantive and empirical data, studies, and research which demonstrated to the satisfaction of the SEPA Official of Kittitas County that there would be no adverse environmental impacts as a result of the construction and operation of the project. Outside of the environmental realm, other concerns expressed within the comment letters that the project may be detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood include:

23.1.7.1 **Loss of farmland and/or dangerous precedent to oversaturation of solar farms:** The application should be considered on its own merits. The discussion at hand is about this project, in this place, by this person, at this time. That being said, the Kittitas County Comprehensive Plan lists 516,797 acres of land as being designated as agricultural use. The proposed solar farm project acreage to be removed represents 0.0009% of that acreage. The removal is temporary, and the land, as per the MDNS, will be restored to an agriculturally productive level upon decommissioning of the project. The property belongs to a private individual entering into a private contract, with a private corporation for a permitted conditional use. Nothing within the county code or comprehensive plan establishes or even contemplates an appropriate or acceptable threshold for "how much is enough" or "how much is too much" when it comes to Major Alternative Energy Facilities. The conditional use is deemed appropriate for 1,425,612 acres within the county; to date there are 13.6 acres of land approved for development as a Major Alternative Energy Facility in Kittitas County.

23.1.7.2 **Loss of farming jobs:** No data or research was presented with respect to this assertion. According to the application, the property owner retains 500+ acres of land in production; a reduction of less than 10% in the working area of the farm could conceivably manifest itself in a loss of hours for some individuals employed by the applicant. The extent which the loss of those hours would cause damage or injury is not discernable. As mentioned above there are over a half million acres of agriculturally designated lands in the county. By applying a proportional perspective one could only conclude that the damage to the agricultural workforce bottom line would be negligible.

23.1.7.3 **Aesthetics and appearance:** The allegations as to the potential injuries in this realm range from diminished property values, to diminished view quality, to loss of tourism, to change in historical character. No data or research was presented to support these assertions. There is no doubt that the conversion from 47 acres of green hayfield to 47 acres of glass, aluminum, and silicon represents a visual change. The applicant submitted some empirical and research data which indicates that there is *"...no impact in home values due to the adjacency to the solar farm as well as no impact to adjacent vacant, residential, or agricultural land."* and that there was *"no negative impact on the adjoining properties."* Another study espoused that *"A review of literature nationwide shows little evidence that solar arrays influence nearby property values."* Notwithstanding the above, staff acknowledged that this issue is perhaps the most challenging characteristic to quantify and address. The applicant points out that *"Given the fact that solar PV facilities are a relatively new land use, limited peer-reviewed studies exist regarding potential impacts on the values of adjacent and surrounding properties."* It is undeniable that aesthetic appeal or lack thereof with respect to anything is subjective; and there can be no doubt that some unknown percentage of the population would find the appearance of the proposed project unappealing. The Hearing Examiner finds that this same distaste for visual changes occur with wind turbines, cellular towers and in all likelihood, in an earlier time, with power poles and electrical transmission lines.

It is understood that the area residents do not want to look at this facility. No evidence, studies or data have been presented to provide support for actual detrimental or injurious impacts to the public health, peace, or safety or to the character of the surrounding neighborhood. Given the established overall desirability of the proposed project, Staff was compelled to issue an affirmative response to this conditional use permit criteria.

It should be noted at this time that several concerns or statements articulated within the comment letters submitted were deemed by the county as *"not germane"* to the discussion. The expense of the energy produced, the viability, efficiency, or cost effectiveness of the

project; questions or statements about being below the *"fog line"*; requests for free or reduced electricity to the neighbors; market factors stimulating or driving the project; statements that other property is available; or the overabundance of existing power. All of these topics/questions/requests extend beyond the jurisdictional framework of the county. Mr. Hanson is leasing property to a private corporation who is speculating that the electricity produced will cost less than what the market will pay. Staff concluded that the project as proposed is desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.

23.2.1 The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:

A. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
B. The applicant shall provide such facilities; or
C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.

23.2.1.1 The city of Kittitas is a small community with a population of approximately 1,450 people. The town has a rural character with deep roots in agriculture. The City of Ellensburg lies just 10 miles west and is home to a much larger population of approximately 18,175 people and Central Washington University.

23.2.1.1.1 This project will be serviced by existing facilities including but not limited to, existing roads, highways, and police and fire protection.

23.2.1.1.2 Any additional facilities required by this Project will be provided by OER. These facilities may include utility infrastructure on Clerf Road, appropriate access improvements to comply with public works or Washington Department of Transportation, additional safety training for the local fire department and all necessary equipment.

23.2.1.1.3 The power generated from this Project will primarily be absorbed in PSE's service areas in and near Kittitas. The total Project capital investment is estimated to be approximately $11.2 million. Beyond generating a source of renewable energy, this Project will deliver numerous economic benefits through direct capital investment in the local and regional economy.

23.2.1.1.4 In addition to local hired project development technical support and the spike of local spending during the construction period and a hired regional labor force. The Project will generate a consistent revenue stream over the operation life through recurring annual lease payments, which will bring revenue to the landowner as a different commercial enterprise: property taxes, which will generate revenue for Kittitas County, an injection that will contribute to the provision of improved roads, quality education, police, fire, and other municipal needs that would benefit the entire community; and long-term operations and maintenance expenses spent regionally.

23.2.1.2 The applicant has demonstrated that there would be no negative economic impacts to the county. The applicant has stated that 40 to 60 jobs will be created during the construction phase of the project, and that where feasible local labor will be hired. No taxpayer money is being used for the project and the property tax revenue increase for the life of the project is estimated at $873,048. There would be no significant detrimental effects to or increased demands on public services. Existing off sight roads and infrastructure are sufficient to service both the construction and operational phases of the project. As mitigated, the project would not result in an increased need for fire, police, school, public transit, irrigation, refuse, water or septic systems, health care or other public services. As mitigated, there are no costs or detriments for economic benefit to offset.

23.3 The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code because:

23.3.1 OER is dedicated to using best management practices during all phases of development, construction, and operations. This Project will comply with any and all relevant development standards laid out by Kittitas County code.

23.3.2 As mitigated and conditioned the project will be in full compliance with all relevant Titles and chapters of Kittitas County Code including but not limited to:

KCC Title 8 Health, Welfare, and Sanitation
KCC Title 9 Public Peace, Safety, and Morals
KCC Title 10 Vehicles and Traffic
KCC Title 12 Roads and Bridges
KCC Title 13 Water and Sewers
KCC Title 14 Buildings and Construction
KCC Title 15 Environmental Policy
KCC Title 17 Zoning
KCC Title 17A Critical Areas
KCC Title 20 Fire and Life Safety

23.4 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.

23.4.1 OER employs a rigorous site selection process to mitigate, to the largest extent feasible, negative environmental impacts while partnering with landowners and local residents to generate positive community impacts and economic development for Kittitas County. The development process for this Project began in 2013 and OER has been working through the due diligence process to ensure the least amount of impacts while developing the Project to achieve successful financing and operations. OER has been and will continue to work to mitigate impacts. OER is committed to developing well-sited projects that avoid sensitive habitats and engages agencies early and often.

23.4.2 As mitigated the use will mitigate probable, substantial impacts.

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

23.5.1 The Project will be compatible with all neighboring land use. The Project will have very limited visual or auditory impacts, keeping with the rural nature of the City of Kittitas, as further described in the Project narrative.

23.5.2 As mitigated and conditioned, the use will be compatible with neighboring land uses.

23.6 The proposed use is consistent with the intent and character of the zoning district in which it is located because:

23.6.1 The Parcel is currently zoned AG-20. Kittitas County Code states that alternative energy facilities may be authorized in this zoning. This Project is a clean energy generator defined in Chapter 17.61 as a "'Major alternative energy facility' means a hydroelectric plant, solar farm, or wind farm that is not a minor alternative energy facility." The Project is consistent with the intent and character of the zoning district. As defined in 17.61.020 Permitted and Conditional Uses, "Major alternative energy facilities may be authorized in the Agriculture-20, forest and range, commercial agriculture, and commercial forest zones as follows: ... All other major alternative energy facilities may be authorized as a conditional use."

23.6.2 The use is consistent with the intent and character of the zoning district in which it is located.

23.7 For conditional uses outside of Urban Growth Areas, the proposed use:

23.7.1 The project is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands because:

23.7.1 Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, specifically GPO 6.36, which states an intent to develop a criteria and design standard for siting solar farms in the county.

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

23.7.2.1 Preserves "rural character" as defined in the Growth Management Act by fitting into the patterns established by the county in RCW 36.70A.030 (15). The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. Native grasses will be planted beneath the panels. The low-lying natures and native grasses will perpetuate the visual landscapes of open space and vegetation that are traditionally found in rural area.

23.7.2.2 The project is compatible with use of the land by local wildlife. OER will continue to work with WDFW to address concerns related to existing wildlife habitat. Additionally, this Project will continue the protection of natural surface water and groundwater flows and surface water recharge and discharge areas. This Project will not inhibit traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas as local farming practices will continue and no job opportunities will be lost. The Project will not require an extension of urban governmental services.

23.7.3 Requires only rural government services;

23.7.4.1 The Project requires only rural government services such as but not limited to, police and fire protection services.

23.7.4.2 Existing off sight roads and infrastructure are sufficient to service both the construction and operational phases of the project. As mitigated, the project would not result in an increased need for fire, police, school, public transit, irrigation, refuse, water or septic systems, health care or other public services. As mitigated, there are no costs or detriments for economic benefit to offset.

23.7.4 Does not compromise the long term viability of designated resource lands.

23.7.4.1 This Project does not compromise the long term viability of the agricultural resource value of this parcel. This Project will temporarily remove a maximum of 47.5 acres for a term to be no longer than 36 years from agricultural production. The landowner will have the ability to continue using the remainder of the land holdings for agricultural uses for the duration of this term. Within one year from the date the lease expires or terminates, all solar facilities and related infrastructure shall be removed and the land shall be returned to its original state at which time the land can return to an agricultural resource.

23.7.4.2 There are no resource lands adjacent to or impacted by the proposed project.

23.8 This proposal is consistent with the Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As mitigated and conditioned, the proposal meets or exceeds all of the criteria listed under KCC 17.60A.015 specifically, and Title 17 generally.

24. This proposal is consistent with the Kittitas County Zoning Code as proposed under KCC 17.61 Utilities as a major alternative energy facility, a conditional use for the Agriculture 20 zone.

25. Based on the facts set forth herein, this proposal is consistent with the Kittitas County Zoning Code for Conditional Uses as follows:

25.1 The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood because:

25.2 The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that because:

25.2.1 The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools.

25.3 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.

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

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

25.6 As a conditional use located outside of an Urban Growth Areas, the proposed use:

25.6.1 Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;

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

25.6.3 Requires only rural government services, and

25.6.4 Does not compromise the long term viability of designated resource lands.

26. As conditioned, the proposal is consistent with the provisions of KCC Title 12 Roads and Bridges, Title 13 Water and Sewers, Title 14 Buildings and Construction, Title 15 Environmental Policy, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire and Life Safety.

27. An open record public hearing after due legal notice was held on October 20, 2016.

28. At the hearing the following exhibits were admitted into the record:

28.1 Exhibit 1 KC CDS Receipt;
28.2 Exhibit 2 Original SEPA Checklist;
281.3 Exhibit 3 Original Application Packet;
28.4 Exhibit 4 Pre-Application Conference Summary;
28.5 Exhibit 5 Deem Incomplete Letter;
28.6 Exhibit 6 Revised Application;
28.7 Exhibit 7 Revised SEPA Checklist;
28.8 Exhibit 8 Planners Notes;
28.9 Exhibit 9 Site Plan;
28.10 Exhibit 10 Transportation Concurrency;
28.11 Exhibit 11 Deem Complete;
28.12 Exhibit 12 Prior Survey;
28.13 Exhibit 13 Regional Land Use Map;
28.14 Exhibit 14 Critical Areas Checklist;
28.15 Exhibit 15 Floodplain, Floodway, Streams, and Wetlands Map;
28.16 Exhibit 16 Vicinity Map
28.17 Exhibit 17 LiDAR Hillshade Elevation Model Map;
28.18 Exhibit 18 Oblique Air Photo;
28.19 Exhibit 19 Vertical Air Photo;
28.20 Exhibit 20 Land Use Action Signs Map;
28.21 Exhibit 21 Affidavit of Posting Signed;
28.22 Exhibit 22 Adjacent Property Owners Notification Map;
28.23 Exhibit 23 Adjacent Properties Mailing Labels;
28.24 Exhibit 24 Notice of Application Legal;
28.25 Exhibit 25 Notice of Application;
28.26 Exhibit 26 Notice of Application Email;
28.27 Exhibit 27 Site Visit Photos;
28.28 Exhibit 28 Correspondence with Authorized Agent;
28.29 Exhibit 29 Correspondence All Others;
28.30 Exhibit 30 Comment Letter – Charles;
28.31 Exhibit 31 Comment Letter – Woodworth;
28.32 Exhibit 32 Comment Letter – Williams R;
28.33 Exhibit 33 Comment Letter –Wenger;
28.34 Exhibit 34 Comment Letter – Stull;
28.35 Exhibit 35 Comment Letter – Kittitas County Public Works;
28.36 Exhibit 36 Comment Letter - Pfeifer;
28.37 Exhibit 37 Comment Letter – NW Energy Coalition;
28.38 Exhibit 38 Comment Letter - McKendrick;
28.39 Exhibit 39 Comment Letter – Kittitas Reclamation District;
28.40 Exhibit 40 Comment Letter - Johnson;
28.41 Exhibit 41 Comment Letter – Gigstead;
28.42 Exhibit 42 Comment Letter – Craig;
28.43 Exhibit 43 Comment Letter – Cooper T.;
28.44 Exhibit 44 Comment Letter – Cooper F.;
28.45 Exhibit 45 Comment Letter – Climate Solutions;
28.46 Exhibit 46 Comment Letter – Clerf R.;
28.47 Exhibit 47 Comment Letter – Clerf J.;

28.48 Exhibit 48 Comment Letter – Chalrton/Weekes;
28.49 Exhibit 49 Comment Letter – Carr;
28.50 Exhibit 50 Comment Letter – Allphin R.;
28.51 Exhibit 51 Comment Letter – Allphin J.;
28.52 Exhibit 52 Comment Letter - Washington Fish and Wildlife;
28.53 Exhibit 53 Comment Letter – Washington Wool Growers;
28.54 Exhibit 54 Comment Letter – Warm Springs Ranch;
28.55 Exhibit 55 Comment Letter – Sierra Club;
28.56 Exhibit 56 Comment Letter – Sherman;
28.57 Exhibit 57 Comment Letter – Pentico;
28.58 Exhibit 58 Comment Letter – Miller;
28.59 Exhibit 59 Comment Letter – Lower;
28.60 Exhibit 60 Comment Letter – Jackson;
28.61 Exhibit 61 Comment Letter – Hubbard S.;
28.62 Exhibit 62 Comment Letter – Hubbard E.;
28.63 Exhibit 63 Comment Letter – Graham;
28.64 Exhibit 64 Comment Letter – Eslinger;
28.65 Exhibit 65 Comment Letter – Clean Tech Allaince;
28.66 Exhibit 66 Comment Letter – Caraway;
28.67 Exhibit 67 Comment Letter – Black;
28.68 Exhibit 68 Comment Letter – Adams;
28.69 Exhibit 69 Comment Letter – Walter;
28.70 Exhibit 70 Comment Letter – Meeks;
28.71 Exhibit 71 Comment Letter – Hein and Lee;
28.72 Exhibit 72 Comment Letter Hahn;
28.73 Exhibit 73 Comment Letter – Clerf Sherre;
28.74 Exhibit 74 Comment Letter - Clerf Shelley;
28.75 Exhibit 75 Comment Letter – Busch;
28.76 Exhibit 76 Comment Letter - Williams B;
28.77 Exhibit 77 Comment Letter – McNichol;
28.78 Exhibit 78 Comment Letter – Kenner;
28.79 Exhibit 79 Comment Letter – Hunt;
28.80 Exhibit 80 Comment Letter – Allred;
28.81 Exhibit 81 Comment Letter – Ridgeway;
28.82 Exhibit 82 Comment Letter - Kittitas County Public Health;
28.83 Exhibit 83 Comment Letter – Morgan & Son;
28.84 Exhibit 84 Comment Letter – McMeans;
28.85 Exhibit 85 Comment Letter – McCune;
28.86 Exhibit 86 Comment Letter – Martinez;
28.87 Exhibit 87 Comment Letter – Evans;
28.88 Exhibit 88 Comment Letter – Busch;
28.89 Exhibit 89 Comment Letter – Gremel;
28.90 Exhibit 90 Comment Letter – Kittitas County Building Dept.;
28.91 Exhibit 91 Comment Letter - Kittitas County Fire Marshal;
28.92 Exhibit 92 Comment Letter – Bates;
28.93 Exhibit 93 Comment Letter - Washington State Department of Health;
28.94 Exhibit 94 Comment Letter – Kittitas Valley Fire and Rescue;
28.95 Exhibit 95 Request to Place on Hold Applicant;
28.96 Exhibit 96 Late Comment Letter – Ecology;
28.97 Exhibit 97 Transmittal of Comments;

28.98 Exhibit 98 Applicant Supplemental Materials;
28.99 Exhibit 99 Request to Resume Processing;
28.100 Exhibit 100 Late Comment Letter – Kittitas County Weed Dept.;
28.101 Exhibit 101 Request for Notification – Yakima Herald Republic;
28.102 Exhibit 102 Correspondence Staff to HE;
28.103 Exhibit 103 Notice of Decision and Hearing Publication Confirmation;
28.104 Exhibit 104 Correspondence Williams R.;
28.105 Exhibit 105 Notice of Decision and Hearing Mailing Labels;
28.106 Exhibit 106 Notice of Decision and Hearing Affidavit of Mailing;
28.107 Exhibit 107 Notice of Decision and Hearing Email;
28.108 Exhibit 108 Correspondence Martinez;
28.109 Exhibit 109 Notice of Decision and Hearing;
28.110 Exhibit 110 SEPA MDNS;
28.111 Exhibit 111 HE Agenda;
28.112 Exhibit 112 HE Staff Report;
28.113 Exhibit 113 Appeal Letter;
28.114 Exhibit 114 Order Striking Hearing;
28.115 Exhibit 115 Email Cancelling Hearing;
28.116 Exhibit 116 Declaration of Representation;
28.117 Exhibit 117 Correspondence;
28.118 Exhibit 118 Appeal Documentation Transmittal Email Applicant;
28.119 Exhibit 119 Applicant Witness List;
28.120 Exhibit 120 Applicant Appeal Response with Appendices;
28.121 Exhibit 121 Appeal Documentation Transmittal Appellant;
28.122 Exhibit 122 Appellant Witness List;
28.123 Exhibit 123 Appellant Opening Memorandum;
28.124 Exhibit 124 Notice of Appeal and Hearing Request for Publication;
28.125 Exhibit 125 Notice of Appeal and Public Hearing Memo;
28.126 Exhibit 126 Notice of Appeal and Public Hearing Publication Confirmation;
28.126 Exhibit 127 Appellant's Response Memorandum;
28.128 Exhibit 128 Teanaway Solar Reserve Notice of Decision;
238.129 Exhibit 129 Teanaway Solar Reserve MDNS;
28.130 Exhibit 130 One Energy Response Final Legal;
28.131 Exhibit 131 One Energy Response Docs;
28.132 Exhibit 132 Appellant Memo RE: CUP;
28.133 Exhibit 133 Applicant's Legal Response to Appellant Memo RE: CUP;
28.134 Exhibit 134 SEPA Appeal Order on Prehearing Conference;
28.135 Exhibit 135 SEPA Appeal Comments John Clerf;
28.136 Exhibit 136 SEPA Appeal Email of Record;
28.137 Exhibit 137 Appeal and Cup Hearing Agenda;
28.138 Exhibit 138 Correspondence RE SEPA Hearing Process;
28.139 Exhibit 139 Correspondence RE SEPA Hearing Process 2;
28.140 Exhibit 140 Letter/Statement from Hearing – Clerf;
28.141 Exhibit 141 Hearing Sign-in Sheet SEPA;
28.142 Exhibit 142 Hearing Sign-in Sheet CUP; and
28.143 Exhibit 143 Staff Power Point;
28.144 Exhibit 144 One Energy Power Point;
28.145 Exhibit 145 Tables from R Williams; and
28.146 Exhibit 146 KC Economic Impact Analysis (R. Williams).

29. Appearing on behalf of the applicant was attorney Tim McMahon. Testifying on behalf of the applicant were the following individuals:

29.1 Tayler Steele;
29.2 Anne Siqveland; and
29.3 Travis Bryan.

30. The following members of the public testified at the SEPA appeal hearing. Their testimony is incorporated into the CUP hearing.

30.1 Patricia Clerf;
30.2 Craig Clerf;
30.3 Ron Cline;
30.4 Marlene Pfeifer;
30.5 Sherre Clerf;
30.6 Scott Downs;
30.7 Greg Carr;
30.8 Cheryl Pentico;
30.9 Thomas Houghton;
30.10 Stan Blazynski;
30.11 Dwight Bates;
30.12 Jerry Gilmore;
30.13 Andrea Eklund;
30.14 Paul Boguslawski;
30.15 Jake Steign;
30.16 Carol Martinez; and
30.17 Roger Clerf.

31. Additional public testimony was provided by the following persons:

31.1 Stan Blazynski;
31.2 Dan Morgan;
31.3 Particia Clerf;
31.4 Craig Clerf;
31.5 Rolf Williams;
31.6 Jeff Green;
31.7 Margie VanCleve; and
31.8 James Carmody on behalf of "Save Our Farm! Say No to Iron Horse" provided legal argument.

32. One of the primary concerns of neighboring property owners was the visual appearance of the fence and solar panels. The Hearing Examiner believes that the visual objections to this facility can be mitigated by the use of vegetation growing on or in front of (street side) the chain link fencing. The Hearing Examiner would recommend that vegetation growing on or in front of the chain link fence be provided on a permanent basis to reach a height equal to that of the chain link fence. The selection of vegetation should be determined in consultation with agencies with jurisdiction, including Washington State Fish and Wildlife (so as not to be vegetation that would unduly attract wildlife and cause a safety issue for the traveling public). The primary purpose of this mitigation is to shield the project from the traveling public.

33. The proposal conforms to the standards specified in Kittitas County Code.

34. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.

35. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.

36. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.

37. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.

38. The proposed conditional use will comply with all required performance standards specified in the Kittitas County Code.

39. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified in the Kittitas County Code.

40. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.

2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.

3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.

4. Public use and interest will be served by approval of this proposal.

5. As conditioned, the proposal is consistent with the provisions of KCC Title 12.

6. As conditioned, the proposal is consistent with the provisions of KCC Title 13.

7. As conditioned, the proposal is consistent with the Kittitas County Building Code.

8. As conditioned, the proposal is consistent with KCC Title A.

9. As conditioned, the proposal is consistent with KCC Title 20.

10. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Conclusions of Law, Conditional Use Permit Application CU-15-00006, Iron Horse Solar Farm, is recommended to be **APPROVED** subject to the following Recommended Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. The project shall proceed in substantial conformance with the plans and application materials on file dated March 3rd, 2016 and July 20, 2016 except as amended by the conditions herein.

2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.

3. The applicant shall obtain a conditional use permit in order to operate the facility.

4. A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.

5. The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the Washington State Department of Fish and Wildlife (WDFW).

6. A WDFW representative shall be provided ongoing access to the site for the purposes of assessing, monitoring, and analyzing wildlife activities and behavior.

7. The applicant shall develop an Incidental Avian Monitoring Plan in conjunction with, and approved by, the Washington State Department of Fish and Wildlife (WDFW). The plan and program shall be required to be in effect for a period of five years. The plan will designate thresholds and metrics to establish if additional monitoring is required beyond a period of five years.

8. No additional flood control structures may be constructed on the project site.

9. Development shall be limited to the proposal as submitted; substantive modifications (as determined by the Planning Official) or expansion of the development may require additional environmental review.

10. The access approach must be designed and constructed to commercial standards, as shown in the WSDOT Design Manual Exhibits 1340-1 and 1340-2. A Kittitas County Access Permit is required prior to driveway construction. Access driveways will need to be designed to meet standards.

11. A road standards variance application will be required for additional approaches being requested. Current road standards allow for a single access to a parcel of land or to contiguous parcels of land under the same ownership.

12. If any creek or irrigation waterway is to be crossed by bridge, it will need to be engineered and posted for 75,000lb capacity.

13. Addressing shall be clearly visible from the road.

14. The project shall comply with all aspects of the International Fire Code Appendix D including twenty (20) foot wide access roads.

15. All gates shall be a minimum of 12' wide; if gates are locked, keys or equivalent shall be provided to all emergency services.

16. Facility management will provide on-site training to KVFR and other emergency services personnel to assist in pre-incident planning and safe operations once the facility is producing electricity.

17. Fire department key access will be provided for site access and any control panels. A site plan is to be provided for emergency responders prior to the site producing electricity.

18. A Fugitive and Construction Dust Control Plan utilizing best management practices found in the Dust Palliative Selection and Application Guide and the Eastern Washington Stormwater Management Manual (Chapter 7) shall be developed; the plan shall be submitted to and approved by Kittitas County Community Development Services prior to final approval.

19. The Kittitas Reclamation District has a recorded right of way and associated service road abutting Caribou Creek (and by inference the project site) on the west side of the stream. This right of way is not on the subject parcels and as such will not be availed to any use for the project development, construction, or operation without explicit permission from the District.

20. The primary transporter route will use Interstate 90; exit 115 to take Main St. north to Clerf Road and continue east on Clerf Road before turning north on Caribou Road to access the Site via and access road on the west side of Caribou road. The applicant will make every effort to minimize traffic and its impacts to other State, County, and City streets and roads.

21. Under no circumstances shall construction or operational traffic related to the project utilize private roads.

22. All current and future landowners must comply with the International Fire Code.

23. All development, design and construction shall comply with all Kittitas County Codes and the International Fire and Building Codes.

24. Building permits will be required for any construction or structure not exempted by 2015 IBC 105.2 Work exempt from permit.

25. Addressing of the parcel shall be clearly visible from the road.

26. A vegetation management plan to be maintained in accordance with the Fire Prevention Plan in the Project Narrative.

27. No vegetation control measures shall be utilized which might jeopardize the project site's future ability to return to productive agricultural use.

28. A site plan is to be provided for emergency responders prior to the site producing electricity. Facility management will provide on-site training to KVFR and other emergency services personnel to assist in pre-incident planning and safe operations once the facility is producing electricity.

29. Fire Department key access will be provided for site access and any control panels.

30. The applicant will need to consult and comply with the requirements set forth in the KRD General Guidelines prior to final approval of the Conditional Use Permit.

31. The irrigation canal on the east side of the project shall have a 30 foot buffer from all project related development and operations. Weed, vegetation, and fire control measures shall prevail.

32. No part of the project shall disrupt existing surface water rights or existing irrigation easements.

33. An on-site Stormwater Management Plan that conforms to the specifications of the most current version of the Stormwater Management Manual for Eastern Washington is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. The Stormwater Management Plan shall be submitted to and approved by Kittitas County Public Works prior to final approval.

34. A Construction Storm water Permit may be required if over 1 acre of ground is disturbed for the project and there is a potential for discharge to waters of the state. This includes dewatering for foundation and utility trenching, access route, laydown, impervious pad construction and footings/foundations.

35. Should ground disturbing or other activities related to the proposed plat result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State DAHP. Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.

36. Financing of the decommissioning options must be approved by the county, and may include but not be limited to assignment of funds, a bond, or other financial measures equaling one hundred and twenty five percent (125%) of the estimated cost of the decommissioning efforts.

37. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties and associated Roads and Streets.

38. The applicant shall limit development and construction practices during building of this project shall only occur between the hours of 7:00 am to 7:00 pm to minimize the effect of construction noise on nearby residences.

39. A vegetation management plan to be maintained in accordance with the Fire Prevention Plan in the Project Narrative.

40. No portion of the solar panels and arrays shall exceed 8 feet in height at any time during the operation cycle.

41. Broken, damaged, or non-functional panels will be disposed of through consultation with Kittitas County Solid Waste in a safe and environmentally responsible fashion.

42. Disclosure Statement; The owners of the property shall be required to sign a statement of acknowledgment containing the Disclosure set out in sub-part (2)(a) on forms provided, which shall then be recorded with Kittitas County. "The County of Kittitas supports the continuation and development of properly conducted agricultural operations within the County and has enacted a Right to Farm For the Protection of Agricultural Activities Ordinance (KCC 17.74). If the property you are purchasing is located near agricultural lands or operations or included within an area zoned for agricultural purposes, you may be subject to inconveniences arising from such operations. Inconveniences may occur as a result of agricultural operations which are in conformance with existing laws and regulations and accepted customs and standards. These inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft), and the driving of machinery and/or livestock on public and private rights-of-way during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. If you live near an agricultural area, you should be prepared to accept such conditions as part of the custom of a county with a strong rural character and an active agricultural sector". (Ord. 2007-22, 2007; Ord. 96-5 (part), 1996)

43. A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on August 24th, 2016. The following are the mitigation contained within the MDNS and shall be conditions of approval:

<u>Water</u>

1) A 100 foot buffer from the ordinary high water mark shall be placed on Caribou Creek within the project parcel; no development, structures, excavation, or clearing of existing vegetation may occur within the buffer.

2) The applicant shall develop a Riparian Planting Plan in conjunction with and approved by the Washington State Department of Fish and Wildlife (WDFW).

3) Required mitigation measures including but not limited to weed control, vegetation management, fire control and suppression, noise, visual aesthetics, and irrigation shall not encroach into the riparian buffer or conflict with the Riparian Planting Plan.

4) Any construction or maintenance work affecting the Caribou Creek, including the construction of bridges or culverts, installation of utilities under the channel (e.g. drilling, boring, jacking or open cut installations), bank or channel modifications, etc. will require a Hydraulic Project Approval from the WDFW.

5) This property is within the boundaries of the KRD and all parcels contain irrigable ground. The applicant will need to consult and comply with the requirements set forth in the KRD General Guidelines prior to final approval of the Conditional Use Permit.

6) The irrigation canal on the east side of the project shall have a 30 foot buffer from all project related development and operations. Weed, vegetation, and fire control measures

shall prevail. No part of the project shall disrupt existing surface water rights or existing irrigation easements.

7) A floodplain development permit will be required for the construction of the fence in within the floodplain.

8) If the final development plan calls for the placement of panels in the Floodplain a Floodplain development permit will be required.

9) No flood control structures may be constructed on the project parcel.

10) Development shall be limited to the proposal as submitted; modifications or expansion of the development shall require additional environmental review.

Stormwater

1) An on-site Stormwater Management Plan that conforms to the specifications of the most current version of the Stormwater Management Manual for Eastern Washington is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. The Stormwater Management Plan shall be submitted to and approved by Kittitas County Public Works prior to final approval.

2) A Construction Storm water Permit may be required if over 1 acre of ground is disturbed for the project and there is a potential for discharge to waters of the state. This includes dewatering for foundation and utility trenching, access route, lay down, impervious pad construction and footings/foundations.

Earth

1) A Fugitive and Construction Dust Control Plan utilizing best management practices found in the Dust Palliative Selection and Application Guide and the Eastern Washington Stormwater Management Manual (Chapter 7) shall be developed; the plan shall be submitted to and approved by Kittitas County Community Development Services prior to final approval.

2) A Grading Permit shall be obtained from the Kittitas County Public Works department prior to final approval.

Animals

1) The applicant shall develop an Incidental Avian Monitoring Plan in conjunction with, and approved by, the Washington State Department of Fish and Wildlife (WDFW). The plan and program shall be required to be in effect for a period of five years. The plan will designate thresholds and metrics to establish if additional monitoring is required beyond a period of five years.

2) A WDFW representative shall be provided ongoing access to the site for the purposes of assessing, monitoring, and analyzing wildlife activities and behavior.

Vegetation

1) The Vegetation Management Plan Submitted as Appendix C within the Project Narrative shall be utilized as the foundational document for mitigation measures with respect to Vegetation Management, Weed Management, and Fire Protection. Final approval of the Conditional Use Permit will be subject to the approval as adjusted by the WDFW and the applicant for vegetation management, and the Kittitas County Noxious Weed Board and the applicant for weed management as noted in supplemental discussions, comments, exhibits, and submissions.

2) No vegetation control measures shall be utilized which might jeopardize the project site's future ability to return to productive agricultural use.

Transportation

1) The access approach must be designed and constructed to commercial standards, as shown in the WSDOT Design Manual Exhibits 1340-1 and 1340-2.A Kittitas County Access Permit is required prior to driveway construction. Access driveways will need to be designed to meet standards.

2) A road standards variance application will be required for additional approaches being requested. Current road standards allow for a single access to a parcel of land or to contiguous parcels of land under the same ownership.

3) If any creek or irrigation waterway is to be crossed by bridge, it will need to be engineered and posted for 75,000 lb. capacity.

4) The project shall comply with all aspects of the International Fire Code Appendix D including twenty (20) foot wide access roads.

5) Addressing shall be clearly visible from the road.

6) All gates shall be a minimum of 12' wide. If gates are locked, keys or equivalent shall be provided to all emergency services.

7) The Kittitas Reclamation District has a recorded right of way and associated service road abutting Caribou Creek (and by inference the project site) on the west side of the stream. This right of way is not on the subject parcels and as such will not be availed to any use for the project development, construction, or operation without explicit permission from the District.

8) The primary transporter route will use Interstate 90; exit 115 to take Main St. North to Clerf Road and continue east on Clerf Road before turning north on Caribou Road to access the site via and access road on the west side of Caribou road. The applicant will make every effort to minimize traffic and its impacts to other State, County, and City streets and roads. Under no circumstances shall construction or operational traffic related to the project utilize private roads.

Cultural Resources and Historic Preservation

1) Should ground disturbing or other activities related to the proposed plat result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State DAHP. Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.

Light and Aesthetics

1) All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties and associated roads and streets.

2) No portion of the solar panels and arrays shall exceed 8 feet in height at any time during the operation cycle.

Noise

1) Development and construction practices during building of this project shall only occur between the hours of 7:00 am to 7:00 pm to minimize the effect of construction noise on nearby residences.

Public Services

1) Vegetation management plan to be maintained in accordance with the Fire Prevention Plan in the Project Narrative.

2) A site plan to be provided for emergency responders prior to the site producing electricity.

3) Facility management will provide on-site training to KVFR and other emergency services personnel to assist in pre-incident planning and safe operations once the facility is producing electricity.

4) Fire Department key access will be provided for site access and any control panels.

Reclamation

1) Financing of the decommissioning options must be approved by the county, and may include but not be limited to assignment of funds, a bond, or other financial measures equaling one hundred and twenty five percent (125%) of the estimated cost of the decommissioning efforts.

2) Broken, damaged, or non-functional panels will be disposed of through consultation with Kittitas County Solid Waste in a safe and environmentally responsible fashion.

44. The Hearing Examiners recommended Conditions:

44.1 One of the primary concerns of neighboring property owners was the visual appearance of the fence and solar panels. The Hearing Examiner believes that the visual objections to this facility can be mitigated by the use of vegetation growing on or in front of (street side) the chain link fencing. The Hearing Examiner would recommend that vegetation growing on or in front of the chain link fence be provided on a permanent basis to reach a height equal to that of the chain link fence. The selection of vegetation should be determined in consultation with agencies with jurisdiction, including Washington State Fish and Wildlife (so as not to be vegetation that would unduly attract wildlife and cause a safety issue for the traveling public). The primary purpose of this mitigation is to shield the project from the traveling public.

44.2 The applicant shall comply with environmental noise levels set forth in WAC 173-60 et seq.

Dated this 9th day of November, 2016.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

4. Board of County Commissioners,
County of Kittitas, WA

Osprey Solar Farm Conditional Use Permit&
Shoreline Substantial Development Permit
Approval, & Exhibit A, Dated April 15, 2015

(CU-14-00003 & SD-14-00002)-Resolution No. 2015-106

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

CONDITIONAL USE PERMIT & SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT APPROVAL

OSPREY SOLAR FARM CONDITIONAL USE PERMIT & SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT (CU-14-00003 & SD-14-00002)

RESOLUTION

NO. 2015- 106

WHEREAS, according to Kittitas County Code Title 15A, relating to Hearings and Title 17.60A Conditional Uses, an open record hearing was held by the Kittitas County Hearing Examiner on April 9, 2015, for the purpose of considering a conditional use permit and shoreline substantial development permit known as Rocky Coulee Tent Camping CU-13-00004 & SD-13-00001 and described as follows:

> *The construction and operation of a 13.6 acre photovoltaic solar power generation facility on approximately 112 acres in the Agriculture 20 zone. The subject property is accessed off highway 10 (US 97) and located approximately 3.5 miles northwest of Ellensburg on Highway 10 (US 97), in a portion of Section 20, T18N, R18E, WM in Kittitas County, bearing Assessor's map number 18-18-20030-0006. Proponent: One Energy Development LLC authorized agent for Pat Taylor, landowner.*

WHEREAS, public testimony was heard, in favor of the proposal; and,

WHEREAS, due notice of the hearing had been given as required by law, and the necessary inquiry has been made into the public interest to be served by such use; and,

WHEREAS, the Hearing Examiner recommended approval of said proposed conditional use and shoreline substantial development permits; and,

WHEREAS, a closed record public hearing was held by the Board of County Commissioners on June 16, 2015 to consider the Hearing Examiner's recommendation on this matter; and,

WHEREAS, the Kittitas County Board of Commissioners make the following FINDINGS OF FACT and CONCLUSIONS AT LAW concerning said proposed conditional use and shoreline substantial development permits:

1. One Energy Development LLC authorized agent for Pat Taylor, landowner, submitted a conditional use application and shoreline substantial development permit for the construction and operation of a 13.6 acre photovoltaic solar power generation facility on approximately 112 acres. The subject property is zoned Agriculture 20. This "Utility" (KCC 17.61.010{1}) is subcategorized as a major alternative energy facility (KCC 17.61.010{9}), and as such is a conditional use for the zone 17.61.020(4)(b).

2. This proposal is located approximately 3.5 miles northwest of Ellensburg on Highway 10 (US 97), in a portion of Section 20, T18N, R18E, WM in Kittitas County, bearing Assessor's map number 18-18-20030-0006. Access is provided for via an existing permit with WSDOT.

3. The Kittitas County Comprehensive Plan's Land Use Element designates the subject property as Mineral Land and the zoning for this proposal is Agriculture 20.

4. The conditional use permit application was submitted to Community Development Services (CDS) on September 26th, 2014; the shoreline substantial development permit was submitted to CDS on November 3rd, 2014. Both of these applications were deemed complete on December 11th, 2015. The Notice of Application for the conditional use and shoreline substantial development permits was issued on January 19th, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on February 19th, 2015.

5. Kittitas County acted as the lead agency for the SEPA Environmental Checklist; a Mitigated Determination of Non-Significance (MDNS) was issued for this project on March 25, 2015. The appeal period for this SEPA determination ended on April , 2015 at 5:00 p.m. No appeals were filed.

6. The Hearing Examiner conditional use permit and shoreline substantial development permit hearing was held on April 9, 2015 at 6:00 p.m. Public comment was received from members of the public that were in attendance. On April 15th, 2015 the Kittitas County Hearing Examiner recommended approval of the Osprey Solar Farm Shoreline Substantial Development Permit (SD-13-00001) and the Osprey Solar Farm Conditional Use Permit (CU-13-00004)

7. The Board of County Commissioners conducted a closed record meeting on September 17, 2013 for the purpose of considering the Osprey Solar Farm Conditional Use and Shoreline Substantial Development Permits (CU-14-00004 & SD-13-00002). A motion was made and seconded that the conditional use permit and shoreline substantial development permit be approved per the Hearing Examiner's recommendation subject to nine (9) corrections of scrivener errors in the Hearing Examiner's recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (see Exhibit A), and the addition of one condition of approval; the motion carried with a vote of 3-0.

8. The Board of County Commissioners finds that in the project description of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. In the third paragraph, the words "The project" shall be inserted at the beginning of the sentence, the word "Within" shall not be capitalized, and the word "within" shall be inserted between the word "is" and the number "200".

9. The Board of County Commissioners finds that following the project description of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) there is a scrivener's error. The words "Recommended Conditions of Approval" shall be centered as a heading prior to the carriage return and the sentence beginning "Development pursuant to this permit...".

10. The Board of County Commissioners finds that Recommended Finding of Fact #9 of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. The number "9" shall be inserted following the word "April" near the end of the second sentence.

11. The Board of County Commissioners finds that Recommended Condition of Approval #20 of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. The word "plat" shall be replaced with the word "project" near the beginning of the sentence.

12. The Board of County Commissioners finds that Recommended Condition of Approval #22 of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. The word "an" shall be replaced with the word "and" near the beginning of the sentence.

13. The Board of County Commissioners finds that Recommended Findings of Fact #17 of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. The word "agency" shall be replaced with the word "agencies" near the beginning of the sentence and the words Washington State Department of Ecology should be included among the commenters listed

14. The Board of County Commissioners finds that Recommended Findings of Fact #19 of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. The word "Department" shall be inserted following the word "Development".

15. The Board of County Commissioners finds that Recommended Findings of Fact #24 of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. The word

"decision" shall be replaced with the word "recommendation" at the end of the sentence.

16. The Board of County Commissioners finds that Recommended Conclusions of Law #1 of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval document (Exhibit A) contains a scrivener's error. The word "decision" shall be replaced with the word "recommendation" at the end of the sentence.

17. The Board of County Commissioners finds that additional conditions **are** necessary to protect the public's interest.

NOW, THEREFORE BE IT RESOLVED: That the Kittitas County Board of Commissioners hereby grants approval to the **Osprey Solar Farm Conditional Use Permit (CU-14-00004) and Osprey Solar Farm Shoreline Substantial Development Permit (SD-14-00002)** with the following additional condition:

1. Financing of the decommissioning options must be approved by the county, and may include but not be limited to assignment of funds, a bond, or other financial measures equaling one hundred and twenty five percent (125%) of the estimated cost of the decommissioning efforts.

NOW THEREFORE,

BE IT HEREBY RESOLVED that the Kittitas County Board of Commissioners hereby grants approval of the **Osprey Solar Farm Conditional Use Permit (CU-14-00003) and Osprey Solar Farm Shoreline Substantial Development Permit (SD-13-00002)** and adopts the Kittitas County Land Use Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval (Exhibit A) with the corrections stated above and the same hereby is approved with the proposed development configuration (See Exhibit B).

DATED this 7th day of July, 2015 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Gary Berndt, Chairman

Obie O'Brien, Vice Chairman

ABSENT

Paul Jewell, Commissioner

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

ATTEST:
CLERK OF THE BOARD

Julie A Kjorsvik

APPROVED AS TO FORM:

Greg Zempel WSBA #19125

Exhibit A

SHORELINE MANAGEMENT PERMIT
ACTION SHEET

Application #:	SD-13-00001
	CU-13-00004
Administering Agency	Kittitas County Community Development
Type of Permit:	■ Shoreline Substantial Development
Recommended Action:	■ Conditional Use Permit
	■ Approved ☐ Denied
Date of Action:	April 15th, 2015
Date Mailed to DOE/AG	

Pursuant to Chapter 90.58 RCW and the Shoreline Master Program of the Kittitas County, the Hearing Examiner recommends that a permit be granted to:

One Energy Development, LLC

Agent for Pat Taylor

To undertake the following development: One Energy Development LLC authorized agent for Pat Taylor, landowner, submitted a conditional use application and shoreline substantial development permit for the construction and operation of a 13.6 acre photovoltaic solar power generation facility on approximately 112 acres. The subject property is zoned Agriculture 20. This "Utility" (KCC 17.61.010{1}) is subcategorized as a major alternative energy facility (KCC 17.61.010{9}), and as such is a conditional use for the zone (KCC 17.61.020(4)(b)).

Upon the following property: This proposal is located approximately 3.5 miles northwest of Ellensburg on Highway 10 (US 97) in a portion of Section 20, T18N, R18E, WM in Kittitas County, bearing Assessor's map number 18-18-20030-0006. Access is provided for via an existing permit with WSDOT.

Within 3,000 feet of the Yakima River and/or its associated wetlands and is 200 feet of Dry Creek, a Type 2 fish bearing stream.

The project will be within a shoreline of state-wide significance (RCW 90.58.030). The project will be located within a rural designation. The following Shoreline Master Program provisions are applicable to this development:

Development pursuant to this permit shall be undertaken in conformance with the following terms and recommended conditions:

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The Applicant shall obtain all permits required by all federal, state and local agencies with jurisdiction.

3. The Applicant shall comply with all federal, state and local laws and regulations.

4. Construction shall proceed substantially as shown on the application materials on file with Kittitas County, except as modified by conditions below.

5. The project shall proceed in substantial conformance with the plans and application materials on file dated September 26th, 2014 and November 3rd, 2014 except as amended by the conditions herein.

6. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.

7. A 70 foot buffer from the ordinary high water mark shall be placed on Dry Creek within the project parcel. No development, structures, excavation, or clearing of existing vegetation may occur within the buffer.

8. No additional flood control structures may be constructed on the project parcel.

9. Development shall be limited to the proposal as submitted. Modifications or expansion of the development shall require additional environmental review.

10. The parcel's approach shall:

    a. remain the same. No additional approaches to Highway 10/US 97 shall be permitted; and

    b. be extended 50 feet from the centerline of US 97; and

    c. have its permit updated

11. A fully executed Burlington Northern crossing permit shall be obtained and recorded before operation of the facility.

12. The project shall comply with all aspects of the International Fire Code Appendix D including twenty (20) foot wide access roads.

13. All current and future landowners must comply with the International Fire Code.

14. All development, design and construction shall comply with all Kittitas County Codes and the International Fire and Building Codes.

15. Building permits will be required for any construction or structure not exempted by 2012 IBC 105.2 Work exempt from permit.

16. Addressing of the parcel shall be clearly visible from the road.

17. All gates shall be a minimum of 12' wide. If gates are locked, keys or equivalent shall be provided to all emergency services.

18. The dike road (defined by easement) shall remain free of encroachments, fences, structures, vehicles, and debris.

19. On-site stormwater management that conforms to the specifications of the most current version of the Stormwater Management Manual for Eastern Washington is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. Development of the site shall be in conformance with the stormwater report furnished with the application. Any deviation from the proposal as presented will require a stormwater report addendum, and may require at the discretion of the Planning Official, an amendment to the Conditional Use Permit.

20. Should ground disturbing or other activities related to the proposed plat result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State DAHP. Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted

in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.

21. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties and Highway 10/US 97.

22. Developed areas of the project shall maintain vegetation control for fire protection purposes; vegetation in an around solar panels and other infrastructure shall be kept at or below six (6) inches. Other vegetation control measures may be required by the Kittitas County Fire Marshal.

23. Prior to final approval of the conditional use permit, the applicant shall provide to the County for its review and approval a Project Decommissioning and Site Restoration plan to meet the event of decommissioning of the project. Such Plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Applicant at the time of decommissioning of the project. The plan shall describe the measures that will be taken to decommission the project and restore the project site, including any measures necessary to finance the operation. Decommissioning the project shall involve removal of the project's components, including, without limitation, the solar panels, panel trackers, anchors, supports and mounts, inverter buildings, underground electrical conductors, substation, and operations and maintenance building, and any foundations or permanently fixed anchors; the re-grading of any areas significantly impacted by the removal of any components; removal of Project maintenance roads and overhead cables (except for any roads, buildings, and/or power cables that project area landowner may wish to retain).

24. The subject property is within or near designated mineral resource lands on which a variety of commercial activities and mineral operations may occur that are not compatible with residential or other development for certain periods of limited duration. Commercial natural resource activities and/or mineral operations performed in accordance with County, State and federal laws are not subject or legal action as public nuisances.

RECOMMENDED FINDINGS OF FACT

1. One Energy Development LLC authorized agent for Pat Taylor, landowner, submitted a conditional use application and shoreline substantial development permit for the construction and operation of a 13.6 acre photovoltaic solar power generation facility on approximately 112 acres. The subject property is zoned Agriculture 20. This "Utility" (KCC 17.61.010{1}) is subcategorized as a major alternative energy facility (KCC 17.61.010{9}), and as such is a conditional use for the zone 17.61.020(4)(b).

2. This proposal is located approximately 3.5 miles northwest of Ellensburg on Highway 10 (US 97), in a portion of Section 20, T18N, R18E, WM in Kittitas County, bearing Assessor's map number 18-18-20030-0006. Access is provided for via an existing permit with WSDOT.

3. Site Information:

Total Property Size:	112 acres
Total project size:	13.6 Acres
Number of Lots:	1. No new lots are being proposed
Domestic Water:	None required or planned at this time
Sewage Disposal:	None required or planned at this time
Power/Electricity:	Kittitas County PUD
Fire Protection:	Kittitas Valley Fire and Rescue
Irrigation District:	Ellensburg Water and Olsen Ditch

4. Site Characteristics:
   North: Private Residential Farming and Grazing
   South: Private Residential Farming and Grazing
   East: Private Residential Farming and Grazing
   West: Private Residential Farming and Grazing

5. Site Characteristics: The subject property is generally flat pasture land with perimeter and occasional internal clumps of deciduous trees and brush.

6. The Comprehensive Plan designation is "Mineral Land."

7. The subject property is zoned "Agriculture 20". Major alternative energy facilities are a conditional use in the zone (KCC 17.61.020(4)(b))

8. The conditional use permit application was submitted to Community Development Services (CDS) on September 26th, 2014. The shoreline substantial development permit was submitted to CDS on November 3rd, 2014. Both of these applications were deemed complete on December 11th, 2015. The Notice of Application for the conditional use and shoreline substantial development permits was issued on January 19th, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on February 19th, 2015.

9. Kittitas County acted as the lead agency for the SEPA Environmental Checklist; a Mitigated Determination of Non-Significance (MDNS) was issued for this project on March 25, 2015. The appeal period for this SEPA determination ended on April , 2015 at 5:00 p.m. No appeals were filed.

10. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan.

11. Staff conducted an administrative critical area review in accordance with KCC 17A and found that this proposal contains a wetland and is adjacent to a type 2 fish bearing stream. The applicant provided a critical areas assessment prepared by Sewall Wetland Consultants for the site and it is included in the Record. The onsite wetland has a designation of PEMC. Kittitas County agrees with the critical areas assessment that the wetland (identified as 'A' in the report) is a class IV and that no buffer is required. Kittitas County further agrees that the use of pin piles does not constitute fill of waters of the US and that no impacts or fill would occur from the project as proposed. Other wetlands on the property will not be impacted by the project as proposed, if expansion is contemplated at some point in the future, additional environmental review will be required. Kittitas County agrees with the comments provided by The Washington State Department of Fish and Wildlife regarding Dry Creek's designation as a Type 2 Fish Bearing stream and will enforce the recommended 70 buffer as well as prohibit the removal of trees and vegetation inside the buffer.

12. The proposal is covered by a Shoreline Master Program 'Rural' designation. Kittitas County finds that utilities are permitted within the "Rural' designation under the SMP (section 37) and that the development portion of the proposal is approximately 3,000 feet from the ordinary high water mark of the Yakima River. Kittitas County further finds that the project as proposed is designed and will be installed in a manner which would result in minimal damage to the normal qualities of the shoreline area, that the project as proposed will not destroy scenic views, and that as conditioned the project will restore the area to a status comparable to its current state at such time as it may be decommissioned. As conditioned, the proposal is consistent with the Shoreline Master Program.

13. This proposal is consistent with the Kittitas County Zoning Code as proposed under KCC 17.61 Utilities as a major alternative energy facility, a conditional use for the Agriculture 20 zone.

14. This proposal is consistent with the Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As conditioned, staff finds the proposal is 1) desirable to public convenience, 2) will not be detrimental to public health, safety or welfare, 3) is not economically detrimental to the public, and 4) is adequately serviced by public facilities.

15. This proposal is consistent with the Kittitas County Building Code as conditioned.

16. As conditioned, the proposal is consistent with the provisions of KCC Title 12.

17. The following agency provided comments during the comment period: Kittitas County Public Works, Washington State Department of Transportation, Washington State Department of Fish & Wildlife, Washington State Department of Health, Kittitas County Fire Marshal, and Kittitas Valley Fire & Rescue. These comments have been included in the index file record and were considered when preparing the recommended conditions for this proposal.

18. The following individuals provided comments during the comment period. Sylvia Shriner, Martha Duskin-Smith, Rance Dewitt, and Larry Lowther. These comments have been included in the file record. All expressed support for the project as presented and were considered when preparing the recommended conditions for this proposal.

19. The Kittitas County Community Development recommended approval of the requested permits, subject to the recommended conditions of approval.

20. An open record public hearing after legal notice was held on April 9th, 2015.

21. Appearing and testifying at the hearing on behalf of the applicant were Jennifer Bradford and Pat Taylor. Ms. Bradford testified that she is an agent authorized to appear and speak on behalf of the applicant. She stated that she is the Director of Project Development for the applicant, One Energy Development, LLC. She was not sworn in as a witness and did not provide any sworn testimony. She did indicate, on behalf of the applicant, that all of the proposed conditions of approval were acceptable. Mr. Taylor testified that he was the property owner for the project location. Mr. Taylor testified that all of the proposed conditions of approval were acceptable to him. He indicated that he would be entering into a long term lease with the applicant.

22. At the open record public hearing, the following exhibits were admitted into the record:

22.1	Exhibit 1.	Pre-Application Meeting Documents - 1/22/2014.
22.2	Exhibit 2.	Pre-Application Meeting Documents - 8/27/2014.
22.3	Exhibit 3.	Receipts - 9/26/2014.
22.4	Exhibit 4.	Railroad Crossing Permit - 6/23/2014.
22.5	Exhibit 5.	Pre-Application Correspondence - Multiple Dates.
22.6	Exhibit 6.	Stormwater Report – 8/2014.
22.7	Exhibit 7.	Critical Areas Report – 6/27/2014.
22.8	Exhibit 8.	SEPA Checklist – 9/26/2014.
22.9	Exhibit 9.	Application – 9/26/2014
22.10	Exhibit 10.	Deem Incomplete Letter – 10/10/2014.
22.11	Exhibit 11.	Shoreline Substantial Development Application – 11/3/2014

11/3/2014

22.12 Exhibit 12. Deem Complete Letter and Email – 12/11/2014.
22.13 Exhibit 13. Affidavit of Posting Documentation – 12/19/2014.
22.14 Exhibit 14. Site Visit Photos – 12/19/2014.
22.15 Exhibit 15. Critical Areas Checklist – 12/18/2014.
22.16 Exhibit 16. Planner's Evaluation Maps and Air Photos – 12/19/2014.
22.17 Exhibit 17. Notice of Application Documentation – 1/19/2015.
22.18 Exhibit 18. Transportation Concurrency Correspondence – 1/15/2015.
22.19 Exhibit 19. Project Brief From Applicant – 1/20/2015.
22.20 Exhibit 20. Comments – KVFR – 1/19/2015.
22.21 Exhibit 21. No Comments – Cascade Irrigation – 1/20/2015.
22.22 Exhibit 22. Comments – Fire Marshal – 1/20/2015.
22.23 Exhibit 23. Comments – State Dept. of Health – 1/20/2015.
22.24 Exhibit 24. Comments – Dewitt – 1/26/2015.
22.25 Exhibit 25. Comments – Lowther – 2/17/2015.
22.26 Exhibit 26. Comments – Duskin-Smith – 2/17/2015.
22.27 Exhibit 27. Comments – State Dept of Ecology – 2/19/2015.
22.28 Exhibit 28. Comments – State Dept of Transportation – 2/18/2015.
22.29 Exhibit 29. Comments – Public Works – 2/19/2015.
22.30 Exhibit 30. Comments – State Dept of Fish and Wildlife – 2/18/2015.
22.31 Exhibit 31. Excerpts from the Shoreline Master Program – 3/1975.
22.32 Exhibit 32. Transmittal of Comments – 3/16/2015.
22.33 Exhibit 33. Letter from Yakima Nation & Transmittal – 2/25/2015.
22.34 Exhibit 34. Notice of SEPA Action and Public Hearing Documentation -3/25/2015.
22.35 Exhibit 35. Mitigated Determination of Non-Significance – 3/25/2015.
22.36 Exhibit 36. Mineral Lands of Long Term Significance Documentation 6/2008.
22.37 Exhibit 37. Comments – Shriner – 2/19/2015.
22.38. Exhibit 38. The re-issued affidavit of posting.
22.39 Exhibit 39. Staff power point presentation provided at the hearing.

23. No member of the public testified at this hearing.

24. Public agencies with potential jurisdiction over this project were given an opportunity to review the proposal. Agencies that responded with comments were admitted into the record and considered by the Hearing Examiner in rendering this Decision.

25. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

RECOMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.

2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.

3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.

4. Public use and interest will be served by approval of this proposal.

5. As conditioned, the proposal is consistent with Kittitas County Code Title 17 Zoning, Title 17A Critical Areas, Title 14.04 Building Code, Title 12 Roads and Bridges and the Kittitas County Shoreline Master Program.

6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

This permit is granted pursuant to the Shoreline Master Program of Kittitas County, as amended, and nothing in this permit shall excuse the applicant from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project, but not inconsistent with the Shoreline Management Act of 1971 (Chapter 90.58 RCW).

This permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms and conditions hereof.

CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN NOR IS AUTHORIZED UNTIL TWENTY-ONE (21) DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).

Substantial progress toward construction of the project for which this permit has been granted must be accomplished within two (2) years of the filing date of this permit. Authorization to conduct development activities granted by this permit shall terminate five (5) years from the filing date of this permit.

Approval recommended this 15th day of April, 2015.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A CONDITIONAL USE OR VARIANCE PERMIT

Date received by the Department_____

Approved_____ Denied_____

This conditional use/variance permit is approved/denied by the Department pursuant to Chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:

_____ _____

Date Signature of Authorized Department Official

5. Notice of Decision -Conditional Use Permit-Approved Dated August 17, 2010 Teanaway Solar Reserve-CU-09-00005

KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES
411 N. Ruby St., Suite 2, Ellensburg, WA 98926
CDS@CO.KITTITAS.WA.US
Office (509) 962-7506
Fax (509) 962-7682
"Building Partnerships – Building Communities"

NOTICE OF DECISION

TO: Applicant
Interested Parties (KCC 15A.06)

FROM: Dan Valoff, Staff Planner

DATE: August 17, 2010

SUBJECT: Notice of Decision - Conditional Use Permit
Teanaway Solar Reserve CU-09-00005

Pursuant to RCW 36.70B.130 and KCC 15A.06, notice is hereby given that Kittitas County Board of Adjustment did on August 11, 2010 approved a Conditional Use Permit on an application from Teanaway Solar Reserve, LLC to develop a solar farm generating up to 75 megawatts (MWdc) of photovoltaic (PV) for distribution to utilities and communities through a substation interconnection point on the Pacific Northwest power grid. The project site is 982 acres. The solar farm will use approximately 580 acres of the project site. The subject property is zoned Forest and Range. The site is northeast of the city of Cle Elum off of Highway 970 via County and private roads. All of Section 22; the N ½ of the NE ¼, the NW ¼ and the N ½ of the SW ¼ of Section 23, and a portion of the NE ¼ of Section 27; all in T20N, R16 E, W.M..; Kittitas County map numbers 20-16-22000-0001, 20-16-23000-0002, 20-16-22000-0002, 20-16-27000-0009, and 20-16-22000-00025.

A copy of the Kittitas County Board of Adjustment Findings of Fact and Decision is attached, other related file documents may be examined at Kittitas County Community Development Services, 411 N. Ruby Suite 2, Ellensburg, WA 98926. (509) 962-7506.

Issuance of these land use decisions may be appealed by parties with standing, by filing a land use petition in Superior Court, and serving said petition on all required parties pursuant to RCW 36.70C and KCC 15A.08, within twenty-one days of the issuance of the land use decision.

If you have any questions, please do not hesitate to contact our office at (509) 962-7506.

KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES
411 N. Ruby St., Suite 2, Ellensburg, WA 98926
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Fax (509) 962-7682

Findings of Fact and Decision
Teanaway Solar Reserve - Conditional Use Permit
CU-09-00005

Applicant: Teanaway Solar Reserve, LLC

Project: Teanaway Solar Reserve

Location: The project site is located approximately 4 miles northeast of Cle Elum, Washington, in Township 20N, Range 16E, within Sections 22, 23, and 27. The site is located on the eastern slopes of the Cascade Mountains on Cle Elum Ridge, which runs generally from east to west at elevations ranging from approximately 2,200 to 2,600 feet. The Teanaway River is approximately 1 mile to the northeast of Cle Elum Ridge. The site is accessed from Highway 970 by way of County roads such as Red Bridge Road, and private roads such as Loping Lane. The site is also accessed via Wiehl Road, which is a dedicated public road but is not maintained by the County; it is maintained privately. The property is located in all of Section 22; the North Half of the Northeast Quarter, the Northwest Quarter and the North Half of the Southwest Quarter of Section 23; and Parcel 2 of that certain Survey as recorded May 6, 2003 in Book 28 of Surveys, pages 234, 235 and 236, under Auditor's File No. 200305060025, records of Kittitas County, Washington, being a portion of the Northeast Quarter of Section 27; All in Township 20 North, Range 16 East, W.M., in the County of Kittitas, State of Washington.

This matter having come before the Kittitas County Board of Adjustment upon the above referenced Conditional Use Application from Teanaway Solar Reserve, LLC, land lessee, the Board of Adjustment makes the following Findings of Facts, Conclusions at Law and Decision related to the above referenced matter:

I. FINDINGS OF FACT

General Description of Proposal

1. Teanaway Solar Reserve LLC ("the applicant" or "TSR"), has submitted a Conditional Use Permit application to construct and operate the Teanaway Solar Reserve ("the project"). The project includes the following key components: solar modules; field inverters; field transformers; electrical conductors; electrical substation and switchyard; operations and maintenance (O&M) building and supervisory control and data acquisition (SCADA) system; overhead interconnection transmission line; and access and maintenance roads.

2. The Teanaway Solar Reserve will be constructed on an approximately 982 acre site, though only up to 477 acres will be involved in land disturbance and development. The remaining acres are currently undeveloped open space. Approximately 193 acres onsite will be preserved with a conservation easement as part of the Applicant's wildlife mitigation plan, and an open corridor will be maintained to allow for wildlife migration through the site.

3. The project will be completed over a period of 2 to 3 years, with 7-to 9-month construction periods each year, weather dependent.

4. The project is proposed to generate up to 75MWdc of PV solar energy for distribution to utilities and communities in the region.

5. The Comprehensive Plan's Land Use Element designates the subject parcel as Rural.

6. The subject property is zoned Forest and Range. The surrounding properties are zoned Commercial Forest, Forest and Range, and Rural-3.

7. The purpose and intent of the Forest and Range zone is to provide for areas of Kittitas County wherein natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged.

8. The solar farm is considered a "Major Alternative Energy Facility" (KCC 17.61.010.9) and certain components of the solar farm (overhead transmission line and substation) are considered "Special Utilities" (KCC 17.61.010.2). According to the Kittitas County Code a "Major Alternative Energy Facility" and "Special Utilities" are allowed with a Conditional Use Permit in the Forest and Range zoning district, subject to the conditions set forth in Chapter KCC 17.60A Conditional Uses and KCC 17.61 Utilities. KCC 17.61.020.4; 17.61.020.6.

9. An administrative site analysis was completed by the staff planner in compliance with Kittitas County Code Title 17A, Critical Areas. Wetlands, wildlife habitat areas, and geologically hazardous areas were identified onsite.

Procedural Background for the Subject Application

10. On August 18, 2009 Teanaway Solar Reserve, LLC ("TSR" or "the applicant") submitted to Kittitas County Community Services Department ("CDS") an application for a Conditional Use Permit ("CUP"), a draft Development Agreement ("DA") for the project, and an expanded SEPA Environmental Checklist dated August 14, 2009. The expanded SEPA Checklist included a *Sensitive Species Report*; a *Wetland Delineation Report*, a *Cultural Resources Report*, and a *Zone of Visual Influence Memorandum.*

11. On August 22, 2009 the County deemed the application complete and sent a letter to the applicant stating this conclusion.

12. On September 3, 2009 a Notice of Application was issued. This notice was mailed to government agencies, adjacent property owners, and the applicant. The public notice period lasted from September 3, 2009 to September 18, 2009. A notice of application was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. Written comments were received and included in the record for consideration.

13. On September 2, 2009, the applicant's authorized agent signed an Affidavit of Posting, confirming that in accordance with Kittitas County Code 15A.03.110, this project was accurately posted with the "Land Use Action" sign as provided by Community Development Services. The Affidavit of Posting was returned to the planner and is included as part of the record.

14. The County reviewed comments with the Applicant and requested that additional studies addressing issues raised by the comments be submitted by February 22, 2010.

15. In February 2010, TSR supplemented its CUP application and Expanded SEPA checklist with additional reports and information per the County's request including, but not limited to, a Geology and Soils Hazard Evaluation, a Fugitive Dust Control Plan, a Vegetation Management Plan, a Hydrologic Analysis, a Wildlife Mitigation Plan, and a Transportation and Road Plan.

16. The Applicant submitted additional hydrology and stormwater modeling as well as executed agreements between the Applicant and WDFW and the Kittitas County Fire Protection District 7 in June of 2010.

17. Based upon a review of these materials, on July 15, 2010 the County issued a SEPA Mitigated Determination of Non-significance (MDNS). The Board finds that the notice of said determination was provided to all required parties of record pursuant to 43.21C RCW and that said notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. The last day to appeal this decision was July 29, 2010 at 5:00 PM.

Conduct of Hearing

18. On August 11, 2010 a consolidated open record hearing was held to consider the SEPA Appeal and the underlying Conditional Use Permit. Testimony was taken from those persons present who wished to be heard. On July 15, 2010, due notice of the CUP public hearing was given as required by law, and the necessary inquiry was made into the public interest to be served by this proposed project.

19. The public hearing was conducted in the standard manner for a Board of Adjustment consolidated hearing to consider an application for conditional use permit. County staff presented an overview of the project and summarized its Staff Reports on the CUP, including the recommended conditions of approval. The applicant made their presentation requesting approval of the CUP. Public testimony was taken from 18 citizens.

Conditional Use Permit

20. The Board of Adjustment finds that the proposed development has met the requirements of KCC 17.60A.010 Review criteria—Conditional uses, which include the following:

> 1. The Board of Adjustment shall determine that the proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
>
> 2. The Board of Adjustment shall determine that the proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that (1) it will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or (2) that the applicant shall provide such facilities or (3) demonstrate that the proposed use will be of sufficient economic benefit to offset additional public cost or economic detriment. (Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988: Res. 83-10, 1983)

21. The Board of Adjustment finds that the proposed development has met the requirements of KCC 17.61.030 Review Criteria—Special utilities and associated facilities, which include the following:

> 1. The board of adjustment shall determine that adequate measures have been undertaken by the proponent of the special utility and/or associated facility to reduce the risk of accidents caused by hazardous materials.

2. The board of adjustment, as required by existing statutes, shall determine that the proposed special utility and/or associated facilities are essential or desirable to the public convenience and/or not detrimental or injurious to the public health or safety, or to the character of the surrounding neighborhood.

3. The board of adjustment shall determine that the proposed special utility and/or associated facilities will not be unreasonably detrimental to the economic welfare of the county and/or that it will not create excessive public cost for public services by finding that: (a) It will be adequately serviced by existing services such as highways, roads, police and fire protection, emergency response, and drainage structures, refuse disposal, water and sewers, and schools; or (b) The applicant shall provide such services or facilities.

4. Special utilities and/or associated facilities as defined by this chapter shall use public rights-of-way or established utility corridors when reasonable. Although Kittitas County may map utility corridors, it is recognized and reaffirmed that the use of such corridors is subject to conditional use approval and just compensation to the landowner for the use of such corridor. While a utility corridor may be used for more than one utility or purpose, each utility or use should be negotiated with the landowner as a separate easement, right-of-way, or other agreement, or other arrangement between the landowner and all owners of interests in the property. Any county map which shows utility corridors shall designate such corridors as "private land closed to trespass and public use" where such corridors are on private land. Nothing in this paragraph is intended to conflict with the right of eminent domain.

5. The board of adjustment shall consider industry standards, available technology, and proposed design technology for special utilities and associated facilities in promulgating conditions of approval.

6. The construction and installation of utilities and special utilities may necessitate the importation of fill material which may result in the displacement of native material. The incidental generation of earthen spoils resulting from the construction and/or installment of a utility or special utility, and the removal of said material from the development site shall not require a separate zoning conditional use permit.

7. The operation of some utilities and special utilities identified within this chapter may necessitate unusual parcel configurations and/or parcel sizes. Such parcels: (a) Need not conform with applicable zoning requirements; provided, they comply with the procedures provided in KCC Title 16, Subdivisions, and so long as used for a utility or special utility; (b) Are not eligible for any other use or any rights allowed to nonconforming lots in the event the utility or special utility use ceases; (c) Shall continue to be aggregated to the area of the parent parcel for all other zoning and subdivision requirements applicable to the parent parcel. (Ord. 2001-12)

22. According to KCC 17.60A.020, in permitting conditional uses the Board of Adjustment may impose such conditions as it deems necessary to protect the best interests of the surrounding property or neighborhood or the county as a whole. The Board of Adjustment grants this Conditional Use Permit subject to the following conditions are required for approval of the Conditional Use Permit.

    1. All development, design and construction shall comply with Kittitas County Code, Kittitas County Zoning and the 2006 International Fire and Building Codes, including those mitigation measures listed as "Code Mitigation" in the SEPA Staff Report, dated July 14, 2010.
    2. All development, design and construction shall comply with those mitigation measures listed as "Voluntary Mitigation" in the SEPA Staff Report, dated July 14, 2010.

3. All development, design and construction shall comply with the SEPA mitigation measures listed in the MDNS, dated July 15, 2010.
4. The applicant shall enter into a Development Agreement with the Kittitas County Board of County Commissioners.

II. DECISION

The Conditional Use Permit is approved.

Daryl Akkerman, Chairman, Board of Adjustment

08/12/10
Date

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Findings of Fact and Decision
Teanaway Solar Reserve - SEPA Appeal
CU-09-00005

Applicant: Teanaway Solar Reserve, LLC

Project: Teanaway Solar Reserve

Location: The project site is located approximately 4 miles northeast of Cle Elum, Washington, in Township 20N, Range 16E, within Sections 22, 23, and 27. The site is located on the eastern slopes of the Cascade Mountains on Cle Elum Ridge, which runs generally from east to west at elevations ranging from approximately 2,200 to 2,600 feet. The Teanaway River is approximately 1 mile to the northeast of Cle Elum Ridge. The site is accessed from Highway 970 by way of County roads such as Red Bridge Road, and private roads such as Loping Lane. The site is also accessed via Wiehl Road, which is a dedicated public road but is not maintained by the County; it is maintained privately. The property is located in all of Section 22; the North Half of the Northeast Quarter, the Northwest Quarter and the North Half of the Southwest Quarter of Section 23; and Parcel 2 of that certain Survey as recorded May 6, 2003 in Book 28 of Surveys, pages 234, 235 and 236, under Auditor's File No. 200305060025, records of Kittitas County, Washington, being a portion of the Northeast Quarter of Section 27; All in Township 20 North, Range 16 East, W.M., in the County of Kittitas, State of Washington.

This matter having come before the Kittitas County Board of Adjustment upon the above referenced Conditional Use Application from Teanaway Solar Reserve, LLC, land lessee, the Board of Adjustment makes the following Findings of Facts, Conclusions at Law and Decision related to the above referenced matter:

I. FINDINGS OF FACT

General Description of Proposal

1. Teanaway Solar Reserve LLC ("the applicant" or "TSR"), has submitted a Conditional Use Permit application to construct and operate the Teanaway Solar Reserve ("the project"). The project includes the following key components: solar modules; field inverters; field transformers; electrical conductors; electrical substation and switchyard; operations and maintenance (O&M) building and supervisory control and data acquisition (SCADA) system; overhead interconnection transmission line; and access and maintenance roads.

2. The Teanaway Solar Reserve will be constructed on an approximately 982 acre site, though only up to 477 acres will be involved in land disturbance and development. The remaining acres are currently undeveloped open space. Approximately 193 acres onsite will be preserved with a conservation easement as part of the Applicant's wildlife mitigation plan, and an open corridor will be maintained to allow for wildlife migration through the site.

3. The project will be completed over a period of 2 to 3 years, with 7-to 9-month construction periods each year, weather dependent.

4. The project is proposed to generate up to 75MWdc of PV solar energy for distribution to utilities and communities in the region.

5. The Comprehensive Plan's Land Use Element designates the subject parcel as Rural.

6. The subject property is zoned Forest and Range. The surrounding properties are zoned Commercial Forest, Forest and Range, and Rural-3.

7. The purpose and intent of the Forest and Range zone is to provide for areas of Kittitas County wherein natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged.

8. The solar farm is considered a "Major Alternative Energy Facility," (KCC 17.61.010.9) and certain components of the solar farm (overhead transmission line and substation) considered "special utilities" (KCC 17.61.010.2). According to the KCC. a "Major Alternative Energy Facility" (KCC 17.61.010.9) and "Special Utilities" (KCC 17.61.020.6) are allowed with a Conditional Use Permit in the Forest and Range zoning district, subject to the conditions set forth in Chapter KCC 17.60A Conditional Uses and KCC 17.61 Utilities.

9. An administrative site analysis was completed by the staff planner in compliance with Kittitas County Code Title 17A, Critical Areas. Limited amounts of wetlands, wildlife habitat areas, and geologically hazardous areas were identified onsite.

Procedural Background for the Subject Application

10. On August 18, 2009 Teanaway Solar Reserve, LLC ("TSR" or "the applicant") submitted to Kittitas County Community Services Department ("CDS") an application for a Conditional Use Permit ("CUP"), a draft Development Agreement ("DA") for the project, and an expanded *SEPA Environmental Checklist* dated August 14, 2009. The expanded *SEPA Checklist* included a *Sensitive Species Report*; a *Wetland Delineation Report*, a *Cultural Resources Report*, and a *Zone of Visual Influence Memorandum*.

11. On August 22, 2009 the County deemed the application complete and sent a letter to the application stating this conclusion.

12. On September 3, 2009 a Notice of Application was issued. This notice was mailed to government agencies, adjacent property owners, and the applicant. The public notice period lasted from September 3, 2009 to September 18, 2009. A notice of application was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. Written comments were received and included in the record for consideration.

13. On September 2, 2009, the applicant's authorized agent signed an Affidavit of Posting, confirming that in accordance with Kittitas County Code 15A.03.110, this project was accurately posed with the "Land Use Action" sign as provided by Community Development Services. The Affidavit of Posting was returned to the planner and is included as part of the record.

14. The County reviewed the comments with TSR and requested that additional studies addressing the public comments be submitted by February 22, 2010.

15. In February 2010, TSR supplemented its Conditional Use Permit Application and Expanded SEPA Checklist with additional reports and information in response to the comments that were received. TSR prepared, reports, including, but not limited to, a Geology and Soils Hazard Evaluation, a Fugitive Dust

Control Plan, a Vegetation Management Plan, a Wildlife Mitigation Plan, and a Transportation and Road Plan.

16. TSR submitted additional materials on June 2, 2010, which included additional hydrology and stormwater runoff modeling, and executed agreements between TSR and WDFW and the Kittitas County Fire Protection District #7.

17. On July 15, 2010 the County issued a SEPA Mitigated Determination of Non-significance (MDNS). The Board finds that the notice of said determination was provided to all required parties of record pursuant to 43.21C RCW and that said notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. The last day to appeal this decision was July 29, 2010 at 5:00 PM.

18. On July 26, 2010, a timely SEPA Appeal pursuant to KCC 15A.04 was submitted with $500.00 to the Kittitas County Board of County Commissioners. The appeal was filed by James Brose and Paige Green Dunn, adjacent property owners to the proposed Teanaway Solar Reserve.

Conduct of Hearing

19. On August 11, 2010 a consolidated open record hearing was held to consider the SEPA Appeal and the underlying Conditional Use Permit. Testimony was taken from those persons present who wished to be heard. On July 29, 2010, due notice of this SEPA Appeal public hearing was given as required by law, and the necessary inquiry was made into the public interest to be served by this proposed project.

20. The public hearing was conducted in the standard manner for a Board of Adjustment consolidated hearing to consider a SEPA appeal and application for a conditional use permit. County staff presented an overview of the project and summarized its Staff Report on the SEPA Appeal. SEPA appellants presented their case. The applicants made their presentation opposing the MDNS appeal.

SEPA Appeal

21. As provided in KCC 15.04.210, SEPA threshold determinations issued in conjunction with a project permit application may be appealed following the procedures in Title 15A Project Permit Application Process. Specifically, Title 15A Table A establishes that an open record hearing before the Board of Adjustment shall be required for an appeal of a SEPA threshold determination, and Chapter 15A.07 sets forth procedures for appealing administrative decisions, such as a SEPA threshold determination.

22. A timely appeal of the County's SEPA Determination for the project was filed by two neighboring landowners, James Brose and Paige Green Dunn (appellants) on July 26, 2010. The appellants' request that the MDNS be withdrawn, a Determination of Significance issued, and demand that an environmental impact statement (EIS) be required.

23. The Board of Adjustment must give substantial weight to the County's decision to issue an MDNS. As stated in RCW 43.21C.090, "In any action involving an attack on a determination by a government agency relative to the requirement or absence of the requirement, or the adequacy of a 'detailed statement,' the decision of the governmental agency shall be accorded substantial weight."[1]

24. A governmental agency's threshold determination of "no probable environmental significance" ("DNS")

[1] *Anderson*, 86 Wn. App. at 302; *Indian Trail Prop. Owner's Association v. City of Spokane*, 76 Wn. App. 430, 442, 886 P.2d 209 (1994).

is subject to review under the clearly erroneous standard.[2] In considering the Responsible Official's decision to issue an MDNS and not require an environmental impact statement, the Board shall not substitute its judgment for that of the administrative decision maker (in this case the County's Responsible Official) and will find administrative decision clearly erroneous only if the Board is left with definite and firm conviction that a mistake has been committed based on the record.[3]

25. For a threshold determination to withstand appeal, the Responsible Official must demonstrate that it actually considered relevant environmental factors before reaching a decision.[4] The record must demonstrate that the County adequately considered the relevant environmental elements listed in WAC 197-11-444 "in a manner sufficient to be prima facie compliant with the procedural dictates of SEPA."[5] The decision to issue a determination of nonsignificance must be based on information sufficient to evaluate the proposal's environmental impact.[6]

26. The appellants' statement contained the following claims (in summary):
Issue #1: Failure to properly evaluate the fire protection plan;
Issue #2: Failure to conduct an alternative site analysis is required under RCW 43.21C.030;
Issue #3: Failure to ensure consistency with critical areas ordinance, which has not been updated as required by state law;
Issue #4: Special and sensitive areas not properly mitigated;
Issue #5: Failure to ensure compliance with wildlife laws;
Issue #6: Failure to adequately consider potential impacts to water resources;
Issue #7: Failure to consult with tribal governments;
Issue #8: Failure to consider the project would establish a precedent for future actions with significant effects or unknown risks;
Issue #9: Other concerns—Identified artifacts; carbon sequestration; and
Issue #10: Inadequate analysis of cumulative impacts.

27. The Board of Adjustment heard the appellants' case challenging the SEPA MDNS, including written testimony, presentation of witnesses, and the opportunity to cross examine witnesses of the County and applicant.

28. According to KCC 15.07.030, the Board of Adjustment must issue a written decision on this appeal within 90 days of the appeal being filed. A timely appeal was filed on July 26, 2010; therefore the Board of Adjustment must issue its written decision no later than October 23, 2010.

29. After careful consideration of appellants' case and the record before the Board on this matter, the Board finds that Kittitas County Community Development Services Department, acting as the Responsible Official, did follow and comply with all procedural requirements contained within KCC 15A, WAC 197-11, RCW 43.21C, and RCW 36.70B, and did consider all relevant environmental factors.[7] The appellants failed to meet their burden of demonstrating otherwise. Therefore the Board upholds the Mitigated Determination of Nonsignificance (MDNS) as issued by the Responsible Official. The Board provides the following findings and conclusions with respect to the specific issues raised by appellants.

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[2] *Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994).
[3] *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 860 P.2d 390, amended on denial of reconsideration.
[4] See RCW 43.21C.030(2)(c); *Lassila v. Wenatchee*, 89 Wn.2d 804, 813, 576 P.2d 54 (1978); *Juanita Bay Valley Cnty. Ass'n v. City of Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140.
[5] *Lassila*, 89 Wn.2d at 814; *see also Anderson v. Pierce County*, 86 Wn. App. 290, 302 936 P.2d 432 (1997).
[6] See *Anderson*, 86 Wn. App. at 302; WAC 197-11-335.
[7] *Anderson*, 86 Wn. App. at 302; *Indian Trail Prop. Owner's Association v. City of Spokane*, 76 Wn. App. 430, 442, 886 P.2d 209 (1994).

30. Issue #1: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official did not properly consider fire hazards, fire evacuation routes, and other fire safety issues. To the contrary, the record contains letters from the Kittitas County Fire Marshall, a Fire Protection Agreement with Fire District No. 7, and additional analysis in the SEPA Staff Report demonstrating a thorough consideration of this issue.

31. Issue #2: The Board of Adjustment finds that the appellants' claim that an alternative site analysis should have been conducted pursuant to RCW 43.21C.030 is legally incorrect, because this provision applies only to the preparation of an EIS. RCW 43.21C.030; WAC 197-11-440.

32. Issue #3: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official did not properly consider compliance with its critical areas ordinance. To the contrary, the Responsible Official reviewed studies and reports on wetlands and waters, habitat, and geologically hazardous areas contained in the record, and provided an analysis of these impacts in its SEPA Staff Report. Appellants also claim the County's critical areas ordinance is inadequate or outdated. The Board of Adjustment has not jurisdiction to rule on the adequacy of the adopted critical areas ordinance. If such a claim is to be made, it must be made before the Growth Management Hearings Board according to applicable procedures.

33. Issue #4: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official did not properly mitigate impacts to special and sensitive areas. To the contrary, in addition to reviewing studies and reports included in the expanded SEPA Environmental Checklist, the Responsible Official relied on a wildlife mitigation agreement Washington Department of Fish and Wildlife, in which the WDFW concludes the mitigation contained within that agreement is sufficient to bring the level of impact to wildlife habitat below a level of significance. Impacts to cultural and historic resources were analyzed in the applicant's *Cultural Resources Report*, and the County has condition approval upon compliance with the recommendations of that plan, which include conducting sub-surface testing in areas likely to contain historic artifacts and halting construction work if ever an artifact is discovered. The Responsible Official has demonstrated in an exhaustive 42-page SEPA Staff Report that special and sensitive areas were carefully considered and probable impacts mitigated below a level of significance.

34. Issue #5: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official failed to ensure compliance with wildlife laws. To the contrary, the Responsible Official has shown the proposal was reviewed closely by the Washington Department of Fish and Wildlife, who have reached a wildlife mitigation agreement with the applicant. Regardless of SEPA determination, the proposal will be required to comply with applicable local, state, and federal laws pertaining to wildlife.

35. Issue #6: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official did not properly consider impacts to water resources. To the contrary, the Responsible Official reviewed stormwater plans, hydrology reports, and stormwater runoff models submitted by the applicant, and relied on review (including site visits) and comments from the Department of Ecology to conclude the probable impacts on water resources, particularly stormwater, would be mitigated below a level of significance.

36. Issue #7: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official did not properly consult with tribal governments. To the contrary, the record contains letters and emails between the Responsible Official and the Yakama Nation concerning this project and the Yakama Nation is included on the mailing distribution list for all public notices.

37. Issue #8: The Board of Adjustment finds that the appellant has not met its burden of proving the

Responsible Official did not properly consider the precedent set by this project. To the contrary, the Responsible Official has shown that the proposal's potential environmental impacts were carefully assessed and considered, and concluded the proposed project did not have a significant impact on the environment, involve unique or unknown risks or affect public health and safety. The KCC requires that each proposal be assessed independently in light of the site-specific factors and the proposal's details. This MDNS does not create a precedent for a future action.

38. Issue #9: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official did not properly consider carbon sequestration. There currently is no federal, state, or county standard determining when a potential impact to carbon sequestration should be considered significant and it is therefore not possible to determine whether the impacts to vegetation as they relate to carbon sequestration can be consider significant.

39. Issue #10: The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official did not properly consider the cumulative impacts of this project. A cumulative impact analysis is required when the project under review will facilitate future development.

40. The Board of Adjustment finds that the appellant has not met its burden of proving the Responsible Official acted in a clearly erroneous manner in its threshold determination of mitigated nonsignificance; and therefore denies this appeal.

II. DECISION

The SEPA Appeal is denied.

Daryl Akkerman

Daryl Akkerman, Chairman, Board of Adjustment

08/12/2010

Date

6. SEPA Mitigated Determination of Nonsignificance Teanaway Solar Reserve LLC, Dated July 15, 2010

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State Environmental Policy Act
MITIGATED DETERMINATION OF NONSIGNIFICANCE

Description

Teanaway Solar Reserve LLC has submitted a Conditional Use Permit application and Development Agreement to construct and operate the Teanaway Solar Reserve (TSR) project. The TSR project will be constructed on an approximately 982 acre site. Approximately 477 acres of the site will be involved in land disturbance and development. The TSR project will include the following key components: solar modules; field inverters; field transformers; electrical conductors; electrical substation and switchyard; operations and maintenance (O&M) building and supervisory control and data acquisition (SCADA) system; overhead interconnection transmission line; and access and maintenance roads.

The project will be completed over a period of 2 to 3 years, with 7-to 9-month construction periods anticipated each year, weather dependent. The subject property is zoned Forest and Range. The project is proposed to generate up to 75MWdc of PV solar energy for distribution to utilities and communities. See project application materials for full description.

Proponent

Teanaway Solar Reserve LLC

Location:

The property site is located approximately 4 miles northeast of Cle Elum, Washington, in Township 20N, Range 16E, within Sections 22, 23, and 27. The site is located on the eastern slopes of the Cascade Mountains on Cle Elum Ridge, which runs generally from east to west at elevations ranging from approximately 2,200 to 2,600 feet. The Teanaway River is approximately 1 mile to the northeast of Cle Elum Ridge. The site is accessed from Highway 970 by way of County roads such as Red Bridge Road, and private roads such as Loping Lane. The site is also accessed via Wiehl Road, which is a dedicated public road but is not maintained by the County; it is maintained privately. The property is located in all of Section 22; the North Half of the Northeast Quarter, the Northwest Quarter and the North Half of the Southwest Quarter of Section 23; and Parcel 2 of that certain Survey as recorded May 6, 2003 in Book 28 of Surveys, pages 234, 235 and 236, under Auditor's File No. 200305060025, records of Kittitas County, Washington, being a portion of the Northeast Quarter of Section 27; All in Township 20 North, Range 16 East, W.M., in the County of Kittitas, State of Washington.

Lead Agency:

Kittitas County Community Development Services

The lead agency for this proposal has determined that the proposal will not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (c) and WAC 197-11. This decision was made after review of a expanded SEPA environmental checklist and

other information on file with the lead agency, after considering voluntary mitigation measures which the lead agency or the applicant will implement as part of the proposal, and after considering mitigation measures required by existing laws and regulations that will be implemented by the applicant as part of the Kittitas County permit process. The responsible official finds this information reasonably sufficient to evaluate the environmental impact of this proposal. This information is available to the public on request.

Based on the project specific analysis, the lead agency for this proposal has also determined that certain mitigation measures are necessary in order to issue a Determination of Non-Significance for this proposal. Failure to comply with the mitigation measures identified hereafter will result in the issuance of a Determination of Significance (DS) for this project. The mitigation measures are listed below. Also note the following:

Notes:

A. This finding is based on review of the Conditional Use Permit Application Supplement submitted February 2010; an environmental checklist dated February 22, 2010; *Sensitive Species Report* (**Attachment A**) prepared by CH2MHill dated February 2010; *Wetland Delineation Report* (**Attachment B**) prepared by CH2MHill dated February 2010; *Cultural Resources Report* (**Attachment C**) (privileged and confidential: restricted distribution) prepared by CH2MHill dated August 2009; *Geology and Soil Hazards Evaluation*(**Attachment D**) prepared by CH2MHill dated February 2010; *Fugitive Dust Control Plan* (**Attachment E**) prepared by CH2MHill dated February 2010; *Hydrologic Analysis* (**Attachment F**) prepared by CH2MHill dated February 2010; *Vegetation Management Plan* (**Attachment G**) prepared by CH2MHill dated February 2010; *Wildlife Mitigation Plan* (**Attachment H**) prepared by CH2MHill dated February 2010 and related *Mitigation Agreement Between WSDFW and TSR*, dated April 18, 2010; Transportation *Road Plan* (**Attachment I**) prepared by CH2MHill dated February 2010; Figures (**Attachment J**) referenced in the checklist prepared by CH2MHill; Photographs of Solar Equipment (**Attachment K**) supplied by CH2MHill; *Potential Visual Impact Assessment* (**Attachment L**) prepared by CH2MHill dated February 2010; *Fire Protection Agreement* (**Attachment M**) dated February 17, 2010; *Economic Impact Analysis* (**Attachment N**) prepared by CH2MHill dated October 2009; *Public Outreach* efforts by Teanaway Solar Reserve, LLC (**Attachment O**); additional environmental analysis submitted on June 2, 2010 and other documents on file.

B. Issuance of this threshold determination does not constitute approval of the proposal for construction. This proposal will require review and approval by Kittitas County (Building Permit and associated permits/approvals) and will be reviewed for compliance with all applicable Kittitas County codes which regulate development activities, including but not limited to the Zoning Code, Uniform Fire and Building Codes, Road Standards, Surface Water Design Manual, and the Sensitive Areas Regulations. This proposal will also require approvals by other agencies as described in the SEPA Staff Report. A summary of various approvals and code requirements which the applicant must obtain and/or will implement are described in the SEPA staff analysis report dated July 15, 2010. These approvals and requirements are not inclusive, as some approvals and code requirements can only be confirmed and/or reviewed upon submittal of construction permits.

C. The applicant shall abide by the SEPA mitigation measures, as stated in the Development Agreement between Kittitas County and Teanaway Solar Reserve, LLC.

D. Voluntary mitigation measures which the applicant will implement as part of the proposal are listed in the February 22, 2010 environmental checklist and attachments, as supplemented, and are further described in the SEPA staff analysis report dated July 14, 2010. These mitigation measures are in addition to requirements that will be implemented through Kittitas County code compliance permit review. Prior to construction permit issuance, these voluntary mitigation measures will be incorporated as conditions of development.

I. AIR

1. The applicant has submitted a *Fugitive Dust Control Plan* (February 2010), which has been reviewed by the Department of Ecology. The proposed project shall be constructed and operated in accordance with the *Fugitive Dust Control Plan* and other application documents, such as the *Vegetation Management Plan.* In addition, following optional mitigation measures have been suggested by Ecology to further minimize adverse air quality impacts:
    a. Fully implement the no-burn option described in the Vegetation Management Plan, which includes making beneficial use of all organic matter being displaced and ensuring no waste disposal into the atmosphere or breathing air. If burning is to occur, a permit will be required from the Department of Ecology, Central Regional Office – Air Quality.

    b. Seek and employ the cleanest possible mobile source technology reasonably available especially for construction vehicles, including using low emission vehicles wherever possible, keeping all vehicles tuned-up and running well, using the lowest sulfur fuel available, and eliminating unnecessary idling.

2. The current proposal does not contain assembly or manufacturing components. If at any time the project is changed to include these components, the applicant shall contact the Department of Ecology to discuss emissions and permit requirements. Air quality permits would be required prior to construction, and the Department of Ecology wishes to advise the applicant that sufficient lead time should be considered for any additional review and permit processing.

II. WATER (Surface and Ground)

1. On-site stormwater management that conforms to the specifications of the *2004 Stormwater Management Manual for Eastern Washington* is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. Stormwater system designs shall be prepared and stamped by a civil engineer licensed in the State of Washington. The stormwater system design shall be presented to Public Works and approved by the County Engineer prior to permit issuance. The stormwater system construction shall be certified by a licensed engineer and is required prior to issuance of a building permit. Stormwater plans shall be submitted in accordance with KCC 12.06 and 12.08.

III. PLANTS

1. According to the *Mitigation Agreement Between Washington State Department of Fish and Wildlife and Teanaway Solar Reserve LLC*, TSR shall control the spread of noxious weeds caused by the Project. Prior to construction, TSR shall present a Noxious Weed Control Plan to the Kittitas County Noxious Weed Control Board for review and approval.

2. No later than August 31st, 2010, the applicant shall submit to the County a *Final Draft Tree Planting Plan* based on review comments from the Technical Advisory Committee on the *Draft Tree Planting Plan.* Following the TAC meeting tentatively scheduled for September 2010, at which the *Final Draft Tree Planting Plan* will be discussed, the applicant shall submit the *Final Tree Planting Plan* for review and approval by the County prior to building permit issuance.

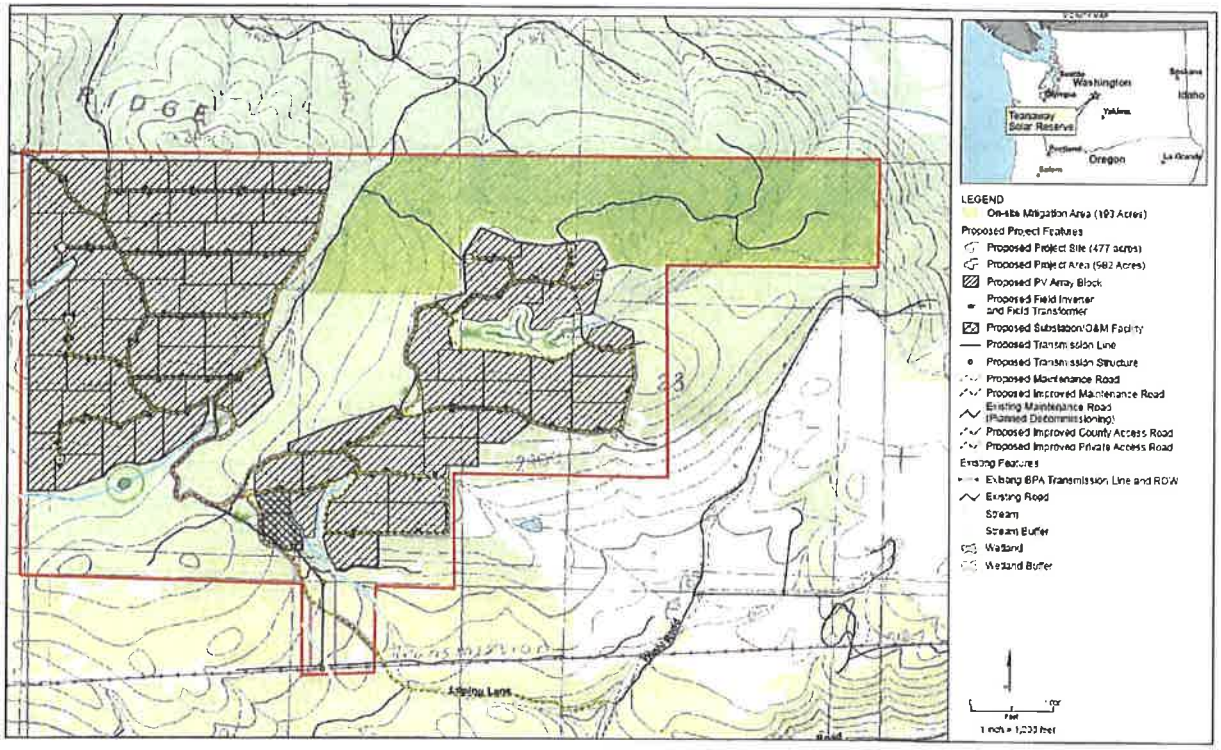
IV. ANIMALS

As a voluntary measure, TSR agreed to develop mitigation under *The Washington Department of Fish and Wildlife Wind Power Guidelines* (April 2009) *("Wind Power Guidelines")* where feasible even though the Project is a solar facility. The WDFW Mitigation Agreement between TSR and WDFW was also developed pursuant to the *Wind Power Guidelines*. The WDFW Mitigation Agreement and applicant's voluntary mitigation contain the following requirements pertaining to animals:

1. The applicant has conducted sensitive species surveys to identify potential impacts to plants and animals. Pursuant to the *Sensitive Species Surveys for the Teanaway Solar Reserve, Kittitas County, Washington* (February 2010), the applicant shall implement Best Management Practices wherever surface disturbance occurs during construction to avoid and reduce temporary and permanent impacts to wildlife to the extent practicable. In the event that a state or federally listed threatened or endangered wildlife species is observed during project development, work will be halted immediately and a qualified biologist notified.

On-Site Mitigation (Animals)

2. TSR will permanently impact 477 acres of Class II habitat, requiring a mitigation value of 2:1, or 954 acres, under *The Washington Department of Fish and Wildlife Wind Power Guidelines* (April 2009) *("Wind Power Guidelines")*. To satisfy this mitigation in part, TSR will protect and preserve from further development, for the life of the project, a Category II area on-site of approximately 193 acres of similar elk habitat within the proposed Project Area identified as "Mitigation Area" below and in Figure 3 of the *Teanaway Solar Reserve Wildlife Mitigation Plan, Kittitas County, Washington* (February 2010).



The amount of on-site replacement habitat (193 acres) may be increased as a result of a pre-construction on-site habitat analysis jointly conducted by WDFW and the TSR qualified biologist. The 193 acre on-site mitigation and any additional acreage approved for on-site mitigation shall be preserved and protected

through a conservation easement with a non-governmental organization from further development for as long as a solar energy project remains within the project area, regardless of who holds the lease or owns the property. The conservation easement must be in a form approved by WDFW and must be completed and recorded before construction begins on the Project. If TSR is unsuccessful in recording the conservation easement for the on-site mitigation, TSR will either contribute money to a mutually acceptable third party that owns or will purchase mitigation habitat or pay WDFW a fee as provided for in "Off-Site Mitigation" below.

3. Several existing roads located within the northeast parcel which are not used to access WDNR property, will be restricted for general use to minimize human impacts on elk.

4. To reduce impacts to elk, visual barriers will be created and reasonably maintained between (1) the array fields and Mitigation Area, and (2) along the corridor between the arrays. These barriers will consist of local native coniferous trees (ponderosa pine and Douglas fir) placed and maintained in such proximity and density to provide a visual screen approximately 8' or greater in height within 6-8 years after planting. It must be noted that this is a vegetation requirement independent of tree stocking criteria required by the Washington Department of Natural Resources, and that soils, weather, elevation, drainage, planting density, nutrients, fire, wind and other factors heavily influence the rate of growth and mortality of trees and other vegetation. Accordingly, TSR cannot guarantee that any vegetation barrier will block all views of the Project at any particular location or time. WDFW does not oppose any trees used for the visual barriers counting towards fulfillment of TSR's 3:1 tree replacement mitigation for the CUP. The Technical Advisory Committee shall guide in the location and placement of the trees, provided that creation of the visual barriers cited above shall be the first priority of the tree replacement program.

5. TSR shall design and engineer the Project to avoid and/or minimize impacts on elk and elk habitat. The Project already includes, or shall include, the following design features and commitments:

    a. The Project footprint is designed to avoid, or minimize impacts on, possible migration routes previously identified by landowners and densely forested winter habitat along the Teanaway River corridor.
    b. No Project facilities will be placed within any riparian corridor, wetland, or stream. Stream buffers will be flagged and clearly marked to prevent inadvertent clearing by construction crews.
    c. Artificial lighting will be directed on Project facilities to avoid light disturbance to surrounding wildlife mitigation areas and potential wildlife corridors.
    d. Electrical conductors from the array field to the inverters will be supported above-ground within the solar module framework and installed per National Electrical Code standards. Collector lines between field transformers and the substation will be below grade.
    e. Overall site selection is designed to avoid all areas with documented endangered, threatened species.
    f. No fencing will be erected along the boundary of the Project Area to help maintain access for large mammals and minimize disruption of movement or migration of wildlife.
    g. TSR will not place a planned solar panel between the two major solar array fields in the southwest portion of the Project Area to provide opportunity for wildlife movement between the two major arrays. Vegetation within the corridor will not be altered.
    h. During the initial timber clearing process, TSR will temporarily stockpile (up to one year), load and haul up to 100 trees greater than 14" dbh cut from the project site for use by WDFW or third party in stream projects within the upper Yakima River Basin. The trees will remain in lengths of 40-45 feet wherever possible. WDFW or third party will be responsible for identifying a location for TSR to haul and deposit the trees, and shall provide TSR notice requesting the trees within the one year stockpiling period.
    i. TSR shall install filter bags, weed free mulches, sediment fences, sediment filter fabric traps, and graveled construction accesses as necessary for erosion control. The primary means of erosion

control will involve methods that preclude initial mobilization of fines and sediment rather than attempting to catch or trap it after mobilization. Straw mulches and similar mechanisms will be used to prevent erosion and mobilization of sediment contaminated runoff.

j. TSR shall ensure that the hydrology of the seasonal streams on-site is not altered.
k. TSR shall reseed areas temporarily affected by construction activities using seed sources of native biotypes. Where installed, erosion control mulches, sediment fences and check dams will remain in place until the affected areas are well vegetated and the risk of erosion has been eliminated.
l. During project construction, vehicle servicing and refueling will occur in a temporary staging area equipped for fuel or oil spills.
m. Onsite vehicles used during construction, operation, maintenance, and decommissioning will be monitored for petroleum leaks.
n. Spills will be cleaned up immediately upon discovery and reported to the appropriate agency. Equipment found to be visibly leaking petroleum products will not be used at the project site until repaired.
o. Any hazardous waste material generated by project construction or operation will be disposed of in a manner specified by local and state regulations or if there are no applicable regulations, according to the manufacturer's recommendations.
p. Cleanup materials will be kept readily available onsite, either at the equipment storage area, O&M building or on the construction contractor's trucks.
q. Speed limits on access roads will be set at 20 m.p.h. in order to minimize vehicle strikes on wildlife.
r. The Project site will be restored to approximate or improved pre-project conditions as provided in TSR's Development Agreement. Surrounding lands with similar habitat will be used as reference sites to guide restoration. The project site will be revegetated with plant species and densities representative of undisturbed areas adjacent to the site.

Off-Site Mitigation (Animals)

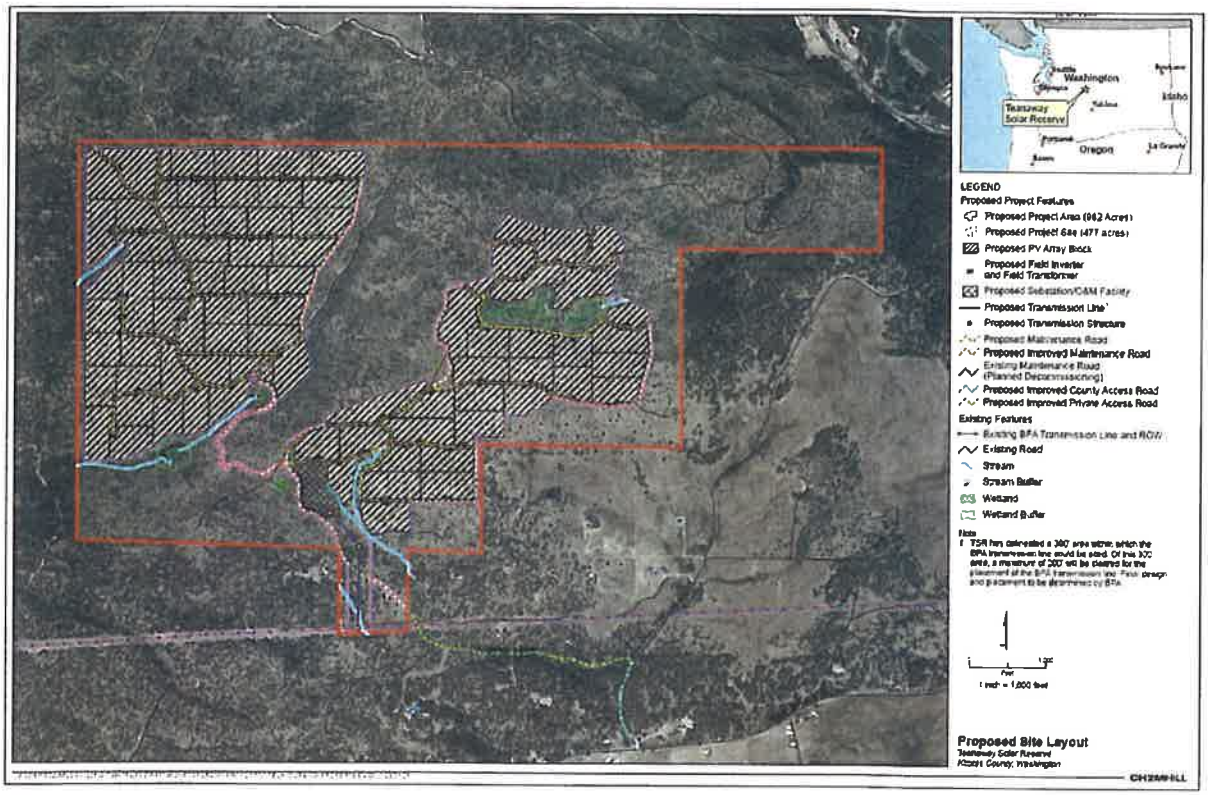
6. The *Wind Power Guidelines* suggest two fundamental mitigation approaches for mitigating permanent impacts to habitats by wind energy projects: Mitigation "be fee" and, secondarily, acquisition of replacement habitats. The Project will permanently impact 477 acres of Class II habitat, requiring a mitigation value of 2:1, or 954 acres, under the *Wind Power Guidelines*. As provided above, a maximum of approximately 193 acres of the remaining 505 undeveloped acres within the Project Area will be considered mitigation habitat; *provided* that the amount of on-site replacement habitat (193 acres) may be increased as a result of a pre-construction on-site habitat analysis jointly conducted by WDFW and a TSR qualified biologist, and provided that this mitigation habitat it not altered or developed, and is managed exclusively for fish and wildlife benefit as long as any form of type of solar energy project remains on the 477 acres referenced above. Moreover, this 193 acre on-site mitigation and any additional acreage set aside for on-site mitigation must be secured by a conservation easement as provided for above (On-Site Mitigation). In accordance with the *Guidelines*, TSR will provide off-site mitigation for the number of remaining acres necessary to satisfy its 2:1 habitat mitigation (Mitigation Obligation) through fee or habitat acquisition.

7. Consistent with the *Wind Power Guidelines*, TSR may satisfy its remaining Mitigation Obligation either by purchasing mutually acceptable mitigation habitat and deeding it to WDFW or a mutually acceptable third party, contributing money to a mutually acceptable third-party that owns or will purchase mitigation habitat, or by paying to WDFW a fee of one-thousand four hundred fifty dollars ($1450.00) per acre plus $30,000.00 or the actual funds necessary, for appraisal costs, a hazardous waste assessment, closing costs, and transaction time invested by WDFW real estate staff. WDFW and TSR agree in utilizing any of the proceeding approaches for TSR to satisfy habitat permanently impacted by the Project shall be a priority. The mitigation proposed by TSR will be subject to WDFW's final approval and such approval will not be unreasonable withheld. If TSR has not satisfied its mitigation obligation prior to commencing construction, TSR will

provide a letter of credit, bond, or other financial security to WDFW in an amount and form sufficient to provide for its Mitigation Obligation prior to commending operation of the Project.

V. LAND USE

1. The width and location of the transmission corridor, the location of the substation facility, and the southeasterly edge of the southern solar module field shall be located no closer to residences than shown on the proposed site layout below.



2. The northern solar module field shall be setback at least 100 feet from adjacent properties zoned Commercial Forest.

VI. AESTHETICS

1. Consistent with the *Tree Planting Plan*, new trees will be planted at visually strategic locations around the perimeter of the site that could provide visual screening to power lines, sub-stations, and other project components, and to screen views or help "soften" views of the project.

VII. HISTORIC AND CULTURAL PRESERVATION

1. The project shall be constructed and operated pursuant to the August 2009 *Cultural Resources Report*, referenced in the expanded SEPA Checklist.

VIII. TRANSPORTATION

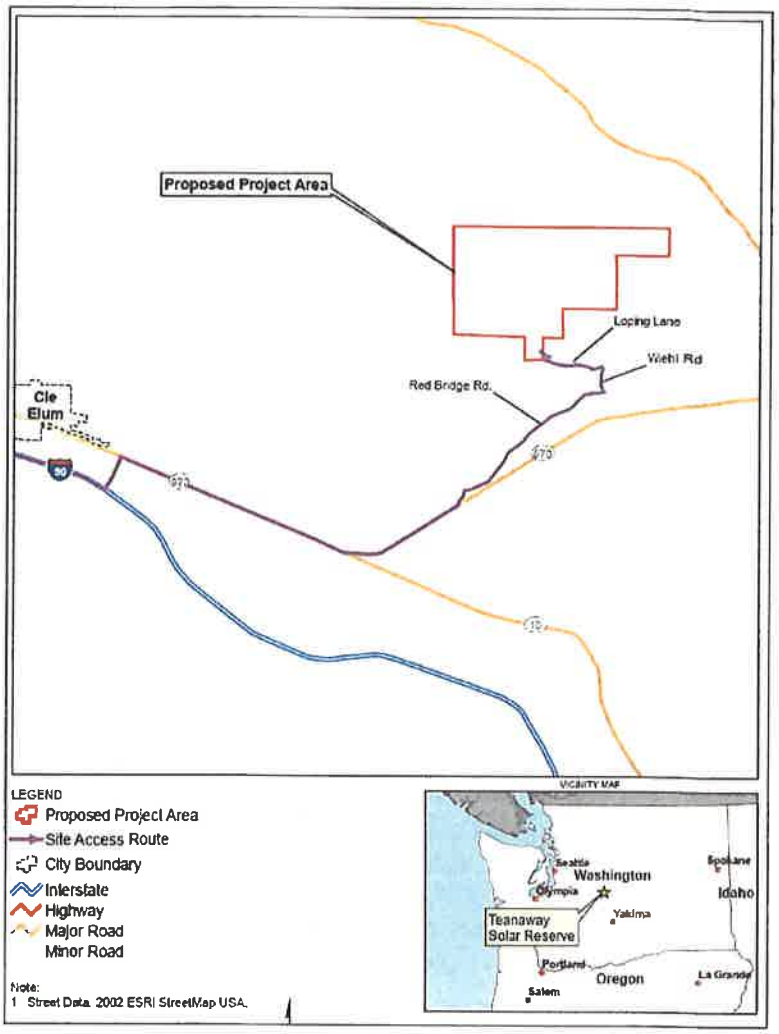
Construction Mitigation (Excluding Site Preparation—SEPA Checklist page 10-11)

1. Construction traffic shall access Red Bridge Road from the southwest entrance, directly from SR 970. If road closures along this access route occur, Public Works shall be consulted to establish a temporary detour route.

2. The applicant shall prepare a *Traffic Management Plan* with the construction contractor outlining steps for minimizing construction traffic impacts. The *Traffic Management Plan* shall be submitted to the Department of Public Works and WSDOT for review and approval prior to construction.

3. The applicant shall prepare a Construction Road Signage Plan for Red Bridge Road and Wiehl Road that conforms to the most recent edition of the Manual on Uniform Traffic Control Devices. The Construction Road Signage Plan shall be submitted to the Department of Public Works prior to construction for review and approval.

4. The applicant shall assist in minimizing access disruptions to residents along roadways impacted by construction activities. Five days prior to the commencement of road construction, the applicant shall provide notice by mail of upcoming construction activities to landowners gaining access from the portion of the "Site Access Route" extending form the intersection of Red Bridge Road and Highway 970 northeastward to the intersection of Loping Land and the TSR onsite access point, as depicted below on the next page.



5. When hauling slow or oversized wide loads, appropriate vehicle and roadside signing and warning devices shall be deployed per the Traffic Management Plan. Pilot cars shall be used as WSDOT dictates, depending on load size and weight. WSDOT requirements shall also apply to county roads.

6. The applicant shall encourage carpooling for the construction workforce to reduce traffic volume.

7. The applicant shall provide Detour and Warning Sign Plans to the Department of Public Works in advance of any traffic disturbances. When temporary road closures cannot be avoided the applicant shall post "To Be Closed" signs and place a legal notice in the newspaper a minimum of five working days prior to the closing. The types and locations of the signs shall be shown on a detour plan. A Detour Plan must be submitted to the Department of Public Works at least ten working days prior to the proposed closure. No County roadway shall be closed until after the Detour Plan has received approval from the Department of Public Works. In addition, at least five working days prior to the closing the contractor must provide written notification to local fire, school, law enforcement authorities, postal service and any other affected persons as directed by the Department of Public Works.

8. The applicant shall maintain one travel lane at all times when construction occurs or Loping Lane or Wiehl Road. A flagger shall be employed at all times when only one travel lane is open.

9. The applicant shall employ flaggers as necessary to direct traffic when large equipment is exiting or entering public roads to minimize risk of accidents.

10. The applicant shall provide a roadway pavement analysis and visually inspect the condition of pavement and the quantity and severity of pavement distresses utilizing a county approved rating system and a video, prior to and immediately after each phase of construction, including substation construction. The analysis shall document roadway and shoulder conditions before and after construction and shall include Red Bridge Road east of Wiehl Road. The applicant shall be responsible for restorative work made necessary by the project.

11. Loping Lane and Wiehl Road shall be constructed to meet the minimum requirements of the IFC as adopted by the County, prior to receiving building permit approval.

Project Mitigation

12. Loping Lane and Wiehl Road shall be constructed and/or repaired as required below. Prior to receiving permit approval, a bond shall be submitted which covers 135% of the engineer's estimate of the full costs of road construction requirements and repairs and follows all requirements of KCC 12.01.150.

    a. After construction is completed, Loping Lane shall be constructed and/or repaired to comply with International Fire Code standards. The road must be certified by a civil engineer licensed in the state of Washington prior to release of the bond.

    b. Wiehl Road must be constructed to 24-feet total paved width, or as approved by the County Engineer from the intersection at Red Bridge Road to the intersection with Loping Lane. All road designs shall be engineered as specified by AASHTO A Policy on Geometric Design of Highways and Streets, 5th edition (2004). Engineering justification shall be included with the design for proposed total pavement width less than 24 feet. The road must be certified by a civil engineer licensed in the state of Washington prior to release of the bond.

13. Within the project boundaries, the primary access roads shall be constructed with an all-weather surface and be a minimum of 20 feet in width. Secondary roads shall be a minimum of 16-feet wide. A turnout shall be provided every 1000 feet, or if the segment of road is less than 2000-feet long, the turnout shall be located in the middle of that segment. Each turnout shall provide at least 5 feet of additional driving surface for a length of 50 feet. All changes to the road layout must be approved by County staff.

14. The turning radius at all corners shall be a minimum of 28 feet. Cul-de-sacs shall have a minimum driving surface radius of 50 feet.

15. Primary access roads throughout the site shall be kept clear of snow for emergency access.

IX. PUBLIC SERVICES

1. A 50' cleared area shall be maintained around the solar module fields, with an additional 50' of area with reduced natural vegetation. Trees greater than 4" in diameter are to be limbed up, ladder fuels are to be removed, dead fall is to be removed, etc.

2. Emergency fire, supportive medical, and other standard emergency response services shall be provided to the Teanaway Solar Reserve by Fire District 7, according to the Fire Protection Agreement (Teanaway Solar

Reserve) dated April 17th, 2010. Any future amendments to this agreement shall be reviewed by the Fire Marshal's Office prior to adoption.

3. Pursuant to the Fire Protection Agreement, the applicant will seek annexation of the Teanaway Solar Reserve property into Fire District 7 following permit approvals. The applicant shall provide a copy of the petition for Annexation of the Property to the District No. 7, and any other subsequent proceedings regarding the annexation process.

Responsible Official: Dan Valoff

Title: Staff Planner

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7506 Fax: (509) 962-7682

Date: July 15, 2010

This Mitigated DNS is issued under WAC 197-11-355, WAC 197-11-390 and Kittitas County Code (KCC) Chapter 15.04; the lead agency will not act on this proposal for 10 working days. Any action to set aside, enjoin, review, or otherwise challenge this administrative SEPA action's procedural compliance with the provisions of Chapter 197-11 WAC shall be commenced on or before 5:00 pm, July 29, 2010.

Pursuant to Chapter 15A.04.020 KCC, this MDNS may be appealed by submitting specific factual objections in writing with a fee of $500.00 to the Kittitas County Board of Commissioners, Kittitas County Courthouse Room 110, Ellensburg, WA 98926. Timely appeals must be received within 10 working days, or no later than 5:00 PM, July 29, 2010. Aggrieved parties are encouraged to contact the Board at (509) 962-7508 for more information on appeal process.