

Verbatim Transcript of Monthly Council Meeting
Washington State Energy Facility Site Evaluation
Council

February 20, 2018



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WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
Richard Hemstad Building
1300 South Evergreen Park Drive Southwest
Conference Room 206
Olympia, Washington
February 20, 2018
1:30 p.m.

MONTHLY COUNCIL MEETING
Verbatim Transcript of Proceeding

REPORTED BY: ANITA W. SELF, RPR, CCR #3032

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A P P E A R A N C E S

Councilmembers Present:

- Kathleen Drew, Chair
- Jaime Rossman, Department of Commerce
- Cullen Stephenson, Department of Ecology
- Mike Livingston, Department of Fish and Wildlife
- Dennis Moss, Utilities and Transportation Commission

Local Government and Optional State Agencies:

- Kelly Cooper, Department of Health
- Ian Elliot, Kittitas County

Assistant Attorney General:

- Ann Essko, Senior Counsel
- Jon Thompson

Staff in Attendance:

- Stephen Posner
- Jim LaSpina
- Tammy Mastro
- Sonia Bumpus
- Joan Aitken
- Patty Betts
- Ami Kidder
- Christina Potis
- Cassandra Noble
- Laura Chartoff

(Continued...)

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A P P E A R A N C E S

Guests in Attendance:

Mark Miller, PacifiCorp Chehalis Generation Facility
Chris Sherin, Grays Harbor Energy
Scott Kuhta, Department of Commerce

Guests in Attendance via Phone:

Dick Carkner, Ellensburg
Debbie Knaub, Energy Northwest
Jennifer Diaz, Wild Horse Wind Power Project
Eric Melbardis, EDP Renewables
Tim McMahan, TUUSSO Project, Stoel Rives
Kara Warner, Golder Associates
Joy Potter, Potter Consulting
Joanna Markell, Daily Record

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1 OLYMPIA, WASHINGTON; FEBRUARY 20, 2018

2 1:30 P.M.

3 P R O C E E D I N G S

4

5 CHAIR DREW: Okay. Good afternoon. This
6 is Kathleen Drew, Chair of the EFSEC Council, and I am
7 calling this meeting to order. We will have the roll
8 call. Tammy?

9 MS. MASTRO: Department of Commerce?

10 MR. ROSSMAN: Jaime Rossman, here.

11 MS. MASTRO: Department of Ecology?

12 MR. STEPHENSON: Cullen Stephenson, here.

13 MS. MASTRO: Department of Fish and
14 Wildlife?

15 MR. LIVINGSTON: Mike Livingston, here.

16 MS. MASTRO: Department of Natural
17 Resources? Excused?

18 CHAIR DREW: Excused.

19 MS. MASTRO: Utilities and Transportation
20 Commission?

21 MR. MOSS: Dennis Moss is here.

22 MS. MASTRO: Local governments and
23 optional state agencies for the Vancouver Energy
24 Project; Department of Transportation?

25 CHAIR DREW: Excuse me. If we could

1 correct -- it's not the Vancouver -- oh, we are
2 doing -- I'm sorry. I take a step back.

3 MS. MASTRO: Department of Transportation?

4 City of Vancouver?

5 Clark County?

6 Port of Vancouver?

7 Local governments and optional state

8 agencies for the Columbia Solar Project; Department of

9 Health?

10 MS. COOPER: Kelly Cooper, here.

11 MS. MASTRO: Kittitas County?

12 MR. ELLIOT: Ian Elliot, here.

13 MS. MASTRO: Chair, there is a quorum for

14 the regular Council and for Columbia Solar Project

15 Council.

16 CHAIR DREW: Thank you for your excellent

17 knowledge of how to do the roll call.

18 We do have additional people who have

19 joined us by phone, not our councilmembers, but at

20 this point if anyone would like to introduce

21 themselves to let us know that they have joined the

22 meeting, please do so.

23 MR. CARKNER (by phone): This is Dick

24 Carkner from Ellensburg.

25 MS. DIAZ (by phone): Jennifer Diaz with

1 Wild Horse, Puget Sound Energy.

2 MS. KNAUB (by phone): Debbie Knaub with
3 Energy Northwest.

4 MR. MCMAHAN (by phone): Tim McMahan with
5 TUUSSO Energy from Stoel Rives law firm.

6 MS. WARNER (by phone): Kara Warner,
7 Golder Associates.

8 MR. MELBARDIS (by phone): Eric Melbardis,
9 Kittitas Valley Wind Project.

10 MS. POTTER (by phone): Joy Potter, Potter
11 Consulting.

12 MS. MARKELL (by phone): Joanna Markell,
13 Daily Record in Ellensburg.

14 CHAIR DREW: Okay. Thank you.

15 The proposed agenda is before you. Are
16 there any changes to the agenda? If not, is there a
17 motion to approve the agenda?

18 MR. STEPHENSON: I will so move.

19 MR. ELLIOT: Second.

20 CHAIR DREW: Thank you. All those in
21 favor?

22 MULTIPLE SPEAKERS: Aye.

23 CHAIR DREW: Opposed? Agenda is adopted,
24 proposed agenda.

25 Now we have before us the meeting minutes

1 from January 16th. I do have some corrections. If I
2 could start with page 7, line 1, I believe that should
3 say "stints," S-T-I-N-T-S, not "stents," S-T-E-N-T-S.

4 And on line 6, that should be "appreciate"
5 rather than "appreciation."

6 There are a couple of places throughout
7 that -- where the court reporter said "MULTIPLE
8 SPEAKERS: I," and instead of the letter "I," it
9 should be A-Y-E, and those are on page 8, line 22;
10 page 9, line 11 and line 12; page 10, line 1 and line
11 2, and I believe I caught all the instances of that
12 occurring. Oh, and page 5, line 18 -- 18 is fine, "I
13 also move" -- line 21.

14 MR. ELLIOT: Move to approve as corrected.

15 CHAIR DREW: Are there any other
16 corrections?

17 MR. STEPHENSON: Yes, Chair.

18 CHAIR DREW: Mr. Stephenson?

19 MR. STEPHENSON: Thank you, Chairman
20 Drew -- Chairwoman, you would think.

21 Page 5, line 18, it says, "I also move"
22 and that should say "I so move."

23 And then page 21, we were talking to
24 Councilmember Moss talking about the candies that he
25 so dearly loves, and he thanked me for the Werther's,

1 and it came out "word wars." So that should be
2 "Werther's," W-E-R-T-H-E-R-S, although I think maybe
3 the word wars are what he really appreciates.

4 CHAIR DREW: Thank you.

5 Are there any other changes to the
6 minutes? Mr. Elliot made a motion. Is there a second
7 to accept the minutes as amended?

8 MR. STEPHENSON: I'll second.

9 CHAIR DREW: Thank you. All those in
10 favor?

11 MULTIPLE SPEAKERS: Aye.

12 CHAIR DREW: Opposed? The minutes are
13 adopted as amended.

14 Now we will move forward with the project
15 updates. Kittitas Valley Wind Project? Mr. --

16 MR. MELBARDIS: Good afternoon, EFSEC
17 Council. This is Eric (bridge line interruption) with
18 EDP Renewables for the Kittitas Valley Wind Power
19 Project. January was an operationally routine month
20 for us and there's nothing noteworthy to report.

21 CHAIR DREW: Thank you.

22 Wild Horse Wind Power Project?

23 MS. DIAZ: Yes. Thank you, Chair Drew and
24 councilmembers. This is Jennifer Diaz with Puget
25 Sound Energy at the Wind Horse Wind facility. I only

1 have one nonroutine update.

2 The annual review of the Operations
3 Stormwater Pollution and Prevention Plan was submitted
4 to EFSEC staff on January 11th for review by the
5 Department of Ecology.

6 CHAIR DREW: Thank you.

7 The Columbia Generating Station update?

8 MS. KNAUB: Yes. This is Debbie Knaub
9 with Energy Northwest and Columbia Generating Station,
10 and I just have a couple of things to report.

11 Columbia is online at the current time and
12 operating at 100 percent power. We are still in the
13 process of choosing a successor to our current CEO,
14 but we're moving forward in that process and
15 anticipate a selection within the next couple of
16 months.

17 We are pursuing as part of our emphasis on
18 excellence a new program focusing on developing our
19 leaders at the first line supervisor level as well as
20 staff levels, next level leaders to further the
21 organization in the future. And that's for Columbia.

22 For plants 1 and 4, we are still working
23 with restoration of those sites and demolition and
24 currently proceeding with the plan to obtain water
25 from the Columbia River. That's ongoing.

1 Thank you, Chair and Council. That's the
2 end of our report.

3 CHAIR DREW: Thank you.

4 The Chehalis Generation facility?

5 MR. MILLER: Good afternoon, Chair Drew
6 and councilmembers and Staff. I'm Mark Miller, the
7 plant manager at the PacifiCorp Chehalis Generation
8 Facility.

9 I have no nonroutine comments this month.
10 Are there any questions?

11 CHAIR DREW: Any questions? Thank you.

12 Our court reporter has asked for those who
13 are listening on the phone if you could mute your
14 phones because we're getting a lot of static and then
15 it's difficult to hear. Thank you.

16 I am on Grays Harbor Energy Center.

17 MR. SHERIN: Good afternoon, Chair Drew
18 and councilmembers. Chris Sherin, plant manager at
19 Grays Harbor Energy Center.

20 The only nonroutine thing I'll bring to
21 your attention is under 2.2 from our operational
22 note -- excuse me, 2.1 from our operational notes,
23 the -- it mentions that our final engineering report
24 addendum to our NPDES permit was resubmitted in a
25 different format to EFSEC. Since this was submitted,

1 that has been approved, so that process continues on.

2 Any questions?

3 CHAIR DREW: Any questions?

4 MR. SHERIN: Thank you.

5 CHAIR DREW: Thank you.

6 Tesoro Savage Vancouver Energy

7 Distribution Terminal Project update?

8 MR. POSNER: Good afternoon, Chair Drew,
9 councilmembers. Steven Posner, EFSEC manager. Just a
10 quick update.

11 The governor made his decision on
12 January 29th. That decision was that he agreed with
13 the EFSEC recommendation, so that started the 30-day
14 deadline for filing petitions, and that deadline is
15 February 28th.

16 And that's all I have.

17 CHAIR DREW: Any questions? Thank you.

18 Desert Claim Project update, Mr. LaSpina?

19 MR. LASPINA: Good afternoon, Chair Drew
20 and councilmembers. I'm here today to provide you
21 with an update for the Desert Claim Wind Project.

22 EFSEC issued the Desert Claim site
23 certification agreement to the certificate holder on
24 February 1st, 2010. Construction on the project has
25 not commenced.

1 The certificate holder has recently
2 informed EFSEC staff of its intent to submit a request
3 to amend the SCA in the next ten days or so. Staff
4 will keep you informed on future developments.

5 Thank you.

6 CHAIR DREW: Are there questions? Thank
7 you.

8 The Columbia Solar Project, I wanted to
9 start by walking through councilmembers on the
10 information that is in the packet and the order we're
11 going to walk through our discussion on this item
12 before us today.

13 The first item is a letter from the
14 applicant, TUUSSO Energy, requesting an extension,
15 which we will take up first to consider that.

16 Following that, we will have a project
17 update on the SEPA process by Ms. Kidder, and then
18 walking through the memo from Ms. Bumpus on the
19 expedited processing options before us.

20 You have in your packet two motions that
21 were drafted by Staff. This was -- this is for
22 discussion purposes only because it follows the memo.
23 And so those are motions that would go with the two
24 options outlined in the memo.

25 The council itself can take up any motion

1 or not take up a motion at this point, so I wanted to
2 make that really clear before we got into the
3 conversation. But this was just so that, if we wanted
4 to, we had something to work with, and we can also
5 obviously change the language of those as well. So I
6 want to make that clear as we walk through this.

7 And we also have -- which I believe that
8 you received last week -- the final Department of
9 Commerce Land Use Analysis Report along with the
10 Columbia Appendix A, which has the Columbia Solar
11 Project maps. And I think that covers our documents
12 for this.

13 So we will start with -- are there any
14 questions? Okay. So we will start with the request
15 for extension on the TUUSSO Energy letterhead, and the
16 applicant is requesting an extension for 60 days
17 through the April 2018. I don't know if it's exactly
18 60 days, but through the scheduled April 2018 council
19 meeting to consider the expedited permitting.

20 We are required under statute to allow for
21 120 days to consider unless the applicant requests an
22 extension. So what I would like to know is if there
23 is a motion to approve the extension.

24 MR. MOSS: Chair Drew, I would move that
25 we approve the request of the applicant to extend the

1 period for consideration as indicated in the letter,
2 dated February 12, 2018, over Mr. Evans' signature.

3 MR. ROSSMAN: I'll second that.

4 CHAIR DREW: Thank you. Any questions or
5 comments?

6 All those in favor, signify by saying

7 "Aye."

8 MULTIPLE SPEAKERS: Aye.

9 CHAIR DREW: All those opposed? Motion
10 carries.

11 Okay. Now we will move into the project
12 update.

13 MS. BUMPUS: Thank you, Chair Drew. So at
14 this time Patty Betts is going to do a brief
15 introduction to SEPA. We have new councilmembers on
16 the EFSEC panel, and we thought it would be a good
17 idea to just do an overview very quickly of EFSEC and
18 SEPA. And then Ami Kidder will proceed with an update
19 on the SEPA progress.

20 MS. BETTS: Good afternoon, Chair Drew and
21 councilmembers.

22 The State Environmental Policy Act
23 requires agencies with jurisdiction over a proposal to
24 consider the environmental consequences of that
25 proposal as part of their agency decision making. The

1 SEPA environmental review process identifies those
2 environmental consequences.

3 SEPA also helps to improve proposals
4 environmentally through applicant changes to their
5 proposal as they respond to information developed
6 during the SEPA environmental review process. And it
7 also helps to improve proposals through additional
8 agency-imposed mitigation identified during the SEPA
9 review process that responds to identified impacts,
10 and in the case of an EIS, through alternatives as
11 well.

12 It's important to understand that SEPA
13 fills the gaps in regulations. Regulatory gaps such
14 as existing regulations may not deal with all the
15 impacts to an environmental resource, or there may not
16 be any regulations for protecting some resources, say,
17 recreation, for example.

18 Or regulations can be out of date. They
19 may be -- there may be new information about impacts,
20 there may be new impacts, or there may be new
21 technologies that were not known or contemplated when
22 a regulation was created. The authority to deal with
23 those gaps is provided through SEPA.

24 It is a supplemental authority to all
25 agencies with jurisdiction to impose conditions that

1 are not within their existing authority. It is called
2 SEPA's substantive authority or SEPA supplemental
3 authority.

4 One agency is identified to conduct a
5 neutral and objective SEPA review process for all
6 local and state agencies with jurisdiction over the
7 proposal. That agency is known as the lead agency.
8 The SEPA duties of the lead agency are independent of
9 the agency's other responsibilities.

10 SEPA requires the lead agency to identify
11 a responsible official who is responsible for
12 implementing the lead agency's duties under SEPA.

13 A decision-maker's duties are different
14 from the responsible official's duties.

15 Decision-makers have important responsibilities at the
16 end of the SEPA process. One is to use the
17 environmental information produced by the responsible
18 official during SEPA along with other information
19 considerations that they normally use as part of their
20 decision-making, or to consider -- and I should say to
21 consider using SEPA's supplemental authority to impose
22 additional conditions on a proposal, or in the case of
23 an EIS, to deny a proposal based on identified
24 significant adverse environmental impacts.

25 I'm going to just talk a little bit about

1 the threshold determination. After reviewing the
2 checklist and any additional required information, the
3 lead agency makes a threshold determination whether
4 the proposal would result in significant or
5 nonsignificant impacts. These identified impacts are
6 those that would remain once existing regulations are
7 applied.

8 Because a proposal can have an impact to a
9 broad range of environmental resources, the lead
10 agency can and often does use other agencies with
11 expertise to assist with the environmental review and
12 identification of impacts.

13 As part of that impact analysis, the lead
14 agency is also expected to consider if mitigation is
15 available that would reduce identified impacts.
16 Although significant impacts are the priority for
17 identifying mitigation, it can be appropriate and is
18 common to explore options for mitigating
19 nonsignificant impacts as well.

20 There are three threshold determinations.

21 The Determination of Nonsignificance,
22 commonly called the DNS, is issued when the
23 environmental review shows no significant impacts even
24 without SEPA-identified mitigation. That DNS may
25 identify -- although that DNS may identify mitigation

1 for nonsignificant impacts.

2 A Mitigated Determination of
3 Nonsignificance, which is typically called an MDNS, is
4 issued when mitigation is needed to reduce significant
5 impacts to nonsignificant levels. That mitigation
6 must be identified in the MDNS and the decision-makers
7 are then responsible to consider requiring that
8 mitigation as conditions in an approval using their
9 SEPA supplemental authority.

10 The third threshold determination is a
11 Determination of Significance, which results in the
12 preparation of an EIS.

13 For a comment period, many Determinations
14 of Nonsignificance and all Mitigated Determinations of
15 Nonsignificance require a 14-day public comment
16 period. Once that comment period is done, the lead
17 agency reviews all comments received and considers all
18 the substantive comments such as those related to
19 identifying impacts to the environmental resources
20 covered by SEPA or related to mitigation for those
21 impacts. Those are the substantive comments.

22 Written responses to comments are not
23 required, but the lead agency would be expected to be
24 able to explain how those substantive comments were
25 considered.

1 Anyway, that seemed to be perhaps maybe
2 some of the more pertinent aspects of SEPA that you
3 folks might want to hear about, so that ends my short
4 discussion of SEPA.

5 CHAIR DREW: Are there any questions? Are
6 there any questions? Thank you.

7 MS. KIDDER: Good afternoon, Chair Drew
8 and councilmembers. I just have a few updates for
9 you.

10 Since the last meeting, EFSEC staff
11 participated in a site visit with the applicant and
12 their contractor as well as our contact from the
13 Department of Commerce. We visited all five proposed
14 sites to make sure we understood the layout and some
15 of the details of the sites.

16 We have also received an updated ASC and
17 SEPA checklist as well as other support materials from
18 the applicant on January 26th, which is available on
19 the EFSEC website to view.

20 We have asked our contractors at other
21 agencies to review these materials, and we requested
22 formal consultation per WAC 197-11-335 and 197-11-550.

23 We are coordinating with fellow agencies
24 to identify mitigation measures appropriate for each
25 proposed site while working towards a SEPA threshold

1 determination.

2 Are there any questions on the progress of
3 the SEPA analysis?

4 CHAIR DREW: Thank you.

5 MS. BUMPUS: Okay. Thank you.

6 Good afternoon, councilmembers and
7 Chair Drew. So the next thing we'd like to talk about
8 is the Staff memo that Chair Drew mentioned earlier
9 that's in your packets. Hopefully you've had a chance
10 to review that.

11 So as councilmembers are already aware,
12 TUUSSO has requested expedited process for their
13 application. The memo that was prepared by Staff
14 contemplates eligibility of the project as proposed,
15 and it talks about the two qualifiers for expedited
16 process, which include a land use consistency
17 determination, that the project is consistent, and
18 also that impacts that are identified can be
19 mitigated.

20 Ami's already talked about the status of
21 the threshold determination. The memo also talks
22 about the work that's been done to develop mitigation
23 measures and that work continues now.

24 So what I want to hone in on is the land
25 use consistency discussion that the memo covers, and

1 basically it talks about some of the ways that
2 additional information can be brought in for making a
3 land use consistency determination.

4 It acknowledges that EFSEC has already
5 held a land use consistency hearing. We extended the
6 comment period for -- or -- well, left the record open
7 for an additional 10 days to receive additional input
8 about land use consistency issues.

9 We did receive more information and it
10 contemplates these other -- this other possibility
11 that there could be more information that the council
12 would want before making a consistency determination.
13 And so it talks about how that could -- how additional
14 information could be brought in.

15 One option that it talks about is that we
16 could ask for additional information, solicit
17 additional comment during the -- comment during SEPA
18 to ask for more input about land use consistency
19 issues specifically.

20 So it wouldn't be two public comment
21 periods. It would be one public comment period for
22 14 days -- Patty, correct me if I'm wrong -- and we
23 would basically ask for input on the threshold
24 determination document, which would propose mitigation
25 measures for the five sites, but we would also ask for

1 information about land use consistency issues. That
2 information could be provided to the council before
3 making a land use consistency determination. I
4 believe that's Option B.

5 Option A contemplates, you know, the
6 possibility that the council has gathered enough
7 information for the land use consistency determination
8 via the land use hearing and the testimony and public
9 comment we received and are essentially ready to make
10 a consistency determination.

11 And if that were the case, we would be
12 able to proceed with finalizing the SEPA threshold
13 determination, and after that we could then consider
14 the eligibility of granting expedited process.

15 CHAIR DREW: Are there any questions for
16 Staff? Okay.

17 Any comments from councilmembers about the
18 issue in front of us, being the issue of expedited
19 processing and the questions posed in terms of have we
20 received sufficient information through our process to
21 date to make a land use consistency determination?

22 Mr. Elliot?

23 MR. ELLIOT: I guess I'll start off.

24 I think that the different material we've
25 received in our packets show that there is a certain

1 amount of concern with regards to the land use and the
2 preemption of the local jurisdiction's land use
3 policies.

4 I think the Department of Commerce brought
5 up a big issue with respect to the view sheds and the
6 rural character. They belabored that at some point.
7 I believe that the lands of significance for the
8 Kittitas County, whether they're the first-class
9 farmlands or whether they're being utilized or if
10 they're unsuitable for agriculture [sic].

11 And another issue is that the working
12 group in Kittitas County has about finished their work
13 on coming up with the policy for the Board of County
14 Commissioners and the County Commissioners themselves
15 have sent out a letter to EFSEC and to the public
16 saying that the -- what is the general policy that
17 they wanted to be followed with respect to
18 agricultural lands of significance.

19 That all being said, I think that the
20 consensus within the County, I believe, is that they
21 aren't inherently opposed to the expedited process as
22 long as that expedited process includes the ability of
23 the County to be at the table with respect to the
24 individual sites.

25 There's also consensus that it was a

1 mistake to bundle all the sites together as a single
2 project since they are diverse sites and they have
3 different character.

4 So with that being said, I think that
5 there's a feeling at home that working a little longer
6 to come up with a good solution that includes the
7 County in that decision-making process with respect to
8 the lands of significance, the view sheds and a few
9 other things, that something probably can be worked
10 out. So that would be a starting point.

11 CHAIR DREW: Thank you, Mr. Elliot.
12 Mr. Rossman?

13 MR. ROSSMAN: Yeah. Thank you.

14 So I'm looking at this, and I guess what's
15 in front of us is possibly making a determination on
16 land use consistency or --

17 MR. ELLIOT: Is your microphone on?

18 MR. ROSSMAN: I think so. There we go.
19 Sorry. The red light is toggling on and off. There
20 we go. Thank you. Yeah.

21 So I'm -- on land use consistency, I guess
22 I'm seeing -- I'm seeing two big issues. One is the
23 County's moratorium and whether that has any effect on
24 our decision-making, and the other is issues
25 surrounding sort of the five different sites and the

1 fact that they would be a conditional use rather than
2 allowable use under the permit.

3 And what I'm hoping for is a little bit
4 more clarity on what the channels are -- if we do make
5 a determination that it is consistent at a high level
6 with the County's land use plans and zoning
7 regulations, what are the available channels for us to
8 learn more about the types of things that would be
9 discussed at a conditional use hearing if the County
10 were permitting it so that we would, if we do move
11 forward and ultimately recommend approval, be able to
12 develop those kinds of site-specific conditions that
13 would take into account rural character, impact on
14 farmland, view shed and those sorts of things.

15 CHAIR DREW: I believe Ms. Bumpus has a
16 response for you.

17 MS. BUMPUS: So one of the things that the
18 memo talks about, not specifically in the options that
19 are outlined, but it does talk about soliciting
20 additional information, and it also talks about that
21 if there is information -- it may be more implied, but
22 if there is information that we -- that's proffered
23 through the comment on the MDNS, let's just say we get
24 input from the local government about some of the
25 conditions that Councilmember Elliot is talking about,

1 there's nothing that precludes us from using that
2 information to look at impacts from the proposal.

3 So that is one option is that, if there is
4 additional information gathered via the SEPA process
5 and we hear concerns about specific conditions on
6 specific sites, there's nothing that would prevent us
7 from looking at that input and seeing if we could
8 develop measures to condition the proposal to mitigate
9 for impacts.

10 The other thing that is perhaps a bit more
11 implied in the memo is that the council, even where
12 expedited process is granted, they can do additional
13 studies. You're not required to, but this is another
14 option that's entertained in the memo where, if more
15 information's needed to develop a recommendation,
16 specific studies could be done to perhaps answer
17 specific questions that are not answered.

18 CHAIR DREW: And am I correct in saying
19 that if the council makes a high-level land use
20 consistency determination that it is inconsistent --
21 and it is consistent and in compliance with land use
22 or zoning ordinances, that the council still has an
23 opportunity to take that additional input to condition
24 the recommendation going forward? So either pathway
25 we have opportunities perhaps?

1 MS. BUMPUS: That's my understanding.

2 CHAIR DREW: Mr. Elliot?

3 MR. ELLIOT: So if there was an approval
4 and additional studies were required and we follow
5 that path, how would -- because once the approval is
6 given, is it a conditional approval or is it an
7 approval? Is it conditioned on something in the
8 future, or is it an approval kind of with a hope of
9 something happening in the future?

10 CHAIR DREW: If we could have our legal
11 counsel walk through the steps of, if the council were
12 to make the determination of consistency, what are the
13 next steps then?

14 MR. THOMPSON: So -- right. A
15 determination of consistency and then I would imagine
16 to grant expedited process? I think that's the
17 question.

18 CHAIR DREW: Let's put that theoretical
19 idea on the table, yes.

20 MR. THOMPSON: Right. I think -- I think,
21 as Councilmember Elliot suggests, you could do so
22 conditionally. You could grant expedited process
23 conditionally and to specify some other method of
24 gathering information.

25 CHAIR DREW: So we would -- my

1 understanding is that if we chose to say -- to move
2 that the project is consistent and in compliance, we
3 have another threshold to achieve, which is the SEPA
4 process mitigation -- mitigated determination of
5 nonsignificance. And that, following that, we would
6 have an order for expedited processing. And in that
7 order, we -- so we wouldn't do the expedited
8 processing order today because we haven't achieved the
9 mitigated determination of nonsignificance.

10 And then further, we would have the
11 opportunity, when we make a recommendation to the
12 governor, to add conditions at that point as well; is
13 that correct? I'm sorry.

14 MR. THOMPSON: I'm sorry. I was
15 consulting with my colleague right when you were
16 speaking. Could you repeat the last part of your
17 question?

18 CHAIR DREW: So step one, make a
19 consistency determination; step two, which we cannot
20 do today, is to make -- to agree to the expedited
21 processing; step three would then be recommendation to
22 the governor. At each of these steps, we could add
23 conditions to any of those orders.

24 MR. THOMPSON: Well, let's see. So --
25 when I originally answered the question, I was

1 thinking of it in terms of just granting expedited
2 processing. I mean, I think -- well, consistency, I
3 believe, I'd have to consult your rules, but I think
4 that has to be -- that does specify that it has to be
5 done by order. It seems to me that's an either/or
6 proposition.

7 CHAIR DREW: Right.

8 MR. THOMPSON: It's either consistent or
9 it's not consistent. I'm not sure how you would do
10 that. You would find that conditionally. The
11 recommendation to the governor, you -- if you were to
12 recommend approval of the site certification, you
13 include a site -- draft site certification agreement
14 which includes conditions on -- is supposed to include
15 conditions to serve various purposes. So -- so
16 conditions are included there.

17 I think for purposes of what we're talking
18 about now -- as I understand it, the question is,
19 could expedited process be granted but with strings
20 attached, meaning there would be some specification by
21 the council of some other information-gathering
22 process other than a general adjudication or -- and a
23 study, and I think you could do that.

24 CHAIR DREW: Thank you.

25 Did that help clarify?

1 MR. ELLIOT: Well, just -- you know, I
2 want to be clear. In listening to the working
3 groups -- I haven't participated, but I've listened to
4 the Kittitas County working groups -- that there are
5 certain sites that are part of this application, and
6 keeping in mind that we have five separate sites and
7 they're spread out across the -- pretty much the
8 bottom of the valley, and each site has its own
9 specific issues, that the -- certain sites, there's no
10 problem, I think, within the county, is those are
11 appropriate and fall within the guidelines of what are
12 going to be the working groups' recommendations.
13 There are a couple that don't.

14 And so in that conditional process, is
15 there the ability to say something along the lines of
16 an alternative analysis to the site being proposed
17 that's in the same geographical area or perhaps even
18 the same substation that has the capacity to take that
19 power? And would that be -- would there be some way
20 to introduce that into the process so that it is kind
21 of a win-win where we can move along, get this thing
22 going?

23 I don't think there's a general distaste
24 for the solar projects. It's a site-specific issue,
25 and I think that's just what needs to be kind of

1 fleshed out so...

2 MR. POSNER: Chair Drew, if I could just
3 respond.

4 Essentially, to attempt to answer your
5 question, I would say that's probably not something
6 the council would do because we're -- we have an
7 application for site certification before us, and that
8 application specifies the specific locations where the
9 different sites are to be located. So I don't believe
10 that it's the Council's role to sort of do an
11 alternatives analysis and say this -- this particular
12 site would not be acceptable, but it might be
13 acceptable over here.

14 We have to -- the council has to look at
15 the application that's before us, so I think that the
16 process is basically, we have the application, they're
17 requesting that we do an expedited review of the
18 application. So that's what needs to happen first,
19 the decision on the expedited processing.

20 And then if the council decides that
21 expedited processing is appropriate, which would mean
22 that -- you know, that the decision has been made that
23 the project is consistent, we can gather more
24 information through various means to inform the
25 recommendation that goes to the governor, which could

1 include information to address issues that the County
2 has, you know, concern with, or issues that the -- you
3 know, we have information showing that the County has
4 issues with particular things related to the
5 conditional use criteria. We have opportunities to
6 try to address those in developing the recommendation.

7 But I think at this point to start, like,
8 making -- sort of making modifications to the
9 application or saying that we want to look at
10 alternatives before we -- before the council makes a
11 decision on expedited processing, I'm not sure that
12 that would be appropriate or would actually be -- fall
13 within our regulatory purview.

14 MR. ELLIOT: Well, I guess my two comments
15 would be, one, that that process of an alternative
16 would be that of the applicants, not necessarily that
17 of the council here, and the idea of trying to get
18 everybody to the same -- on the same page. And most
19 of that, I think, is generated as a result of a
20 decision to bundle five disparate sites into one
21 application. And I would guess that that's probably
22 not something that's going to happen again because of
23 the obvious problems of individual sites.

24 So it would be, I think, in the interest
25 of the applicant to look at their selection process to

1 see if there were alternatives that -- and then the
2 council would look at whether or not they would be
3 willing to find substitutions for those sites that
4 were objectionable, but still in the same
5 neighborhood, that might be better suited for the
6 County, and as far as the type of land and the
7 viewsapes that are involved.

8 MR. MOSS: If I may, I think it's a point
9 well taken that the applicant has the ability to file
10 an amended application, I believe, just about at any
11 point in time it chooses to do so, and so I think
12 you're correct in what you say.

13 I don't know that it would be appropriate
14 for us to be, at this juncture, certainly, saying, you
15 know, do this, change this, no, I agree with you, it
16 would not be appropriate.

17 But I think our -- what our obligation --
18 we have several obligations. One of them is that we
19 must take into account the concerns of the local
20 community as reflected through its ordinances and also
21 as reflected through the -- what we hear at our public
22 comment hearings, for example, what we may have
23 received in writing from people who are interested in
24 these -- this project, and what we may yet receive.
25 And, of course, the SEPA process is another piece of

1 the information gathering that we engage in as we move
2 toward making decisions.

3 Expedited process or not, that's a process
4 decision. Substantive decisions -- whichever way we
5 go, whether it's expedited or some other avenue, the
6 substantive decisions will follow the process
7 decisions.

8 And I think the -- Mr. Posner, you touched
9 on the point, and I believe Ms. Bumpus perhaps as
10 well, at the stage where we send a recommendation to
11 the governor, we have to develop a site certification
12 agreement. And typically the site certification
13 agreement will have in it conditions concerning the
14 scope of the project and how it's to be implemented
15 and so forth.

16 So I think the important thing for us is
17 to be sure as a council that we set up an environment
18 in which these decisions can be made in an efficient
19 and correct manner, and give the County the
20 opportunity to work with the applicant and with the
21 council.

22 There's nothing wrong with a settlement
23 being brought to us, in a sense. I mean, this is a
24 process that parties who have divergent interests can
25 resolve those interests through whatever means.

1 Perhaps they even might employ a facilitator or
2 something to -- to get to a common ground.

3 So I want us to make -- take such steps as
4 we need to take today, and perhaps in a subsequent
5 meeting, to create that environment. And I think
6 we've got an outline here that would perhaps offer us
7 alternatives to do that. I'm not sure which one I
8 fall on just yet, but anyway, that's my thought on the
9 subject.

10 CHAIR DREW: Thank you.

11 Other thoughts, Mr. Stephenson?

12 MR. STEPHENSON: Thank you, Chair Drew.

13 A timing question. Option B adds a 14-day
14 opportunity during the SEPA comment period. Is that
15 adding 14 days to the process, or is it just adding
16 the ability to continue this land use receipt of
17 questions during the SEPA process?

18 MS. BUMPUS: It doesn't add 14 days. It
19 would be concurrent. We would solicit for input on
20 the land use issues at the same time that we solicit
21 for input on the mitigation measures in the threshold
22 determination document. So we wouldn't be adding any
23 extra days.

24 MR. STEPHENSON: Thank you.

25 MR. MOSS: So we would have everything

1 before us that we need for a decision with respect to
2 land use consistency, and perhaps additional
3 information that would inform our more substantive
4 efforts down the road without expanding the schedule?

5 MS. BUMPUS: Correct.

6 MR. MOSS: All right.

7 So I think -- I'm, again, not sure which
8 one that puts me on, but I think that makes a lot of
9 sense, to get all the information that we can, gather
10 the information we can before we make any final
11 decisions, process or otherwise.

12 And so I don't know. I'm -- perhaps I'm
13 pushing a little bit in the direction of saying, yes,
14 let's put out that notice of the comment period on the
15 SEPA process, and include in that some direction that
16 parties or persons who are interested can also provide
17 us with additional information concerning land use,
18 and that way we have a full paper record.

19 We don't -- I don't think we need to have
20 further live hearings. I don't think that would
21 advance the game significantly, if at all. But there
22 may be some additional thought/comment that could be
23 presented to us by interested persons, including, of
24 course, the County -- officials from the County.

25 So I favor process that's inclusive, and

1 it seems to me that that is one that is so...

2 CHAIR DREW: Am I correct in saying that
3 also the Staff could meet with the County during this
4 time period, as well as perhaps even have
5 conversations with the citizens group to get
6 information on their thoughts and ideas?

7 MS. BUMPUS: It is possible for us to do
8 that. We have met with the local government on past
9 projects. We do so with -- yeah, we've done that with
10 other projects. I don't see any reason why we could
11 not do that.

12 CHAIR DREW: Mr. Rossman?

13 MR. ROSSMAN: So I'm inclined to agree
14 with Mr. Moss, but I have a couple questions, and I
15 think one of them is for Staff, and then do we have
16 Scott Kuhta here who did the Commerce report?

17 MS. BUMPUS: We do.

18 MR. ROSSMAN: Could I trouble you to come
19 up so I could ask you a couple questions, Scott?

20 MR. KUHTA: Good afternoon.

21 MR. ROSSMAN: Good afternoon. And I'm
22 realizing I don't actually -- I'm not confident I'm
23 pronouncing your last name --

24 MR. KUHTA: It's Kuhta.

25 MR. ROSSMAN: Kuhta. Sorry about that.

1 K-U-H-T-A?

2 MR. KUHTA: Correct.

3 MR. STEPHENSON: Can you spell it for the
4 court reporter?

5 MR. KUHTA: I just did.

6 MR. STEPHENSON: Oh, you did.

7 MR. ROSSMAN: So thank you.

8 And we -- we are both from Commerce, but
9 we haven't talked about this project at all; is
10 that --

11 MR. KUHTA: No, I'm in the Spokane office
12 anyway, so we don't really run into each other in the
13 hallways.

14 MR. ROSSMAN: Okay.

15 So to me, a big sticking point in
16 understanding whether to go forward with expedited
17 processing was that these would be conditional use
18 under the code. But I've learned that EFSEC in the
19 past has found consistency even for something that
20 would be under a conditional use, and that the later
21 elements of the process after that determination is
22 where information can come in that would flesh out
23 what those site-specific criteria would be.

24 So the question I have is, I know that
25 there's two different zoning categories that these

1 five sites fall into, but it seems like there's just
2 one set of conditional use criteria. So I'm wondering
3 about how those get applied -- how those would get
4 applied differently in the different zoning classes.
5 Where's the point -- are they looking at anything
6 different in the code or in rural character, or would
7 the -- running through those conditional use items be
8 the same whichever zone you were in at that point?

9 MR. KUHTA: Generally, the conditional use
10 criteria would be applied to both sites, and the two
11 zone categories, the rural working and the commercial
12 ag, are both under the rural category, but the
13 conditional use criteria would be applied
14 individually.

15 So in this scenario, if these were to be
16 brought to the County, these would be five individual
17 conditional use permits, essentially. I would assume
18 that the County could, similar to this process,
19 hold -- you know, consider them at one kind of
20 process. But they would consider each site uniquely
21 and independently and then apply the criteria to each
22 site.

23 So further guidance would be provided by
24 the policies in the comprehensive plan to determine
25 the appropriate -- appropriateness of that use in that

1 zone in specific locations.

2 Does that help?

3 MR. ROSSMAN: I think so. And so that's
4 the -- I want to say it's maybe Policy 8 on the rural
5 character; is that right? Or the rural element? Or
6 GPO 8 point -- there's a list of them in your memo.

7 So those would be -- those would be
8 analyzed under the conditional use process?

9 MR. KUHTA: Yeah. So I believe this is on
10 page 10 of the memo, item number -- so, let's see --
11 yeah, well, it's on page 10. So the -- all of these
12 review criteria would apply to any conditional use, as
13 I recall.

14 The proposed use is essentially -- well, I
15 mean, it's got a list of them there. And then there's
16 specific conditions for rural and resource lands.
17 That's item 7.

18 So -- and these specifically say [as
19 read], ...is consistent with the intent, goals and
20 policies and objectives of the Kittitas County
21 comprehensive plan, including the policies of Chapter
22 8, Rural and Resource Lands, preserves rural
23 character, requires only rural government services and
24 does not compromise the long-term viability of
25 designated resource lands.

1 So really what those criteria are kind of
2 blending are the two issues of rural character and
3 preserving resource lands, and you have a zoning
4 category that's a rural category, which is your
5 working rural -- rural working, and then you have a
6 category that's preservation of long-term commercial
7 ag and long-term -- or agriculture as a long-term
8 commercial significance.

9 So these criteria sort of, kind of speak
10 to both of those issues. So if you have -- if you
11 have a property that's -- that's not commercial ag
12 property, then you kind of ignore the designated
13 resource land criteria on that property.

14 MR. ROSSMAN: Ah, okay. Thank you.
15 That's helpful. That's the piece I wasn't getting.

16 MR. KUHTA: Okay.

17 MR. ROSSMAN: Thank you.

18 CHAIR DREW: Ms. Bumpus, you look like you
19 want to add something.

20 MS. BUMPUS: Well, I was just going to
21 ask, are there any other questions on the memo or the
22 options?

23 MR. ROSSMAN: I actually do have one more.
24 I'm sorry.

25 CHAIR DREW: Go ahead.

1 MR. ROSSMAN: When we're looking at the
2 County's memo that they submitted on this, on the
3 point of sort of expedited processing and conditional
4 use, they're very emphatic that sort of one of their
5 objections is that there would not be a hearing at
6 which those conditional use issues are fleshed out
7 further.

8 And recognizing that Councilmember Moss
9 was suggesting possibly just getting in writing -- if
10 we do -- if we do go an expedited direction, is there
11 an opportunity to have another land use hearing to
12 look into the site-specific, conditional use-type
13 restrictions on the parcels, or would it have to be
14 just in writing or through studies or reports?

15 MR. POSNER: I don't believe there's
16 anything that precludes the council from having a
17 hearing or doing whatever -- essentially whatever they
18 feel is necessary to gather more information to inform
19 their recommendation.

20 So, for instance, if there was a feeling
21 or a need -- if there was a need for more information
22 to inform the recommendation relative to the
23 individual sites that constitute the project, to try
24 to address some of the issues that may vary from site
25 to site, I don't believe there's anything that

1 prevents the council from getting new information,
2 whether it be through Staff going out and meeting with
3 appropriate individuals, whether it be the County or
4 other professionals, or having another public comment
5 period or a hearing.

6 I mean, we haven't -- we haven't done this
7 before, and this -- for a new project, expedited
8 processing, so -- but I think there's flexibility in
9 how we get to that end point of making the
10 recommendation to the governor.

11 MR. ROSSMAN: So that being the case, I'm
12 in agreement. I'm inclined to move forward with an
13 option that lets us continue to process this as an
14 expedited permit.

15 But just thinking about some of the
16 site-specific things that we heard when we were
17 hearing from an adjacent golf club -- golf course
18 owner, you know, other adjacent, adjoining land uses
19 that might have really, really specific input to give
20 us, I think finding another opportunity for public
21 comment, that open forum, website-specific criteria
22 we'd like in the future. So that's why I think I'm
23 comfortable either with Option A or B as presented
24 here.

25 CHAIR DREW: Well -- and I do believe

1 that, Ms. Bumpus, you probably are going to say that,
2 in the SEPA process, which we haven't yet seen the
3 draft SEPA document, that some of those issues may
4 already be addressed.

5 MS. BUMPUS: Yes, that's possible. And as
6 I talked about earlier, by putting that document out
7 for public input, other agencies, the local government
8 can provide additional information to help us refine
9 the mitigation measures that are already in there and
10 help us identify new ones. And if we were to get
11 specific information, scientific information, I mean,
12 we can contemplate all of that and use that to refine
13 the MDNS.

14 CHAIR DREW: And when do you expect the
15 draft document to be sent out for public comment?

16 MS. BUMPUS: Our timeline right now is the
17 end of this month. We're trying to get that
18 finalized, as I mentioned -- well, actually, I think
19 Ms. Kidder mentioned we're still coordinating with
20 some of the agencies to get additional input, but our
21 target is to get that document out by the end of
22 February.

23 CHAIR DREW: Which is a week from today --

24 MS. BUMPUS: Correct.

25 CHAIR DREW: -- more or less.

1 Okay. Mr. Elliot?

2 MR. ELLIOT: Would the announcement of
3 that comment period also include the provision that
4 the comments could be open -- open-ended?

5 CHAIR DREW: Would you like to answer that
6 open-ended --

7 MR. ELLIOT: Well, meaning that local
8 government could make issues with respect to zoning or
9 comprehensive plan issues along with the issues of
10 environmental issues.

11 MS. BUMPUS: Yes. And that's where we
12 would put out two notices that would solicit input on
13 two different things. So in an ideal world, if there
14 were comments specific to land use plans, zoning
15 ordinances, those would be in response to that notice,
16 and then specific comments on the SEPA document would
17 be identified as such so that we aren't trying to find
18 within a comment submission which issue they're
19 responding to.

20 CHAIR DREW: Ms. Bumpus and I have
21 actually talked through this scenario, because we also
22 want to make it very easy for the public to respond,
23 and so nothing would be -- everything would be
24 considered as it comes in, even if it was in the wrong
25 bucket. We would set up a website comment where you

1 could do both, but you could also submit one letter,
2 for example, and have both issues addressed.

3 It would be nice to have them set aside as
4 separate sections, but we did talk through how we
5 could make this easy for people as well because,
6 putting on our citizen hats, you know, we want to make
7 sure that all the comments would be respected.

8 MS. BUMPUS: Yes.

9 CHAIR DREW: Mr. Stephenson?

10 MR. STEPHENSON: Thank you, Chair Drew.

11 This is for counsel. Setting up a dual
12 process like this, are you worried about any precedent
13 setting?

14 MR. THOMPSON: I would say no. I think
15 this is a pretty unique situation, so no.

16 MR. MOSS: I don't think we can go wrong
17 setting up a rational and deliberate process that will
18 get us the information that we need to make the
19 decisions we need to make, and I think that's what I'm
20 hearing people describe. And I think perhaps -- I may
21 be mistaken here, but perhaps one of these motions
22 captures that, probably motion [sic] B.

23 CHAIR DREW: Would you like to make a
24 motion?

25 MR. MOSS: I would, I think. I think this

1 is nicely worded, and if it -- of course, if somebody
2 wants to offer an amendment, they certainly could do
3 so.

4 MR. ROSSMAN: Just a moment for a little
5 more discussion. I mean, I -- personally I -- I don't
6 know what additional information we would need to make
7 a consistency determination at the broad level. But
8 conversely, I think we would potentially need a lot
9 more information to really understand all the
10 site-specific criteria that would need to be put in
11 place.

12 So I would actually be inclined to go with
13 Option A here, I believe, but then with a direction to
14 the future that, as we're moving forward, assuming
15 that the SEPA does come back with an MDNS and we do
16 move forward with expedited process, that we have
17 additional comment opportunities at that point in
18 building in the criteria for a site-specific
19 recommendation.

20 And if we don't go expedited, then there
21 will be the adjudicative process and we can be
22 efficient that way. But if we do go expedited, then
23 that's the point I think the additional information
24 would be most helpful.

25 And so I would be concerned if we're -- if

1 we're dealing with Option B with the additional
2 14 days, my --

3 MR. STEPHENSON: Option B is --

4 MR. ROSSMAN: Sorry. With the additional
5 time to comment on land use consistency, that the
6 comments that we would get would be encouraging us not
7 to make a determination on consistency, or encouraging
8 us to determine that it wasn't consistent rather than
9 focus on more information that would actually help us
10 with the site-specific approval recommendations.

11 MS. BUMPUS: Excuse me, Councilmember
12 Rossman, just to make sure that I provide
13 clarification here, we wouldn't -- we would have the
14 14-day public comment period under either option as
15 it's required under SEPA.

16 MR. ROSSMAN: No, I understand that.

17 MS. BUMPUS: Okay.

18 MR. ROSSMAN: Okay. Sorry.

19 But my concern is, what type of comments
20 will we be getting? And I feel like the gravamen of
21 the comments we'll be getting under Option B are
22 really going to be focused on encouraging us not to
23 determine consistency, and I don't know -- and I don't
24 know that I need a lot more information on that.

25 I feel like we've got good information on

1 that, and because we, as a council, have made this
2 determination about consistency at a much higher level
3 in the past and not dug into the conditional use
4 criteria, my concern would be that we wouldn't be
5 getting the kind of information that would be helpful
6 to us and we would be overly litigating that question.

7 MR. MOSS: Well, I appreciate your
8 comments, and I think I can't really find a basis to
9 disagree with you having sat on the council through
10 some of these earlier cases and having been part of
11 making those determinations at a high level.

12 So I think I started out a moment ago
13 saying I'm not really quite sure which one to choose
14 here. I think it's important that we give people an
15 opportunity to be heard, but it seems to me that they
16 will be heard either way.

17 So I can see some advantage, perhaps, to
18 at least testing the proposition whether the majority
19 of the council feels that we have sufficient
20 information, given our prior decisions, to go ahead
21 and make a determination of land use consistency and
22 then let the process be fleshed out as we have
23 discussed through the comment period on the SEPA side
24 that will also give us information we might need to
25 develop -- assuming down the road that there is a

1 decision to recommend approval to condition a site
2 certification agreement appropriately. That's the
3 main thing is to get the information. So I suppose
4 I'll just be quiet and see if somebody else makes a
5 motion.

6 CHAIR DREW: Mr. Elliot?

7 MR. ELLIOT: So if we're going to make a
8 decision on consistency, that means that the -- the
9 issues of rural character and the things that
10 Department of Commerce has brought up become moot
11 because it's consistent, and I'm not sure that I want
12 to make that determination yet. I'm not sure I oppose
13 that issue as far as the council is concerned, but I
14 think I may oppose it from the standpoint of what the
15 County is going to want to propose as far as how each
16 one of the particular sites would be mitigated to
17 bring it into compliance with something they'd like to
18 see. So I'm kind of torn there.

19 CHAIR DREW: Thank you.

20 Other comments, Mr. Rossman?

21 MR. ROSSMAN: Just to clarify, I wouldn't
22 see this as mooting those concerns at all. I would
23 see this approximately as doing our equivalent of
24 moving forward to the conditional use hearing where
25 those issues could really be discussed and fleshed

1 out, and not letting the broad consistency
2 determination -- having those in a conversation about
3 what those site-specific conditions should be rather
4 than at this level where we're talking about a broad
5 level is it or isn't it consistent.

6 MR. ELLIOT: Okay.

7 MR. MOSS: And I sense that we're
8 committed to that direction, so, as I said, I'll defer
9 to someone else to make a motion.

10 CHAIR DREW: You want to make a motion,
11 Mr. Rossman?

12 MR. ROSSMAN: If there's no further
13 discussion on this, I'd move that we move forward with
14 Option A, that the council find that we do not need
15 additional land use or zoning information to make our
16 high-level determination about consistency, and then
17 subsequently to make a decision about whether to
18 approve the expedited process.

19 And subsequently, we would direct Staff to
20 proceed with the SEPA 14-day public comment period,
21 and I would also add that we would direct Staff to
22 develop a plan in the event we were to move forward
23 with expedited processing for us to receive
24 information of the sort akin to what the County would
25 receive during a conditional use hearing as to

1 site-specific conditions and criteria.

2 CHAIR DREW: Okay.

3 MR. MOSS: I'll second that motion.

4 CHAIR DREW: Okay.

5 We have a motion on the floor and a
6 second. Is there discussion?

7 MR. MOSS: I think you did a nice job of
8 fleshing that motion out, Mr. Rossman. I appreciate
9 it.

10 CHAIR DREW: Other comments?

11 All those in favor, please say "Aye."

12 MULTIPLE SPEAKERS: Aye.

13 CHAIR DREW: All those opposed?

14 MR. ELLIOT: Abstained.

15 CHAIR DREW: Motion carries.

16 Thank you all very much for that good
17 discussion about the issues and the complexity of the
18 issues in front of us.

19 I think that we're all better off to have
20 that conversation here in public with points of view,
21 and I look forward to getting additional information
22 from the County and from the public as we move
23 forward.

24 And I would ask Staff to initiate
25 conversations with the County to make sure that we're

1 getting the information we need. I would also say
2 that information can come in through the SEPA public
3 comment period. Look for that to begin in
4 approximately a week from now.

5 MR. POSNER: I just wanted to -- just to
6 clarify, what we heard is that the council does find
7 that the project is consistent?

8 CHAIR DREW: Yes.

9 MR. POSNER: Okay. Thank you.

10 CHAIR DREW: Mr. Rossman?

11 MR. ROSSMAN: I think, actually, to be
12 technical, we decided we have sufficient information
13 to determine consistency, so we don't need that
14 additional comment period in parallel is my
15 recollection.

16 CHAIR DREW: Okay.

17 MR. ROSSMAN: And so I would assume that
18 we would be taking up consistency at our next meeting
19 based on the information we already have.

20 CHAIR DREW: Now I'm confused.

21 MR. THOMPSON: I'm confused too.

22 MR. ROSSMAN: Maybe we should have the
23 motion read back.

24 MR. POSNER: So what I heard -- if I may,
25 what I heard was that the council feels that they do

1 not need any more information to make a land use
2 consistency determination; however, I didn't clearly
3 hear that the council is saying the project is
4 consistent. So that was the basis for my question,
5 which --

6 CHAIR DREW: That was confirmed by
7 Mr. Rossman.

8 MR. POSNER: Right.

9 MR. ROSSMAN: That was the intent of my
10 motion. I am prepared at this point if we want to
11 take a motion on consistency for our purposes, but I
12 think we could reserve that because we have extended
13 our time frame to make the expedited decision. I'm
14 certainly leaning towards doing it consistent at a
15 high level personally, so I don't know if we want to
16 take action on that.

17 CHAIR DREW: Ann, would you like to
18 comment? Ms. Essko, excuse me.

19 MS. ESSKO: Thank you.

20 One thing to consider is whether you want
21 to have a written decision of your consistency
22 decision, and you can make a decision today or later
23 that directs Staff or Laura Chartoff, your ALJ, to go
24 away and write a decision for your consideration.

25 CHAIR DREW: Okay. I --

1 MR. MOSS: Sounds like a good plan to me.

2 CHAIR DREW: So the council -- do we need
3 a motion for that, Ms. Essko?

4 MS. ESSKO: Yes.

5 CHAIR DREW: Okay. Would you like to make
6 a motion?

7 MR. MOSS: Well, I can give it a try.

8 CHAIR DREW: Okay.

9 MR. MOSS: And I'm trying to make sure I
10 understand the lay of the land here, but I think the
11 motion would be that the council make a determination
12 of land use consistency and direct the appropriate
13 Staff to draft an order so saying.

14 Is that fair?

15 MS. ESSKO: That sounds good to me.

16 MR. MOSS: Then that will be my motion.

17 MR. ROSSMAN: I second.

18 CHAIR DREW: Okay.

19 Any questions or comments?

20 MR. ELLIOT: So does that mean that when
21 we meet again we will take up that memo?

22 CHAIR DREW: Yes.

23 MR. ELLIOT: Okay.

24 MR. MOSS: We hope. Assuming it can be
25 drafted by then. It should be.

1 CHAIR DREW: That's my expectation.

2 Any other discussion? All those in favor,
3 please say "aye."

4 MULTIPLE SPEAKERS: Aye.

5 CHAIR DREW: All those opposed? Motion
6 carries.

7 I would also like to announce that we are
8 working towards our March meeting being located in the
9 city of Ellensburg, and we are looking for a site to
10 be there so...

11 MR. ELLIOT: I'll make sure it doesn't
12 snow.

13 MR. MOSS: Please do.

14 MR. ROSSMAN: Madam Chair, would it be
15 possible to look at having a site visit to the sites
16 of the project in conjunction with that meeting?

17 CHAIR DREW: I will ask for Ms. Bumpus to
18 respond to that.

19 MS. BUMPUS: Well, we have been out to the
20 sites, and one of the things that Stephen and I have
21 talked about internally is that there may be some
22 issues with access to the sites with a large party
23 going to these areas. These are on private property.
24 We would need to coordinate with landowners.

25 But the other thing that may be an issue

1 is access. It was difficult to get to some of the
2 sites, and in many cases we were sort of in the front
3 and backyards of the landowners in the mud.

4 And so it could be an issue, but -- we
5 could talk about it some more, but in some cases, you
6 are on a private road for quite a while sort of
7 trudging through the mud to try to get to the site
8 so --

9 CHAIR DREW: I would also add that, should
10 we go as a council, then we would have public meeting
11 requirements and that may be problematic in that kind
12 of situation whereas [sic] it would be difficult sites
13 to get to.

14 Am I correct in saying that it would be a
15 public meeting if the council were to do a site visit?

16 MS. ESSKO: You're correct.

17 CHAIR DREW: So can we take this offline
18 and get back to the council?

19 MR. MOSS: Yeah, I think -- on this
20 question of site visits, I think it probably would be
21 possible to go out there and see the view shed from
22 the public highways and byways and so forth. And to
23 the extent we need to look more closely at a site, we
24 do have aerial photographs, and I suspect we may have
25 yet additional photographic portrayals that I haven't

1 even looked at yet, but we've got quite extensive
2 photography in the record already that I've seen.

3 MS. BUMPUS: Right. Well -- and we did
4 take -- we did take photos when staff did a site
5 [sic]. We have an internal draft site report that
6 we've used internally for our work on SEPA, and that
7 could be finalized and prepared to Council so that you
8 could see some of the pictures that we took while we
9 were there on foot.

10 MR. MOSS: That might help avoid the need
11 to trudge through miles of mud, so I think it would be
12 a good idea.

13 MS. BUMPUS: Yeah. We certainly want to
14 spare you that. It was very muddy out there.

15 CHAIR DREW: Okay.

16 MR. ELLIOT: I can make sure we don't have
17 mud.

18 CHAIR DREW: Thank you, Mr. Elliot.

19 Okay. We are concluded with the Columbia
20 Solar Project.

21 Are there any other issues to come before
22 the council at this point in time? Hearing none, this
23 meeting is adjourned.

24 (Meeting concluded at 2:48 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, ANITA W. SELF, a Certified Shorthand
Reporter in and for the State of Washington, do hereby
certify that the foregoing transcript is true and
accurate to the best of my knowledge, skill and
ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 7th day of March, 2018.

ANITA W. SELF, RPR, CCR #3032

Kittitas Valley Wind Power Project

Monthly Operations Report

January 2018

Project Status Update

Production Summary:

Power generated: 8909 MWh
Wind speed: 4.2 m/s
Capacity Factor: 11.9%

Safety:

No incidents

Compliance:

Project is in compliance

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Wild Horse Wind Facility
January 2018

Safety

No lost-time accidents or safety injuries/illnesses.

Compliance/Environmental

Annual review of the Stormwater Pollution Prevention Plan (SWPPP) was completed and revisions were submitted to EFSEC staff on January 11th for review by the Department of Ecology.

Operations/Maintenance

Nothing to report.

Wind Production

January generation totaled 54,270 MWh for an average capacity factor of 26.76%.

Eagle Update

Nothing new to report.

**Energy Northwest
EFSEC Council Meeting
January 2018 Operations Report
Debbie Knaub**

I. Columbia Generating Station Operational Status

Columbia is online at 100% power and producing 1161 MWs.

Executive Team Changes:

Columbia is in the process of selecting a successor to the current CEO, Mark Reddemann, who has announced his retirement. Interviews will occur this winter and spring with selection occurring in April 2018. The new CEO will start in June 2018.

Excellence in Performance at Columbia:

As part of its emphasis on excellence in performance, Columbia is renewing its excellence program with a focus on developing leadership of first-line supervisors and next-level leaders in the organization. Recent training for supervisors and staff has focused on this goal.

II. WNP 1/4 Building Transfer/Water Rights

NEPA/Leasing

No change from July 2017 report.

Energy Northwest's new lease with the Department of Energy for WNP 1/4 went into effect on July 1, 2017. We have started the planning and some field work on the water distribution system project, which will eventually utilize the Water Rights permit granted by the Department of Ecology.

Chehalis Generation Facility----Monthly Plant Report – January 2018

Washington Energy Facility Site Evaluation Council

02.09.2017

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 918 days without a Lost Time Accident.

Environment:

- There were no air emissions or stormwater deviations or spills during the month of January 2018.
- Wastewater and Stormwater monitoring results were in compliance with the permit limits for the month of January 2018.

Operations and Maintenance Activities:

- The Plant generated 138.4k MW-hours in January for a 2018 YTD generation total of 138.4k MW-hours and a capacity factor of 36.4%.

Regulatory/Compliance:

- Nothing to report.

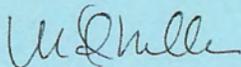
Sound monitoring:

- Nothing to report this period.

Carbon Offset Mitigation:

- Nothing to report this period

Respectfully,



Mark A. Miller
Manager, Gas Plant
Chehalis Generation Facility

EFSEC Monthly Operational Report

January 2018

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of January.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled Safety Committee meeting.

2. Environmental

- 2.1. The Final Engineering Report Addendum for the NPDES permit was resubmitted to EFSEC in the new format requested by Ecology.
- 2.2. The 2017 Q4 Air Emissions report was submitted to EFSEC/ORCAA on January 31, 2018 and the updates to the Startup, Shutdown, Malfunction, Procedures (SSMP) Manual and CEMS O&M Manual were highlighted for the new NOx analyzers added in 2016.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 20 days and generated 167,916MWh during the month of January.

4. Noise and/or Odor

- 4.1. One noise complaint was made to the site during the month of January. The plant was not running at the time, and no activities were occurring that would potentially generate loud noise. The complaint was investigated, and the source not located. We were unable to find/hear any noise the fit the description in the local area around the plant. We determined the plant was not source.

5. Site Visits

- 5.1. None.

6. Other

- 6.1. Grays Harbor is staffed with 21 personnel.



February 12, 2018

Stephen Posner, Siting Manager
Energy Facility Site Evaluation Council
Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
PO Box 43172
Olympia, WA 98504-3172

RE: TUUSSO Energy, LLC - Columbia Solar Projects
Project No.: EF-170823

Dear Mr. Posner:

TUUSSO Energy, LLC ("Applicant") submitted its Application for Site Certification for the Columbia Solar Projects on October 16, 2017. The timeline for the Council's determination of the Projects' eligibility for expedited permitting would expire on February 13, 2018. WAC 463-43-050.

The Applicant requests an extension to and through the April 2018 Council meeting for the Council to complete evaluation of the Projects' suitability for expedited permitting. This extension request is based on information provided to Applicant by EFSEC staff. The Applicant asks EFSEC to allocate the appropriate resources to complete and deliver a recommendation to the Governor according to the applicable timeline.

Thank you for your consideration of this extension.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Evans", is written over a light blue horizontal line.

Jason Evans
Vice President
TUUSSO Energy LLC

cc: Timothy L. McMahan, Stoel Rives LLP

500 Yale Avenue North
Seattle, WA 98109
Phone: 206-303-0198
E-Mail: jason.evans@tuusso.com
Web: www.tuusso.com

Washington State Energy Facility Site Evaluation Council

February 13, 2018

TO: EFSEC Council Members

FROM: Sonia E. Bumpus
EFSEC Siting and Compliance Manager

SUBJECT: TUUSSO Columbia Solar Project Application for Site Certification (ASC) Expedited Processing Eligibility Discussion.

Introduction:

The purpose of this memo is to present process recommendations to the EFSEC Council for the proposed TUUSSO Columbia Solar project (Project). Recommendations were formulated by EFSEC staff and are listed as options A and B at the end of this memo. Each option contemplates a path forward in terms of expedited process. For land use consistency determination process issues, EFSEC staff considered legal input from our Assistant Attorney General (AAG) and from our contractor at the Washington Department of Commerce, who provided a Land Use Analysis Report (LUAR). Staff also considered the progress and status of EFSEC's State Environmental Policy Act (SEPA) threshold determination, which includes technical input from EFSEC's contractors at Golder Associates, the Washington Department of Archaeological and Historic Preservation (DAHP), the Department of Fish and Wildlife (WDFW), the Department of Ecology (Ecology), the Department of Health (DOH), Department of Agriculture (WSDA), and the U.S. Fish and Wildlife Service (USFW).

Background:

On October 16th, 2017, EFSEC received an Application for Site Certification (ASC) to construct and operate five photovoltaic solar projects on 232 leased acres in Kittitas County. For this discussion the five solar sites are collectively referred to as the "Project". In its ASC, TUUSSO (the Applicant) requests that the Council grant expedited process under RCW 80.50.075.

In accordance with RCW 80.50.075 (1) and RCW 80.50.090 (2), the Council will grant expedited process if two conditions are met, 1.) EFSEC SEPA responsible official determines that Project impacts are not significant or can be mitigated to non-significant levels (No EIS is developed), and 2.) The Council finds the Project sites are consistent and in compliance with the applicable local land use plans or zoning ordinances. The primary processes through which EFSEC determines if the two conditions are met

includes conducting a local Land Use hearing in order to make a land use consistency determination, and development and issuance of a SEPA threshold determination.

Pursuant to SEPA WAC 197-11, EFSEC staff, its independent consultant, and agency contractors completed a comprehensive technical review of the ASC and SEPA checklist. Subsequently, EFSEC staff transmitted "Data Request 1" to the Applicant on January 17, 2018, requesting additional information. On January 26, 2018, the Applicant responded to EFSEC's request, submitting an updated ASC and SEPA checklist. These updated materials, in addition to a list of proposed draft mitigation measures, were circulated to agency SEPA contacts and contractors at DAHP, WDFW, USFW, WSDA, DOH, and Ecology on February 6, 2018. Via this consultation effort, staff have either refined existing mitigation measures or added new ones.

For the land use determination, EFSEC held a public land use consistency hearing on December 12, 2017 in Ellensburg, WA. At that meeting the Council extended the record for an additional 10 days, allowing additional briefings and public comment submittal. Subsequently, in late January 2018, EFSEC staff commissioned the Department of Commerce to provide a report analyzing applicable Kittitas County (County) land use plans and zoning ordinances for the Project.

Does the Project meet conditions 1 and 2 for Expedited Process?

Condition 1 Discussion:

EFSEC staff are currently consulting with participating agencies and working to finalize mitigation measures that would be appropriate for a Mitigated Determination of Non-significance (MDNS) for the Project. As mitigation measures are finalized, staff may develop an MDNS for public notice. If an MDNS is appropriate, as required by SEPA WAC 197-11-502 (3), EFSEC would conduct a 14-day public comment period, and depending on comments, may revise the MDNS. A final MDNS would outline measures to minimize and/or avoid identified impacts. If EFSEC issues an MDNS, condition 1 would be satisfied for expedited process eligibility.

Condition 2 Discussion:

In order to grant expedited process, the Council would determine the Project to be consistent and in compliance with local land use plans or zoning ordinances. Since EFSEC has conducted a land use hearing and received public input and briefs from the Applicant and the local government, the immediate question before the Council is whether the information regarding land use issues is sufficient to make an EFSEC land use consistency determination. If the Council feels more information is needed related to local land use issues, such as local conditional use criteria, additional information could be generated through other EFSEC processes.

For instance, under SEPA rules in WAC 197-11, the decision maker may use information made available during its environmental review. If the SEPA public comment process yields information relevant to impacts beyond those discussed in EFSEC's MDNS, nothing would preclude the Council from taking that information into account. EFSEC could also solicit for specific input on specific land use issues during public comment. Additionally, under EFSEC's rules in WAC 463-43-060 (1), if expedited process is granted, the Council has the discretion to direct its independent consultants to conduct additional studies if the Council determines they need additional information to develop a recommendation for the Governor. These inlets for more information are available to supplement EFSEC's record of decision, whether or not expedited process is granted. After reviewing all materials and considering the options discussed above, staff recommends the Council determine whether the land use comments and briefs are sufficient to make its land use consistency determination for the Project. If the Council finds the land use comments and briefs sufficient, then EFSEC staff recommends that the Council proceed with Option A. On the other hand, if the Council finds the record should be supplemented, staff recommends proceeding with option B.

Options:

Option A

If, in accordance with RCW 80.50.075 (1) and RCW 80.50.090 (2), no additional information is necessary for an EFSEC land use consistency determination, EFSEC may finalize an MDNS and conduct a 14-day public comment period for the SEPA threshold determination. If the land use determination by the Council is that the Project, as-proposed, is consistent and in compliance with local land use plans or zoning ordinances, and an MDNS is determined appropriate, the Council could by order grant expedited processing.

Option B

If the Council finds that additional information would be helpful to make an EFSEC land use consistency determination, in accordance with RCW 80.50.075 (1) and RCW 80.50.090 (2); the Council may ask the public and the County to provide any additional land use considerations during a 14 day SEPA public comment period. By accepting additional written comments, the County or local community members may propose conditions that could be considered by the Council; should the Council determine it is consistent and in compliance with land use plans or zoning ordinances. If the land use determination by the Council is that the Project, as-proposed, is consistent and in compliance with local land use plans or zoning ordinances, and an MDNS is determined appropriate, the Council could by order grant expedited processing.



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

COLUMBIA SOLAR PROJECT
February 20, 2018

Motion Option A. Move Council to find that no additional land use or zoning information is necessary to its expedited process decision and that the proposed site is consistent and in compliance with applicable land use plans or zoning ordinances in effect as of October 16, 2017, and to direct staff to proceed with the SEPA 14-day public comment period to finalize the MDNS determination in the TUUSSO Energy Project.

Motion Option B. Move Council to re-open the land use hearing record to allow the public an additional 14 days during the SEPA public comment period to submit further information on whether the proposed site is consistent and in compliance with applicable land use plans or zoning ordinances in effect as of October 16, 2017, and to direct EFSEC staff to proceed with holding a 14-day SEPA public comment period for the TUUSSO Energy Project and notify the public of the dates for submittal of such additional land use hearing information and/or SEPA comment.



Department of Commerce

TUUSO Energy - Colombia Solar Project Land Use Analysis Report

Prepared for:

Washington State Energy Siting Evaluation Council
1300 S. Evergreen Park Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Prepared by:

Scott Kuhta, AICP, Senior Planner
Washington State Department of Commerce
Growth Management Services
1011 Plum Street S.E.
PO Box 42525
Olympia, WA 98504-2525

Introduction

The Washington State Department of Commerce (Commerce) prepared this report at the request of the Washington State Energy Facility Site Evaluation Council (EFSEC). EFSEC requested Commerce's assistance to determine consistency between Tuusso Energy's Columbia Solar Project and Kittitas County's comprehensive plan and zoning regulations. Commerce has no regulatory or approval authority and provides this analysis as a neutral party to EFSEC's Expedited Siting process.

The scope of this report is to analyze the Columbia Solar Project sites' consistency with and compliance with Kittitas County's land use plans and zoning ordinances (see WAC 463-43-050). The scope does not include recommendations for Expedited Review approval or denial; nor does it recommend specific site mitigation measures.

Documents reviewed include the following:

- Tuusso's application for expedited review.
- Kittitas County Comprehensive Plan and Zoning Ordinance
- Legal briefs from both Tuusso and Kittitas County
- Iron Horse conditional use staff report and Board of Commissioners findings and conclusion

A site visit was conducted on January 24, 2018, which included EFSEC staff, a Tuusso representative and Tuusso environmental consultants.

Project Overview

The Columbia Solar Project consists of five individual sites located to the north, west and south of the City of Ellensburg, Washington. The sites range in size between approximately 35 and 54 acres on open, agricultural land. Appendix A includes zoning and land use maps for each site. Land Use, zoning and site characteristics for each of the sites are as follows:

1. Fumaria

Location: Approximately 3 miles north (and a bit west) of Ellensburg

Size: 35.24 Acres

Site characteristics: The site is remote with limited development within close proximity. There is no water available and is not currently being farmed and is largely covered with weeds. The project appears to be visible to one house lying to the east.

Land Use Designation: Rural Working (Rural Lands)

Zoning: Agriculture 20

2. Typha

Location: Approximately 2 miles west (and a bit north) of Ellensburg.

Size: 54.29 Acres

Site characteristics: The site is currently farmed with a golf course located directly east. The Yakima River and Interstate 90 lie to the east, providing a visual barrier to development north and east of the freeway. The project site is surrounded by agricultural land to the north, west and south and does not appear to be visible from off-site residences, nor from the freeway.

Land Use Designation: Commercial Agriculture (Agricultural Resource Lands)

Zoning: Commercial Agriculture

3. Urtica

Location: Approximately 1/2 mile southwest of Ellensburg.

Size: 51.94 Acres

Site characteristics: The site is currently farmed and is surrounded by open farmland, rural houses and a K-5 elementary school (Damman School). The historic school building located on the site in 1890.

Land Use Designation: Rural Working (Rural Lands)

Zoning: Agriculture 20

4. Camas

Location: Approximately 2 miles southeast of Ellensburg, adjacent to Interstate 82, just south of the I-90/I-82 interchange.

Size: 51.21 Acres

Site characteristics: The site lies adjacent to I-82 to the west, the freeway connecting Ellensburg and surrounding region to the Yakima region. Tjossem Road borders the north site boundary, which rises 8 to 12 feet as it approaches the I-82 overpass. A commercial dog kennel is located across Tjossem Road to the north with farmland directly west of I-82, to the east and south. A small ditch, creating two distinct portions of land, bisects the site. The site is currently farmed and includes a barn.

Land Use Designation: Commercial Agriculture (Agricultural Resource Lands)

Zoning: Commercial Agriculture

5. Penstemon

Location: Approximately 3 miles east and a bit south of Ellensburg, adjacent to Tjossem Road on the north boundary.

Size: 39.98 Acres

Site characteristics: The site is currently farmed and is surrounded by active farms, with houses to the north/north east. A channelized creek forms to east site boundary.

Land Use Designation: Commercial Agriculture (Agricultural Resource Lands)

Zoning: Commercial Agriculture

Land Use Analysis

Washington State's Growth Management Act (GMA) establishes statewide goals for growth and development and includes specific requirements that counties must address in their comprehensive plans. The Kittitas County Comprehensive Plan adopts goals, policies and objectives specific to local conditions, while consistent with the GMA, hearings board decisions and court cases. The comprehensive plan provides policy guidance for zoning and other development regulations, which are the rules for how land is used and developed. Two GMA goals that are most pertinent to this analysis include:

1. Preservation of rural character, and
2. Designate and assure the conservation of agricultural resource lands of long-term commercial significance.

Rural Element

The GMA requires counties to adopt a Rural Element, which establishes goals and policies for rural development and preservation of rural character. The concept of rural character varies from one region to the next, even within the same county. The GMA refers to the patterns of land use and development in the rural element of comprehensive plans:

- *In which open space, the natural landscape, and vegetation predominate over the built environment;*
- *That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;*
- *That provide visual landscapes that are traditionally found in rural areas and communities;*
- *That are compatible with the use of the land by wildlife and for fish and wildlife habitat;*
- *That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;*
- *That generally do not require the extension of urban governmental services; and*
- *That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas. (RCW 36.70A.030(15)).*

Rural Character is defined in the Kittitas County comprehensive plan as:

Predominate visual landscape of open spaces, mountains, forests, and farms and the activities which preserve such features. It balances environmental, forest, and farm protection with a variety of rural development and recreational opportunities. Many sizes and shapes of properties can be found in the Rural Lands providing a wide variety of land use from its diverse topography, small to large acreage properties, assorted economic activities and opportunities, small rural residential development, and recreational activities... (Page 8-4, Kittitas County Comprehensive Plan).

The following goals, policies and objectives (GPO), provide context to preserving and enhancing rural character:

GPO 8.12 Incentive-based land use strategies will be examined and adopted to encourage land uses which are compatible to the rural environment.

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.

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.

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.

GPO 8.19 Develop buffer standards and regulations that will be used between incompatible rural uses.

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.

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. (Page 8-6, Kittitas County Comprehensive Plan).

Rural Working Designation

Kittitas County's plan designates the Fumaria and Urtica sites as "Rural Working". The Rural Working designation emphasizes farming and ranching as historic and fundamental components of the rural landscape and character. Rural Working lands also support "some commercial and industrial uses compatible with rural environment and supporting agriculture and/or forest activities" (Page 8-8, **Kittitas County Comprehensive Plan**). Agriculture activities in Rural Working lands are generally less in scope than Agricultural Resource lands.

Goals, policies and objectives specific to the Rural Working focus largely on agricultural preservation and limiting conflict between working farms and residential development. The GPOs do not specifically address energy facilities. The following GPOs discuss commercial/industrial development in the Rural Working designation:

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

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.

GPO 8.44B All runoff from impermeable surfaces of industrial/commercial development must meet local and State storm water standards and requirements.

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.

Analysis

The Rural Working designation is clearly focused on preserving working farms and ranches while limiting conflicts and impact from non-agricultural development. Policies do recognize that non-agricultural uses may be permitted as long as impacts can be minimized. This can be accomplished by restricting certain non-agricultural uses to areas adjacent to freeways, other similar non-agricultural uses and by adopting development regulations requiring special setbacks, building height limits, vegetation screens and fencing. For rural lands, the critical questions regarding land use consistency are:

- Does the proposed project change the visual character of the area such that it is not consistent with rural visual character?
- Will the operation of the facility create any operational interference with agricultural production on any surrounding resource lands?
- Will the project manage any stormwater runoff in a manner that maintains natural drainage without contamination of the surface and groundwater?

RESOURCE LANDS

The GMA requires counties to designate agricultural, forest and mineral resource lands, which are lands that have long term commercial significance (RCW 36.70A.170). Counties are further required to adopt regulations to ensure the conservation of resource lands (RCW 36.70A.060). The GMA requirements protects resource lands from two primary threats: **conversion** of resource lands to uses that remove the land from agricultural production; and development that creates **operational interference** with agricultural operations on surrounding property.

Kittitas County adopts goals, policies and objectives in the Rural Lands chapter to assure that resource land policies are consistent with the GMA.

Most of the resource land goals, policies and objectives concern the protection and conservation of resource lands and do not specifically address commercial or industrial land uses. The following GPO addresses incompatible development:

GPO8.123 Where proposed development is determined incompatible with natural resource activities, all mitigation measures to make the development compatible with the activities shall be completed at expense of the developer.

Commercial Agriculture Designation

Three of the project sites, Typhus, Camas and Pentsemon, are designated Commercial Agriculture. This designation intends to conserve designated agricultural land for long-term commercial viability. The County applied the following guidelines in designating commercial agriculture land (see WAC 365-190):

- *Lands not characterized by urban growth;*
- *Lands capable of being used for agricultural production based primarily on physical and geographic characteristics;*
- *Lands having long-term significance for agriculture which takes into account, among other things, the proximity to urban growth areas, public facilities and services, intensity of nearby uses and other things which might contribute to potential revision of use based upon marketing factors.*

The comprehensive plan includes the following designation criteria and considerations:

- *Land Grade Consideration. Agricultural Lands of Long-Term Commercial Significance shall be prime and unique farmland soils as mapped by the United States Department of Agriculture Natural Resources Conservation Service and considered capable of agricultural use according to land capability criteria in Agriculture Handbook No. 210 or successor guide adopted by the federal agency.*
- *Other consideration. In determining whether land should be designated as Agricultural Land of Long-Term Commercial Significance, the County may also consider the needs and nature of the agricultural industry.*
- *Designation. Upon a determination that a tract qualifies as Agricultural Lands of Long-Term Commercial Significance (referred to as Commercial Agricultural Lands in the Kittitas County Code) under the definitions and considerations noted above, such lands shall be so mapped in the Comprehensive Land Use Plan map of Kittitas County and shall be zoned Commercial Agricultural lands under Kittitas County zoning code, section KCC 17.31. The County's Commercial Agricultural zoning code, KCC 17.31, shall control uses, maintenance and enhancement of the agricultural industry and conserve productive agricultural lands consistent with the needs and best practices of the industry. Lands presently mapped as "commercial agriculture" shall retain that designation unless a*

*specific de-designation request is filed by the owner for a review under the guidelines of this Ordinance (Page 8-30, **Kittitas County Comprehensive Plan**).*

Preservation of agricultural lands is one of 14 GMA goals and a high priority for Kittitas County. Resource lands goals, policies and objectives in the County's Comprehensive plan provide little guidance for the siting and development of commercial and industrial uses, or utilities.

Solar farm construction allows for complete removal once the project is no longer viable. Soils would not be disturbed and the property can return to agricultural production. This meets the intent to preserve agricultural lands of long-term significance.

The concern for Kittitas County are the cumulative impacts of solar installations on productive agricultural land. Considerations include the market demand for alternative energy and the proximity to existing power infrastructure. If the demand for solar energy were persistent and growing, these lands would not be available for agricultural use for a long period. This would effectively remove lands from agricultural production and would be conversion, unless farming can coexist with solar energy production on the site.

For agricultural resource lands, the critical questions regarding land use consistency are:

- Does the proposed project remove agricultural resource lands from agricultural production?
- Can the project be designed in a way that retains the ability to use the land for agricultural production?
- Will the operation of the facility create any operational interference with agricultural production on any surrounding resource lands?

Utilities Element

The Utilities Element includes the following GPOs specific solar farms:

GPO 6.36 Develop a study area encompassing the entire county to establish criteria and design standards for the siting of solar farms (Page 6-5, *Kittitas County Comprehensive Plan*).

Kittitas County is currently developing updates to its zoning code specific to solar farms.

Zoning Analysis

Zoning Codes regulate the use of land by classifying uses within specific zones as either permitted, not permitted or as a conditional use. Conditional uses require a public hearing where a specific project is either approved with specific conditions, or denied. Conditions of approval include mitigation measures to lessen the impact of the proposed use on surrounding development. Conditional uses permits are applied to specific properties for specific uses and cannot be transferred to other sites.

Zoning codes include conditional uses because some uses may be desirable at a specific location and compatible with surrounding land uses. That same use may not be compatible with surrounding uses at other sites. The hearing process allows the public to voice support or opposition to the proposal, and testimony may result in conditions that mitigate impacts to surrounding properties.

Conditions of approval reflect the compatibility of the proposed use with surrounding development, site characteristics, proximity to adjacent development and public services. Example conditions may include, but are not limited to, hours of operation, increased setbacks, landscaping, increased buffers from streams and wetlands, height limitations, fencing and building materials.

In Kittitas County, a Hearing Examiner conducts the Conditional Use public hearing, then forwards a recommendation for approval with conditions, or denial, to the Board of Commissioners. The Commissioners then conduct a “closed record” hearing, with authority to make the final decision. A closed record hearing means that the Board may only consider information presented to the Hearing Examiner. The Board’s decision is appealable to Superior Court.

EFSEC must consider whether the Tuusso project, which would require five separate conditional use permits, can be compliant with local zoning if the zoning code requires a public hearing before a Hearing Examiner and a final decision by the Board of Commissioners. The Conditional Use hearing process does not guarantee a positive outcome for the applicant.

Major Alternative Energy Facilities

Title 17, Zoning, of the *Kittitas County Code* (KCC) regulates land use within the County. The code includes “solar farms” in the definition of “Major alternative energy facility”, along with hydroelectric plants and wind farms. The code also includes “Minor alternative energy facilities, but those facilities must use the energy produced on-site. Therefore, the KCC classifies the Columbia Solar projects as major alternative energy facilities.

Section 17.61.020 specifies that major alternative energy facilities *may* be authorized as a conditional use permit in the Agricultural-20 and Commercial Agriculture zones. Therefore, all

five of the Columbia Solar sites would be eligible to apply for a conditional use permit (notwithstanding the current moratorium on solar farms, discussed later in this report).

Section 17.60A.15 lists review criteria that the Board must consider when reviewing Conditional Use proposals, including:

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. (Ord. [2013-012](#), 2013; Ord. [2013-001](#), 2013; Ord. [2012-009](#), 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)*

Section 17.60A.020 lists conditions that may be imposed, included, but not limited to:

1. *Increasing the required lot size, setback or yard dimensions;*
2. *Limiting the height of buildings or structures;*
3. *Controlling the number and location of vehicular access points (subject to approval by the reviewing authority with jurisdiction to issue approach or access permits);*
4. *Requiring the dedication of additional rights-of-way for future public street improvements;*
5. *Requiring the designation of public use easements;*
6. *Increasing or decreasing the number of required off-street parking and/or loading spaces as well as designating the location, screening, drainage, surfacing or other improvement of a parking area;*
7. *Limiting the number, size, height, shape, location and lighting of signs;*
8. *Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;*
9. *Designating sites for and/or the size of open space or recreational areas;*
10. *Requiring site reclamation upon discontinuance of use and/or expiration or revocation of the project permit;*
11. *Limiting hours and size of operation;*
12. *Controlling the siting of the use and/or structures on the property;*
13. *Requiring mitigation measures to effectively reduce the potential for land use conflicts with agricultural and resource lands, such as: landscape buffers, special setbacks, screening, and/or site design using physical features such as rock outcrops, ravines, and roads.*
14. *Demonstrating that the requirements of [Chapter 13.35, Kittitas County Code](#), Adequate Water Supply Determination, can be met. ([Ord. 2014-005](#), 2014; [Ord. 2013-012](#), 2013; [Ord. 2012-009](#), 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988)*

Solar Farms in Kittitas County

Kittitas County has conditionally approved two solar farms (see P. 7, *Kittitas County's Brief on Land Use Consistency*). The two projects include the Teanaway Solar Preserve, a 477-acre project on a 982-acre parcel, and the Osprey Solar Farm, a 13-acre project on a 112-acre parcel. Neither project has been constructed to date.

The County's most recent solar farm proposal, Iron Horse, was recommended for approval by the Hearing Examiner, but was denied by the Board of Commissioners. The Board's decision was appealed to Kittitas County Superior Court and the Court affirmed the decision. The Iron Horse project was proposed on open, irrigated farmland near the City of Kittitas. The Board found that the project was not consistent with rural character, and the Court agreed. The relevant findings from the court including the following statements:

Preserving rural character is one of the conditions that must be met, and the burden of showing that it does so at the specific site rests with the applicant proponent of the solar farm.

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

It is not an erroneous interpretation of the law, specifically rural character, to consider whether a massive industrial project of this nature, encompassing 47.5 acres, eight feet high with large mechanized racks to follow the sun, set in the middle of treeless productive farm fields preserves rural character, interferes with visual compatibility of the surrounding area, or contains a built environment which predominates over the natural landscape...

The Superior Court's decision has not been appealed and, therefore, establishes legal parameters in which solar farms must be evaluated in Kittitas County. Key takeaways include the following:

1. Each site must be evaluated independently from other sites.
2. Solar farms may, or may not, preserve rural character.
3. The built environment cannot predominate over the natural environment.
4. Projects may potentially be designed in ways that preserve rural character

Moratorium

After making its decision on the Iron Horse project, the Board of Commissioners adopted a moratorium for new solar farms, which was recently extended to July 10, 2018. The County is developing new rules, which would include the appropriate location for new solar farms. Therefore, the County cannot currently accept Condition Use applications for solar farms. The question of whether this project is consistent with applicable zoning regulations when those

regulations include a moratorium on that type of project is not within the scope of the analysis requested of Commerce.

Other Non-Agriculture Uses

Kittitas County Code includes zoning use tables, which lists specific uses as either permitted (P), permitted with administrative approval (PA), permitted with an administrative conditional use (AC), or a conditional use (CU) (see Appendix B, Chapter 17.15, Allowed Uses).

Following are non-agricultural uses allowed in the Commercial Agriculture zone:

- *Religious Institutions (CU)*
- *Schools (CU)*
- *Shooting Range (CU)*
- *Vehicle Equipment Service and Repair (P, limited to farm implements)*
- *Airport (P, when used supporting agricultural activities)*
- *Refuse Disposal/recycle (CU)*
- *Mining and excavation (CU)*
- *Public Facilities (PA)*
- *Utilities (P/ACU/CU, depending on the type of Utility)*

Following are non-agricultural uses allowed in the Agriculture 20 zone:

- *Religious Institutions (CU)*
- *Schools (P)*
- *Interpretive Center (AC)*
- *Veterinary Hospital (CU)*
- *Shooting Range (CU)*
- *Vehicle Equipment Service and Repair (P, limited to farm implements)*
- *Airport (CU)*
- *Forest Product Processing (CU)*
- *Refuse Disposal, Recycle (CU)*
- *Campground (CU, with specific criteria)*
- *Golf Course (CU)*
- *Parks and playgrounds (P)*
- *Mining and excavation (CU)*
- *Public facilities (PA)*
- *Utilities (P/ACU/CU, depending on the type of Utility)*

Chapter 17.61 defines "Utility" as:

"Utility" or "utilities" means the supply, treatment and distribution, as appropriate, of gas, gas meter stations, municipal domestic and irrigation water, sewage, storm water, electricity, telephone, fiber-optic and cable television. Such utilities consist of both the service activity along with the physical facilities necessary for the utilities to be supplied,

except for associated facilities and special utilities as defined herein. Electric vehicle infrastructure, as provided for in [Chapter 17.66](#), is not a "utility" or "utilities".

Chapter 17.62 defines "Public Facility" as:

"Public facility" means the capital improvements and systems of transportation, law enforcement, fire protection, and recreational facilities (i.e., parks and playgrounds). Public facilities may be sited in any zoning, classification, subject to the review and approval requirements of this chapter.

Conclusion

This report does not recommend a position on the project's consistency with Kittitas County's comprehensive plan and zoning regulations. Rather, it highlights policy issues for EFSEC's consideration in determining consistency. In making its consistency determination, EFSEC should consider information gathered during the land use hearing process and SEPA evaluation.

Key issues include the legal effect of the moratorium on solar projects, the Superior Court's *Iron Horse* decision regarding rural character and whether a consistency determination can be made given the local public hearing process required for a conditional use.

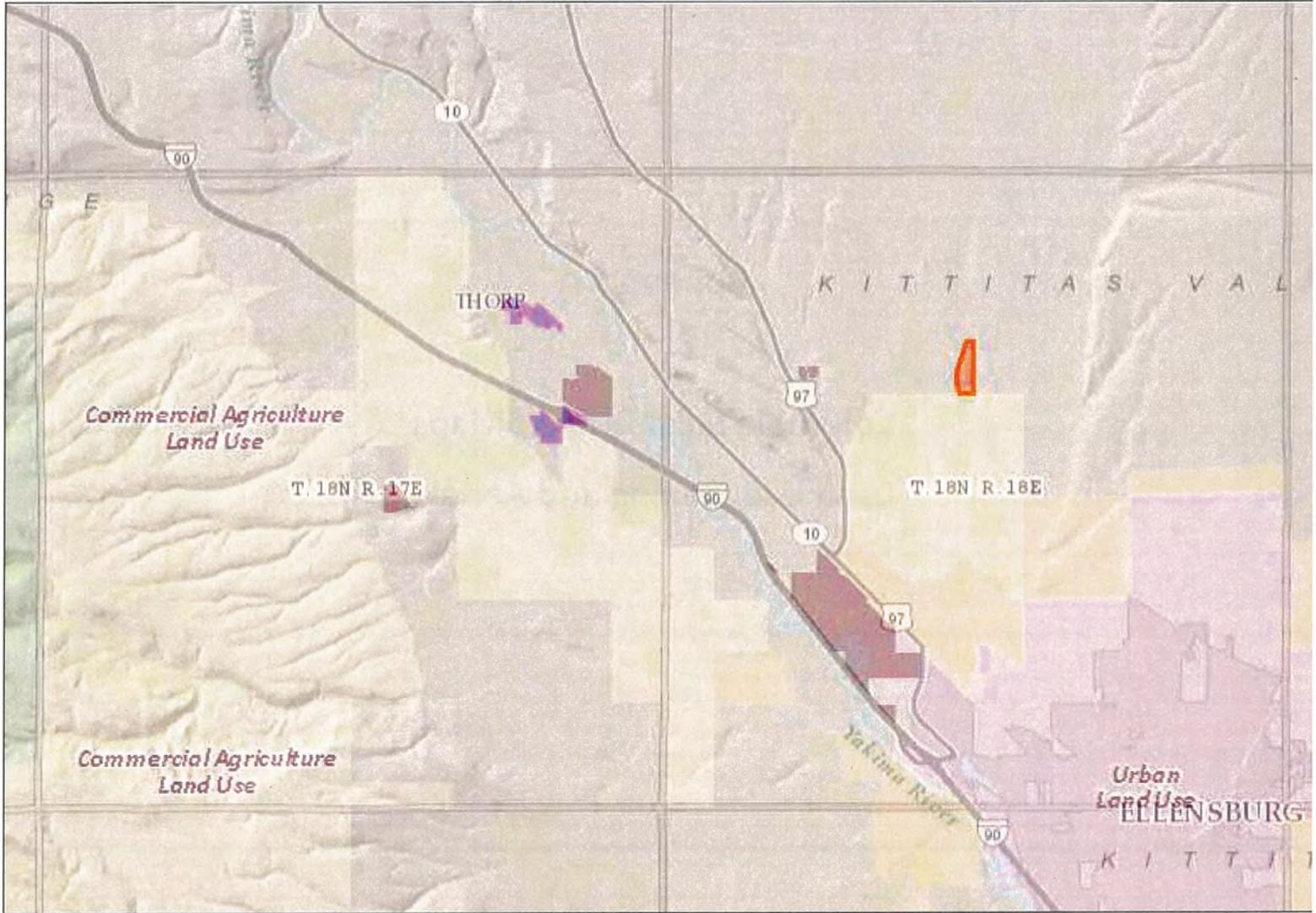
If EFSEC moves forward with expedited review, a critical task is to determine appropriate conditions/mitigation to ensure compatibility with rural character and agricultural lands. Issues to consider include:

- Proximity to adjacent uses, especially residential development
- Viewsheds
- Fencing and vegetative buffering
- Setbacks from public roads. (Does a 10' fence adjacent to a public road inhibit rural character/scenic vistas?)
- Does the site coverage overwhelm the rural environment?
- Is the site visible from public areas?
- Potential cumulative impacts to agricultural lands resulting from solar installations

Appendix A

Columbia Solar Project Maps Land Use, Zoning and Aerials

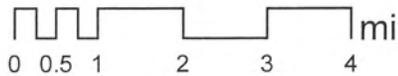
Fumaria - Land Use - Rural Working



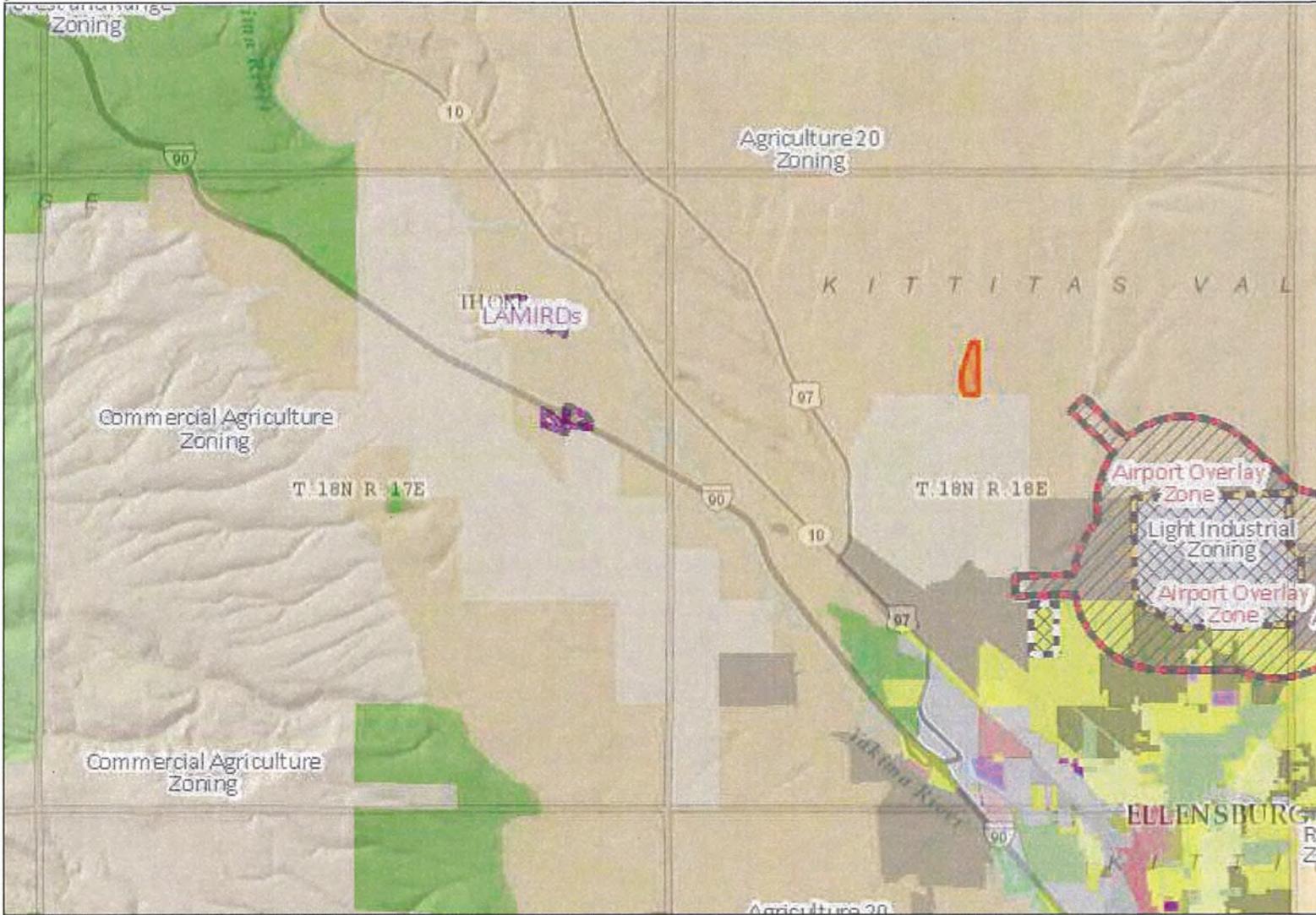
Date: 1/19/2018

1 inch = 12,037 feet
Relative Scale 1:144,448

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Fumaria - Zoning - Ag 20

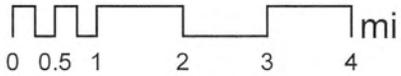


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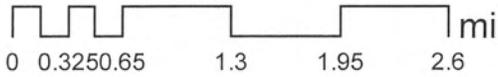
Fumaria Aerial Image



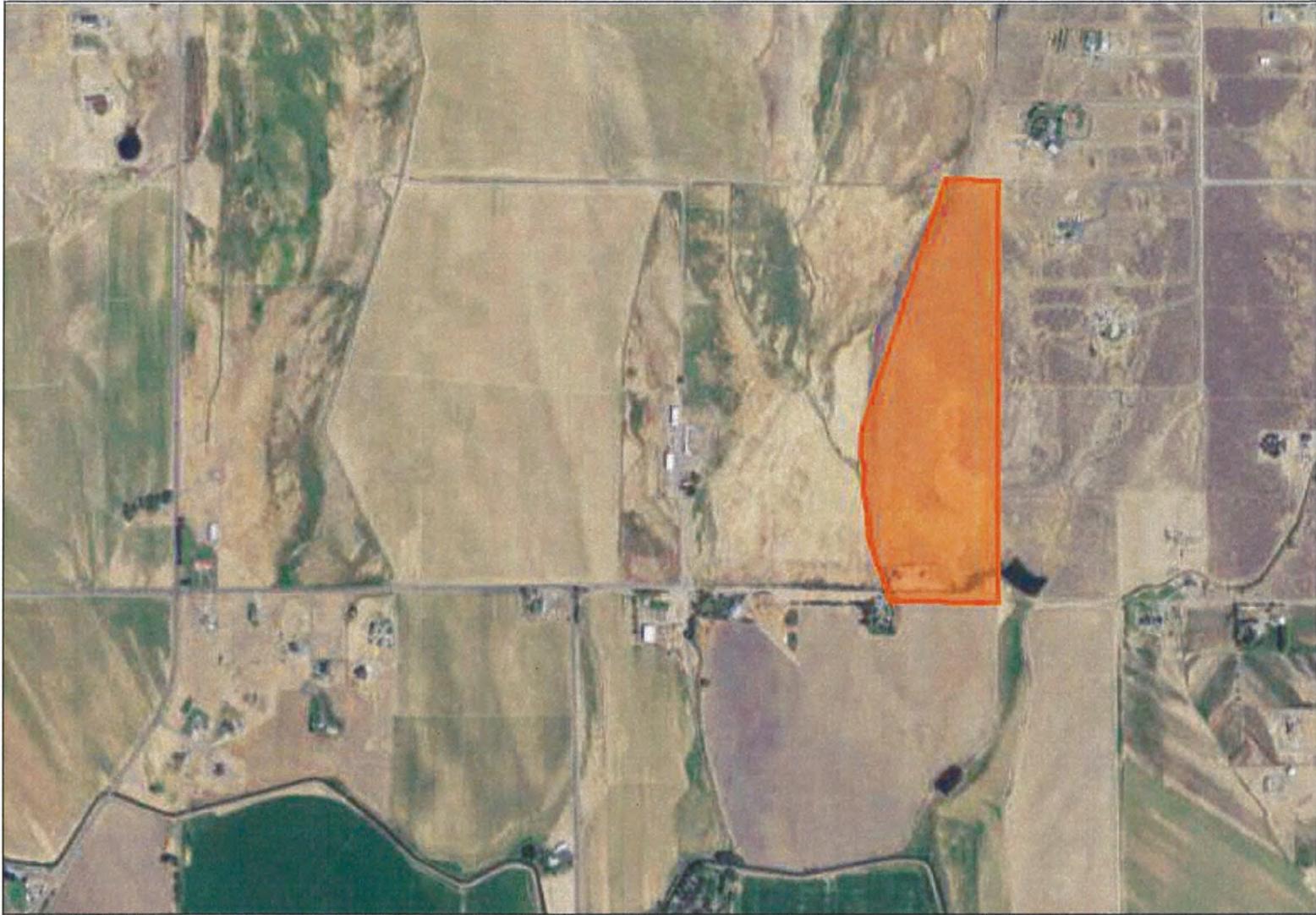
Date: 2/1/2018

1 inch = 6,019 feet
Relative Scale 1:72,224

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Fumaria Aerial Image

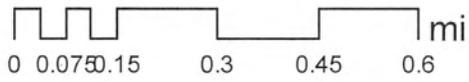


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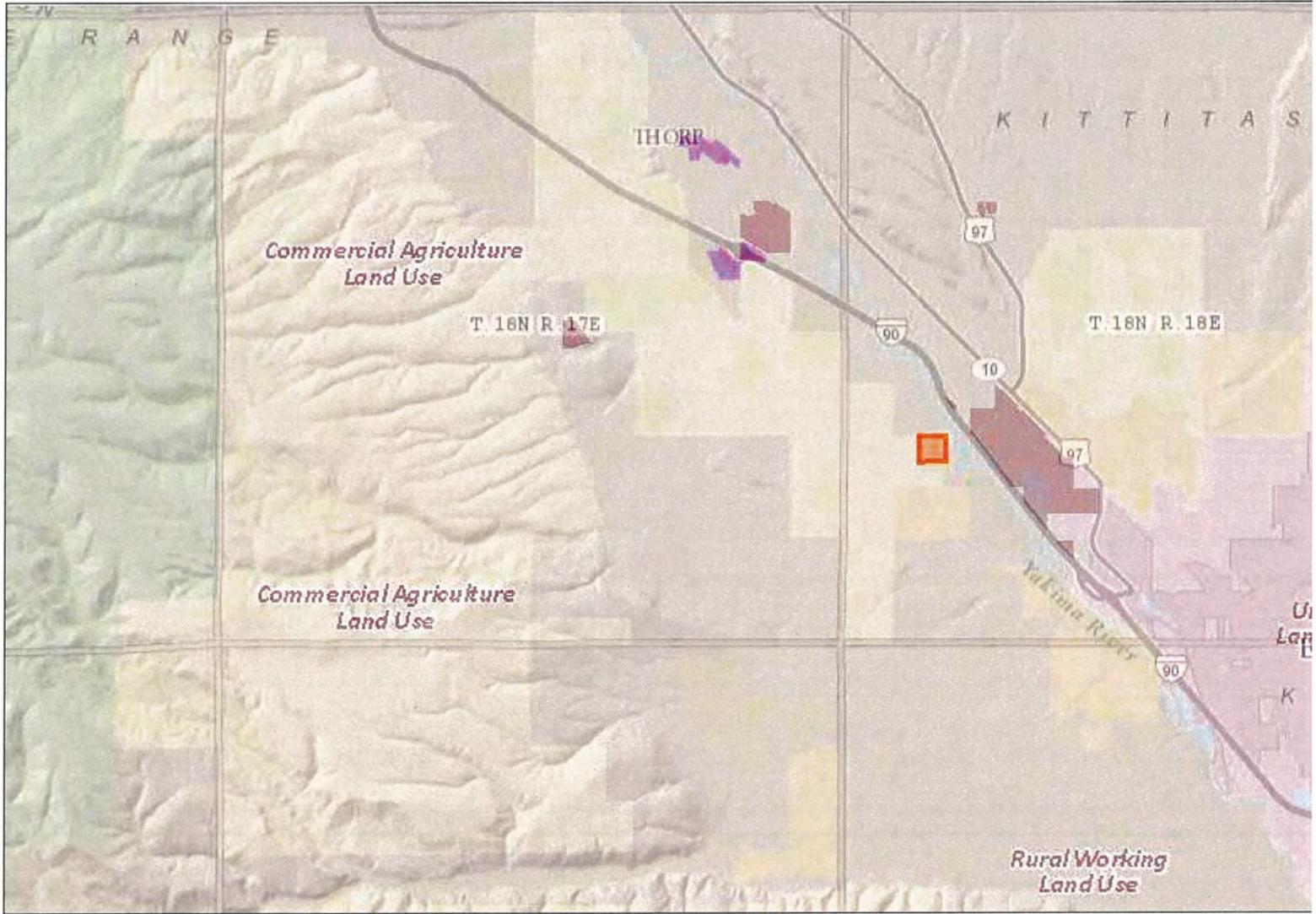
1 inch = 1,505 feet
Relative Scale 1:18,056

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Typha - Land Use - Commercial Ag

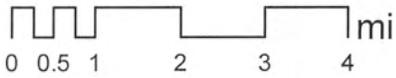


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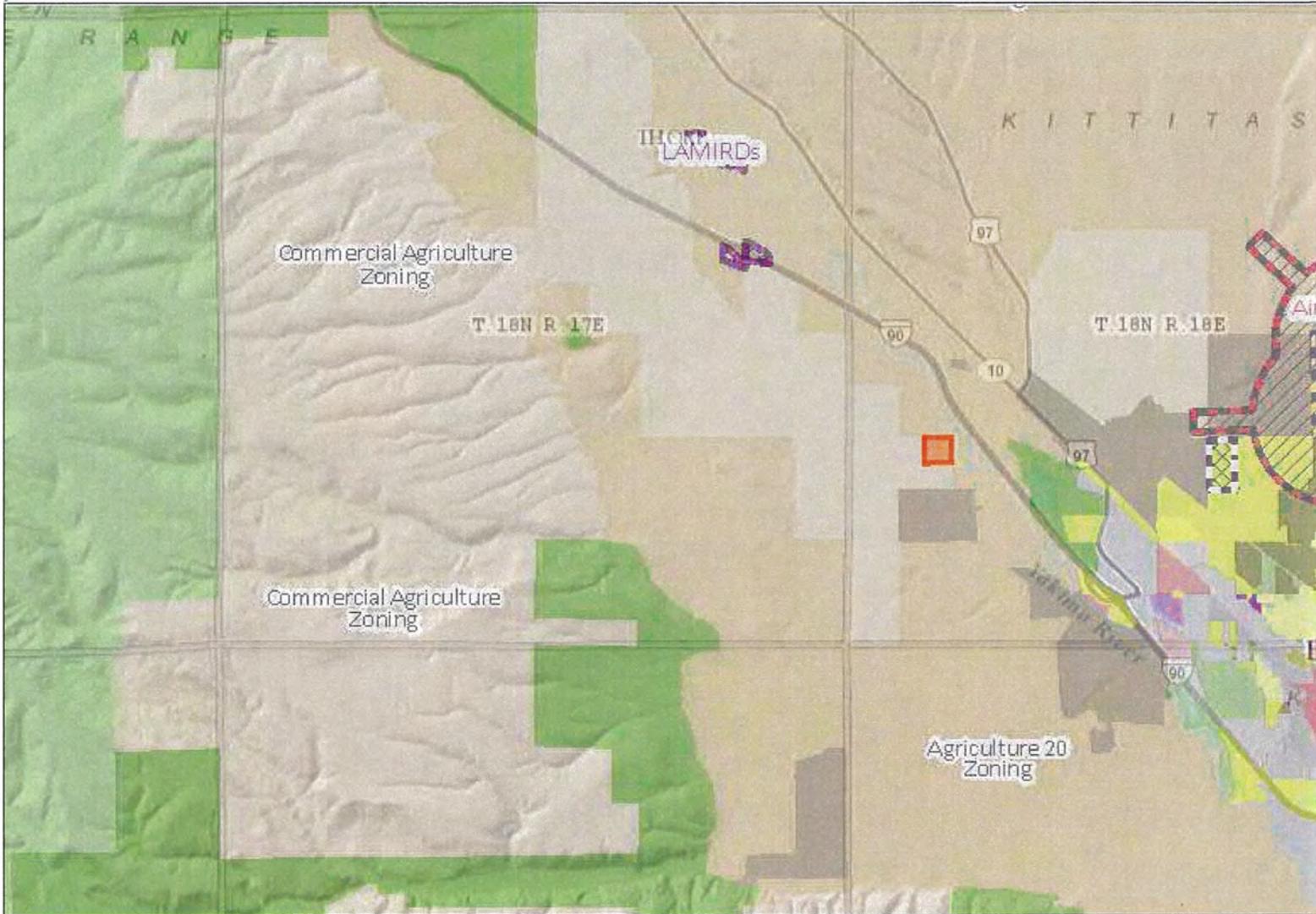
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Relative Scale 1:144,448

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Typha - Zoning - Commercial Ag



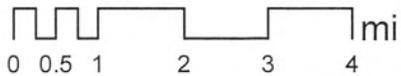
Date: 1/19/2018

1 inch = 12,037 feet

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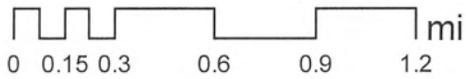
Typha Aerial Image



Date: 2/1/2018

1 inch = 3,009 feet
Relative Scale 1:36,112

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Typha Aerial Image

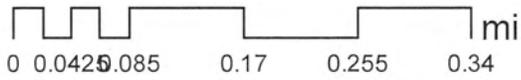


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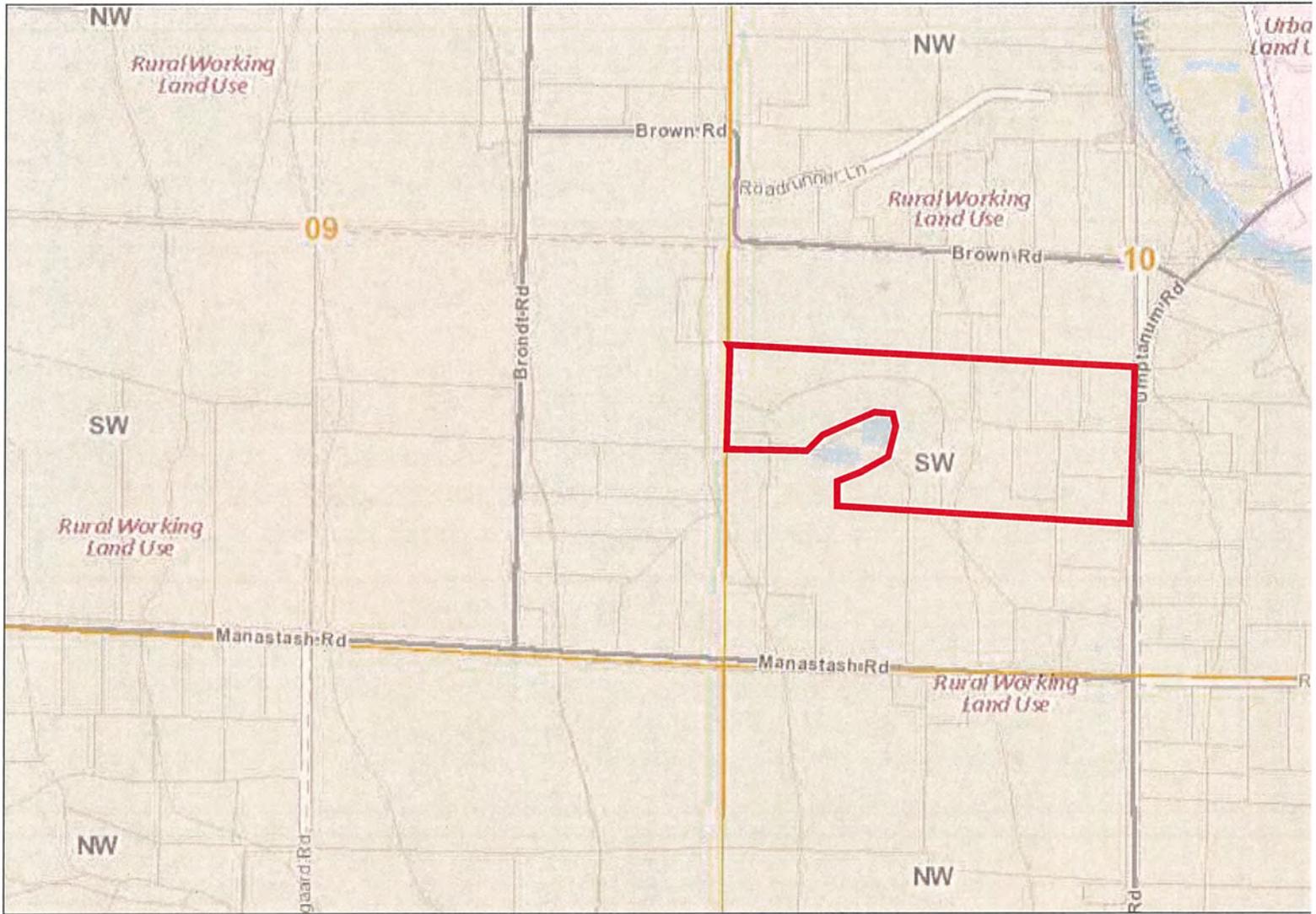
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Relative Scale 1:9,028

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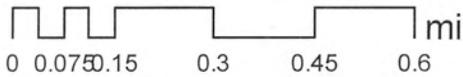
Urtica - Land Use - Rural Working



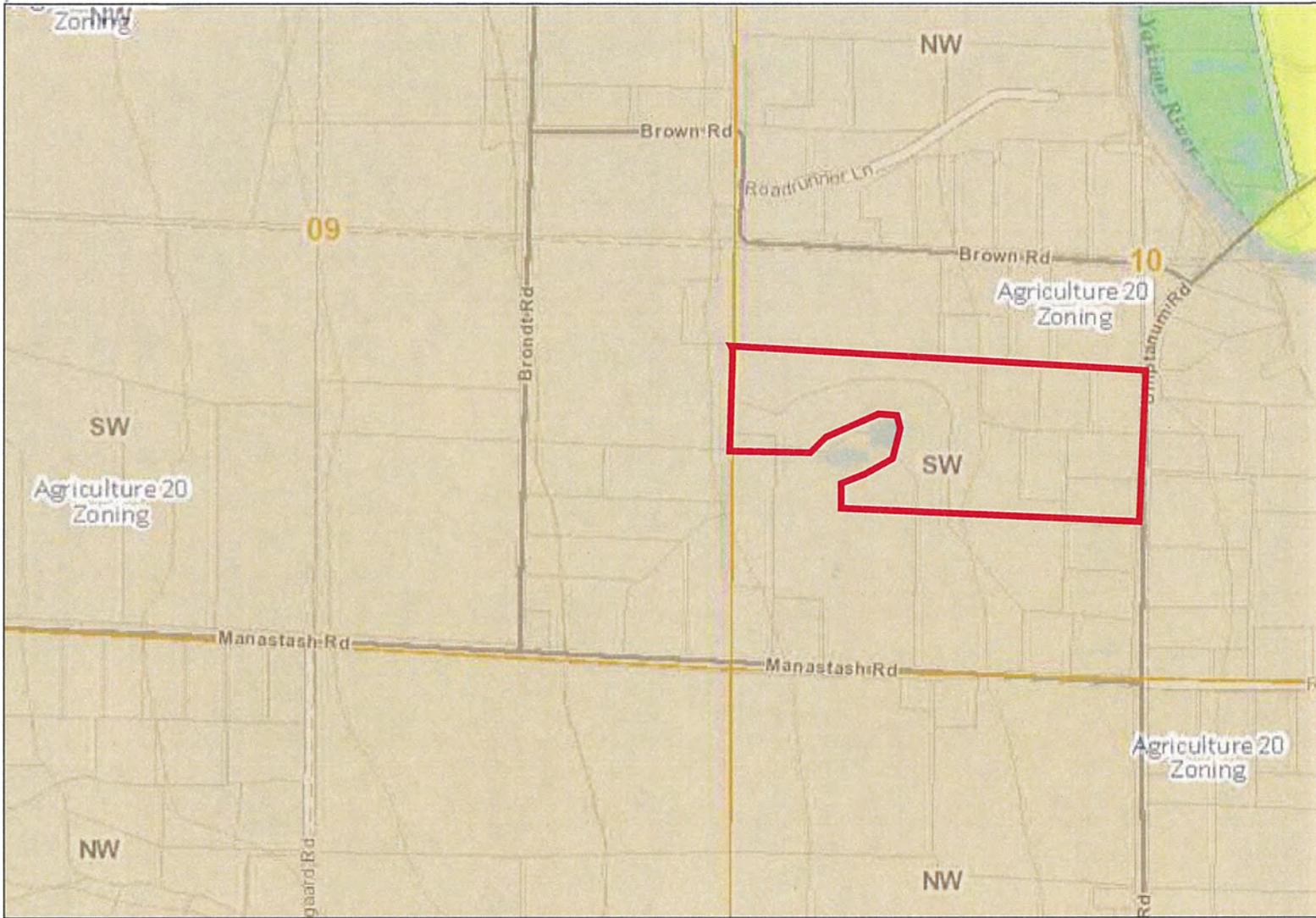
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1 inch = 1,505 feet
Relative Scale 1:18,056

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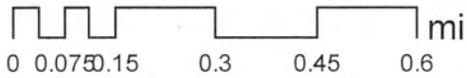
Urtica - Zoning - Ag 20



Date: 2/7/2018

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Relative Scale 1:18,056

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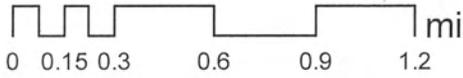
Urtica Aerial Image



Date: 2/7/2018

1 inch = 3,009 feet
Relative Scale 1:36,112

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Urtica Aerial Image

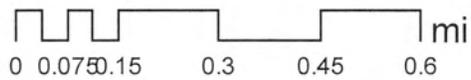


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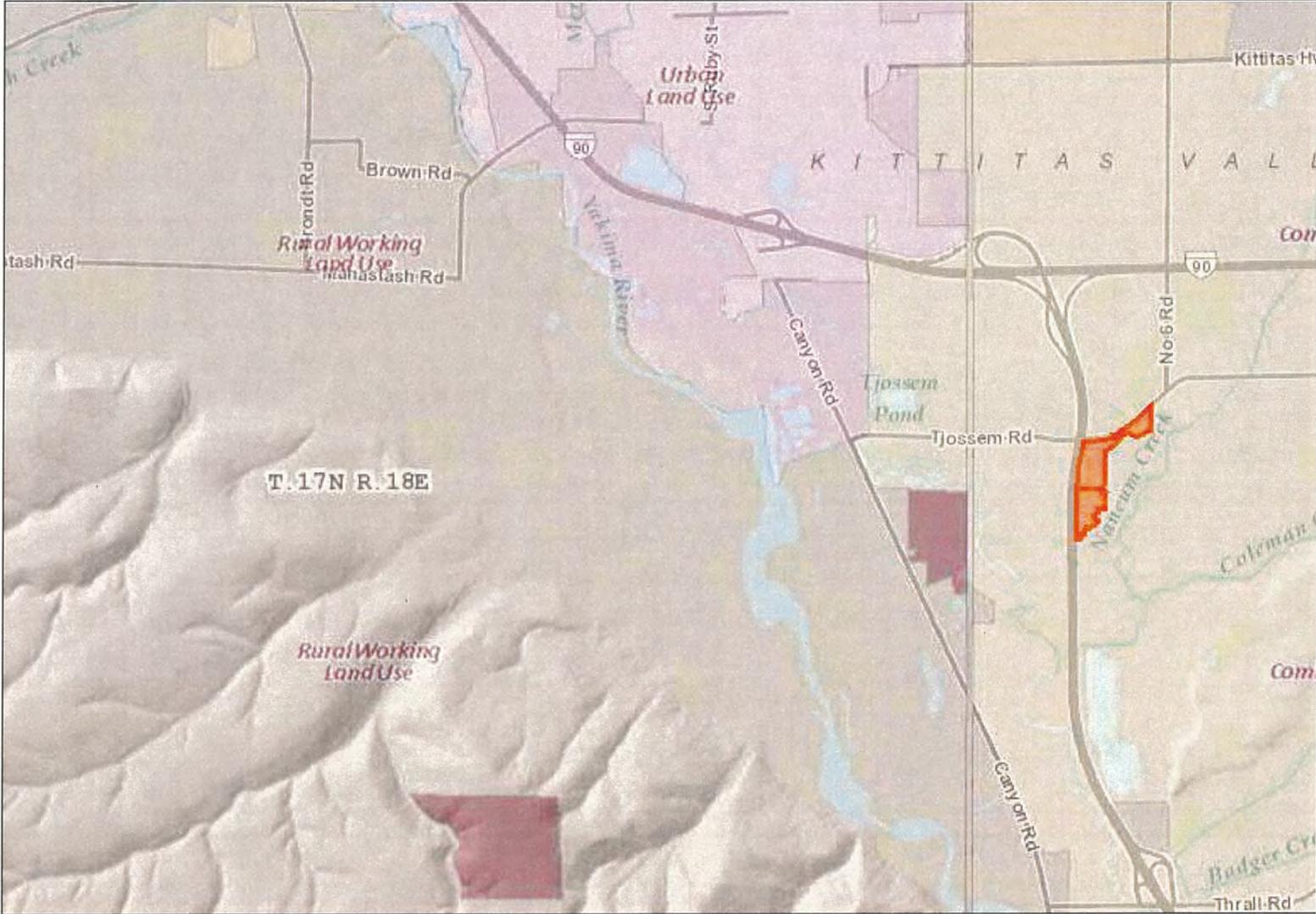
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Relative Scale 1:18,056

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Camas - Land Use - Commercial Ag



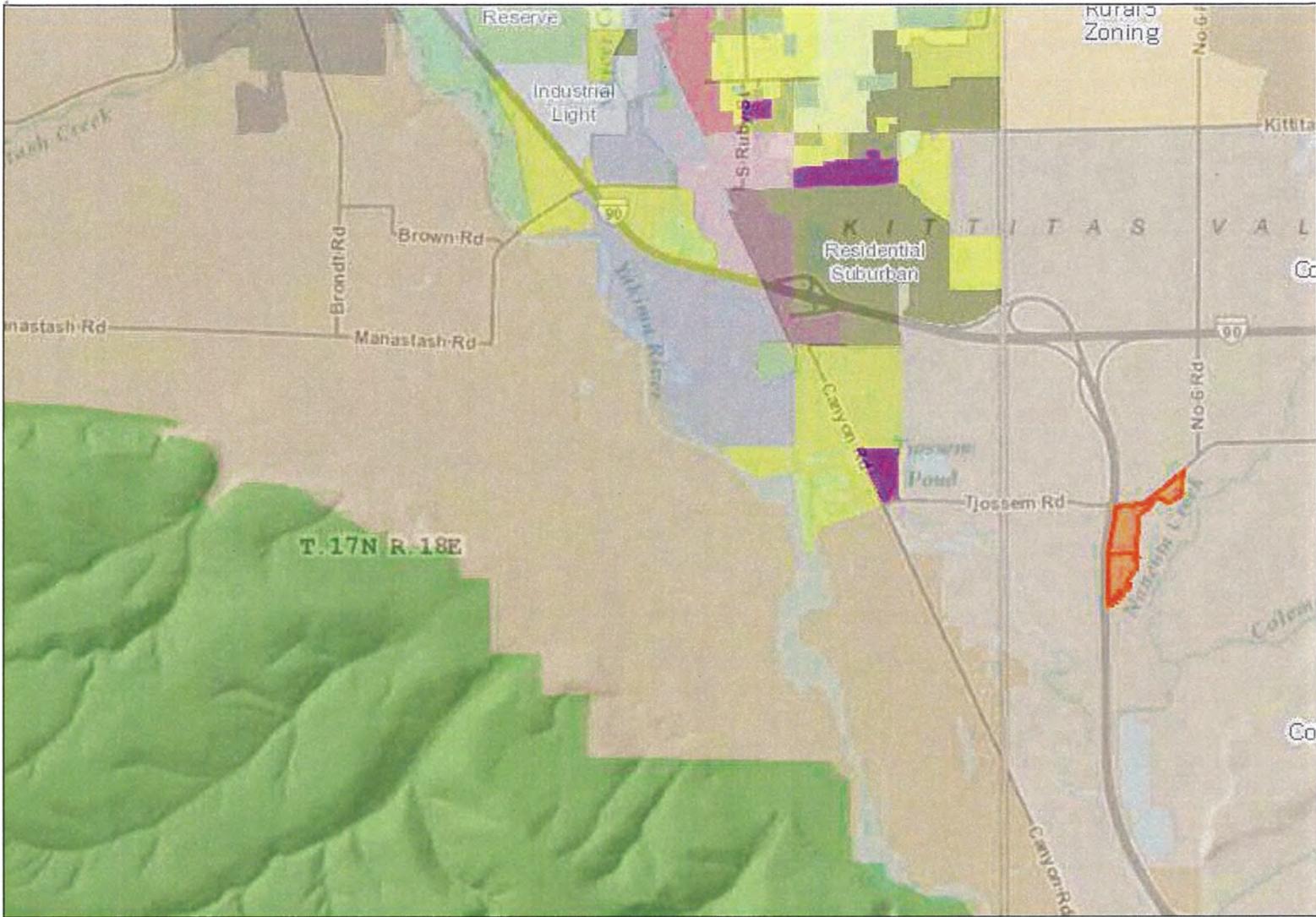
Date: 1/19/2018

1 inch = 6,019 feet
Relative Scale 1:72,224

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Camas - Zoning - Commercial Ag

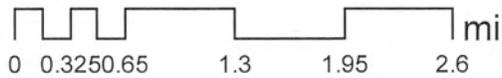


Date: 1/19/2018

1 inch = 6,019 feet
Relative Scale 1:72,224

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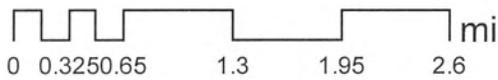
Camas Aerial Image



Date: 2/1/2018

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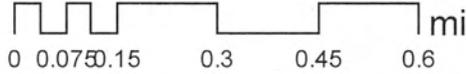
Camas Aerial Image



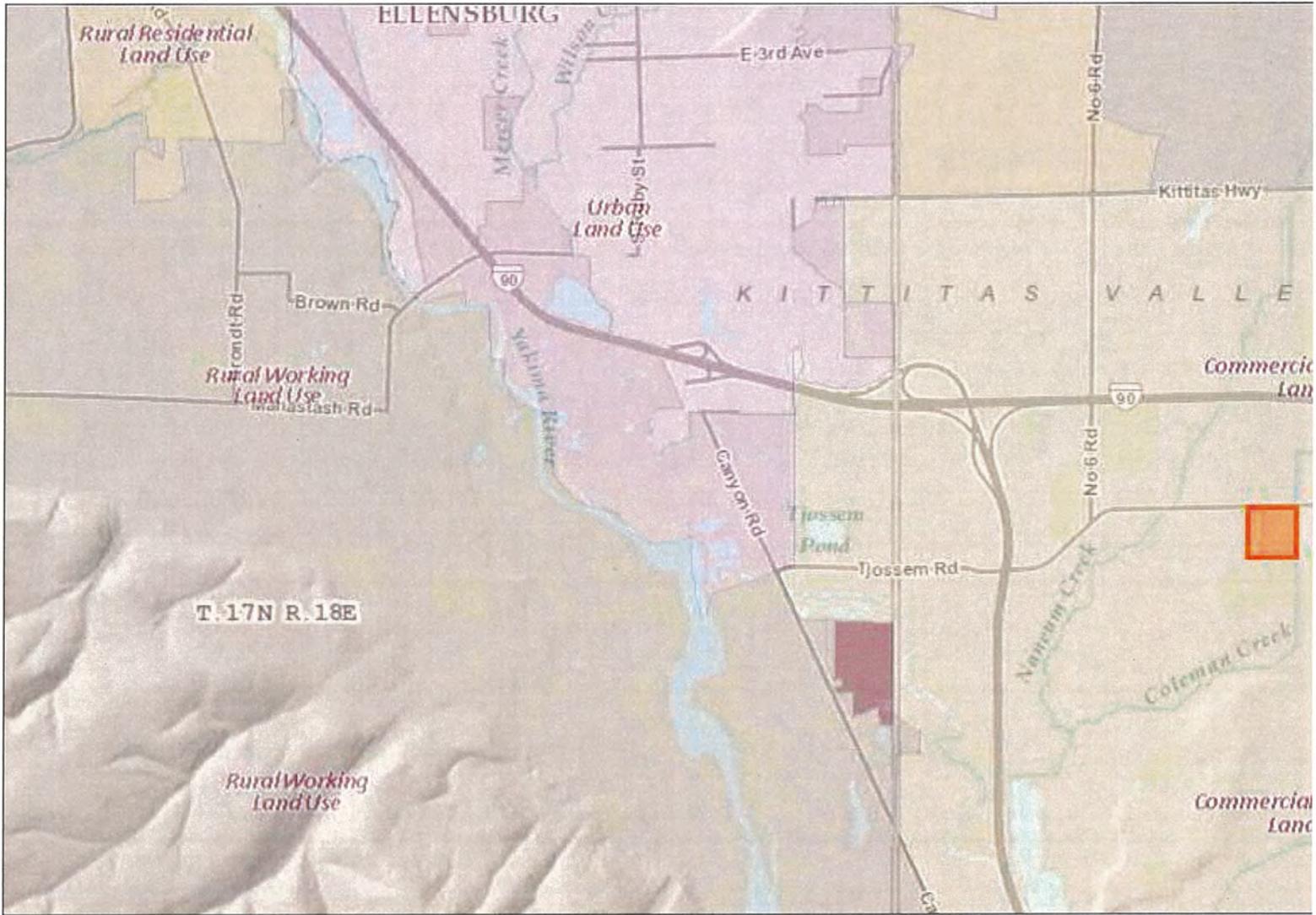
Date: 2/1/2018

1 inch = 1,505 feet
Relative Scale 1:18,056

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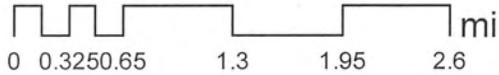
Penstemon - Land Use - Commercial Ag



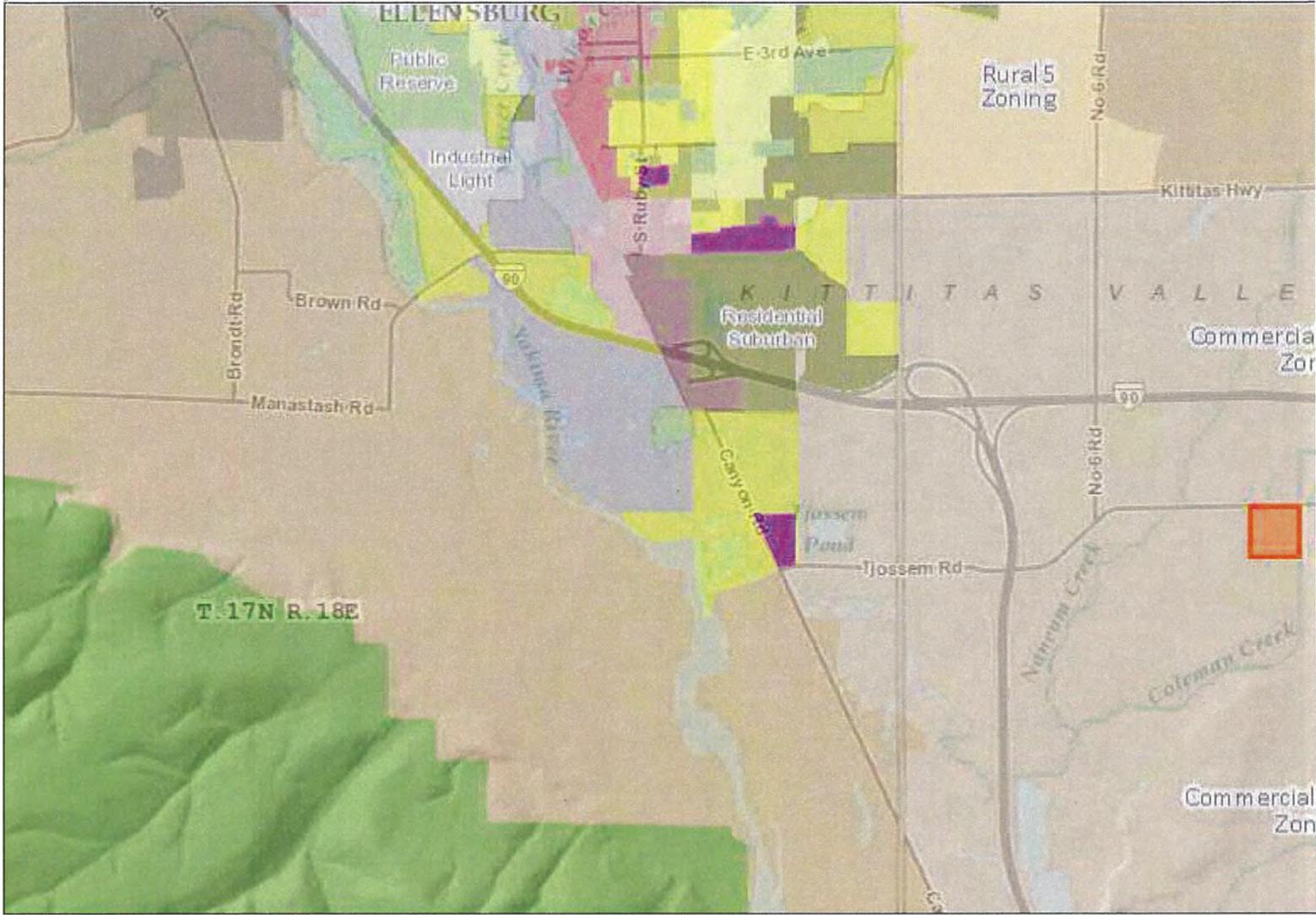
Date: 1/19/2018

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Penstemon - Zoning - Commercial Ag

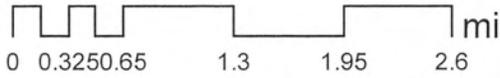


Date: 1/19/2018

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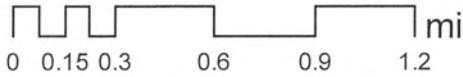
Penstemon Aerial Image



Date: 2/1/2018

1 inch = 3,009 feet
Relative Scale 1:36,112

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Penstemon Aerial Image

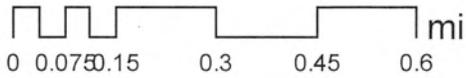


Date: 2/1/2018

1 inch = 1,505 feet
Relative Scale 1:18,056

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CLIENT ADVICE MEMORANDUM

DATE: February 13, 2018
TO: Energy Facilities Site Evaluation Council
FROM: Jonathan Thompson, Assistant Attorney General
SUBJECT: **Procedural Options for TUUSSO Energy Application**

TUUSSO Energy, LLC, has requested that the Energy Facilities Site Evaluation Council (EFSEC or Council) give expedited processing under RCW 80.50.075 to its application for site certification to develop, construct and operate the five Columbia Solar photovoltaic projects on 232 total acres in Kittitas County.

The Council may grant expedited processing, meaning no independent study or adjudication of the application would be required, if (1) the proposed facility does not have significant impacts requiring preparation of an environmental impact statement, and (2) the proposed sites are “consistent and in compliance” with applicable county “land use plans or zoning ordinances.”¹

Kittitas County argues that the projects are inconsistent and not in compliance with its land use plans and zoning ordinances, and that the Council should not grant expedited processing. The Kittitas County zoning code would require a conditional use permit for each of the five projects. Before TUUSSO filed its application with EFSEC, the Kittitas Board of County Commissioners had adopted a moratorium on acceptance of conditional use permit applications for commercial solar facilities based on the Board’s assessment that current siting standards are inadequate. The Board’s intent was to prevent vesting of applications for such solar facilities while it develops zoning code changes. Shortly before it adopted its moratorium, the County denied an application for a conditional use permit for a 47 acre solar facility proposed to be sited on farm land in the Kittitas Valley. In doing so, the County interpreted two of its conditional use criteria, as well as the goal of preserving “rural character” under its comprehensive plan, in a way it says would make the Columbia Solar projects ineligible for conditional use permits as designed.

For purposes of this memo, I will assume that a mitigated determination of non-significance will be issued, satisfying the first of the two requisites for expedited processing.

¹ RCW 80.50.075, RCW 80.50.090(2).

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A. Questions Presented:

What are the Council's options for determining whether the Columbia Solar projects are "consistent and in compliance" with Kittitas County land use plans or zoning ordinances under RCW 80.50.090(2)?

If the Council determines the projects meet the requisites for expedited processing, what procedural options are available to the Council for its review of the application, and what are the legal risks of those options?

B. Answer:

In my opinion, there is a significant possibility that a court would view the County's moratorium on commercial solar projects as an interim regulation of land use, and therefore a "zoning ordinance"² with which the project sites are not in compliance. If the moratorium is a "zoning ordinance," then EFSEC's rules would require the Council to conduct an adjudicative hearing on whether to preempt the inconsistent local land use provision (i.e., a "preemption adjudication").³ In addition, the existence of an inconsistent zoning ordinance would preclude the use of an expedited process, and EFSEC's statutes would require the Council to conduct an adjudicative hearing at which "any person shall be entitled to be heard in support of or in opposition to the application for certification" (i.e., a "general adjudication").⁴ In a non-expedited process, this general adjudication is – together with the contents of an Environmental Impact Statement – one of the main sources of information that the Council uses to inform its analysis under RCW 80.50.010 and its recommendation to the Governor.

The fact that conditional use criteria would apply to the siting of the facilities under local ordinances also presents difficulties for granting expedited processing. In two prior cases, the Council decided that the proposed location of pipeline facilities was in compliance with local zoning ordinances, even though local land use ordinances would have required the land use authority to grant a conditional use permit after a hearing process. (The Council cited these decisions in support of a narrow interpretation of land use consistency in the Tesoro Savage proceeding.) However, those were not cases in which expedited processing had been requested, and consequently, the Council was able to assure project opponents that the proposed facility's compliance with conditional use criteria would be considered outside of the land use consistency process during the general adjudication. Therefore, similar to a case where the project site is inconsistent with local zoning, one of the purposes of the general adjudication was to hear specific local concerns and to develop a record on what conditions might be imposed in a certification agreement to protect the interests of the local government and community affected

² RCW 80.50.020(22).

³ WAC 463-28-060.

⁴ RCW 80.50.090(3).

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by the proposed facility.⁵ (The other purpose of the general adjudication was to acquire information to enable to Council to balance the RCW 80.50.010 objectives and make a recommendation to the Governor.)

In my opinion, if the Council grants expedited processing, recommends approval, and the Governor grants site certification, there is a significant possibility that the court, on judicial review, would agree with Kittitas County's assertion that the proposed facility sites are not consistent and in compliance with Kittitas County land use provisions in effect at receipt of the application. In that event, if the Council had neither conducted a preemption adjudication as required by rule in cases of land use inconsistency nor a general adjudication as required by statute in non-expedited cases, the Court would likely reverse the certification and remand (send the matter back to the Council) for a preemption adjudication and a general adjudication.

In addition, even assuming the reviewing court would agree that the projects are consistent and in compliance with the County's land use provisions, that a preemption adjudication is unnecessary, and that expedited processing is proper, the Council would need to find an alternative way to develop a robust administrative record of local government and community concerns with each project through some means other than a general adjudication. If it could not do so, the eventual site certification decision would still risk judicial reversal or remand for lack of substantial evidence. This possibility of remand for lack of substantial evidence also exists if the expedited process produces insufficient evidence to support the Council's RCW 80.50.010 balancing and recommendation to the Governor. Under the expedited processing statute the Council has the discretion not to grant expedited processing even if it determines that the requisites for expedited processing are met (i.e., land use consistency and no significant environmental impact). The Council retains its ability to have any hearings it deems necessary to develop a sufficient and defensible decisional record.⁶ In lieu of a general adjudication, the Council staff may be able to develop an adequate record of local government and community interests in regard to siting and design of the projects, along with the other information necessary to support RCW 80.50.010 balancing, such as by requesting county and community comment in the SEPA threshold determination process.

The Council has at least four options with different levels of legal risk at the judicial review stage:

1. Find the project *inconsistent* with local land use provisions and deny expedited processing on that basis. The Council would then be required to hold a preemption adjudication on whether to preempt inconsistent land use provisions and a general adjudication on the merits of the application⁷ (*low risk of reversal or remand, but a*

⁵ RCW 80.50.100(2), WAC 463-28-070.

⁶ RCW 80.50.090(4).

⁷ The Council's rules allow the preemption adjudication and the general adjudication to be combined into one proceeding. WAC 463-28-020(2).

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departure from the Council's narrow interpretation of land use consistency if the basis for finding inconsistency is conditional use permit criteria that are typically considered outside of the land use consistency process).

2. Find the project *consistent* with local land use provisions based on the Council's narrow interpretation of land use consistency adopted in prior Council decisions but use the Council's discretion to deny expedited processing in recognition of the County's opposition to the projects and the need to develop an agency record on land use issues that fall outside of the land use consistency process and on other matters pertinent to the Council's RCW 80.50.010 balancing and recommendation to the Governor (*low to moderate risk of reversal or remand, allows the Council to maintain its narrow interpretation of land use consistency to avoid problems in future cases, provides a known mechanism for development of an adequate record to support the Governor's decision*).
3. Find the project *consistent* with local land use provisions based on the Council's prior narrow interpretation of land use consistency, and grant expedited processing—meaning no preemption adjudication or general adjudication would be conducted—but require that there be a limited scope adjudication on what conditions the Council should include in a certification agreement to serve the purposes of the conditional use criteria at the project sites (*moderate risk of reversal or remand, allows the Council to maintain its narrow interpretation of land use consistency to avoid problems in future cases; would blunt potential argument by County and community members that they were substantially prejudiced by Council declining to conduct preemption or general adjudication if the Council recommends approval*).
4. Find the project *consistent* with local land use provisions based on the Council's prior narrow interpretation of land use consistency, and grant expedited processing. Direct Council staff to develop a record on land use issues that fall outside of the land use consistency process and on other matters pertinent to the Council's RCW 80.50.010 balancing and recommendation to the Governor through a means other than an adjudication (*moderate to high risk of reversal or remand depending, in part, on the strength of the agency record*).

Alternatively, you could postpone a decision on land use consistency and expedited processing until a later open meeting and direct the Council staff to gather more information on local government and community land use interests through a request for comments on the SEPA mitigated determination of non-significance. This would give you the advantage of seeing what input the county government and community members will provide on land use issues through the SEPA process before making a decision on expedited process. (This would require the applicant's agreement to further extend the 120 days provided in WAC 463-43-050 for a decision on expedited processing.)