SITE CERTIFICATION AGREEMENT
BETWEEN

THE STATE OF WASHINGTON

AND

TUUSSO ENERGY LLC



For the

COLUMBIA SOLAR PROJECT

FUMARIA SOLAR SITE

KITTITAS COUNTY, WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

OLYMPIA, WASHINGTON

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SITE CERTIFICATION AGREEMENT

FOR THE COLUMBIA SOLAR PROJECT – FUMARIA SOLAR SITE

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1. Fumaria Solar Site – Site-Specific Descriptions, Plans and Conditions
2. August 22, 2018 Report to the Governor, Recommending Approval of Site Certification.

SITE CERTIFICATION AGREEMENT

FOR THE COLUMBIA SOLAR PROJECT – FUMARIA SOLAR SITE

between

THE STATE OF WASHINGTON

and

TUUSSO ENERGY, LLC

This Site Certification Agreement (Agreement or SCA) is made pursuant to Revised Code of Washington (RCW) 80.50, by and between the State of Washington, acting by and through the Governor of Washington State, and TUUSSO Energy, LLC (TUUSSO or Certificate Holder).

TUUSSO filed, as permitted by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of five solar powered generation facilities, to be located in Kittitas County, Washington. The Council reviewed Application 2017-01, conducted public meetings, and on August 22, 2018 recommended approval of a modified version of the application and five separate Site Certification Agreements by the Governor. On Oct. 17, 2018, the Governor approved the Site Certification Agreement authorizing TUUSSO Energy to construct and operate the Fumaria Solar Site (Site).

The parties hereby now desire to set forth all terms, conditions, and covenants in relation to such site certification in this Agreement pursuant to RCW 80.50.100(1).

ARTICLE I: SITE CERTIFICATION

A. Site Description

The Columbia Solar Project comprises five solar sites to be constructed and operated on distinct locations in unincorporated Kittitas County. Certification details applicable to all five sites are discussed in the body of this Site Certification Agreement, while site-specific details relevant only to the Fumaria Solar Site are presented in Attachment 1.

B. Site Certification

The State of Washington hereby authorizes TUUSSO Energy, LLC, any and all parent companies, and any and all assignees or successors approved by the Council to construct and/or operate the Fumaria Solar Site as described herein, subject to the terms and conditions set forth in the August 22, 2018, Report to the Governor, Recommending Site Certification (Attachment 2 to this Agreement), and this Agreement.

The construction and operation authorized in this Agreement shall be located within the areas designated herein and in the modifications to the Revised Application for Site Certification submitted by TUUSSO on January 26, 2018 (Revised Application).

This Agreement authorizes the Certificate Holder to construct the Fumaria Solar Site such that Substantial Completion is achieved no later than ten (10) years from the date that all final state and federal permits necessary to construct and operate the Site are obtained and associated appeals have been exhausted.

If the Certificate Holder does not begin construction of the Site within five (5) years of the execution of the SCA, the Certificate Holder will report to the Council their intention to continue and will certify that the representations in the Revised Application, environmental conditions, pertinent technology, and regulatory conditions have remained current and applicable, or identify any changes and propose appropriate revisions to the Agreement to address changes. Construction may begin only upon prior Council authorization and approval of such certifications. If the Certificate Holder does not begin construction of the Site within ten (10) years of the execution of the SCA as well as upon final conclusion of any and all appeals of all permits and approvals, all rights under this SCA will cease.

The Certificate Holder may begin Commercial Operation of the Fumaria Solar Site prior to completing construction of all of the Site components, provided that all necessary Site elements are in place for safe operation of the Site and its operation will not adversely affect any obligations under this Agreement.

C. Project Description

Each of the Columbia Solar Project sites will consist of:

1. A Solar Panel Field. Each site will include north-south-oriented rows of crystalline silicon PV panels, such as (but not limited to) modules between 325 and 345Wp, mounted on single-axis tracking systems, on galvanized steel support structures.
2. An Electrical Collection and Inverter System. These systems aggregate the output from the PV panels and convert the electricity from direct current (DC) to alternating current (AC), including inverters.

3. Interconnection Equipment. This equipment transforms facility electric output to a voltage of 12.47 kV, and will include a padmount-style transformer manufactured by ABB or similar.

4. Remote Supervisory Control and Data Acquisition (SCADA) Equipment. This monitoring equipment will be incorporated into the process control system to allow unmanned operations.

5. Communications and Grid-protection Equipment. This equipment will be selected by Puget Sound Energy and TUUSSO in order to allow the Sites to connect to the electric grid.

6. A Meteorological Data Collection System. This system will be configured to collect meteorological information roughly at the height of the PV panels.

7. Civil Infrastructure. Infrastructure would include access gates, internal access roads, and secure fencing.

8. Screening Vegetation. Where appropriate, native trees, shrubs, and/or plants in selected locations to provide visual screening.

9. Site-Specific Facilities. The Fumaria Solar Site further includes the following:

    a. **Generation Tie Line**. A 12.47-kV ~2.56 mile long generation tie line connecting the Fumaria Solar Site to a nearby Puget Sound Energy substation.

The location of Site facilities including, but not limited to, the solar panels, electrical collection and distribution system, electrical transformers, electrical generation tie lines, roadways, and other related Site facilities, is generally described in the Revised Application[1], as modified within the Agreement. The final location of the solar panels and other site facilities within the Site Location may vary from the locations shown on the conceptual drawings provided in the Revised Application[2], but shall be consistent with the conditions of this Agreement and in accordance with the final construction plans approved by EFSEC pursuant to Article IV.L.

More detail about the Fumaria Solar Site is included in Attachment 1.

ARTICLE II: DEFINITIONS

Where used in this Site Certification Agreement, the following terms shall have the meaning set forth below:

1. "Application" means the *Application for Site Certification: Columbia Solar Project*, designated No. 2017-01, submitted on October 16, 2017, as supplemented in the Revised Application filed on January 26, 2018.

2. "Approval" (by EFSEC) means an affirmative action by EFSEC or its authorized agents including those actions and consultations delegated to Council staff regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.

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[1] *See* Section 2.3.3.2 and Appendix L of the Revised Application.
[2] Appendix L of the Revised Application.

3. "Begin Commercial Operation" or "Beginning of Commercial Operation" means the time when the Site begins generating and delivering electricity to the electric power grid, other than electricity that may be delivered as a part of testing and startup of the Site.

4. "BMPs" means Best Management Practices.

5. "Certificate Holder" means TUUSSO Energy, LLC, any and all parent company(s), or an assignee or successor in interest authorized by the Council.

6. "Checklist" means the Columbia Solar Projects SEPA Environmental Checklist, submitted on October 16, 2017, as supplemented in the Revised Checklist filed January 26, 2018, and as supplemented by the Memorandum RE: Environmental Review and Staff Recommendation for SEPA Determination for the Columbia Solar Project issued by EFSEC on February 27, 2018, pursuant to the requirements of the State Environmental Policy Act, and adopted by EFSEC.

7. "Construction" means any of the following activities: any foundation construction including hole excavation, form work, rebar, excavation and pouring of concrete for the inverter pads and switchyard, or erection of any permanent, above-ground structures including any solar tracking assemblies, the transformer, transmission line poles, substation poles, or meteorological towers.

8. "County" means Kittitas County, Washington.

9. "DAHP" means the Washington State Department of Archaeology and Historic Preservation.

10. "Ecology" means the Washington State Department of Ecology.

11. "EFSEC" or "Council" means the State of Washington Energy Facility Site Evaluation Council, or such other agency or agencies of the State of Washington as may hereafter succeed to the powers of EFSEC for the purposes of this Agreement.

12. "EFSEC Costs" means any and all reasonable costs, both direct and indirect, associated with EFSEC activities with respect to this Site Certification Agreement (SCA), including but not limited to monitoring, staffing, and SCA maintenance.

13. "End of Construction" means the time when all Site facilities have been substantially constructed and are in operation.

14. "FAA" means the Federal Aviation Administration.

15. "Force Majeure Event" means any event beyond the control of the Party affected that directly prevents or delays the performance by that Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Site caused by third parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or

revolution; sabotage or vandalism; embargoes; and actions of a governmental authority other than EFSEC.

16. "Fumaria Solar Site" or "Site" means those Fumaria Solar Site facilities described in the Application, including: solar panels and their construction areas; electrical collection/interconnection and communication systems; electrical step-up and interconnection transformers; permanent meteorological towers; access roadways; temporary construction-related facilities; and other related Site facilities. The specific components of the Site are identified in Article I.C, and Attachment 1.

17. "IBC" means the International Building Code.

18. "Micro-siting" means the final technical and engineering process by which the Certificate Holder shall recommend to the Council the final location of solar project facilities on the Site Location.

19. "NPDES Permit" means National Pollutant Discharge Elimination System permit.

20. "PSE" means Puget Sound Energy.

21. "RCW" means the Revised Code of Washington.

22. "Revised Application" means the Columbia Solar Project Revised Application for Site Certification submitted on January 26, 2018.

23. "Revised MDNS" means the Revised Mitigated Determination of Non-Significance issued on April 17, 2018 by EFSEC.

24. "Site Location" means the land identified in the Application on which the Fumaria Solar Site is to be constructed and operated, namely, the 35.24-acre Fumaria Solar Site, as described in greater detail in Attachment 1.

25. "Site Certification Agreement," "SCA" or "Agreement" means this formal written agreement between the Certificate Holder and the State of Washington, including all attachments hereto and exhibits, modifications, amendments, and documents incorporated herein.

26. "Site Preparation" means any of the following activities: Site Location clearing, grading, earth moving, cutting or filling, excavation, and preparation of roads and/or laydown areas.

27. "State" or "state" means the State of Washington.

28. "Substantial Completion" means the Site is generating and delivering energy to the electric power grid.

29. "UBC" means the Uniform Building Code of 1997.

30. "WAC" means the Washington Administrative Code.

31. "WDFW" means the Washington Department of Fish and Wildlife.

32. "WSDOT" means the Washington State Department of Transportation.

ARTICLE III: GENERAL CONDITIONS

A. Legal Relationship

1. This Agreement shall bind the Certificate Holder, and its successors in interest, and the State and any of its departments, agencies, divisions, bureaus, commissions, boards, and its political subdivisions, subject to all the terms and conditions set forth herein, as to the approval of, and all activities undertaken with respect to the Site or the Site Location. The Certificate Holder shall ensure that any activities undertaken with respect to the Site or the Site Location by its agents (including affiliates), contractors, and subcontractors comply with this Agreement and applicable provisions of Title 463 WAC. The term "affiliates" includes any other person or entity controlling, controlled by, or under common control of or with the Certificate Holder.

2. This Agreement, which includes those commitments made by the Certificate Holder in the Revised Application, constitutes the whole and complete agreement between the State of Washington and the Certificate Holder, and supersedes any other negotiations, representations, or agreements, either written or oral.

B. Enforcement

1. This Agreement may be enforced by resort to all remedies available at law or in equity.

2. This Agreement may be suspended or revoked by EFSEC pursuant to RCW 34.05 and RCW 80.50, for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, for violations of RCW 80.50 and the rules promulgated thereunder, or for violation of any applicable resolutions or orders of EFSEC.

3. When any action of the Council is required by or authorized in this Site Certification Agreement, the Council may, but shall not be legally obligated to, conduct a hearing pursuant to RCW 34.05.

C. Notices and Filings

Filing of any documents or notices required by this Agreement with EFSEC shall be deemed to have been duly made when delivery is made to EFSEC's offices at Energy Facility Site Evaluation Council, 1300 S. Evergreen Park Dr. SW, P.O. Box 47250, Olympia, WA 98504-7250, in Thurston County.

Notices to be served by EFSEC on the Certificate Holder shall be deemed to have been duly made when deposited in first class mail, postage prepaid, addressed to the Certificate Holder at TUUSSO Energy, LLC, 500 Yale Avenue North, Seattle, WA 98109, Attn: Jason Evans, with a copy to Tim McMahan, Stoel Rives LLP, 760 SW Ninth Avenue, Portland, OR 97205.

D. Rights of Inspection

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site Location, the Site structures, buildings and facilities, underground and overhead electrical lines, and all records relating to the construction and operation of the Site to designated representatives of EFSEC and EFSEC contractors in the performance of their official duties.

Such duties include, but are not limited to, environmental monitoring as provided in this Agreement and monitoring and inspections to verify the Certificate Holder's compliance with this Agreement. EFSEC personnel or any designated representatives of EFSEC shall follow all worker safety requirements observed and enforced on the Site Location by the Certificate Holder and its contractors.

E. Retention of Records

The Certificate Holder shall retain such records as are necessary to demonstrate the Certificate Holder's compliance with this Agreement.

F. Consolidation of Plans and Submittal to EFSEC

Any plans required by this Agreement may be consolidated with other such plans, if such consolidation is approved in advance by EFSEC. This Site Certification Agreement includes time periods for the Certificate Holder to provide certain plans and other information to EFSEC or its designees. The intent of these time periods is to provide sufficient time for EFSEC or its designees to review submittals without delay to the Site construction schedule, provided submittals made to EFSEC and/or its designees are complete.

G. Site Certification Agreement Compliance Monitoring and Costs

The Certificate Holder shall pay to the Council such reasonable monitoring costs as are actually and necessarily incurred during the construction and operation of the Site to assure compliance with the conditions of this Agreement, as required by RCW 80.50. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.

The Certificate Holder shall deposit or otherwise guarantee payment of all EFSEC Costs as defined in Article II.15, for the period commensurate with the activities of this Agreement. EFSEC shall provide the Certificate Holder an annual estimate of such costs. Any instrument guaranteeing payment of EFSEC's costs shall be structured in such a manner as to allow EFSEC to collect from a third party and without approval of the Certificate Holder any such costs which the Certificate Holder fails to pay to EFSEC during any preceding billing period.

H. Site Restoration

The Certificate Holder is responsible for site restoration pursuant to the Council's rules, WAC 463-72, in effect at the time of submittal of the Application.

The Certificate Holder shall develop an Initial Site Restoration Plan in accordance with the requirements set out in Article IV.D of this Agreement and in consultation with WDFW, and submit it to EFSEC for approval. The Certificate Holder may not begin Site Preparation or Construction until the Council has approved the Initial Site Restoration Plan, including the posting of all necessary guarantees, securities, or funds associated therewith.

The Certificate Holder shall submit a detailed Site Restoration Plan to EFSEC for approval prior to decommissioning in accordance with the requirements of Article VIII.A of this Agreement.

I. EFSEC Liaison

No later than thirty (30) days from the effective date of this Agreement, the Certificate Holder shall designate a person to act as a liaison between EFSEC and the Certificate Holder.

J. Changes in Project Management Personnel

The Certificate Holder shall notify EFSEC of any change in the primary management personnel, or scope of responsibilities of such personnel, for the Site.

K. Amendment of Site Certification Agreement

1. This Agreement may be amended pursuant to EFSEC rules and procedures applicable at the time of the request for amendment. Any requests by the Certificate Holder for amendments to this Agreement shall be made in writing.
2. No change in ownership or control of the Site shall be effective without prior Council approval pursuant to EFSEC rules and procedures.
3. Unless otherwise required by EFSEC, any change in the terms or conditions of the following Sections or Attachments to this Agreement shall not require amendment of this Site Certification Agreement in the manner prescribed in Section K.1, above, provided the change does not result in a material alteration of the size or location of the Site.
4. Repair, maintenance, and replacement of Site facilities:
    a) The Certificate Holder is permitted, without any further amendment to this agreement, to repair and maintain Site Facilities described in Article I.C and Attachment 1, consistent with the terms of this Agreement.
    b) The Certificate Holder shall notify EFSEC of the replacement of any significant portion of the Site Facilities no later than thirty (30) days prior to the replacement occurring.
5. In circumstances where the Site causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement, or where such impacts are imminent, EFSEC shall take all steps it deems reasonably necessary, including imposition of specific conditions or requirements on the Certificate Holder as a consequence of such a situation in addition to the terms and conditions of this Agreement. Such additional conditions or requirements initially shall be effective for not more than ninety (90) days, and may be extended once for an additional ninety (90) day period if deemed necessary by EFSEC to pursue ongoing, or continuing temporary, arrangements under other authority, including but not limited to RCW 34.05, RCW 80.50 RCW, or Title 463 WAC.

L. Order of Precedence

In the event of an inconsistency or apparent ambiguity in this Agreement, the inconsistency or ambiguity shall be resolved by giving precedence in the following order:

1. Applicable Federal statutes and regulations;
2. Applicable State of Washington statutes and regulations;
3. The body of this Site Certification Agreement, including any other provision, term, or material incorporated herein by reference or otherwise attached to, or incorporated in,

this Agreement;

4. The application of common sense to effect a result consistent with law and the principles effected in this document.

M. Review and Approval Process; Exceptions

1. Except for the Initial and Final Site Restoration Plans, prior to any Site Location work, the Council may delegate to the EFSEC Manager authority to approve or deny the construction and operational plans required by this Agreement. The EFSEC Manager shall ensure that the construction and operational plans have been sufficiently reviewed prior to approval.

2. The EFSEC Manager may allow temporary exceptions from plan requirements or provisions of the SCA when such exceptions are not contrary to the purposes of the SCA, provided that a record is kept and Council members are immediately notified. Any Council member may within seven (7) days of the notice put the item on a Council meeting agenda for review.

ARTICLE IV: PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION

A. Notice of Federal Permit Approvals

No later than thirty (30) days after the effective date of this Agreement, the Certificate Holder shall notify the Council of all Federal permits, not delegated to EFSEC, that are required for construction and operation of the Site, if any, and the anticipated date of permit issuance to the Certificate Holder. The Certificate Holder shall notify the Council when all required federal permits have been obtained, no later than ten (10) business days after the last permit has been issued.

B. Mitigation Measures

During construction, operation, decommissioning, and site restoration of this Site, the Certificate Holder shall implement the mitigation measures set forth in this Agreement, including, but not limited to, those presented in Section 1.10 of the Revised Application, those identified in the Final SEPA Environmental Checklist as commitments made by the Certificate Holder, and those presented in the Revised MDNS. Mitigation measures relevant to all five project sites are set forth below, while site-specific mitigation measures for the Fumaria Solar Site are presented in Attachment 1.

No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall file with EFSEC a comprehensive list of these mitigation measures. For each of these mitigation measures, the Certificate Holder shall in the same filing further identify the Construction Plan and/or Operation Plan addressing the methodology for its achievement.

The specific plans and submittals listed in the remainder of this Article IV, and Articles V, VI, VII, and VIII, shall incorporate these mitigation measures as applicable.

C. Construction Stormwater Plans

1. Notice of Intent. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities.[3]

2. Construction Stormwater Pollution Prevention Plan[4]. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit to EFSEC a Construction Stormwater Pollution Prevention Plan (Construction SWPPP), and provide a copy to Ecology for comment. The Construction SWPPP shall meet the requirements of the Ecology stormwater pollution prevention program (WAC 173-230), and the objectives and requirements in Special Condition S.9 of the *National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activities* issued by the Department of Ecology on January 1, 2011 or as revised. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction SWPPP.

   The Construction SWPPP shall identify a regular inspection and maintenance schedule for all erosion control structures. The schedule shall include inspections after significant rainfall events. Any damaged structures shall be addressed immediately. Inspections, and subsequent erosion control structure corrections, shall be documented in writing and available for EFSEC's review on request.

3. Temporary Erosion and Sediment Control Plan[5]. The Certificate Holder shall develop a Temporary Erosion and Sediment Control (TESC) Plan. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit the TESC Plan to the Council for approval and provide a copy to Ecology for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the TESC Plan. As an alternative to submitting a separate TESC Plan, the Certificate Holder may include measures for temporary erosion and sedimentation control in the Construction SWPPP required in Article IV, Section C.2, above.

4. Construction Spill Prevention, Control and Countermeasures Plan[6]. The Certificate Holder shall develop a Construction Spill Prevention, Control, and Countermeasures Plan (Construction SPCCP), consistent with the requirements of 40 CFR Part 112. The Construction SPCCP shall include the Site Location, and all access roads. The Certificate Holder shall require all contractors working on the facility to have a spill prevention and countermeasure program consistent with 40 CFR Part 112. No later than

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[3] *See* Table 1.10-1, Sections 2.11.1, 2.23.2.3 and 5.2(1) of the Revised Application, and Section B(1)(f) of the Final SEPA Environmental Checklist.

[4] *See* Table 1.10-1, Sections 2.11.1, 2.17.3, 2.23.2.3, 3.1.5.1, 3.4.6.3, 4.4.22.2 and 5.2(1) of the Revised Application, and Sections B(1)(f), B(1)(h), B(3)(c)(2) and B(5)(d) of the Final SEPA Environmental Checklist.

[5] *See* Table 1.10-1, Sections 2.17.3 and 3.1.6 of the Revised Application, and Section B(1)(h) of the Final SEPA Environmental Checklist.

[6] *See* Table 1.10-1, Sections 2.10, 3.4.5.2(h) and 4.1.6 of the Revised Application, and Section B(3)(c)(2) of the Final SEPA Environmental Checklist.

sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit the Construction SPCCP to the Council for approval and provide a copy to WDFW and Ecology for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction SPCCP. All applicable elements of the Construction SPCCP shall be implemented prior to the beginning of Site Preparation.

D. Initial Site Restoration Plan

The Certificate Holder is responsible for Site decommissioning and restoration pursuant to Council rules. The Certificate Holder shall develop an Initial Site Restoration Plan, pursuant to the requirements of WAC 463-72-040 in effect on the date of Application, in consultation with EFSEC staff and WDFW. The Certificate Holder shall submit the Initial Site Restoration Plan to the Council for review at least ninety (90) days prior to the beginning of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Initial Site Restoration Plan from the Council.

The Initial Site Restoration Plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues reasonably anticipated by the Certificate Holder on the date the Plan is submitted to EFSEC. The Initial Site Restoration Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Site Location or otherwise protect the public against risks or danger resulting from the Site. The Initial Site Restoration Plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk, and shall address provisions for funding or bonding arrangements to meet the Site Location restoration or management costs. The Initial Site Restoration Plan shall be prepared in detail commensurate with the time until restoration is to begin. The scope of proposed monitoring shall be addressed in the Initial Site Restoration Plan.

The objective of the Plan shall be to restore each Site Location to approximate pre-Project condition or better. The Plan shall require removal of the solar panels and rack mounting system, foundations, cables, and other facilities to a depth of four feet below grade, and restoration of any disturbed soil to the pre-construction condition.

The Plan shall include the following elements:

1. Decommissioning Timing and Scope, as required by Article VIII.C of this Agreement.
2. Decommissioning Funding and Surety, as required by Article VIII.D of this Agreement.
3. Mitigation measures described in the Revised Application[7] and this Agreement.
4. A plan that addresses both the possibility that restoration will occur prior to, or at the end of, the useful life of the Site and also the possibility of the Site being suspended or terminated during construction.
5. A description of the assumptions underlying the plan. For example, the plan should explain the anticipated useful life of the Site, the anticipated time frame of restoration, and the anticipated future use of the Site Location.

[7] *See* Sections 1.9, 4.1.9, and Appendix F of the Revised Application.

6. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.

7. Performing an on-site audit, and preparing an initial plan for disposing of hazardous materials (if any) present on the Site Location and remediation of hazardous contamination (if any) at the Site Location. In particular, if the Certificate Holder constructs the Site with solar panels incorporating hazardous materials, such as Cadmium Telluride, then the Certificate Holder shall use appropriate precautions during decommissioning and removal of the solar panels to safely dispose of and to avoid, and, if necessary, remediate any soil contamination resulting from the panels' hazardous materials.

8. An initial plan for restoring the Site Location, including the removal of structures and foundations to four feet below grade and the restoration of disturbed soils.

9. Provisions for preservation or removal of Site facilities if the Site is suspended or terminated during construction.

E. Habitat, Vegetation, and Fish and Wildlife Mitigation

1. Habitat Restoration and Mitigation Plan[8]. Prior to the beginning of Site Preparation, the Certificate Holder shall develop a Habitat Restoration and Mitigation Plan, in consultation with EFSEC staff and WDFW. The Certificate Holder shall submit the Habitat Restoration and Mitigation Plan to EFSEC for approval at least sixty (60) days prior to the beginning of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Habitat Restoration and Mitigation Plan from the Council.

    a) The Certificate Holder and EFSEC staff, in consultation with WDFW, shall develop a map of habitat types found within the Site Location ("Habitat Map"). This Habitat Map shall be based upon Gap Analysis Project (GAP) spatial data and field investigations of the Site Location.

    b) The Plan shall specify the Certificate Holder's Mitigation Obligation. The Certificate Holder's Mitigation Obligation will be determined through consultation with WDFW. The Mitigation Obligation will include benchmarks and a timeline for revegetation success, and a plan for monitoring revegetation activities in riparian areas to ensure success.[9] Pre-construction Site layout drawings will show expected permanent and temporary land disturbances.

    c) The Plan shall include a process to determine the actual impacts to habitat following the completion of construction. In the event that actual impacts to habitat exceed the expected impacts determined prior to construction, the Habitat Mitigation Plan will include a mechanism for the Certificate Holder

[8] *See* Table 1.10-1 and Section 3.4.6 of the Revised Application, and Section B(5)(d) of the Final SEPA Environmental Checklist.

[9] *See* Mitigation Measure #3 of the Revised MDNS.

to provide supplemental compensatory mitigation (Supplemental Mitigation). Supplemental Mitigation, if any, may take the form of additional on-site habitat enhancement or the payment of an additional fee equivalent to the value of permanently disturbed project acres to WDFW in lieu of mitigation.

d) In consultation with WDFW, the Certificate Holder shall develop the plan to require all temporarily disturbed areas to be reseeded with an appropriate mix of plant species that are adapted to local site conditions and will become established quickly, such as, but not limited to, native plant species, in a manner and sequence that will maximize the likelihood of successful restoration of the area and prevent the spread of noxious weeds. The Plan shall include a restoration schedule that identifies timing windows during which restoration should take place, and an overall timeline for when all restoration activities will be completed.

2. Wetlands, Streams and Riparian Areas[10].

a) Construction of the Site shall be performed in accordance with Mitigating Conditions 1-5 of the Revised MDNS.

b) Prior to construction of the Site, the Certificate Holder shall provide plans to EFSEC for coordination with Ecology to conduct additional wetlands surveys and to identify hydrologic features at each Site Location. A final set of wetlands buffers, setbacks and mitigation standards shall be determined by EFSEC in consultation with Ecology. A final set of wetlands buffers, setbacks and mitigation standards shall be determined by EFSEC in consultation with Ecology. For identified wetland buffers in the shoreline jurisdiction, buffers shall be determined in accordance with applicable provisions of the Kittitas County Code (KCC) for Shorelines in KCC 17B. For identified wetland buffers outside the shoreline jurisdiction, buffers shall be determined in accordance with applicable provisions of the Kittitas County Code for Critical Areas in KCC 17A. Where supported by the following Ecology guidance documents, EFSEC may require buffers of greater width than would be required under KCC 17B or 17A: Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance, Ecology Publication #06-06-011a (March 2006); Wetland Mitigation in Washington State - Part 2: Developing Mitigation Plans, Ecology Publication #06-06-011b (March 2006); Update on Wetland Buffers: The State of the Science, Final Report, Ecology Publication #13-06-011 (October 2013). Based upon the final wetlands requirements from EFSEC, the Certificate Holder shall submit a Wetlands Mitigation Plan to EFSEC for approval at least sixty (60) days prior to the beginning of Site Preparation, which shall summarize how the Site is in compliance with those wetlands

[10] *See* Table 1.10-1, Sections 1.16.1(a), 3.3.5.1, 3.4.3.1, 3.4.5, 3.4.6.3, 3.5.4, 3.5.5 and 3.5.6 of the Revised Application, and Sections B(1)(h), B(5)(d) of the Final SEPA Environmental Checklist.

buffers, setbacks, and mitigation standards.

c) Construction of the Site shall not result in any temporary or permanent disturbances of streams or other surface waters. If unanticipated disturbances of streams or other surface waters occur, the Certificate Holder shall prepare a Waters Restoration Plan in consultation with the Corps and Ecology and submit it to EFSEC for approval. Prior to any construction work affecting the bed or flow in waters of the state (including seasonally dry channels), the Certificate Holder shall consult with and obtain approval from the Corps and Ecology, and provide documentation of such approval to EFSEC. At least sixty (60) days prior to beginning any such channel work, the Certificate Holder shall submit construction drawings to EFSEC for review and approval. The drawings shall specify the exact locations of work to be conducted, buffers that are required, and best management practices and mitigation measures that will be implemented as required by this article. The Certificate Holder shall not begin channel work prior to obtaining approval of the construction drawings from the Council.

3. Wet Season Construction. Construction activities are not restricted to particular seasons. However, the Certificate Holder shall attempt to sequence construction activities in order to minimize temporary earth disturbances during the wet season where practical. In particular, the Certificate Holder shall avoid earth-disturbing activities that result in distinct areas of temporary habitat disturbance in areas when soils are saturated (which commonly occurs from mid-November through April) when possible. If such activities are to take place during periods of soil saturation, the Certificate Holder shall consult with WDFW to develop a specific plan incorporating strategies and best management practices to minimize the environmental impacts of the activities and additional restoration measures to ensure successful restoration of the disturbed habitat.

4. Avian Protection Plan[11]. No later than thirty (30) days prior to beginning construction, the Certificate Holder shall submit to EFSEC for review and approval an Avian Protection Plan (APP). The APP shall be developed in consultation with the USFWS and WDFW. The purpose of the APP shall be to outline measures to avoid or reduce impacts to avian species and to assess the adequacy of mitigation measures implemented, including any mitigation necessary under the Migratory Bird Treaty Act. The Certificate Holder shall not begin construction prior to obtaining approval of the APP from the Council. The results of these measures shall be reported to EFSEC after construction.

   The APP shall provide, at a minimum, that any new electrical poles installed for the Site will be designed to comply with the current Avian Power Line Interaction Committee (APLIC) guidelines. If the APLIC guidelines are not feasible on a pole location, the Certificate Holder will present the reasons to EFSEC and determine

[11] *See* Section 3.4.2 of the Revised Application, Section B(5)(a) of the Final SEPA Environmental Checklist, and Mitigation Measures #7 and 8 of the Revised MDNS.

appropriate mitigation or monitoring measures.

The Certificate Holder will also take steps to avoid avian attraction to solar panels by planting vegetation around panels, or using other strategies to reduce the risk of avian collisions.

The APP shall further include pre-construction nest survey protocols, active nest avoidance measures, and post-construction habitat mitigation/enhancement measures. The APP shall include nesting surveys for raptors and great blue heron (where appropriate) in the spring of each year of construction, and if found to be active, establish the following seasonal work avoidance buffers:

a) 0.25-mile avoidance buffer during nesting season for raptors. If construction near active raptor nests might occur during the critical use period, the Certificate Holder shall consult with EFSEC and USFWS for appropriate mitigation or monitoring measures.

b) 0.25-mile avoidance buffer from February through May for great blue heron. If construction near active great blue heron nests might occur between February through May, the Certificate Holder shall consult with EFSEC and WDFW for appropriate mitigation or monitoring measures.

In consultation with WDFW and USFWS, the Certificate Holder shall include actions taken to comply with the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) within the APP.

F. Construction Traffic Development Standards

Development Standards: The Certificate Holder shall incorporate the following development standards into the design and construction of the Site:

1. Site Access Roads[12]. Interior all-weather access roads consisting of compacted soils and/or gravel within the Site Location would be designed to provide access to the major equipment pads from the Site Location entrance. The remainder of the access roads throughout the Site Location would be unpaved vegetated roads.

2. Oversize or Overweight Hauls. The Certificate Holder shall notify EFSEC, at the earliest time possible, of any permits or approvals required to conduct oversize or overweight hauls.

G. Cultural and Archaeological Resources Plan[13]

Prior to construction, the Certificate Holder shall obtain all necessary Department of Archaeology and Historic Preservation (DAHP) permits and perform all necessary archaeological work in order to comply with RCW 27.53.

With the assistance of an experienced archaeologist, and in consultation with EFSEC, DAHP, and the Yakama Nation, the Certificate Holder shall develop a Cultural Resources Monitoring

[12] *See* Sections 2.3.2.6 and 4.3.2.2 of the Revised Application.

[13] *See* Table 1.10-1, Sections 2.23.2.7 and 4.2.11 of the Revised Application, Section B(13)(d) of the Final SEPA Environmental Checklist, and Mitigation Measure #10 of the Revised MDNS.

and Mitigation Plan for monitoring construction activities and responding to the discovery of archaeological resources or buried human remains. The Certificate Holder shall provide copies of the draft Plan for comment to other potentially affected tribes, prior to submitting the plan for EFSEC approval.

The Certificate Holder shall submit the Plan to EFSEC for review and approval no later than sixty (60) days prior to the start of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Plan from the Council. All applicable elements of the Plan shall be implemented prior to the start of Site Preparation. The Plan shall include, but not be limited to, the following:

1. The Plan shall include a copy of the final construction and micro-siting plans for the Site, and shall provide for the avoidance of significant archaeological sites where practical. For sites to be avoided, the boundaries of identified cultural resources and buffer zones shall be staked in the field and flagged as no-disturbance areas to avoid inadvertent disturbance during construction. These site markings will be removed following construction. The Plan shall address alternative mitigation measures developed in coordination with DAHP to be implemented if it is not practical to avoid archaeological sites or isolates.

2. The Plan shall address the possibility of the unanticipated discovery of archaeological artifacts during construction. If any archaeological artifacts, including but not limited to human remains, are observed during construction, then disturbance and/or excavation in that area will cease, and the Certificate Holder shall notify DAHP, EFSEC, the Yakama Nation and any affected tribes and, in the case of human remains, the County Coroner or Medical Examiner. At that time, appropriate treatment and mitigation measures shall be developed in coordination with the agencies and tribes cited above, and implemented following approval by EFSEC. If Site facilities cannot be moved or re-routed to avoid the resources, the Certificate Holder shall contact EFSEC and DAHP for further guidance, which may require the implementation of a treatment plan. If a treatment plan is required, it shall be developed in consultation with DAHP and any affected tribes.

3. Potentially affected tribes shall be notified of earth-disturbing construction activities and if a tribe requests to have its representatives present during earth-disturbing construction activities, the Certificate Holder shall accommodate reasonable requests. In all cases the Certificate Holder shall inform EFSEC of each such tribal request.

H. Construction Emergency Plan

1. Construction Emergency Plan[14]. The Certificate Holder shall retain qualified contractors familiar with the general construction techniques and practices to be used for the Site and its related support facilities. The construction specifications shall require contractors to implement a safety program that includes an Emergency Plan. The Certificate Holder shall prepare and submit a Construction Emergency Plan to

[14] *See* Section 4.1.9 and Appendix M of the Revised Application.

EFSEC for review at least sixty (60) days prior to the beginning of Site Preparation. The Certificate Holder shall coordinate development and implementation of the Plan with applicable local and state emergency services providers. The Certificate Holder shall not begin Site Preparation or Construction prior to obtaining EFSEC approval of the Construction Emergency Plan. The Construction Emergency Plan shall include consideration of the following, in such level of detail as reasonable, given the nature and probability of risk:

a) Medical emergencies;

b) Construction emergencies;

c) Site Location evacuation;

d) Fire protection and prevention;

e) Flooding;

f) Extreme weather abnormalities;

g) Earthquake;

h) Volcanic eruption;

i) Facility blackout;

j) Hazardous materials spills;

k) Terrorism, sabotage, or vandalism; and

l) Bomb threat.

2. Fire Control Plan[15]. The Certificate Holder shall develop and implement a Fire Control Plan in coordination with state and local agencies to minimize the risk of accidental fire during construction and to ensure effective response to any fire that does occur on the Site Location at any time. The Certificate Holder shall submit the Fire Control Plan to EFSEC for review and approval at least sixty (60) days prior to Site Preparation and provide a copy to WDFW, and other local and state service providers for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Fire Control Plan.

I. Construction Management Plan

The Certificate Holder shall, with the assistance of Council staff, develop a detailed Construction Management Plan in consultation with WDFW and other affected state and local agencies. The Plan shall address the primary Site Preparation and Construction phases for the Site, and shall be generally based on the mitigation measures contained in this Agreement and the Revised Application. At least sixty (60) days prior to the start of Site Preparation, the Certificate Holder shall submit the Construction Management Plan to the Council for review and approval. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the

[15] *See* Table 1.10-1 and Sections 3.4.6.3 and 4.4.8.1 of the Revised Application, and Section B(5)(d), B(7)(a), B(15)(a) of the Final SEPA Environmental Checklist.

Construction Management Plan.

J. Construction Schedule

No later than thirty (30) days prior to the beginning of Site Preparation, the Certificate Holder shall submit to EFSEC an overall construction schedule. Thereafter, the Certificate Holder shall notify EFSEC of any significant changes in the construction schedule.

K. Construction Plans and Specifications

1. At least sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit to EFSEC or its designated representative for approval of those construction plans, specifications, drawings, and design documents that demonstrate the Site design will be in compliance with the conditions of this Agreement. The Certificate Holder shall also provide copies to WDFW, Ecology, DAHP and other agencies as EFSEC may direct, for comment. The plans shall include the overall project Site plans, equipment and material specifications. The Certificate Holder shall not begin Construction prior to obtaining Council approval of the construction plans and specifications.

2. The construction plans and specifications shall be in compliance with Chapter 17A.07 of the Kittitas County's Critical Areas Ordinance for the protection of riparian areas.

3. The construction plans and specifications shall show fencing at a minimum of eight feet in height, with a single line of barbed wire installed at the top of the fence. Razor wire will not be used.[16]

4. The Certificate Holder shall consult with emergency services suppliers prior to preparing final road construction plans, to ensure that interior all-weather access roads are sufficient to provide reliable access by emergency vehicles. In its final design for construction, the Certificate Holder shall maximize the use of existing roads and pathways, and minimize the construction of new roads as much as reasonable and practical, and without disrupting wetlands or other sensitive habitat.[17] The final design shall be subject to approval by EFSEC as part of the overall construction plans and specifications.

5. The construction plans and specifications shall show that structures placed within floodplains are designed so as not to restrict or redirect flows from their natural flow path. If impervious surfaces, such as roads, are placed in the floodplain, the Certificate Holder shall propose measures to mitigate for the lack of floodplain storage.[18]

ARTICLE V: SITE CONSTRUCTION

A. Environmental Monitoring During Construction

1. Environmental Monitor (EM). EFSEC shall provide on-site environmental monitoring for the construction phase of the Site, at the Certificate Holder's cost. The EM shall be

[16] Mitigation Measure #9 of the Revised MDNS.
[17] *See* Table 1.10-1 and Section 3.4.6.3 of the Revised Application.
[18] Mitigation Measure #1 of the Revised MDNS.

an independent, qualified engineering firm (or a person) selected by EFSEC, and shall report directly to EFSEC.

2. Environmental Compliance Program for Construction Activities. The Certificate Holder shall identify and develop environmental monitoring and "stop-work" criteria in consultation with the EM and other EFSEC designees. At least sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit these environmental monitoring and stop-work criteria to EFSEC or its designated representative for review and approval.[19] The Certificate Holder shall not begin Construction prior to obtaining Council approval. The Environmental Compliance Program shall cover avoidance of sensitive areas during construction, waste handling and storage, stormwater management, spill prevention and control, habitat restoration efforts begun during the construction phase of the Site, and other mitigation measures required by this Agreement. The Certificate Holder shall implement the program to ensure that construction activities meet the conditions, limits, and specifications set out in the Site Certification Agreement, all Attachments thereto, and all other applicable state and federal environmental regulations.

3. Copies of Plans and Permits Kept On-Site. A copy of the Site Certification Agreement, Plans approved by the Council or its designees, and all applicable construction permits shall be kept at the Site Location. The lead Site construction personnel and construction project managers will be required to read, follow, and be responsible for all required compliance activities.

4. Environmental Monitor Monthly Reports. The EM will provide monthly reports to EFSEC regarding adherence to the BMPs, the implementation of environmental mitigation plans, and environmental problems reported or discovered as well as corrective actions taken by the Certificate Holder to resolve these problems. The EM will provide copies to the Certificate Holder of reports submitted to EFSEC.

5. Environmental Violations and Stop-Work Orders. Upon identification of an environmental noncompliance issue, the EM will work with the responsible subcontractor or direct-hire workers to correct the violation. If non-compliance is not corrected in a reasonable period of time, the EM shall request that EFSEC issue a "stop-work" order for that portion of the work not in compliance with Site environmental requirements. EFSEC will promptly notify the EM of any "stop work" orders that have been issued.

B. Quarterly Construction Reports

The Certificate Holder shall submit quarterly construction progress reports to EFSEC no later than thirty (30) days after the end of each calendar quarter. Such reports shall describe the status of construction and identify any changes in the construction schedule.

[19] *See* Section 4.1.8 of the Revised Application.

C. Construction Inspection

EFSEC shall provide plan review and inspection of construction for all Site structures, underground and overhead electrical lines, and other Site facilities to ensure compliance with this Agreement. Construction shall be in accordance with the approved design and construction plans, and other relevant regulations. EFSEC may contract with Kittitas County, another appropriate agency, or an independent firm to provide these services.

D. As-Built Drawings

The Certificate Holder shall maintain a complete set of as-built drawings on file for the life of the Site, and shall allow the Council or its designated representative access to the drawings on request following reasonable notice.

E. Habitat, Vegetation, Fish and Wildlife

1. The Certificate Holder shall use construction techniques and Best Management Practices (BMPs) to minimize potential impacts to habitat and wildlife. In particular, construction of the Site shall be performed in accordance with Mitigating Conditions 2, 7 and 9 of the Revised MDNS.
2. The Certificate Holder shall ensure that the construction team includes a qualified staff person or persons with experience in construction in environments similar to those found in the Site Location.
3. Construction teams shall stake work and clearing limits prior to construction and ground clearing.
4. Any new electrical poles installed for the Site will be designed to comply with the current Avian Power Line Interaction Committee (APLIC) guidelines. If the APLIC guidelines are not feasible on a pole location, the Certificate Holder shall present the reasons to EFSEC and determine appropriate mitigation or monitoring measures.[20]
5. The Certificate Holder shall post, maintain, and enforce reasonable driving speed limits within the Site Location to minimize potential collisions with wildlife during construction.

F. Construction Noise[21]

The Certificate Holder and its contractors and subcontractors shall use industry standard noise attenuation controls during construction to mitigate noise impacts and shall comply with applicable state and local noise emission regulations. The Certificate Holder shall limit loud construction activities to daytime hours (7 a.m. to 10 p.m.), and shall comply with the applicable requirements of WAC 173-60-040 (2) (b) during the hours of 10:00 p.m. and 7:00 a.m.

G. Construction Safety and Security

1. Federal and State Safety Regulations[22]. The Certificate Holder shall comply with applicable federal and state safety regulations (including regulations promulgated under

[20] *See* Mitigation Measure #8 of the Revised MDNS.
[21] *See* Table 1.10-1, Section 3.4.6.2, 4.1.2.2, 4.1.5.1(d) of the Revised Application, and Section B(5)(d) and B(7)(b) of the Final SEPA Environmental Checklist.
[22] *See* Section 4.1.9(4) of the Revised Application.

the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act), as well as local and state industrial codes and standards (such as the Uniform Fire Code). The Certificate Holder, its general contractor, and all subcontractors shall make every reasonable effort to maximize safety for individuals working at the Site.

2. Construction Phase Health and Safety Plan. The Certificate Holder shall develop and implement a Construction Phase Health and Safety Plan prior to the beginning of Site Preparation. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the event of an emergency. The Certificate Holder shall submit the plan to EFSEC for review and approval no later than sixty (60) days prior to Site Preparation. The Certificate Holder shall not begin Construction prior to obtaining Council approval.

3. Construction Phase Site Security Plan[23]. The Certificate Holder shall develop and implement a construction phase Site security plan to effectively monitor the Site Location. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the event of an emergency. The Certificate Holder shall submit the plan to EFSEC for review and approval no later than sixty (60) days prior to Site Preparation. The Certificate Holder shall not begin Construction prior to obtaining Council approval.

4. Visitors Safety. Visitors shall be provided with safety equipment where and when appropriate.

H. Fugitive Dust[24]

The Certificate Holder shall implement appropriate mitigation measures to control fugitive dust from roads and construction activities. The Certificate Holder shall use water or a water-based environmentally safe dust palliative such as lignin, for dust control on unpaved roads during Site construction.

I. Contaminated Soils

In the event that contaminated soils are encountered during construction, the Certificate Holder shall notify EFSEC and Ecology as soon as possible. The Certificate Holder shall manage, handle, and dispose of contaminated soils in accordance with applicable local, state, and federal requirements.

J. Light, Glare, and Aesthetics

The Certificate Holder shall implement mitigation measures to minimize light and glare impacts. Landscaping with appropriate vegetation shall be planted, and perimeter fencing shall be erected

[23] *See* Section 2.19 of the Revised Application.
[24] *See* Sections 2.6.1, 2.15.3, 3.6.2.1 and 4.4.22.1 of the Revised Application, and Section B(3)(a)(4) of the Final SEPA Environmental Checklist.

as described in the Revised Application.[25]

The Certificate Holder shall minimize outdoor lighting to safety and security requirements. Motion sensors shall be used to keep lighting turned off when not required, and lighting shall be equipped with hoods and directed downward.[26] If compliance with any of these requirements is not feasible, the Certificate Holder may seek a waiver from the Council.

K. Construction Wastes and Clean-Up[27]

The Certificate Holder's waste disposal plans and schedule shall be included in the Site Location construction plans and specifications for review and approval by EFSEC. The Certificate Holder shall dispose of sanitary and other wastes generated during construction at facilities authorized to accept such wastes.

The Certificate Holder shall properly dispose of all temporary structures not intended for future use upon completion of construction. The Certificate Holder also shall dispose of used timber, brush, refuse, or flammable materials resulting from the clearing of lands or from construction of the Site.

ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO THE BEGINNING OF COMMERCIAL OPERATION

A. Operations Stormwater Pollution Prevention Plan

1. Operations Stormwater Pollution Prevention Plan[28]. The Certificate Holder shall prepare an Operations Stormwater Pollution Prevention Plan (Operations SWPPP) in consultation with Ecology and submit it to EFSEC for approval at least sixty (60) days prior to the beginning of Commercial Operation. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Operations SWPPP shall include an operations manual for permanent BMPs. The Operations SWPPP shall be prepared in accordance with the guidance provided in the Ecology *Stormwater Management Manual for Eastern Washington, September 2004* or as revised. The Certificate Holder shall periodically review the Operations SWPPP against the guidance provided in the applicable *Ecology Stormwater Management Manual*, and make modifications as necessary to the Operations SWPPP to comply with current requirements for BMPs.

2. Operations Spill Prevention, Control and Countermeasure Plan[29]. The Certificate Holder shall prepare an Operations Spill Prevention, Control and Countermeasures Plan (Operations SPCCP) in consultation with Ecology and submit it to EFSEC for review and approval at least thirty (30) days prior to the beginning of commercial operation. The Certificate Holder shall not begin Commercial Operation prior to obtaining

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[25] *See* Table 1.10-1 of the Revised Application, and Sections B(10)(c) and B(11) of the Final SEPA Environmental Checklist.

[26] *See* Table 1.10-1, Sections 2.3.2.6, 2.19.2 and 4.4.10.2 of the Revised Application, and Sections B(10)(c) and B(11) of the Final SEPA Environmental Checklist.

[27] *See* Table 1.10-1 of the Revised Application, and Section B(10)(c) of the Final SEPA Environmental Checklist.

[28] *See* Sections 2.11.2, 2.23.2.3, 3.1.5.1, 3.4.6.3, 4.4.22.2 and 5.2(1) of the Revised Application, and Sections B(1)(h), B(3)(c)(2) and B(5)(d) of the Final SEPA Environmental Checklist.

[29] *See* Sections 2.10.2, 3.4.5.2(h) and 4.1.7 of the Revised Application, and Section B(3)(c)(2) of the Final SEPA Environmental Checklist.

Council approval. The Operations SPCCP shall be prepared pursuant to the requirements of 40 CFR Part 112, Sections 311 and 402 of the Clean Water Act, Section 402 (a)(l) of the Federal Water Pollution Control Act (FWPCA), and RCW 90.48.080. The Operations SPCCP shall include the Site Location, all Site structures and facilities on the Site Location, and all access roads. The Operations SPCCP shall be implemented within three (3) months of the beginning of Commercial Operation. The Operations SPCCP must be updated and submitted to the Council every two (2) years.

B. Emergency Plans

1. Operations Emergency Plan[30]. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall submit for the Council's approval an Operations Emergency Plan for the Site to provide for employee safety in the event of emergencies. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Certificate Holder shall coordinate development of the plan with local and state agencies that provide emergency response services in the Site Location. Periodically, the Certificate Holder shall provide the Council with updated lists of emergency personnel, communication channels, and procedures. The Operations Emergency Plan shall address in detail the procedures to be followed in the event of emergencies listed in Article IV.I.1.

2. Operations Fire Control Plan[31]. The Certificate Holder shall develop an Operations Fire Control Plan in consultation with WDFW, and in coordination with other state and local agencies to minimize the risk of accidental fire during operation and ensure effective response to any fire that does occur. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall submit the Plan to EFSEC for review and approval. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval.

ARTICLE VII: SITE OPERATION

A. Technical Advisory Committee (TAC)

The purpose of the Technical Advisory Committee (TAC) is to advise EFSEC on the effectiveness of mitigation measures as they have been implemented. TAC will also make recommendations to EFSEC if it deems additional studies or mitigation are warranted to address impacts that were either not foreseen in the Revised Application, or significantly exceed impacts that were projected. In order to make advisory recommendations to EFSEC, the TAC will review and consider results of the Site monitoring studies. The TAC will assess whether the post-construction restoration and mitigation and monitoring programs merit further studies or additional mitigation, taking into consideration factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings.

The TAC may include, but need not be limited to, representatives from WDFW, U.S. Fish and Wildlife Service, Ecology, EFSEC, Kittitas County and the Certificate Holder. EFSEC, at its

[30] *See* Section 4.1.9 of the Revised Application.
[31] *See* Table 1.10-1 and Sections 3.4.6.3 and 4.4.8.2 of the Revised Application, and Section B(5)(d), B(7)(a), B(15)(a) of the Final SEPA Environmental Checklist.

discretion, may add additional representatives to the TAC from state, local, federal and tribal governments. All TAC members must be approved by EFSEC.

No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall contact the agencies and organizations listed above requesting that they designate a representative to the TAC, and that the agencies or organizations notify EFSEC in writing of their TAC representative and of their member's term of representation. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall convene the first meeting of the TAC.

The TAC will be convened as determined by EFSEC, except that EFSEC may terminate the TAC if: the TAC determines that all of the pre-permitting, operational and post-operational monitoring has been completed and further monitoring is not necessary; or the TAC members recommend that it be terminated; or, upon request by Certificate Holder, after the first year of operation of the Site.

The ultimate authority to require implementation of additional mitigation measures, including any recommended by the TAC, shall reside with EFSEC.

B. Water Discharge

The Certificate Holder shall ensure that all stormwater control measures and discharges are consistent with the Operations SWPPP, required by Article VI.A.1 and the Ecology *Stormwater Management Manual for Eastern Washington, September 2004* or as revised.

C. Noise Emissions

The Certificate Holder shall operate the Site in compliance with applicable Washington State Environmental Noise Levels, WAC 173-60.

D. Fugitive Dust Emissions

The Certificate Holder shall continue to implement dust abatement measures as necessary.

E. Habitat, Vegetation and Wildlife BMPs

During Site operations, the Certificate Holder shall implement appropriate operational BMPs to minimize impacts to plants and animals, especially impacts to special status species such as giant Palouse earthworm, sharp-tailed snake, Columbia spotted frog, sandhill crane, greater sage-grouse, and Bald and Golden Eagles.[32]

In addition to those BMPs, the Certificate Holder shall also take the following steps to minimize impacts:

1. Implementation of the Operations Fire Control Plan developed pursuant to Article VI.B.3, in coordination with local fire districts, to avoid accidental wildfires and respond effectively to any fire that might occur.
2. Operational BMPs to minimize storm water runoff and soil erosion.
3. The Certificate Holder shall not use rodenticides to control rodent burrowing around

[32] *See* Table 1.10-1 and Section 3.4.6 of the Revised Application, and Section B(5)(d) of the Final SEPA Environmental Checklist.

inverter pads. In the event that the Certificate Holder believes the use of rodenticides is necessary, the Certificate Holder shall consult with WDFW and Ecology to develop a plan for appropriate application and use, and submit the plan to EFSEC for approval prior to implementation.

4. The Certificate Holder shall cooperate with WDFW in an effort to exclude deer and elk from the Site Locations through the use of fencing with a minimum height of eight feet, with a single strand of barbed wire on top.[33]

5. The Certificate Holder shall monitor the Site for the first year of operation to determine whether there is any evidence of potential "lake effect." If such an effect is confirmed, mitigation shall be instituted by planting vegetation around panels, or using other strategies to reduce the risk of avian collisions.[34]

F. Safety and Security

1. Personnel Safety[35]. The safety of operating personnel is governed by regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act. The Certificate Holder shall comply with applicable federal and state safety laws and regulations (including regulations under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act) as well as local and industrial codes and standards (such as the Uniform Fire Code).

2. Operations Phase Health and Safety Plan. No later than sixty (60) days before the beginning of Commercial Operation, the Certificate Holder shall develop and, after EFSEC approval, implement an Operations Phase Health and Safety Plan. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the event of an emergency.

3. Operations Phase Site Security Plan[36]. The Certificate Holder shall develop and implement an Operations Phase Site Security Plan. The Certificate Holder shall submit the Plan to EFSEC for review and approval no later than sixty (60) days before the beginning of Commercial Operation. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Plan shall include, but shall not be limited to, the following elements: controlling access to the Site by any visitors, contractors, vendors, or suppliers; installing security lighting and fencing; and securing access to solar panels, pad transformers, pad-mounted switch panels and other outdoor facilities. A copy of the final Security Plan shall be provided to EFSEC and other agencies involved in emergency response.

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[33] Mitigation Measure #9 of the Revised MDNS.
[34] Mitigation Measure #8 of the Revised MDNS.
[35] *See* Section 4.1.9(4) of the Revised Application.
[36] *See* Section 2.19 of the Revised Application.

4. Visitors Safety. The Certificate Holder shall require visitors to observe the safety plans and shall provide them with safety equipment where and when appropriate.

G. Dangerous or Hazardous Materials

The Certificate Holder shall handle, treat, store, and dispose of all dangerous or hazardous materials in accordance with Washington state standards for hazardous and dangerous wastes, WAC 463-40 and WAC 173-303. Following any abnormal seismic activity, volcanic eruption, severe weather activity, flooding, vandalism, or terrorist attacks the Certificate Holder shall inspect areas where hazardous materials are stored to verify that containment systems are operating as designed.

ARTICLE VIII: SITE TERMINATION, DECOMMISSIONING AND SITE RESTORATION

A. Detailed Site Restoration Plan[37]

The Certificate Holder shall submit a Detailed Site Restoration Plan to EFSEC for approval within ninety (90) days from the time the Council is notified of the termination of the Site. The Detailed Site Restoration Plan shall provide for restoration of the Site Location within the timeframe specified in Article VIII.C, taking into account the Initial Site Restoration Plan and the anticipated future use of the Site Location. The Detailed Site Restoration Plan shall address the elements required to be addressed by WAC 463-72-020, and the requirements of the Council approved Initial Site Restoration Plan pursuant to Article IV.D of this Agreement. The Certificate Holder shall not begin Site Restoration activities without prior approval from the Council. The Certificate Holder shall consult with WDFW, and Ecology in preparation of the Detailed Site Restoration Plan.

B. Site Termination

1. Termination of this Site Certification Agreement, except pursuant to its own terms, is an amendment of this Agreement.

2. The Certificate Holder shall notify EFSEC of its intent to terminate the Site, including by concluding the plant's operations, or by suspending construction and abandoning the Site.

3. The Council may terminate the SCA through the process described in WAC 463-66-090, and the Council may initiate that process where it has objective evidence that a certificate may be abandoned or when it deems such action to be necessary, including at the conclusion of the plant's operating life, or in the event the Site is suspended or abandoned during construction or before it has completed its useful operating life.

C. Site Restoration Timing and Scope

Site Restoration shall be conducted in accordance with the commitments made in the draft Site Restoration Plan attached as Appendix F to the Application, and the Detailed Site Restoration Plan required by Article VIII.A (unless the Certificate Holder fails to submit such a plan), and in

[37] *See* Sections 1.9, 4.1.9, and Appendix F of the Revised Application.

accordance with the following measures:

1. Timing. The Certificate Holder shall commence Site Restoration of the Site within twelve (12) months following the termination described in Article VIII.B above.

   The period to perform the Site Restoration may be extended if there is a delay caused by conditions beyond the control of the Certificate Holder including, but not limited to, inclement weather conditions, equipment failure, wildlife considerations, or the availability of cranes or equipment to support decommissioning.

2. Scope. Site Restoration shall involve removal of the solar panels and mounting structures; removal of foundations or other Site facilities to a depth of four (4) feet below grade; restoration of any disturbed soil to pre-construction condition; and removal of Site access roads and overhead poles and transmission lines (except for any roads and/or overhead infrastructure that Site Location landowner wishes to retain) (all of which shall comprise "Site Restoration"). Site Restoration shall occur in the order of removing the solar panels as the first priority and performing the remaining elements immediately thereafter. If the Certificate Holder constructs the Site with solar panels incorporating hazardous materials, such as Cadmium Telluride, Site Restoration shall also include the use of appropriate precautions during decommissioning and removal of the solar panels to safely dispose of and to avoid, and, if necessary, remediate any soil contamination resulting from the panels' hazardous materials.

3. Monthly Reports. If requested by EFSEC, the Certificate Holder shall provide monthly status reports until this Site Restoration work is completed.

4. Restoration Oversight. At the time of Site Restoration, the Site Location will be evaluated by a qualified biologist to determine the extent of and type of vegetation existing on the Site Location. Success criteria for Site Restoration will be established prior to commencement of decommissioning activities, based on the documented pre-construction conditions, experience gained with re-vegetation during operation and the condition of the Site Location at the time of Site Restoration. The restoration success criteria will be established in the Detailed Site Restoration Plan approved by EFSEC in consultation with the designated biologist. Once restoration of the Site Location is determined to be complete, a final report of restoration activities and results will be submitted to EFSEC in consultation with the designated biologist, for review and approval.

D. Site Restoration Financial Assurance

1. Except as provided in Article VIII.D.3 below, the Certificate Holder or any Transferee, as the case may be, shall provide financial assurance sufficient, based on detailed engineering estimates, for required Site Restoration costs in the form of a surety bond, irrevocable letter of credit, or guaranty. The Certificate Holder shall include a detailed engineering estimate of the cost of Site Restoration in its Initial Site Restoration Plan submitted to EFSEC. The estimate must be based on the costs of the Certificate Holder or Transferee hiring a third party to carry out Site Restoration. The estimate may not be reduced for "net present value" or other adjustments. During the active life of the

facility, the Certificate Holder or Transferee must adjust the Site Restoration cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument used to provide financial assurance and must increase the financial assurance amount accordingly to ensure sufficient funds for Site Restoration.

2. The duty to provide such financial assurance shall commence thirty (30) days prior to the beginning of Construction of the Site, and shall be continuously maintained through to the completion of Site Restoration. Construction of the Site shall not commence until adequate financial assurance is provided. On or before the date on which financial assurance must be established, the Certificate Holder shall provide EFSEC with one of the following financial assurance mechanisms that is reasonably acceptable to EFSEC:

    a) *Surety Bond.* The Certificate Holder or any Transferee, as the case may be, shall provide financial security for the performance of its Site Restoration obligations through a Surety Bond issued by a surety listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The Performance Bond shall be in an amount equal to the Site Restoration costs. A standby trust fund for Site Restoration shall also be established by the Certificate Holder or Transferee to receive any funds that may be paid by the surety to be used to complete Site Restoration. The surety shall become liable for the bond obligation if the Certificate Holder or Transferee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least one hundred twenty days after the Certificate Holder or Transferee and EFSEC have received notice of cancellation. If the Certificate Holder or Transferee has not provided alternate financial assurance acceptable under this SCA within ninety days of the cancellation notice, the surety shall pay the amount of the bond into the standby Site Restoration trust; or

    b) *Irrevocable Letter of Credit.* The Certificate Holder or any Transferee, as the case may be, shall provide financial security for the performance of its Site Restoration obligations through an irrevocable letter of credit payable to or at the direction of EFSEC, that is issued by an institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency. The letter of credit shall be in an amount equal to the Site Restoration costs. A standby trust fund for Site Restoration shall also be established by Certificate Holder or Transferee to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit shall be irrevocable and issued for a period of at least one year, and renewed annually, unless the issuing institution notifies the Certificate Holder or Transferee and EFSEC at least one hundred twenty days before the current expiration date. If the Certificate Holder or Transferee fails to perform Site Restoration, or if the Certificate Holder or Transferee fails to provide alternate financial assurance acceptable to EFSEC within ninety days after notification that the letter of

credit will not be extended, EFSEC may require that the financial institution provide the funds from the letter of credit to be used to complete Site Restoration; or

c) *Guaranty*. Certificate Holder or any Transferee, as the case may be, shall provide financial assurance for the performance of its Site Restoration obligations by delivering a guaranty to fund the Certificate Holder or Transferee's Site Restoration obligations hereunder from an entity that meets the following financial criteria:

i. A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

ii. Tangible net worth at least six times the sum of the current Site Restoration cost estimates;

iii. Tangible net worth of at least ten million dollars; and

iv. Assets in the United States amounting to at least ninety percent of its total assets or at least six times the sum of the current Site Restoration cost estimates.

The guarantor entity's chief financial officer shall provide a corporate guaranty that the corporation passes the financial test at the time the Initial Site Restoration Plan is filed. This corporate guaranty shall be reconfirmed annually ninety days after the end of the corporation's fiscal year by submitting to EFSEC a letter signed by the guaranteeing entity's chief financial officer that:

i. Provides the information necessary to document that the entity passes the financial test;

ii. Guarantees that the funds to finance required Site Restoration activities are available;

iii. Guarantees that required Site Restoration activities will be completed;

iv. Guarantees that within thirty days if written notification is received from EFSEC that the entity no longer meets the above financial criteria, the entity shall provide an alternative form of financial assurance consistent with the requirements of this section;

v. Guarantees that the entity's chief financial officer will notify in writing the Certificate Holder or Transferee and EFSEC within fifteen days any time that the entity no longer meets the above financial criteria or is named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy;

vi. Acknowledges that the corporate guaranty is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guaranty;

vii. Attaches a copy of the independent certified public accountant's report on examination of the entity's financial statements for the latest completed fiscal year; and

viii. Attaches a special report from the entity's independent certified public accountant (CPA) stating that the CPA has reviewed the information in the letter from the entity's chief financial officer and has determined that the information is true and accurate.

If the Certificate Holder or any Transferee fails to perform Site Restoration covered by the guaranty in accordance with the approved Initial or Final Site Restoration plan, the guarantor will be required to complete the appropriate activities. The guaranty will remain in force unless the guarantor sends notice of cancellation by certified mail to the Certificate Holder or Transferee and EFSEC. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Certificate Holder or Transferee and EFSEC. If the Certificate Holder or Transferee fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from EFSEC within ninety days after receipt of a notice of cancellation of the guaranty from the guarantor, the guarantor will provide such alternative financial assurance in the name of the Certificate Holder or Transferee.

3. If the SCA is transferred after its effective date pursuant to applicable EFSEC laws and regulations, EFSEC has the right to require, consider, and approve other financial security that would provide for the Certificate Holder's performance of its Site Restoration obligations pursuant to Articles VIII.C and VIII.D of this Site Certification Agreement.

ARTICLE IX: SITE CERTIFICATION AGREEMENT - SIGNATURES

Dated and effective this 17th day of October, 2018.

FOR THE STATE OF WASHINGTON

Jay Inslee, Governor

FOR TUUSSO ENERGY, LLC

Jason Evans
General Counsel and Vice President of Business Development
TUUSSO Energy, LLC

ATTACHMENT 1

Fumaria Solar Site

Site-Specific Descriptions, Plans and Conditions

Site Description

The Certificate Holder plans to construct a new photovoltaic (PV) solar facility on approximately 35.24 acres of fallow pasture land, including the construction of a switchyard with a short (2.56-mile-long, 25.4-acre) generation tie line into an existing PSE substation, located northwest of Ellensburg, in unincorporated Kittitas County, Washington. The Fumaria Solar Site is intended to provide up to 5 MW of solar energy to PSE for use within their service area.

The Fumaria Solar Site location primarily consists of fallow pasture land. The Site would be located approximately 1.5 miles northwest of the intersection of Hungry Junction Road and Reece Creek Road, in Sections 9, 16, 17, and 20, T18N, R18E, Willamette Meridian (Figure 2.1-3). The generation tie line would originate from the southwestern Site Location boundary corner and follow Clarke Road, along one of two proposed alignments, to Faust Road, where it would parallel Faust Road south along an existing transmission corridor (sharing poles with an existing distribution line) on the east side of the road right-of-way (ROW) to Hungry Junction Road, where it would turn west and travel along the north side of the road ROW for roughly 2,000 feet, and then continue to travel along the north side of the road ROW within an existing transmission corridor (sharing poles with an existing distribution line) to U.S. Highway 97, where it would travel south along the west side of the road ROW down to just south of McManamy Road, where it would turn northwest to connect into an existing PSE substation (a total of 2.6 miles). The two proposed alignments along Clarke Road comprise one that follows the north side of the road (ROW A), and one that follows the south side of the road (ROW B).

The Fumaria Solar Site location totals approximately 67.0 acres (35.24 acres for the solar site and 25.4 acres for the generation tie line). Topography of the Site Location generally slopes to the south toward the Cascade Irrigation District Canal. Surface elevation within the Site Location ranges from 1,750 to 1,600 feet amsl, the lowest elevation being along the southern study area boundary near the existing PSE substation and the highest elevation being at the northern end of the solar Site Location.

The Fumaria Solar Site would be located on land zoned as Rural Working – Agriculture 20, and would be a permitted conditional use under KCC 17.15.060.01.

Legal Description

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 18 NORTH, RANGE 18 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON, BEING A PORTION OF PARCEL E OF THAT CERTAIN SURVEY AS RECORDED DECEMBER 22, 1998 IN BOOK 23 OF SURVEYS, AT PAGES 249 THROUGH 251, UNDER AUDITOR'S FILE NO. 199912220015, RECORDS OF SAID COUNTY, WHICH IS BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SAID SECTION 9;

THENCE SOUTH 00°06'44" EAST ALONG THE EAST BOUNDARY LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 9, 60.76 FEET TO THE TRUE POINT OF BEGINNING OF SAID LINE;

THENCE CONTINUING SOUTH 00°06'44" EAST, ALONG SAID EAST BOUNDARY LINE OF SAID SOUTHEAST QUARTER, 2384.88 FEET;

THENCE SOUTH 89°36'01" WEST, 41.02 FEET;

THENCE SOUTH 71°56'57" WEST, 18.75 FEET;

THENCE SOUTH 68°28'25" WEST, 25.60 FEET;

THENCE SOUTH 59°52'18" WEST, 21.39 FEET;

THENCE SOUTH 55°35'54" WEST, 165.95 FEET;

THENCE NORTH 16°08'33" WEST, 159.35 FEET;

THENCE NORTH 04°55'17" WEST, 37.25 FEET;

THENCE SOUTH 86°43'54" WEST, 105.98 FEET;

THENCE NORTH 77°47'27" WEST, 339.61 FEET;

THENCE NORTH 88°06'56" WEST, 37.07 FEET;

THENCE SOUTH 69°10'09" WEST, 24.70 FEET;

THENCE NORTH 17°18'53" WEST, 22.35 FEET;

THENCE NORTH 02°14'53" WEST, 143.64 FEET;

THENCE NORTH 02°27'39" WEST, 389.33 FEET;

THENCE NORTH 19°22'16" EAST, 1646.02 FEET

THENCE SOUTH 89°13'18" EAST, 298.08 FEET TO THE TRUE POINT OF BEGINNING AND THE TERMINUS OF SAID LINE.

CONTAINS 35.24 ACRES.

Site-Specific Conditions

The conditions set forth above apply to this Site Location. In addition, for the sake of clarity, the following conditions apply particularly to the Fumaria Solar Site.

PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION

A. **Actions Prior to Construction**

1. Cultural and Archaeological Resources Plan. Prior to construction, the Certificate Holder shall obtain a Department of Archaeology and Historic Preservation (DAHP) excavation permit for sites 45KT4007 and 45KT4009 identified on the Fumaria Solar Site and perform all necessary archaeological work in order to comply with RCW 27.53.[38]

B. **Habitat, Vegetation, and Fish and Wildlife Mitigation**

1. Habitat Restoration and Mitigation Plan. Prior to the beginning of Site Preparation, the Certificate Holder shall develop a Habitat Restoration and Mitigation Plan, including the general plans set forth above, as well as the following site-specific plans, in consultation with WDFW.

    a) In consultation with WDFW, the Certificate Holder shall develop the plan to require all temporarily disturbed areas to be reseeded with an appropriate mix of plant species that are adapted to local Site conditions and will become established quickly, such as, but not limited to, native plant species, in a manner and sequence that will maximize the likelihood of

[38] *See* Sections 2.23.2.7 and 4.2.11 of the Revised Application, and Mitigation Measure #10 of the Revised MDNS.

successful restoration of the area and prevent the spread of noxious weeds. The Plan shall include a restoration schedule that identifies timing windows during which restoration should take place, and an overall timeline for when all restoration activities will be completed.

PROJECT CONSTRUCTION MITIGATION MEASURES

A. Light, Glare, and Aesthetics

The Certificate Holder shall implement mitigation measures to minimize light and glare impacts. In particular, the Certificate Holder will plant a line of trees and/or shrubs up to 15 feet in height along the eastern half of the southern boundary of the Site Location. Perimeter fencing will be erected around the Site Location.

Attachment 2
Council Report of August 22, 2018
Recommendation of Approval to the Governor

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATON COUNCIL

In the Matter of Application No. 2017-01 of TUUSSO ENERGY, LLC COLUMBIA SOLAR PROJECT	APPLICATION NO. 2017-01

REPORT TO THE GOVERNOR ON APPLICATION NO. 2017-01

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EXECUTIVE SUMMARY

On October 16, 2017, TUUSSO Energy, LLC (TUUSSO or Applicant) filed an Application for Site Certification (Application) with the Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Columbia Solar Project (Project). The Project consists of five solar photovoltaic generating facilities (Sites) and two generation tie lines, with a combined generating capacity of 25 megawatts (MW). The Project Sites would be located on five discrete sites in unincorporated Kittitas County near Ellensburg.

RCW 80.50.010 in the Energy Facility Site Locations Act (EFSLA) provides the legal framework for the Council's siting recommendation. The Washington Supreme Court has described EFSLA as seeking to balance the need for the proposed Project against its impacts on the broad public interest. The Council determines whether the proposed Project will produce a net benefit justifying a recommendation of project approval. The Applicant bears the burden of proving, by preponderance of the evidence, that the Project meets this and other requirements of the law.

The Council has carefully considered the record before it, including: the Application; the record in the land use consistency hearing; the SEPA documentation; the draft Site Certification Agreements; public comments received orally during hearings and received by the Council in writing; and the statutory policies on need for energy at a reasonable cost, need to minimize environmental impacts, and other relevant state energy policies.

The Council concludes that the Columbia Solar Project will provide the state and the region with important alternative energy supply and will not cause significant unmitigated environmental impacts or substantial negative effect on the broad public interest. With the recommended mitigation measures that are required in the proposed site certification agreements, the proposed Project meets the requirements of applicable law and comport with the policy and intent of Chapter 80.50 RCW. Therefore the Council recommends that the Governor approve of the Project.

I. INTRODUCTION

A. The Applicant and the Application for Site Certification

TUUSSO Energy, LLC (TUUSSO or Applicant) is a privately owned, Seattle based utility-scale solar developer.[1] TUUSSO was formed in 2008 and has developed over 100 megawatts (MW) of solar photovoltaic (PV) projects across the United States, ranging in size from 15 to 45 MW.[2] Those projects are owned by large independent power producers and utilities.[3]

On October 16, 2017, TUUSSO filed an Application with the Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Project. TUUSSO seeks to obtain site certifications pursuant to RCW 80.50.060(2). The Project sites are alternative energy facilities as defined in RCW 80.50.020(17). Developers of alternative energy facilities have the option of seeking site certification through the EFSLA process or through standard permitting and local land use approval requirements.[4]

The proposed Project, which is described in Section II below, consist of five solar photovoltaic generating facilities and two generation tie lines with a total combined generating capacity of 25 MW. TUUSSO proposes to construct the Sites on five separate leased sites totaling 232 acres of farmland in unincorporated Kittitas County near Ellensburg.[5]

The Applicant has stated that it selected the sites based on several factors: the Kittitas Valley is one of the sunniest areas of the state, major alternative energy facilities are a conditionally permitted use under the Kittitas County zoning code, the available sites offer land use efficiencies, placement on previously disturbed farmland avoids environmentally sensitive areas, and locating close to existing Puget Sound Energy (PSE) distribution lines minimizes the need for new electrical infrastructure.[6]

TUUSSO requested that the application be granted expedited processing pursuant to RCW 80.50.075 and WAC 463-60-117.[7]

B. The Council and its Processes

RCW 80.50.030 created the Council, a Washington state agency, to advise the Governor in deciding whether to approve an application to site certain new large energy facilities. The Council must "prepare written reports to the governor" which shall include a recommendation on applications to construct a proposed energy facility on a specified site and, if

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[1] TUUSSO Energy, LLC Columbia Solar Project Application for Site Certification, revised January 26, 2018 (Rev. App.) at 1.
[2] Id. at 2.
[3] Id.
[4] RCW 80.50.060(2); RCW 80.50.110(2); RCW 80.50.100(2); *See Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 285 (2008).
[5] Rev. App. at 39-47.
[6] Application cover letter (October 16, 2017); Rev. App. at 63-76.
[7] Rev. App. at 25.

the Council recommends approval, the Council will prepare site certification agreements embodying the conditions upon which approval should be granted.[8]

The Council's analysis is guided by RCW 80.50.010, which articulates Washington's policy to recognize the pressing need for additional energy facilities; ensure that the location and operation of such facilities produce minimal environmental effects; and balance the rising demand for energy facilities with the broad interests of the public.

The Council must weigh and balance the need for the proposed facility against its impacts on the broad public interest, including human welfare and environmental stewardship. The Council then determines whether the proposed facility at the particular site selected will produce a net benefit that justifies a recommendation of project approval.[9]

RCW 80.50.110(2) provides that the "state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification" with respect to the energy facilities that are required, or that have the option to receive site certification through the EFSEC process. The inclusion of the word "location" means that local land use plans and zoning ordinances are preempted by EFSLA. However, EFSLA also requires that "[i]f the council recommends approval of an application for certification" to the Governor, it must include in the draft site certification agreement "conditions . . . to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110."[10]

The Council consists of a chair, appointed by the Governor, and appointees of the Departments of Ecology, Fish and Wildlife, Natural Resources, and Commerce, and the Utilities and Transportation Commission.[11] The county in which the project is to be sited appoints a voting member.[12] In addition, the Departments of Agriculture, Transportation, Health, and the Military may elect to sit on the Council for a specific application.[13] For purposes of this Application, Kittitas County and the Department of Health each appointed a member to EFSEC.

The Council Review Process. In reviewing an Application, the Council and the Governor must complete a number of procedural steps. The steps are summarized below, with a detailed discussion of how the Council accomplished each of its steps for purposes of this Application provided in Section III of this report.

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[8] RCW 80.50.040(8); RCW 80.50.100(2).
[9] *Columbia RiverKeeper v. Port of Vancouver*, 188 Wn.2d 80, 95, 392 p.3d 1025 (2012).
[10] RCW 80.50.100(2); *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 285 (2008).
[11] RCW 80.50.030(2), (3).
[12] RCW 80.50.030(4).
[13] RCW 80.50.030(3)(b).

- **Informational Public Hearing.** RCW 80.50.090(1) requires the Council to conduct an informational public hearing in the county of the proposed site no later than 60 days after receipt of the application for site certification.
- **Land Use Consistency Hearing.** RCW 80.50.090(2) requires the Council to conduct a public hearing to determine whether the proposed site is (or sites are) consistent and in compliance with city, county, or regional land use plans or zoning ordinances as those terms are defined in EFSLA.
- **State Environmental Policy Act (SEPA).** The Council must comply with SEPA, RCW 43.21C, which requires consideration of probable significant adverse environmental impacts of government action (including approval or denial of an application to site an energy facility) and possible mitigation. If the Council's SEPA responsible official (the EFSEC manager) finds that any adverse environmental impacts can be mitigated to non-significant levels, he may issue a mitigated determination of non-significance.[14]
- **Expedited Processing Decision.** If an applicant requests expedited processing, the Council must decide whether to use the expedited process authorized by RCW 80.50.075 to evaluate the application. An application is eligible for expedited processing when EFSEC finds (1) the environmental impacts of the proposed project are not significant or can be mitigated to non-significant levels and (2) the proposed project is consistent and in compliance with city, county or regional land use plans and zoning ordinances. If an application is granted expedited processing, the Council may proceed to a decision without holding an adjudicative proceeding under chapter 34.05 RCW, and is not required to conduct any further review of an application by an independent consultant.[15]
- **Recommendation to Governor and Site Certification Agreements.** The final step for the Council is to prepare a report to the Governor recommending approval or denial of the application. If the Council recommends approval, the Council will also prepare and provide with the report draft site certification agreements.[16]
- **Governor's action on the Recommendation.** Within sixty days of receipt of the Council's report, the Governor is to either approve the application and execute the draft certification agreements, reject the application, or direct the council to reconsider certain aspects of the draft certification agreements.[17]

The Application submitted by TUUSSO includes five discrete facility "sites." RCW 80.50.020(19) defines "site" to include "any proposed . . . location of an . . . alternative energy resource." EFSLA's definition of "application" contemplates the possibility of an applicant including more than one proposed site within a single application: "'Application' means any

[14] WAC 197-11-350, WAC 463-47-080.
[15] RCW 80.50.075(2), WAC 463-43-060.
[16] RCW 80.50.100.
[17] RCW 80.50.100(3).

request for approval of a particular *site or sites* filed in accordance with the procedures established pursuant to this chapter . . . ." (Emphasis added.)

Regardless of whether an application includes one or several sites, the Council is directed by RCW 80.50.100 to "report to the governor its recommendations as to the approval or rejection of *an application.*"[18] From these statutory provisions, we conclude that it is permissible for an applicant to submit an application that includes multiple sites, and that it is likewise acceptable for the Council to make a single report of its recommendations on such an application. We further conclude that it is appropriate in this instance for the Council to provide separate draft site certification agreements for each of the sites in the application to facilitate site-specific comments from the public on conditional use criteria, and so that it is clear which conditions and mitigation measures would apply at each site. For purposes of the report, we refer to the five proposed solar facilities as the "Sites" or "Project sites."

This report is organized as follows. Section II provides a summary description of the five proposed Sites. Section III details the procedural steps followed by the Council in processing this Application. Section IV discusses the issues and objections raised and the Council's resolution of each. Section V discusses the legal framework to be applied and the Council's application of the RCW 80.05.010 balancing analysis. Section VI contains the findings of fact and conclusions of law. Finally, Section VII states the recommendation of the Council.

II. DETAILED DESCRIPTION OF THE SITES

The five sites are named: Camas, Fumaria, Penstemon, Typha, and Urtica. The location of the proposed Sites, including the two generation tie lines that would be constructed to connect the Fumaria and Typha locations to PSE electrical distribution infrastructure are depicted in Figure 2.1-1. [19]

Each of the Columbia Solar Project sites will consist of:[20]

1. A Solar Panel Field. Each site will include north-south-oriented rows of crystalline silicon PV panels, such as (but not limited to) modules between 325 and 345Wp, mounted on single-axis tracking systems, on galvanized steel support structures. The panels would rotate throughout the day to track the sun from east to west.

2. An Electrical Collection and Inverter System. These systems aggregate the output from the PV panels and convert the electricity from direct current (DC) to alternating current (AC), including inverters.

[18] RCW 80.50.100 (emphasis added).
[19] TUUSSO Energy, LLC Columbia Solar Project Application for Site Certification, October 16, 2017 at 32
[20] Rev. App. at 13-22.

3. Interconnection Equipment. This equipment transforms facility electric output to a voltage of 12.47 kV, and will include a padmount-style transformer manufactured by ABB or similar.

4. Remote Supervisory Control and Data Acquisition (SCADA) Equipment. This monitoring equipment will be incorporated into the process control system to allow unmanned operations.

5. Communications and Grid-protection Equipment. This equipment will be selected by Puget Sound Energy and TUUSSO in order to allow the Sites to connect to the electric grid.

6. A Meteorological Data Collection System. This system will be configured to collect meteorological information roughly at the height of the PV panels.

7. Civil Infrastructure. Infrastructure would include access gates, internal access roads, and secure fencing.

8. Screening Vegetation. Where appropriate, native trees, shrubs, and/or plants in selected locations to provide visual screening.

Details specific to each of the proposed sites are as follows:

Camas Site

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 boarders 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. Topography of the site is fairly flat and slopes to the south toward Little Naneum Creek. A small ditch, creating two distinct portions of land, bisects the site. The site is active agricultural land, growing alfalfa and includes a barn.[21]

Fumaria Site

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

Size: 35.24 Acres

Site characteristics: The site would be located approximately 1.5 miles northwest of the intersection of Hungry Junction Road and Reece Creek Road. The site is remote with limited

[21] Id. at 22-25.

development within close proximity. There is no water available and is not currently being farmed and is largely covered with weeds. Topography of the site generally slopes to the south toward the Cascade Irrigation District Canal. The site appears to be visible to one house lying to the east.

The Applicant proposes to construct a switchyard with a 2.56-mile-long, 25.4-acre generation tie line into an existing PSE substation.[22]

Penstemon Site

Location: Approximately 3 miles east and a bit south of Ellensburg, immediately southwest of the intersection of Tjossem Road and Moe Road.

Size: 39.38 Acres

Site characteristics: The site is active agricultural land, for growing export hay products (such as timothy and alfalfa) and is surrounded by active farms, with houses to the north/north east. A channelized creek forms the east site boundary. Topography of the site slopes to the south.[23]

Typha Site

Location: Approximately 2 miles west (and a bit north) of Ellensburg, located just west of the Yakima River and north of Thorp Highway South.

Size: 54.29 Acres

Site characteristics: The site primarily consists of agricultural land (irrigated and grazed pasture), and 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. Topography of the site generally slopes to the east toward the Yakima River. The site is surrounding by agricultural land to the north, west and south and does not appear to be visible from off-site residences, nor from the freeway.

The Applicant would construct of a switchyard with a 0.45-mile-long, 4.4-acre generation tie line into an existing PSE distribution transmission line.[24]

Urtica Site

Location: Approximately 1/2 mile southwest of Ellensburg.

Size: 51.94 Acres

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[22] Id. at 25-28.
[23] Id. at 28-30.
[24] Id. at 30-33.

Site characteristics: The site primarily consists of active agricultural land, growing common timothy, located on the west side of Umptanum Road and approximately 0.2 mile southwest of the Yakima River. Topography of the site generally slopes to the east toward Umptanum Road and toward McCarl Creek, which flows through the site. The site is surrounded by open farmland, rural houses and a historic school building (K-5 Damman School).[25]

Each new PV solar array would be capable of providing up to 5 megawatts (MW) of solar energy within the PSE service area, for a total of 25 MW of electrical power generation.[26] The five solar arrays would be constructed on 232 total leased acres, close to existing PSE electrical distribution lines.[27]

The Camas, Penstemon, and Typha sites are on land zoned as "Commercial Agriculture" (CA) under Kittitas County zoning ordinances. The Fumaria and Urtica sites are on land zoned as "Rural working – Agriculture 20" (A-20).[28] The Sites meet the Kittitas County Code's definition of "Major alternative energy facilities."[29] The code provides that such facilities may be permitted as conditional uses in both of the zones in which they are proposed.[30]

Combined, the Project Sites include approximately 145 acres of commercial agricultural land, which is 0.05 percent of all lands in the County under that designation, and 87.2 acres of rural working-agriculture 20 lands, which is 0.08 percent of the total lands in the County under that designation.[31]

The expected life of the Project is approximately 30 years.[32] The draft site certification agreements include site restoration and financial assurance requirements to ensure that the Sites can be returned to agricultural use, if desired by the landowners, at the end of the useful life of the project, or if the sites are abandoned.[33]

Proposed structure setbacks from the property lines on the five sites would range from 15 feet to 60 feet (but may be increased where necessary for wetland or riparian buffers). None of the solar arrays would be above eight feet tall, so there would be no shadow onto adjacent properties from the solar panels or inverters.[34] The Sites would be located and designed so there will be no water drainage off-site.[35] To provide habitat restoration benefits and to prevent noxious weeds at the

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[25] Id. at 33-36.
[26] Id. at 28.
[27] Id. at 28.
[28] Id. at 76.
[29] Id. at 76; KCC 17.61.010(9).
[30] KCC 17.61.020(4).
[31] Kittitas County Comprehensive Plan, Table 2-1 at p. 2-3 (2016) (listing 291,614.3 acres in Commercial Agriculture zoning classification, and 113,251.6 acres in Agriculture 20 zoning),
[32] Rev. App. at 286.
[33] Draft site certification agreements (SCA) at 14.
[34] Rev. App. at 268-279, see also Rev. App., Appendix D, Visual Resources Technical Report.
[35] Id. at 24-35.

sites, the Applicant plans to grow native vegetation beneath the solar arrays, treat for any weeds that appear, and possibly plant some hay crops.[36]

On average, vehicle use associated with the construction phase of the Project would consist of six heavy trucks and 19 non-heavy vehicles per day to each site, which amounts to less than five percent of the current number of vehicles using the roads serving the sites.[37] For the Fumaria site, vehicle use would be slightly higher, between 12 to 35 percent of current traffic use.[38] It is not anticipated that any farm traffic would be affected. During operation, traffic trips would be relatively small. It is anticipated that four to five operation maintenance personnel would conduct two to three visits per year to each of the five sites. Additional truck trips are indicated in the Application, specifically for panel washing during the life of the facility.[39]

The Applicant would be required to meet state and local noise standards.[40]

For analysis of the visual contrast effects of the sites (relevant to the aesthetic aspects of maintaining rural character), the Applicant hired researchers to conduct a visual assessment with the U.S. Bureau of Land Management's Visual Resource System designed for rural areas.[41] This takes into account land form, vegetation, bodies of water, and human-made structures to define the characteristics of sites and the contrast that the Project would have on those sites and the surrounding areas. A key aspect of this evaluation is contrast.[42] For all five sites, the visual impacts were classified at most as moderate, meaning that the structures would begin to be considered above background level and attract the eye of a person. Observation points were placed at two miles from the structures. They were selected to assess the visual impact to people living or working around the sites, travelers along main transportation routes, and recreational users of public lands.[43]

The researchers found that, although the structures would introduce horizontal and vertical lines to areas of farm country, open fields, and land forms, these lines would not dominate the landscape due to the presence of other structures in view, such as transmission lines and metal buildings.[44] In sum, they found no strong contrast effects.

To address concerns about glare from the solar arrays, the applicant presented information that the arrays absorb most of the light and do not reflect it. The more light they absorb, the more efficient they are, and the more electricity they generate. Because of this, the panels are darker,

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[36] Id. at 8, 191-192.
[37] Id. at 329.
[38] Id. at 330.
[39] Id. at 374.
[40] Id. at 68.
[41] Id. at 270.
[42] Rev. App. Appendix D; TUUSSO Columbia Solar Project Land Use Hearing Transcript, December 12, 2017 (TR) at 17.
[43] Rev. App. at 277-279, TR at 18.
[44] Rev. App. at 277-279; TR at 18.

and, from above, tend to look like dark blue ponds.[45] The Applicant pointed to a U.S. Air Force study of solar panels to determine their impacts on planes flying in and out of airports. This study concluded the panels pose a minimal risk to air traffic around airports and would look like weathered concrete and similar to dark water bodies.[46] After modeling the Project sites with a Solar Glare Hazard Analysis tool developed by Sandia National Labs, the researchers found the sites had either no unacceptable glare effects or were well within and below levels that are normally considered of concern.[47]

The Camas site visual contrast was at a moderate level, so specific plantings of trees and shrubs are required as mitigation, up to 15 feet tall when planted, to grow taller and provide additional screening height at maturity.[48] At the Penstemon site, there was some moderate contrast potential, but there is a similar plan for appropriately sized shrub and tree planting as mitigation. On the Urtica site, the contrast is much further in the background and more difficult to see from public observation points, other than Umptanum road which would be screened by vegetation, so has less visual impact. The other two sites, Fumaria and Typha, had either no visual impacts or contrast levels of any kind because of how far away they were from the key observation points at roads or other properties, and they could not be seen.[49]

The researchers that conducted the visual assessment concluded that each of the five solar sites would be adequately screened by either existing or new vegetation or by perimeter fencing to reduce contrast from glint and glare for known observation points with level views.[50] Comments received on proposed draft site certification agreements led the Applicant and EFSEC staff to recommend inclusion of additional vegetative screening for a golf course located adjacent to the Typha site.[51]

The current uses of the proposed Project sites include active agriculture, fallow fields, recently grazed areas, and natural vegetation along riparian and wetland areas, as well as some native shrub steppe areas nearby. The Project would avoid, or offset, all water impacts on site through project design. One known wetland impact would be on the Typha site entrance, requiring a limited wetland fill of about 600 square feet to address a collapsed and clogged culvert causing flooding of the road, preventing year-round access to the site.[52] Based on wetland surveys required by MDNS mitigation measure 4, wetland and riparian buffers would be required that comply with Kittitas County Shorelines and Critical Areas ordinances at a minimum, with the

[45] Rev. App. at 268; TR at 19.
[46] Rev. App. at 268; TR at 23.
[47] Rev. App. at 268-270.
[48] TR at 20.
[49] Id. at 21-22.
[50] Rev. App., Appendix D; TR at 22-24.
[51] SCA at 44.
[52] Rev. App. at 26; TR at 26-27.

potential to be enlarged during micro-siting based on current guidance from the Department of Ecology.[53]

Wildlife impacts would be limited to any game species traversing the Kittitas Valley that might be impacted by the fences. However, none of the Project sites are within identified big game migratory corridors or migratory bird fly-ways.[54] Two protected species have a likelihood to occur in or near the Project sites: bald eagles and Columbia spotted frogs. All impacts to the frogs would be avoided with setback distances from the aquatic resources and construction best management practices. No eagle nests were observed within the Project site areas. Should any nests be encountered during the construction period, the Applicant would be required to coordinate with EFSEC, Washington Department of Fish and Wildlife and the U.S. Fish and Wildlife Service and construction would be delayed during the critical use period (January 1 – May 31).[55] There was no likelihood of any protected fish species occurring within the analysis area as any stream that could potentially have those species was avoided.

To avoid impacts to wetlands, existing roads would be improved and only minimal additional road construction would be needed (most access roads throughout the Sites would be unpaved, vegetated roads).[56] In addition, seeding and planting of the sites will be conducted to reduce erosion and improve water quality.[57] Currently there are no buffers on riparian corridors, so establishing them will improve riparian corridor quality for wildlife.[58] The wetland scientist contracted by TUUSSO determined that, other than the road repair at the Typha site, the Project sites will not have impacts to waters or wetlands, or have any significant impact on wildlife and available habitat. In addition to the review by the wetland scientist contracted by the Applicant, mitigation measures four and five in the MDNS provide that the Department of Ecology, as contractor to EFSEC will perform further evaluation of wetlands and that any unanticipated impacts identified will be addressed and/or compensated for by the Applicant.[59]

III. PROCEDURAL STEPS – EXPEDITED PROCESS

A. Informational Public Hearing

RCW 80.50.090(1) requires the Council to conduct an informational public hearing in the county of the proposed site no later than 60 days after receipt of the application for site certification. The Council conducted the public informational meeting on December 12, 2018, at the Kittitas Valley Event Center Armory in Ellensburg, Washington. The Council Members present at the meeting were Cullen Stephenson (Department of Ecology), Jaime Rossman (Department of

[53] Rev. App. at 26; TR at 30.
[54] Rev. App. at 184.
[55] Rev. App. at 184, 188; TR at 29.
[56] Rev. App. at 191, 192; SCAs Art. IV, Part F, Sec. 1.
[57] Rev. App. at 9.
[58] TR at 30.
[59] Mitigated Determination of Non-Significance (MDNS) at 227; Rev. App. at 2.

Commerce), Dan Siemann (Department of Natural Resources), Laura Chartoff (Utilities and Transportation Commission), Ian Elliot (Kittitas County) and Kelly Cooper (Department of Health).[60] Cullen Stephenson presided over the hearing.[61]

After a presentation by TUUSSO describing the Project and a presentation by Council staff describing the Council and its role in the application process, the public was provided an opportunity to provide comment. 14 members of the public provided oral comments. The comments were roughly equally split for and against the Project. Persons commenting in favor of the Project stated that the Project would help the state meet renewable energy goals, combat global warming, and provide an increase to the local tax base and jobs. In addition, one commenter cited with approval the fact that the Project is not located in important bird habitat. Persons opposed to the Project expressed the desire to preserve prime farmland and support the farming economy. In addition, opponents expressed concerns with the view shed, and negative impacts on neighboring property values and businesses (the golf course). Many commenters argued for local control over land use decisions.

B. Land Use Consistency Hearing

RCW 80.50.090(2) requires the Council to conduct a public hearing to determine whether a proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances as those terms are defined in EFSLA. On December 1, 2017, the Council issued a Notice of Land Use Consistency Hearing and conducted the required public hearing in Ellensburg, Washington, at 7:30 p.m. on December 12, 2017.

The following Council members were present at the December 12, 2017, hearing: Cullen Stephenson (Department of Ecology), Jaime Rossman (Department of Commerce), Dan Siemann (Department of Natural Resources), Laura Chartoff (Utilities and Transportation Commission), Ian Elliot (Kittitas County) and Kelly Cooper (Department of Health).[62] Cullen Stephenson presided over the hearing.[63]

Tim McMahan, Stoel Rives Law Firm, represented the Applicant. The Applicant also filed a written hearing memorandum. Greg Poremba, Senior Energy Manager with SWCA Environmental Consultants, and Evan Dulin, Wetland Scientist and Biologist with SWCA Environmental Consultants, also spoke for the Applicant. Neil Caulkins, Deputy Prosecuting Attorney, and Paul Jewell, then-Kittitas County Commissioner and Chairman of the Board of County Commissioners, spoke for the County, expressing opposition to the Project. Assistant Attorney General Bill Sherman, Counsel for the Environment, was present for the land use

[60] Kelly Cooper appeared by phone. Laura Chartoff appeared for Council Member, Dennis Moss.
[61] TR at 3.
[62] Kelly Cooper appeared by phone. Laura Chartoff appeared for Council Member, Dennis Moss.
[63] TR at 3.

hearing. The Council also received oral and written comments from members of the public in favor and opposed to the Project.

At the hearing, the Applicant argued that the Project satisfies the conditional use criteria at KCC 17.60A.015 and therefore are consistent and in compliance with Kittitas County's applicable land use plans and zoning ordinances.[64] The Applicant provided oral comments and a memorandum detailing how each of the conditional use criteria are met, and how the Project is compatible and will not jeopardize farming and ranching activities on surrounding lands.[65]

The County spoke in opposition to a determination of land use consistency, referring to the County's moratorium on processing on conditional use permit applications for the siting of commercial solar facilities, and disputing the Applicant's contention that the Project could satisfy the conditional use criteria in KCC 17.60A.015.[66] At the request of Commissioner Jewell, the Council moved to extend the public comment period for 10 days to allow Kittitas County, and any interested member of the public, to provide additional information regarding land use consistency.[67] During this public comment period, Kittitas County submitted a legal brief, and the Applicant submitted a supplemental memorandum. In addition several members of the public submitted written comments.

The Council heard from 21 speakers at the land use consistency hearing and received 22 written comments. Many of the comments were more relevant to general public interest considerations and concerns about the proposed Project than to the narrower question of land use consistency under RCW 80.50.090(2). Of the 43 total comments received, six expressed their support for the Project and 37 expressed opposition. 26 of the comments expressed opposition due to concerns about conversion of prime or irrigated farmland. Seven expressed opposition based on concerns about the proposed project's actual or precedential effect on patterns of development that the believed to be in conflict with preservation of rural character or other Growth Management Act policy objectives. Four opposed a state agency deciding a matter that they felt should be the County's decision. Three commented in favor of the Project because of their support for solar energy, and three commented in favor because of the potential for themselves or other farmland owners to earn extra income and thereby to preserve long term viability of farm lands.

The narrow purpose of the land use consistency hearing is "to determine whether at the time of application the proposed facility was consistent and in compliance with land use plans and zoning ordinances."[68] EFSEC's determination that the sites are consistent and in compliance with land use plans and zoning ordinances, under RCW 80.50.090(2), is not dispositive of whether the application should be approved or rejected. At this stage, the Council considers only

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[64] Land Use consistency is also addressed in the Application.
[65] TR at 8-12.
[66] Id. at 31-26, 85-91.
[67] TR at 92-96.
[68] WAC 463-26-050.

whether the pertinent local land use provisions "prohibit" the sites "expressly or by operation clearly, convincingly and unequivocally." If a site can be permitted either outright *or conditionally* (i.e., if it would be eligible to apply for a condition use permit), it is considered consistent and in compliance with the local land use provisions.[69] The Council's land use consistency determination was therefore based on much narrower considerations than either the Applicant's arguments or the issues raised in most of the comments received for the land use consistency hearing. The Council's charge was not to decide, at this stage of the process, whether or how specific conditional use criteria should apply to the Sites (other than the County's argument that the sites are categorically prohibited by certain conditional use criteria and that the inconsistency can't be mitigated). The Council reserved site-specific consideration of conditional use criteria for its final decision on the Application, as reflected in Section IV.B of this report.

C. State Environmental Policy Act (SEPA)

SEPA, chapter 43.21C RCW, requires consideration of environmental information about impacts, alternatives, and mitigation before committing to a course of government action (approval or disapproval of the application). (The Council's SEPA rules are found in chapter 463-47 WAC.)

EFSEC staff reviewed the Applicant's environmental checklist received October 16, 2017, and updated January 26, 2019, Application for site certification received October 24, 2017, and updated January 26, 2018, and letter from TUUSSO to EFSEC regarding cultural resources, received December 4, 2017. The environmental review also consisted of input or recommendations from State agencies, tribes, and the County via several forms of communication which is detailed in the MDNS memo and MDNS.

On February 27, 2018, EFSEC's SEPA responsible official (EFSEC Manager) issued a Mitigated Determination of Non-Significance (MDNS) under WAC 197-11-350 based on his determination that mitigating conditions included in the MDNS report, along with required compliance with applicable county, state and federal regulations and permit requirements, will mitigate all significant adverse impacts to the environment. The responsible official made this determination after a review of a completed environmental checklist and other information on file with the lead agency and exiting regulations applicable to the proposal. The MDNS included 10 mitigation conditions related to Water, Wildlife, and Historic and cultural preservation resources.

The law provides a 15 day public comment period on the MDNS. Accordingly, the public and agencies were invited to comment February 27, 2018, through March 13, 2018, on the SEPA MDNS.

The Council received 18 comments during the public comment period, including from Kittitas County. Seven commenters were in favor of the Project. Eight commenters were opposed for one

[69] *In re TransMountain Pipeline*, Council Order 616 at 3 (May 26, 1981).

or more of the following reasons: impacts to farmlands; aesthetic impacts; impacts to tourism, recreation and property values; conflict with local land use permitting; and opposition to expedited process. Three requested deletion of mitigation measure number six (related to water rights) and one requested language revision to mitigation measures seven and eight (related to wildlife impacts). Finally, one requested extension of the public comment period and one requested information from Applicant but did not comment on the MDNS. After close of the public comment period, EFSEC staff reviewed all eighteen comments and subsequently prepared a revised MDNS, with changes to measure 6 related to water rights and measure 10, related to historic and cultural preservation.

On April 17, 2018, the Council issued the Revised Mitigated Determination of Non-significance along with supporting documentation. These mitigation measures are in addition to those already proposed and described in the Application and which are also required to be met under the terms of the draft site certification agreements.[70] The following table details the required mitigation measures in the revised MDNS report:

Resource	Impact	Mitigation
Water	Flow path disruption in floodplains	(1) Prior to construction, TUUSSO will provide final construction and micro-siting plans to EFSEC showing that structures (including roads and fences) placed within floodplains are designed so as to not restrict or redirect flows from their natural flow path. If impervious surfaces such as roads are placed in the floodplain, measures will be taken to mitigate for the lack of floodplain storage.
	Riparian habitat	(2) Prior to construction, TUUSSO will provide final construction and micro-siting plans to EFSEC that apply a 100-foot minimum setback from Type F (fish-bearing) streams in the Project sites, including the Yakima River, as well as compliance with updated (draft) Kittitas County Critical Areas Ordinances for the protection of riparian areas. (3) Further, TUUSSO will compensate for habitat impacts of the Project by submitting a plan for EFSEC approval detailing riparian habitat enhancement within the 100-foot buffers adjacent to fish-bearing streams. The plan will include, at a minimum, the following:

[70] SCA at 16.

		• TUUSSO will plant native riparian plants (including shrubs) within the riparian area buffers where current vegetation has been reduced or eliminated from agricultural practices. • TUUSSO will establish benchmarks and timeline for revegetation success, and monitor revegetation activities in the riparian areas to ensure success.
	Wetland impacts during construction	(4) Prior to construction, TUUSSO will provide plans to EFSEC for coordination with Ecology to conduct additional wetlands surveys and identification of hydrologic features at each site. (5) Further, TUUSSO will compensate for habitat impacts of the Project by submitting a plan for EFSEC approval detailing buffer zones and/or any required compensatory mitigation as identified through coordination with EFSEC and Ecology.
	Resources	(6) TUUSSO will verify that landowners' water shares purchased from the controlling water companies will be maintained throughout the life of the facility.
Wildlife	Disturbance of nesting birds during construction	(7) TUUSSO will survey all Project sites for nesting raptors and great blue heron in the spring of each year of construction, and if found to be active, establish the following seasonal work avoidance buffers (in addition to those proposed by TUUSSO in the SEPA Environmental Checklist): • 0.25-mile avoidance buffer during nesting season for raptors. If construction near active raptor nests might occur during the critical use period, TUUSSO will consult with EFSEC and local U.S. Fish and Wildlife Service (USFWS) biologists for appropriate mitigation or monitoring. • 0.25-mile avoidance buffer from February through May for great blue heron.

	Hazards to birds during construction and operation	(8) TUUSSO will develop an Avian Protection Plan (APP) in consultation with EFSEC, USFWS, and WDFW prior to construction that specifies mitigation or monitoring for impacts to birds from the Project, with particular attention to Birds of Conservation Concern known or likely to occur in the Project area. The APP will include, at a minimum, the following: • TUUSSO will follow measures listed in Avian Power Line Interaction Committee (APLIC) guidelines for new electrical poles installed for the Project. If the APLIC guidelines are not feasible on a pole location, TUUSSO will present the reasons to EFSEC and determine appropriate mitigation or monitoring measures. • TUUSSO will avoid avian attraction to solar panels (birds may attempt to land on panels due to "lake effect") by planting vegetation around panels, adding patterns to panels, or using other strategies to reduce the risk of avian collisions.
	Hazards to wildlife during construction and operation	(9) TUUSSO will install fencing at all site locations at a minimum of eight feet in height, with a single line of barbed wire installed at the top of the fence. Razor wire will not be used in Project fencing.
Historic and Cultural Preservation	Resource disturbance or degradation during construction	(10) Prior to construction, TUUSSO, in consultation with EFSEC and Washington Department of Archaeology and Historic Preservation (DAHP), will provide final construction and micro-siting plans and plans for avoidance of impacts to resources. TUUSSO will continue to coordinate with EFSEC to obtain all necessary permits and perform all required archeological work in order to comply with RCW 27.53.

D. Expedited Processing Decision and Order

The Applicant requested that EFSEC use the expedited process authorized by RCW 80.50.075 to evaluate the Application. An Application is eligible for expedited processing when EFSEC finds (1) the environmental impacts of the proposed project are not significant or can be mitigated to

non-significant levels and (2) the proposed project is consistent and in compliance with city, county or regional land use plans and zoning ordinances.

If an application is granted expedited processing, the Council may make a decision on the Application without holding an adjudicative proceeding under chapter 34.05 RCW, and is not required to conduct any further review of an application by an independent consultant.[71]

On April 17, 2018, the Council issued an order concluding that expedited process should be granted, finding land use consistency and that an MDNS had reasonably been issued by the SEPA responsible official. In so doing, the Council directed EFSEC Staff to develop a means for the Council to receive information akin to what the County would receive during a conditional use hearing as to site-specific conditions and criteria.[72]

Land Use Consistency

The Council's process for considering whether the proposed Project is consistent and in compliance with applicable land use plans and zoning ordinances is described in Section III.B, above. The Council's conclusion that the Project is consistent and in compliance with land use provisions, within the meaning of EFSLA, is set forth in the Council's April 17, 2018, Order Granting Expedited Processing at pp. 8-17. For convenience, a summary of the Council's conclusions on the disputed issues regarding land use consistency is set forth in Section IV.A, below.

SEPA Mitigated Determination of Non Significance (MDNS)

On March 13, 2018, Kittitas County submitted "SEPA objections" to EFSEC's MDNS, arguing that conflicts between the proposed Project and various County code provisions precluded issuance of an MDNS, and therefore made expedited processing inappropriate. Although EFSEC's procedural rules do not provide for an administrative appeal of SEPA determinations, in the Order on Expedited Processing, the Council found the responsible official's MDNS to be reasonable and appropriate based on currently available information. The Order on Expedited Processing[73] and Section IV.A.5, below, provide a detailed analysis of why the Council concludes the MDNS is does not fail to mitigate significant environmental effects, contrary to the County's assertions.

Save our Farms' Procedural Objection to Expedited Processing

On May 18, 2018, Save Our Farms LLC, a Washington nonprofit corporation that asserts "a direct interest in the preservation and protection of prime farm land within Kittitas County, Washington," filed a procedural objection to EFSEC's Order Granting Expedited Processing

[71] RCW 80.50.075; WAC 463-43-060.
[72] Order on Expedited Processing (Order) at 13, 23.
[73] Order at 20, 21.

pursuant to RCW 80.50.140(2).[74] Save our Farms asserts that the Council erred in granting expedited processing because the Council's finding of land use consistency is incorrect as a matter of law, [75] and because the MDNS is clearly erroneous and contrary to law.[76] In addition, Save our Farms further argues the Order fails to provide an appeal process, and unlawfully delegates to Council staff the task of developing a process to obtain site specific information.[77] Sections IV.A.3 and 4, below, provides the Council's response to Save our Farms' procedural objections.

E. Public Comment on Draft Site Certification Agreements

When the Council recommends approval of an Application, the recommendation to the Governor is accompanied by a draft site certification agreement (SCA) for the Governor's consideration. In the present matter, the record before EFSEC, including but not limited to the information in the Application, the analysis conducted and comments received under SEPA, the comments and information received from state and local agencies and members of the public, and the Council and EFSEC staff's observations during site visits[78] all provided the basis for developing the SCAs.

Common requirements for all five sites are described in Article 1 of the SCAs. Site specific conditions for each site including mitigation measures (visual impacts, water rights, etc.) are included in Attachment 1 to each SCA.

The SCAs include plan approval requirements and actions required prior to construction, commitments during project construction, submittals required prior to operation, commitments during operation, and commitments for project termination, decommissioning and site restoration at the end of the Project.

As noted above, the Council directed EFSEC Staff to develop a means for the Council to receive information akin to what the County would receive during a conditional use hearing as to site-specific conditions and criteria.[79] In accordance with the Council's direction, on May 29, 2018, EFSEC staff published proposed draft site certification agreements for each of the five sites making up the Project. That same day, EFSEC issued a notice inviting the public to review and

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[74] James C. Carmody for Save Our Farms, LLC, Objection to Order Granting Expedited Processing (Objection), (received May 18, 2018); RCW 80.50.140(2) provides for judicial review of a final decision on an application for certification, and also discusses objections concerning procedural error, as follows: Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty days of the commission of such error, or within thirty days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

[75] Id. at 4, 5.

[76] Id. at 2 (listed as objection 5, but not explained in the text).

[77] Id. at 4.

[78] On April 11, 2018, Members of the Council toured the proposed five sites. *See* Site Tour Notice, Site Tour Agenda, Site Tour route map (March 13, 2018).

[79] Order on Expedited Processing at 13, 23. EFSEC staff complied with this direction by publishing proposed draft site certification agreements for each of the sites and holding an additional public comment meeting and written comment opportunity on those drafts in order to receive site-specific information as directed by the Order. See Section IV.A.2 and 3, below.

provide comment on the five draft SCA documents. Comments were accepted electronically or by mail from May 29, 2018, through June 27, 2018. In addition, EFSEC held an open house and public meeting on June 26, 2018 at the Kittitas Valley Event Center Amory. During the open house, TUUSSO Energy representatives and EFSEC staff were available to answer questions about the Project and the EFSEC review process. During the public meeting portion, EFSEC staff made a presentation on the five SCAs and invited members of the public to make oral comments.

The Council received 32 written comments (either handwritten, emailed, or otherwise electronically submitted) and heard from five speakers at the public meeting.

Some opposed the Project, arguing that the Growth Management Act directs the County to protect agricultural lands, that the County's moratorium prohibits solar facilities, and that the Council's Order Granting Expedited Processing was flawed or incorrect and that an adjudicative hearing should be held on the draft Site Certification Agreements. Some argued the Council should wait for Kittitas County to amend its zoning code provisions applicable to solar facilities before making a recommendation on site certification. Some commenters expressed support for the solar project as a source of clean, renewable energy that is good for the county and for the future.

Concerns raised by commenters regarding the substance of the draft site certification agreements included: soil impacts and the feasibility or cost of restoring sites to agricultural use, loss of prime irrigated and non-irrigated farmland, potential for site contamination from metals in solar panels, potential loss of water rights associated with parcels, salvage or disposal of panels during decommissioning, proper site restoration oversight, visual impacts of solar panels, and the insufficiency or lack of clarity of wetland and stream buffer requirements.

As a result of the comments, the proposed draft SCAs on which public comments were received have been amended as follows:

Revisions to All SCAs	**Location**
Add requirement that EFSEC will develop all final buffers in consultation with the WA. Department of Ecology	Article IV, Part E, No. (2)
Add Wetland Mitigation Plan requirement identifying final buffers	Article IV, Part E, No. (2)
Add requirement for a qualified biologist for restoration oversight, on behalf of EFSEC	Article VIII, Part C
Add requirement that certificate holder will identify method for safe disposal of any potentially contaminated materials from solar panels in the Initial and Detailed Site Restoration Plan	Article IV, Part D, No. (6) and (7). Article VIII, Part C, No. (2)

Add footnotes referencing the Revised Application for Site Certification and the Revised Mitigated Determination of Nonsignificance	Throughout
Correct any references to WAC 463-42-655, replace with the correct rule, WAC 463-72-040; Initial Site Restoration Plan	Article IV Article VIII
Revisions to TYPHA SCA	**Location**
Add additional vegetative screening requirement to Typha site-specific conditions	Attachment 1 of Typha's SCA

IV. DISCUSSION AND RESOLUTION OF LOCAL GOVERNMENT AND COMMUNITY CONCERNS

This Section IV discusses and provides the Council's conclusions regarding specific objections and concerns raised by Kittitas County representatives and members of the public as to (1) the expedited process EFSEC used to review the Application and (2) the public interest effects of the proposed Project, both off and onsite, if approved.

A. Objections to Expedited Processing

For the convenience of the reader, this Section IV.A summarizes the objections raised to expedited processing and the Council's determinations, which are set forth in greater detail in the Council's April 17, 2018, Order Granting Expedited Processing.

As discussed above, an applicant is eligible for expedited processing when EFSEC finds (1) the environmental impacts of the proposed project are not significant or can be mitigated to non-significant levels and (2) the proposed project is consistent and in compliance with city, county or regional land use plans.[80]

The chief arguments raised by the County and public commenters against expedited processing were that (1) the County's moratorium on processing of solar site applications prevents a determination of a land use consistency and therefore prevents expedited processing, (2) that the Project's categorical inability to meet certain conditional use criteria prevents a determination of land use consistency and therefore also prevents expedited processing, and (3) that the MDNS was not appropriate, and this prevents expedited processing.

The Council concluded that each of these arguments was incorrect, as summarized here.

[80] RCW 80.50.075; WAC 463-43-030.

1. County moratorium on solar facility applications does not prevent a determination of consistency of the proposed sites with land use plans and zoning codes, as defined in ESLA.

Then-Kittitas County Commissioner Paul Jewell[81] argued that the Kittitas County Moratorium on consideration of major alternative energy facility applications should prevent a Council finding of land use consistency.[82] On January 10, 2017, the Kittitas County Board of County Commissioners passed a "moratorium on applications for solar projects that qualify as major alternative energy facilities." The moratorium has been extended three times and remains in effect through the end of 2018.[83]

The Applicant argued that the moratorium is not an applicable land use plan or zoning ordinance for purposes of EFSEC's land use consistency determination.[84] Commissioner Jewell disagreed, arguing that the moratorium is a land use plan or zoning ordinance in effect at the time of application; thus the project is inconsistent with applicable land use laws. Some commenters also suggested that EFSEC should delay a decision to allow the County's Solar Facilities Citizen Advisory to present its recommendations for amendments to zoning provisions affecting siting facilities to the Board of County Commissioners.

In the Order Granting Expedited Processing, the Council concluded that the moratorium is not a "land use plan" or "zoning ordinance" within the meaning of EFSLA and for purposes of EFSEC's land use consistency determination. The Washington Supreme Court's decisions in *Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*[85] and *Save Our Scenic Area v. Skamania County*[86] support the conclusion that a zoning moratorium is merely a "temporary suspension of established regulations" that "does not repeal, amend, or contradict" the existing regulations.[87] EFSLA's definition of "zoning ordinance" parallels the Growth Management Act's term "development regulation" insofar as that term is distinguished from a moratorium.[88] If the County's moratorium were a "development regulation" under the GMA, then it would have been improper for the County to have adopted it following the GMA's

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[81] According to the Ellensburg *Daily Record,* Commissioner Jewell was to resign from the Board of County Commissioners effective June 30, 2018. Bonar, Kayla, "Commissioner Paul Jewell to resign June 30," *Daily Record* (May 12, 2018). The Kittitas County website indicates Commissioner Cory Wright was appointed July 5, 2018. https://www.co.kittitas.wa.us/boc/default.aspx

[82] TR at 13; 11-17.

[83] Ordinance No. 2018-013, An Ordinance Extending a Moratorium on Accepting Applications for Solar Projects That Qualify As Major Alternative Energy Facilities within Kittitas County, Kittitas Board of County Commissioners (July 3, 2018). https://www.co.kittitas.wa.us/uploads/bocc/ordinances/2018-013-ordinance.pdf

[84] Applicant's Supplemental Legal Memorandum at 2, 3 (Dec. 21, 2017).

[85] 178 Wn.2d 320, 346 (2013).

[86] 183 Wn. 2d 455, 465 (2015) (citing favorably Fairhurst, J., dissenting in *Biggers v. City of Bainbridge Island,* 162 Wn. 2d 683, 709, 169 P.3d 14 (2007)).

[87] Id.

[88] RCW 36.70A.030(7).

abbreviated procedure for adoption of moratoria, as opposed to the more involved process for adoption of actual development regulations.[89]

2. Because Kittitas County's zoning code provides that major alternative energy facilities may be permitted as a conditional use in the zones where the project is proposed, the sites are deemed consistent with local land use provisions for purposes of EFSLA.

Two of the Project sites are located on land zoned as "Rural Working – Agriculture 20" (A-20). Three of the Project sites are located on land zoned as "Commercial Agriculture" (CA). Under Kittitas County Code, each of the Project sites would qualify as a "major alternative energy facility." Major Alternative Energy Facilities may be permitted as a conditional use in the A-20 and CA zones if they satisfy the conditional use criteria in KCC 17.60A.015.[90]

Despite this, Kittitas County argued that "a conditional use permit application is not amenable to a summary determination of code consistency, by definition."[91] The County cited the Kittitas County Code definition of a conditional use as "a use which may be permitted in a zone classification following review and hearing under the provisions of KCC Chapter 17.06A." Thus, the County argued that absent a review and hearing contemplated by the county code, one could not determine if the Application meets the criteria for a conditional use.[92]

The County also argued that the application of conditional use criteria to a proposal is a matter committed to the discretion of the County legislative body, and is not a determination that can be made by EFSEC.[93]

In the Order Granting Expedited Processing, we explained that under the test for land use consistency previously established by the Council, the Council considers whether the pertinent local land use provisions "prohibit" the Sites "expressly or by operation clearly, convincingly and unequivocally."[94] If a Site can be permitted either outright *or conditionally* (i.e., it is eligible under zoning code regulations to be considered for a conditional use permit), it is consistent and in compliance with the local land use provisions.[95]

Applying the facts to the test established, the Council concluded the Sites are consistent with the pertinent portions of the land use provisions because neither the pertinent portions of the comprehensive plan nor the pertinent portions of the zoning ordinances clearly, convincingly, and unequivocally prohibit the Project. The Order explained that the County's Comprehensive Land Use Plan does not provide guidance on the siting of solar facilities and that the zoning

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[89] RCW 36.70A.390. *See* discussion in Order Granting Expedited Processing at 16.
[90] Revised Application at 29; KCC 17.61.010(9), KCC 17.61.020, KCC 17.08.550.
[91] County's Brief on Land Use Consistency, p.2.
[92] Id.
[93] Id. at 5:3-4
[94] Order Granting Expedited Processing at 12, citing *In re TransMountain Pipeline*, Council Order 616 at 3 (May 26, 1981).
[95] Id.

ordinances specifically allow the proposed use to potentially be authorized in the CA and A-20 zones as a conditional use, KCC 17.61.020.[96]

The Council also rejected the County's argument that the solar project is categorically inconsistent with rural character, and therefore can never satisfy the conditional use criteria, as a matter of law.[97] (Discussed further in Sec. IV.B.1, below.)

Accordingly, the Council concluded that the Applicant met its burden of establishing land use consistency. The Council's Order on Land Use Consistency resolved only the narrow question of whether the sites were consistent and in compliance with the Kittitas County Comprehensive Plan and zoning ordinances within the meaning of RCW 80.50.090(2) as interpreted by prior Council decisions.

Consistent with its prior land use consistency determinations under RCW 80.50.090(2) in which a project site was only conditionally permitted, the Council decided it would afford a means to receive information akin to what the County would receive during a conditional use hearing as to site-specific conditions and criteria.[98] This was to address the County's legitimate contention that a proposed development's consistency with conditional use criteria can only be determined "following review and a hearing." The Council deferred to this report our determination on whether, or through what mitigation measures, the disputed conditional use criteria could be met at each of the Sites.

The County's argument that the application of conditional use criteria is a matter committed exclusively to the discretion of the County legislative body, even to the exclusion of EFSEC, is flatly contradicted by RCW 80.50.110(2) (preempting the regulation and certification of the location, construction, and operational conditions of certification of energy facilities included in RCW 80.50.060) and RCW 80.50.100(2) (providing that if EFSEC recommends that the Governor approve an application for certification, it shall include conditions designed to recognize the purpose of the ordinances preempted by RCW 80.50.110).

3. EFSEC's public comment opportunity on draft SCAs was sufficient to obtain site-specific information pertinent to the site's compliance with conditional use criteria.

Save our Farms argues that EFSEC's June 26 meeting in Ellensburg to receive comments on the five draft site certification agreements was not consistent with the Kittitas County conditional use permit hearing process.[99] Essentially, Save our Farms suggests that the hearing should have been more trial-like or adjudicative in nature, and that it should have been afforded an

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[96] Id.

[97] Id. at 13.

[98] Order Granting Expedited Processing at 12-13, citing *In re TransMountain Pipeline*, Council Order 616 at 3 (May 26, 1981); *In re Northern Tier Pipeline*, Council Order 529 at 2 (April 11, 1977).

[99] Letter of Dick Carkner and Kirk Kirkland for Save our Farms, RE: Facility Site Certification meetings, pp. 1, 2 (June 26, 2018); Objection to Order Granting Expedited Processing at 4 (May 18, 2018).

opportunity to cross-examine the applicant's experts and to present the testimony of its own expert.

Save our Farms comments reflect a misunderstanding of both the Kittitas County conditional use hearing process and EFSEC's processes. Under Kittitas County ordinances and the record of prior conditional use applications considered by the County, once an application to Kittitas County for a conditional use permit is deemed complete, the public is afforded a period of time to submit written comments on the application. The County's Community Development Services Staff then develops a recommended decision on whether to approve the application for conditional use and what conditions of approval should be required.[100] There is then an opportunity for the public to present testimony at a hearing before a hearing examiner. KCC 15A.05.020 sets out the public hearing sequence. While there is an opportunity for "[t]estimony and comments by the public germane to the matter," the code provision states only that "Members of the hearing body may ask questions of the applicant. Questions to the staff shall be posed by the chair at its discretion." There is no provision for members of the public to directly ask questions (let alone cross-examine) the applicant or staff. *See also*, KCC Ch. 1.10 (Rules of Procedure before the Kittitas County Hearing Examiner), specifically KCC 1.10.013(3) ("the right of parties of record to cross-examine, object, submit motions and arguments shall be at the discretion of the hearing examiner.")[101]

Similar to the County's conditional use hearing, the primary purpose of EFSEC's June 26 meeting was to hear from members of the public and public agencies about whether each of the proposed project sites meets county conditional use criteria, KCC 17.60A.015, and what conditions would need to be included in site certification agreements to ensure that proposed sites meet those criteria. The oral comment opportunity at the meeting was in addition to the opportunity to submit written comments. In other words, the purpose was to receive information akin to, but not necessarily through the same process as, what a county hearing examiner would receive at a public hearing on a conditional use permit application. EFSEC's procedures are different than the County's procedures. For instance, under expedited processing of an application for site certification, EFSEC's rules state the Council is not required to hold an adjudicative hearing under chapter 34.05 RCW.[102]

Save our Farms and other members of the public were afforded an opportunity to provide written and oral comments, including legal argument and evidence on site-specific components of the

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[100] *See, e.g.*, Staff Report on Iron Horse Solar Farm Conditional Use Permit at 2, Kittitas County Community Development Services (August 25, 2015), available at: http://www.co.kittitas.wa.us/uploads/cds/land-use/Conditional%20Use%20Permits/CU-15-00006%20Iron%20Horse/CU-15-00006%20Iron%20Horse%20HE%20Staff%20Report.pdf

[101] We note that the agenda for the hearing on the OneEnergy Development LLC (Iron Horse) conditional use permit stated that testimony from the applicant should be limited to 15 minutes and public testimony should be limited to three minutes. See http://www.co.kittitas.wa.us/uploads/cds/land-use/Conditional%20Use%20Permits/CU-15-00006%20Iron%20Horse/CU-15-00006%20Iron%20Horse%20HE%20Agenda.pdf

[102] WAC 463-43-060, RCW 80,50,075(2).

application and draft certification conditions for each of the sites. Save our Farms' comments do not explain what additional evidence, argument, or information might have been brought forth through a more trial-like hearing. Save our Farms provides no explanation of why it believes the Order's MDNS is erroneous as a matter of law.

Save our Farms also argues that EFSEC's Order Granting Expedited Processing improperly delegated to EFSEC staff authority to develop a procedure for receiving site specific information akin to what the County would receive for a conditional use permit.[103] The Council disagrees. The Order Granting Expedited Processing included sufficient detail to guide EFSEC staff in developing a proposal for the County government and members of the public to be heard on site-specific issues related to application of the County's conditional use criteria. EFSEC Staff advised the Council of its plans at open public meetings and Council members were afforded an opportunity to express concerns or objections.[104] The Council concludes there was no impermissible delegation.

4. EFSEC's Order Granting Expedited Processing did not violate the APA or SEPA procedural requirements.

Save our Farms also argues that Council's Order Granting Expedited Process failed to comply with the Administrative Procedure Act, specifically RCW 34.05.461(3), by failing to provide a statement of procedures for seeking reconsideration.

Again, Save our Farms' comments reflect a misunderstanding of EFSEC processes. RCW 34.05.461(3) pertains to initial and final orders in adjudicative proceedings.[105] EFSEC's order granting expedited processing is not an order in an adjudicative proceeding. RCW 80.50.075(2) states that one of the consequences of expedited processing is that EFSEC shall not be required to hold "an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, on the application." Even if the order granting expedited processing were considered an order in an adjudicative proceeding, it would be neither an initial nor a final order on the merits to which RCW 34.05.461(3) would apply. Finally, even if the statute did apply, all it requires is that the order "include a statement of the *available* procedures and time limits for seeking reconsideration or other administrative relief [emphasis added]." Because there is no provision in EFSEC's rules for parties to seek reconsideration or other administrative relief from an order granting expedited processing, there are no "available procedures" to which the order could have referred. Accordingly, the Council concludes it did not err.

Save our Farms also argues that the Order failed to set forth EFSEC's appeal procedures for the SEPA mitigated determination of non-significance. EFSEC provides no administrative appeal procedure for its SEPA threshold determinations.[106] Under the SEPA rules, agencies may, but are

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[103] Objection to Order Granting Expedited Processing at 4 (May 18, 2018).
[104] Verbatim Transcript of Monthly Council Meetings, Washington State Energy Facility Site Evaluation Council, May 15, 2018, at 10:14 – 14:19.
[105] *See* RCW 34.05.410.
[106] WAC 463-47.

not required to provide for an administrative appeal of SEPA determinations.[107] EFSEC has opted not to provide such an internal appeal. The SEPA threshold determination can only be appealed to court as part of a petition for judicial review of the decision of the Governor on the application for site certification.[108]

5. The MDNS does not fail to mitigate significant environmental impacts.

As described above, Kittitas County submitted comments to the MDNS that it termed "SEPA objections." Citing WAC 197-11-330(3)(e)(iii), the County argued that a project that is in "conflict with local, state, or federal laws or requirements for the protection of the environment" will have a significant adverse environmental impact, and that an MDNS is inappropriate when such a conflict exists.[109] The County then asserted various inconsistencies between the project, as proposed, and the County code. Because the MDNS is flawed, the County argued, it was therefore inappropriate for the Council to have used the expedited process.[110]

Part of the County's argument as to why the Project Sites are in "conflict with local … requirements for the protection of the environment" is that the Project fails to meet conditional use criteria. In essence, the County repurposed its arguments against land use consistency as objections to the MDNS. For reasons set forth in Section IV.B.1, below, the Council concludes the Project is consistent with the conditional use criteria.

However, the County also made a number of more specific objections to the MDNS that we specifically address here.

The County's first such objection was that the County code states that an "adequate water supply determination" is required for conditional use permits that require water, that a determination of adequate water supply requires certain documentation from an applicant, and that because the Sites do not have adequate water supply determinations there is a conflict with local and state laws for the protection of the environment that precludes an MDNS.[111]

The Council disagrees that an adequate water supply determination is required for the Sites. The Applicant is not proposing structures that will have potable water plumbing, and therefore an adequate water supply determination is not required under KCC 13.35.020. The Department of Labor and Industries rule cited by County, WAC 296-307-09512, requires provision of potable water supply and sanitation where agricultural workers are engaged in hand-labor operations in the field.[112] The rules are inapplicable to the proposed solar facility.

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[107] WAC 197-11-680(3).
[108] RCW 43.21C.075, RCW 80.50.140.
[109] County's SEPA Objections at 2 (March 12, 2018).
[110] Id. at 3.
[111] Id. at 2.
[112] See also WAC 296-307-006.

The County next asserted that noise is not appropriately conditioned at the Camas Site.[113]

Again, the Council disagrees. Although the noise levels for the Camas Site are estimated to be above permissible levels at the property boundary, noise levels at Camas' nearest sensitive receptor, which is a commercial facility located 155 feet from the property boundary, are estimated to be within permissible levels.[114] The Applicant would be required to conduct post-construction monitoring and mitigation to ensure that noise impacts at all Sites, including Camas, do not exceed applicable standards. If noise limits are exceeded at the Camas Site, TUUSSO will be required to stop operations and come up with controls, such as a noise barrier, to reduce noise below applicable regulatory standards.[115]

The County further asserted that the MDNS does not provide for decommissioning the facility at the end of the project or upon abandonment, and proposed draft decommissioning requirement language for inclusion in the MDNS.[116]

The Council agrees that site restoration requirements backed by appropriate financial assurance mechanisms are essential and are required by EFSEC rules.[117] The draft site certification agreements include strong site restoration and financial assurance requirements.[118] There is no reason to repeat these requirements as mitigation condition in the MDNS.

Finally, the County asserted that vegetative buffers to mitigate visual impacts are mentioned, but not required in the MDNS.[119]

The Council agrees that plantings to screen visual contrast are important to address the County and community members' concerns about preservation of rural character. The Applicant proposed the use of landscape planting to mitigate visual impacts of the Sites in the Application.[120] The draft Site Certification Agreements require the Applicant to provide all mitigation measures described in the Application.[121] The Typha SCA imposes additional screening beyond what was described in the Applicant's site maps at the Typha Site to address specific concerns raised by the neighboring golf course business at the hearing on the proposed draft site certification agreements.[122]

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[113] County's SEPA Objections at 6.
[114] Rev. App. at 247.
[115] Id. Applicant's Legal Memorandum Re Land Use, pp. 12-13.
[116] County's SEPA Objections at 6, 7.
[117] WAC 463-72.
[118] SCAs Art. VIII.
[119] County's SEPA Objections at 7.
[120] Rev. App. at 278, 279; Rev. App. Appendix D (Visual Aesthetic Assessment Report); Rev. App. Appendix B (Vegetation Management Plan); Rev. App. Appendix L (TUUSSO Solar Project Plans and Designs). The location of required vegetative screening is shown as "proposed landscaping strip, typ" on Appendix L site plans.
[121] SCAs Art. IV, Part B.
[122] Attachment 1 to Typha SCA.

B. Substantive Objections to Approval of the Application (By Topic)

As noted above, the County and public commenters raised various objections and concerns about approval of the proposed project. The most salient concerns and the Council's conclusions about them are addressed in this section IV.B.

1. The Sites meet the Kittitas County conditional use criterion of preserving rural character.

The Washington State Growth Management Act (GMA) requires that counties such as Kittitas develop a comprehensive plan, and that the plan include a Rural Element to "include measures that apply to rural development and protect the rural character of the area as established by the County."[123] These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, reduce sprawl and protect against conflict with the use of agricultural, forest and mineral resource lands.[124] "Rural Character" is defined in the GMA as follows:

> "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:
>
> (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
>
> (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
>
> (c) That provide visual landscapes that are traditionally found in rural areas and communities;
>
> (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
>
> (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
>
> (f) That generally do not require the extension of urban governmental services; and
>
> (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.[125]

The Kittitas County Comprehensive Plan defines rural character as "predominant 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."[126]

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[123] RCW 36.70A.070.
[124] Id.
[125] RCW 36.70A.030(16).
[126] Kittitas County Comprehensive Plan at 8-4 (Dec. 2016).

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.[127] 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 Project Sites as major alternative energy facilities.[128]

KCC 17.61.020 specifies that major alternative energy facilities may be authorized under a conditional use permit in the Agricultural-20 and Commercial Agriculture zones.[129] 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).

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. 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.[130]

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 increased setbacks, landscaping, increased buffers from streams and wetlands, height limitations, fencing and building materials.[131]

KCC 17.60A.015.7.B requires that a conditional use outside the urban growth area preserve rural character.

The Applicant argues that "The Columbia Solar Projects would be compatible with the existing neighboring uses by creating very limited visual and auditory impacts and generating almost no traffic during operations. The projects are an allowed use, considered to be compatible with the County's Comprehensive Plan and an accepted rural land use. Solar PV facilities are therefore compatible with the rural nature of Kittitas County. The projects satisfy this criteria in that the solar PV facilities will not cause any impacts to the ongoing adjacent and surrounding farming operations, and would in no way cause or force the conversion to non-farming land uses. To the contrary, solar farms in Kittitas County discourage the costly conversion of agricultural lands to

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[127] KCC 17.61.010.9.
[128] KCC 17.61.010.11.
[129] KCC 17.61.020.4.
[130] TUUSSO Energy – Columbia Solar Project Land Use Analysis Report at p. 9, Department of Commerce.
[131] Id.

sprawling, low-density residential development, provide farmers with a cushion in variable markets with a new source of income, and provide a new and steady stream of new tax revenues for Kittitas County."[132]

"The projects are consistent with the intent and character of the zoning districts, as they are expressly allowed, and satisfy the Growth Management Act's intent that the county allow a range of land uses in rural areas, discouraging residential sprawl, to meet local economic needs. The projects would not cause any significant conversion of lands to non-agricultural uses. . . . As a conditional use, the projects must be authorized unless the facilities would cause an impact that discourages and impedes the ongoing use of the surrounding lands for farming."[133]

The County, and other commenters, argue that the proposed sites fail to meet the conditional use criterion requiring preservation of "rural character." The County's arguments were based largely upon the Board of County Commissioners' 2017 decision denying a 47.5 acre proposed solar facility on a 68 acre property in the Agriculture 20 zone, called Iron Horse, based in part on the conclusion that the scale of the project made it inconsistent with rural character.[134]

Kittitas County had previously conditionally approved two other solar farms.[135] Those two projects were 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. Approval for the Teanaway Solar Preserve has lapsed.[136]

The most recent solar farm proposal to be considered by the County, Iron Horse, was recommended for approval by the County's Community Development Services Staff and the Hearing Examiner, but was denied by the Board of Commissioners.[137] The Board's decision was appealed to Kittitas County Superior Court and the Court affirmed the decision.[138] 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 Kittitas County Superior Court agreed on review. The relevant findings from the court included 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.[139]

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[132] Rev. App. at 31.
[133] Id.
[134] County's Brief on Land Use Consistency at 5-7.
[135] Id. at 7, fn. 2; Applicant's Supplemental Legal Memorandum at 14 (Issue No. 5) and attachments pertinent to Issue 5.
[136] County's Brief on Land Use Consistency at 2.
[137] Conditional Use Permit Denial, Iron Horse Solar Farm Conditional Use Permit (CU-15-00006), Resolution No. 2017-022, Kittitas Board of County Commissioners (Feb. 7, 2017) (copy included in Applicant's Supplemental Legal Memorandum at 14, Issue No. 5).
[138] One Energy Dev. LLC v. Kittitas County, Memorandum Decision, Kittitas County Superior Court (Nov. 30, 2017) (submitted in the record at the Dec. 12, 2017 land use consistency hearing by Kittitas County).
[139] Id. at 15.

> 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.[140]
>
> 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… [141]

The Superior Court's decision is on appeal before the Court of Appeals. Nonetheless, key points from the Superior Court's reasoning include the recognition that each site must be evaluated independently from other sites, that solar farms may, or may not, preserve rural character, and that projects may potentially be designed in ways that preserve rural character.

The County argues, with reference to the Iron Horse conditional use permit denial, that "a solar farm that takes up an entire lot is not in keeping with rural character because it is industrial, not rural, development."[142] According the County's written submission, because the proposed facilities take up the maximum area of their respective parcels they fail to meet the conditional use criterion that requires preservation of rural character and this is a problem that cannot be conditioned.[143]

In the Council's view, the County's assertion to the Council that any solar farm that takes up an entire "lot" is, in all cases, inconsistent with rural character does not follow from the Superior Court's reasoning, is nowhere stated in the County code, and does not provide a discernable standard. There is no standard lot size,[144] and not all lots have the same potential for visual effects.

Even if this were an across the board standard for the siting of solar facilities in Kittitas County, it does not follow that rural character cannot be preserved through conditions. There are various possible conditions that can be imposed to address visual impacts on rural character including greater setbacks from lot boundaries and vegetative screening. KCC 17.60A.020 lists conditions

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[140] Id.
[141] Id. at 16, 17.
[142] County's SEPA Objections at 5.
[143] Id; County's Brief on Land Use Consistency at 6, 7.
[144] The Kittitas County comprehensive plan's definition of "rural character" includes the statement that "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…" Kittitas County Comprehensive Plan, p. 8-4.

that may be imposed "to protect the best interests of the surrounding property or neighborhood or the county as a whole."[145]

The Council provided a public comment opportunity on draft proposed site certification agreements and added mitigating conditions in response to site-specific testimony in addition to those visual mitigation measures already proposed by the Applicant.[146] Rather than proposing different or stronger conditions to address visual effects of the Sites on rural character, the County rested on its previous assertion that the proposed lot coverage made the Sites inconsistent with rural character and that this was impossible to mitigate.

The County's position is internally inconsistent. On the one hand, the County argued that a decision could not be made on a proposed conditional use until there is review and a hearing, while at the same time categorically rejecting the sites before site-specific review and a hearing. EFSEC Staff made efforts, consistent with KCC 1.28.050 (General Guidance for Coordinating Government Regulation of Land and Natural Resource Use) to coordinate consideration of the Application with Kittitas County staff. The County declined to meet but did offer in its "SEPA objections" some specific additional mitigating measures for the MDNS, despite is general position that the rural character inconsistency is impossible to mitigate.[147]

In its legal Brief on Land Use Consistency, the County also cited GPO 8.21A, from its Comprehensive Plan, which states a policy that "residential and commercial buildings" in rural and resource lands be "located in areas buffered by vegetation and along the edges of fields or areas of shrub steppe vegetation to maintain Kittitas County's historic rural character."[148] However, KCC 17.08.130 defines "building" as "a structure having roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels." In addition, the siting of "major alternative energy facilities" including "solar farm[s]" is specifically and separately addressed for CA and A-20 lands as a use that is reviewed under the conditional use criteria.[149] There is no zoning code provision that expressly limits solar arrays to being located only in areas buffered by vegetation and along the edges of fields or areas of shrub steppe vegetation. It does not appear that the County asserted this interpretation about solar arrays constituting "buildings" in its prior permitting decision regarding the Osprey solar facilities permitted by the county, or even in its denial of a permit for the Iron Horse facilities.[150] The

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[145] Most of the resource land goals, policies and objectives (GPOs) in Kittitas County's comprehensive plan concern the protection and conservation of resource lands and do not specifically address commercial or industrial land uses. However, GPO 8.123 states: "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."

[146] See Sec. III.E, above.

[147] See Sec. IV.A.5, above.

[148] County's Brief on Land Use Consistency at 5, 6.

[149] KCC 17.61.010.9, 020.4.

[150] Kittitas County Board of County Commissioners Resolution No. 2015-106, Osprey Solar Farm Conditional Use Permit & Shoreline Substantial Development Permit (CU-14-00003 & SD-14-00002) (July 7, 2015); Kittitas County Board of County Commissioners Resolution No. 2017-022, Iron Horse Conditional Use Permit Denial (CU-15-00006). (Copies of which are included in Applicant's Supplemental Legal Memorandum at 14, Issue No. 5).

Council concludes that the solar arrays are not "residential [or] commercial buildings," and that GPO 8.21A is therefore not applicable.

As described in the Visual/Aesthetic Assessment Report,[151] and confirmed by the Council's own observations while visiting the proposed Project Sites,[152] the areas surrounding the Project Sites generally consist of scattered houses and farm buildings, flat agricultural fields, irrigation ditches, county roads and major highways. Additional elements present at individual Project Sites include: signs, utility poles, industrial buildings, scattered trees, overhead irrigation sprinklers, metal gates, and wire fences. In the background, there are rolling hills and distant peaks. Due to the low lying nature of the solar panels, the Sites would not interfere with current views and would be less visible at a distance. The solar panels would not dominate the view. The Applicant would be required to use vegetative screening to lessen the contrast to surrounding areas.[153]

The Council also concludes that the surrounding landscape at Camas, Penstemon, and Urtica sites, which would easily be seen from public roadways and other known observation points, is already predominated by other built structures – linear structures, buildings, and highways – and therefore the change in the visual character of the surrounding neighborhood would not be substantial.

The only site-specific concerns expressed by commenters about view shed were from the golf course business adjoining the Typha Site about impacts to the view from the golf course. While the Applicant already included visual buffers into its designs, EFSEC staff decided to revisit the issue based on the public comments. The Applicant will be required to incorporate additional plantings on the southern boundary of the Typha Site which will address the adjoining property owners' concerns by providing additional vegetative screening. This measure will be incorporated into final site mitigation plans prior to construction to reflect this added commitment. Attachment 1 of the Typha SCA has been updated to reflect this commitment.

The Council finds no basis to support the County's and other commenters' contention that the Sites fail to preserve rural character based on visual or aesthetic effects. Under Kittitas County Code, major alternative energy facilities are a conditional use regardless of size. Neither the County or public commenters rebutted the Applicant's site-specific visual effects or glare assessment and its conclusion that each of the five solar sites would be adequately screened either by existing vegetation or new required trees and shrubs, to reduce contrast from glint and glare for known observation points with level views.[154]

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[151] Rev. App. Appendix D.

[152] On April 11, 2018, Members of the Council toured the proposed five sites.

[153] Rev. App. at 278, 279; Rev. App. Appendix D (Visual Aesthetic Assessment Report); Rev. App. Appendix B (Vegetation Management Plan); Rev. App. Appendix L (TUUSSO Solar Project Plans and Designs). The location of required vegetative screening is shown as "proposed landscaping strip, typ" on Appendix L site plans. Each SCA's Attachment 1 requires screening as depicted on site plans.

[154] *See* Rev. App. Appendix D (Visual Aesthetic Assessment Report) and Appendix B (Vegetation Monitoring Plan).

2. The Sites meet the Kittitas County conditional use criterion of being essential or desirable to the public convenience.

In addition to the "preserves rural character" review criterion for conditional uses discussed above, a conditional use must be "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."[155] The County and other commenters asserted the Project could not meet the "essential or desirable to the public convenience" element of this criterion.

The Applicant states that "The Columbia Solar Projects are essential or desirable to the public convenience because the projects would help the state meet Washington's Renewable Portfolio Standard mandates for 15% of Washington's electricity to be generated from renewable sources by 2020. The projects would also provide clean, locally produced power that would be delivered directly to the Puget Sound Energy electricity grid."[156]

"Washington has a policy to increase the use of renewable energy facilities through focusing on local sources such as solar [citing RCW 82.16.110]. The legislature also found it in the public interest to encourage private investment in renewable energy resources, to stimulate the state's economic growth and to enhance the continued diversification of energy resources used in the state (RCW 80.60.005). The Columbia Solar Projects meet this policy because they would be funded by private money, with an estimated total cost of $40 to $50 million, which should stimulate economic growth and would diversify energy resources further through additional solar facilities."[157]

The Energy Independence Act, RCW 19.285, declares "Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies."[158]

The Applicant asserts that the current pressing need to address climate change, the declining interest in new fossil fuel generation facilities, competitive pricing of renewable energy generation, and the rising demands of major customer choice for renewable energy within utility service areas have pushed Washington and the region to a much enhanced obligation to reduce reliance on high-carbon emitting energy generation resources, and toward an abundance of

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[155] KCC 17.60A.015.1.
[156] Rev. App. At 30, referencing requirements in RCW 19.285.045, 010.
[157] Rev. App. at 30.
[158] RCW 19.285.020.

renewable energy facilities that are diverse in geography and in "fuel" source.[159] The Applicant references the planned retirement of the Colstrip coal-fired generating plant, which supplies around 22% of the power for PSE's customers, in July 2022 at the latest. TUUSSO also cites PSE's Green Direct Program, which goes above and beyond PSE's renewable portfolio standard requirements, and would involve selling clean energy "direct" to commercial, industrial and municipal entities. Finally, TUUSSO references the regional Solar Plus coalition, which includes Washington utilities and state agencies collaborating to develop strategies to enhance solar adoption.[160]

TUUSSO signed a 15 year power purchase agreement with PSE beginning in December 2016.[161] The Applicant's reasons for selecting the Project Sites include: Kittitas County being the sunniest location in PSE's territory, the land's zoning for utility-scale solar development, the availability of sites previously disturbed for agriculture which therefore raise fewer habitat impact concerns, the sites' close proximity to Puget Sound Energy's network (being adjacent to distribution lines and close to substations with capacity to accept the electricity to be generated), the availability of land of sufficient size and proximity to roads, and the sites' flat profile and minimal grading requirements.[162]

The Columbia Solar Project sites would be located in areas of Kittitas County for which PSE is the electric utility. The electricity generated would be injected into local distribution lines and the power therefore would be used in Kittitas County.[163]

Some commenters argued that the facilities are not needed because there is already adequate supply of electricity, or because of their view that solar is an inefficient or expensive form of generation as compared with other generation technologies.

Similarly, the County argues that there is no need for the Project because previously permitted alternative energy facilities are not being built. The County speculates that this is because there is no market for the power.[164] The County asserts that therefore the Project fails the conditional use criterion that the proposal must be essential or desirable to the public convenience.

In response, the Applicant suggests that part of the reason the 477-acre Teanaway project previously permitted by Kittitas County was not built is because of habitat challenges unique to that site, resulting in high costs of mitigation.[165]

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[159] Applicant's Legal Memorandum Re Land Use at 4.
[160] Id. At 5, 6.
[161] Rev. App. at 12; Applicant's Supplemental Legal Memorandum at 13 (Issue No. 4), attached letter from Jason Evans at 2 (Dec. 22, 2017).
[162] Columbia Solar presentation, Informational Hearing, Dec. 2017.
[163] Id.
[164] County's Brief on Land Use Consistency at 2.
[165] Applicant's Supplemental Legal Memorandum, p. 13.

We do not interpret the "essential or desirable to the public convenience" criterion for conditional uses to require an applicant to prove that a proposed conditional use is economically viable.

The fact that some permitted alternative energy projects have not been built does not convince us that these Sites, that are already under a 15 year power purchase agreement with PSE, are not essential or desirable. We decline to speculate on why other projects were not built, or have not yet been built, and also point out that the Applicant has developed numerous projects.

The Council concludes that the Sites meet the conditional use criteria of being essential or desirable to the public convenience for all of the reasons state by the Applicant, and the County and other commenters fail to provide persuasive argument rebutting the basis for that finding.

3. The Sites are consistent with policies favoring conservation of agricultural lands of long-term commercial significance.

Consideration of policies for conservation of agricultural lands of long-term significance

The Growth Management Act requires counties to designate agricultural, forest and mineral resource lands, which are lands that have long term commercial significance.[166] Counties are further required to adopt regulations to ensure the conservation of resource lands.[167] The GMA requirements protect 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.[168]

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

Three of the project sites, Typhus, Camas and Penstemon, 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

[166] RCW 36.70A.170.
[167] RCW 36.70A.060.
[168] TUUSSO Energy – Columbia Solar Project Land Use Analysis Report at p. 6, Department of Commerce.

of nearby uses and other things which might contribute to potential revision of use based upon marketing factors.

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"[169]

TUUSSO argues that "The Columbia Solar Projects would not compromise the long-term viability of the surrounding agricultural lands. The projects would temporarily remove approximately 232 acres of land from its current agricultural use or fallow status, introducing native vegetation, and providing sound weed management practices beneficial to the surrounding farmlands. Throughout the projects' life, the projects would not compromise agricultural and rural use on the surrounding land. Moreover, after the removal of all solar equipment after the lease terms, the land would be returned to its original state and can be returned to agricultural production."[170]

Save our Farms and other commenters expressed concern that the sites would result in loss of prime farmland. The group argued that the project should be rejected as inconsistent with policies in the Growth Management Act requiring counties to adopt zoning regulations that provide for the preservation of agricultural land.[171]

There is no current county ordinance that prohibits solar farms on land designated as agricultural land having long-term commercial significance. Nonetheless, 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. [172]

For agricultural resource lands, the Council concludes that the critical questions for this Application are:

- Would approval of these Sites necessarily result in the removal of a substantial portion of agricultural resource lands from agricultural production?
- Can the Sites be designed in a way that retains the ability to use the land for agricultural production?
- Will the operation of the facilities create any operational interference with agricultural production on any surrounding resource lands?

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[169] Kittitas County Comprehensive Plan, p. 8-8.
[170] Rev. App. at 34.
[171] Letter of Dick Carkner and Kirk Kirkland for Save our Farms, RE: Facility Site Certification meetings, pp. 3, 4 (June 26, 2018).
[172] TUUSSO Energy – Columbia Solar Project Land Use Analysis Report at p. 8, Department of Commerce.

Save our Farms cites *Kittitas County v. Eastern Washington Growth Management Hearings Board,* 172 Wn.2d 144 (2011), for the proposition that Kittitas County Code did not adequately protect agricultural lands from harmful conditional uses.[173]

Since the Supreme Court's decision, the code has been amended to come into compliance with the GMA, and it allows major alternative energy facilities as conditional uses in the Commercial Agriculture and Agriculture 20 zones. Kittitas County Development Services Staff stated the following in August 2015 in response to similar arguments raised in opposition to the Iron Horse solar facility:

> The current Kittitas County Comprehensive Plan and Development Code have been subjected to years of scrutiny, discussion, litigation, and adaptation by numerous state and local, public and private entities. Notwithstanding that scrutiny, Major Alternative Energy Facilities continue to reside in the county code as conditional uses in the Agriculture 20, Forest and Range, Commercial Agriculture and Commercial Forest zones. Two major solar facilities have successfully navigated the conditional use process and achieved approval without appeal with respect to their conformance to rural element of the Comprehensive Plan. The Teanaway Solar Reserve Conditional Use Permit (CU-09-00005) was approved in August of 2010. The county at that time, was not in compliance with the Growth Management Act (Case No. 07-1-0004c) placing the Comprehensive Plan in a state of constant scrutiny and review. On February 11th, 2013 The BOCC [Board of County Commissioners] signed Ordinance 2013-001, mandating changes to the Comprehensive Plan and the development code (Titles 15A, 16, and 17) to bring county in to Compliance with the GMA. On August 13th, 2014, The Growth Management Hearings Board declared:
>
> > *"that with the adoption of new restrictions on allowed rural uses and standards applicable in certain rural zones, Kittitas County has complied with the requirements of the Growth Management Act."*
>
> Nearly one year later the BOCC signed Resolution 2015-106 unanimously approving the Osprey Solar Farm (CU-14-00003) and in the stated findings of fact declared:
>
> > *"The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan."*
>
> and:
>
> > *"This proposal is consistent with the Kittitas County Zoning Code as proposed under KCC l 7 .61Utilities as a major alternative energy facility, a conditional use for the Agriculture 20 zone."*
>
> The identified use, Major Alternative Energy Facility, regardless of size, was found to be compliant and consistent with both the comprehensive plan and the development code, by both the Board of County Commissioners and the Growth Management Hearings Board

[173] Letter of Dick Carkner and Kirk Kirkland for Save our Farms, RE: Facility Site Certification meetings, p. 4 (June 26, 2018).

notwithstanding the review and scrutiny of dozens of governmental and non-governmental agencies, entities, and individuals.[174]

EFSEC understands that Kittitas County has convened a citizens' advisory group to consider amendments to zoning code provisions pertaining to siting of solar facilities. The Council is also aware that the citizen's advisory Kittitas County Planning Commission recommended prohibiting siting of solar facilities on prime irrigated agricultural land, but these recommendations have not been adopted as ordinances by the Board of County Commissioners, and would not apply retroactively to the Application in any event.[175]

The temporary reduction of overall agricultural land in agricultural production in Kittitas County from these Sites would be very small. The Project would use 232 acres of farm land, representing just 0.05 percent of the land in Kittitas County under Commercial Agricultural zoning and 0.08 percent of the land under AG-20 zoning. The Applicant submitted convincing and unrebutted analysis regarding why large, utility scale solar projects (well over 100 acres) are unlikely to be developed in Kittitas in the foreseeable future and explained that the capacity in PSE's existing distribution infrastructure in Kittitas County for projects of the 5 MW and smaller scale like those being proposed by TUUSSO is very limited.[176]

Commenters including the agricultural landowners that would be leasing land to TUUSSO for the Sites stated that being able to lease part of their land for temporary use as a solar farm is a benefit to their long term ability to remain in farming.[177] The project would provide consistent revenue to the landowners of the leased Project sites, thereby aiding their ability to weather variable market and weather events.

The Council agrees with Applicant's argument that the sites are consistent with the purposes of the A-20 and CA zones because they help to preserve agricultural land from permanent encroachment by other non-agricultural uses, such as low density residential sprawl. Unlike other conditional uses permitted in the A-20 and CA zones (which include airports, shooting ranges, refuse disposal and recycling centers, warehouse and distribution centers, mining and excavation, and utilities),[178] the Project would not permanently remove farmland from production. The sites in no way discourage or interfere with adjacent agricultural uses. The project provides added financial security for owners of agricultural land who wish to temporarily lease their property for the Project sites. The construction of the proposed solar farm sites allows for complete removal once the project is no longer viable. Disturbed soils can be amended to return the property to

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[174] Staff Report on Iron Horse Solar Farm Conditional Use Permit at 3, Kittitas County Community Development Services (August 25, 2015), available at: http://www.co.kittitas.wa.us/uploads/cds/land-use/Conditional%20Use%20Permits/CU-15-00006%20Iron%20Horse/CU-15-00006%20Iron%20Horse%20HE%20Staff%20Report.pdf

[175] Under RCW 80.50.090(2), "[i]f it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site."

[176] Applicant's Supplemental Legal Memorandum at 13 (Issue No. 4), attached letter from Jason Evans (Dec. 22, 2017).

[177] Transcript of Informational Meeting at 43:1-5 (Kittitas County Chamber of Commerce); Transcript of Land Use Consistency Hearing at 41:22 – 44:1 (Pittenger); 49:5 – 50:19 (Dicken); 39:6 – 41:19 (Brunson).

[178] KCC 17.15.050.1, KCC 17.15.060.1.

agricultural production. The Council concludes this meets the intent to preserve agricultural lands of long-term significance.

Site Restoration to Agricultural Use

The Applicant states that the removal of the Project sites from agricultural production would be limited to the expected 30-year life of the Project. The Sites would be constructed, operated, and restored in such a way as to protect the viability of the land for agricultural use after decommissioning. The solar panels would be installed on post-and-frame system that could be removed with minimal disturbance. The Project sites are also relatively flat and therefore require minimal grading. After installation, the sites would be revegetated to prevent erosion of valuable topsoil. For these reasons, the leased properties on which the Sites are proposed to be sited would be readily available for agricultural production upon removal of the solar panels at the end of the Project's life.[179]

In its written comments on the proposed draft site certification agreements, Save our Farms cites studies that it suggests cast doubt on whether the sites could be returned to farmland at the end of the project.[180]

The Council finds that the studies cited by Save our Farms do not, in fact, support such a finding.

The first of the three studies[181] states that reversion of solar sites back to agriculture is "typically" unlikely and complicated by "long term application of herbicides, stabilizers, gravel, chemical suppressants, and soil compaction from power plant maintenance construction and maintenance activities." This does not describe the Applicant's use of Project sites under the Application, as incorporated into the binding SCAs. The Applicant has committed to minimize any new gravel roads, to use unpaved vegetated roads, and to plant all of the sites beneath the solar panels (except Fumaria where irrigation water is unavailable) with native vegetation as guided by the Department of Fish and Wildlife. The Applicant would use herbicides selectively to control noxious weeds to ensure compatibility with neighboring agriculture.[182]

The second publication[183] suggests that restoration of a 2 MW solar facility could cost over $60,000. This does not support the claim that restoration to pre-project condition is not possible. Rather, it indicates the opposite—that restoration is indeed possible, but may be somewhat costly. (For perspective, however, note that the Applicant's stated cost for the overall 25 MW project is $40 to $50 Million.[184]) Under the draft SCAs, the applicant would not be allowed to

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[179] Applicant's Legal Memorandum Re Land Use, p. 9.
[180] Letter of Dick Carkner and Kirk Kirkland for Save our Farms, RE: Facility Site Certification meetings, p. 3 (June 26, 2018).
[181] Hoffacker, et al., Land-Sparing Opportunities for Solar Energy Development in Agricultural Landscapes: A Case Study of the Great Central Valley, CA, United States, Environ. Sci. Tehnol. (2017).
[182] Rev. App. at 191, 192; SCAs Art. IV, Part F, Sec. 1.
[183] https://www.nyserda.ny.gov/-/media/NYSun/files/Decommissioning-Solar-Systems.pdf
[184] Rev. App. at 28.

build the Project until it provides adequate financial assurance (such as a bond, irrevocable letter of credit, or guaranty) in an amount that is based on an engineering analysis of the cost of all work required to restore the site.[185]

The third study[186] is cited for the proposition that grading, razing, and scraping of soils at vegetated sites in arid zones for utility scale solar development can have significant ecological effects. But because the subject sites have already been scraped of native vegetation and leveled for agricultural use, the point is not applicable (as it might be if shrub steppe habitat were proposed for development, for example). The applicant proposes to either restore native vegetation beneath the solar arrays, or to plant timothy hay consistent with surrounding agricultural uses. As discussed further below, the Applicant would also be required to restore riparian and wetland vegetative buffers that do not exist under current agricultural use.

In summary, there are strong site restoration requirements in SCAs, and they are backed by a requirement to provide a financial assurance mechanism so that funds will be available for site restoration even if the sites are abandoned or if the operator gets into financial distress or goes out of business.[187] The SCAs contain a requirement in Article VI, Part D for submittal of an initial site restoration plan prior to construction. Article III, Part C, No. (2) of each SCA requires a detailed site restoration plan to be prepared prior to restoration activities and the certificate holder may not proceed with restoration without approval of the Council. The scoping of the initial site restoration plan includes the requirement to restore any disturbed soils to previous condition.[188]

In addition, Staff consulted with the Department of Agriculture and the Applicant on this issue during development of the MDNS and identified the soil amendment approach that would be required under the revised MDNS. Following the SCA meeting, EFSEC Staff again discussed the issue with the Department of Agriculture. The agency reported that it had no concerns regarding site remediation for the project, or the feasibility of the soil amendment process to restore the site to its previous condition.[189]

To address commenters' concerns related to decommissioning and restoration oversight, EFSEC added the requirement that a qualified biologist review the certificate holder's detailed SRP activities and efforts on EFSEC's behalf to ensure that soils will be adequately restored for agricultural production. This requirement was added under Article VIII, Part C of the SCAs.

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[185] SCAs Art. VIII, Part D.

[186] Beatty, et al, *Native Vegetation Performance under a Solar PV Array at the National Wind Technology Center*, National Renewable Energy Laboratory, NREL/TP-1900-66218 (May 2017).

[187] SCAs Art. VIII, Part D.

[188] SCAs Art. IV, Part D.

[189] Verbatim Transcript of Monthly Council Meetings, Washington State Energy Facility Site Evaluation Council, July 17, 2018, at 25:22 – 26:3

At least one commenter raised concerns about the potential for toxic metals such as cadmium telluride to cause on-site contamination. The current panels the Applicant proposes to use are silicon panels that do not contain cadmium telluride. However, the SCAs do not bind the Applicant to install a specific panel. To address concerns regarding potential contamination the SCAs were amended to require the Applicant to include soil contamination remediation in the site restoration plans.[190]

When Washington State Department of Agriculture reviewed the application, the agency expressed concern over maintaining water rights for irrigation through the life of the facilities and ensuring that rights would still be retained by the land owners for use after decommissioning of the facilities. Department of Ecology staff suggested donation of the water rights to a trust, under RCW 90.14.140 and RCW 90.42.080, to ensure that current rights would be retained by land owners for the life of the facility. However, comments received during the SEPA public comment process clarified that the water trust donation proposal suggested by Ecology would not apply to these sites because the land owners do not hold the water rights for the proposed properties. The local water purveyors own the water rights, and the landowners purchase shares from those water companies. Based on this information, EFSEC included a mitigation measure in the MDNS (measure 6) to require that the Applicant will ensure that the land owners (lessors to the Applicant) intend to maintain their shares with the water companies such that those shares would be available at the end of the project and the land could be returned to irrigated agricultural use, should the land owners choose.[191]

Mr. Jeff Dunning, a former manager with the Ellensburg Water Company stated in written comments to the draft SCAs that the quantities of water not used on the subject parcels for irrigation during the life of the solar Project would be subject to recall by the water purveyor for redistribution within the purveyor's service area to those lacking sufficient water.[192] If Mr. Dunning is correct, then the reduction or elimination of irrigation on the subject parcels will present an opportunity to divert water for irrigation of other agricultural land within the Kittitas Valley in the service areas of the purveyors.

Mr. Dunning suggested that the legal authority to use water on the subject parcels might be wholly or partially lost due to the water law principle of relinquishment.[193] This seems unlikely in that water right holders have latitude regarding where to use the quantities in their water right within the place of use. The Council finds that the preservation of water rights for the sites is adequately addressed in the draft SCAs.

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[190] SCAs Article IV, Part D, No. (6) and (7). Article VIII, Part C, No. (2); see also, Rev. App. at 4 ("Once the sites are operational, TUUSSO would continue to maintain . . . pollution liability insurance")
[191] Revised Mitigated Determination of Non-Significance (April 17, 2018).
[192] Dunning, Columbia Solar Project SCA Comment, p. 1 (June 26, 2018)
[193] Id. p. 2, *See* RCW 90.14.160, 170, 180.

4. Wetlands and Riparian Buffers will be enhanced by the project.

Multiple commenters, including Counsel for the Environment in detailed letters to EFSEC, raised concerns about mitigation for impacts to riparian areas and wetlands and the standard to be applied in determining the width of the buffers from water bodies and wetlands during the micro-siting process.[194] There were questions about specific buffers for each of the sites, mitigations standards that apply to wetland areas and streams on or near the sites, particularly at the Typha site adjoining the Yakima River.[195]

To address concerns, Staff added clarifying language to the SCAs that final wetland buffers, setbacks and wetland mitigation shall be determined in accordance with applicable provisions of the Kittitas County Shorelines and Critical Areas provisions, and that greater buffer widths may be required based on current Department of Ecology guidance documents.[196] The Council believes this will address the concerns of Counsel for the Environment and other commenters on this subject.

V. LEGAL FRAMEWORK AND ANALYSIS UNDER RCW 80.50.010

A. Legal Framework

The entire record is now before the Council. This Recommendation draws from the application and informational meeting presentations, information provided by consultant agencies, information provided at the land use consistency hearing, legal briefing from the County and the Applicant, SEPA documentation and comments, and information received on the draft proposed site certification agreements at the public comment meeting on those documents.

The Council carefully considers the information received through each process. On matters where there is a divergence of views, the Council makes the necessary findings based on the record assembled.

RCW 80.50.010, the EFSLA, provides the central legal framework for the Council's siting recommendation:

> The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.
>
> It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the

[194] Sherman, letter RE: TUUSSO Energy Columbia Solar Project, Application No. 2017-1 (received July 2, 2018)
[195] Id.
[196] SCAs Art. IV, Part E, (2) Wetlands, Streams, and Riparian Areas, (b).

> environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.
>
> It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:
>
> (1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.
>
> (2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.
>
> (3) To provide abundant energy at reasonable cost.
>
> (4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.
>
> (5) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay.

Citing RCW 80.50.010, the Washington Supreme Court has described EFSLA as seeking to "balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public."[197] The Council applies RCW 80.50.010 by weighing and balancing the need for the proposed facility against its impacts on the broad public interest, including human welfare and environmental stewardship. The Council then determines whether a proposed facility at a particular site will produce a net benefit justifying a recommendation of project approval. The Council has referred to this balancing as determining "need and consistency."[198]

EFSEC has previously described the test as follows:

> The Council must determine whether the [proposed facility] for this site will produce a net benefit, giving appropriate weight to impacts based on their likelihood and severity, with the proper weight varying depending on the facts. The Council has discretion in this regard because as the Washington Supreme Court has noted, EFSLA is a "unique statutory framework" that grants "much discretion to both the Council and the governor,"

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[197] *Columbia Riverkeeper v. Port of Vancouver,* 188 Wn.2d 80, 95, 392 P.3d 1025 (2017) (citing RCW 80.50.010).
[198] Council Order No. 753, at 12, *In re Chehalis Generating Facility* (Feb. 12, 2001).

with the restrictions placed upon the Council characterized as largely procedural with some guidance on what issues should be considered.[199]

The record before the Council must demonstrate the need for this facility at this location. The record must also demonstrate that the proposed Project's impacts on the public interest are outweighed by the need for this facility.

B. Discussion

The Council will begin its analysis by considering the need for the Project. We then consider off and onsite impacts to the broad public interest. Finally, we provide our conclusion that the proposed facilities at the particular sites will produce a net benefit justifying a recommendation of project approval.

Provision of Abundant Energy at Reasonable Cost. We acknowledge the statutory statement of need for power, RCW 80.50.010. We also consider that renewable sources of electrical generation are identified by statute as required to meet future consumption goals to supplant or supplement non-renewable energy. It is the policy of the State of Washington to support the development of solar energy facilities. RCW 19.285, RCW 82.16.110. The project will produce electrical energy without generating greenhouse gas emissions.

The Applicant is under agreement to sell power generated by the Sites to PSE. The project will help the electric utility serving substantial parts of Kittitas County to diversify its energy resource portfolio to meet renewable portfolio requirements and customer demand, and to replace fossil fuel resources slated to be retired.

The sites are particularly well suited to meeting the need because of their location in the sunniest part of Washington and PSE's service territory; the ability to connect the facilities at reasonable cost to existing distribution infrastructure; the relatively low environmental mitigation and development costs at leased sites that are already disturbed by agriculture, are of adequate size and relatively flat grade, and which are accessible by existing roads.

After reviewing all available information on the record in this decision, the Council finds that the project will contribute to the availability of abundant energy at reasonable cost.

Public interest – off and onsite impacts. The Council finds that the off and on site impacts to the public interest, including land use objectives sought to be protected by the Growth Management Act, and by Kittitas County's zoning ordinances and comprehensive plan, are adequately protected. Our conclusion is based on site-specific visual effects considerations, binding design details for the Sites including required visual screening with trees and shrubs at key observation points with high visual contrast at each of the sites, and our own observations about the character of the surrounding neighborhood and landscape at the five sites. We find that the surrounding

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[199] Report to the Governor on Application No. 2013-01, at 68, *In re Tesoro Savage, LLC Vancouver Energy Distribution Terminal* (Dec. 19, 2017), citing *Friends of Columbia Gorge v. EFSEC,* 178 Wn.2d 320, 334, 310 P.3d 780 (2013).

landscape at Camas, Penstemon, and Urtica, the three sites that would easily be seen from public roadways other known public observation points, is already predominated by other built structures – linear structures, buildings, and highways – and therefore the change in the visual character of the surrounding neighborhood would not be substantial.

Looking specifically at the objections from Kittitas County and public commenters, the Council concludes that the Sites, as conditioned in the SCAs and MDNS, are consistent and in compliance with Kittitas County's land use regulations and satisfy the conditional use criteria.

- The Sites, with their low eight foot profile and required visual effects mitigation measures, will meet the Kittitas County conditional use criterion of preserving rural character as demonstrated by largely unrebutted, site-specific visual effects and glare analysis.
- The Sites meet the Kittitas County conditional use criterion of being essential or desirable to the public convenience for the same reasons identified in our need analysis, above.
- The Sites are consistent with policies favoring conservation of agricultural lands of long-term commercial significance. The sites will have no detrimental effects on adjoining agricultural uses and will allow agricultural property owners to receive an additional source or revenue that will help maintain a farming presence. The sites represent a very small percentage of all lands in Kittitas County in commercial agricultural designation and the record suggests that approval of these sites does not portend the opening of floodgates to solar projects on agricultural lands in Kittitas County. In any event, the County is free to continue the development of new policies to apply prospectively to the siting of such facilities. Most importantly, the facilities are temporary. Restoration of the lands to agricultural use is feasible, will be required if the landowners desire to do so at the end of the facilities' useful lives, and the cost of restoration will be backed by financial assurance provided by the Applicant. As such, the Sites as conditioned will preserve affected agricultural lands of long term commercial significance.
- Wetlands and riparian buffers, which are not required to be observed for existing agricultural uses, will be enhanced by the project and will be at least as protective as would be the case under otherwise applicable shorelines and critical areas provisions of the Kittitas County code.

Environmental impacts within the scope of the SEPA threshold determination would be mitigated to a non-significant level. The Application, MDNS and SCAs identify numerous mitigation measures. They are described briefly in this order and specified in the accompanying SCA to ensure that the Sites are built and operated in a way that preserves and protects the quality of soil, air and water, as well as potentially affected wildlife and their habitat. The Project's environmental protection measures are in compliance with the Council's requirements.

The Council finds that operational safeguards in the SCA will be at least as stringent as the criteria established by the federal government and will be technically sufficient for the protection of the public.[200]

The Applicant must agree to construct and operate the Project in accordance with commitments made in legal briefing. Applicant's authorized signature on the SCA is an agreement to comply with the SCA that is a condition of State authorization to complete and operate the project.

Taken together, the required mitigations preserve and protect the quality of the environment and the broad public interest in terms of off and onsite impacts.

Balancing Need against public interest. As a renewable energy solar power facility, the Project will contribute to the diversification and reliability of the state's electrical generation capacity. The impacts to the public will be minor.

In evaluating the need for the Project, the Council finds instructive and relevant the following statement from a prior Council decision:

> Each application is unique and falls somewhere on a continuum that may be defined by end points that, at the one extreme, might involve a facility that produces no harmful emissions, is designed and proposed to be located in a fashion to affect the environment minimally; and that provides demonstrable economic benefits both immediately and over the long term. Persuasive evidence of such benefits would militate strongly in favor of site certification even if the facility promised to produce only a moderate amount of energy or was proposed at a time when available energy supply is adequate to meet demand.
>
> At the other extreme, a proposed facility might produce significant harmful emissions, be designed and proposed to be located with little regard to impacts on the land, surface, and groundwater; and promise few economic benefits. Persuasive evidence of such facts would militate strongly against site certification even if the facility promised to satisfy a pressing energy need somewhere on the Western states' and Canadian power grid.
>
> Most proposed facilities, of course, fall somewhere in the middle range between these hypothetical extremes. Thus, EFSEC's need and consistency analysis is a delicate and difficult task in practice, made more difficult yet by the need to consider both objective and subjective criteria in evaluating "the broad interests of the public."[201]

Here, the Council finds that the application falls squarely into the first category. The facility produces no harmful emissions, effects the environment minimally, and provides needed renewable energy. We conclude the project should be approved.

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[200] RCW 80.50.010(1).

[201] Council Order No. 754, at 13-14, *In re Sumas Energy 2, Inc.* (No. 99-01) (Feb. 16, 2001).

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Council includes conclusions of law with its findings of fact for the convenience of the reader. Any finding in the nature of a conclusion of law should be interpreted as a conclusion, and any conclusion in the nature of a finding should be interpreted as a finding of fact.

Nature of Proceedings

1. This matter involves Application No. 2017-01 to EFSEC for site certification to construct and operate the Columbia Solar Photovoltaic Project (Project) on five discrete sites located in unincorporated Kittitas County, Washington, near the city of Ellensburg. The Project consists of five solar photovoltaic generating facilities and two generation tie lines, with a combined generating capacity of 25 MW.

2. The Washington State Energy Facility Site Evaluation Council has Jurisdiction over the persons and the subject matter of Application No. 2017-01, pursuant to Chapter 80.50 RCW.

The Applicant and the Application

3. The Applicant, TUUSSO Energy, LLC, is a privately owned, Seattle based utility-scale solar developer that had previously developed solar sites across the United States.

4. The Applicant submitted its Application for Cite Certification on October 16, 2017, seeking certification pursuant to 80.50.060(3)(a)(iii) and requesting expedited processing of the Application.

5. The Applicant submitted a revised Application on January 26, 2018, in response to an EFSEC request dated January 17, 2018.

Site Characteristics

6. The proposed Project consists of five solar photovoltaic generating facilities named Camas, Fumaria, Penstemon, Typha, and Urtica, and two generation tie lines, with a total combined generating capacity of 25 MW. The solar array facilities would be located on five separate leased sites totaling 232 acres of farmland.

7. The Camas, Penstemon, and Typha sites are on land zoned as "Commercial Agriculture" (CA) under Kittitas County zoning ordinances. The Fumaria and Urtica sites are on land zoned as "Rural working – Agriculture 20" (A-20). The Sites meet the Kittitas County Code's definition of "Major alternative energy facilities." The code provides that such facilities may be permitted as conditional uses in both of the zones in which they are proposed.

8. None of the solar arrays would be above eight feet tall, so there would be no shadow onto adjacent properties from the solar panels or inverters.

9. The Camas site would be located on 51.21 acres adjacent to I-82 to the west, the freeway connecting Ellensburg and surrounding region to the Yakima region. Tjossem Road boarders

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. The site is active agricultural land, growing alfalfa and includes a barn.

10. The Fumaria site would be located on 35.24 acres, approximately 1.5 miles northwest of the intersection of Hungry Junction Road and Reece Creek Road. 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. Topography of the site generally slopes to the south toward the Cascade Irrigation District Canal. The site appears to be visible to one house lying to the east.

11. From the Fumaria site, the Applicant proposes to construct a switchyard with a 2.56-mile-long, 25.4-acre generation tie line into an existing PSE substation.

12. The Penstemon site would be located on 39.38 acres, immediately southwest of the intersection of Tjossem Road and Moe Road. It is active agricultural land, for growing Sudan grass and export hay products (such as timothy and alfalfa) and is surrounded by active farms, with houses to the north/north east.

13. The Typha site would be on 54.29 acres currently consisting of agricultural land (irrigated and grazed pasture), and 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. Topography of the site generally slopes to the east toward the Yakima River. The project site is surrounding by agricultural land to the north, west and south and does not appear to be visible from off-site residences, nor from the freeway.

14. From the Typha site, the Applicant would construct of a switchyard with a 0.45-mile-long, 4.4-acre generation tie line into an existing PSE distribution transmission line.

15. The Urtica site would be on 51.94 acres primarily consisting of active agricultural land, growing common timothy, located on the west side of Umptanum Road and approximately 0.2 mile southwest of the Yakima River. The site is surrounded by open farmland, rural houses and a historic school building (K-5 Damman School).

16. The Applicant is under agreement to sell power generated by the Sites to PSE.

17. The project will help PSE, the electric utility serving substantial parts of Kittitas County to diversify its energy resource portfolio to meet renewable portfolio requirements and customer demand, and to replace fossil fuel resources slated to be retired.

18. The sites are particularly well suited to meeting the need because of their location in the sunniest part of Washington and PSE's service territory; the ability to connect the facilities at reasonable cost to existing distribution infrastructure; the relatively low environmental mitigation and development costs at leased sites that are already disturbed by agriculture, are of adequate size and relatively flat grade, and which are accessible by existing roads.

19. The Sites, with their low eight foot profile and required visual effects mitigation measures, will meet the Kittitas County conditional use criterion of preserving rural character as demonstrated by largely unrebutted, site-specific visual effects and glare analysis.

20. The Council finds that the surrounding landscape at Camas, Penstemon, and Urtica, the three sites that would easily be seen from public roadways, is already predominated by other built structures – linear structures, buildings, and highways – and therefore the change in the visual character of the surrounding neighborhood would not be substantial.

21. The Council concludes that the off and on site impacts to the public interest, including land use objectives sought to be protected by the Growth Management Act, and by Kittitas County's zoning ordinances and comprehensive plan, are adequately protected.

22. The sites will have no detrimental effects on adjoining agricultural uses and will allow agricultural property owners to receive an additional source or revenue that will help maintain a farming presence.

23. The sites represent a very small percentage of all lands in Kittitas County in commercial agricultural designation and the record suggests that approval of these sites does not portend the opening of floodgates to solar projects on agricultural lands in Kittitas County.

24. Restoration of the lands to agricultural use is feasible, will be required if the landowners desire to do so at the end of the facilities' useful lives, and the cost of restoration will be backed by financial assurance provided by the Applicant.

25. The Council concludes that the Sites are consistent with policies favoring conservation of agricultural lands of long-term commercial significance.

Informational Public Meeting

26. The Council held a public informational meeting December 12, 2017, at the Kittitas Valley Event Center Armory in Ellensburg, Washington.

27. The Council concludes that it has complied with the applicable procedural law and regulation, including RCW 80.50.090(1), in conducting an informational public hearing in the county of the proposed site not later than 60 days after receipt of the application for site certification.

Land Use Consistency Hearing

28. On December 1, 2017, the Council issued a Notice of Land Use Consistency Hearing.

29. On December 12, 2017, the Council conducted a Land Use Consistency Hearing under RCW 80.50.090 and WAC 463-26-050 at the Kittitas Valley Event Center Armory in Ellensburg, Washington.

30. The Council heard public comments and accepted written comments on the question of whether the Sites are consistent and in compliance with Kittitas County's Comprehensive Plan and Zoning Ordinances.

31. During the hearing, the Council decided to extend the public comment period for an additional 10 days to allow members of the public to submit written comment.

32. The Council concludes it has complied with the applicable procedural law and regulation, including RCW 80.50.090(2), in conducting a land use consistency hearing in the county of the proposed site not later than 60 days after receipt of the application for site certification.

Compliance with the State Environmental Policy Act (SEPA)

33. EFSEC is the lead agency for environmental review of project proposals within its jurisdiction under the State Environmental Policy Act (SEPA), RCW 43.21C.

34. The Council Manager is the SEPA responsible official. WAC 463-47-051.

35. EFSEC's environmental review consisted of analysis based on the following documents included in the environmental record: environmental checklist received October 16, 2017 and updated January 26, 2018; Application for Site Certification (Application) received October 24, 2017 and updated January 26, 2018; and Letter from TUUSSO to EFSEC regarding cultural resources, received December 4, 2017. The environmental review also consisted of input or recommendations from State agencies, tribes, and the County.

36. EFSEC's SEPA responsible official issued a Mitigated Determination of Non-Significance (MDNS) on February 27, 2018, under WAC 197-11-350, listing 10 mitigation measures related to water, wildlife, and historic and cultural preservation.

37. Also on February 27, 2018, the Council issued a notice inviting the public and agencies to comment on the MDNS by submitting written comments no later than March 13, 2018.

38. EFSEC's SEPA responsible official considered the public comments received and revised the MDNS to address the comments.

39. EFSEC's SEPA responsible official issued the revised MDNS on April 17, 2018.

40. The Council concludes that an "adequate water supply determination" is not required for the sites because the Applicant is not proposing structures that will have potable water plumbing.

41. Noise impacts are appropriately conditioned at the Camas facility because the Applicant would be required to conduct post-construction monitoring and mitigation to ensure that noise impacts at all Sites, including Camas, do not exceed applicable standards. If noise limits are exceeded at the Camas facility, TUUSSO will be required to stop operations and come up with controls, such as a noise barrier, to reduce noise below applicable regulatory standards.

42. The draft site certification agreements include strong site restoration and financial assurance requirements. There is no reason to repeat these requirements as mitigation condition in the MDNS.

43. The Applicant proposed the use of landscape planting to mitigate visual impacts of the Sites in the Application. The draft Site Certification Agreements require the Applicant to provide

all mitigation measures described in the Application. The MDNS imposes additional screening beyond what was described in the Applicant's site maps at the Typha site to address specific concerns raised by the neighboring golf course business at the hearing on the proposed draft site certification agreements.

44. Wetlands and riparian buffers, which are not required to be observed for existing agricultural uses, will be enhanced by the project and will be at least as protective as would be the case under otherwise applicable shorelines and critical areas provisions of the Kittitas County code.

45. *The Council concludes* that it has complied with SEPA and its implementing regulations including Chapter 80.50 RCW and WAC 463-47.

Expedited Process

46. The Applicant requested expedited processing of the Application on October 16, 2017.

47. On February 12, 2018, the Applicant requested an extension for a decision on Expedited process through April 17, 2018, which EFSEC granted.

48. On April 17, 1018, EFSEC issued an Order Granting Expedited Processing consistent with the requirements of RCW 80.50.075 and WAC chapter 463-43.

49. In the order, EFSEC concluded that the Applicant had met its burden of proof of demonstrating that the sites were consistent and in compliance with Kittitas County's Comprehensive Plan and applicable zoning ordinances as required by RCW 80.50.075(1). EFSEC also concluded the environmental impact of the proposed Sites would be mitigated to a nonsignificant level under RCW 43.21C.031, as required by RCW 80.50.075(1).

50. The Order also directed Council staff to develop a means to receive information akin to what the County would receive during a conditional use hearing as to site-specific conditions and criteria.

51. Save our Farms filed a procedural objection to the order on May 18, 2018.

52. The Council's Order Granting Expedited Process did not fail to comply with the Administrative Procedure Act, specifically RCW 34.05.461(3), by not providing a statement of procedures for seeking reconsideration. The Order is not an order in an adjudicative proceeding.

53. The Council's Order Granting Expedited Process did not fail to set forth EFSEC's appeal procedures for the SEPA mitigated determination of non-significance. EFSEC provides no administrative appeal procedure for its SEPA threshold determinations. WAC 463-47.

54. The Council concludes that the Order granting expedited process complied with applicable statutes and regulations.

55. The Applicant requested an extension for the decision on the Application to August 2018, which was granted.

Site Certification Agreements

56. On May 29, 2018, EFSEC issued proposed draft site certifications for each of the five sites making up the Project.

57. On May 29, 2018, EFSEC invited the public to review and provide comment on the five proposed draft SCA documents. Comments were accepted electronically or by mail from May 29, 2018 through June 27, 2018. In addition, EFSEC held an Open House and Public meeting on June 26, 2018 at the Kittitas Valley Event Center Amory for members of the public to make oral comments.

58. EFSEC staff amended the SCA in part to reflect feedback from the public on site-specific concerns and criteria that would be relevant to a conditional use permit review by Kittitas County.

59. The Applicant would be required to comply with all mitigation measures provided for in the Application, all mitigation committed by the Applicant in the SEPA checklist and required by the MDNS, and requirements of EFSEC rules and the SCAs, such as site restoration and financial assurances.

Balancing Need against Public Interest

60. It is the policy of the State of Washington to support the development of solar energy facilities. RCW 19.285, RCW 82.16.110. The project will produce electrical energy without generating greenhouse gas emissions.

61. Council finds that the project will contribute to the availability of abundant energy at reasonable cost.

62. The Council concludes that TUUSSO met its burden of proof demonstrating that the Sites would comply with applicable land use provisions and should be approved as a conditional use.

63. The Sites as conditioned in the SCAs have no significant unmitigated impacts to the environment.

64. Finding no significant public interest impacts and finding significant evidence of need, the Council concludes that the project will produce a net benefit that would support a recommendation of approval.

65. The Council concludes that it should recommend that the Governor approve the Application with the mitigation measures outlined in SCAs.

VII. RECOMMENDATION

The Counsel recommends that the Governor of the State of Washington approve TUUSSO Energy LLC's Application dated January 26, 2018, for site certification to construct and Operation the Columbia Solar Project.

VIII. RECONSIDERATION OR OTHER ADMINISTRATIVE RELIEF

There is no opportunity for petitions for reconsideration of this Report. WAC 463-30-335, which allows parties to petition the Council for reconsideration of its recommendation to the Governor, is codified in WAC 463-30, the purpose of which is to set forth procedures by which adjudicative proceedings are to be conducted before the Council. Because the Council used the expedited process under RCW 80.50.075, it did not hold an adjudicative proceeding, and WAC 463-30-335 does not apply.

Pursuant to RCW 80.50.140, the Governor's final decision pursuant to RCW 80.50.100 on an application for certification shall be subject to judicial review pursuant to provisions of chapter 34.05 RCW and RCW 80.50. Any petitions for review of such a decision must be filed in the Thurston county superior court. RCW 80.50.140.

DATED at Olympia, Washington, and effective August 21, 2018.

Washington Energy Facility Site Evaluation Council

Kathleen Drew, EFSEC Chair

Jaime Rossman,
Department of Commerce

Cullen Stephenson,
Department of Ecology

Mike Livingston,
Department of Fish and Wildlife

Dan Siemann,
Department of Natural Resources

Marguerite Friedlander,
Utilities and Transportation Commission

Kelly Cooper,
Department of Health

Statement of Kittitas County Council Member Ian Elliot, I am still strongly opposed to the recommendation for approval on the grounds that the decision to allow the applicant to bundle the projects is flawed. Saving the applicant fees in not a valid reason and does not inherently safeguard the public interest.

Ian Elliot,
Kittitas County