

EXHIBIT

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BEFORE THE STATE OF WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2017-01 of

APPLICATION NO. 2017-01

TUUSO ENERGY, LLC

COLUMBIA SOLAR PROJECT

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

TUUSO Energy, LLC (TUUSO or Applicant) is a privately owned, Seattle based utility-scale solar developer.¹ TUUSO 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, TUUSO filed an Application with the Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Project. TUUSO 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. TUUSO 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

TUUSO 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

¹ TUUSO 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.

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 borders the north site boundary, which rises 8 to 12 feet as it approaches the I-82 overpass. A commercial dog kennel is located across Tjossem Road to the north with farmland directly west of I-82, to the east and south. 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

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

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,

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

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 existing 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 Processing⁷³ 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 visits⁷⁸ 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

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 Jewell⁸¹ 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

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/bocce/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

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

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

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

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.

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

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

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

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

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 to 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

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 its 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

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

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

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

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

TUUSO 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?

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 TUUSO 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 17.61 Utilities 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 un rebutted 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

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 studies¹⁸¹ 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 publication¹⁸³ 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

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. Technol. (2017).

¹⁸² Rev. App. at 191, 192; SCAs Art. IV, Part F, Sec. 1.

¹⁸³ <https://www.nysed.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 study¹⁸⁶ 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.

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.

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,”

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

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 un rebutted, 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.

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 borders

the north site boundary, which rises 8 to 12 feet as it approaches the I-82 overpass. A commercial dog kennel is located across Tjossem Road to the north with farmland directly west of I-82, to the east and south. 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 un rebutted, 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, 2018, 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.

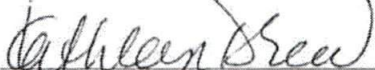
VIII. RECONSIDERATION OR OTHER ADMINISTRATIVE RELIEF

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.

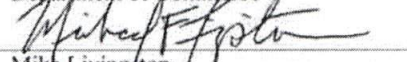
DATED at Olympia, Washington, and effective August 21, 2018.

Washington Energy Facility Site Evaluation Council

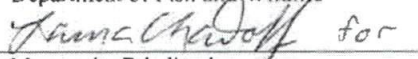

Kathleen Drew, EFSEC Chair


Janine Rossman,

Department of Commerce


Mike Livingston,

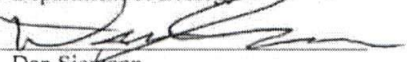
Department of Fish and Wildlife


Marguerite Friedlander,

Utilities and Transportation Commission


Cullen Stephenson,

Department of Ecology


Dan Siehmann,

Department of Natural Resources


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 is not a valid reason and does not inherently safeguard the public interest.


Ian Elliot,
Kittitas County