

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application

Docket No. EF-220212

CYPRESS CREEK RENEWABLES –
High Top Solar, LLC and Ostrea
Solar, LLC

Council Order No. 885

**ORDER GRANTING EXPEDITED
PROCESSING**

BACKGROUND

Synopsis. *Cypress Creek Renewables requested expedited review of an application it filed with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification and approval of the High Top Solar and Ostrea Solar Projects. The Council may grant expedited review when it finds the project is consistent and in compliance with land use plans and zoning ordinances, and the environmental impacts are insignificant or can be mitigated to a nonsignificant level. The Council, by this order, concludes that the criteria for expedited review have been satisfied and will use the expedited process authorized by RCW 80.50.075 to evaluate the application.*

- 1 **Nature of Proceeding.** This matter involves an application for site certification (Application or ASC) filed on April 7, 2022, by Cypress Creek Renewables (the Applicant) to construct and operate High Top Solar and Ostrea Solar (the Projects or the facility) solar photovoltaic (PV) projects with one planned and one optional battery storage system. The Projects would be located adjacent to one another on a total of eleven parcels in unincorporated Yakima County between SR-24 to the south and the Yakima Training Center to the north.
- 2 The Applicant requests that EFSEC use the expedited process authorized by RCW 80.50.075 to evaluate the Application. 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.¹
- 3 The Applicant and the Council mutually agreed to extend the one hundred twenty-day

¹ RCW 80.50.075; WAC 463-43-030.

timeline for the Council to issue an order on the land use consistency and to decide the request for expedited process, by 10 weeks to encompass the later time of the Council's monthly meeting on October 18, 2022.²

- 4 **Land Use Consistency Finding.** RCW 80.50.090(2) requires EFSEC to “conduct a public hearing to determine whether or not a proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances.” On May 25, 2022, EFSEC issued a Notice of Informational Public Hearing and Land Use Consistency Hearing and scheduled a virtual hearing by Microsoft Teams or by telephone participation for 5:00 p.m. on Wednesday, June 1, 2022.³
- 5 On June 1, 2022, the Council conducted a virtual land use consistency hearing, to hear testimony regarding whether the facility was consistent and in compliance with Yakima County's local land use provisions.
- 6 The Council issued an Order Granting a Finding of Land Use Consistency on October 18, 2022. The order is incorporated by reference herein. In that order, the Council granted the Applicant's request for a finding of land use consistency for the reasons, and with the limitations, set forth therein. Consistent with that Order, the Council will provide a hearing to take comments from the public and give consideration to any specific recommendations from Yakima County Planning Department, after which the Council may decide whether to recommend site certification conditions to uphold Yakima County's conditional use permit criteria.⁴
- 7 **SEPA Mitigated Determination of Non-Significance:** On September 30, 2022, EFSEC's SEPA responsible official, EFSEC Director Sonia Bumpus, issued a Mitigated Determination of Non-Significance (MDNS) for the Projects and invited public comment as required by WAC 197-11-340.
- 8 The comment period ended on October 14, 2022, during which EFSEC received four comments. The responsible official reviewed and considered all comments, finding that no new issues were raised that had not already been considered.
- 9 On October 28, 2022, the responsible official issued a Revised MDNS under WAC

² While the Council and the Applicant have not formally agreed to a further extension of the one hundred twenty day aspirational timeline that EFSEC has set for itself in WAC 463-43-050 for the Council to grant a request for expedited processing, neither has the Applicant objected to the Council continuing its final vote on this Order to the November 2022 Council meeting.

³ The Council sent this Notice to all interested persons on the application mailing list and the project mailing list. Further, the Council purchased a legal advertisement in the Yakima Herald.

⁴ RCW 80.50.090(5) requires that “[a]fter expedited processing is granted under RCW 80.50.075, the council must hold a public hearing to take comments on the proposed application prior to issuing a council recommendation to the governor.”

197-11-350 that clarified one mitigation measure related to vegetation and added one additional mitigation measure related to animals and habitat. The Revised MDNS lists 19 total mitigating conditions related to earth, air, water, animals and habitat, noise, visual and aesthetics, historic and cultural resources, and utilities.

- 10 The Revised MDNS sets forth the responsible official's determination that mitigating conditions included in the Revised MDNS report, along with required compliance with applicable county, state, and federal regulations and permit requirements will mitigate any significant adverse impacts to the environment. An environmental impact statement therefore is not required under RCW 43.21C.030(2)(c).⁵

FINDINGS OF FACT

- 11 (1) On April 7, 2022, Cypress Creek Renewables, LLC, submitted an application for site certification to construct and operate High Top Solar and Ostrea Solar Projects (the facility), a solar photovoltaic (PV) project with an optional battery storage system at the High Top Project and battery storage at the Ostrea Project. The facility would be located on 3,263 leased acres in unincorporated Yakima County, Washington.⁶
- 12 (2) On April 7, 2022, the Applicant submitted a written request that the Council use the expedited processing procedure authorized by RCW 80.50.075.
- 13 (3) On June 1, 2022, the Council convened a virtual land use consistency hearing, pursuant to due and proper notice. The Council received testimony from the Applicant's attorney and community member, Michael Tobin.
- 14 (4) The Applicant presented Certificates of Zoning Compliance from Yakima County's Zoning and Subdivision Manager, Jason Earles, attesting to the facility's consistency and compliance with local land use plans and zoning ordinances.
- 15 (5) On October 28, 2022, EFSEC's SEPA responsible official issued a Revised Mitigated Determination of Non-Significance under the State Environmental Policy Act that lists 19 mitigating conditions related to earth, air, water, animals and habitat, noise, visual and aesthetics, historic and cultural resources, and utilities.

⁵ The revised environmental checklist was completed by EFSEC and cross references the parts of the application that provide the requested information in the checklist. The Revised MDNS, environmental checklist, environmental review and staff recommendation, and the updated ASC are available for review at EFSEC. For convenience, the documents are available online at: <https://www.efsec.wa.gov/energy-facilities/high-top-and-ostrea-solar-project>

⁶ The respective Project Site Control Boundaries are: 1,564 acres for High Top; and 1,699 acres for Ostrea.

CONCLUSIONS OF LAW

- 16 (1) The Council has jurisdiction over the subject matter of this proceeding and the parties to it pursuant to RCW 80.50.075 and WAC chapter 463-43.
- 17 (2) The Council provided adequate notice to interested parties, and the Council has adequate information to render a land use consistency decision.
- 18 (3) The Applicant has met its burden of proof of demonstrating that the sites are consistent and in compliance with Yakima County's Comprehensive Plan and applicable zoning ordinances as required by RCW 80.50.075(1).
- 19 (4) The environmental impact of the proposed High Top and Ostrea Facility can be mitigated to a nonsignificant level under RCW 43.21C.031 as required by RCW 80.50.075(1).
- 20 (5) The criteria for expedited processing set forth in RCW 80.50.090 and WAC 463-43-050 as of the date of the Application have been satisfied, and therefore, the Applicant's request for expedited processing should be granted.

ORDER

THE COUNCIL ORDERS:

- 21 Cypress Creek Renewable, LLC's request for expedited processing is GRANTED; EFSEC will evaluate Cypress Creek Renewable, LLC's Application for Site Certification of the High Top and Ostrea Facility in an expedited process consistent with the requirements of RCW 80.50.075, RCW 80.50.090 and WAC chapter 463-43.

DATED at Olympia, Washington, and effective November 15, 2022.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

KATHLEEN DREW, Chair