

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of
Application No. of EF-220212

APPLICATION NO. EF-220212

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

REPORT TO THE GOVERNOR ON APPLICATION NO. EF-220212

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EXECUTIVE SUMMARY

On April 7, 2022, Cypress Creek Renewables, LLC (CCR or Applicant) filed an application for site certification (Application or ASC) with the Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the High Top Solar and Ostrea Solar Projects (the Facility) through its wholly-owned subsidiaries, High Top Solar, LLC and Ostrea Solar, LLC. Each project consists of a solar photovoltaic generating facility and optional battery energy storage system (BESS). The High Top Project would be located on three parcels and the Ostrea Project would be located on eight parcels, together eleven parcels (the Site), in unincorporated Yakima County 20 and 22 miles east of the city of Moxee, respectively, each with a generating capacity of 80 megawatts (MW).

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 facility against its impacts on the broad public interest. The Council determines whether the proposed facility will produce a net benefit justifying a recommendation of project approval.

The Council has carefully considered the record before it, including: the Application; the record in the land use consistency hearing; the State Environmental Policy Act 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 High Top Solar and Ostrea Solar Projects will provide the state and the region with important clean 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 (SCAs), the proposed Facility meets the requirements of applicable law and comports with the policy and intent of Chapter 80.50 RCW. Therefore, the Council recommends that the Governor approve of the Facility.

I. INTRODUCTION

A. The Applicant and the Application for Site Certification

On April 7, 2022, Cypress Creek Renewables, LLC¹ (Applicant) filed an Application with the Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Facility. The Applicant seeks to obtain site certification pursuant to RCW 80.50.060(1)(b)(ii). The Facility is an alternative energy resource facility as defined in RCW 80.50.020(1). 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.²

The Applicant is an indirect wholly-owned subsidiary of Cypress Creek Renewables, LLC, a California-based privately-held developer of utility-scale, distributed generation, community solar, and storage energy projects across the United States. It has developed more than 12 gigawatts (GW) of solar photovoltaic and storage projects since its founding in 2014 and has more than 2GW within company fleet ownership. It operates and maintains more than 4GW of combined owned and third-party projects. It has experience working with investor-owned utilities, public power, and commercial and industrial customers.”

The proposed Facility, which is described in Section II below, will consist of PV modules mounted in rows on single-axis trackers supported on stationary piles. The High Top Project will interconnect through a dedicated switch yard PacifiCorp’s Union Gap-Midway 230 kV transmission line that runs through the southern part of the project. The Ostrea Project will connect through a line tap to Bonneville Power Administration’s Midway to Moxee 115-kilovolt (kV) transmission line, which runs through the southern part of the project. Both Projects’ output will be conveyed to substations near their respective points of interconnection (POI) to the electrical grid. The BESSs would not exceed the nominal 80 MW capacity of each Project.³

The Application submitted by CCR is for two adjacent sites, together consisting of eleven parcels leased from one property owner. For purposes of the report, we refer to the eight parcels of the Ostrea Project and the three parcels of the High Top Project as the “Sites” or “Project sites.” The Sites are in unincorporated Yakima County 20 (High Top) and 22 (Ostrea) miles east of the city of Moxee. Described below, the Sites’ total acreage is approximately 3,263. However, High Top’s footprint would not exceed 926.6 acres and Ostrea’s footprint would not exceed 811.3 acres. The Applicant has stated that it chose the location based on several suitability factors, including but not limited to the high solar energy resource, the underlying topography and land traits, access to electrical infrastructure, and low impacts to land use and habitat.⁴ On April 7, 2022, CCR requested that the application be granted expedited processing.⁵

¹ See Cypress Creek Renewables Public Information Meeting PowerPoint presentations, June 1, 2022 and March 16, 2021, at slide 4.

² RCW 80.50.060(1)(b)(ii); RCW 80.50.110(2); RCW 80.50.100(2); See *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 285 (2008).

³ Cypress Creek Renewables, LLC Application for Site Certification, Submitted April 7, 2022, page 13.

⁴ Id. at 18-19

⁵ RCW 80.50.075

B. The Council and its Processes

The Council is a Washington State agency, established under RCW 80.50.030 to advise the Governor in deciding whether to approve applications to site certain new energy facilities. The Council must “prepare written reports to the governor” which shall include recommendations on applications to construct proposed energy facilities on a specified site. If the Council recommends approval, it prepares site certification agreements embodying the conditions upon which approval should be granted.⁶

The Council’s analysis is guided by RCW 80.50.010, which articulates Washington’s policy to recognize the pressing need for increased energy facilities; ensure that the location and operation of such facilities produce minimal environmental effects; and balance the increasing demands 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.⁷

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, local governmental or community interests . . . affected by the construction or operation of the 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.”⁸

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.⁹ The county in which the project is to be sited is authorized to appoint a voting member.¹⁰ In addition, the Departments of Agriculture, Transportation, Health, and the Military may elect to sit on the Council for a specific application.¹¹ For purposes of this Application, Yakima County did not appoint a member.

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

⁶ RCW 80.50.040(8); RCW 80.50.100(2).

⁷ *Columbia RiverKeeper v. Port of Vancouver*, 188 Wn.2d 80, 95, 392 p.3d 1025 (2012).

⁸ RCW 80.50.100(2); *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 285 (2008).

⁹ RCW 80.50.030(2), (3).

¹⁰ RCW 80.50.030(4).

¹¹ RCW 80.50.030(3)(b).

discussion of how the Council accomplished each of its steps for purposes of this Application provided in Section III of this report.

- **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 Director) finds that any adverse environmental impacts can be mitigated to non-significant levels, they may issue a mitigated determination of non-significance.¹²
- **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.¹³
- **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.¹⁴
- **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.¹⁵

This report is organized as follows. Section II provides a summary description of the proposed Site. 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.

¹² WAC 197-11-350, WAC 463-47-080.

¹³ RCW 80.50.075(2), WAC 463-43-060.

¹⁴ RCW 80.50.100.

¹⁵ RCW 80.50.100(3).

II. DETAILED DESCRIPTION OF THE SITES

The eleven parcels on which the Facility will be located constitute the “Facility Parcels.” The property is owned entirely by a single land owner, Zine and Najiba Badissy. The Applicant has executed options to lease with the landowners for adequate acreage to accommodate the Facility long-term. The landowners have provided letters of support for both Projects located on the Facility Parcels (Attachment M to the ASC).

The total acreage of the Facility Parcels is 3,263 acres. However, the Facility’s footprint, defined as the Project Footprint, would be located wholly within two micrositings boundaries, defined as the Maximum Project Extent, of 926.6 acres for the High Top Project and 811.3 acres for the Ostrea Project. The Project Study Area is the extent of the acreage that was surveyed for the wildlife, cultural and wetland surveys, which totals 1,114 acres for the High Top Project and 1,123 acres for the Ostrea Project and wholly encompasses the Maximum Project Extent.

Each row of solar panels will be strung together in a north-south orientation and the panels will tilt on a single-axis (facing east in the morning and tilting toward the west, following the sun, through the course of each day to maximize energy output). Each string of panels will be arranged in rows with a minimum of eight feet of space between the rows. The racking system and panels will be supported by steel piles that will be driven to a depth of eight to ten feet below grade.

Inverters paired with medium voltage step-up transformers will convert the generated electricity from direct current (DC) to alternating current (AC) and increase the voltage to distribution class to minimize ohmic losses when collecting power circuits. The voltage at the High Top Project will be increased to 230 kV, and the voltage at the Ostrea Project will be increased to 115 kV. The output from each Project will be conveyed to a substation near the POI to the electrical grid.

The BESS for each project would not exceed the nominal 80 MW capacity of each project. The battery would store power generated by the Facility and dispatch it to the electrical grid at a later time.

The Ostrea Project will interconnect through a line tap to Bonneville Power Administration’s Moxee to Midway 115 kV transmission line that runs through the southern part of the Ostrea Project. The Ostrea Project will be accessed on the east side of the Project from Washington State Route 24. The High Top Project will interconnect through a dedicated switchyard located at the High Top Project adjacent to PacifiCorp’s Union Gap-Midway 230 kV transmission line that runs through the southern part of the High Top Project. The High Top Project will be accessed on the east side of the Project from Washington State Route 24.

The Facility will be secured with fencing within twenty feet of the final approved locations of the panel arrays. The fencing will be six feet in height with an additional foot of barbed wire across the top and access gates for authorized personnel. Internal gravel roads built to the applicable fire code will be used to maintain the Facility.

The Facility is currently grazed. Historic land use on both Projects has included crop production. Habitat types on the High Top Project include cheatgrass dominated pasture and mixed environs, shrub-steppe, and disturbed/reclaimed. Habitat types on the Ostrea Project include crested wheatgrass dominated pasture and mixed environs, cheatgrass dominated pasture and mixed environs, shrub-steppe, and disturbed/reclaimed. The cheatgrass dominated pasture and mixed environs in both Projects appears to have been plowed historically. Crested wheatgrass dominance is also typically associated with plowing and crops, and the crested wheatgrass dominated pasture and mixed environs may have also been historically plowed or cultivated. Project facilities for High Top will be predominately located in the cheatgrass dominated pasture and mixed environs area, while for Ostrea they will be located in the cheatgrass dominated pasture and mixed environs and crested wheatgrass dominated pasture and mixed environs habitats.

The northern boundary property lines of two parcels for the High Top Project and two parcels for the Ostrea Project adjoin the southeastern property line of the Yakima Training Center. Communications with representatives of the Yakima Training Center did not result in notable land use conflicts with the Projects. The results of the glint and glare studies conducted by the applicant were shared with the Yakima Training Center for confirmation that there are no impacts to the Yakima Training Center from the Projects.¹⁶

The ASC identifies one wetland and several ephemeral channels within the study area for each Project. The ephemeral channels were classified on non-forest land as Non- Fish Seasonal (formerly Type 5) streams by DNR and as Type 5 streams under Yakima County Code (YCC) Title 16C. Critical Areas Ordinance, 16C.06.06 Stream, Lake and Pond Typing System. Yakima County does not have any buffer requirements for Type 5 streams (YCC 16C.06.06).

For the High Top Project, nine ephemeral channels are located in the site control boundary. Two of these channels are located in the maximum project extent of the High Top Project. The United States Army Corps of Engineers (USACE) has provided a No Permit Required Letter confirming no impacts to ephemeral channels from the High Top Project based on the current proposed project footprint.

For the Ostrea Project, eighteen ephemeral channels occur within the site control boundary. Eight of these channels are located in the maximum project extent of the Ostrea Project. Temporary and permanent impacts to these channels will be covered under USACE Nationwide Permit 14, which has been issued and a copy provided to EFSEC.

The ASC states that micrositing would occur such that the precise location of Facility components within the maximum project extent would be provided in an updated site plan prior to construction. This would give the Applicant the ability to refine the spacing of solar modules, associated access roads, collector lines, staging areas and above-ground facilities within the maximum project extent as design is finalized. The maximum project footprint would not exceed the acreage of the maximum project extent.

As shown in the Preliminary Site Plan (Attachment K to the ASC), the Facility would consist

¹⁶ Cypress Creek Renewables, LLC Application for Site Certification, Submitted April 7, 2022, page 23.

of PV panels, inverters, mounting infrastructure, an electrical collection system, operation and maintenance building, access roads, interior roads, security fencing, a new collector substation and electrical interconnection infrastructure.

III. PROCEDURAL STEPS – EXPEDITED PROCESS

A. Informational Public Hearing and Land Use Consistency 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. 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 May 25, 2022, EFSEC issued a Notice of Informational Public Hearing and Land Use Consistency Hearing and scheduled a virtual hearing by Teams or by telephone participation for 5:30 p.m. on June 1, 2022.¹⁷

The Council conducted a virtual public informational hearing, which was followed by a land use consistency hearing. The Council Members present on June 1, 2022, were Kate Kelly (Department of Commerce), Eli Levitt (Department of Ecology), Leonard “Lenny” Young (Department of Natural Resources), and Stacey Brewster (Utilities and Transportation Commission). Kathleen Drew, EFSEC Chair, presided over the hearing. Managing Assistant Attorney General Sarah Reyneveld, Counsel for the Environment, was present.

After a presentation by CCR 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.

At the land use consistency hearing, Sarah Drummond, attorney from the Law Offices of Susan Drummond, represented the Applicant and spoke on the Applicant’s behalf. Michael Tobin testified in opposition to a finding of land use consistency. The Applicant provided the Council two letters dated March 7, 2022, from Jason Earles, Zoning and Subdivision Manager and the Yakima County Planning Official, which included a Certificate of Zoning Compliance (Certificate). According to the Certificate, the Facility is defined as a Power Generating Facility under Yakima County Code (YCC) Title 19, the Unified Land Development Code, and is proposed to be within the Agricultural Zoning District (AG). It is classified as a “Type 3” conditional use in the County’s AG zoning district (YCC Table 19.14-010). Type 3 Uses are “uses which may be authorized subject to the approval of a conditional use permit” as set forth in Section 19.30.030. Type 3 conditional uses are not generally appropriate throughout the zoning district. Type 3 uses require Hearing Examiner review of applications subject to a Type 3 review under the procedures of Section 19.30. 100 and YCC Subsection 16B.03.030(l)(c).” (YCC Title 19.19-010(2)). Therefore, for purposes of the Council’s initial determination of land use consistency (which considers only whether the project “can be

¹⁷The 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.

permitted either outright or conditionally”¹⁸) the High Top Solar and Ostrea Solar projects were consistent with YCC Title 19 and would have been eligible for review and permitting under Yakima County permit processes.

B. 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 of the Washington Administrative Code (WAC).

EFSEC staff completed SEPA review of the ASC and provided a memo of their review for consideration by the SEPA Responsible Official.

On October 1, 2022, EFSEC’s SEPA Responsible Official¹⁹ issued a Mitigated Determination of Non-Significance (MDNS) and invited public comment as required by WAC 197-11-340. The public comment period ended on October 14, 2022, during which EFSEC received 4 public comment submissions. All of these comments were reviewed, with a supplemental memo prepared by staff, and the SEPA Responsible Official added one additional mitigation measure related to Animals and Habitat (regarding fencing), and revised a mitigation measure also related to Animals and Habitat.

On October 28, 2022, EFSEC issued a Revised MDNS under WAC 197-11-350. The Revised MDNS listed 19 mitigation measures related to Earth, Air, Water, Animals and Habitat, Noise, Visuals and Aesthetics, and Historic and Cultural Preservation, and Utilities as follows:

Resource	Impact	Mitigation
Earth	Erosion	1. Monitoring for erosion, and response measures should erosion occur, would be addressed in the Stormwater Pollution Prevention Plans and the Vegetation and Weed Management Plans prepared prior to construction. Should erosion occur following construction, including wind-caused erosion, response measures would be taken in accordance with the approved plans. If mitigation is implemented for erosion, monitoring would occur for a period of time agreed upon by EFSEC and the applicant to ensure the mitigation is successful.
Air	Emissions	2. Once the number and size of backup generators to be used during construction is known, supplemental environmental analysis would be required, and the Applicant would be required to submit applications to EFSEC for approval of these sources prior to implementation.
Water	Quality – Wetlands and	3. Prior to the start of construction, an additional visit to each site would be conducted by Washington Department of Ecology (WDOE) to verify the lack of seasonal wetlands throughout the

¹⁸ In re Columbia Solar Project, Docket No. EF-170823, Council Order – Expedited Processing, ¶ 35.

¹⁹ Within EFSEC, the SEPA Responsible Official is the EFSEC Director. WAC 463-47-051.

	Surface Waters	project sites. Additional mitigation, particularly with respect to buffer, may be imposed after the site visits, developed in coordination with WDOE.
		4. If the US Army Corps of Engineers determines the ephemeral streams are non-federally regulated waters, an Administrative Order would be needed if details showed the projects would not meet the State's water quality standards. Additional mitigation would be imposed if needed to replace any of the features' functions and values.
	Use	5. Prior to construction, the amount of water estimated to be used during construction must be identified, and an approved source of water with enough legally available water to supply the needed amount for construction would be identified and confirmed via a contract or certificate of availability
		6. Prior to operations, an approved source of water with enough legally available (202,000 gallons annually) water to supply the needed amount for continued operation would be identified and confirmed via a contract or certificate of availability.
	Quality and Quantity – Stormwater and Washwater	7. Water for washing the solar panels would not have any cleaning solvents, detergents, or other additives in it. Wash water would be controlled in such a manner as to be able to infiltrate all water on site.
Animals and Habitat	Habitat impacts	8. Since the Project layouts are not yet final, the acres of impact and any subsequent mitigation calculations will represent higher values. Mitigation Ratios for habitat impacts are as follows: • 2:1 ratio for permanent impacts to shrubsteppe habitat • 1:1 ratio for altered impacts to shrubsteppe habitat • 0.5:1 ratio for altered impacts to the cheatgrass dominated pasture/mixed environment habitat classification at the Ostrea project. • No mitigation is required for cheatgrass dominated pasture/mixed environment habitat classification at the High Top Project
		9. The applicant would be required to provide compensatory mitigation for remaining impacts to habitat. The applicant would compensate for the remaining permanent and altered impacts by providing money to Washington Department of Fish and Wildlife (WDFW) or a third party identified by WDFW to purchase other lands suitable as in-kind and/or enhancement mitigation. This fee-based mitigation includes a per acre fee that would be determined by market rates and land sales within the general vicinity of the Facilities for lands containing comparable habitat types and quality present within the project area. The per acre fee would be developed by the applicant in consultation with WDFW and

		approved by EFSEC. The Total Financial Obligation (TFO) would be determined by multiplying the cost per acre by the total Compensatory Mitigation Acres (CMA) and would include a one-time 15% premium to cover administration and management costs for the purchased lands. The TFO for compensatory mitigation would be determined prior to issuance of a Site Certification Agreement (SCA). If construction has not begun within 12 months of the approval of the SCA, the TFO identified in the SCA would expire and be recalculated prior to beginning construction; comparable land sales at the time the TFO is recalculated would be used. <u>Fee calculation:</u> i. $(Average\ Comparable\ Land\ Sale\ Cost_{per\ acre}) * (CMA) * 1.15 = TFO$
		10. Prior to the start of construction, Habitat Restoration and Mitigation Plans would be developed in coordination with WDFW and EFSEC, as described in the ASC, to include 1) considerations of any potential additional setbacks as identified by WDFW or other micro-siting options that may be feasible to further reduce the impact to habitat connectivity, and 2) revegetation of disturbed areas with a native seed mix
		11. Prior to the start of construction, the applicant will implement, where feasible, in coordination with EFSEC and WDFW, the raising of the bottom of fences to allow for small animal passage.
Noise		12. Set up a “noise hot line” or other form of communication that the public could use to report any undesirable noise conditions associated with the construction of the Projects, with the ability to log the date and time of a complaint. This line of communication would be maintained through construction.
		13. Loud machinery would be limited to the hours of 7 a.m. to 8 p.m.
		14. Perform noise monitoring during operations, at a frequency and locations identified in coordination with EFSEC for the first 180 days of operation. Additional mitigation (e.g., noise barriers, etc.) and subsequent noise monitoring would be required if 1) the facilities are receiving and documenting ongoing substantiated noise complaints, and/or noise levels exceed maximum permissible noise levels as indicated in WAC 173-60-040.
Visual and Aesthetics	Aesthetics	15. Following final design, provide visual simulations as requested by EFSEC, for EFSEC review, for viewpoints associated with residences. Following review of the simulations, mitigation such as visual screening (e.g., vegetation or physical) or surface treatments would be implemented for viewpoints: 1) with a moderate rating for contrast and 2) that have specific aspects that contribute to visual contrast that could be mitigated to a less than moderate level by

		additional best management practices such as visual screening or surface treatments.
Historic and Cultural Resources	Cultural Resources	16. If the site identified as being avoided within the Ostrea Maximum Project Extent is going to be altered during construction or operations, the applicant would consult with DAHP, any concerned Tribes, and EFSEC. An archaeological excavation permit would be required prior to any alteration.
		17. Prior to the start of construction, the applicant would submit to EFSEC a Concurrence Letter from DAHP stating approval of the revised Cultural Resources Survey Reports.
		18. Prior to the start of construction, the applicant would submit updated Unanticipated Discovery plans outlining steps taken to avoid precontact archaeological resources, including avoidance mechanisms proposed in the initial cultural resource reports. These plans would be developed in coordination with EFSEC, DAHP, and the Yakama Nation.
		19. Mitigation discussions will be ongoing once site impacts are fully assessed by EFSEC, the Yakama Nation, and DAHP. These discussions will likely occur on a case by case basis and include both the Yakama Nation and DAHP.
Utilities		See mitigation measures #5 and #6 under Water use

The Responsible Official determined that the above mitigating conditions included in the Revised MDNS, along with required compliance with applicable county, state and federal regulations and permit requirements, will mitigate all significant adverse impacts to the environment. An environmental impact statement (EIS) therefore is not required under RCW 43.21C.030(2)(c). The Responsible Official made this determination after a review of the ASC, other information on file with the agency, and existing regulations applicable to the proposal.²⁰

C. 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 decide 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.²¹

²⁰ The Revised MDNS, environmental checklist, environmental review and staff recommendation, and the ASC are available for review at the EFSEC office. For convenience, the documents are available online at <https://www.efsec.wa.gov/energy-facilities/high-top-and-ostrea-solar-project>

²¹ RCW 80.50.075; WAC 463-43-060.

On November 15, 2022, the Council issued an order concluding that expedited process should be granted, finding land use consistency and that a revised 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.²² 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 October 18, 2022, Order Granting a Finding of Land Use Consistency.

IV. PUBLIC MEETING TO RECEIVE COMMENT ON YAKIMA COUNTY CONDITIONAL USE CRITERIA

The November 15, 2022, Order Granting Expedited Processing instructed EFSEC Staff to receive information akin to what Yakima County would receive during a conditional use hearing as to site-specific conditions and criteria.²³

Consequently, on January 6, 2023, the Council issued a Notice of a Public Meeting and Request for Public Comment and invited public comment regarding whether additional requirements should be imposed in consideration of the goals of YCC 19.30.100(2). This meeting also met the requirement of 80.50.090(5), which requires that after expedited processing is granted, the council must hold a public meeting to take comments on the proposed application prior to issuing a recommendation to the Governor. The Applicant and EFSEC Staff made presentations at the virtual meeting convened on January 11, 2023.

Jess Mosleh, Heather Wise, and attorney Susan Drummond, presented on behalf of the Applicant, summarizing the information and analysis presented in Attachment A to the Application, which concerns the applicability of County comprehensive plan and development code provisions to the project.

Yakima County Code 19.30.100(2) allows the County hearing examiner to impose additional requirements as conditions of approval of Type 3 conditional uses (including Power Generating Facilities proposed in the Agricultural Zoning District), to:

- a. Comply with any development standard or criteria for approval set forth in Yakima County Code
- b. Mitigate material impacts of the development
- c. Ensure compatibility of the development with existing neighboring land uses; assure consistency with the intent and character of the zoning district involved
- d. Ensure that the structures and areas proposed are surfaced, arranged, and screened in such a manner that they are compatible with and not detrimental to existing or reasonable expected future development of the neighborhood, or resources uses, consistent with the Comprehensive Plan and

²² Order on Expedited Processing (Order) at 13, 23.

²³ Providing that after expedited processing is granted under RCW 80.50.075, the Council must hold a public meeting to take comments on the proposed application prior to issuing a recommendation to the Governor.

- e. Achieve and further the intent, goals, objectives, and policies of the Comprehensive Plan and this Title (Title 19)

EFSEC received verbal comments from five parties during the public comment meeting regarding conditional use criteria. EFSEC received written comments from four parties during the public comment period. Two of the written comments were presented verbally as well, accounting for two of the five comments received at the public meeting--one provided by Dale Hille and the second provided by the Yakima County Farm Bureau.

Yakima County Commissioner Amanda McKinney expressed concern about the number of projects in Yakima County and noted that as of July 2022, the County had placed a moratorium on solar projects to allow time to develop more specific criteria for the siting of solar projects. She also indicated that the county had \$5 billion in income from agricultural land and the Board of County Commissioners is concerned about the impact of the projects because they will be sited on agricultural land. Commissioner McKinney ask the Council to reject the Application.

Dale Hille, the Fire Chief for the Yakima Fire District (YCFD), expressed the need for a contractual fire suppression service for the projects. He cautioned that gates and roadways needed to be wide enough for fire equipment. He requested vegetation management to mitigate the risk of fire. He recommended pre-incident emergency response planning annually. He also asked whether there would be a water source on site to assist in fire suppression.

Lorre Gefre, a concerned citizen, spoke against the projects noting that High Top Solar and Ostrea Solar are not the only projects being planned for Yakima county. She felt the process has been rushed and citizens have not had enough time to understand the implications of all the projects. She also expressed a concern about fire protection and whether sufficient water is available to fight a fire. She expressed her opinion that there will be insufficient oversight of mitigation measures such that they will not be effective. Finally, she was concerned about toxins that may be released either during the project or when it is dismantled.

Michael Tobin of the North Yakima Conservation District noted that the land on which the site is proposed had been used as agricultural land in the past, and asserted it is compatible with future use as such. He asserted that the projects would convert agricultural land into an industrial commercial property and would violate state laws providing for the protection of agricultural lands. He stated that the mitigation measures cannot replace the habitat that is critical for sage grouse and other wildlife.

Mark Henke, President of the Yakima County Farm Bureau expressed concerns about projects being rushed through the process. He also expressed concerns about the projects being chained together across the landscape damaging the land, impacting sage grouse, and creating an increased fire hazard.

None of the comments received at the hearing recommended specific additional conditions to ensure consistency of the project with the conditional use criteria set forth in Yakima County Code 19.30.100(2).

To the concerns raised during this meeting, EFSEC provides the following response:

County Commissioners' request to reject the application based on the moratorium

Commissioner McKinney's comments at the meeting mirrored those presented in a letter EFSEC received from the Yakima County Commissioners on November 7, 2022. As EFSEC Director of Siting and Compliance, Amí Hafkemeyer explained in response to that letter, RCW 80.50 and Title 463 WAC do not provide a basis to cease review of an application based on a county-enacted moratorium. EFSEC is directed to "conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances on the date of the application." RCW 80.50.090(2). EFSEC received the ASC for the High Top and Ostrea Projects on April 7, 2022. The County enacted its moratorium on July 26, 2022. Even if the moratorium had been in effect prior to CCR's submission of its application to EFSEC, the Council has previously determined that a moratorium is not a land use plan or zoning ordinance for the purposes of EFSEC's consistency determination.

Fire Response

The ASC includes commitments for fire response plans, which the draft Site Certification Agreement requires to be submitted and approved prior to construction and operations. EFSEC staff have initiated coordination with the YCFD and the Applicant to include input on required fire plans, and other related input. The Applicant has responded to the comments regarding fire risk indicating where they have or will make commitments to address the concerns of the YCFD.²⁴

Adequacy of public input opportunities

RCW 80.50.100(1)(a) requires the Council to report to the Governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt of an application. This period may be extended based on the mutual agreement of the Council and the applicant. Several opportunities for public input on the Projects were provided and are inherent to the EFSEC process. Within the first 60 days of receipt of an ASC, EFSEC holds a public informational meeting, during which public comment is received. This meeting was held on June 1, 2022, for the Projects. EFSEC also holds a Land Use Consistency Hearing at which public comment is received. This meeting was also held on June 1, 2022. EFSEC also provided opportunities for public comment on the MDNS, the Land Use Consistency Order, and the Order on Expedited Processing. Finally, EFSEC provided the hearing required by RCW 80.50.090(5), on January 11, 2023, at which public input was solicited on whether the projects are consistent with Yakima County conditional use criteria, and whether any conditions need to be imposed to ensure consistency with those criteria. In summary, EFSEC's process actively seeks public input at these various waypoints in the application review process and encourages interested parties to participate.

Agricultural land loss

²⁴ See Applicant response letter, received January 30, 2023

With respect to the concerns regarding impacts to agricultural land, the Project sites are not currently in agricultural use and have not been for 25 years and 70 years (for the High Top and Ostrea, sites respectively) except as rangeland. Cheatgrass (*Bromus tectorum*) and other weedy species not well suited for year-round livestock grazing are dominant in the previously plowed areas. Additionally, there is no on-site water source, so neither Project Study Area is irrigated, which diminishes the agricultural potential of the site. Therefore, use of the properties for a non-agricultural solar energy facility will not affect current agricultural activities on-site to the detriment of the region's commercial agricultural economy. The Projects will facilitate the property owner's intent to develop the sites with revenue-generating projects on lands that have not in recent years generated revenue with agricultural development.

The Washington Department of Agriculture reviewed the proposal and did not identify any impacts that could not be mitigated. With a planned lifespan of 40 years for each Project, after which the solar arrays will be decommissioned and removed from the site, the Projects will not remove the opportunity to reestablish agricultural uses in the future, consistent with the current intent of Yakima County Policy LU-ER-AG 1.1.²⁵ Per WAC 463-72-040, the Applicant will develop an initial site restoration plan. The plan will address site restoration occurring at the conclusion of the Projects' operating life, or in the event the project is suspended or terminated during construction or before it has completed its useful operating life. Under the draft SCAs, the applicant would not be allowed to build the Projects 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.

Regarding the interplay of the EFSLA siting process with requirements of the Growth Management Act, the Department of Commerce's GMA procedural criteria for adopting comprehensive plans and development regulations acknowledge that "[c]omprehensive plans and development regulations adopted under the [GMA] should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110." WAC 365-196-560(1).

Wildlife impacts

EFSEC has reviewed the impacts associated with this proposal in close coordination with WDFW. This review, and the resulting mitigation measures are presented in the Revised MDNS and associated documents. The Applicant has committed to establishing a wildlife corridor to maintain habitat connectivity. Mitigation for impacts are established and listed in the MDNS, and section III.B.

Release of toxins to the environment

The SCA includes a provision that the applicant develop a construction phase and operational phase Spill Prevention, Control, and Countermeasure Plan (SPCCP) in the

²⁵ Yakima County, WA, Comprehensive Plan, Chapter 5, p. 85 (update June 2017).

event that materials on site are of sufficient quantity to qualify. In the event that hazardous materials were released to the environment, clean up would be required per WAC 463-74-030; WAC 173-303-145.

V. LEGAL FRAMEWORK AND ANALYSIS UNDER RCW 80.50.010

A. Legal Framework

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 a procedure for the selection and use 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 reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities.

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 all energy facilities and certain clean energy product manufacturing facilities will produce minimal adverse effects on the 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. In addition, it is the intent of the legislature to streamline application review for energy facilities to meet the state's energy goals and to authorize applications for review of certain clean energy product manufacturing facilities to be considered under the provisions of this chapter.

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; to pursue beneficial changes in the environment; and to promote environmental justice for overburdened communities.

- (3) To encourage the development and integration of clean energy sources.
- (4) To provide abundant clean energy at reasonable cost.
- (5) 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.
- (6) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay while also encouraging meaningful public comment and participation in energy facility decisions.

Citing an earlier version of RCW 80.50.010 that included much of the same key language, the Washington Supreme Court described EFSLA as seeking to “balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.”²⁶ 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.”²⁷

B. Analysis

This Recommendation draws from the Application for Site Certification and informational meeting presentations, information provided by consultant agencies, information provided at the land use consistency hearing, SEPA documentation and comments, and information received at the meeting to receive comment on the County’s conditional use criteria.

On matters where there is a divergence of views, the Council makes the necessary findings based on the record assembled.

Regarding need for the facility, the Council has considered the policy of the State of Washington to support the development of facilities that produce electricity from renewable resources, including solar energy facilities. RCW 19.285, RCW 19.405, RCW 70A.65, RCW 80.50.010. The Facility will produce electrical energy without generating greenhouse gas emissions.

Regarding the off and onsite impacts to the broad public interest, the Facility will meet federal, state, and local regulatory requirements and the Applicant has agreed to appropriate environmental mitigation requirements as indicated in the sections discussed above. The mitigation package preserves and protects the quality of the environment.

²⁶ *Columbia Riverkeeper v. Port of Vancouver*, 188 Wn.2d 80, 95, 392 P.3d 1025 (2017) (citing RCW 80.50.010).

²⁷ Council Order No. 753, at 12, *In re Chehalis Generating Facility* (Feb. 12, 2001).

After reviewing all available information on the record in this decision, the Council concludes that the proposed Facility will produce a net benefit justifying a recommendation of project approval.

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. EF-220212 to EFSEC for site certification to construct and operate High Top Solar Project and Ostrea Solar Project (the Facility) on sites located in unincorporated Yakima County, Washington, south of the Yakima Training Center and north of SR-24, 20 miles east of the town of Moxee. The Facility consist of solar photovoltaic (PV) projects with optional battery energy storage systems (BESS) with a combined generating capacity of 160 MW.
2. The Washington State Energy Facility Site Evaluation Council has jurisdiction over the persons and the subject matter of Application No. EF-220212, pursuant to Chapter 80.50 RCW.

The Applicant and the Application

3. The Applicant submitted its Application for Site Certification on April 7, 2022, seeking certification pursuant to RCW 80.50.060(3)(a)(iii) in the name of its subsidiaries, High Top Solar, LLC and Ostrea Solar, LLC, and requesting expedited processing of the Application.
4. The Applicant and the Council mutually agreed to extend the one hundred twenty-day timeline for the Council to issue an order on the expedited request.

Site Characteristics

5. The Facility will consist of two projects, High Top Solar Project, to be constructed and operated by High Top Solar, LLC, and Ostrea Solar Project, to be constructed and operated by Ostrea Solar, LLC. Each Project will consist of solar PV modules mounted on single-axis trackers with an aggregated injection capacity limited to 80 megawatts (MW) of alternating current. The eleven parcels on which the facility will be located will together constitute the “facility parcels.” All facility parcels involved are owned by Zin and Najiba Badissy. The Applicant has executed options to lease and easement agreements with the landowners for adequate acreage to accommodate the facility long-term. The landowners have provided

letters of support for each Project making up the facility (Attachment M²⁸ to the Application for Site Certification (ASC)).

Informational Public Meeting

6. The Council held a virtual public informational meeting on June 1, 2022, after receipt of the Application.
7. 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

8. On May 25, 2022, the Council issued a Notice of Land Use Consistency Hearing.
9. On June 1, 2022, the Council conducted a virtual Land Use Consistency Hearing under RCW 80.50.090 and WAC 463-26-050.
10. The Council heard from an attorney for the Applicant, and Michael Tobin.
11. 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)

12. EFSEC is the lead agency for environmental review of project proposals within its jurisdiction under the State Environmental Policy Act (SEPA), RCW 43.21C.
13. The Council Director is the SEPA Responsible Official. WAC 463-47-051.
14. EFSEC's SEPA Responsible Official issued a Mitigated Determination of Non-Significance (MDNS) on October 1, 2022, under WAC 197-11-350.
15. Also on September 30, 2022, the Council issued a notice inviting the public and agencies to comment on the MDNS by submitting written comments beginning October 1, 2022, to be received no later than October 14, 2022.
16. EFSEC's SEPA Responsible Official considered the public comments received and revised the MDNS to address the comments.

²⁸ On the EFSEC website two attachments identified as M are listed. Although nearly identical, one attachment is the letter referencing the High Top Project and the other letter addresses the Ostrea Project.

17. EFSEC's SEPA Responsible Official issued the revised MDNS on October 28, 2022.
18. The Council concludes that it has complied with SEPA and its implementing regulations including Chapter 80.50 RCW and WAC 463-47.

Expedited Process

19. The Applicant requested expedited processing of the Application on April 7, 2022.
20. By mutual agreement, the Applicant and the Council set a later time of October 20, 2022, for the Council to issue an order on the request for expedited process. The Council met on October 18, 2022 and agreed to grant expedited processing.
21. On August November 15, 2022, EFSEC issued an Order Granting Expedited Processing consistent with the requirements of RCW 80.50.075 and WAC chapter 463-43.
22. 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 Yakima 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 Site would be mitigated to a nonsignificant level under RCW 43.21C.031, as required by RCW 80.50.075(1).
23. 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.
24. The Council concludes that the Order granting expedited process complied with applicable statutes and regulations.
25. The Applicant requested an extension for the decision on the Application to February 22, 2021, which was granted.

Conditional Use Meeting

26. The EFSEC Staff reviewed the Application as it relates to Yakima County land use plans and development and ordinances.
27. The Council concludes that the SCA includes conditions to protect local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of Yakima County land use plans and development ordinances as required by RCW 80.50.100(2).

Site Certification Agreement

28. The holder of the Site Certification Agreement (SCA) would be required to comply with all mitigation measures provided for in the Revised Application, all mitigation required by the

Revised MDNS, and the requirements of EFSEC rules and the SCA, such as site restoration and financial assurances.

Balancing Need against Public Interest

29. It is the policy of the State of Washington to support the development of facilities that produce electricity from renewable resources, including solar energy facilities. RCW 19.285, RCW 19.405, RCW 70A.65, RCW 80.50.010. The Facility will produce electrical energy without generating greenhouse gas emissions.
30. Council finds that the project will contribute to the availability of abundant energy at reasonable cost.
31. The Council concludes that the Applicant met its burden of proof demonstrating that the Site would comply with applicable land use provisions and should be approved as a conditional use.
32. The Site as conditioned in the SCA has no significant unmitigated impacts to the environment.
33. 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.
34. The Council concludes that it should recommend that the Governor approve the updated Application with the mitigation measures outlined in SCA.

VII. RECOMMENDATION

The Council recommends that the Governor of the State of Washington approve Cypress Creek Renewables, LLC's Application dated April 7, 2022, for site certification authorizing its subsidiary High Top Solar, LLC, to construct and operate the High Top Solar Project, and authorizing its subsidiary Ostrea Solar, LLC to construct and operate the Ostrea 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 _____.

Washington Energy Facility Site Evaluation Council

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Kate Kelly,
Department of Commerce

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