

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application
No. 2024-
Docket No. EF-240004

Council Order No. [REDACTED]

Goldeneye Energy Storage, LLC, for
the Goldeneye Solar Storage Project,
Applicant

ORDER DETERMINING LAND
USE CONSISTENCY

BACKGROUND

Synopsis. *Goldeneye Energy Storage, LLC (Applicant)¹ filed an application for site certification with the Energy Facility Site Evaluation Council (EFSEC or Council) on June 27, 2024, seeking approval of the proposed Goldeneye Solar Storage Project (Project) site in unincorporated Skagit County, Washington. RCW 80.50.090(2) requires EFSEC to determine whether the proposed site is consistent and compliant with local provisions. The Council may find that the site proposed for a facility is consistent and in compliance with land use plans and zoning ordinances if the proposed use is one that can be approved under current land use and zoning laws, conditionally or outright. The Council, by this order, concludes that the proposed site of the project is consistent with local land use plans and zoning ordinances because it would be eligible to apply for a special use permit as a major utility development under the Skagit County Code.*

FINDINGS OF FACT

- 1 **Nature of Proceeding.** This matter involves an application for site certification (Application or ASC) filed on June 27, 2024, by Goldeneye Energy Storage, LLC to construct and operate the Goldeneye Storage Project.
- 2 **Land Use Consistency Hearing.** 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 August 5, 2024, EFSEC issued a Notice of Informational Public Hearing and Land Use Consistency Hearing and scheduled an in-person hearing at Sedro-Woolley Community Center in Sedro-Woolley,

¹ The application for site certification and Administrative Decision Administrative Official Interpretation 2023-01 reference Goldfinch Energy Storage, LLC. Goldfinch Energy Storage, LLC is a predecessor entity of Goldeneye Energy Storage, LLC. The details of the project were not altered with the name change of the entity. *Applicant’s Legal Memorandum.*

Washington, with the option to participate by Microsoft Teams or by telephone for 5:00 p.m. on Tuesday, August 13, 2024.²

3 On August 13, 2024, the Council conducted the land use consistency hearing, to hear testimony regarding whether the Project was consistent and in compliance with Skagit County's local land use provisions. The following EFSEC members were present or participated remotely via Microsoft Teams at the August 13, 2024, hearing: Kathleen Drew (EFSEC Chair), Elizabeth Osborne, (Department of Commerce), Eli Levitt (Department of Ecology), Mike Livingston (Department of Fish and Wildlife), Stacey Brewster (Department of Utilities and Transportation Commission), Leonard "Lenny" Young (Department of Natural Resources), and Robby Eckroth (Skagit County). Chair Drew presided over the hearing.

4 Tim McMahan, Attorney, represented the Applicant and spoke on the Applicant's behalf. Jordan Grace, environmental planner with Tetra Tech and Tommy Nelson, Tenaska lead project manager also spoke on the Applicant's behalf. The Council also heard testimony from Skagit County residents Kim Rubenstein, Randy Good, Bonnie Helms, Kim Torgerson, James Delay, Suzanne Rohner, Celeste Frisbee, and State Senator Keith Wagoner.

5 **Applicant's Description of Proposed Facility - Goldeneye Solar Storage Project.** The Project would be a standalone 200-megawatt (MW)/800-megawatt hour (MWh) battery energy storage system (BESS), with interconnection and ancillary support infrastructure.

6 The Siting Area would encompass approximately 16 acres across the five parcels. The BESS units would be located on the main assessor parcel, P40030, located at 25080 Minkler Road, Sedro-Woolley, Washington. The underground transmission line would be located on assessor parcels P40042 and P40046. The access road to the site would be located on a portion of assessor parcels P40046, P40022, and P40047. *Application for Site Certification, Part 1: Site Summary, p. 3 of 166; Figure 2 in Attachment A.*

7 The Project would not generate electricity, but it would provide a buffer for the local electrical grid. The Project would receive energy (charging) from the Puget Sound Energy (PSE) electric transmission system, storing energy on site, and then later deliver energy

² The Council sent this Notice to all interested persons on the mailing list for the Facility including landowners within one mile and to all subscribers to EFSEC's general minutes and agenda list. Further, the Council posted this Notice in English and Spanish on its public website, delivered this Notice in English and Spanish to EFSEC's mailing list and the mailing list for this Project, distributed the Notice to local libraries, and purchased advertisement in the local daily newspapers of general circulation.

(discharging) back to the point of interconnection. *Application for Site Certification, Part 1: Project Summary, p. 3 of 166.*

- 8 All proposed Project parcels are zoned as Agricultural - Natural Resource Lands (Ag-NRL). The portion of Minkler Road right-of-way, where an upgraded water line is located, is zoned both Ag-NRL and Rural Reserve (RRv). *Id.*
- 9 The five parcels on which the Project would be located would together constitute the Project Siting Area. The owners of the parcels are listed in a table in Section A.3. Property Owner and Location of Proposed Site Use of the initial application. The owners are: John Grinder, Jon Fleurichamp, and Puget Sound Energy. *Application for Site Certification, A.3: Property Owner; Application for Site Certification, Attachments A & B.*
- 10 On February 1, 2023, the Skagit County Planning Director issued Administrative Official Interpretation (AOI) 2023-01. Applicant requested an AOI of Skagit County Code (SCC) 14.04.020 for the definition of the term “utility development”. Specifically, Applicant requested that the proposed BESS project in the current matter be classified as a major utility development. *AOI 2023-01, page 1.*
- 11 AOI 2023-01 approved Applicant’s request “to allow consideration of the proposed BESS project as a major utility development.” *AOI 2023-01, page 6.*

PUBLIC COMMENTS

- 12 EFSEC received oral and written comments on whether the proposed site is consistent and compliant with local land use provisions. Jack Moore, Director of Skagit County Planning & Development Services, and the Skagit River System Cooperative raised concerns that the Applicant’s ASC incorrectly states that no portions of the Project are within shoreline jurisdiction. These commenters assert that portions of the project—the underground transmission line and an access road—are within 200 feet of the ordinary high water mark of Hansen Creek and therefore within shoreline jurisdiction.
- 13 Commenters raised concerns about noise, fire and flood safety, and pollution due to chemical leaks and runoff. Some commenters also argued the Project is inconsistent with the rural, agricultural character of the surrounding area and stated their opposition to conversion of agricultural land.

DISCUSSION

Land Use Consistency Determination and Applicable Law

- 14 RCW 80.50.090(2) provides that subsequent to the informational public hearing for a proposed facility, the Council shall conduct a public hearing to determine whether the

proposed site was consistent and in compliance with city, county, or regional land use plans or zoning ordinances on the date of the application. In this order, the Council will refer to land use plans and zoning ordinances collectively as “land use provisions” and will refer to its decision as pertaining to “land use consistency.”

- 15 The Council’s evaluation of land use consistency is not dispositive of the Application and a determination of land use consistency is neither an endorsement nor an approval of the Project.³ The evaluation pertains only to the general siting of categories of uses, considering only the site and not the project’s construction and operational conditions.
- 16 Whether a particular facility will create on- or off-site impacts (including impacts to the environment) is considered separately through the State Environmental Policy Act (SEPA) process, during the Council’s adjudication (if applicable), through the environmental permitting processes (if applicable), and through other Council processes (if applicable).⁴ The Council’s ultimate recommendation to the Governor will be made after full and thorough consideration of all relevant issues.
- 17 Under the test for land use consistency previously established by the Council, EFSEC considers whether the pertinent local land use provisions “prohibit” the site “expressly or by operation clearly, convincingly and unequivocally.” A facility meets this initial standard so long as it “can be permitted either outright or conditionally.”⁵ Whether applicable conditional use criteria are in fact met is a question for later EFSEC proceedings,⁶ after which EFSEC may recommend and impose conditions of approval in the Site Certification Agreement (SCA) to recognize the purpose of Skagit County’s special use permit criteria.⁷ For the purpose of determining initial land use consistency, EFSEC has previously held that a project is consistent with local land use regulations where it is potentially eligible for a conditional use permit, regardless of the likelihood of final county approval.⁸

³ In re Whistling Ridge Energy Project, Council Order No. 868 at 9 (October 6, 2011) (Whistling Ridge Order). A determination of land use inconsistency simply results in the Council’s further consideration of whether local land use provisions should be preempted. WAC 463-28-060(1); *see also* RCW 80.50.110(2) and WAC 463-28-020. If they are preempted, the Council will include in any proposed site certification agreement conditions designed to recognize the purpose of the preempted provisions. WAC 463-28-070.

⁴ RCW 80.50.090; RCW 80.50.040(9), (12); Chapter 463-30 WAC; Chapter 463-47 WAC; Chapter 463-76 WAC; and Chapter 463-78 WAC.

⁵ In re Columbia Solar Project, Docket No. EF-170823, Council Order – Expedited Processing, ¶ 35. (April 17, 2018).

⁶ *Id.*, ¶ 36.

⁷ RCW 80.50.100(2); WAC 463-64-020.

⁸ In the Matter of TUUSSO Energy, LLC, Columbia Solar Project, Order Granting Expedited Processing (April 17, 2018); In the Matter of Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC, Applicant, Order Finding Proposed Site Consistent with Land Use Regulations (May 17, 2022).

18 The EFSEC process contemplates that the Applicant will coordinate with the local jurisdiction to attempt to determine whether the project would be consistent and compliant with the jurisdiction's land use plans and ordinances.⁹ If, through these discussions, the local jurisdiction determines the project is indeed consistent and compliant with its land use plans and ordinances, it may provide, and the applicant may present to the Council, a certificate attesting to that fact. Such a certificate provides prima facie proof of consistency and compliance with County land use plans and zoning ordinances.¹⁰

19 **Definitions of "Land Use Plan" and "Zoning Ordinances."** The term "land use plan" is defined by statute as a "comprehensive plan or land use element thereof adopted . . . pursuant to" one of the listed planning statutes.¹¹ EFSEC interprets this definition as referring to the portions of a comprehensive plan that outline proposals for an area's development, typically by assigning general uses (such as housing) to land segments and specifying desired concentrations and design goals.¹² Comprehensive plan elements and provisions that do not meet this definition are outside of the scope of the Council's present land use consistency analysis. The term "zoning ordinance" is defined by statute as an ordinance "regulating the use of land and adopted pursuant to" one of the listed planning statutes.¹³ EFSEC has interpreted this definition as referring to those ordinances that regulate land use by creating districts and restricting uses in the districts (i.e., number, size, location, type of structures, lot size) to promote compatible uses. Ordinances that do not meet this definition are outside of the scope of the Council's present land use consistency analysis.

20 EFSEC has defined the phrase "consistent and in compliance" based on settled principles of land use law: "[z]oning ordinances require compliance; they are regulatory provisions that mandate performance. Comprehensive plan provisions, however, are guides rather than mandates and seek consistency."¹⁴ Under the Growth Management Act, a local agency's zoning regulations must be made in conformity with its comprehensive plan.¹⁵ Consequently, compliance with zoning ordinances establishes a presumption of consistency with the comprehensive land use plan that those ordinances implement.

21 "Application" means any request for approval of a particular site or sites filed in accordance

⁹ WAC 463-26-090.

¹⁰ *Id.*

¹¹ RCW 80.50.020(18).

¹² In re Northern Tier Pipeline, Council Order No. 579 (Northern Tier Pipeline Order) at 9 (November 26, 1979).

¹³ RCW 80.50.020(30).

¹⁴ Whistling Ridge Order at 10 n 15.

¹⁵ [RCW 36.70A.120](#).

with the procedures established pursuant to RCW 80.50.060.

APPLICABLE SKAGIT COUNTY CODES

- 23 SCC 14.04.020 defines utility development as, but not limited to, “facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products.” SCC 14.04.020.
- 24 SCC 14.04.020 outlines three types of utility developments; minor utility development, major utility development, and major regional development. *Id.*
- 25 Minor utility development is defined as, “an unmanned utility development designed to serve a small local community that would be considered a normal utility service for the area. *Id.*
- 26 Major utility development is defined as, “a utility development that is not a minor utility development or a major regional utility development.” *Id.*
- 27 Major regional utility development is defined as, “a utility development that is designed to serve a region.” *Id.*
- 28 Skagit County Code 14.16.400 defines the purpose of its Agricultural-Natural Resource Lands district: to “provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and operations as the primary use of the district. Non-agricultural uses are allowed only as accessory uses to the primary use of the land for agricultural purposes.” SCC 14.16.400(1).
- 29 SCC 14.16.400(2) codifies the permitted uses of Ag-NRL as:
- a) Agriculture.
 - b) Agricultural accessory uses.
 - c) Agricultural processing facilities.
 - d) Co-housing, as part of CaRD, subject to SCC 14.18.300 through 14.18.330.
 - e) Commercial greenhouse operations that are an integral part of a local soil-based commercial agriculture operation.
 - f) Individual or multiple farm composting as an incidental agricultural operation to a working farm with no net loss of soil. The composting operation shall be managed according to an approved nutrient management plan in conjunction with the local Conservation District and Natural Resources Conservation Service (NRCS) standards and all applicable environmental, solid waste, access and health regulations. Such use shall not generate traffic uncommon to a farm operation.

- g) Family day care provider as defined in Chapter 14.04 SCC; provided, that no conversion of agricultural land is allowed.
- h) Farm-based business carried on exclusively by a member or members of a family residing on the farm and employing no more than 3 nonresident full-time equivalent employees.
- i) Historic sites open to the public that do not interfere with the management of the agricultural land.
- j) Home-Based Business 1.
- k) Manure lagoons.
- l) Cultivation and harvest of any forest products or forest crop and necessary accessory buildings.
- m) On-site sorting, bagging, storage, and similar wholesale processing activities of agricultural products that are predominantly grown on-site or produced principally from the entire commercial farm operation. Such activities shall be limited to those which are integrally related to the agricultural production and harvesting process.
- n) Seasonal roadside stands not exceeding 300 square feet.
- o) Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use; and provided, that no conversion of agricultural land is allowed for accessory uses.
- p) Water diversion structures and impoundments related to resource management.
- q) Wholesale nurseries.
- r) Anaerobic digester, when accessory to an agricultural use.
- s) Maintenance, drainage.
- t) Net metering system, solar.
- u) Repair, replacement and maintenance of water lines with an inside diameter of 12 inches or less.

30 A Hearing Examiner may issue a special use permit for a major utility development to deviate from the use requirements of SCC 14.16.400(2). SCC 14.16.400(4)(h). The purpose of a special use permit is to “provide a means to recognize and approve land uses not specifically identified as allowed uses. A special use permit must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district.” SCC 14.16.900(1)(a).

31 To qualify for a major utility development special use permit, an applicant must show that “there is no other viable parcel or non-agricultural designated land to serve the affected area” and must conduct “[a]nalysis of alternatives to the development of the utility in the natural resource land” SCC 14.16.400(4)(h). The applicant also bears the burden of proof to show the major utility development meets the general criteria for approval of a special use permit, provided under SCC 14.16.900(1)(b)(v):

- (A) The proposed use will be compatible with existing and planned land use.

- (B) The proposed use complies with the Skagit County Code.
- (C) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (D) The proposed use will not generate intrusions on privacy of surrounding uses.
- (E) The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.
- (G) The proposed use is not in conflict with the health and safety of the community.
- (H) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
- (I) The proposed use will maintain the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.

The Skagit County Shoreline Master Program (SMP) is codified pursuant to SCC 14.26.010. Under Section 7.18.A.3. of the SMP, utility developments are permitted in rural shoreline areas, provided they comply with the general and tabular regulations of the SMP. *See* SMP Sec. 7.18.B., 7.18.C.

CONCLUSIONS OF LAW

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.
2. The Council provided adequate notice to interested parties, and the Council has adequate information to render a land use consistency decision.
3. The Applicant obtained AOI 2023-01 from local Skagit County authorities, which certifies that the proposed project would be considered a major utility development.
4. As stated above, when determining whether a site meets the standard for land use consistency under RCW 80.50.075(1), EFSEC will consider whether the pertinent local land use provisions “prohibit” the site “expressly or by operation clearly, convincingly and unequivocally.” A facility meets this initial standard so long as it “can be permitted either

outright or conditionally.”¹⁶

5. The term conditional or conditionally are not specific legal terms of art. In the current matter, Applicant’s consistency and compliance with the current zone requirements contained within Skagit County Code is conditioned upon approval of the special use permit. The Skagit County Code uses the term “special use permit” to describe permits for uses that may be approved conditionally, so for purposes of this analysis, conditional use and special use will be used interchangeably.
6. At this stage, as in previous cases,¹⁷ EFSEC considers only the Project’s eligibility for a conditional use permit, not its likelihood of receiving approval. The question of whether the Project actually complies with the requirements for a special use permit under the Skagit County Code will be incorporated into EFSEC’s process in the form of an additional public hearing required under RCW 80.50.090(5) if EFSEC grants expedited processing, or in the adjudication required by RCW 80.50.090(4), in the event that expedited processing is not granted.
7. Here, the Skagit County Code does not clearly, convincingly, and unequivocally prohibit the siting of the Project either expressly or by operation. Because AOI 2023-01 determined that the Project would be considered a major utility development, it would be eligible to apply for a special use permit from the Skagit County Hearing Examiner under SCC 14.16.400(4)(h).
8. The record before the Council does not clearly demonstrate the siting of the Project is prohibited. Commenters expressed concerns that the Project would be incompatible with the agricultural character of the site area. While these arguments may be germane to whether the Project ultimately meets the criteria listed under SCC 14.16.900(1)(b)(v), they do not show that siting of the Project is clearly prohibited on its face. The Applicant has advanced its own arguments as to why the Project is compatible with local character and existing uses, and the Council will weigh these arguments and those of commenters at a later stage in this proceeding. *See Application for Site Certification, Attachment H at 16-20.*
9. If portions of the Project are, in fact, located within shoreline jurisdiction, the Project’s siting is still not clearly prohibited. The Skagit County SMP allows siting of utility developments within rural shoreline areas, provided those developments comply with the

¹⁶ In re Columbia Solar Project, Docket No. EF-170823, Council Order – Expedited Processing, ¶ 35. (April 17, 2018).

¹⁷ In the Matter of TUUSSO Energy, LLC, Columbia Solar Project, Order Granting Expedited Processing (April 17, 2018); In the Matter of Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC, Applicant, Order Finding Proposed Site Consistent with Land Use Regulations (May 17, 2022).

general and tabular design regulations provided under Sections 7.18.B. and 7.18.C. of Shoreline Master Program. SMP Sec. 7.18.A.3. Nothing in the record suggests the Project fails to do so in any way that would unequivocally prohibit its siting. Whether the Project actually complies with these design regulations, if applicable, will be considered by the Council at a later date.

10. Therefore, pursuant to RCW 80.50.090(2) and WAC 463-26-110, the Council finds the Applicant has met its burden of proof to demonstrate that the Project is consistent and in compliance with the applicable provisions of the Skagit County Code and the comprehensive land use plans with which those regulations must conform.

ORDER

THE COUNCIL ORDERS:

1. Goldeneye Energy Storage, LLC's application for site certification and approval of Goldeneye Solar Storage Project is consistent and in compliance with local land use provisions, consistent with RCW 80.50.090(2) and WAC 463-26-110.
2. The Council will provide a means to receive information regarding site-specific conditions and criteria akin to what the Skagit County Hearing Examiner would receive during a special use permit hearing. This will occur either as part of the adjudication, if one is to be provided in this matter, or during the hearing required by RCW 80.50.090(5).

DATED at Olympia, Washington, and effective _____.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

KATHLEEN DREW, Chair

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