Land Use #4

## Written Testimony from Karen Poulsen

EFSEC Land-Use Suitability Hearing on December 12, 2017
Tuuusso Energy - Columbia Solar Project - Kittitas County WA.

This testimony is provided by Karen Poulsen. My address is 3591 Tjossem Rd. Ellensburg, WA.
I am a full time farmer with land across from two of the proposed solar sites.
I am the 5th generation of the Tjossem and Moe families and the 3rd generation of the Poulsen family that has farmed in this area.
As for my background, I graduated from WSU with a BS in Agriculture. I've served on the Washington State Farm Bureau board of directors, as Kittitas Co. Farm Bureau President, board of the Kittitas Co. Hay Growers, Kittitas Co. noxious weed board. I've also served on the Kittitas Co Planning Commission and the Board of Adjustment.

## HISTORY OF LAND USE IN KITTITAS COUNTY

The land and water resources of the Kittitas valley have long been important both the Native Americans and those who have come since. This valley is well known around the world for its timothy hay and is now also becoming known for its high quality specialty apples and seed crops. Due to a unique climate and the ability to irrigate our prime farm lands, Kittitas county has developed a viable agriculture community. However for our modern agriculture to thrive in the world marketplace it takes a certain economy of scale and land base to maintain both our markets and our local agriculture infrastructure of buyers and farm suppliers. If our prime irrigated farmland is converted to other non-agriculture uses it puts ever increasing economic stress on those remaining farms and businesses who are left. As an example the Kent valley was once a thriving farming area but as farms were converted to other uses those that were left became economically stressed to the point that they to were lost.

## Expedited Review Process

Tuusso Energy is requesting FESEC to use the expedited process for review of the ASC. I don't think that their project is eligible for this process under WAC 463-43-030 Eligible Proposals. For EFSEC to even consider using the expedited process the council must find that the following four items are not significant enough to warrant a full review under the provisions of chapter 80.50 RCW.

1. The environmental impact is not significant.
2. The area potentially affected is not significant.
3. The cost and magnitude of the energy facility is not significant.
4. The degree to which the proposed energy facility represents a change of use of the proposed site is not significant.

These projects are not small scale rooftop projects. They are industrial size energy projects changing the use of hundreds of acres of prime irrigated farmland to a completely new non-agricultural use and therefore certainly don't comply with the forth requirement.

## Conversion of Prime Farmland to Non-agriculture Uses

Under WAC 463-43-050 FESEC is also required to make sure that the proposed site, actually 5 sites, are all consistent and in compliance with other county and regional land use plans and ordinances. They do not.

1. All of these project sites are zoned Commercial Ag (17.31) or Ag 20 (17,29. In both zones the purpose and intent are defined as "An area where farming and ranching are the priority. The intent of this zoning classification is to preserve the fertile farmland from encroachment by nonagricultural land uses and protect the rights and traditions of those in agriculture.
2. All of these project sites are classified as Open Space Farm and Agricultural Land under The Open Space Tax Act RCW 84.34 and WAC 458-30. Attachment A.
3. GMA RCW 36.70a requires that under RCW 36.70.170 adopt development regulations to ~~assure~~ prevent the conservation of agricultural, forest and mineral resource lands. to non-resource uses. Attachment B.

## Rural Character

Both GMA and Kittitas County's Comp Plan define what Rural Character means. In Kittitas County "Rural Character" is defined as predominant visual landscape of open spaces, mountains forests and farms and the activities that preserve such features. Attachment C.

GMA says that open space predominate over the built environment.

The placement of large and medium scale solar facilities on prime irrigated farmland is not compatible with these definitions.

Kittitas County is currently in the process of developing siting regulations for Solar Projects. Please let this process finish.

For the reasons I have stated I urge the Council to deny the expedited review process of the Tuusso Energy - Columbia Solar Project and not use your preemptive power to site solar facilities on our prime irrigated farmland where such projects are not appropriate.

Sincerely,

Karen Poulsen

Attachment A



# Open Space Taxation Act

JULY 2017

**The information and instructions in this publication are to be used when applying for assessment on the basis of current use under the "open space laws," chapter 84.34 RCW and chapter 458-30 WAC.**

## What is the Open Space Taxation Act?

The Open Space Taxation Act, enacted in 1970, allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use. The Act states that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.

## Lands qualifying for current use classification

The law provides three classifications:

**Open space land**

**Farm and agricultural land** pg 2, 5, 6

**Timber land**

## Open space land is defined as any of the following:

1. Any land area zoned for open space by a comprehensive official land use plan adopted by any city or county.

2. Any land area in which the preservation in its present use would:
   a. Conserve and enhance natural or scenic resources.
   b. Protect streams or water supply.
   c. Promote conservation of soils, wetlands, beaches or tidal marshes. (As a condition of granting open space classification, the legislative body may not require public access on land classified for the purpose of promoting conservation of wetlands.)
   d. Enhance the value to the public of neighbouring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space.
   e. Enhance recreation opportunities.
   f. Preserve historic sites.
   g. Preserve visual quality along highway, road, and street corridors or scenic vistas.
   h. Retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative authority granting the open space classification.

3. Any land meeting the definition of "farm and agricultural conservation land," which means either:
   a. Land previously classified under the farm and agricultural classification that no longer meets the criteria and is reclassified under open space land; or
   b. "Traditional farmland," not classified, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

*This fact sheet provides general information regarding the Open Space Taxation Act. The information is current at the date of publication. Please note subsequent law changes may supersede or invalidate some of this information.*

## Farm and agricultural land is defined as any of the following:

1. Any parcel of land that is 20 or more acres, or multiple parcels of land that are contiguous and total 20 or more acres, and are:
   a. Devoted primarily to the production of livestock or agricultural commodities for commercial purposes.
   b. Enrolled in the federal conservation reserve program (CRP) or its successor administered by the United States Department of Agriculture.
   c. Other commercial agricultural activities established under chapter 458-30 WAC.

2. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has produced a gross income equivalent to:
   a. Prior to January 1, 1993, $100 or more per acre per year for three of the five calendar years preceding the date of application for classification.
   b. On or after January 1, 1993, $200 or more per acre per year for three of the five calendar years preceding the date of application for classification.

3. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has standing crops with an expectation of harvest within:
   a. Seven years and a demonstrable investment in the production of those crops equivalent to $100 or more per acre in the current or previous calendar year.
   b. Fifteen years for short rotation hardwoods and a demonstrable investment in the production of those crops equivalent to $100 or more per acre in the current or previous calendar year.

4. For parcels of land five acres or more but less than 20 acres, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs.

5. Any parcel of land less than five acres devoted primarily to agricultural uses and has produced a gross income of:
   a. Prior to January 1, 1993, $1,000 or more per year for three of the five calendar years preceding the date of application for classification.
   b. On or after January 1, 1993, $1,500 or more per year for three of the five calendar years preceding the date of application for classification.

6. "Farm and agricultural land" also includes any of the following:
   a. Incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land.
   b. Land on which appurtenances necessary for production, preparation, or sale of agricultural products exist in conjunction with the lands producing such products.
   c. Any non-contiguous parcel one to five acres, that is an integral part of the farming operations.
   d. Land on which housing for employees or the principal place of residence of the farm operator or owner is sited provided the use of the housing or residence is integral to the use of the classified land for agricultural purposes, the housing or residence is on or contiguous to the classified land, and the classified land is 20 or more acres.
   e. Land that is used primarily for equestrian-related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed. Depending on the number of classified acres, the land may be subject to minimum gross income requirements.
   f. Land that is primarily used for commercial horticultural purposes, including growing seedlings, trees, shrubs, vines, fruits, vegetables, flowers, herbs, and other plants in containers, whether under a structure or not. For additional criteria regarding this use, please refer to RCW 84.34.020(2)(h).

The application is acted upon in a manner similar to open space land applications and within six months of receiving the application.

Approval or denial of a timber land application is a legislative determination and is reviewable only for arbitrary and capricious action. Appeal can be made only to the superior court of the county where the application was filed.

Within 10 days of receiving notice of classification of the land from the granting authority, the assessor submits the notice to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

If approved, current use assessment will begin on January 1 following the year the application was submitted. The criteria for classification continue to apply after classification has been granted.

## How is the value of classified land determined?

The assessor is required to maintain two values for each parcel that is classified. The first is the value that would be placed on the land if it was not classified. This is commonly referred to as the "fair market value." The second is the current use land value based on its current use, not highest and best use , as classified by the granting authority.

Open space land located within a county that has adopted a public benefit rating system will be valued according to the criteria of the rating system.

In the absence of a rating system, the per acre value can be no less than the lowest per acre value of classified farm and agricultural land in the county.

In determining the current use value of farm and agricultural land, the assessor considers the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years. This earning or productive capacity is the "net cash rental" and is capitalized by a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes.

Timber land is valued according to a schedule prepared by the Department of Revenue according to chapter 84.33 RCW. The Department of Revenue annually adjusts and certifies timber land values to be used by county assessors in preparing assessment rolls. The assessors assign the timber land values to the property based upon land grades and operability classes.

## When are taxes due on classified lands?

Land classified as open space, farm and agricultural, or timber land is assessed at its current use value and placed on the assessment rolls the year after the application was submitted. Taxes on classified land are due and payable the year after the current use value was placed on the assessment rolls.

## How long does the classification last?

The land continues in its classification until a request for removal is made by the owner, the use of land no longer complies, a sale or transfer to an owner that causes land to be exempt from property taxes, or the ownership has changed and the new owner has not signed a Notice of Continuance. The notice of removal is recorded with the county auditor in the same manner as the recording of state tax liens on real property. Additional tax, interest, and penalties will apply if the land is removed and the removal does not meet one of the exceptions listed in RCW 84.34.108(6).

## How do I withdraw from classification?

If intending to withdraw all or a portion of the land from classification after 10 years of classification, the owner must complete a withdrawal form with the county assessor.

If a portion of the land is removed from classification, the remaining portion must meet the requirements of original classification unless the remaining land has different income or investment criteria.

### What happens after I file a request to withdraw?

Upon receipt of a request for withdrawal, the assessor notifies the granting authority that originally approved the classification, and, the assessor withdraws the land from classification. The land withdrawn from classification is subject to seven years of additional tax and interest, but not a 20 percent penalty.

### What happens if the classified land is sold or transferred?

When classified land is sold or transferred, the seller or transferor becomes liable at the time of sale for the additional tax, interest, and penalty unless the new owner(s) signs the Notice of Continuance which is attached to or shown on the real estate excise tax affidavit. The county auditor cannot accept an instrument of conveyance on any classified land unless the Notice of Continuance has been signed or the additional tax, interest, and penalty has been paid. The assessor determines if the land qualifies for continued classification

### What if I want to change the use of my classified property?

An owner changing the use of land from a classified use must notify the county assessor within 60 days of this action. The assessor will remove the land from classified status and impose an additional tax equal to the difference between the tax paid on the current use value and the tax that would have been paid on the land had it not been classified. The additional tax is payable for the last seven tax years, plus interest at the same rate as charged on delinquent property taxes, plus a penalty of 20 percent of the total amount.

### If the assessor removes my land from classification, may I appeal?

Yes, the owner may file an appeal of the removal from classification to the county board of equalization on or before July 1 of the year of the determination, or within 30 days of the date the notice was mailed by the assessor, or within a time limit of up to 60 days adopted by the county legislative authority, whichever is later.

### Upon removal from classification, what taxes are due?

At the time the land is removed from classification, any taxes owing from January 1 of the removal year through the removal date, and any additional tax, applicable interest, and penalty owing are due and payable to the county treasurer within 30 days of the owner being notified.

### What if the additional taxes are not paid?

Any additional tax, applicable interest, and penalty become a lien on the land at the time the land is removed from classification. This lien has priority over any other encumbrance on the land. Such a lien may be foreclosed upon expiration of the same period after delinquency in the same manner as delinquent real property taxes. If unpaid, interest is charged on the total amount due at the same rate that is applied by law to delinquent property taxes. Interest accrues from the date of the delinquency until the date the total amount is paid in full.

### What is done with the additional tax, interest, and penalty paid when land is removed from classification?

Upon collection, the additional tax is distributed by the county treasurer in the same manner in which current taxes applicable to the subject land are distributed. The applicable interest and penalties are distributed to the county's current expense fund.

Attachment B

**RCW 36.70A.170**

**Natural resource lands and critical areas—Designations.**

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forestlands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

[ 1990 1st ex.s. c 17 § 17.]

Attachment C

It's a pastoral scene familiar to many in the Kittitas Valley — a patchwork pattern of bright gold and green hay fields surrounded by the rising hills of the Kittitas Valley.

It's an image that the state Growth Management Act was designed to protect. The 1990 act requires counties to define rural character and restrict urban growth in areas classified as rural in nature.

Over the years, Kittitas County has grappled with what defines rural character, especially in dealing with projects and businesses that want to move into the community, such as a compost facility, solar farm, marijuana processing, wind turbines and more.

The county is guided by its comprehensive plan, which provides a framework for decisions and rules over the next 20 years. As it does every eight years, the county is updating the plan and redefining the area's rural character, Kittitas County Planning Official Doc Hansen said.

"It's going to be up to the people to make that determination" of what rural character is, he said.

Tim Trohimovich, director of planning and law with Futurewise, said the Growth Management Act was created to protect rural uses, critical areas and groundwater.

The GMA sets broad standards for rural character, Trohimovich said. The major restriction set by the GMA is it doesn't allow urban growth in rural areas. Urban growth is defined as the intensive use of buildings, structures and impervious surfaces.

## Kittitas County's definition of rural character

"Rural character" is defined in Kittitas County as predominant visual landscape of open spaces, mountains, forests, and farms and the activities which preserve such features. It balances environmental, forest, and farm protection with a variety of rural development and recreational opportunities. Many sizes and shapes of properties can be found in the rural lands, providing a wide variety of land use from its diverse topography, small to large acreage properties, assorted economic activities and opportunities, small rural residential development, and recreational opportunities throughout the county, but most intense in the western portion of the county.

... Some choose a private, more independent lifestyle, or space for small farm activities. Others choose the more compact arrangement found in clustering, with its accompanying open space and close neighbors designed in ways that enhance and preserve rural character. The most common uses in rural lands are agriculture, recreation and logging, which have

One of the arguments for the Iron Horse solar farm was that the solar array would be a temporary use and not permanently affect the soil. The land would be leased to the company developing the solar panels, OneEnergy Renewables, for 36 years. Afterward it could be returned to agriculture land.

The GMA allows for temporary uses if there isn't a permanent change and the land isn't out of commission for a long time, Trohimovich said. But "30 years is probably not in most people's minds a limited term of time," he said.

Trohimovich pointed to a case in King County involving land in an agricultural zone in the Sammamish Valley. The county wanted to allow soccer fields, but the government was sued and the Washington state Supreme Court denied the plan. King County's argument was that the soccer fields would not permanently damage the soil and they could be turned back into agriculture lands latter. The Supreme Court said in their decision the soccer players might not want to give up the soccer field later.

"So the court rejected the temporary loss argument," he said.

**County defines**

Hansen said he is assisting a working group of citizens, who represent stakeholders in the community, to create a new definition of rural character for the county's comprehensive plan update.

"So far it's been pretty much all motherhood and apple pie, we haven't gotten down to the sticks yet," he said, referring to the discussion.

## Growth Management Act definition

"Rural Character" is defined in the Growth Management Act as lands where:

- open space and visual and natural landscape predominate over the built environment,
- opportunities exist for traditional rural lifestyle and rural based economies,
- spaces and development are compatible with wildlife habitat,
- undeveloped land is not converted to development of sprawl and low density,
- activities generally do not require extension of urban governmental services, and
- land use is consistent with protection of surface and ground water flows and recharge/discharge areas. (RCW 36.70A.030(15))

The definition leaves a lot to interpretation, he said. A restaurant would not be allowed on agricultural lands, because it could take portion of farmland out of production. Whether a party barn, might be used for weddings and events, would be allowed is a more difficult question to answer.

If the barn was already there, it could count as rural in nature, Trohimovich said. If a two-acre parking lot is paved over agricultural land to provide parking for the barn, it might count as urban growth.

"One of the questions is, are we going to lose a large amount of agricultural land, and the other is, does it interfere with agricultural uses on neighboring properties?" he said.

The GMA requires counties to take the guidelines it sets and then create their own comprehensive plan and definition of rural character, Trohimovich said. The county can choose to make that definition as confining or loose as it wants within those restrictions.

"It has to ask the question, does that make sense in our county?" he said.

**Temporary uses**

One recent example of the debate over rural character focused on a proposed solar farm near the city of Kittitas. Neighbors objected to the Iron Horse Solar project, which called for 18,500 solar panels on 48 acres on Caribou Road.

been basic industries historically and remain important in terms of employment, income and tax base. Kittitas County will strive to encourage and support these activities in areas they occur and are appropriate. With the exclusion of stated incorporated areas and UGAs, all remaining areas are considered to be rural lands.

One of the main attractions of the rural residential lifestyle is the low intensity of development and the corresponding sense of a slower pace of living. Part of what creates that attraction is the rural-level facilities and services. The plan supports and preserves this rural lifestyle by limiting service levels to those historically provided in the county's rural areas. Residents should expect county services, such as road maintenance and emergency responses, to be limited and to decrease as the distance from a rural activity center or urban area increases.

— Kittitas County comprehensive plan