

December 11, 2017

Ms. Sonia Bumpus, EFSEC Siting and Compliance Manager
Energy Facility Site Evaluation Council
PO Box 43172
Olympia, Washington 98504-3172

Dear Ms. Bumpus:

Subject: Land Use Consistency Hearing for the TUUSSO Energy Columbia Solar Projects.

Sent via email to: sbumpus@utc.wa.gov

Thank you for the opportunity to comment on the Land Use Consistency Hearing for the TUUSSO Energy Columbia Solar Projects. Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable, and opportunity-rich communities, and protect our valuable farmlands, forests and water resources. Futurewise has members across Washington State, including Kittitas County.

I am the Director of Planning and Law for Futurewise and have been a professional planner in Washington State for over 36 years. I have been licensed in Washington State as an attorney for 24 years. I am a member of the American Institute of Certified Planners (AICP). I am an expert in the conservation of agricultural lands in Washington State. I was a coauthor of the chapter *Protecting Working Farm and Forest Landscapes: How Do Oregon and Washington Compare?* in *PLANNING IN THE PACIFIC NORTHWEST*.¹ I speak and write frequently on the conservation of agricultural land. I am familiar with land use planning in Kittitas County, the *Kittitas County Comprehensive Plan*, and the Kittitas County zoning regulations.

In my expert opinion, the proposed Camas, Penstemon, and Typha Solar Project Sites are not consistent with the *Kittitas County Comprehensive Plan*. They are also not consistent with the Kittitas County zoning regulations. My reasoning follows below.

The proposed Camas, Penstemon, and Typha Solar Project Sites are on land designated Commercial Agriculture in the *Kittitas County Comprehensive Plan* and are zoned Commercial Agriculture.² The Commercial Agriculture designation is a Growth Management Act agricultural lands of long-term commercial significance comprehensive plan designation.³ The *Kittitas County Comprehensive Plan* provides as follows:

¹ Published in 2015 by the Planners Press.

² TUUSSO Energy Columbia Solar Projects Washington State Environmental Policy Act (SEPA) Environmental Checklist p. 59 of 80 accessed on Dec. 11, 2017 at:
http://www.efsec.wa.gov/Tuusso_Solar/Application/Appendix%20A_WA%20SEPA%20Environmental%20Checklist.pdf

³ The *Kittitas County Comprehensive Plan* p. 2-16 (Dec. 2016) accessed on Dec. 11, 2017 at:

<https://www.co.kittitas.wa.us/uploads/documents/cds/comp-plan/2016/2016%202016%20Comp%20Plan%20per%20Kittitas%20Co%20Ord%202016-023.pdf>

Upon a determination that a tract qualifies as Agricultural Lands of Long-Term Commercial Significance (referred to as Commercial Agricultural Lands in the Kittitas County Code) under the definitions and considerations noted above, such lands shall be so mapped in the Comprehensive Land Use Plan map of Kittitas County and shall be zoned Commercial Agricultural lands under Kittitas County zoning code, section KCC 17.31. The County's Commercial Agricultural zoning code, KCC 17.31, shall control uses, maintenance and enhancement of the agricultural industry and conserve productive agricultural lands consistent with the needs and best practices of the industry. Lands presently mapped as 'commercial agriculture' shall retain that designation unless a specific de-designation request is filed by the owner for a review under the guidelines of this Ordinance.⁴

Chapter 17.31 Kittitas County Code (KCC)⁵ cross references KCC 17.61.020 4 which provides:

4. Major alternative energy facilities may be authorized in the Agriculture-20, forest and range, commercial agriculture, and commercial forest zones as follows:

- a. Wind farms may be authorized pursuant to the provisions of KCC Chapter 17.61A;
- b. All other major alternative energy facilities may be authorized as a conditional use.

Therefore, the solar energy facilities are conditional uses in Commercial Agriculture zone. Here are Kittitas County's criteria for conditional uses:

The Director or Board, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements have been met:

1. The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
2. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that

⁴ *Kittitas County Comprehensive Plan* p. 8-29 (Dec. 2016).

⁵ The cited provisions of Title 17 KCC, zoning, were accessed on Dec. 11, 2017 at: <http://www.co.kittitas.wa.us/boc/countycode/title17.aspx>

- A. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
 - B. The applicant shall provide such facilities; or
 - C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
 4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
 5. The proposed use will ensure compatibility with existing neighboring land uses.
 6. The proposed use is consistent with the intent and character of the zoning district in which it is located.
 7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
 - B. Preserves “rural character” as defined in the Growth Management Act (RCW 36.70A.030(15));
 - C. Requires only rural government services; and
 - D. Does not compromise the long term viability of designated resource lands. (Ord. 2013-012, 2013; Ord. 2013-001, 2013; Ord. 2012-009, 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)⁶

The “purpose and intent” of the Commercial Agriculture zone is:

The commercial agriculture zone is an area wherein farming and ranching are the priority. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture. (Ord. 96-15 (part), 1996).⁷

⁶ KCC 17.60A.015.

⁷ KCC 17.31.010.

The Camas, Penstemon, and Typha Solar Project Sites all have prime farmland soils.⁸

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods.⁹

The proposed Camas, Penstemon, and Typha Solar Project Sites will not preserve fertile farmland from encroachment by nonagricultural land uses which is the intent of the Commercial Agriculture zone. So, these project sites are inconsistent with KCC 17.60A.015 6.

According to the *Kittitas County Comprehensive Plan* “Commercial Agriculture lands are those that have been identified as lands with soils and location characteristics that suggest that they will be used for commercial agriculture use in perpetuity and are considered a resource to the economy.”¹⁰ Use of these lands as a solar energy facility is not consistent with the using these lands for commercial agricultural use in perpetuity. The proposed Camas, Penstemon, and Typha Solar Project Sites are not consistent with the *Kittitas County Comprehensive Plan* as KCC 17.60A.015 7 A requires. The proposed Camas, Penstemon, and Typha Solar Project Sites also violate KCC 17.60A.015 7 D since the project will compromise the long-term viability of the designated resource lands on which they will be sited.

For the above reasons, the proposed Camas, Penstemon, and Typha Solar Project Sites are inconsistent with the *Kittitas County Comprehensive Plan* and the Commercial Agriculture zone. This opinion is reinforced by the Washington State Supreme Court’s *Soccer Fields* decision which concluded that “a net loss of designated agricultural land” violates the GMA.¹¹ The Camas, Penstemon, and Typha Solar Project Sites will result in a net loss of designated agricultural lands of long-term commercial significance.

In addition, SEPA, in WAC 197-11-330(3)(i), requires the Energy Facility Site Evaluation Council (EFSEC) to consider if the proposal will “[a]dversely affect environmentally sensitive or special areas, such as loss or destruction of ... prime farmlands ...” Here is that subsection from the SEPA regulations:

(3) In determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that:

⁸ TUUSSO Energy Columbia Solar Projects Washington State Environmental Policy Act (SEPA) Environmental Checklist pp. 13 – 15 of 80.

⁹ 7 CFR § 657.5(a)(1).

¹⁰ *Kittitas County Comprehensive Plan* p. 8-26 (Dec. 2016).

¹¹ *King County v. Central Puget Sound Growth Management Hearings Board (Soccer Fields)*, 142 Wn.2d 543, 558, 14 P.3d 133, 141 (2000).

- (a) The same proposal may have a significant adverse impact in one location but not in another location;
- (b) The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment;
- (c) Several marginal impacts when considered together may result in a significant adverse impact;
- (d) For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified.
- (e) A proposal may to a significant degree:
 - (i) Adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;

The Camas, Fumaria, Penstemon, Typha, and Urtica Solar Project Sites all have prime farmland soils.¹² So, WAC 197-11-330(3)(i) would counsel for preparing an EIS including an analysis of sites that are not prime farmland and not designated and zoned for agricultural use that could be used for a solar facility in Kittitas County.

Thank you for considering my professional opinion. If you require additional information, please contact me at 206-343-0681 Ext. 118 or tim@futurewise.org.

Very Truly Yours,



Tim Trohimovich, AICP, WSBA No. 22367

Director of Planning & Law

¹² TUUSSO Energy Columbia Solar Projects Washington State Environmental Policy Act (SEPA) Environmental Checklist pp. 13 – 15 of 80.