

Dick Carkner
speaker #3

Save Our Farms

P.O. Box 765, Ellensburg, WA 98926
saveourfarms@yahoo.com

June 26, 2018

Sonia Bumpus
Stephen Posner, Manager
Energy Facilities Sitting Council
P.O. Box 47250
Olympia, WA. 98504-7250

To: Stephen.posner@utc.wa.gov

RE: Facility Site Certification meetings
For the Columbia Solar Project.

Mr. Stephen Posner,

Thank you for the opportunity to comment on the Site Certification meeting held in Ellensburg on June 26. As noted in previous correspondence, we have concerns about this meeting as the April 2018 Order for an expedited process for the Columbia Solar Project called for staff to create a hearing "*akin*" to what the county uses in a *conditional use hearing*.

According to EFSEC Order of April 17, 2018, in item 67 the staff was "***directed 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.***"

If EFSEC intends to be consistent with the county process, the conditional use hearing must allow for the public to provide information to a hearing examiner about where the Determination of Non-Significance is in error, and means to provide expert witnesses and be able to cross examine TUUSSO's experts and consultants. It is important to note that site certification would be difficult to determine how conditions for the site will be implemented without first resolving the environmental concerns -- which are many.

At this point in the expedited process, we feel that the Site Certification meetings are premature. The EFSEC should not go forward with the expedited process as the Council actions are not consistent with the county process and with SEPA.

According to WAC 463-43-030. an application may be expedited when the council finds:

(1) The environmental impact of the proposed energy facility will be mitigated to a non- significant level under the State Environmental Policy Act (SEPA); and

(2) The project is found to be consistent and in compliance with city, county or regional land use plans

As we will show below, the Order of April 2018 for the Columbia Solar project meets neither of these requirements. In addition, the Order does not meet even the minimum state standards required by the Administrative Procedures Act. The act sets forth the requirements and content for initial and final orders in RCW 34.05.461 (3) which provides in part:

(3) Initial and final orders shall include... "a statement of the available procedures and time limits for seeking reconsideration or other administrative relief..."

The order failed to include required statement regarding available procedures and time limits.

The EFSEC process is not consistent with Kittitas County land use plans:

The adjudicated process is integral to public participation in the review of the proposed land use. Kittitas County procedures for review of conditional use permits mandates an "open record hearing" on all applications for "major alternative energy facilities KCC 15A.02.060.

The EFSEC staff review of the environmental checklist is inconsistent with local regulations. Kittitas County Code 17.08.550 requires a conditional use permit be determined by a *review and hearing* process. This is required by the code to vet applications under provisions of KCC Chapter 17.06A.

Quite simply, a conditional use is not amendable to a summary determination of code consistency without the local jurisdiction exercising its discretion. If the county code requires a hearing to make the determination, a summary process that omits that hearing cannot pretend to arrive at the determination that the code requires.

The proposal is not essential to public convenience:

Kittitas County's second largest economic sector is agriculture and annually produces \$68 million in product sales. Millions of dollars have been invested over decades to create a system reservoirs and canals to turn our agriculture fields green in the heat of summer. The Columbia Project did not consider the cumulative impact of the loss of irrigated farm land.

To be consistent with local land use it must be shown that the proposal is essential or desirable to the public convenience. KCC 17.60a.015(1) In **17.60A.015**

2.C. "The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment."

SEPA prohibits use of "prime" farmlands.

Four of the five TUUSSO site proposals contain irrigated farm land and three are agriculture lands of long term commercial significance.

KCC 17.60A.015.7.D. Review criteria require projects outside the Urban Growth area can "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)"

EFSEC proposes the restoration objective on page 18 of the SCA which calls for restoring "each project site to approximate pre-project condition or better". The word "approximate" will not meet the SEPA criteria to return designated "prime" farmland to former productive capacity. In fact researchers at UC Davis/UC Riverside group studied solar projects and found:

"Reversion of a site used for solar energy generation back to agriculture is typically unlikely, complicated by long-term application of herbicides, stabilizers, gravel, chemical suppressants, and soil compaction from power plant construction and maintenance activities. Further, land lease agreements and payback periods often exceed 15 years." Land-Sparing Opportunities for Solar Energy Development in Agricultural Landscapes: A Case Study of the Great Central Valley, CA, <https://pubs.acs.org/doi/10.1021/acs.est.7b05110>

The costs of decommissioning a solar facility can be expected to vary with the site, area of the country and whether located in a rural or urban setting. As a guide to communities considering solar New York Energy Research and Development Authority, NYSERDA, has developed estimates for decommissioning ground mounted solar systems. They estimate that a 2 MW system would cost over \$60,000 and by extension a 5 MW system would cost \$150,000. The Joint Landowners Coalition of NY cautions that these estimates are conservative. It should be noted that the above costs do not include soil restoration activities such as reducing soil compaction.

The National Renewable Energy Lab found significant environmental issues with a solar test site (Technical Report NREL/TP-1900-66218 May 2017, p. 29):

"Utility-scale solar development that employs conventional site preparation techniques (e.g., grading, razing, etc.) to satisfy engineering requirements can be destructive to the often fragile life that soil comprises. Whether considering only the potential to support growth of vascular plants or, more appropriately, the totality of soil organisms (fungi, bacteria, and invertebrate animals, many of which are yet to be known), scraping of soils to prepare sites for utility-scale solar arrays in arid zones can have a large environmental impact."

State Supreme Court rules on Agriculture resource lands

Counties which plan under the Growth Management Act are required to designate Agriculture lands to protect the long term viability of farmland. This Kittitas County has completed by mapping Agriculture lands of long term commercial significance on 291,614 acres in the county.

The Washington Supreme Court in several decisions has held that counties are *"required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products."*¹

In the Lewis County decision, the state Supreme Court found that *"County ordinances allowing residential subdivision and other non-farm uses within designated agricultural lands undermined the GMA conservation requirements."*²

In the Kittitas County case (Kittitas County v. Eastern Washington Growth Management) the Supreme Court held that KCC was out of compliance with GMA where the county had no protections in place to protect agricultural land from harmful conditional uses.

This includes converting farmland for public facilities, structures, schools, shops and airports.

Moratorium is a land use plan and a zoning ordinance.

EFSEC Order of April 2018 for Columbia Solar projects concluded erroneously that the Kittitas County's moratorium on solar projects that qualify as major energy facilities was not a zoning ordinance. The moratorium authorized by RCW 36.70A.390 was correctly extended through July 20, 2018. The moratorium specifically prohibits processing of solar applications and as a consequence is inconsistent with EFSEC determination to over rule county land use ordinances.

In the Order of April 2018, EFSEC relies on the case of *Save Our Scenic Area v. Skamania County*. This is incorrect because the Order concludes that the moratorium can be disregarded for purposes of land use consistency. EFSEC has authority under RCW 80.50.110(2) to preempt local comprehensive plan and land use laws, but only after conducting an adjudicative process.

¹ King city v. Cent. Puget Sound Growth Mgmt, Hearings BD (Soccer Fields), 142WN2d543,556 14P 3d 133, 140 (2000) emphasis in original.

² Lewis Cty v. W Wash. Growth Mgmt. hearings BD., 157 Wn 2d 488, 509 139 P 3d 1096 1106 (2006)

Save Our Farms registers our objection and requests that the Order granting Expedited Review to Columbia Solar be rescinded. And further, the Site Certification process be halted until such time as the Determination of Non-Significance can be reviewed in an "open record hearing" before a hearing examiner.

The open record process allows the public to provide both written and oral testimony, submit evidence, cross examine witnesses and make a legal argument with respect to the site specific components of an application.

The Order of April 2018 delegates to the staff authority to adopt policy, practice procedures and rules governing the EFSEC process which is "akin" to the county's conditional use hearing. This is an impermissible delegation of authority.

As shown above the EFSEC has side stepped the legal process in several occasions removing the rights of the public for a conditional use hearing and a hearing for reconsideration. TUUSSO in their impatience to receive an expedited process for their solar projects in Kittitas County would have been better off waiting for the County to finish their research and complete their solar ordinance.

Sincerely,

Dick Carkner

Kirk Kirkland.