Land Use Consistency Hearing

Cypress Creek Renewables-High Top Solar & Ostrea Solar Projects

June 1, 2022
WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL

Docket No. EF-220212
HIGH TOP SOLAR & OSTREA SOLAR PROJECTS
LAND USE CONSISTENCY HEARING
JUNE 1, 2022
6:15 P.M.

VERBATIM TRANSCRIPT OF PROCEEDING

REPORTED BY: ANITA W. SELF, RPR, CCR #3032
APPEARANCES

(All participants appeared via Teams videoconference)

STATE AGENCY MEMBERS PRESENT:

KATHLEEN DREW, Chair
KATE KELLY, Department of Commerce
ELI LEVITT, Department of Ecology
STACEY BREWSTER, Utilities and Transportation Commission
LENNY YOUNG, Department of Natural Resources

ASSISTANT ATTORNEY GENERAL:

JON THOMPSON

COUNCIL STAFF:

AMI HAFKEMEYER
JOAN OWENS
ANDREA GRANTHAM
SONIA BUMPUS
STEWART HENDERSON

COUNSEL FOR THE ENVIRONMENT:

SARA REYNEVELD

GUESTS IN ATTENDANCE:

TAI WALLACE, Cypress Creek Renewables
JESS MOSLEH, Cypress Creek Renewables
PATTI LORENZ, TRC Companies
SUSAN DRUMMOND, Law Offices of Susan Drummond
ERIN BERGQUIST, TRC Companies
MICHAEL TOBIN, North Yakima Conservation District

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CHAIR DREW: It is now 6:15. I am calling to order the land use hearing for the Cypress Creek Renewable projects as required by RCW 80.50.090, and WAC, Washington Administrative Code 463-26-035.

EFSEC is beginning the land use hearing for the Cypress Creek Renewable projects, High Top Solar, and Ostrea Solar.

During this hearing, the public will be given an opportunity to provide testimony regarding the project -- proposed project's consistency and compliance with land use plans and zoning ordinances.

With me is Administrative Law Judge Laura Bradley, who will preside over this hearing.

Will -- Ms. Owens, will you please call the roll for the councilmembers?

MS. OWENS: Yes. Thank you.

Department of Commerce?

MS. KELLY: Kate Kelly, present.

MS. OWENS: Department of Ecology?

MR. LEVITT: This is Eli Levitt, present.

MS. OWENS: Department of Fish and
Wildlife?

Department of Natural Resources?

MR. YOUNG: Lenny Young, present.

MS. OWENS: Utilities and Transportation Commission?

MS. BREWSTER: Stacey Brewster, present.

MS. OWENS: Chair, would you like me to continue with the EFSEC staff roll call? Oh, you're on mute.

CHAIR DREW: I think we're fine with just the councilmembers. We have a quorum.

MS. OWENS: Thank you.

CHAIR DREW: Judge Bradley? Now you're on mute.

JUDGE BRADLEY: Now I'm on mute. Sorry about that.

Thank you, Chair Drew. So I think, at this point, we'll proceed with the presentation from the applicant.

MR. WALLACE: This is Tai Wallace. I just wanted to introduce Susan Drummond from the Cypress Creek project team. She's our local counsel and will be presenting this presentation and hearing on land use.

JUDGE BRADLEY: Thank you. Go ahead,
MS. DRUMMOND: I needed to unmute myself.

Thank you.

Thank you, Mr. Wallace, Judge Bradley.

Good evening. I'm Susan Drummond. I represent the applicant, Cypress Creek Renewables, on the Ostrea Solar and High Top Solar projects.

I'm not able to unmute my video. If I'm able to do so, I'm -- I'm happy to, but I'm not able to do so right now.

If we can move on the PowerPoint to the agenda. Thank you.

I'll be fairly brief this evening, but what I wanted to do was to first provide some very brief context, and then move to the Yakima County Land Use Code and Comprehensive Plan, and address how they support the project. The County has determined there is land use consistency, and I'll briefly address that. And then, I'll briefly turn to the county's conditional use permitting criteria, and address some of the highlights of the project and how they are consistent with those criteria.

If we can move to the next slide. I guess the next -- we'll keep going -- one more, Context. If we can move one page on the agenda. Yep. Thank you.
Perfect.

So just some brief background on this.

The council in 2017 determined that, under its enabling legislation, it must ensure that certified projects are aligned with the objectives of reducing dependence on fossil fuels and transitioning to a clean energy project. That determination is, of course, consistent with other state statutes calling for carbon neutrality and carbon-free energy supplies, and it's consistent with recent amendments to EFSEC's enabling legislation, which further promote clean energy development.

So with that context in mind, referring to the next -- next slide, the Yakima County Land Use Code and Comprehensive Plan are consistent with those objectives, and they support the project.

The county code authorizes this project as a power-generating facility that's an allowed Type 3 conditional use within the agricultural zoning district. The applicant consulted with the County planning department before submitting this application, and throughout its review process, and has documented consistency with the plan and code.

And attached to attachment A of the application for site certification is the
correspondence from the County documenting the consistency with the land use code. And, of course, that's prima facie proof of consistency with the code. I'd refer the council to Council Order 879 on the Goose Prairie project. That was order granting expedited processing with -- which documents the -- that consistency.

The applicant also prepared a very detailed land use review, which further documents consistency, and that is attachment A to the application for site certification. And that material goes through both the plan and code and the specific permitting criteria to document that -- that consistency.

So if we can move to the -- the next slide, and the next slide shows the --

JUDGE BRADLEY: Counsel --

MS. DRUMMOND: Yes, thank you. The County -- I'm sorry.

JUDGE BRADLEY: This is Judge Bradley. So if you could please slow down a little bit. We do have a court reporter making a transcript of the hearing, and we want to make sure we get a clear record. So just give her a chance to keep up with you, please.
MS. DRUMMOND: Thank you, your Honor. I will -- I will do so.

So these are the -- the county's nine criteria for granting conditional use permits. And we're not here tonight to evaluate these criteria, but I did want to point them out, and, of course, the application -- the first attachment to the application for site certification goes through these criteria.

But in general, just to provide an overview of that, they provide for land use compatibility with surrounding uses. And that assessment looks in the -- at the project in relationship to surrounding uses. It looks at whether the project is supported with infrastructure, and whether local code requirements can be met.

If we can move to the next slide.

So briefly, some highlights on the criteria. First, I want to look at where the project is. It's on vacant, non-irrigated land. It will not adversely impact public infrastructure or environmental resources. It fully complies with the county's critical area ordinance. It also supports the rural economy through tax revenue and lease payments, so it provides an overall benefit to the community, and that was touched on in the earlier
presentation.

In terms of comprehensive plan consistency, the project is consistent with the county's objective of considering energy supply alternatives, and also diversifying the regional agricultural economy.

The county plan's rural and agriculture goals are also met. The project provides economic support to minimize land conversion risks.

On the site itself, crop production has been nonexistent for over 25 years, and the weedy species which are dominant in the previously plowed areas are not well-suited for year-round livestock grazing. And then, of course, after its commercial life, the project would be decommissioned and removed.

If we could move to the next slide.

These are criteria 7b and 7g, which dive into consistency with neighboring uses. This is a very rural, remote area. As we heard earlier, the project is north of State Route 24, it's south of the Yakima Training Center, and it's 20 to 22 miles east of -- of Moxee.

On the preliminary site plans, solar panels and access roads will not be within 300 feet of the Yakima Training Center, and the applicant has
consulted with the training center and completed a glare analysis, and no issues have arose in there. Also, the -- there's grazing to the east and to the west. On the west, the nearest structure is 2 -- 2 and a half to 3.6 miles away. To the east, the nearest structure is 850 feet east from Ostrea's boundary, and three miles from High Top's boundary, so there's few homes in the area. There are no schools in the vicinity. So this is an ideal location for the -- this proposed use.

With regard to transportation impacts, the State Route 24 approach onto the private access road will be improved for safety and access, and, of course, county and WS-DOT requirements will all be met. The Washington State Department of Transportation has provided conceptual approval of the access, and that's at attachment P to the application.

With regard to regulatory compliance and the property size, we heard earlier about the size of the property that was outlined and is under the lease control is larger than what is actually needed, so this has been ideally sized to -- for this particular use. And the county -- or the applicant will fully comply with all of the county's codes, and that includes building codes, fire codes, and any other
county requirements.

The County also, of course, if this were a proceeding before the hearing examiner, would have authority to impose conditions on the project, and the application for cite certification identifies development standards, and identifies mitigation to address material impacts, environmental or otherwise. At attachment O to the application, mitigation measures are outlined in the application.

So the applicant has documented that the project is consistent with the county code, and by consistency, it means that they can be permitted conditionally under that the zoning code, and is consistent with the plan. And the applicant asks that the council determine that the project is consistent with the county's code and plan.

Thank you. If there are any questions, I'm happy to address those.

JUDGE BRADLEY: I'll start with Chair Drew. Did you have any questions for the applicant?

CHAIR DREW: I do not. Thank you.

JUDGE BRADLEY: Do any of the councilmembers have questions for the applicant?

MS. BREWSTER: This is Stacey Brewster. One quick question regarding the property
size and its compliance.

Is that the two projects together are within compliance, or are we considering these separately in regard with compliance?

MS. DRUMMOND: I should have clarified at -- at the outset. My comments address both projects. I know I may have referred to them in the singular, but they are both projects. And both projects have been cited so that they would fully comply with the code, and that there's plenty of room on those sites. So more is under -- for both projects, more is under lease control than is needed for those -- those projects.

Also, I did want to emphasize, I mentioned earlier, on the certificate of land use consistency, I -- I believe I mentioned that, that that was -- is attached to the application for site certification.

That's at the very end of attachment A. Those are the -- the correspondence from the County documenting the project's consistency with the land use code.

Did that -- did that answer your question?

MS. BREWSTER: Yes. Thank you.

JUDGE BRADLEY: Any other councilmembers with questions?

Not hearing any, Ms. Owens, are you aware
of any requests to comment at this proceeding that were submitted in advance?

MS. OWENS: I have not received any, no.

JUDGE BRADLEY: Thank you.

Chair Drew, would the council like to entertain comments from others in attendance?

CHAIR DREW: Yes. If they are on the land use consistency, we can see if anyone else wants to comment with the three-minute limit. And let's just allow one time this time.

JUDGE BRADLEY: All right. Thank you.

So if you would like to comment, please raise your hand or indicate in the chat.

All right. Mr. Tobin, and again, three minutes, and no second bite, please.

MR. TOBIN: Understood.

Interesting review of that, and question to the community needs, it's vacant land. I think it's clear that it is not vacant land. It is used as habitat. It is also used as forage. That is an agricultural input and a habitat input. So to -- to say that it's vacant leads -- leads the -- leads someone to believe that it's not there.

Will not adversely impact the public infrastructure or environmental resources. Certainly,
we've demonstrated earlier, the environmental resources as a habitat is dependent upon these large open spaces. The -- these infrastructures, individually and combined, will impact that, whether it's sage-grouse, which really hates this kind of stuff, won't even be in that region anymore.

In terms of agriculture, range land grazing is not predicated on having animals there year-round. I could speak all day to how range land agriculture, which leads to the fourth largest commodity in the state of Washington, livestock, is -- uses these types of ranges earlier in the spring, they move to other ranges, and then, in the winter, they use supplemental feeding. It's part of an agricultural process that uses and has used these grounds forever, at least in terms of our existence here, and -- I'm wondering, how does the conversion from agriculture -- range land agriculture, converting it to an industrial complex, actually enhance agriculture? That connection was not made, so I don't know how it meets the intent of the county's code.

Also, how does that same conversion to an industrial complex diversify the regional agricultural commodity? You're producing electricity. That is not an agricultural product. So I believe those points
are moot and misleading.

Thank you.

JUDGE BRADLEY: Thank you.

Anyone else in attendance who would like to comment at this point? Okay, folks. Just another minute or so to indicate an interest in commenting.

Chair Drew, I'm not seeing any other requests to comment, so I will turn it back to you.

CHAIR DREW: Thank you.

With no other comments, the land use hearing for the Cypress Creek Renewables project is concluded, and the meeting is adjourned. Thank you all for your participation tonight.

(Videocconference hearing concluded at 6:33 p.m.)
CERTIFICATE

STATE OF WASHINGTON  )
   ) ss.
COUNTY OF KING  )

I, ANITA W. SELF, a Certified Shorthand
Reporter in and for the State of Washington, do
hereby certify that the foregoing transcript is true
and accurate to the best of my knowledge, skill and
ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 10th day of June 2022.

______________________________
ANITA W. SELF, RPR, CCR #3032