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February 23, 2023

Energy Facility Site Evaluation Council v.

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ENERGY FACILITY SITE EVALUATION COUNCIL

Hop Hill Solar Project
Land Use Consistency Hearing

February 23, 2023

Three Rivers Convention Center, Halls G & H
7016 West Grandridge Blvd.
Kennewick, WA 993366

and
via Teams Video Conferencing

Transcribed by: STEVEN B. CRANDALL, CER
Certified Electronic Reporter #1198

1 CHAIR DREW: Kathleen Drew, again, Chair
2 of the Energy Facility Site Evaluation Council, calling
3 our Land Use Consistency Hearing to order today. Ms.

4 Grantham will you call the role of the Council members?

5 STAFF GRANTHAM: Certainly. Department of
6 Commerce.

7 KATE KELLY: Kate Kelly present.

8 STAFF GRANTHAM: Department of Ecology.

9 (No response)

10 STAFF GRANTHAM: Department of Fish and
11 Wildlife.

12 MIKE LIVINGSTON: Mike Livingston present.

13 STAFF GRANTHAM: Department of Natural
14 Resources.

15 LENNY YOUNG: Lenny Young present.

16 STAFF GRANTHAM: Utilities and
17 Transportation Commission.

18 STACEY BREWSTER: Stacey Brewster present.

19 STAFF GRANTHAM: The Hop Hill Project,
20 Benton County, Paul Krupin.

21 PAUL KRUPIN: Present.

22 STAFF GRANTHAM: Chair, there's a quorum.

23 CHAIR DREW: Thank you. Now I will turn
24 it over to Judge Gerard.

25 JUDGE GERARD: Good evening, everyone.

1 Pursuant to the Revised Code of Washington -- pursuant
2 to Revised Code of Washington 80.50.90 -- 090,
3 subsection two and Washington Administrative Code
4 463-26-035, we are now starting the Land Use Consistency
5 Hearing. During this hearing the public will be allowed
6 to provide testimony regarding the proposed project's
7 consistency and compliance with the land use plan and
8 zoning ordinances.

9 We will not limit the speakers on time. We
10 will however limit them on subject matter. Speakers
11 will only be allowed to discuss the land use consistency
12 measures, not other considerations you wish to bring
13 forth.

14 We will start off with the applicants
15 presenting their comments on the land use, after which
16 the county will be allowed to present their portion on
17 the land use consistency meeting. You will then take
18 public comments at that point. As before, after this
19 hearing is completed, if there are additional comments
20 you wish to make, you may do so online by 11 p.m. or
21 11:59 p.m. tonight. So with that, applicants if you
22 wish to begin, please do.

23 CHRIS WISSEL-TYSON: Thank you Chairman
24 Drew, Judge Gerard, EFSEC Council and staff.

25 If you wouldn't mind going to the next slide.

1 One, I just wanted to share how we developed
2 this site from a land use perspective. If you look at
3 the timeline in the upper portion of the screen, you can
4 see we started developing the Hop Hill project in 2020.
5 In early 2021, we finalized the site location and
6 started due diligence and site work.

7 In November 2021, we heard there was a
8 potential of a change in the zoning code and decide to
9 submit a conditional use permit as it is a company
10 policy to always work with the local community and
11 county in the development of these projects, whenever
12 possible.

13 In December 2021, the county made significant
14 changes to their zoning code which prevented the
15 development of renewable projects in the county going
16 forward.

17 In 2022, we worked in collaboration with the
18 county over a year to explore if there was a path
19 through the local planning process. By the end of 2022,
20 it became apparent that the county did not have the
21 resources and staff to process our application in a
22 timely manner and we also didn't want to overburdened
23 local resources.

24 The county dropped our CoP application at the
25 end of last year due to a slight difference in opinion

1 around utilizing EFSEC work in the SEPA process. Thus,
2 we submitted a project application with EFSEC in
3 December of last year, which brings us in front of you
4 today.

5 I do want to say again we, as a company, really
6 focus on working with local community government. And
7 early engagement with the county has been critical in
8 understanding and addressing concerns with the project.
9 And we're still utilizing that information today. And
10 I'll hand it over to Tim McMahan.

11 TIM MCMAHAN: Thank you, Chris. Tim
12 McMahan, I'm with Stoel Rives law firm, and I have the
13 privilege of being legal counsel to -- okay, all right,
14 good -- I have the privilege of being legal counsel to
15 this applicant and representing this project.

16 As the Council's aware, land use has an unusual
17 or the -- EFSEC has an unusual system for adjudicating
18 land use. It's two steps. The first step is a Land Use
19 Consistency Hearing tonight.

20 And the second step is, much further down the
21 road, when the Council conducts what I think Chair Drew
22 has been calling the CUP process, the conditional use
23 review, that at -- toward the end of the process the
24 Council asks the county and members of the public to
25 recommend conditions, mitigation measures, et cetera

1 that best deal with local land use considerations in
2 what would be a local process but for the EFSEC process.

3 So tonight the focus is on land use
4 consistency. And reflecting Judge Gerard's summary, the
5 process -- the purpose is to determine, pursuant to RCW
6 80.50.090 sub two, whether on the day of filing the
7 application with EFSEC the proposed site was consistent
8 and in compliance with the county's land use plan or
9 zoning ordinances.

10 We've supplied a land use memorandum, a
11 relatively brief memorandum. Attached to that
12 memorandum is a chronology that Chris summarized briefly
13 of the steps the applicant took to try, through a lot of
14 efforts, to file a local conditional use permit
15 application and to be consistent with the local zoning
16 and land use -- and land use plan provisions to --
17 eventually to no avail.

18 So the land use memorandum and the appendix
19 really sort of provides the anatomy of a moratorium in
20 kind of how a project that finds itself in a place where
21 the county's comprehensive planning and zoning is
22 evolving, one would say, in a way that would prohibit
23 renewable energy, and how that affected an applicant
24 that was trying very, very hard to find the pathway to
25 permit this project locally. But as Chris indicated,

1 that ended up being to no avail.

2 So the applicant spent many months in
3 pre-application processes with the county between
4 October 21st and December 21st of -- or, excuse me,
5 between October 21 and December 21, the county
6 considered a moratorium through a series of public
7 hearings. The applicant was very much involved in those
8 hearings.

9 And on December 20 of 21 when it was clear that
10 the county would impose a moratorium, the applicant
11 filed a conditional use application that reflected the
12 prior considerations and efforts with the county. And
13 on December 30th, the county found that the conditional
14 use permit application was incomplete and further denied
15 the project due to the imposed moratorium.

16 So on one level, on the date the applicant
17 filed the application for a site certification, the
18 county had rescinded its allowance for utility scale
19 solar facility. However, as the Judge indicated, at RCW
20 80.50.090 requires consideration of whether the solar
21 facility was in compliance with the zoning code at the
22 time of the application for site certification or
23 consistent with and in compliance with the comprehensive
24 plan. We are unaware of any action that the county took
25 to amend its comprehensive plan and we suggest that the

siting

1 ~~siting~~ Council consider this question when it considers
2 the order that the Council will ultimately issue on land
3 use consistency.

4 We do wish to reflect, and the applicant has
5 already, I think, emphasized this, that the applicant
6 understands the growth management agricultural district
7 zoning. The comprehensive plan provides guidance. And
8 this application deliberately proposes a facility that
9 enables the continued agricultural uses on this site
10 through grazing.

11 And we have submitted a land use consistency
12 review document that cites the comprehensive plan
13 provisions and explains them and indicates how this
14 project is consistent with the local comprehensive plan.
15 And a key factor with the comprehensive plan is, in
16 fact, the preservation of agricultural land use in this
17 county and opportunities for property owners to take
18 advantage of their property rights in facilitating and
19 participating in an application of this kind. So you
20 have that document, and we'd be happy to talk about it
21 if you have questions.

22 So, I also wanted to explain why the applicant
23 provided an application that reviews the now repealed
24 conditional use permit criteria. We've done that
25 because it's the best framework we have. So, in other

1 words, we looked to the code that was repealed and we
2 built the application and its land use consistency
3 around those provisions in the code. Rather than just,
4 sort of, turning it over to the Council to fashion that
5 for yourself, we did use that as a framework for
6 evaluating the criteria for the conditional use permit
7 and the mitigation measures that could be considered
8 under that prior code that is now repealed.

9 And, again, it's the best model we had to
10 really try to reflect some consistency with this
11 county's framework for a conditional use permit. So it
12 is our intention, and the applicant's intention, to make
13 to make reasonable efforts to assist the Council in
14 determining land use consistency now and in the future
15 adjudication, the step two of land use review, which the
16 Council calls a conditional use permit phase of the
17 adjudication.

18 We emphasize that there need not be conflict
19 between agricultural use and habitat with this
20 application and others pending in this county. This
21 application for site certification will demonstrate and
22 has demonstrated a thoughtful balance between habitat
23 issues and agricultural impact issues, and we have
24 provided an application -- this applicant has provided
25 an application that does its best to actually account

1 for ongoing agricultural uses on the site. So with
2 that, that's the conclusion of my comments. Thank you.

3 JUDGE GERARD: Thank you, Mr. McMahan.
4 All right, at this point, we're going to take the county
5 -- to allow their presentation.

6 MICHELLE COOKE: Good evening, and thank
7 you for your time. My name is Michelle Cooke, and I am
8 the Planning Manager for Benton County. I'd like to
9 speak to Hop Hill Solar Project's inconsistency and lack
10 of compliance with the Benton County land use plan and
11 zoning ordinance.

12 Prior to applying with EFSEC, as we've heard
13 tonight, the Hop Hill project initially submitted an
14 incomplete conditional use permit application to the
15 county on December 20, 2021 for the proposed solar
16 facility. This incomplete submittal was a hurried
17 attempt to obtain vesting at the eleventh hour for their
18 project, as the application was received less than 24
19 hours before the Board of County Commissioners amended
20 its zoning code to prohibit such uses.

21 It should be noted that the ordinance amendment
22 was not a temporary moratorium, as inferred by the
23 applicant in their memorandum, but rather a permanent
24 code change that staff had spent many prior months
25 drafting as a means to allow the county to protect its

1 agricultural lands of long-term commercial significance.

2 Despite the misconstrued suggestion in the
3 applicant's memorandum that the county has animosity
4 towards renewable energy, the county's priority is to
5 protect its agricultural lands. The code change to the
6 GMA agricultural zone was made in order to protect the
7 long-term commercially significant agricultural lands
8 from conversion to incompatible industrial uses and to
9 ensure consistency and compliance with the county's
10 comprehensive plan and the GMA, which charges the county
11 to protect these lands.

12 The applicant's initial CUP application
13 submittal to the county was not vested under the zoning
14 code as it applied on December 20th, 2021 because it
15 failed to meet several requirements necessary to be
16 deemed a complete application. The county didn't notify
17 the applicant of the incompleteness of their submittal,
18 and the county only received the materials for a
19 complete application in March of 2022.

20 March 29th, 2022 is the date which the CUP
21 application was vested and which the zoning code would
22 apply. The county's zoning code at that time, and
23 currently, does not allow the proposed project as an
24 allowed accessory or a conditional use in the GMA
25 agricultural zone.

1 The application before you tonight fails to
2 comply with both the Washington State Growth Management
3 Act and the Benton County comprehensive plan, which
4 mandates and directs the county to prevent and protect
5 agricultural lands of long-term significance. The
6 proposed location of the Hop Hill Solar Project has a
7 land use designation of GMA agriculture, and as such,
8 non-agricultural uses are discouraged and restricted per
9 the county's comprehensive plan.

10 The proposed project is an industrial use, not
11 an agricultural one, and the approximately 11,000 acre
12 loss of commercially significant land would be both
13 inconsistent and incompatible not only with the county's
14 comprehensive plan, but also it's implementing
15 regulations such as a zoning ordinance and the critical
16 area regulations.

17 The applicant is requesting that EFSEC preempt
18 the county's local land use plan and zoning ordinances
19 which do not allow such a large scale industrial use to
20 occur on agricultural land. Based upon the project's
21 location, the proposal does not meet the intent of RCW
22 36.70, it is not consistent with the goals and policies
23 of the county's comprehensive plan, and it does not
24 comply with the GMA agricultural zoning district as
25 solar farms are a prohibited use in the zone.

1 As we heard tonight, RCW 80 05 0902 cites that
2 the consistency with local land use shall occur on the
3 date of application to EFSEC. As such, it is our
4 position that the county's local land use policies and
5 zoning codes should be held in effect as they existed on
6 December 22nd, 2022 -- the date of the application to
7 EFSEC -- not the zoning codes as they previously existed
8 on any other date. Thank you for your time.

9 JUDGE GERARD: Thank you, Ms. Cooke. At
10 this point we're going to take public comments.

11 STAFF GRANTHAM: The person I have signed
12 up with me is Russell Walker.

13 RUSSELL WALKER: Russell Walker,
14 R-U-S-S-E-L-L, W-A-L-K-E-R. I'm with the Operating
15 Engineers Local 302. I'm speaking in support of the Hop
16 Hill solar program. This is an exciting project that
17 will not only help enable our clean energy transition
18 and create local economic opportunity.

19 JUDGE GERARD: Mr. Walker, stop you there
20 just a moment. This is for the land use. If there's
21 comments about how this complies with the land use or
22 does not, those comments are appropriate. These
23 comments about your support should've been made during
24 the informational session. I did make that clear in the
25 initial opening statements.

1 RUSSELL WALKER: I apologize.

2 JUDGE GERARD: So if you wish to make
3 comments about the land use, you're certainly welcome to
4 do so. If you wish to make additional comments about
5 your support that go beyond that scope, you're certainly
6 welcome to do through the website before 12 p.m.
7 tonight, 11:59.

8 RUSSELL WALKER: Okay. I think I might be
9 able to touch on that a bit here.

10 JUDGE GERARD: Of course. You're more
11 than welcome to. I'm just letting know the scope of
12 what your comments should be.

13 RUSSELL WALKER: Okay. Thank you, sir.
14 So I'll skip ahead here. It's also important to note
15 that the project and land use have remained consistent
16 with the applicable provisions of the Benton County comp
17 plan, and it's compliant with the zoning ordinances at
18 the time the applicant initially submitted a conditional
19 use permit to the county. So I hope that falls within
20 the parameters.

21 JUDGE GERARD: Yes sir. It does.

22 RUSSELL WALKER: Okay. You understand
23 that despite our region's stated clean energy goals, the
24 county has since eliminated the local pathway for
25 studying and permitting wind and solar projects. When a

1 local permitting pathway doesn't exist to consider
2 project such as these, developers are only left to turn
3 to state permitting.

4 Given our state's renewable energy needs, the
5 profound economic opportunity the project represents for
6 the local community, and the land use consistency with
7 the county comp plan we urge you to move this project
8 forward.

9 On another note, as stated by the landowners
10 earlier tonight, this project makes their farming
11 operation more sustainable, which helps maintain the
12 current agricultural land use. Thank you very much.

13 JUDGE GERARD: Thank you, sir. And,
14 again, if you wish to make those additional comments
15 online, you're more than welcome to do so.

16 STAFF GRANTHAM: I don't have anyone else
17 signed up.

18 JUDGE GERARD: Okay. We're going to
19 proceed the same way we did before. We're going to take
20 anyone who wishes to make additional comments on the
21 land use who are currently in person, please go ahead
22 and step up to the podium. If we don't have any takers,
23 we'll go ahead and move online. We've waited the
24 requisite 10 seconds. Let's go head and see we have
25 anyone online.

1 CHAIR DREW: Hearing no further comments. This meeting
2 is adjourned. Thank you all for participating.
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