

Land Use Consistency Hearing
Scout Clean Energy-Horse Heaven Wind Project

March 30, 2021



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HORSE HEAVEN WIND FARM
LAND USE CONSISTENCY HEARING
Docket No. EF-210011
March 30, 2021
Administrative Judge Adam Torem Presiding

PRESENT AT HEARING:

Chairperson Kathleen Drew

Councilmember Stacey Brewster
Utilities and Transportation Commission

Councilmember Robert Dengel
Department of Ecology

Councilmember Michael Livingston
Department of Fish and Wildlife

Councilmember Kate Kelly
State Department of Commerce

Councilmember Derek Sandison
State Department of Agriculture

Councilmember Ed Brost
Benton County Representative

Bill Sherman
Assistant Attorney General, Counsel for the Environment

Timothy McMahan
Attorney, Stoel Rives, representing Scout Clean Energy

Ryan Brown, Benton County Deputy Prosecutor

Sonia Bumpus, EFSEC Manager

~ Official Transcript of Recording ~

REPORTED BY: Marjorie Jackson, CET

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March 30, 2021

JUDGE TOREM: Good evening, everyone. I think we still have over a hundred people with us. This is the Energy Facility Site Evaluation Council's set of hearings tonight on the Horse Heaven Wind Farm Project. We just completed, about 7, 8 minutes ago, the public information meeting. We're on a break right now until 8:30, just a few minutes away. My name is Adam Torem. I am the administrative law judge presiding over these hearings tonight. We're about to start the Land Use Consistency hearing at 8:30 p.m.

I anticipate that should go at least an hour. We're going to have an opportunity to hear a roll call of the EFSEC Council to make sure we have a quorum. We're going to hear from the Applicant. We're going to hear from Benton County, and we may have some public comment, land use comments as well.

This is a specific, very focused topic. It's not about general concerns. That was the previous meeting. This meeting is going to focus on land use, zoning and those kinds of issues. So if you already commented in a general way, there is no need to comment again in this matter. You can submit your land use comments

1 electronically, by mail, through the EFSEC portal.
2 Staff will describe that process again, how to comment
3 on land use, and the rules as we begin the hearing in
4 just a couple minutes. So bear with us. We're running
5 about an hour past the budgeted time tonight, but we'll
6 stay with this and, hopefully, about an hour for the
7 Land Use Consistency hearing and maybe a little bit
8 longer, depending on comments. And please realize that
9 the Applicant has withdrawn their request for expedited
10 processing, so this discussion of land use tonight is
11 just the beginning of a focus on whether or not this
12 complies and is consistent with local land use
13 ordinances and zoning rules and regulations. We'll be
14 on the record in just a few minutes.

15 (Recess)

16 CHAIRPERSON DREW: Judge Torem, are you ready to begin
17 the Land Use Consistency hearing?

18 JUDGE TOREM: I was about to click my unmute button.
19 You beat me to it, Chair Drew.

20 CHAIRPERSON DREW: Trying to be timely. It's a long
21 evening, and I appreciate all those who are
22 participating with this. As required by
23 RCW 80.50.090(2) and WAC 463-26-050 and WAC 463 --
24 that's Washington Administrative Code 463-26-060, I will
25 call to order this Land Use Consistency hearing. And

1 during this hearing, the public will be given an
2 opportunity to provide testimony regarding the proposed
3 projects, consistency and compliance with land use plans
4 and zoning ordinances.

5 And with that, I will ask the clerk to call the roll
6 of the Council.

7 THE CLERK: Department of Commerce?

8 COUNCILMEMBER KELLY: Kate Kelly, present.

9 THE CLERK: Department of Ecology?

10 COUNCILMEMBER DENGEL: Rob Dengel, present.

11 THE CLERK: Department of Fish and Wildlife.

12 COUNCILMEMBER LIVINGSTON: Mike Livingston, present.

13 THE CLERK: Department of Natural Resources.

14 (No audible reply)

15 THE CLERK: Utilities and Transportation Commission?

16 COUNCILMEMBER BREWSTER: Stacey Brewster, present.

17 THE CLERK: For the Horse Heaven project, Derek
18 Sandison.

19 MR. SANDISON: Derek Sandison, present.

20 THE CLERK: Ed Brost.

21 COUNCILMEMBER BROST: Present.

22 THE CLERK: Chair, I believe we have a quorum for the
23 Council and for the Horse Heaven Council.

24 CHAIRPERSON DREW: Thank you. Judge Torem.

25 JUDGE TOREM: Thank you, Chair Drew. Again, my name

1 is Adam Torem. I'm an administrative law judge, and
2 this is the Land Use Consistency hearing for the
3 Washington Energy Facility Site Evaluation Council.
4 This is regarding Docket No. DF-210011. This is an
5 application filed by Scout Clean Energy back on February
6 8th of 2021. The siting council has appointed me to
7 facilitate the proceedings in this matter, and I'm
8 presiding over tonight's land use hearing.

9 As the Chair said, this is being held pursuant to
10 Revised Code of Washington 80.50.090 and Title 463 of
11 the Washington Administrative Code or the WAC. This
12 public hearing is being held online due to some ongoing
13 health restrictions we have all become too familiar
14 with. It's necessary due to the COVID-19 Coronavirus
15 pandemic.

16 Council would normally be local in Benton County for
17 these types of public hearings, and the Council does
18 hope to be in your community later in this process
19 whenever the health and well-being circumstances allow.
20 Notice of this particular land use hearing was published
21 in your local newspapers, in the Tri-City Herald and in
22 the Corvallis Gazette Times.

23 If you, as an individual, want to ensure you're
24 notified and informed about all future EFSEC proceedings
25 in this Horse Heaven Wind Farm Project proceeding, make

1 sure you sign up on the EFSEC website and you will be
2 getting email notices and you will be notified of every
3 proceeding that's going on, and perhaps even every
4 document that's filed so you can review it. There are
5 public documents on the Energy Siting Council website.
6 That's [www.efsec -- E-F-S-E-C -- .wa.gov](http://www.efsec--E-F-S-E-C--.wa.gov).

7 We have already called the roll and established there
8 is a quorum. Tonight there is not going to be a vote or
9 decision on Land Use Consistency. I want that to be
10 clear. Both sides here, the Applicant and Benton
11 County, have filed legal briefs, and the Council will be
12 taking those under consideration after they hear the
13 presentations tonight, and they will also be reviewing
14 any public comments.

15 We're going to take public testimony in this
16 particular hearing. It's not just a comment. So the
17 testimony, if it's given by any witnesses -- again, not
18 by the attorneys that might be making their points in
19 presentations -- but I will swear in each individual to
20 give their testimony so it's sworn. It can be taken
21 tonight orally in the hearing. You can submit also
22 written comments and electronic comments.

23 The focus of these comments should be with regard to
24 whether, at this time of the application -- and again
25 that's as of the laws in effect on February 8, 2021 --

1 whether this proposed Horse Heaven Wind Farm Project is
2 and was consistent with local and regional land use
3 plans and zoning ordinances. The Applicant, Scout Clean
4 Energy, submitted their application to construct and
5 operate a 1,150 megawatt wind turbine and solar
6 electrical generation facility in Benton County,
7 Washington. Again, that's 1,150 megawatts, as the name
8 plate generation level.

9 This Council, the Energy Facility Site Evaluation
10 Council, or EFSEC, the rules allow for the Applicant to
11 provide what's called a certificate from the local
12 authorities attesting to the fact that their proposal is
13 consistent and in compliance with County or regional
14 land use plans and zoning ordinances. That has not been
15 provided, but if it is, whether tonight or at some later
16 date, that certificate will be regarded as prima facie
17 proof and evidence of land use consistency. So that
18 means they will have carried their burden if they can
19 present such a certificate, meaning that County is also
20 in agreement and saying that this project is consistent
21 with your local codes, ordinances and land use plans.

22 Now, if Scout Clean Energy does not or cannot provide
23 such a land use consistency certificate from the County
24 and they do not demonstrate compliance with local land
25 use plans and zoning ordinances, then this Council will

1 have to request testimony from the County -- sworn
2 testimony, not just a summary presentation by the County
3 Prosecutor's office tonight -- and only after hearing
4 sworn testimony, subject to cross-examination as well,
5 received throughout the process and in consideration of
6 comments, only then will the Council take and make a
7 determination about zoning and land use consistency.

8 Tonight, in addition to those presentations, we have
9 Assistant Attorney General Bill Sherman. He's known as
10 Council for the environment. He has a separate interest
11 in land use issues, as well, as counsel for the
12 environment. And for the record tonight, Mr. Sherman,
13 if you're still with us -- I know you were at the
14 previous public information meeting -- if you're here I
15 would like you to introduce yourself for this audience
16 and this record and briefly explain your duties under
17 Revised Code of Washington Chapter 80.50 for those that
18 are still listening and present tonight.

19 Mr. Sherman, are you out there?

20 MR. SHERMAN: Thank you, Judge. Yes, I'm here. So,
21 again, my name is Bill Sherman. I am an Assistant
22 Attorney General with the Washington State Attorney
23 General's Office. I am the division chief at the
24 Environmental Protection Division of our office. And
25 under state law, the Attorney General is authorized to

1 appoint a counsel for the environment for projects like
2 this. Under state law, my role is to represent the
3 public and its interest in protecting the quality of the
4 environment in EFSEC proceedings. I will put that legal
5 citation to the law that authorizes this appointment and
6 my email address in the chat thread.

7 Thank you very much, Judge.

8 JUDGE TOREM: Mr. Sherman, we will look for that
9 information in the chat thread. Part of your audio cut
10 out at least on my end. And I know we're bearing with
11 some technical difficulties tonight.

12 MR. SHERMAN: I'm sorry, Judge. Is there a portion
13 that would be helpful for me to repeat?

14 JUDGE TOREM: Anything you said that I didn't hear
15 came after you said you would put something in the chat
16 thread. If you want to repeat from there, sir.

17 MR. SHERMAN: I think all I said was, "That's it."

18 JUDGE TOREM: Okay.

19 MR. SHERMAN: I don't think I had anything to say
20 after that. Thank you for checking.

21 JUDGE TOREM: Thank you. Those two words didn't get
22 to me, and they were not the most important words but
23 indicative of when you were done. Thank you,
24 Mr. Sherman.

25 MR. SHERMAN: Thank you.

1 JUDGE TOREM: All right. Again, this land use hearing
2 is a separate process from the earlier public comment
3 and information hearing. So, again, as I said, we're
4 focusing now on only one narrow aspect of the project,
5 the land use consistency. And we're going to begin with
6 some presentations first from the Applicant and then
7 from the County, from Benton County. I believe we have
8 on the line legal counsel for Scout Clean Energy. I am
9 anticipating hearing from Tim McMahan, a partner with
10 Stoel Rives, LLP, in Portland, Oregon.

11 Mr. McMahan, are you on the line?

12 MR. McMAHAN: Yes, I am, Judge Torem. Thank you.

13 JUDGE TOREM: And once we hear from Mr. McMahan, I
14 believe we're going to hear from the County attorney,
15 Chief Deputy Prosecutor in the Civil Division, Ryan
16 Brown.

17 Mr. Brown, are you on the line?

18 MR. BROWN: Yes, I'm here. Can you hear me?

19 JUDGE TOREM: I understand, gentlemen, that you're
20 each going to take about 15 minutes to make your
21 presentation. That's what we budgeted.

22 Mr. McMahan, is that going to be sufficient?

23 MR. McMAHAN: That should. Thank you, Your Honor.

24 JUDGE TOREM: And, Mr. Brown, is that going to work
25 for you, as well?

1 MR. BROWN: Yes, I may not take that long since Scout
2 withdrew its request for expedited processing, but that
3 will be the maximum amount I would take.

4 JUDGE TOREM: All right. Mr. Brown, I might hold you
5 to that. You're right, in that notice today -- or we
6 got notice yesterday that the expedited processing was
7 being withdrawn and that a full environmental review
8 would be conducted on this project and environmental
9 impact statement. And I am sure that Mr. McMahan will
10 address that as well.

11 Does the Council or the Chair have any questions or
12 comments before I turn it over to the Applicant and the
13 County?

14 (No audible reply)

15 JUDGE TOREM: Hearing none, I am going to remind our
16 representatives of the parties to speak slowly and
17 deliberately. We do have a court reporter even though
18 you can't see her. She's been through enough already
19 tonight with the public comment hearing, and have mercy.

20 Mr. McMahan, I turn the floor over to you. We will
21 see if you go 15 minutes, and let me know if you need
22 more or less. Go ahead, sir.

23 MR. McMAHAN: Thank you, Your Honor. And I do have a
24 tendency to talk fast, so I will take that direction
25 seriously. Judge Torem, Chair Drew, members of the

1 Council, thank you for this opportunity to present this
2 evening. We did file a hearing memorandum in the early
3 morning hours of last Friday. Our circulation wasn't
4 perfect. I apologize to Ryan about the way that it was
5 circulated, but in any event we did each receive each
6 other's presentations, and I don't anticipate any
7 objection from either of us with respect to that matter.

8 As Judge Torem indicated, Scout has withdrawn its
9 request for expedited processing, which makes this
10 hearing a lot less exciting than it would otherwise have
11 been. Scout does not at this time intend to submit
12 testimony concerning specific land use code provisions.
13 We will not repeat the content in our land use
14 memorandum, and we concur with the County's attorney
15 that an adjudicative hearing will be held later in this
16 process to address these and other requirements and
17 criteria, specifically the CUP criteria found in the
18 Benton County code. That is not something we intend to
19 address tonight; although we have written a summary
20 judgment response to those criteria in the second half
21 or so of our adjudicative hearing memorandum.

22 An adjudicative hearing is outside the scope of what
23 is needed at this time and would be quite redundant with
24 a later process that we, I think, agree on that will be
25 informed by SEPA and will be informed by a full

1 evaluation of the ESC at that time.

2 As I understand it, the County's argument,
3 essentially, just even setting aside the consistency --
4 excuse me -- the expedited processing issue, is that the
5 County disagrees with the Council's inquiry as explained
6 in the Columbia Solar order, which I will talk about in
7 a minute. The County takes issue with the expedited
8 processing which, of course, is now mute. And there is
9 a contention that a -- what we consider to be a somewhat
10 debatable lot setback standard, which is not a land use
11 zoning allowance question, may or may not have been
12 accurately addressed in the application. We appreciate
13 the comment that the County submitted and we will
14 certainly look to ensuring that our narrative and the
15 approach that we're taking to development conforms with
16 that standard.

17 So the Council's approach to land use consistency is
18 not, as I indicated, it is not a land use adjudication,
19 but it is a limited and very discreet inquiry at this
20 point in time. As Judge Torem indicated under the EFSEC
21 statute, 80.50.090(2), the question at this time is
22 whether or not the proposed site is consistent and in
23 compliance with city, county and regional land use plans
24 or -- I emphasize "or" zoning ordinances, and prior to
25 the issuance of the Council's recommendation to the

1 Governor, a public hearing conducted as an adjudicative
2 proceeding will be held. So that is not, again, being
3 held tonight.

4 At the time -- excuse me. The statute -- the EFSEC
5 rules that frame the purpose of the land use hearing
6 indicate that the purpose is to determine whether at the
7 time of the application the proposed facility was
8 consistent and in compliance with land use plans and
9 zoning.

10 Now, at the time of the application the only thing
11 that can be ascertained is whether a use is allowable,
12 not whether it complies with all the specific land use
13 criteria. That's what the adjudication is for at a
14 later time.

15 We have, as I indicated, evaluated in the second half
16 of the memorandum the County's specific conditional use
17 permit criteria, but we don't intend to go into that at
18 all really this evening because that is the subject of
19 later adjudication. As I indicated before, if we were
20 still pursuing expedited permitting, this would be a
21 rather different conversation than I think we're having
22 this evening.

23 I am now just going to quote from what really is the
24 most recent and controlling authority on what this all
25 means. It was from the TUUSSO Columbia Solar order,

1 paragraph number 35, where the order explains the test
2 for consistency and compliance. It states, "Under the
3 test for land use consistency previously established by
4 the Council, the Council considers whether the pertinent
5 land use provisions "prohibit" -- and that's in
6 quotes -- "the sites expressly or by operation, clearly,
7 convincingly and unequivocally. If a site can be
8 permitted either outright or conditionally, it is
9 consistent and in compliance with the land use
10 provisions."

11 This project, this site can be permitted
12 conditionally, consistent with the County's code. We
13 did append to our land use memorandum discussion -- it
14 was in email really -- from the County planning director
15 that certainly indicated that the use is allowable
16 conditionally under the conditional use criteria in the
17 County code. So I really don't think that there is much
18 to dispute about that at this point in time.

19 As we understand it, the County's primary contention
20 here is with the previous abbreviated consistency and
21 compliance standard that's applicable to expedited
22 permitting. The County argues that there is no
23 statutory or regulatory support for the standard, and
24 that Scout, by seeking expedited processing, which is
25 now moot, is somehow dispensing with an adjudicative

1 hearing.

2 So in terms of the statutory support, RCW 50 -- or
3 80.50 concerning expedited permitting expressly
4 references the public hearing provision in
5 RCW 80.50.090. So the legislature clearly intended that
6 for the inquiry of consistency under Section 090. The
7 decision would be based upon an adjudicative public
8 hearing that's referenced in that statute. So the
9 Council does have the authority to conduct multiple
10 hearings, really, but certainly an adjudication dealing
11 with land use compliance at a later time.

12 Deference to EFSEC's interpretation. EFSEC's
13 interpretation of the statute in WAC 463-26 is entitled
14 to substantial deference. The Washington Supreme Court
15 has been clear on giving great deference to an agency's
16 interpretation of its own promulgated regulations. And
17 that would be -- there is ample law controlling that,
18 which I can certainly provide the citations to.

19 An adjudicative hearing will be held, as I've
20 indicated and as Judge Torem indicated. The Council may
21 hold, also, "additional public hearings," under the
22 statute as deemed necessary, and an adjudicative hearing
23 will be held. This is how the process is actually
24 intended to unfold. So the adjudicative hearing will
25 allow an evidence-based level of unbiased objectivity

1 informed by a robust SEPA review, none of which is
2 possible for this project in Benton County.

3 Now, there have been several comments indicating that
4 the project should be permitted locally. Well, we have
5 heard the County commissioners indicate that they oppose
6 the project and we have heard opposing testimony from
7 the planning director. So I think it's clear enough why
8 we're here seeking a fair and objective review by EFSEC
9 versus the County.

10 Finally, concerning preemption, ultimately the
11 legislature directed that EFSEC and not the local
12 jurisdiction would be the ultimate decision-maker to the
13 siting and that land use consistency, while relevant in
14 a Council's analysis, may also be preempted under
15 RCW 50 -- or 80.50.110, WAC 463-28-010 and 020. For the
16 court reporter I am hopeful that that was slow enough.

17 And then finally there is this issue about setbacks.
18 Again, we appreciate the comment from the County. We
19 believe that we have indicated compliance and how we
20 will comply with the setback. The setback, however, is
21 not a zoning -- land use zoning ordinance within the
22 meaning of the statute dealing with land use
23 consistency.

24 So I do want to comment briefly about Mr. Wendt's and
25 Ms. Cooke's statements at the beginning of the hearing

1 this evening concerning the Growth Management Act,
2 preservation of the agricultural land use as some
3 indication that this use is not allowable. The Growth
4 Management Act does not control. The local development
5 per se in this County actually does have a code that
6 allows wind generation facilities and the other -- the
7 solar facility and the storage facility under the
8 condition use criteria.

9 The County plan does have language in it concerning
10 natural resource areas, tourism, rural character and the
11 like. Again, the issue at this point in time is not
12 whether or not this project is consistent with any
13 specific comprehensive plan provisions, but whether or
14 not comprehensive plan provisions somehow disallow the
15 use as an allowable use versus a prohibited use.

16 There's a vague and general indication that the
17 project does not comply with the zoning ordinance.
18 That's not something we understand, nor is it reflected
19 in the narrative that we have attached to our memorandum
20 from the conversations that we had with the planning
21 department. And then just general concerns about the
22 critical areas, regulations and ordinance that we will
23 certainly address as we move forward.

24 So at this point in time, that is the summary of
25 Scout's position on land use consistency. We believe

1 that within the meaning of the statute and the Columbia
2 Solar order, that the project is, in fact, consistent
3 with pertinent local land use provisions. They do not
4 prohibit the sites expressly or by operation,
5 convincingly or unequivocally and, therefore, the
6 project is, for this purpose of this proceeding at this
7 point in time, to be considered consistent with land
8 use. Thank you.

9 JUDGE TOREM: Mr. McMahan, I appreciate being concise.
10 That was 11 minutes, which is perfect.

11 Mr. Brown, you're up. Go ahead, sir.

12 MR. BROWN: Good evening. Ryan Brown, Deputy
13 Prosecuting Attorney on behalf of Benton County. Given
14 the Applicant's withdrawal of its request for expedited
15 processing and the late hour that's in front of us, I
16 will rely primarily on the written materials I submitted
17 to the Council and will keep my comments brief tonight.

18 As I understand this land use portion of the hearing,
19 the determination now is not for purposes of determining
20 if expedited processing will be granted. Rather, it is
21 to identify the applicable local land use laws and the
22 application status under the laws as of today's date or
23 the date of their application to make clear that the
24 project won't be judged based on new local land use
25 provisions maybe adopted by the County at a later date.

1 The intent of my comments, therefore, are to describe
2 the local zoning for this land and the proposed use by
3 the Applicant just so we are all clear as to if and how
4 the project would be evaluated by the County if the
5 Applicant had not chosen to submit its application to
6 Council but rather had submitted it through the normal
7 process to our planning department. And then in doing
8 so, allow you to determine at the appropriate point if
9 the project is consistent with and in compliance with
10 County zoning.

11 There is no disagreement by anyone that the zoning for
12 this project is the County's Growth Management Act
13 agricultural zone and the project before you constitutes
14 a use identified in that zoning code as a use that would
15 only be allowed in that zone upon receipt of a
16 conditional use permit.

17 That permit, if Scout had applied to Benton County,
18 might or might not have been issued. That would have
19 been decided after an evidentiary hearing before the
20 County's hearing examiner. The burden of proof would
21 have been on Scout at that hearing, and I assume it will
22 be at the adjudicatory hearing that is going to be held
23 by EFSEC, and they would have had to show or
24 demonstrate, present evidence to allow the hearing
25 examiner or, in this case, EFSEC to make five

1 conclusions in order for Scout to get that conditional
2 use permit.

3 They would have to demonstrate that the use is
4 compatible with the surrounding uses in the area.
5 Second, they would have to demonstrate and present
6 evidence that the use would avoid materially endangering
7 the health, safety and welfare of the surrounding
8 community. Three, they would have to present evidence
9 to allow a finding that the use will not cause traffic
10 in the area to conflict with current traffic patterns.
11 Fourth, they would have to present evidence that the use
12 of the project does not adversely affect public services
13 in the area. And lastly, fifth, they have to
14 demonstrate that the project would not hinder or
15 discourage development in the area, which, frankly, is
16 probably one of the biggest problems they're going to
17 have, to demonstrate that they would be entitled to a
18 conditional use permit and would be able to undergo this
19 project under the Benton County code.

20 Mr. McMahan stated that it's his understanding -- and
21 it's mine, too -- I just want to confirm that the
22 compliance or satisfaction of those conditions will be
23 the subject of the Council's adjudicatory hearing that
24 will be held later, and that's fine with the County.
25 But it's our position in that case, there's no reason to

1 issue an order now that the project is consistent with
2 the zoning because we don't know that until the evidence
3 is in, and we don't think that the Council should issue
4 that order now based on what we believe is an erroneous
5 legal test set forth in the TUUSSO opinion that was
6 quoted by Mr. McMahan and, frankly, is not supported by
7 any legal authority and is contrary to the language of
8 the statute. It's not to be a finding of whether this
9 might allowed under the local zoning. It's whether it
10 is in compliance and, frankly, none of us will know that
11 until all the evidence is received at the adjudicatory
12 hearing.

13 It's for those reasons the County was opposed to the
14 request for expedited processing because that hearing,
15 either before the County hearing examiner or before this
16 Council, has not been held in order to allow people to
17 offer evidence in opposition and present evidence on
18 those five criteria for a conditional use.

19 Whether the project is allowed under the local zoning
20 would be entirely dependent on the evidence received in
21 an evidentiary hearing, which the Council, as opposed to
22 the County's hearing examiner, will now hold at some
23 point in the future.

24 After receiving that evidence, the Council and the
25 Governor will have the information needed to determine

1 whether sufficient conditions could be imposed so as to
2 address the problems created by this project or whether
3 the project simply needs to be denied. The County
4 believes at this point, particularly based on the type
5 of testimony and evidence you heard from the public
6 earlier this evening, that you will receive evidence at
7 the adjudicatory hearing that would require the denial
8 of the conditional use under the Benton County code
9 criteria.

10 At best, the County believes it is premature for the
11 Council to determine at this point if the project
12 actually is in compliance with the Benton County code as
13 far as whether the proposed use would be allowed or not.
14 Based on what you have heard from the public tonight, we
15 think it probably does not meet the criteria.

16 Just briefly on the setbacks, as outlined in the
17 County's brief, we would like to point out that even if
18 use were an outright allowed use under the County code,
19 the project as proposed is not consistent with the
20 specific County zoning standards regarding setback
21 requirements. The Applicant proposes that its solar ray
22 infrastructure be constructed to span parcel boundaries,
23 which clearly violates the Benton County's code section
24 requiring all structures associated with solar power or
25 generator facilities be set back from all parcel side

1 and rear boundaries.

2 And, finally, it's important to note that, if
3 approved, this project would become the permanent use of
4 approximately 7,000 acres within the County's Growth
5 Management Act agricultural zoning district. All land
6 within that district had been designated as prime
7 agricultural land of long-term commercial significance.
8 This was done as required by the Growth Management Act
9 and its mandate to local governments to take necessary
10 steps to maintain and enhance the local agricultural
11 industry, to conserve productive agricultural lands and
12 to discourage incompatible uses.

13 The County is very concerned that a proposal that
14 displaces nearly 7,000 acres or over 1 percent of the
15 County's prime ag land is directly at odds with the
16 intent of the Growth Management Act and the County's
17 land use plan and ordinances that implement the Act's
18 goals and mandates.

19 For all these reasons, the County looks forward to the
20 Council's evidentiary hearing that will afford the
21 County and other interested parties the opportunity to
22 develop the record as far as the project's potential
23 long-term impacts on the every-so-important agricultural
24 industry of Benton County. And it will allow the people
25 of Benton County an opportunity to provide evidence of

1 the various impacts that they will suffer from the
2 project if it is approved, whether those be esthetic
3 impacts or health impacts from light flicker and noise.

4 No one here has a crystal ball. Maybe no credible
5 evidence will be submitted to you to reflect these
6 adverse impacts of the project, but the County ventures
7 to guess that you will receive credible evidence
8 regarding these and potentially other significant
9 concerns of such magnitude that you can't address them
10 through conditions of approval and that the Council will
11 need to deny the project. But whichever the case may
12 be, we're glad that it has been settled that an
13 evidentiary hearing will be held to give the people the
14 opportunity to present evidence of their concerns and
15 for the Council to receive all the evidence necessary in
16 order to make the appropriate findings and
17 recommendation to the Governor.

18 In closing, I would just like to note that, for the
19 people of Benton County, this is not some minor project,
20 as you can tell from the turnout tonight. The Applicant
21 proposes to put over 200 Space Needle magnitude
22 structures on our horizon that will produce light
23 flicker, noise and that will kill wildlife, in addition
24 to taking thousands of acres of designated -- land
25 designated as prime ag land out of potential service.

1 This is a very big decision before you, as you well
2 know, and we'll look forward to the evidentiary hearing
3 to give you the best opportunity to make the appropriate
4 recommendation to the Governor. Thank you.

5 JUDGE TOREM: Mr. Brown, thank you very much.

6 Councilmembers, it's now nine o'clock p.m. Do you
7 have any questions for Mr. McMahan or Mr. Brown? I ask
8 that because I understand from Staff that there are no
9 other public commenters signed up for tonight. Does the
10 Council or the Chair have any questions for Mr. McMahan
11 or Mr. Brown?

12 (No audible reply)

13 JUDGE TOREM: Chair Drew, anything further tonight?
14 And I want to confirm that there are no public
15 commenters requested to sign up. Those were all in the
16 earlier hearing. Nobody has asked to comment for land
17 use.

18 Ms. Bumpus, maybe you can confirm that on the record?

19 MS. BUMPUS: Yes, I believe that's correct, Judge
20 Torem.

21 CHAIRPERSON DREW: And hearing no questions from
22 Councilmembers, Judge Torem, I think the record is
23 complete for this hearing for this evening.

24 JUDGE TOREM: I want to thank all those that were
25 courteous tonight and listened and muted their phones.

1 This is difficult, obviously, for us and it's just as
2 difficult for you to hear and understand the nature of
3 everything going on over the phone and over Skype. I
4 believe the Council is switching to Microsoft Teams in
5 the future. That should be a little bit easier, we
6 hope. And like I said, as soon as the Coronavirus
7 restrictions allow for travel to the local community, I
8 think you can count on this EFSEC Council being there in
9 Benton County to see you and hear you. I will continue
10 to rule with an iron fist from the bench to demand
11 decorum and to demand that everybody treat everybody
12 that you agree or disagree with, with dignity and
13 respect. You can expect that from me. And we'll hope
14 that you are able to do that in person when we're there
15 in the County and --

16 (Conclusion of recording)

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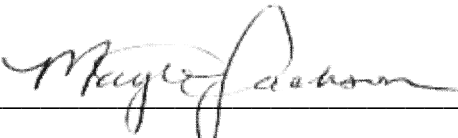
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STATE OF WASHINGTON)
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COUNTY OF SNOHOMISH)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings or interviews were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received court audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of April, 2021.





Marjorie Jackson, CET