

**BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of Application  
No. 2021- 01  
Docket No. EF-210012

**Council Order No. 879**

OER WA Solar 1, LLC- Goose Prairie  
Solar

ORDER GRANTING EXPEDITED  
PROCESSING

**BACKGROUND**

**Synopsis.** *OER WA Solar 1, LLC requested expedited review of an application it filed with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification and approval of the Goose Prairie Solar project. The Council may grant expedited review when it finds the project is consistent and in compliance with land use plans and zoning ordinances, and the environmental impacts are insignificant or can be mitigated to a nonsignificant level. The Council, by this order, concludes that the criteria for expedited review have been satisfied and will use the expedited process authorized by RCW 80.50.075 to evaluate the application.*

- 1 **Nature of Proceeding.** This matter involves an application for site certification (Application or ASC) filed on January 19, 2021, by OER WA Solar 1, LLC (the Applicant) to construct and operate Goose Prairie Solar (the Facility), a solar photovoltaic (PV) project with an optional battery storage system. The Facility would be located on eight parcels (the Site) in unincorporated Yakima County near the city of Moxee, with a combined maximum generating capacity of 80 megawatts (MW).
- 2 The Applicant requests that EFSEC use the expedited process authorized by RCW 80.50.075 to evaluate the Application. An applicant is eligible for expedited processing when EFSEC finds (1) the environmental impacts of the proposed project are not significant or can be mitigated to non-significant levels and (2) the proposed project is consistent and in compliance with city, county, or regional land use plans.<sup>1</sup>
- 3 The Applicant and the Council mutually agreed to extend the one hundred twenty-day

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<sup>1</sup> RCW 80.50.075; WAC 463-43-030.

timeline for the Council to issue an order on the expedited request, to the later time of the Council's monthly meeting on July 20, 2021. The Applicant updated the ASC on June 22, 2021.

- 4 **SEPA.** On June 24, 2021, the Council issued a Mitigated Determination of Nonsignificance (MDNS), and invited public comment. The comment period ended on July 8, 2021, during which EFSEC received 16 comments. The Council reviewed and considered all comments, and on July 30, 2021, it issued a Revised MDNS. The Council determined an environmental impact statement (EIS) was not required by the State Environmental Policy Act (SEPA)<sup>2</sup>. The Revised MDNS listed 19 mitigation measures related to Earth, Water, Plants, Animals and Habitat, Noise, Visuals and Aesthetics, and Historic and Cultural Preservation, and Utilities. EFSEC completed a revised SEPA environmental checklist that cross references the parts of the updated ASC that provide the requested information in the checklist. Mitigation measures and a summary of the comments received are listed below on page 9.
- 5 **Land Use Consistency Hearing.** RCW 80.50.090(2) requires the EFSEC to “conduct a public hearing to determine whether or not a proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances.” On March 2, 2021, EFSEC issued a Notice of Informational Public Hearing and Land Use Consistency Hearing and scheduled a virtual hearing by Skype or by telephone participation for 5:30 p.m. on Tuesday, March 16, 2021.<sup>3</sup>
- 6 On March 16, 2021, the Council conducted a virtual land use consistency hearing, to hear testimony regarding whether the Facility was consistent and in compliance with Yakima County's local land use provisions. The following EFSEC members were present at the March 16, 2021, hearing: Kate Kelly (Department of Commerce), Robert Dengel (Department of Ecology), Mike Livingston (Department of Fish and Wildlife), Leonard “Lenny” Young (Department of Natural Resources), Stacey Brewster (Utilities and Transportation Commission), and Bill Sauriol (Department of Transportation). Kathleen Drew, EFSEC Chair, presided over the hearing.
- 7 Assistant Attorney General Bill Sherman, Counsel for the Environment, was present for the land use consistency hearing.

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<sup>2</sup> RCW 43.21C.030(2)(c)

<sup>3</sup> The Council sent this Notice to all interested persons on the mailing list for the Facility including landowners within one mile and to all subscribers to EFSEC's general minutes and agenda list. Further, the Council posted this Notice in English and Spanish on its public website, distributed the Notice to local libraries, and purchased advertisement in the Yakima Herald Republic and the Tri-City Herald, the local daily newspapers of general circulation.

- 8 Timothy McMahan, Stoel Rives Law Firm, represented the Applicant and spoke on the Applicant's behalf. No other persons presented testimony at the land use consistency hearing.
- 9 **Applicant's Description of Proposed Facility.** The Facility will consist of PV modules mounted on single-axis trackers supported on stationary piles on eight parcels in unincorporated Yakima County east of the city of Moxee. The eight parcels on which the Facility will be located will together constitute the "Facility Parcels." The Estate of Willamae G. Meacham owns three of the parcels which together are known as the "Meacham Property." S. Martinez Livestock, Inc. owns the other five parcels which together are known as the "Martinez Property." The Applicant has executed options to lease with the landowners for adequate acreage to accommodate the Facility long-term. Both landowners have provided letters of support for the Facility (Attachment C to the Application for Site Certification (ASC)).
- 10 Each row of solar panels will be strung together in a north-south orientation and the panels will tilt on a single-axis (facing east in the morning and tilting toward the west, following the sun, through the course of each day to maximize energy output). Each string of panels will be arranged in rows with approximately eight to twelve feet of space between the rows. The racking system and panels will be supported by steel piles that will be driven to a depth of five to nine feet below grade. The top of the panels will stand no higher than 14 feet.
- 11 Throughout the Facility, inverters paired with medium voltage step-up transformers will convert the generated electricity from direct current (DC) to alternating current (AC) and increase the voltage to distribution class to minimize ohmic losses when collecting power circuits. The output will be conveyed to a central substation near the Point of Interconnection (POI) to the electrical grid. The central substation will house a generator step-up transformer, which will convert the power to 115 kilovolts (kV) and will house the controls for the Facility. An operations and maintenance building may be built adjacent to the substation.
- 12 The optional battery energy storage system would not exceed the nominal 80 MW capacity of the Facility. As currently designed, optional battery storage system would be connected to the DC side of the transformer. The battery would store power generated by the Facility and dispatch it to the electrical grid at a later time. The Facility is currently designed to utilize lithium ion battery energy technology. However, pending commercial interest, the Facility could be designed to utilize flow battery technology.
- 13 The Facility will interconnect with a new POI to Bonneville Power Administration's (BPA) Midway to Moxee 115-kV transmission line, which bisects the Facility. BPA

will build, own and operate the structures which constitute the POI. The Facility will be accessed by an existing approach from Washington State Route 24. The Facility will be secured with a fence up to eight feet in height with access gates for authorized personnel. Internal gravel roads built to the applicable fire code will be used to maintain the Facility. During construction, a temporary lay-down area will be utilized for delivery of major equipment. This area will convert to parking during operations.

14 The Applicant intended for the Facility to have a Commercial Operations Date as early as November 30, 2022. In order to meet this schedule, the Applicant expected that construction would begin in Q3 2021.

15 An optional battery energy storage system would not exceed the nominal 80 MW capacity of the Facility.

16 The Meacham property is currently in the Conservation Reserve Program (CRP) which is set to expire on September 30, 2022. The Applicant described the habitat type within the portion that will be utilized for the Facility as mainly CRP with a small component of Pasture Mixed Environs and the vegetation consists primarily of non-native species such as downy brome, crested wheat, Russian thistle, mustard species and others. There is no current agricultural use, though a portion of the area was previously used for row crops. No existing buildings are present on the Meacham Property.

17 The Martinez Property has two distinct areas: four of the parcels may be used for solar facilities and one parcel may be utilized for an aerial easement for the interconnection tie-line depending on the final design of the interconnection with BPA. The area that may be utilized for solar facilities has a historic and current use of grazing and has habitat types that the Applicant categorized as a mix of Eastside Grasslands<sup>4</sup>, Shrub-steppe and Pasture Mixed Environs with predominantly native vegetation including sagebrush and wheatgrass; much of the shrub-steppe area is degraded in its quality due to heavy grazing. The area which may be utilized for an aerial easement is currently planted with an orchard. BPA's Midway-to-Moxee 115 kV transmission line, on which the Facility will directly rely, crosses the Martinez Property. A few agricultural buildings exist on the Martinez Property, but none are within the Facility Area.

18 The Applicant is in the process of completing a rare plant survey. If the survey

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<sup>4</sup> The updated ASC filed June 22, 2021, acknowledges that the Washington Department of Fish and Wildlife (WDFW) does not agree with the habitat classification of Eastside Grasslands. The Applicant, following discussions with WDFW and EFSEC, agrees the habitat types identified as "Shrub-steppe - Degraded" and "Eastside Grasslands" will be considered Shrub-steppe for the purposes of compensatory mitigation calculations.

identifies special status plans within the Facility Area, the Applicant will work with EFSEC and Department of Natural Resources (DNR) to minimize impacts to these plans and incorporate mitigation measures into the design and construction of the Facility. These measures will be incorporated into the Vegetation and Weed Management Plan.

- 19 The Facility Parcels are wholly outside of the 100-year FEMA floodplain and the only surface water features present are ephemeral streams, from which the Facility will maintain a minimum 50-foot buffer on both sides. The Applicant's updated ASC deleted plans for a stream crossing structure (i.e., bridge or culvert). A stream crossing will be designed and constructed to minimize permanent impacts per YCC 16C.06.13, YCC 16.06.17, and WAC 220-660-190(10) and (12). The Facility area generally has a south-facing slope, ideal for solar PV projects, and is mostly under 10% grade, ideal for constructability. A few small areas with grades above 10% may require grading, though none of this will occur in surface waters, wetlands or frequently flooded areas.
- 20 The total acreage of the Facility Parcels is 1,568 acres. However, the Facility's footprint would not exceed 625 acres, defined as the Facility Area. The Facility Area would be located wholly within a broader micrositeing boundary of 789 acres, defined as the Facility Area Extent. The Survey Area is the extent of the acreage that was surveyed for the wildlife, cultural and wetland surveys, which totals 808 acres and wholly encompasses the Facility Area Extent. The Facility Area Extent includes 517 acres of the Meacham Property and up to 272 acres of the Martinez Property. The 272 acres of the Martinez Property includes the Transmission Easement Area which is approximately 17.0 acres.
- 21 The Applicant requests that EFSEC allow the Applicant flexibility to microsite the precise location of Facility components within the Facility Area Extent and provide an updated site plan prior to construction. This would give the Applicant the ability to refine the spacing of solar modules, associated access roads, collector lines, staging areas and above-ground facilities within the Facility Area Extent as design is finalized. The Applicant asserts that the requested flexibility to microsite the final Facility layout within the Facility Area Extent also would allow the Applicant to minimize potential impacts and deliver the most effective and efficient Facility consistent with the landowners' needs. The maximum footprint of the Facility Area would not exceed 625 acres, located wholly within the Facility Area Extent.
- 22 As shown in the Preliminary Site Plan (Attachment B to the ASC), the Facility would consist of PV panels, inverters, mounting infrastructure, an electrical collection system, operation and maintenance building, access roads, interior roads, security fencing, a new collector substation and electrical interconnection infrastructure.

- 23 **Yakima County’s Response.** On March 11, 2021, Thomas Carroll, the Yakima County Planning Official provided the Applicant with a Certificate of Zoning Compliance (Certificate), which the Applicant in turn provided to the Council. According to the Certificate, the Facility is defined as a Power Generating Facility under Yakima County Code (YCC) Title 19, the Unified Land Development Code, and is proposed to be within the Agricultural Zoning District (AG). It is classified as a “Type 3” conditional use in the County’s AG zoning district (YCC Table 19.14-010). Type 3 Uses are “uses which may be authorized subject to the approval of a conditional use permit as set forth in Section 19.30.030. Type 3 conditional uses are not generally appropriate throughout the zoning district. Type 3 uses require Hearing Examiner review of applications subject to a Type 3 review under the procedures of Section 19.30. 100 and YCC Subsection 16B.03.030(1)(c).” (YCC Title 19.19-010(2)). Therefore, the Goose Prairie Solar project is consistent with Title 19 and would be eligible for review and permitting under Yakima County permit processes.
- 24 **Yakama Nation’s Response.** On March 11, 2021, the Yakama Nation Cultural Resources Program (CRP) responded to the Council regarding the Application. The Yakama Nation CRP expressed concern about the cumulative impacts of up to 8 foot chain link fencing surrounding the Facility’s perimeter. The CRP is concerned the Application lacks cumulative analysis of what several 1,000 acre-plus facilities will do to wildlife movement in the valley. In addition, fencing large areas has the potential to inhibit ingress and egress of Yakama Nation members to public lands. Yakama Members retain ingress and egress rights to access usual and accustomed resource areas.
- 25 The Yakama Nation CRP asserts that the Applicant’s archeological survey report utilizes incorrect regulatory law in consideration of cultural sites identified. The CRP asserts the report and Application weighs precontact sites against Washington Heritage Register (WHR) eligibility and erroneously states whether or not a site is “protected” by that listing. The Yakama Nation CRP asserts that RCW 27.53 governs archeological sites in Washington and protects precontact sites regardless of National Register or Washington Register status. The CRP contends that alteration of any precontact site will require a permit from the Department of Archeology and Historic Preservation. They request the Applicant amend the language to accurately reflect state law<sup>5</sup>.
- 26 **Public Comment.** No members of the public offered testimony at the land use consistency hearing.

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<sup>5</sup> The Applicant’s updated ASC struck references to protection under WHR and clarified site protection by RCW 27.53.

## DISCUSSION

### I. Land Use Consistency Determination

- 27 The purpose of the land use hearing is “to determine whether at the time of application the proposed facility was consistent and in compliance with land use plans and zoning ordinances.”<sup>6</sup> In this order, the Council will refer to land use plans and zoning ordinances collectively as “land use provisions” and will refer to its decision as pertaining to “land use consistency.”
- 28 The Council’s evaluation of land use consistency is not dispositive of the Application and a determination of land use consistency is neither an endorsement nor an approval of the Project.<sup>7</sup> The evaluation pertains only to the general siting of categories of uses, taking into account only the Site (in this case, the Sites) and not the Project’s construction and operational conditions.
- 29 Whether a particular project will actually create on- or off-site impacts (including impacts to the environment) is considered separately through the State Environmental Policy Act (SEPA) process, during the Council’s adjudication (if applicable), through the environmental permitting processes (if applicable), and through other Council processes (if applicable).<sup>8</sup> The Council’s ultimate recommendation to the Governor will be made after full and thorough consideration of all relevant issues.
- 30 To be eligible for expedited review, EFSEC must find “that the project is consistent with and in compliance with city, county, or regional land use plans or zoning ordinances,” RCW 80.50.075(1), as determined at a public land use hearing, RCW 80.50.090(2). A project meets this initial standard so long as it “can be permitted either outright or conditionally.”<sup>9</sup> Whether applicable conditional use criteria are in fact met is a question for later EFSEC proceedings,<sup>10</sup> after which EFSEC may recommend and impose conditions of approval in the Site Certification Agreement (SCA) to uphold

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6 WAC 463-26-050.

7 In re Whistling Ridge Energy Project, Council Order No. 868 at 9 (October 6, 2011) (Whistling Ridge Order). A determination of land use inconsistency simply results in the Council’s further consideration of whether local land use provisions should be preempted. WAC 463-28-060(1), see also RCW 80.50.110(2) and WAC 463-28-020. If they are preempted, the Council will include in any proposed site certification agreement conditions designed to recognize the purpose of the preempted provisions. WAC 463-28-070.

8 RCW 80.50.090(3), RCW 80.50.040(9), (12), WAC 463-30, WAC 463-47, WAC 463-76, WAC 463-78

9 In re Columbia Solar Project, Docket No. EF-170823, Council Order – Expedited Processing, ¶ 35 (April 17, 2018).

10 Id., ¶ 36.

Yakima County's CUP criteria<sup>11</sup>.

31 The EFSEC process contemplates that the Applicant will coordinate with Yakima County to attempt to determine whether the project would be consistent and compliant with the jurisdiction's land use plans and ordinances.<sup>12</sup> If through these discussions Yakima County determines the project is indeed consistent and compliant with its land use plans and ordinances, it may provide, and the applicant may present to the Council, a certificate attesting to that fact. Such a certificate provides prima facie proof of consistency and compliance with County land use plans and zoning ordinances.<sup>13</sup>

32 **Definitions of "Land Use Plan" and "Zoning Ordinances"**. The term "land use plan" is defined by statute as a "comprehensive plan or land use element thereof adopted ... pursuant to" one of the listed planning statutes.<sup>14</sup> EFSEC interprets this definition as referring to the portions of a comprehensive plan that outline proposals for an area's development, typically by assigning general uses (such as housing) to land segments and specifying desired concentrations and design goals.<sup>15</sup> Comprehensive plan elements and provisions that do not meet this definition are outside of the scope of the Council's present land use consistency analysis. The term "zoning ordinance" is defined by statute as an ordinance "regulating the use of land and adopted pursuant to" one of the listed planning statutes.<sup>16</sup> EFSEC has interpreted this definition as referring to those ordinances that regulate land use by creating districts and restricting uses in the districts (i.e., number, size, location, type of structures, lot size) to promote compatible uses. Ordinances that do not meet this definition are outside of the scope of the Council's present land use consistency analysis.

33 EFSEC has defined the phrase "consistent and in compliance" based on settled principles of land use law: "Zoning ordinances require compliance; they are regulatory provisions that mandate performance. Comprehensive plan provisions, however, are guides rather than mandates and seek consistency."<sup>17</sup>

34 **Proof of consistency and compliance.** EFSEC accepts the Certificate issued to the Applicant by Yakima County as prima facie proof of consistency and compliance with Yakima County land use plans and zoning ordinances. EFSEC has not received any

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11 RCW 80.50.100(2); WAC 463-64-020

12 WAC 463-26-090

13 Id.

14 RCW 80.50.020(14).

15 In re Northern Tier Pipeline, Council Order No. 579 (Northern Tier Pipeline Order) at 9 (November 26, 1979).

16 RCW 80.50.020(22).

17 Whistling Ridge Order at 10 n 15.



comment or evidence from members of the public in opposition to the Certificate, or which otherwise asserted claims of inconsistency or noncompliance with County land use plans and zoning ordinances.

## II. Environmental Impact

35 **SEPA Threshold Determination:** On June 24, 2021, EFSEC’s SEPA responsible official<sup>18</sup> issued a Mitigated Determination of Non-Significance (MDNS), and invited public comment. On July 30, 2021, EFSEC issued a Revised MDNS under WAC 197-11-350 based on a determination that mitigating conditions included in the Revised MDNS report, along with required compliance with applicable county, state, and federal regulations and permit requirements will mitigate any significant adverse impacts to the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). The responsible official made this determination after a review of the updated ASC, a completed revised environmental checklist and other information on file with the lead agency and existing regulations applicable to the proposal.<sup>19</sup>

36 **Public Comment:** EFSEC provided a 14-day public comment period on the MDNS and the environmental impacts of the proposal as required by WAC 197-11-340. The public comment period ended on July 8, 2021, during which EFSEC received 16 public comments. All of these comments have been reviewed and no new issues were raised that had not already been considered, except for one comment regarding wind erosion. One previously considered issue was found to merit further clarification as a result of comments received, and a specification to a mitigation measure has been identified for this issue. The comments resulted in one additional mitigation measure related to Earth and a revision to one mitigation measure related to Animals and Habitat.

### FINDINGS OF FACT

37 (1) On January 19, 2021, OER WA Solar 1, LLC submitted an application for site certification to construct and operate Goose Prairie Solar (the Facility), a solar photovoltaic (PV) project with an optional battery storage system, on 1,568 leased acres in Yakima County, Washington. The Applicant updated the application on June 22, 2021.

38 (2) On January 21, 2021, the Applicant submitted a written request that the Council use the expedited processing procedure authorized by RCW 80.50.075. By

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<sup>18</sup> Within EFSEC, the SEPA responsible official is the council manager. WAC 463-47-051.

<sup>19</sup> The revised environmental checklist was completed by EFSEC and cross references the parts of the application that provide the requested information in the checklist. The Revised MDNS, environmental checklist, environmental review and staff recommendation, and the updated ASC are available for review at EFSEC. For convenience, the documents are available online at <https://www.efsec.wa.gov/energy-facilities/goose-prairie-solar>

mutual agreement, the Applicant and the Council set a later time of July 20, 2021, for the Council to issue an order on the request for expedited process.

- 39 (3) On March 16, 2021, the Council convened a virtual land use consistency hearing, pursuant to due and proper notice. The Council received testimony from the Applicant’s attorney. No other persons offered testimony on the issue of land use consistency for the Facility.
- 40 (4) The Applicant presented a Certificate from local authorities attesting to the Facility’s consistency or compliance with local land use plans and zoning ordinances.
- 41 (5) The Site is located in unincorporated Yakima County, Washington.

#### CONCLUSIONS OF LAW

- 42 (1) The Council has jurisdiction over the subject matter of this proceeding and the parties to it pursuant to RCW 80.50.075 and WAC chapter 463-43.
- 43 (2) The Council provided adequate notice to interested parties, and the Council has adequate information to render a land use consistency decision.
- 44 (3) Under Yakima County Code (YCC), the Facility meets the definition of a “power generating facility.”
- 45 (4) The Facility Site is on land zoned as Agriculture (AG) under Yakima County Code. In the AG zoning district, power generating facilities are a Type 3 Use.
- 46 (5) Yakima County determined the Facility is consistent with YCC Title 19 and would be eligible for review and permitting under Yakima County conditional use permitting (CUP) processes, and issued the Applicant a Certificate of Zoning Compliance.
- 47 (6) The Applicant has met its burden of proof of demonstrating that the site is consistent and in compliance with Yakima County’s Comprehensive Plan and applicable zoning ordinances as required by RCW 80.50.075(1).
- 48 (7) The environmental impact of the proposed Goose Prairie Solar Facility can be mitigated to a nonsignificant level under RCW 43.21C.031 as required by RCW 80.50.075(1).
- 49 (8) The criteria for expedited processing set forth in RCW 80.50.090 and WAC 463-

43-050 as of the date of the Application have been satisfied, and therefore, the Applicant's request for expedited processing should be granted.

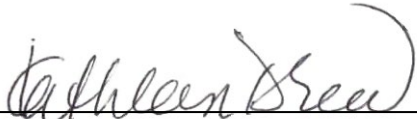
**ORDER**

THE COUNCIL ORDERS:

- 50 (1) OER WA Solar 1, LLC's request for expedited processing is GRANTED; EFSEC will evaluate OER WA Solar 1, LLC's Application for Site Certification of the Goose Prairie Solar Project in an expedited process consistent with the requirements of RCW 80.50.075 and WAC chapter 463-43. In addition, Staff will 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.

DATED at Olympia, Washington, and effective August 6, 2021.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

  
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KATHLEEN DREW, Chair