

# Land Use Consistency Hearing

## Cypress Creek Renewables-High Top Solar & Ostrea Solar Projects

June 1, 2022



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WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL

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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

1 A P P E A R A N C E S

2  
3 (All participants appeared via Teams videoconference)

4  
5 STATE AGENCY MEMBERS PRESENT:

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

10 ASSISTANT ATTORNEY GENERAL:

11 JON THOMPSON

12  
13 COUNCIL STAFF:

- 14 AMI HAFKEMEYER  
15 JOAN OWENS  
16 ANDREA GRANTHAM  
17 SONIA BUMPUS  
18 STEWART HENDERSON

19  
20 COUNSEL FOR THE ENVIRONMENT:

21 SARA REYNEVELD

22  
23 GUESTS IN ATTENDANCE:

- 24 TAI WALLACE, Cypress Creek Renewables  
25 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

\* \* \* \* \*

1 P R O C E E D I N G S

2 JUNE 1, 2022

3 6:15 P.M.

4

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

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

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

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

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

20 MS. OWENS: Yes. Thank you.

21 Department of Commerce?

22 MS. KELLY: Kate Kelly, present.

23 MS. OWENS: Department of Ecology?

24 MR. LEVITT: This is Eli Levitt, present.

25 MS. OWENS: Department of Fish and

1 Wildlife?

2 Department of Natural Resources?

3 MR. YOUNG: Lenny Young, present.

4 MS. OWENS: Utilities and Transportation  
5 Commission?

6 MS. BREWSTER: Stacey Brewster, present.

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

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

12 MS. OWENS: Thank you.

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

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

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

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

25 JUDGE BRADLEY: Thank you. Go ahead,

1 please.

2 MS. DRUMMOND: I needed to unmute myself.

3 Thank you.

4 Thank you, Mr. Wallace, Judge Bradley.

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

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

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

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

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

1 Perfect.

2           So just some brief background on this.  
3 The council in 2017 determined that, under its  
4 enabling legislation, it must ensure that certified  
5 projects are aligned with the objectives of reducing  
6 dependence on fossil fuels and transitioning to a  
7 clean energy project. That determination is, of  
8 course, consistent with other state statutes calling  
9 for carbon neutrality and carbon-free energy supplies,  
10 and it's consistent with recent amendments to EFSEC's  
11 enabling legislation, which further promote clean  
12 energy development.

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

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

24           And attached to attachment A of the  
25 application for site certification is the

1 correspondence from the County documenting the  
2 consistency with the land use code. And, of course,  
3 that's prima facie proof of consistency with the code.

4 I'd refer the council to Council Order 879  
5 on the Goose Prairie project. That was order granting  
6 expedited processing with -- which documents the --  
7 that consistency.

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

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

17 JUDGE BRADLEY: Counsel --

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

20 JUDGE BRADLEY: This is Judge Bradley. So  
21 if you could please slow down a little bit. We do  
22 have a court reporter making a transcript of the  
23 hearing, and we want to make sure we get a clear  
24 record. So just give her a chance to keep up with  
25 you, please.



1 MS. DRUMMOND: Thank you, your Honor. I  
2 will -- I will do so.

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

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

16 If we can move to the next slide.

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

1 presentation.

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

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

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

16 If we could move to the next slide.

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

23 On the preliminary site plans, solar  
24 panels and access roads will not be within 300 feet of  
25 the Yakima Training Center, and the applicant has

1 consulted with the training center and completed a  
2 glare analysis, and no issues have arose in there.

3           Also, the -- there's grazing to the east  
4 and to the west. On the west, the nearest structure  
5 is 2 -- 2 and a half to 3.6 miles away. To the east,  
6 the nearest structure is 850 feet east from Ostrea's  
7 boundary, and three miles from High Top's boundary, so  
8 there's few homes in the area. There are no schools  
9 in the vicinity. So this is an ideal location for  
10 the -- this proposed use.

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

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

1 county requirements.

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

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

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

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

21 CHAIR DREW: I do not. Thank you.

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

24 MS. BREWSTER: This is Stacey Brewster.

25 One quick question regarding the property

1 size and its compliance.

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

5 MS. DRUMMOND: I should have clarified  
6 at -- at the outset. My comments address both  
7 projects. I know I may have referred to them in the  
8 singular, but they are both projects. And both  
9 projects have been ~~cited~~ <sup>sited</sup> so that they would fully  
10 comply with the code, and that there's plenty of room  
11 on those sites. So more is under -- for both  
12 projects, more is under lease control than is needed  
13 for those -- those projects.

14 Also, I did want to emphasize, I mentioned  
15 earlier, on the certificate of land use consistency,  
16 I -- I believe I mentioned that, that that was -- is  
17 attached to the application for site certification.  
18 That's at the very end of attachment A. Those are  
19 the -- the correspondence from the County documenting  
20 the project's consistency with the land use code.

21 Did that -- did that answer your question?

22 MS. BREWSTER: Yes. Thank you.

23 JUDGE BRADLEY: Any other councilmembers  
24 with questions?

25 Not hearing any, Ms. Owens, are you aware

1 of any requests to comment at this proceeding that  
2 were submitted in advance?

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

4 JUDGE BRADLEY: Thank you.

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

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

11 JUDGE BRADLEY: All right. Thank you.

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

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

16 MR. TOBIN: Understood.

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

24 Will not adversely impact the public  
25 infrastructure or environmental resources. Certainly,

1 we've demonstrated earlier, the environmental  
2 resources as a habitat is dependent upon these large  
3 open spaces. The -- these infrastructures,  
4 individually and combined, will impact that, whether  
5 it's sage-grouse, which really hates this kind of  
6 stuff, won't even be in that region anymore.

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

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

1 are moot and misleading.

2 Thank you.

3 JUDGE BRADLEY: Thank you.

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

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

9 CHAIR DREW: Thank you.

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

14 (Videoconference hearing concluded  
15 at 6:33 p.m.)

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STATE OF WASHINGTON )  
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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*

ANITA W. SELF, RPR, CCR #3032

