



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

December 5, 2022

Yakima County Board of Commissioners  
Yakima County Courthouse  
128 N 2nd Street, Room 232  
Yakima, WA 98901

Re: Response to Letter dated November 7, 2022 regarding EFSEC review of proposals located in Yakima County.

Dear Commissioners,

On November 7, 2022, the Energy Facility Site Evaluation Council (EFSEC) staff received your letter requesting that EFSEC immediately cease further proceedings of siting energy projects within Yakima County in recognition of the Solar Moratorium enacted by the County. The letter cites concerns about impacts to agricultural land, fire risk, and opportunities for public input. Additionally, the letter raises concerns about County compliance with the Growth Management Act (GMA), and requests that EFSEC perform our own comprehensive performance evaluation of the effects of the energy independence act and the impacts to central and eastern Washington.

In response to your concerns, EFSEC offers the following response:

EFSEC's guiding statute (RCW 80.50) and rules (WAC 463) do not provide a mechanism to cease review of an Application for Site Certification (ASC) in light of a county-enacted moratorium. EFSEC's statutes require the Council to "conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances *on the date of the application.*" RCW 80.50.090(2). EFSEC received the ASC for the High Top and Ostrea Projects (Projects) on April 7, 2022. It is EFSEC's understanding that the County enacted the moratorium on July 26, 2022. Additionally, the Council has previously determined<sup>1</sup> that a moratorium is not a land use plan or zoning ordinance for the purposes of EFSEC's consistency determination.

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<sup>1</sup> [Columbia Solar Order on Expedited Processing](#)

Yakima County Planning provided certificates of land use consistency dated March 7, 2022 for the applicant to present at the land use consistency hearing. Per EFSEC rules, such a certificate is prima facie proof of land use consistency, WAC 463-26-090. As such, the council issued an order determining land use consistency order for the Projects at the October Council meeting.

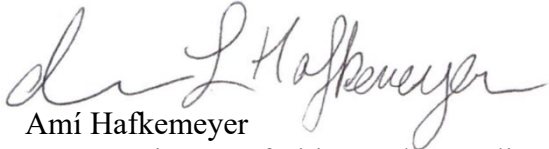
With respect to the concerns raised in your letter regarding impacts, I hope the County will review the staff memo attached to the Revised Mitigated Determination of Non-Significance (MDNS), issued by EFSEC on October 28, 2022. In summary, the Washington Department of Agriculture reviewed the proposal and did not identify any impacts that could not be mitigated, and the ASC includes commitments for fire response plans, which EFSEC traditionally requires within a Site Certification Agreement to be submitted and approved prior to construction and operations.

You raised a concern regarding public input. Several opportunities for public input on these Projects have passed but are inherent to the EFSEC process. Within the first 60 days of receipt of an ASC, EFSEC holds a public informational meeting, during which public comment is received. This meeting was held on June 1<sup>st</sup> for the Projects. EFSEC also holds a Land Use Consistency Hearing at which public comment is received. This meeting was held on June 1<sup>st</sup> for the Projects. EFSEC has also provided opportunities for public comment on the MDNS, the Land Use Consistency order, and the Order on Expedited Processing. Additionally, the Land Use Order provides that EFSEC will provide a hearing similar to a Yakima County hearing examiner conditional use hearing to determine whether the projects are consistent with Yakima County conditional use criteria, and whether any conditions need to be imposed to ensure consistency. This meeting was initially scheduled for November 29 but is currently being rescheduled. Notice for that meeting and the associated public comment will be issued accordingly. We feel that our process actively seeks public input through these many opportunities and encourage interested parties such as yourselves to participate.

There is no need for concern that EFSEC's review of applications for the siting of energy facilities under the Energy Facilities Site Locations Act (EFSLA), RCW 80.50, might cause Yakima County to be out of compliance with the Growth Management Act (GMA). The State Supreme Court determined in *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wash.2d 275, 310 (2008), that "EFSLA can be properly read as a specific exception to the general goals and procedures of the GMA." Accordingly, the Department of Commerce's GMA procedural criteria for adopting comprehensive plans and development regulations acknowledge that "[c]omprehensive plans and development regulations adopted under the [GMA] should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110." WAC 365-196-560(1). Regarding your request for EFSEC to complete a performance report on the effects of the energy independence act and its impacts on central and eastern Washington, that is not a role authorized for EFSEC under that law, RCW 19.285, which was enacted by Initiative Measure No. 937 in 2007, or under any other law.

Please contact me at (360) 664-1305 or via email at [ami.hafkemeyer@efsec.aw.gov](mailto:ami.hafkemeyer@efsec.aw.gov) if you have any further questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ami Hafkemeyer".

Ami Hafkemeyer  
EFSEC Director of Siting and Compliance

Cc: Sonia Bumpus, EFSEC Director  
Jon Thompson, AAG  
Amanda McKinney, Yakima County Commissioner Chair  
Ron Anderson, Yakima County Commissioner District 2  
LaDon Linde, Yakima County Commissioner District 3