

May 15, 2023

Energy Facility Site Evaluation Council
Joanne Snarski, EFSEC Siting Specialist
621 Woodland Square Loop P.O. Box 43172
Olympia, WA, 98504-3172

Re: Carriger Solar Project/Klickitat County – Land Use Consistency Hearing

Dear Ms. Snarski:

We represent Cypress Creek Renewables LLC (“Applicant”) with respect to the upcoming land use consistency hearing regarding the Applicant’s Carriger Solar Project (“Project”) in Klickitat County. This letter is submitted to supplement the Applicant’s May 16, 2023 hearing presentation, and in support of the Applicant’s request that EFSEC deem the project to be land use consistent.

A. Scope and Standard for an EFSEC Land Use Consistency Hearing.

On April 25, 2023 EFSEC held an informational public hearing in Klickitat County pursuant to RCW 80.50.090(1). On April 27, 2023, EFSEC issued a Notice of Land Use Consistency Hearing to be held virtually at 5 pm on May 16. The purpose of that hearing will be to “determine whether ...the proposed site is consistent and in compliance with ...county ...land use plans or zoning ordinances on the date of application.” RCW 80.50.090(2); *see also* WAC 463-26-050. This determination is a two-step process.

1. The scope of EFSEC’s land use consistency analysis is limited to “land use plans” and “zoning ordinances,” as defined by statute.

“Land use plan” is defined in EFSEC’s governing statute as a “comprehensive plan or land use element thereof adopted ...pursuant to” one of a list of planning statutes. RCW 80.50.020(14). EFSEC has interpreted this definition as referring to those 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. *In the Matter of Tuusso Energy, LLC Columbia Solar Project*, Docket EF-170823, Order Granting Expedited Processing, ¶28 at 9 (April 17, 2018) (“Columbia Solar Order”). In the Columbia Solar Order, EFSEC was clear that “[c]omprehensive plan elements and provisions

that do not meet this definition are outside the scope of the Council's ...land use consistency analysis." *Id.*

For purposes of EFSEC's land use consistency determination, a "zoning ordinance" is defined as an ordinance "regulating the use of land and adopted pursuant to" one of the listed planning statutes. RCW 80.50.020(22). 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. *Id.* Ordinances that do not meet this definition are outside the scope of a land use consistency analysis. Columbia Solar Order, *id.* at ¶29.

2. The standard for land use consistency is whether the pertinent local land use provisions allow the use, either outright or conditionally.

Under EFSEC's established land use consistency test, the Council considers whether the local land use provisions allow a site to be permitted either outright or as a conditional use. Columbia Solar Order ¶35 at 12. Unless the pertinent land use provisions "prohibit' [a site] expressly or by operation clearly, convincingly and unequivocally," the site is consistent and in compliance with the local provisions. *Id.*

Under EFSEC's established precedents, this threshold for determining land use consistency pursuant to RCW 80.50.090(2) is a minimal threshold. *Id.* At this point in the process, the relevant question is whether local zoning regulations allow a solar energy project use on a site, either as a permitted use, or as a conditional use. *Id.* Whether conditional use criteria are met is to be taken up in a subsequent hearing, where site-specific conditions will be considered. *Id.*

The Klickitat County Zoning Code reflects this same principle. It defines "conditional use" as an "activity ... permitted when authorized by the board of adjustment and subject to the imposition of reasonable conditions and/or restrictions which, when imposed, renders the use compatible with the existing and potential uses in the vicinity which are permitted outright." KCZC 19.04.160.

B. Klickitat County's January 10, 2023 Moratorium is not Relevant to Whether the Project Meets the Land Use Consistency Standard.

The Applicant anticipates that Klickitat County will argue at the land use consistency hearing that the Project is not consistent with local land use regulations due to a moratorium Resolution adopted by the Klickitat County Board of County Commissioners (BOCC) on January 10, 2023.¹ In that Resolution, the BOCC ordered that "all applications for large scale

¹ Resolution 00823.

solar projects over one acre in size” within certain listed township-ranges “not be accepted for at least six months.” The County’s moratorium Resolution is not relevant to the Carriger Solar Project land use consistency hearing for the simple reason that it does not regulate how land is used; instead, it merely calls for a pause regarding the acceptance of applications for large scale solar projects.

In the Columbia Solar proceeding, the Kittitas County BOCC passed a “moratorium on applications for solar projects that qualify as major alternative energy facilities.” Columbia Solar Order at 15. EFSEC concluded in that matter that “the County’s moratorium on the acceptance of applications for solar projects is not a land use regulation because it regulates the processing of applications and does not regulate how land is used.” Order ¶43 at 15-16 (citing *Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, 178 Wn.2d 320, 346 (2013)). The same is true here.

Further, as also articulated in the Columbia Solar Order, a moratorium that does not repeal or amend existing zoning ordinances is not a development regulation and does not prohibit a site. *Id.* The Klickitat County BOCC Resolution only temporarily suspends the acceptance of applications, and it therefore does not meet the definition of either a land use plan or a zoning ordinance. Columbia Solar Order, ¶44 at 16-17 (citing *Save Our Scenic Area v. Skamania County*, 183 Wn.2d 455, 465. (2015))

C. The Proposed Carriger Solar Project is Sensitively Sited and Incorporates Appropriate Mitigation Measures that Will Ensure Compatibility with Surrounding Uses.

The proposed Project consists of a solar array, a battery energy storage system (BESS), a Project substation, interconnection equipment, an O&M building with employee parking, a laydown area, and access roads. The proposed Project sits within a 2,108 acre Project Site Control Boundary (shown in ASC Attachment A-1, Figure 1). Within that boundary is the slightly smaller Project Study Area (2,011 acres) (shown in the same figure), and within that is the substantially smaller 1,326 acre area of Maximum Project Extent (MPE) (shown in Attachment A-2, Figure 1). As their names suggest, the outer boundary demarks the Applicant’s site control. The Project Study Area has been surveyed extensively on a resource-specific basis to identify and mitigate potential Project impacts, and the MPE defines the maximum Project footprint once final siting and design is completed.

Within this framework, the ASC describes in detail the sensitive manner in which the proposed Project has been sited, and the mitigation measures that have been incorporated in order to ensure compatibility with surrounding uses.

1. Existing Land Uses in Project Study Area.

Existing land uses in the Project Study Area predominately include cultivation (mostly dryland wheat) and pasturelands with some scattered rural residences (owned by Project participant landowners), undeveloped areas, local roads, and electrical infrastructure (e.g., transmission and distribution lines). Adjacent land uses surrounding the Project Study Area are similar and include scattered rural residences owned both by Project participants and non-Project participants, the Goldendale Fish Hatchery and adjacent Washington Department of Fish and Wildlife (WDFW) owned lands, SR 142, and the BPA Knight Substation.

2. Compatibility with existing agricultural land uses.

The existing agricultural uses in the Project Study Area include limited dryland wheat cultivation and some livestock grazing; a small approximately 75-acre portion of the Project Study Area is irrigated for wheat. Project participating landowners will continue to farm those portions of their acreage that will not house Project infrastructure, and the Project is compatible with these continued farming uses. Project utilization of participating farmlands helps preserve participating family farms by enhancing land values for participating landowners while maintaining the suitability of their land for future agricultural production following Project decommissioning. The Project will not result in loss of agricultural land due to the proposed Project. Instead, the Project supports the long-term financial viability of family farms. The Project is likewise compatible with other farming uses in the area, as the presence of solar energy infrastructure has minimal impacts on adjacent agricultural uses.

The Project is thus consistent with the designation of the Project site as “agricultural/forest” (AF) in the County’s General Land Use Plan. That designation allows a conditional use for a non-agricultural/non-forest use when the use is not in conflict with agriculture/forest practices and does not take out of production more land than is reasonably needed for the proposed use. The proposed Project fits that description very well.

3. Compatibility with the rural nature of the County.

In addition to its compatibility with existing agricultural land uses, the proposed Project is compatible with the rural nature of the County as a whole. The Project MPE has been designed to avoid on-site and off-site habitats and vegetation communities, and to avoid impacts to sensitive species, such as the western gray squirrel, and sensitive habitat, such as dwarf shrub-steppe. The Project design protects vernal pools, wetlands, and stream courses by using fenced setbacks and buffers, as provided in the County’s Critical Areas Ordinance (CAO). The layout of the Project facilitates wildlife movement by creating corridors between fenced areas. Changes to stormwater drainage will be minimal, as new impervious surfaces are limited to only about 2% of the Project Study Area (see ASC part 2, Section B-2).

The proposed Project also minimizes visual impacts that might otherwise disturb the rural feel of the County. Where the Project is visible at all, the components are consistent with other horizontal and vertical lines visible throughout the landscape (e.g., fencing, roadways, substations, transmission towers and lines, utility poles and lines, agricultural structures), and will not block views of the surrounding hills and mountains. The Project will not introduce a source of light that will significantly impact motorists, residents, or views in the area (see glare analysis, ASC Attachment G)

Similarly, the Project minimizes noise impacts. The Project will comply with the 50-decibel nighttime limit at all non-participating noise sensitive receptors (i.e., residences) even after incorporating a number of conservative assumptions into the acoustic model. WAC 173-60-050 exempts temporary construction noise from the state noise limits; however, best management practices (BMPs) will be implemented to reduce off-site construction noise impacts.

Project construction impacts will be minimized by best practices for installation of the Project infrastructure. The area within the Project MPE requires minimal site preparation for structure foundations, interconnection equipment, inverters, the BESS, the OEM building and parking area, and access roads. Vegetation under the panel array areas will be mowed prior to construction and temporary construction disturbances to these areas will be primarily limited to small areas of clearing around module posts when driven into the ground.

Finally, the proposed Project will not significantly contribute to vehicular traffic in the County. Existing roads will not change except for new access road approaches on SR-142, Knight Road, Mesecher Road, and Butts Road, and those roads would be for private use only. The Applicant will obtain County and Washington State Department of Transportation road right-of-way access permits for the necessary approaches onto County and state roads.

We hope that this description of the applicable law, together with an overview of how Project impacts have been avoided or minimized, is helpful. I look forward to presenting on May 16. In the meantime, please let me know if you have any questions or concerns.

Very truly yours,

Davis Wright Tremaine LLP



Linda White Atkins

cc: Cypress Creek Renewables, LLC