

July 13, 2023

RE: Notes on Carringer Land Use Consistency by Matt Chiles:

I have two main areas of concern with Land Use Consistency for the Carringer solar project in Klickitat County:

First, Klickitat County put a moratorium on new applications for industrial solar projects approximately one month before the Carringer application with EFSEC. According to the Attorney General's office EFSEC has set precedent, particularly in Kittitas County, that a moratorium is not a change in zoning. I believe that this precedent is incorrect and that the Klickitat County moratorium is in fact a temporary zoning ban on industrial solar.

A moratorium of this sort is essentially an emergency zoning action that overrides all other existing zoning codes as temporary law. When a crisis comes up there is no other method to quickly change zoning codes than a moratorium. Long term actions to permanently change zoning codes require lengthy studies and public hearings. In this case Klickitat County was aware of several upcoming industrial solar projects in the moratorium area and was unsure about being equipped to handle them. Since there were no other options available for the County the moratorium was used to quickly prevent all new applications until zoning issues could be properly and legally reviewed and revised if necessary.

Furthermore, as mentioned in the testimonies of Dave Barta, Commissioner Dan Christopher, and others on May 25th and June 9th, Klickitat County has a precedent of successfully using Zoning Moratoriums in the past. In the 1990's a moratorium was used to halt the rapid and unregulated conversion of agricultural lands into small 20-acre plots. In the early 2010's a moratorium was used to establish reasonable zoning regulations in regards to legal marijuana growing and selling. In both cases the actual effect of the moratoriums were temporary zoning changes through the form of prohibitions until permanent zoning changes could be further studied and adopted.

Moratoriums have historically always had the force of law. Consider, for example, the recent moratoriums during the pandemic on tenant evictions. No one was able to argue that the moratorium did not really matter and that a landlord could indeed evict someone during the moratorium. In the same manner, Klickitat County has a moratorium on new industrial solar applications and it is inconsistent to say that the moratorium does not really count as a land use rule and that new industrial solar applications can indeed be submitted in the County.

If the purpose of a moratorium is indeed to halt applications for new land uses to provide breathing room (as the AG office has suggested) then it is absurd to turn around and say that the moratorium has no effect on halting applications for new land uses. To emphasize, there is no other legal path to changing zoning in emergency situations

other than a moratorium. Thus, a moratorium should rightly be viewed as a legal zoning change for duration of the moratorium.

My second concern regards both of the General Rural and Extensive Agriculture areas outside of the Energy Overlay Zone. It is EFSEC's policy that if explicit prohibition does not exist then the converse must be true – that there is implied permission to proceed through a Conditional Use Permit process.

I am on the Board of Adjustment for Klickitat County, which is the Board that reviews Conditional Use Permits and accepts them or denies them. Although I cannot speak for the entire Board, I do have much insight into the CUP process in the County and am qualified to speak on it.

Klickitat County allows virtually anything to be applied for in virtually every zone by CUP (as do most other jurisdictions, I believe). This is mostly because it is nearly impossible to have an exhaustive list of things that would potentially be excluded. The inverse is also true, that a simple list of only allowable things also leads to zoning difficulties.

Simply because a project can be applied for does not mean that it is an approved use in a zone. There are many uses that could be applied for but would be highly unlikely to be approved by the Board of Adjustment. In fact, I have personally seen uses that are very similar to existing uses be denied or regulated out of viability by the BOA using the CUP process.

The argument that the proposed Carringer project would be a likely fit for a CUP as a "utility service necessary for public service" is not valid, as "utilities" in the context of the zoning code refers to things like power lines, electric substations, gas substations, and cell phone towers – things that provide services. It does not refer to electrical generation facilities like solar, wind or gas plants.

The other argument is that the proposed Carringer project would be "no more detrimental to adjacent properties" than other outright permitted uses. This is also not valid and reasonable, especially in the Extensive Agriculture area, but also to a lesser degree in General Rural.

In summary, a solar facility of the scope of the Carringer project is not named as a specifically allowed activity for a CUP, nor is it likely that the Board of Adjustment would view such a project as consistent with the zoning of either Extensive Agriculture or General Rural outside of the Energy Overlay Zone. The proponents could certainly apply for the permit through the CUP process, but I would be very skeptical about its chances of obtaining one. The actual chances of obtaining a permit are what truly tells if a use is "allowed" under the zoning code, and those chances are very, very low in this area of Klickitat County.

To wrap up, the moratorium is for all intents and purposes an outright prohibition of industrial solar in this area by Klickitat County. It is simply an "interim zoning

ordinance". Additionally, it would appear that the areas outside of the Energy Overlay Zone cannot be permitted outright and would be viewed as an in-compliant use through the CUP process, although applying for a permit is allowed.

A finding of "land use consistency" is thus not appropriate for the entire site due to the moratorium. A finding of "land use consistency" is not appropriate on sites not within the Energy Overlay zone due to inconsistency with other conditionally approved uses which would ultimately find it in-compliant through the CUP process.

Thank you for your time and thoughts on this matter. I appreciate the opportunity to share this matter with the Committee and urge you to evaluate it carefully before deciding on "land use consistency" for the Carringer project. Note that I am not arguing the overall merits of the Carringer project but am merely pointing out that it appears to not have "land use consistency" in Klickitat County at the time of application.

Sincerely,

Matt Chiles
EFSEC Board Klickitat County Representative