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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITING EVALUATION COUNCIL

In the Matter of the Application of:  
Goldeneye Energy Storage, LLC –  
Goldeneye Energy Storage Project,  
  
Applicant.

DOCKET NO. EF-240004  
  
APPLICANT’S LAND USE  
CONSISTENCY LEGAL  
MEMORANDUM

**Legal Memorandum in Support of the Goldeneye Energy Storage Project’s  
Consistency and Compliance with Land Use Plans and Zoning Ordinances**

**I. INTRODUCTION**

On June 27, 2024, Goldeneye Energy Storage, LLC (“Goldeneye”) submitted an Application for Site Certification (“ASC”) to the Energy Facility Site Evaluation Council (“EFSEC”) to develop, construct, and operate the Goldeneye Energy Storage Project (“Project”). The Project is a stand-alone 200-megawatt/800-megawatt hour battery energy storage system (“BESS”), including related interconnection and ancillary support infrastructure, located in Skagit County (“County”).

Goldeneye’s ASC submission kicked off a public process to aid EFSEC’s ASC review that includes several public meetings and hearings. The public has the opportunity to comment in these hearings.<sup>1</sup> First, on August 13, 2024, there will be a public informational hearing, where EFSEC presents the general procedure for processing the ASC and the means and opportunities for public participation.<sup>2</sup> During the informational

<sup>1</sup> See EFSEC, Notice of Informational Public Hearing and Land Use Consistency Hearing on the Goldeneye Battery Energy Storage System Project, EFSEC Docket No. 240004 (August 2, 2024), [https://www.efsec.wa.gov/sites/default/files/goldeneye-energy-storage-project/application/20240802\\_GoldeneyeBESS\\_InfoMtgLUHNotice\\_Print.pdf](https://www.efsec.wa.gov/sites/default/files/goldeneye-energy-storage-project/application/20240802_GoldeneyeBESS_InfoMtgLUHNotice_Print.pdf).

<sup>2</sup> RCW 80.50.090(1); WAC 463-26-025.

1 hearing, the applicant gives a presentation on the Project, and the public can comment on  
2 the proposed project.<sup>3</sup>

3 Also on August 13, 2024, EFSEC will hold a land use consistency hearing.<sup>4</sup> The  
4 land use consistency hearing’s purpose is to “determine whether at the time of application  
5 the [ASC] was consistent and in compliance with land use plans and zoning ordinances.”<sup>5</sup>  
6 During these hearings, the County’s interpretations and determinations of land use  
7 consistency are accorded deference.<sup>6</sup> Even for a project that is not compliant with land  
8 use plans and zoning, EFSEC may recommend, and the Governor, upon EFSEC’s  
9 recommendation, may preempt the applicable land use plans and zoning regulations to  
10 authorize the facility.<sup>7</sup> Here, however, the Applicant believes that the Project is fully  
11 compliant with local land use plans and zoning.

12 In accordance with RCW 80.50.075 and WAC chapter 463-43, Goldeneye  
13 requested that EFSEC use its expedited review process for this ASC. To be eligible for  
14 expedited review, EFSEC must find that the project is “consistent and in compliance with  
15 city, county, or regional land use plans or zoning ordinances.”<sup>8</sup> Goldeneye submits this  
16 Legal Memorandum to support the Project’s consistency and compliance with applicable  
17 County land use plans and zoning ordinances.

## 18 II. FACTUAL BACKGROUND

19 The Project is a BESS facility that would offer storage of up to 200-  
20 megawatt/800-megawatt hours of energy with related interconnection and ancillary

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22 <sup>3</sup> WAC 463-26-025(1)-(2).

<sup>4</sup> RCW 80.50.090(2).

23 <sup>5</sup> RCW 80.50.090(2).

<sup>6</sup> See *In the Matter of Docket No. EF-220212, Cypress Creek Renewables for High Top Solar, LLC and Ostrea Solar, LLC*, Council Order No. 884, Order Granting a Finding of Land Use Consistency, at 8 (May 17, 2022).

24 <sup>7</sup> RCW 80.50.110; *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wash.2d 275, 285-86 (2008).

25 <sup>8</sup> RCW 80.50.075(1); see also RCW 80.50.090(2). Expedited processing also requires that  
26 EFSEC determines that the project’s environmental impact is not significant outright or as mitigated, under the State Environmental Policy Act. See RCW 43.21C.031. That analysis is outside the scope of this memorandum.

1 support infrastructure. The BESS facility is proposed on parcel number P40030, a  
2 property located at 25080 Minkler Road, Sedro-Woolley, Washington. The BESS  
3 facility includes energy storage enclosures containing lithium-ion batteries and other  
4 electrical and communication equipment. The Project will also cross an additional four  
5 parcels, P40042, P40046, P40047, and P40022, (together with parcel P40030, the  
6 “Project Site”) to install a generator intertie transmission line (“gen-tie”) and access road.

7 The Project Site is located in unincorporated Skagit County and is outside of any  
8 urban growth boundary. The Project Site is zoned Agricultural-Natural Resource Lands  
9 (“Ag-NRL”).<sup>9</sup> The Project Site is adjacent to Puget Sound Energy’s Sedro-Woolley  
10 Substation, providing an important flexible energy resource for Skagit County’s electric  
11 power customers.

### 12 III. APPLICABLE STANDARDS

13 For every EFSEC project, the rules contemplate that the county issue a certificate  
14 of consistency that determines land use consistency.<sup>10</sup> An EFSEC project can use  
15 expedited review if EFSEC finds that the proposed site is “consistent and in compliance  
16 with city, county, or regional land use plans or zoning ordinances.”<sup>11</sup>

17 The relevant inquiry for EFSEC’s initial land use analysis under RCW  
18 80.50.090(2) is “whether the pertinent local land use provisions prohibit the [proposed  
19 project site] ‘expressly or by operation clearly, convincingly and unequivocally.’”<sup>12</sup> If a

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21 <sup>9</sup> The Project also proposes to upgrade an existing water line that runs along Minkler Road and  
22 traverses a Rural Reserve zone (“RRv”) and an Ag-NRL zone. Applicant does not intend to  
23 include the upgraded segment of the existing water line as part of the site certification agreement  
24 because while Applicant will complete the necessary upgrades, it will be deeded to and owned  
and operated by Skagit PUD once the upgrades are completed. Even if the proposed upgrades are  
included, this portion of the Project does not propose any installation of aboveground components  
and upgrades an existing structure. Therefore, it is consistent with RCW 80.50.090(2) because  
the County has clearly authorized the water line in its right of way.

<sup>10</sup> WAC ch. 463-26.

25 <sup>11</sup> RCW 80.50.075(1); *see also* RCW 80.50.090(2); WAC 463-26-050. Expedited processing also  
26 requires that EFSEC determines that the project’s environmental impact is not significant outright  
or as mitigated, under the State Environmental Policy Act. *See* RCW 43.21C.031. That analysis is  
outside the scope of this memorandum.

<sup>12</sup> *In the Matter of Application No. 2017-01 of Tuusso Energy, LLC Columbia Solar Project*,  
Council Order Granting Expedited Processing (“Columbia Solar Order”), at ¶ 35 (Apr. 17, 2018)

1 proposed project “can be permitted either outright or conditionally, it is consistent and in  
2 compliance with the local land use provisions” for purposes of RCW 80.50.090(2).<sup>13</sup>  
3 If a local jurisdiction believes that a proposed EFSEC project is consistent and in  
4 compliance with its land use plans and zoning ordinances, it may provide—and the  
5 applicant may enter—a “certificate from local authorities . . . attesting to the fact that the  
6 proposal is consistent and in compliance with land use plans and zoning ordinances”  
7 (“Certificate of Consistency”).<sup>14</sup> The Certificate of Consistency provides prima facie  
8 proof of consistency and compliance with applicable land use plans and zoning  
9 ordinances, and the inquiry ends there.<sup>15</sup> The Applicant is requesting that the County  
10 provide a Certificate of Consistency.

11 Absent a Certificate of Consistency, EFSEC issues its decision regarding  
12 consistency after reviewing the applicable land use plans and zoning ordinances. First,  
13 the applicant and local authorities are directed to “address compliance or noncompliance  
14 with land use plans or zoning ordinances.”<sup>16</sup> EFSEC generally gives deference to the  
15 determinations of local authorities regarding compliance with local land use plans and  
16 zoning ordinances.<sup>17</sup> Then EFSEC determines “whether the proposed site is consistent  
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20 (quoting *In re TransMountain Pipeline*, Council Order 616, at 3) (internal quotations omitted);  
21 see also *In the Matter of Docket No. EF-210011, Scout Clean Energy, LLC, for Horse Heaven*  
*Wind Farm, LLC*, Council Order No. 883, Order Finding Proposed Site Consistent with Land Use

22 <sup>13</sup> *Id.*

23 <sup>14</sup> WAC 463-26-090.

24 <sup>15</sup> *Id.*; See also *In the Matter of Docket No. EF-220212, Cypress Creek Renewables for High Top*  
*Solar, LLC and Ostrea Solar, LLC*, Council Order No. 884, Order Granting a Finding of Land  
Use Consistency, at 8 (Oct. 31, 2022).

25 <sup>16</sup> WAC 463-26-100.

26 <sup>17</sup> See e.g. *In the Matter of Docket No. EF-230001, Carriger Solar Project for Cypress Creek*  
*Renewables, LLC for Carriger Sollar, LLC, Applicant*, Council Order No. 889, Order Granting a  
Finding of Land Use Consistency, at 9 (Sept. 25, 2023) (using prior county decisions to determine  
that a Solar Energy Project is an allowed use in the zone); *In the Matter of Docket No. EF-*  
*170823, Tuusso Energy, LLC – Columbia Solar Project*, Council Order Granting Expedited  
Processing, at 14 (Apr. 17, 2018) (noting that the County’s interpretation was contrary to prior  
interpretation).

1 and in compliance with land use plans and zoning ordinances pursuant to RCW  
2 80.50.090(2).”<sup>18</sup>

3 EFSEC’s review does not consider all local land use plan provisions. A “land use  
4 plan” means “a comprehensive plan or land use element thereof adopted by a unit of local  
5 government pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW.”<sup>19</sup> A “land use  
6 plan” includes “the portions of a comprehensive plan that outline proposals for an area’s  
7 development, typically by assigning general uses (such as housing) to land segments and  
8 specifying desired concentrations and design goals.”<sup>20</sup>

9 A “zoning ordinance” is a local government’s ordinance “regulating the use of  
10 land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI  
11 of the state Constitution.”<sup>21</sup> Zoning ordinances include the applicable “zoning map,  
12 development restrictions, and associated definitions.”<sup>22</sup> The applicable County “land use  
13 plan” and “zoning ordinance” provisions are found within the Skagit County Code  
14 (“SCC” or “Code”) and the Skagit County Comprehensive Plan (“Comprehensive Plan”).

#### 15 IV. ANALYSIS

##### 16 A. The County Attested to Land Use “Consistency and Compliance” for the 17 Purposes of RCW 80.50.090(2).

18 In an administrative decision issued on February 1, 2023, attached as Exhibit A  
19 (“Administrative Decision”), the County attested to land use “consistency and  
20 compliance.” When a county attests to consistency and compliance, EFSEC defers to  
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24 <sup>18</sup> WAC 463-26-110.

<sup>19</sup> RCW 80.50.020(18)

25 <sup>20</sup> Columbia Solar Order, at ¶ 28 (citing *In re Northern Tier Pipeline*, Council Order 579, at 9  
(Nov. 26, 1979)).

26 <sup>21</sup> RCW 80.50.020(30); *see also* Columbia Solar Order, at ¶ 29 (“[Zoning ordinances]...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.”).

<sup>22</sup> Columbia Solar Order, at ¶ 32.

1 that interpretation.<sup>23</sup> At the County’s request, Goldfinch Energy Storage, LLC<sup>24</sup>  
2 submitted a request for an Administrative Official Interpretation declaring whether the  
3 Project was a “Major Utility Development.”<sup>25</sup> The Administrative Decision concludes  
4 that the Project is “consistent and compliant” with the “major utility development” use as  
5 defined in the SCC.<sup>26</sup> The decision became final on February 16, 2023, after the 14-day  
6 appeal period passed.<sup>27</sup> This decision constitutes prima facie evidence from the County  
7 that the Project is consistent and compliant with the Code and Comprehensive Plan,  
8 allowing EFSEC to end its inquiry here.

9 **B. The Project Is Consistent and Compliant with the Code and Comprehensive**  
10 **Plan Because a BESS Is an Allowed Use in the Ag-NRL Zone.**

11 Even if the Administrative Decision is not a Certificate of Consistency, the  
12 Project is still consistent with the Code and the Comprehensive Plan. Pursuant to  
13 Washington’s Growth Management Act, a comprehensive plan serves as a county’s  
14 “generalized coordinated land use policy statement.”<sup>28</sup> Local development regulations,  
15 such as zoning codes, carry out the comprehensive plan’s policies and must be consistent  
16 with those policies.<sup>29</sup> By adopting the SCC zoning ordinances and the Administrative

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18 <sup>23</sup> See *In the Matter of Docket No. EF-220212, Cypress Creek Renewables for High Top Solar,*  
19 *LLC and Ostrea Solar, LLC*, Council Order No. 884, Order Granting a Finding of Land Use  
20 Consistency, at 8 (May 17, 2022) (The Council did not find opposing testimony regarding use of  
21 agricultural land persuasive because “Yakama County has expressly provided that power  
22 generating facilities may be authorized subject to qualifying for a conditional use permit.).

23 <sup>24</sup> Goldeneye’s predecessor entity Goldfinch Energy Storage, LLC filed the request for an  
24 Administrative Official Interpretation with the County. However, the project for which  
25 Goldfinch Energy Storage, LLC requested an Administrative Official Interpretation is the same  
26 project Goldeneye is now seeking a site certification from EFSEC.

<sup>25</sup> Administrative Decision at 6.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.* at 6; see also SCC § 14.16.020(3); RCW 36.70C.020(2)(b).

<sup>28</sup> RCW 36.70A.030(5).

<sup>29</sup> *Woods v. Kittitas County*, 162 Wn.2d 597, 626, 174 P.3d 25 (2007) (Becker, J., concurring)  
24 (“[Local] development regulations must be consistent with and implement the county’s  
25 comprehensive plan.”); see also RCW 36.70A.040. The Washington Supreme Court has also  
26 explained that “[i]f a zoning code explicitly requires that all proposed uses comply with a  
comprehensive plan, then the proposed use must comply with both the zoning code and the  
comprehensive plan.” *Woods*, 162 Wn.2d at 614; see also *Cingular Wireless, LLC v. Thurston*  
*County*, 131 Wn. App. 756, 770, 129 P.3d 300 (2006). However, because a comprehensive plan is  
not a document designed for making specific land use decisions, the Supreme Court has required

1 Decision, the County determined that the Project could be consistent with the Code and  
2 Comprehensive Plan.

3 For the RCW 80.50.090(2) land use consistency analysis, the applicable standard  
4 is simply whether the project as proposed “can be permitted either outright or  
5 conditionally” or whether instead it is “clearly, convincingly and unequivocally”  
6 prohibited under the local land use provisions.<sup>30</sup> EFSEC considers whether the ASC  
7 complies with land use criteria, like development standards and conditional use criteria,  
8 later, when it is deciding whether to approve or deny the ASC.<sup>31</sup>

9 **1. The Administrative Decision Is a Final Determination That the**  
10 **Project Is a “Major Utility Development.”**

11 The first step in this analysis is to determine the type of “use” a BESS is under the  
12 County’s Code and Comprehensive Plan. BESS is not an expressed use in the Code or  
13 Comprehensive Plan.<sup>32</sup> When there are ambiguities or undefined uses, an applicant can  
14 seek a final, binding administrative decision of which class or type of use their proposed  
15 use fits into, and, therefore, where it is allowed in the County.<sup>33</sup> Here, pursuant to that  
16 process and at the County’s request, the Applicant requested a binding administrative  
17 decision. The County issued the Administrative Decision, a final binding land use  
18 decision that classified the Project as a “major utility development” use.<sup>34</sup>

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21 that “conflicts between a general comprehensive plan and a specific zoning code be resolved in  
22 the zoning code’s favor.” *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861,  
874, 947 P.2d 1208 (1997); see also *Cingular Wireless*, 131 Wn. App. at 769.

23 <sup>30</sup> See *In the Matter of Docket No. EF-210011, Scout Clean Energy, LLC, for Horse Heaven Wind*  
24 *Farm, LLC*, Council Order No 883, Order Finding Proposed Site Consistent with Land Use  
Regulations, at 7 (May 17, 2022) (citation omitted); *Columbia Solar Order*, at ¶ 35 (citing *In re*  
25 *Trans Mountain Pipeline*, Council Order 616, at 3 (May 26, 1981)); RCW 80.50.090(2).

26 <sup>31</sup> *Id.* See *In the Matter of Docket No. EF-210011, Scout Clean Energy, LLC, for Horse Heaven*  
25 *Wind Farm, LLC*, Council Order No 883, Order Finding Proposed Site Consistent with Land Use  
Regulations, at 7 (May 17, 2022); *Columbia Solar Order*, at ¶ 35 (citing *In re Trans Mountain*  
26 *Pipeline*, Council Order 616, at 3 (May 26, 1981)); RCW 80.50.090(2).

<sup>32</sup> See SCC § 14.16.020(3); RCW 36.70C.020(2)(b).

<sup>33</sup> SCC § 14.16.020(3).

<sup>34</sup> Administrative Decision at 5.

1           **2. A “Major Utility Development” Is an Allowed Use on the Project Site**  
2           **After Review by a Hearing Examiner.**

3           Siting a “major utility development” on property zoned Ag-NRL is consistent  
4 with the Code and Comprehensive Plan because a “major utility development” is not a  
5 prohibited use. When adopting the Code, the County determined that a “major utility  
6 development” could be permitted as a “Hearing Examiner Special Use” in the Ag-NRL.<sup>35</sup>  
7 That decision should be accorded significant weight in EFSEC’s analysis.<sup>36</sup> Pursuant to  
8 EFSEC’s processes, EFSEC will decide compliance with the “Hearing Examiner Special  
9 Use” criteria,<sup>37</sup> and other development standards later in the process. For the purposes of  
10 complying with RCW 80.20.090(2), it is sufficient that the Project Site’s zoning, which is  
11 Ag-NRL, does not prohibit a “major utility development.”

12   **II. CONCLUSION**

13           At this stage, EFSEC may find that this Project is consistent and in compliance  
14 with the applicable land use plans and zoning ordinance because under the applicable  
15 Code and the Comprehensive Plan provisions, the Project is allowed on the Project Site  
16 as a “Major Utility Facility.”

17 DATED: August 9, 2024.

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<sup>35</sup> SCC 14.16.400(4)(h).

26 <sup>36</sup> See *In the Matter of Docket No. EF-220212, Cypress Creek Renewables for High Top Solar, LLC and Ostrea Solar, LLC*, Council Order No. 884, Order Granting a Finding of Land Use Consistency, at 8 (May 17, 2022).

<sup>37</sup> Set forth in SCC 14.16.900(1)(b)(v).