

PROPOSED DRAFT

DEVELOPMENT AGREEMENT

Between

KITTITAS COUNTY WASHINGTON

and

TEANAWAY SOLAR RESERVE, LLC

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DEVELOPMENT AGREEMENT

TEANAWAY SOLAR RESERVE PROJECT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into and effective this ____ day of _____, 2010 by and between Kittitas County, a Washington municipal corporation ("County") and Teanaway Solar Reserve, LLC, a Wyoming limited liability company authorized to do business in the state of Washington ("Applicant") (collectively, the "Parties"). This Agreement is made pursuant to Revised Code of Washington ("RCW") 36.70B.170, Kittitas County Code ("KCC") Chapter 15A.11, and KCC Chapter 17.61, and relates to the Teanaway Solar Reserve Project.

RECITALS

A. RCW Chapter 36.70B, and KCC Chapter 15A.11 authorize the County to enter into an agreement regarding development of real property located within the County's jurisdiction with any person having an ownership interest in or control of such real property.

B. The Applicant desires and intends to develop a solar farm in Upper Kittitas County known as the Teanaway Solar Reserve Project (the "Project") located approximately four miles northeast of the town of Cle Elum. Key components and related appurtenant improvements of the Project include solar modules, inverter buildings, underground electrical conductors, substation, transmission line, maintenance and access roads, and an Operations and Maintenance (O&M) building.

C. The Applicant's objective is to develop a commercially viable solar energy facility generating up to 75 megawatts (MWdc) of photovoltaic (PV) for distribution to utilities and communities seeking to optimize their renewable and sustainable energy sources through an interconnection point on the Pacific Northwest power grid.

D. The Project will be located on land referred to herein as the "Project Area". The Applicant entered into agreements with the owners of approximately 982 acres of real property comprising the Project Area, giving it requisite control of this land for the purpose of, and authority to, develop the Project. The Project Area is as more specifically described in Attachment A: Project Area Legal Description. A map showing the location of the Project Area is contained in Attachment E: Proposed Site Layout.

E. The construction of the Project is currently scheduled for two to three consecutive construction seasons between the years 2010 through 2012. As fully constructed, the Project is anticipated to require approximately 477 acres ("Project Site") within the overall Project Area. A site plan showing the location and layout of the Project is contained in Attachment E: Proposed Site Layout.

F. A solar farm is defined by the County as a "major alternative energy facility". KCC 17.61.010(9) & (15). The transmission line and electrical substation may also be considered "special utilities." KCC 17.61.010(2). Major alternative energy facilities and special utilities may be authorized for the Project Site by the County's Board of Adjustment ("BOA") as conditional uses following a 15-day comment period and hearing, per KCC Chapter 15.61, KCC Title 15A, and KCC Chapter 17.60A.

G. In conjunction with this Agreement, the Applicant submitted a Conditional Use Permit ("CUP") Application as required by KCC 15.61.020(4)(b) & (6). One of the expected conditions of the CUP is that Applicant will obtain an approved development agreement with the County, and that it will be conditioned and governed by this Agreement.

H. The Applicant's submissions were deemed complete by the County on August 22, 2009. As the State Environmental Policy Act ("SEPA") Lead Agency, Kittitas County issued a Mitigated Determination of Non-significance ("MDNS") for the Project on July 15, 2010. The SEPA determination is attached hereto as Attachment B. Applicant agrees to abide by the CUP, the SEPA Mitigation Measures identified in the MDNS, and the Development Standards set forth in this Agreement to mitigate impacts to the environment.

I. The CUP was the subject of a 15-day comment period and a hearing before the Board of Adjustment as required by KCC Title 15A. On August 11, 2010, the Board of Adjustment ("BOA") voted 4 to 1 to approve the CUP. The CUP is attached hereto as Attachment C.

J. As required by KCC Title 15A and accompanying Table A, and RCW 36.70B.200., this Agreement was the subject of a 30-day comment period and a hearing before the Kittitas County Board of County Commissioners ("BOCC") was held on September 21, 2010, and it voted ___ to ___ enter into this Agreement.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the

Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Applicant agree as follows:

AGREEMENT

1. Effective Date, Termination and Modification.

1.1 Effective Date. The Effective Date of this Agreement is the last date upon which it was signed by the Parties hereto.

1.2 Termination. This Agreement may be terminated by mutual agreement of the Parties to this Agreement, or terminated by Applicant pursuant to Section 8 of this Agreement, or by the County upon revocation, withdrawal or termination of the underlying CUP as per KCC 17.60A.100.

1.3 Modification. This Agreement shall govern and vest the development, use, and mitigation of the Project, and shall not be modified unless as provided in Section 7 below; *Provided* that nothing herein shall be construed to limit the County's reserved authority per KCC 15A.11.020(6) to impose new or different regulations to the extent required by a serious threat to public health and safety.

2. Definitions.

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. Unless otherwise specified herein, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force.

2.1. Agreement. "Agreement" means this Development Agreement between Kittitas

County, Washington and Teanaway Solar Reserve, LLC, approved by the Board of County Commissioners.

2.2. Applicant. "Applicant" means Teanaway Solar Reserve, LLC or any of its Transferee(s) as provided in Section 9 of this Agreement.

2.3. BOCC. "BOCC" means the Board of County Commissioners of Kittitas County, Washington.

2.4. BOA. "BOA" means Kittitas County Board of Adjustment.

2.5. CDS. "CDS" means the Kittitas County Community Development Services.

2.6. County. "County" means Kittitas County, Washington.

2.7. Construction Buildout Period. "Construction Build out Period" has the meaning set forth in Section 5.9 of this Agreement.

2.8. CUP. "CUP" means the Conditional Use Permit approved by the County's BOA for the Project, which shall be conditioned and governed by this Agreement.

2.9. Development Standards. "Development Standards" means the requirements stated in Section 5 of this Agreement.

2.10. Director. "Director" means the Director of the County Department of Community Development Services.

2.11. Effective Date. "Effective Date" has the meaning set forth in Section 1.1 of this Agreement.

2.12. Force Majeure Event. "Force Majeure Event" means any event beyond the control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism;

embargoes; and, actions of a governmental or judicial authority other than EFSEC.

2.13. Historical Energy Production. "Historical Energy Production" means the sum of all energy generated by the Project after Substantial Completion divided by the total number of months of operation after Substantial Completion and the remaining sum multiplied by twelve.

2.14. Liability. "Liability" means all loss, damage, cost, expense (including costs of investigation and attorneys' fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to the Project described herein.

2.15. MDNS. "MDNS" means the Mitigated Determination of Non-significance issued as a SEPA determination by Kittitas County for the Project on July 15, 2010.

2.16. Parties. "Parties" means Kittitas County, Washington and the Applicant, Teanaway Solar Reserve, LLC, a Wyoming limited liability company.

2.17. Project. "Project" means the Teanaway Solar Reserve Project, a solar farm generating up to 75 megawatts (MWdc) of photovoltaic (PV) solar energy, together with any necessary Project components and related appurtenant improvements, including approximately 400,000 solar panels, inverter buildings, underground electrical conductors, substation, transmission line, maintenance and access roads and an Operations and Maintenance (O&M) building. The Project and its components are as further defined in Attachment B: Mitigated Determination of Nonsignificance, Attachment C: Conditional Use Permit, and in this Agreement.

2.18. Project Area. "Project Area" means the overall land area in which the Project Site will be located. The Project Area covers approximately 982 acres. A map depicting the location of the Project Area is contained in Attachment E: Proposed Site Layout. The land within the Project Area is as more specifically described in Attachment A: Project Area Legal Description.

2.19. Project Site. "Project Site" means the land area on which the Project will actually be sited. The Project Site covers approximately 477 acres. A map showing the approximate location of the Project Site is contained in Attachment E: Proposed Site Layout.

2.20. Public Works. "Public Works" means the Kittitas County Public Works Department.

2.21. SEPA. "SEPA" means the State Environmental Policy Act, Chapter 43.21C RCW.

2.22. Substantial Completion. "Substantial Completion" means the Project is constructed, installed, generating and delivering energy to the electric power grid.

2.23. Transferee. A party to which the Project is transferred or assigned in part or in whole under the provisions contained in Section 9.1 of this Agreement.

3. Project Description

The Project is a proposed solar farm, along with other necessary components and related appurtenant improvements, capable of generating up to 75 megawatts (MWdc) of photovoltaic (PV) solar energy, modified as necessary in accordance with the Development Standards contained herein, the CUP, and the proposed SEPA MDNS mitigation measures.

4. Vesting

Except as otherwise noted, this Agreement vests the Project, Project Site, and Project Area to the existing County land use plans, ordinances, and regulations effective as of the Effective Date of this Agreement until the termination of this Agreement under Section 1.2, or Applicant has fulfilled its Decommissioning and Restoration obligations under Section 6, whichever occurs later.

5. Development Standards

5.1. Location and Description of Project. The Project is as described herein and in Attachment B: Mitigated Determination of Nonsignificance and Attachment C: Conditional Use Permit, and illustrated in Attachment E: Proposed Site Layout, modified as necessary in accordance with this Agreement's Development Standards, CUP, and SEPA mitigation measures contained in the MDNS.

5.2 Structures. As part of the Project, Applicant may require supporting structures for any related transmission line. Such structures shall not be subject to any applicable County height restriction, provided that any supporting structure shall not exceed 150 feet unless

Applicant first obtains a variance from the County under KCC 17.84.

5.3. Fire Protection Measures. Applicant will create and maintain a firebreak of no less than 100 feet between all outer edges of the Project Site and adjacent property lines, as illustrated in Attachment E: Proposed Site Layout. Applicant has executed a fire protection services agreement with Kittitas County Fire Protection District No. 7 for the Project to ensure that suitable fire protection services are in place during the construction and on-going operations of the Project. A copy of this fire protection services agreement is contained in Attachment D attached hereto. A fire protection services agreement shall be maintained for the life of the Project, or until the Project Area is annexed into a Fire District or municipal entity which provides fire protection services.

5.4. Setbacks. The Project may be located up to, but no less than, 100 feet from any bordering property as illustrated in Attachment E: Proposed Site Layout.

5.5. Emergency Plans. An emergency preparedness and response plan shall be prepared and submitted to the County by the Applicant prior to construction.

5.6. Project Access and Maintenance Roads. Access to the Project Site will be achieved via Red Bridge Road. Red Bridge Road will be accessed from the southwest entrance, directly from SR 970. From Red Bridge Road traffic will follow Wiehl Road northbound for approximately 0.2 mile to Loping Lane (a private road). Traffic will follow Loping Lane westbound to the Project Site. Any detours from this pre-approved route as a result of road closures or other disruptions must be approved by Public Works.

The MDNS requires that portions of Loping Lane and Wiehl Road be improved. The Parties recognize that Loping Lane and Wiehl Road are existing roads that do not presently meet County Road requirements and that the existing configuration of these roads may make it difficult or impracticable to widen them in some places. In the event the existing configuration of Loping Lane and Wiehl Road necessitate a deviation from the specified road standards set forth in the MDNS, and the Applicant is unable to reach agreement with the County Engineer on an alternative road design, Applicant may seek a variance in conformance with the Kittitas County Code (KCC 12.01.130).

Roads within the Project Site will generally adhere to the Proposed Site Layout attached as Attachment E to this Agreement subject to the minor modification provision in paragraph 7.3 of this Agreement. Roads within the Project Site shall be designed and constructed in

accordance with Table 12-1 of the Kittitas County Road Standards for Private Roads for Joint-Use Driveways except as expressly provided as follows:

5.6.1. All roads within the project site shall be constructed with a minimum 1 foot gravel shoulder;

5.6.2. Primary Roads within the Project site, as depicted on Attachment E to this Agreement, shall be a minimum 20 feet in width;

5.6.3. Secondary Roads within the project site, as depicted in Attachment E to this Agreement, shall be a minimum of 16 feet in width and shall be constructed to have an emergency turnout every 1000 feet, or if the section of road is less than 2,000 feet, in the middle of the road section. Turnouts on the secondary roads shall consist of an additional 5 feet of width (for a total of 21 feet) for 50 feet in length; and

5.6.4. All corners and intersections shall have a minimum radius of 28 feet.

5.7. The Relationship between this Agreement and the CUP. This Agreement incorporates by reference the terms and conditions of the CUP as approved by the BOA, which shall be further conditioned and governed by this Agreement.

5.8. Project Site Access. Public access to the Project Area is already restricted by the subject landowners and will continue to be restricted in accordance with easement agreements. Access to the Project Site shall be further controlled in the form of an electric gate with an associated keypad security code for entry. The Applicant shall be responsible for the installation and maintenance of the gate, and will work with applicable landowners to determine its appropriate location. Property owners who access their property from Loping Lane and may require access through the gate will be provided the necessary and applicable access. Representatives of the Washington State Department of Natural Resources currently has access to and through the Project Site and will continue to be allowed access. The Applicant will also coordinate with local landowners to identify any necessary additional security measures, including an additional access restriction on Loping Lane near its intersection with Wiehl Road. The Applicant does not have the authority to grant permission to all third party recreationists, including hunters and campers, to access the Project, but may grant permission to such parties on a case-by-case basis provided such parties first secure written permission from all of the applicable landowners along Loping Lane.

5.9. Construction Buildout Period. Applicant shall be allowed to construct the Project such that Substantial Completion is achieved no later than 5 years from the date that all permits

necessary to construct the Project are obtained in final form, but in no event later than 6 years from the Effective Date of this Agreement (the "Construction Buildout Period") provided however, that such construction is not delayed by a Force Majeure Event.

6. Decommissioning and Restoration.

6.1. Initial Project Decommissioning and Site Restoration Plan. Within 30 days from the Effective Date of this Agreement, Applicant shall provide to the County for its review and approval an Initial Project Decommissioning and Site Restoration plan (the "Initial Plan"), prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Applicant on the date thereof associated with decommissioning and restoring the Project Site. Failure by the County to respond within thirty (30) days after receipt of the Initial Plan shall be deemed to be the County's approval of the Initial Plan. The Initial Plan shall describe the measures that will be taken to decommission the Project and restore the Project site, including any measures necessary to protect the public against risks or danger resulting from decommissioning the Project and restoring the Project Site. Construction of the Project shall not commence until the County's approval of the Initial Plan, which approval shall not be unreasonably withheld. For purposes of Section 6 of this Agreement, "Construction" shall be construed consistent with Section VIII of the MDNS (i.e., excluding site preparation activities).

6.2. Final Project Decommissioning and Site Restoration Plan. Ninety days prior to decommissioning the Project Site, Applicant shall submit a Final Project Decommissioning and Site Restoration Plan ("Final Plan") to the County for its approval, which approval will not be unreasonably withheld. Failure by the County to respond within thirty (30) days after receipt of the Final Plan shall be deemed to be the County's approval of the Final Plan. The Final Plan may contain measures to decommission the Project and restore the Project Site different than the Initial Plan, *provided* that Applicant explains in sufficient detail the reasons for any new or substantially different measures.

6.3. Decommissioning and Restoration: Scope and Timing.

6.3.1 Scope of Decommissioning. Decommissioning the Project shall involve removal of the Project's components, including, without limitation, the solar panels, panel trackers, anchors, supports and mounts, inverter buildings, underground electrical

conductors, substation, and Operations and Maintenance (O&M) building, and any foundations or permanently fixed anchors; the re-grading of any areas significantly impacted by the removal of any components; removal of Project maintenance roads and overhead cables (except for any roads, buildings, and/or power cables that Project Area landowners wish to retain); and final reseeded of disturbed lands with a native seed mixture (all of which shall comprise "Decommissioning"). The Initial and Final Plans shall contain the measures necessary to fulfill Applicant's Decommissioning obligations.

6.3.2. Scope of Restoration. Restoration of the Project Site shall be to a reasonable approximation of its original condition prior to construction allowing for any permanent improvements chosen by the underlying landowners to be left on site as provided in Section 6.3.1. The Initial and Final Plans shall contain the measures necessary to fulfill Applicant's Restoration obligations.

6.3.3. Timing; Exemptions and Extension. Applicant or any Transferee, as the case may be, shall decommission the Project and restore the Project Site within twelve (12) months following the earlier of either: (a) the date of termination of this Agreement, in accordance with Section 1.2 above; or (b) within thirty days of the Applicant receiving a written request by the County, Applicant demonstrates that the energy generated by the Project for the past twenty-four (24) month period is less than 10% of the Historical Energy Production and no exemptions apply. Applicant shall prepare and maintain at all times during the life of the Project all records and data necessary to establish the Historical Energy Production of the Project. [Upon Substantial Completion of the Project, the Applicant shall provide baseline data to be utilized in establishing the Historical Energy Production and shall thereafter provide an annual report of such records and data to the County.](#) Applicant shall [also](#) allow the County access to such records and data upon County's written notice as provided herein. The Applicant will be exempted from the decommissioning and restoration requirements if the twenty-four (24) month reduced energy output period described above is the result of (i) a repair, restoration or improvement to an integral part of the Project that affects the generation of electricity that is being diligently pursued by the Applicant, or (ii) a Force Majeure Event. The twelve (12) month period to perform the decommissioning and restoration may be extended for one additional twelve (12) month period if there is a delay caused by forces beyond the control of the Applicant including, but not limited to inclement weather

conditions, planting requirements, equipment failure, wildlife considerations or the availability of equipment or personnel to support decommissioning, or a Force Majeure Event.

6.3.4. County Access and Reporting. The County shall be granted unrestricted reasonable access to the Project site during decommissioning of the Project for purposes of inspecting any decommissioning work or to perform decommissioning evaluations. County personnel on the Project site shall observe all worker safety requirements enforced and observed by the Applicant and its contractors. If requested by the County, Applicant will provide monthly status reports until this decommissioning work is completed.

6.4 Decommissioning and Restoration Funding and Surety. Except as provided in Section 6.5 below, Applicant or any Transferee, as the case may be, shall post a Performance Bond as described in 6.4.1 below to ensure the availability of funds to cover Applicant's Decommissioning and Restoration obligations. The Applicant shall deliver the Performance Bond to Kittitas County, prior to the start of construction. The Initial Plan shall provide the estimated costs of Applicant's Decommissioning and Restoration obligations. The Initial Plan shall also provide that such estimated costs shall be reevaluated annually during construction of the Project and every five (5) years thereafter from the date of Substantial Completion to ensure sufficient funds for Decommissioning and Restoration and, if deemed appropriate at that time, the amount of the Performance Bond shall be adjusted accordingly. On or before the date on which financial security must be established, the Applicant or any Transferee, as the case may be, shall provide the County with a copy of the following security device:

6.4.1 Performance Bond. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its Decommissioning and Restoration obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and is, at the time of delivery of the bond, is on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be in an amount equal to 110% of the estimated costs for Applicant's Decommissioning and Restoration obligations provided in the Initial Plan. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the

remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs later. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a default of the Applicant under this Agreement and under the Bond provisions.

6.5. **Financial Security and Utility Project Ownership.** If, at the time the duty to provide Decommissioning and Restoration security arises under Section 6.3 above, the owner of the Project is an investor-owned electric utility regulated by the Federal Energy Regulatory Commission (FERC) and the Washington Utilities and Transportation Commission (WUTC), Applicant or any Transferee, as the case may be, shall not be required to obtain and provide proof of financial security for the performance of its Decommissioning and Restoration obligations arising hereunder, since the obligation to fully decommission the Project and restore the Project Site when due shall be a general obligation of the investor-owned electric utility owner.

7. Amendments and Revisions.

This Development Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and signed by Applicant and the County and is approved by the BOCC (an "Amendment"), whose approval shall not unreasonably be withheld. The following sections specify what Project actions and revisions can be undertaken without the need for amendment of the Development Agreement [and the CUP](#), and what revisions require Amendment to this Agreement and the CUP.

7.1 **Project Facility Repair, Maintenance and Replacement.** Applicant shall be permitted, without any further land use approval from the County or Amendment to this Agreement, to repair, maintain and replace the Project and its components consistent with the terms of this Agreement.

7.2 **Project and Project Area Expansion.** Except as provided in Section 7.3 below, if Applicant seeks to expand the generating capacity of the Project and the geographic scope of the Project Site or Project Area, Applicant will seek an Amendment to this Agreement and amend the CUP, if and as necessary, in accordance with this Agreement and any applicable state and local regulations in effect at the time of such amendments. The Applicant

acknowledges that further SEPA review may be required if the criteria for such is met as set forth in Kittitas County Code Chapter 15.04 (SEPA Regulations).

7.3 Authorized Changes, Enlargements, or Alterations

7.3.1. As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of the CUP and this Agreement. Any other Changes to the Project shall be processed as applicable before the BOA in accordance with KCC 17.60A.020, and before the BOCC in accordance with KCC Chapter 15A.11.

7.3.1.1. The proposed change does not add to the Project design that would result in a greater than a 5 percent increase in solar power generation over 75 MWdc of PV solar energy.

7.3.1.2. The proposed change does not increase the overall approved impervious surface on the site by more than 10 percent over the amount currently estimated for the Project.

7.3.1.3. Any resulting changes as a consequence of obtaining or complying with a federal, state, or local permit or approval, including those identified in Attachment B to this Agreement.

7.3.1.4. Other *de minimis* changes requested by the Applicant, which are reasonably consistent with the CUP.

7.3.2. Substation and Transmission Line: The Parties acknowledge that the final siting of the substation and transmission line is dependent upon site characteristics, BPA ownership and control of the subject special utilities, and BPA design requirements. Applicant shall provide the County with written notice in the event that the substation and/or transmission line will be sited in a location other than that identified on the site plan. The County agrees that any siting change of the substation and/or transmission line will constitute a minor change under paragraph 7.3 of this Agreement provided Applicant presents evidence to the County of its ownership or control over the property

where the substation and transmission line will be located, evidence that the relocation will not have a significant impact on the environment (including wildlife, cultural resources, and wetlands), and evidence that the new location will not result in greater impacts than those contemplated in the CUP approval and this Agreement.

8. Termination.

Applicant shall have the option, in its sole discretion, to terminate this Agreement prior to Substantial Completion of the Project, *Provided* such termination will not relieve the Applicant of any obligation owed the County under the terms of this Agreement and outstanding at the time of such termination. If it elects to terminate this Agreement, Applicant shall submit a Notice to this effect to Kittitas County at least thirty (30) days prior to such termination.

9. General Provisions.

9.1 Assignment. The County and Applicant acknowledge that development of the Project may involve the sale and/or assignment of all or substantially all of the assets or all or substantially all of the membership interests to third parties. In addition the County and Applicant acknowledge that Applicant and its permitted Transferees may obtain financing for all or a portion of the costs of the Project. Applicant shall have the right to assign or transfer all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder, to third parties acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant (each such third party, a "Transferee"), provided such assignments or transfers are made in accordance with the following:

9.1.1 Assignments or Transfers Requiring the Consent of the County.

Applicant may at any time enter into a written agreement with a Transferee other than those described in Sections 9.1.2 and 9.1.3 to transfer all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant, including rights, obligations and responsibilities arising hereunder (such agreement, a "Transfer Agreement"); provided that Applicant obtains the prior written consent of the County as described in this section:

9.1.1.1. Such Transfer Agreement shall not take effect unless and until the County has consented in writing to such transfer or assignment, which

consent shall not be unreasonably withheld, conditioned, or delayed. Written notice of the proposed Transfer Agreement shall be mailed, first-class, to the County at least thirty (30) days in advance of the proposed date of transfer or assignment. Failure by the County to respond within thirty (30) days after receipt of a request made by Applicant for such consent shall be deemed to be the County's approval of the Transfer Agreement.

9.1.1.2. Any Transfer Agreement shall be binding on the Applicant, the County and the Transferee. Upon approval of a Transfer Agreement by the County, the Applicant shall be released from those obligations and responsibilities assumed by the Transferee therein.

9.1.1.3. Applicant shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a Transferee pursuant to an approved Transfer Agreement. No breach or default hereunder by any person that assumes any portion of Applicant's obligations under this Agreement pursuant to an approved transfer shall be attributed to Applicant, nor shall any of Applicant's remaining rights hereunder be cancelled or diminished in any way by any such breach or default.

9.1.1.4. No breach or default hereunder by Applicant shall be attributed to any person succeeding to any portion of Applicant's rights or obligations under this Agreement, nor shall such Transferee's rights be cancelled or diminished in any way by any such breach or default.

9.1.1.5. Upon any transfer made in accordance with this Section 9.1.1 for which the County has consented, the Transferee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Applicant shall be automatically released of all liabilities and obligations under this Agreement as to that portion of its interest so transferred or assigned.

9.1.2 Collateral Assignments Without the Consent of the County.

Notwithstanding anything herein to the contrary, Applicant or any Transferee shall be permitted to collaterally assign its interest in the Project to a lender providing

financing for the Project without the consent of the County, provided that Applicant or any Transferee delivers written notice to the County at least thirty (30) days prior to the date of such collateral assignment and identifies such lender.

9.1.3 Assignments or Transfers without the Consent of the County.

Applicant may transfer or assign all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder, to third parties acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant without the consent of the County provided that:

(a) Transferee is (i) an investor-owned electric utility regulated by the Federal Regulatory Energy Commission ("FERC") and the Washington Utilities and Transportation Commission ("WUTC") or a wholly owned subsidiary of such an investor-owned electric utility, or; (ii) an entity having, at the time of transfer or assignment, a senior unsecured long term debt rating ("Credit Rating") of (1) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB- or better from Standard and Poor's or (2) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's or (3) if such entity has a Credit Rating from both Standard and Poor's and Moody's, BBB- or better from Standard and Poor's and Baa3 or better from Moody's; and

(b) Transferee agrees to be bound by the rights, obligations and responsibilities of Applicant hereunder, on and after the date of such transfer or assignment. In the event that Applicant transfers or assigns all or any portion of its interest in and to the Project in accordance with this provision, Applicant shall be released from all obligations or liabilities under this Agreement on and after the date of such transfer or assignment as to that portion of Applicant's interest so transferred or assigned.

9.2 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

9.3 Washington Law. This Agreement is entered into under the laws of the State of

Washington, and the parties hereto intend that Washington law shall apply to the interpretation hereof.

9.4 Severability. If any provisions of this Agreement are determined to be unenforceable or invalid, this Agreement shall thereafter be modified, to implement the intent of the Parties to the maximum extent allowable under law and the remainder of this Agreement shall remain unaffected and in full force and effect.

9.5 Authority. Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.

9.6 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.7 Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

9.8 Time of Essence. Time is of the essence in the performance of each and every obligation to be performed by the Parties hereto.

9.9 Staffing Agreement for County Project Costs. The Applicant will pay for County costs, including third party consultant costs, if necessary, incurred to support plan review and inspection of the Project during construction, in accordance with K.C.C. 14.04 et. al., under a County Staffing Agreement. The Staffing Agreement shall include any additional building and

other permit review and inspection costs not covered by the underlying permit fees, including those costs by CDS, Public Works Department, Public health Department, Information Services, and the County Prosecutor's Office. The Staffing Agreement shall be approved by the County as to form and content prior to construction, and such approval shall not be unreasonably withheld.

10. Notices.

10.1 Written Notice. Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission.

10.2 Addresses. Notices shall be given to the Parties at their addresses set forth below.

If to the County: Kittitas County Community Development Services
411 North Ruby, Suite 2
Ellensburg, Washington 98926
Attn: Director

CC: Kittitas County Prosecuting Attorney's Office
205 West Fifth, Room 213
Ellensburg, Washington 98926
Attn: Neil Caulkins

If to Applicant: Teanaway Solar Reserve, LLC
418 E. 1st, Suite B
Cle Elum, WA 98922

CC: Perkins Coie LLP
Attention: Patrick W. Ryan
1201 Third Ave, Suite 4800
Seattle, WA 98109
Fax: 206-359-9662

10.3 Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by Notice to the other party may designate a different address or person to which such notice or communication shall be given.

11. Default and Remedies.

No party shall be in default under this Agreement unless it has failed to perform as

required under this Agreement for a period of thirty (30) days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

11.1 Dispute Resolution Process.

11.1.1. Conference. In the event of any dispute relating to this Agreement, each Party, upon the request of the other Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Applicant shall send an Applicant's representative and any Applicant's consultant(s) with technical information or expertise related to the dispute. The parties shall, in good faith, endeavor to resolve their disputes through the Conference.

11.1.2. Mediation. If this Conference process does not resolve the dispute within the 7 day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within 45 days of the parties submitting the dispute to mediation.

In order to expedite the mediation, during the Conference process the Parties shall select the mediator. The mediator must be a neutral professional full time mediator with time available to meet with the parties within the 45 day mediation period following the 7 day Conference period.

To prepare for mediation, during the 7 day Conference period, the County will select three qualified mediators, as specified above, who are available in the following 45 days. At the end of the 7 day Conference period, if the matter has not been resolved, the Applicant shall, within the 24 hours of being given the three names select one of the

three. The parties will in good faith attempt to resolve the dispute in the 45 day mediation period.

If the dispute is not able to be resolved through the mediation process in the 45 day period, the parties may pursue their legal remedies in accordance with Washington and local law, including the revocation of the CUP under 17.60A.100 and this Agreement.

12. Indemnity.

The Project owners shall indemnify and hold harmless the County and its elected officials and employees from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever ("Claims") that are caused by or result from the negligent act or omission of Applicant's employees, officers, or agents in the operation of the Project; provided, however, that the total and cumulative obligation hereunder for all such Claims is limited to and shall not exceed five million dollars (\$5,000,000.00). In the event of concurrent negligence, Applicant shall indemnify and hold harmless the County only to the extent of Applicant's negligence, subject to the foregoing five-million-dollar limitation for any and all Claims.

13. Entire Agreement.

This Agreement, together with all Attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. Agreement is specifically intended by the Parties to supersede all prior agreements whether written or oral.

APPROVED this _____ day of _____, 2010.

BOARD OF COUNTY COMMISSIONERS
Kittitas County, Washington

Chairman, Mark McClain

Vice Chairman, Paul Jewell

Commissioner, Alan A. Crankovich

Attest:

Clerk of the Board, Julie Kjorsvik

Approved by:

Kittitas County Prosecuting Attorney, Deputy
Neil Caulkins

TEANAWAY SOLAR RESERVE, LLC,
a Wyoming limited liability company

By: _____

Name: _____

Title: _____

|

|

ATTACHMENT A: PROJECT AREA LEGAL DESCRIPTION

Contents:

Legal Description of Project Area

Date: None

Pages: 1

EXHIBIT A
LEGAL DESCRIPTION OF PROJECT AREA

All of Section 22; the North Half of the Northeast Quarter, the Northwest Quarter and the North Half of the Southwest Quarter of Section 23; and Parcel 2 of that certain Survey as recorded May 6, 2003 in Book 28 of Surveys, pages 234, 235 and 236, under Auditor's File No. 200305060025, records of Kittitas County, Washington, being a portion of the Northeast Quarter of Section 27; All in Township 20 North, Range 16 East, W.M., in the County of Kittitas, State of Washington.

**ATTACHMENT B: SEPA DETERMINATION: MITIGATED DETERMINATION OF
NONSIGNIFICANCE**

Contents:

SEPA Mitigated Determination of Nonsignificance

Date: July 15, 2010

Pages: 11

[Revised]SEPA Mitigated Determination of Nonsignificance

Date: August 11, 2010

Pages: 1



KITTTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

State Environmental Policy Act MITIGATED DETERMINATION OF NONSIGNIFICANCE

Description

Teaway Solar Reserve LLC has submitted a Conditional Use Permit application and Development Agreement to construct and operate the Teaway Solar Reserve (TSR) project. The TSR project will be constructed on an approximately 982 acre site. Approximately 477 acres of the site will be involved in land disturbance and development. The TSR project will include the following key components: solar modules; field inverters; field transformers; electrical conductors; electrical substation and switchyard; operations and maintenance (O&M) building and supervisory control and data acquisition (SCADA) system; overhead interconnection transmission line; and access and maintenance roads.

The project will be completed over a period of 2 to 3 years, with 7-to 9-month construction periods anticipated each year, weather dependent. The subject property is zoned Forest and Range. The project is proposed to generate up to 75MWdc of PV solar energy for distribution to utilities and communities. See project application materials for full description.

Proponent

Teaway Solar Reserve LLC

Location:

The property site is located approximately 4 miles northeast of Cle Elum, Washington, in Township 20N, Range 16E, within Sections 22, 23, and 27. The site is located on the eastern slopes of the Cascade Mountains on Cle Elum Ridge, which runs generally from east to west at elevations ranging from approximately 2,200 to 2,600 feet. The Teaway River is approximately 1 mile to the northeast of Cle Elum Ridge. The site is accessed from Highway 970 by way of County roads such as Red Bridge Road, and private roads such as Loping Lane. The site is also accessed via Wiehl Road, which is a dedicated public road but is not maintained by the County; it is maintained privately. The property is located in all of Section 22; the North Half of the Northeast Quarter, the Northwest Quarter and the North Half of the Southwest Quarter of Section 23; and Parcel 2 of that certain Survey as recorded May 6, 2003 in Book 28 of Surveys, pages 234, 235 and 236, under Auditor's File No. 200305060025, records of Kittitas County, Washington, being a portion of the Northeast Quarter of Section 27; All in Township 20 North, Range 16 East, W.M., in the County of Kittitas, State of Washington.

Lead Agency:

Kittitas County Community Development Services

The lead agency for this proposal has determined that the proposal will not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (c) and WAC 197-11. This decision was made after review of a expanded SEPA environmental checklist and

other information on file with the lead agency, after considering voluntary mitigation measures which the lead agency or the applicant will implement as part of the proposal, and after considering mitigation measures required by existing laws and regulations that will be implemented by the applicant as part of the Kittitas County permit process. The responsible official finds this information reasonably sufficient to evaluate the environmental impact of this proposal. This information is available to the public on request.

Based on the project specific analysis, the lead agency for this proposal has also determined that certain mitigation measures are necessary in order to issue a Determination of Non-Significance for this proposal. Failure to comply with the mitigation measures identified hereafter will result in the issuance of a Determination of Significance (DS) for this project. The mitigation measures are listed below. Also note the following:

Notes:

- A. This finding is based on review of the Conditional Use Permit Application Supplement submitted February 2010; an environmental checklist dated February 22, 2010; *Sensitive Species Report (Attachment A)* prepared by CH2MHill dated February 2010; *Wetland Delineation Report (Attachment B)* prepared by CH2MHill dated February 2010; *Cultural Resources Report (Attachment C)* (privileged and confidential: restricted distribution) prepared by CH2MHill dated August 2009; *Geology and Soil Hazards Evaluation(Attachment D)* prepared by CH2MHill dated February 2010; *Fugitive Dust Control Plan (Attachment E)* prepared by CH2MHill dated February 2010; *Hydrologic Analysis (Attachment F)* prepared by CH2MHill dated February 2010; *Vegetation Management Plan (Attachment G)* prepared by CH2MHill dated February 2010; *Wildlife Mitigation Plan (Attachment H)* prepared by CH2MHill dated February 2010 and related *Mitigation Agreement Between WSDFW and TSR*, dated April 18, 2010; *Transportation Road Plan (Attachment I)* prepared by CH2MHill dated February 2010; Figures *(Attachment J)* referenced in the checklist prepared by CH2MHill; Photographs of Solar Equipment *(Attachment K)* supplied by CH2MHill; *Potential Visual Impact Assessment (Attachment L)* prepared by CH2MHill dated February 2010; *Fire Protection Agreement (Attachment M)* dated February 17, 2010; *Economic Impact Analysis (Attachment N)* prepared by CH2MHill dated October 2009; *Public Outreach* efforts by Teanaway Solar Reserve, LLC *(Attachment O)*; additional environmental analysis submitted on June 2, 2010 and other documents on file.
- B. Issuance of this threshold determination does not constitute approval of the proposal for construction. This proposal will require review and approval by Kittitas County (Building Permit and associated permits/approvals) and will be reviewed for compliance with all applicable Kittitas County codes which regulate development activities, including but not limited to the Zoning Code, Uniform Fire and Building Codes, Road Standards, Surface Water Design Manual, and the Sensitive Areas Regulations. This proposal will also require approvals by other agencies as described in the SEPA Staff Report. A summary of various approvals and code requirements which the applicant must obtain and/or will implement are described in the SEPA staff analysis report dated July 15, 2010. These approvals and requirements are not inclusive, as some approvals and code requirements can only be confirmed and/or reviewed upon submittal of construction permits.
- C. The applicant shall abide by the SEPA mitigation measures, as stated in the Development Agreement between Kittitas County and Teanaway Solar Reserve, LLC.
- D. Voluntary mitigation measures which the applicant will implement as part of the proposal are listed in the February 22, 2010 environmental checklist and attachments, as supplemented, and are further described in the SEPA staff analysis report dated July 14, 2010. These mitigation measures are in addition to requirements that will be implemented through Kittitas County code compliance permit review. Prior to construction permit issuance, these voluntary mitigation measures will be incorporated as conditions of development.

I. AIR

1. The applicant has submitted a *Fugitive Dust Control Plan* (February 2010), which has been reviewed by the Department of Ecology. The proposed project shall be constructed and operated in accordance with the *Fugitive Dust Control Plan* and other application documents, such as the *Vegetation Management Plan*. In addition, following optional mitigation measures have been suggested by Ecology to further minimize adverse air quality impacts:
 - a. Fully implement the no-burn option described in the *Vegetation Management Plan*, which includes making beneficial use of all organic matter being displaced and ensuring no waste disposal into the atmosphere or breathing air. If burning is to occur, a permit will be required from the Department of Ecology, Central Regional Office – Air Quality.
 - b. Seek and employ the cleanest possible mobile source technology reasonably available especially for construction vehicles, including using low emission vehicles wherever possible, keeping all vehicles tuned-up and running well, using the lowest sulfur fuel available, and eliminating unnecessary idling.
2. The current proposal does not contain assembly or manufacturing components. If at any time the project is changed to include these components, the applicant shall contact the Department of Ecology to discuss emissions and permit requirements. Air quality permits would be required prior to construction, and the Department of Ecology wishes to advise the applicant that sufficient lead time should be considered for any additional review and permit processing.

II. WATER (Surface and Ground)

1. On-site stormwater management that conforms to the specifications of the *2004 Stormwater Management Manual for Eastern Washington* is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. Stormwater system designs shall be prepared and stamped by a civil engineer licensed in the State of Washington. The stormwater system design shall be presented to Public Works and approved by the County Engineer prior to permit issuance. The stormwater system construction shall be certified by a licensed engineer and is required prior to issuance of a building permit. Stormwater plans shall be submitted in accordance with KCC 12.06 and 12.08.

III. PLANTS

1. According to the *Mitigation Agreement Between Washington State Department of Fish and Wildlife and Teanaway Solar Reserve LLC*, TSR shall control the spread of noxious weeds caused by the Project. Prior to construction, TSR shall present a Noxious Weed Control Plan to the Kittitas County Noxious Weed Control Board for review and approval.
2. No later than August 31st, 2010, the applicant shall submit to the County a *Final Draft Tree Planting Plan* based on review comments from the Technical Advisory Committee on the *Draft Tree Planting Plan*. Following the TAC meeting tentatively scheduled for September 2010, at which the *Final Draft Tree Planting Plan* will be discussed, the applicant shall submit the *Final Tree Planting Plan* for review and approval by the County prior to building permit issuance.

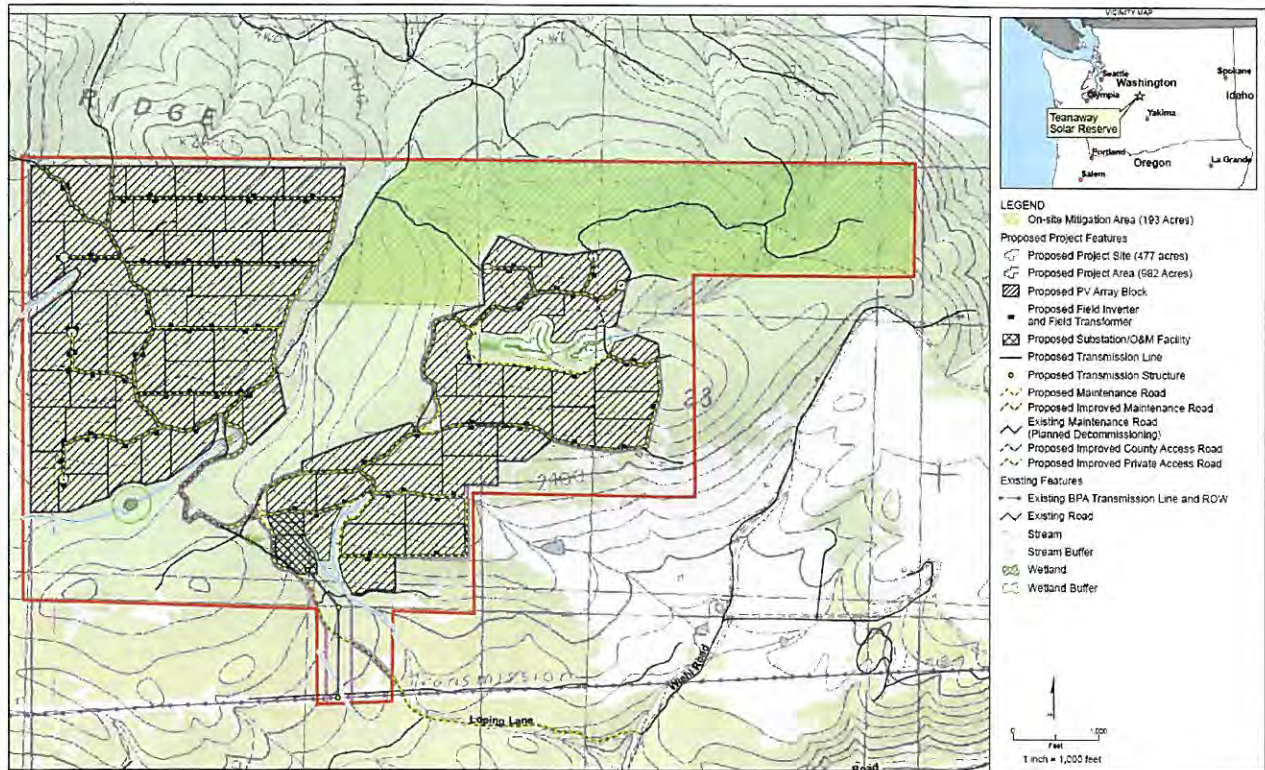
IV. ANIMALS

As a voluntary measure, TSR agreed to develop mitigation under *The Washington Department of Fish and Wildlife Wind Power Guidelines* (April 2009) ("*Wind Power Guidelines*") where feasible even though the Project is a solar facility. The WDFW Mitigation Agreement between TSR and WDFW was also developed pursuant to the *Wind Power Guidelines*. The WDFW Mitigation Agreement and applicant's voluntary mitigation contain the following requirements pertaining to animals:

1. The applicant has conducted sensitive species surveys to identify potential impacts to plants and animals. Pursuant to the *Sensitive Species Surveys for the Teanaway Solar Reserve, Kittitas County, Washington* (February 2010), the applicant shall implement Best Management Practices wherever surface disturbance occurs during construction to avoid and reduce temporary and permanent impacts to wildlife to the extent practicable. In the event that a state or federally listed threatened or endangered wildlife species is observed during project development, work will be halted immediately and a qualified biologist notified.

On-Site Mitigation (Animals)

2. TSR will permanently impact 477 acres of Class II habitat, requiring a mitigation value of 2:1, or 954 acres, under *The Washington Department of Fish and Wildlife Wind Power Guidelines* (April 2009) ("*Wind Power Guidelines*"). To satisfy this mitigation in part, TSR will protect and preserve from further development, for the life of the project, a Category II area on-site of approximately 193 acres of similar elk habitat within the proposed Project Area identified as "Mitigation Area" below and in Figure 3 of the *Teanaway Solar Reserve Wildlife Mitigation Plan, Kittitas County, Washington* (February 2010).



The amount of on-site replacement habitat (193 acres) may be increased as a result of a pre-construction on-site habitat analysis jointly conducted by WDFW and the TSR qualified biologist. The 193 acre on-site mitigation and any additional acreage approved for on-site mitigation shall be preserved and protected

through a conservation easement with a non-governmental organization from further development for as long as a solar energy project remains within the project area, regardless of who holds the lease or owns the property. The conservation easement must be in a form approved by WDFW and must be completed and recorded before construction begins on the Project. If TSR is unsuccessful in recording the conservation easement for the on-site mitigation, TSR will either contribute money to a mutually acceptable third party that owns or will purchase mitigation habitat or pay WDFW a fee as provided for in "Off-Site Mitigation" below.

3. Several existing roads located within the northeast parcel which are not used to access WDNR property, will be restricted for general use to minimize human impacts on elk.
4. To reduce impacts to elk, visual barriers will be created and reasonably maintained between (1) the array fields and Mitigation Area, and (2) along the corridor between the arrays. These barriers will consist of local native coniferous trees (ponderosa pine and Douglas fir) placed and maintained in such proximity and density to provide a visual screen approximately 8' or greater in height within 6-8 years after planting. It must be noted that this is a vegetation requirement independent of tree stocking criteria required by the Washington Department of Natural Resources, and that soils, weather, elevation, drainage, planting density, nutrients, fire, wind and other factors heavily influence the rate of growth and mortality of trees and other vegetation. Accordingly, TSR cannot guarantee that any vegetation barrier will block all views of the Project at any particular location or time. WDFW does not oppose any trees used for the visual barriers counting towards fulfillment of TSR's 3:1 tree replacement mitigation for the CUP. The Technical Advisory Committee shall guide in the location and placement of the trees, provided that creation of the visual barriers cited above shall be the first priority of the tree replacement program.
5. TSR shall design and engineer the Project to avoid and/or minimize impacts on elk and elk habitat. The Project already includes, or shall include, the following design features and commitments:
 - a. The Project footprint is designed to avoid, or minimize impacts on, possible migration routes previously identified by landowners and densely forested winter habitat along the Teanaway River corridor.
 - b. No Project facilities will be placed within any riparian corridor, wetland, or stream. Stream buffers will be flagged and clearly marked to prevent inadvertent clearing by construction crews.
 - c. Artificial lighting will be directed on Project facilities to avoid light disturbance to surrounding wildlife mitigation areas and potential wildlife corridors.
 - d. Electrical conductors from the array field to the inverters will be supported above-ground within the solar module framework and installed per National Electrical Code standards. Collector lines between field transformers and the substation will be below grade.
 - e. Overall site selection is designed to avoid all areas with documented endangered, threatened species.
 - f. No fencing will be erected along the boundary of the Project Area to help maintain access for large mammals and minimize disruption of movement or migration of wildlife.
 - g. TSR will not place a planned solar panel between the two major solar array fields in the southwest portion of the Project Area to provide opportunity for wildlife movement between the two major arrays. Vegetation within the corridor will not be altered.
 - h. During the initial timber clearing process, TSR will temporarily stockpile (up to one year), load and haul up to 100 trees greater than 14" dbh cut from the project site for use by WDFW or third party in stream projects within the upper Yakima River Basin. The trees will remain in lengths of 40-45 feet wherever possible. WDFW or third party will be responsible for identifying a location for TSR to haul and deposit the trees, and shall provide TSR notice requesting the trees within the one year stockpiling period.
 - i. TSR shall install filter bags, weed free mulches, sediment fences, sediment filter fabric traps, and graveled construction accesses as necessary for erosion control. The primary means of erosion

control will involve methods that preclude initial mobilization of fines and sediment rather than attempting to catch or trap it after mobilization. Straw mulches and similar mechanisms will be used to prevent erosion and mobilization of sediment contaminated runoff.

- j. TSR shall ensure that the hydrology of the seasonal streams on-site is not altered.
- k. TSR shall reseed areas temporarily affected by construction activities using seed sources of native biotypes. Where installed, erosion control mulches, sediment fences and check dams will remain in place until the affected areas are well vegetated and the risk of erosion has been eliminated.
- l. During project construction, vehicle servicing and refueling will occur in a temporary staging area equipped for fuel or oil spills.
- m. Onsite vehicles used during construction, operation, maintenance, and decommissioning will be monitored for petroleum leaks.
- n. Spills will be cleaned up immediately upon discovery and reported to the appropriate agency. Equipment found to be visibly leaking petroleum products will not be used at the project site until repaired.
- o. Any hazardous waste material generated by project construction or operation will be disposed of in a manner specified by local and state regulations or if there are no applicable regulations, according to the manufacturer's recommendations.
- p. Cleanup materials will be kept readily available onsite, either at the equipment storage area, O&M building or on the construction contractor's trucks.
- q. Speed limits on access roads will be set at 20 m.p.h. in order to minimize vehicle strikes on wildlife.
- r. The Project site will be restored to approximate or improved pre-project conditions as provided in TSR's Development Agreement. Surrounding lands with similar habitat will be used as reference sites to guide restoration. The project site will be revegetated with plant species and densities representative of undisturbed areas adjacent to the site.

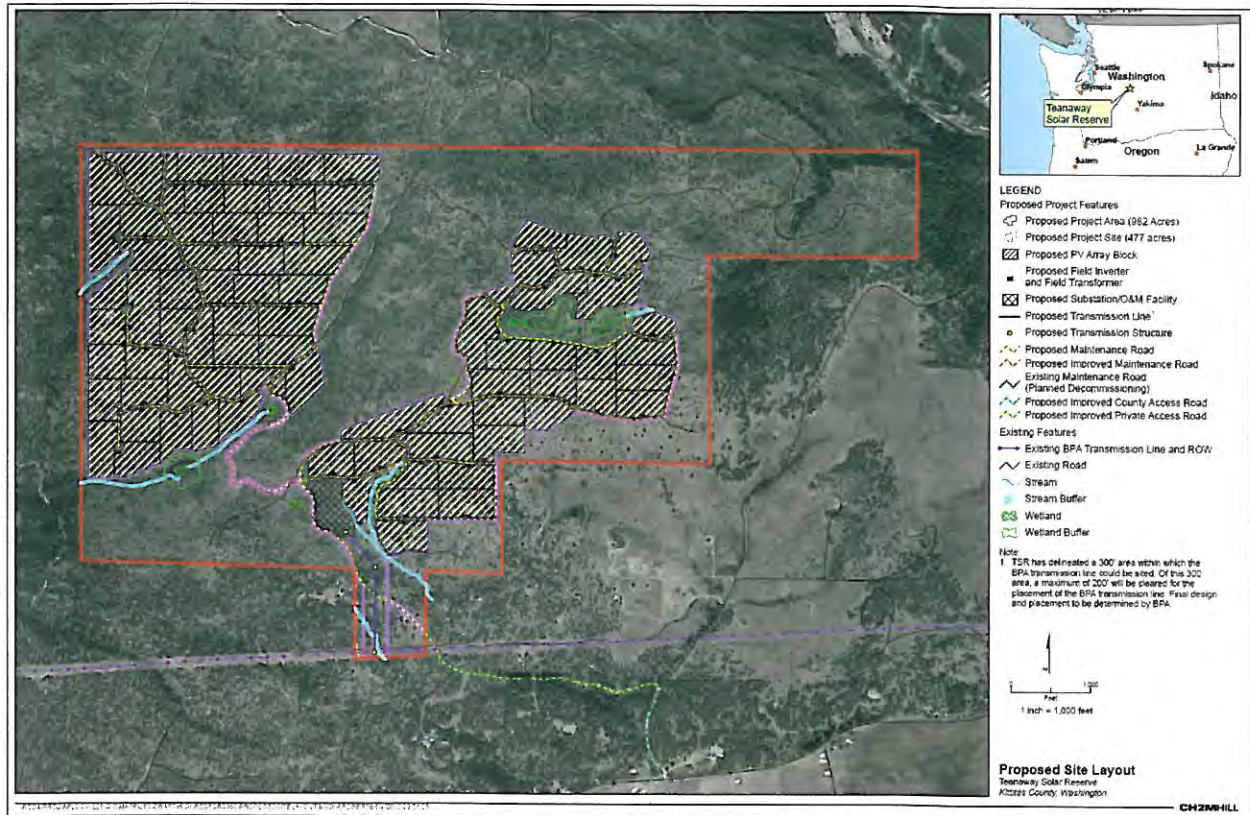
Off-Site Mitigation (Animals)

- 6. The *Wind Power Guidelines* suggest two fundamental mitigation approaches for mitigating permanent impacts to habitats by wind energy projects: Mitigation "by fee" and, secondarily, acquisition of replacement habitats. The Project will permanently impact 477 acres of Class II habitat, requiring a mitigation value of 2:1, or 954 acres, under the *Wind Power Guidelines*. As provided above, a maximum of approximately 193 acres of the remaining 505 undeveloped acres within the Project Area will be considered mitigation habitat; *provided* that the amount of on-site replacement habitat (193 acres) may be increased as a result of a pre-construction on-site habitat analysis jointly conducted by WDFW and a TSR qualified biologist, and provided that this mitigation habitat is not altered or developed, and is managed exclusively for fish and wildlife benefit as long as any form of type of solar energy project remains on the 477 acres referenced above. Moreover, this 193 acre on-site mitigation and any additional acreage set aside for on-site mitigation must be secured by a conservation easement as provided for above (On-Site Mitigation). In accordance with the *Guidelines*, TSR will provide off-site mitigation for the number of remaining acres necessary to satisfy its 2:1 habitat mitigation (Mitigation Obligation) through fee or habitat acquisition.
- 7. Consistent with the *Wind Power Guidelines*, TSR may satisfy its remaining Mitigation Obligation either by purchasing mutually acceptable mitigation habitat and deeding it to WDFW or a mutually acceptable third party, contributing money to a mutually acceptable third-party that owns or will purchase mitigation habitat, or by paying to WDFW a fee of one-thousand four hundred fifty dollars (\$1450.00) per acre plus \$30,000.00 or the actual funds necessary, for appraisal costs, a hazardous waste assessment, closing costs, and transaction time invested by WDFW real estate staff. WDFW and TSR agree in utilizing any of the proceeding approaches for TSR to satisfy habitat permanently impacted by the Project shall be a priority. The mitigation proposed by TSR will be subject to WDFW's final approval and such approval will not be unreasonable withheld. If TSR has not satisfied its mitigation obligation prior to commencing construction, TSR will

provide a letter of credit, bond, or other financial security to WDFW in an amount and form sufficient to provide for its Mitigation Obligation prior to commencing operation of the Project.

V. LAND USE

1. The width and location of the transmission corridor, the location of the substation facility, and the southeasterly edge of the southern solar module field shall be located no closer to residences than shown on the proposed site layout below.



2. The northern solar module field shall be setback at least 100 feet from adjacent properties zoned Commercial Forest.

VI. AESTHETICS

1. Consistent with the *Tree Planting Plan*, new trees will be planted at visually strategic locations around the perimeter of the site that could provide visual screening to power lines, sub-stations, and other project components, and to screen views or help “soften” views of the project.

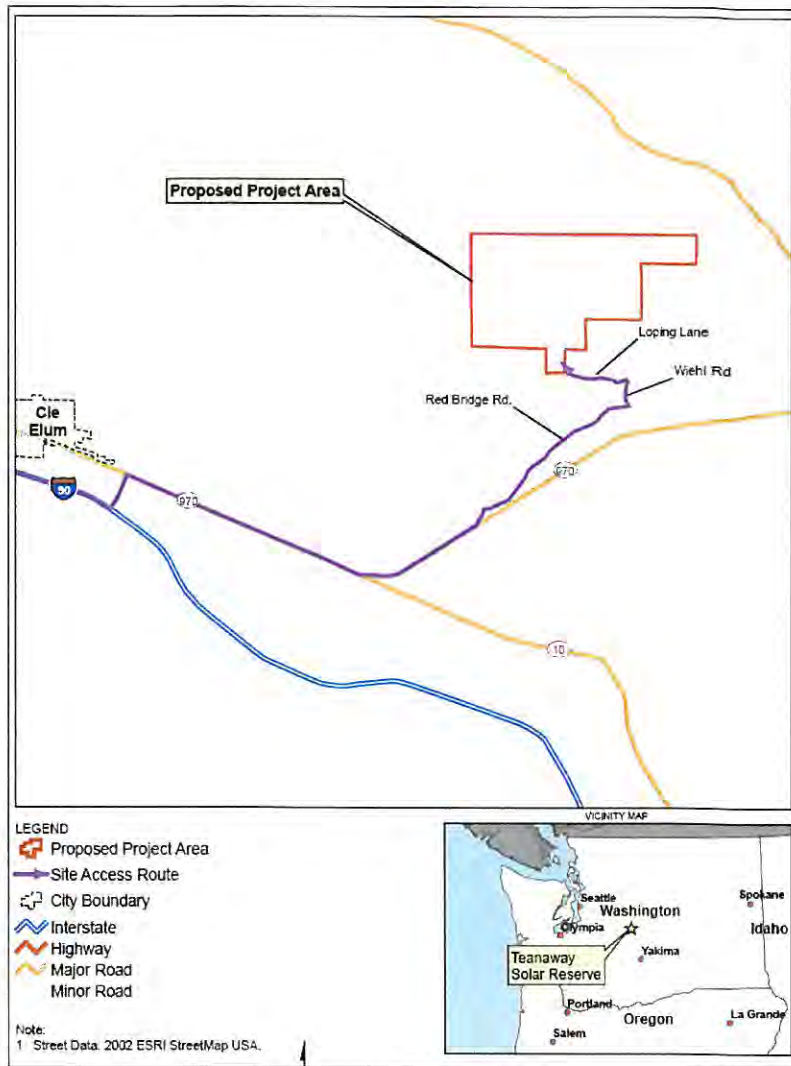
VII. HISTORIC AND CULTURAL PRESERVATION

1. The project shall be constructed and operated pursuant to the August 2009 *Cultural Resources Report*, referenced in the expanded SEPA Checklist.

VIII. TRANSPORTATION

Construction Mitigation (Excluding Site Preparation—SEPA Checklist page 10-11)

1. Construction traffic shall access Red Bridge Road from the southwest entrance, directly from SR 970. If road closures along this access route occur, Public Works shall be consulted to establish a temporary detour route.
2. The applicant shall prepare a *Traffic Management Plan* with the construction contractor outlining steps for minimizing construction traffic impacts. The *Traffic Management Plan* shall be submitted to the Department of Public Works and WSDOT for review and approval prior to construction.
3. The applicant shall prepare a Construction Road Signage Plan for Red Bridge Road and Wiehl Road that conforms to the most recent edition of the Manual on Uniform Traffic Control Devices. The Construction Road Signage Plan shall be submitted to the Department of Public Works prior to construction for review and approval.
4. The applicant shall assist in minimizing access disruptions to residents along roadways impacted by construction activities. Five days prior to the commencement of road construction, the applicant shall provide notice by mail of upcoming construction activities to landowners gaining access from the portion of the "Site Access Route" extending from the intersection of Red Bridge Road and Highway 970 northeastward to the intersection of Loping Land and the TSR onsite access point, as depicted below on the next page.



5. When hauling slow or oversized wide loads, appropriate vehicle and roadside signing and warning devices shall be deployed per the Traffic Management Plan. Pilot cars shall be used as WSDOT dictates, depending on load size and weight. WSDOT requirements shall also apply to county roads.
6. The applicant shall encourage carpooling for the construction workforce to reduce traffic volume.
7. The applicant shall provide Detour and Warning Sign Plans to the Department of Public Works in advance of any traffic disturbances. When temporary road closures cannot be avoided the applicant shall post "To Be Closed" signs and place a legal notice in the newspaper a minimum of five working days prior to the closing. The types and locations of the signs shall be shown on a detour plan. A Detour Plan must be submitted to the Department of Public Works at least ten working days prior to the proposed closure. No County roadway shall be closed until after the Detour Plan has received approval from the Department of Public Works. In addition, at least five working days prior to the closing the contractor must provide written notification to local fire, school, law enforcement authorities, postal service and any other affected persons as directed by the Department of Public Works.
8. The applicant shall maintain one travel lane at all times when construction occurs on Loping Lane or Wiehl Road. A flagger shall be employed at all times when only one travel lane is open.

9. The applicant shall employ flaggers as necessary to direct traffic when large equipment is exiting or entering public roads to minimize risk of accidents.
10. The applicant shall provide a roadway pavement analysis and visually inspect the condition of pavement and the quantity and severity of pavement distresses utilizing a county approved rating system and a video, prior to and immediately after each phase of construction, including substation construction. The analysis shall document roadway and shoulder conditions before and after construction and shall include Red Bridge Road east of Wiehl Road. The applicant shall be responsible for restorative work made necessary by the project.
11. Loping Lane and Wiehl Road shall be constructed to meet the minimum requirements of the IFC as adopted by the County, prior to receiving building permit approval.

Project Mitigation

12. Loping Lane and Wiehl Road shall be constructed and/or repaired as required below. Prior to receiving permit approval, a bond shall be submitted which covers 135% of the engineer's estimate of the full costs of road construction requirements and repairs and follows all requirements of KCC 12.01.150.
 - a. After construction is completed, Loping Lane shall be constructed and/or repaired to comply with International Fire Code standards. The road must be certified by a civil engineer licensed in the state of Washington prior to release of the bond.
 - b. Wiehl Road must be constructed to 24-foot total paved width, or as approved by the County Engineer from the intersection at Red Bridge Road to the intersection with Loping Lane. All road designs shall be engineered as specified by AASHTO A Policy on Geometric Design of Highways and Streets, 5th edition (2004). Engineering justification shall be included with the design for proposed total pavement width less than 24 feet. The road must be certified by a civil engineer licensed in the state of Washington prior to release of the bond.
13. Within the project boundaries, the primary access roads shall be constructed with an all-weather surface and be a minimum of 20 feet in width. Secondary roads shall be a minimum of 16-foot wide. A turnout shall be provided every 1000 feet, or if the segment of road is less than 2000-feet long, the turnout shall be located in the middle of that segment. Each turnout shall provide at least 5 feet of additional driving surface for a length of 50 feet. All changes to the road layout must be approved by County staff.
14. The turning radius at all corners shall be a minimum of 28 feet. Cul-de-sacs shall have a minimum driving surface radius of 50 feet.
15. Primary access roads throughout the site shall be kept clear of snow for emergency access.


IX. PUBLIC SERVICES

1. A 50' cleared area shall be maintained around the solar module fields, with an additional 50' of area with reduced natural vegetation. Trees greater than 4" in diameter are to be limbed up, ladder fuels are to be removed, dead fall is to be removed, etc.
2. Emergency fire, supportive medical, and other standard emergency response services shall be provided to the Teanaway Solar Reserve by Fire District 7, according to the Fire Protection Agreement (Teanaway Solar

Reserve) dated April 17th, 2010. Any future amendments to this agreement shall be reviewed by the Fire Marshal's Office prior to adoption.

3. Pursuant to the Fire Protection Agreement, the applicant will seek annexation of the Teanaway Solar Reserve property into Fire District 7 following permit approvals. The applicant shall provide a copy of the petition for Annexation of the Property to the District No. 7, and any other subsequent proceedings regarding the annexation process.

**Responsible
Official:**


Dan Valoff

Title:

Staff Planner

Address:

Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7506 Fax: (509) 962-7682

Date:

July 15, 2010

This Mitigated DNS is issued under WAC 197-11-355, WAC 197-11-390 and Kittitas County Code (KCC) Chapter 15.04; the lead agency will not act on this proposal for 10 working days. Any action to set aside, enjoin, review, or otherwise challenge this administrative SEPA action's procedural compliance with the provisions of Chapter 197-11 WAC shall be commenced on or before 5:00 pm, July 29, 2010.

Pursuant to Chapter 15A.04.020 KCC, this MDNS may be appealed by submitting specific factual objections in writing with a fee of \$500.00 to the Kittitas County Board of Commissioners, Kittitas County Courthouse Room 110, Ellensburg, WA 98926. Timely appeals must be received within 10 working days, or no later than 5:00 PM, July 29, 2010. Aggrieved parties are encouraged to contact the Board at (509) 962-7508 for more information on appeal process.



KITITITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITITITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

State Environmental Policy Act MITIGATED DETERMINATION OF NONSIGNIFICANCE

August 11, 2010

III. PLANTS

1. According to the *Mitigation Agreement Between Washington State Department of Fish and Wildlife and Teanaway Solar Reserve LLC*, TSR shall control the spread of noxious weeds caused by the Project. Prior to construction, TSR shall present a Noxious Weed Control Plan to the Kittitas County Noxious Weed Control Board for review and approval. The Noxious Weed Control Plan shall incorporate and respond to the August 9, 2010 comments from the Kittitas County Noxious Weed Control Board.

VII. HISTORIC AND CULTURAL PRESERVATION

1. The project shall be constructed and operated pursuant to the August 2009 *Cultural Resources Report*, referenced in the expanded SEPA Checklist. Specifically, shovel testing shall be carried out in areas deemed likely to contain cultural materials, shown in Figure 5-1 in the applicant's *Cultural Resources Report*. Approximately 85 acres of the proposed site are suitable for limited shovel testing. Shovel testing shall take place prior to any land disturbing activity, construction, or installation.
- +2. All ground disturbing activity shall be monitored by a person qualified to recognize archaeological resources. In the event an archaeological discovery is made, operations in the immediate vicinity of the discovery shall stop immediately until the discovery is assessed and any necessary protection measures are implemented.

ATTACHMENT C: CONDITIONAL USE PERMIT

Contents:

Findings of Fact and Decision

Teaway Reserve – Conditional Use Permit CU-09-0005

Date: August 12, 2010

Pages: 5



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

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Fax (509) 962-7682

"Building Partnerships – Building Communities"

Findings of Fact and Decision Teanaway Solar Reserve - Conditional Use Permit CU-09-00005

Applicant: Teanaway Solar Reserve, LLC

Project: Teanaway Solar Reserve

Location: The project site is located approximately 4 miles northeast of Cle Elum, Washington, in Township 20N, Range 16E, within Sections 22, 23, and 27. The site is located on the eastern slopes of the Cascade Mountains on Cle Elum Ridge, which runs generally from east to west at elevations ranging from approximately 2,200 to 2,600 feet. The Teanaway River is approximately 1 mile to the northeast of Cle Elum Ridge. The site is accessed from Highway 970 by way of County roads such as Red Bridge Road, and private roads such as Loping Lane. The site is also accessed via Wiehl Road, which is a dedicated public road but is not maintained by the County; it is maintained privately. The property is located in all of Section 22; the North Half of the Northeast Quarter, the Northwest Quarter and the North Half of the Southwest Quarter of Section 23; and Parcel 2 of that certain Survey as recorded May 6, 2003 in Book 28 of Surveys, pages 234, 235 and 236, under Auditor's File No. 200305060025, records of Kittitas County, Washington, being a portion of the Northeast Quarter of Section 27; All in Township 20 North, Range 16 East, W.M., in the County of Kittitas, State of Washington.

This matter having come before the Kittitas County Board of Adjustment upon the above referenced Conditional Use Application from Teanaway Solar Reserve, LLC, land lessee, the Board of Adjustment makes the following Findings of Facts, Conclusions at Law and Decision related to the above referenced matter:

I. FINDINGS OF FACT

General Description of Proposal

1. Teanaway Solar Reserve LLC ("the applicant" or "TSR"), has submitted a Conditional Use Permit application to construct and operate the Teanaway Solar Reserve ("the project"). The project includes the following key components: solar modules; field inverters; field transformers; electrical conductors; electrical substation and switchyard; operations and maintenance (O&M) building and supervisory control and data acquisition (SCADA) system; overhead interconnection transmission line; and access and maintenance roads.
2. The Teanaway Solar Reserve will be constructed on an approximately 982 acre site, though only up to 477 acres will be involved in land disturbance and development. The remaining acres are currently undeveloped open space. Approximately 193 acres onsite will be preserved with a conservation easement as part of the Applicant's wildlife mitigation plan, and an open corridor will be maintained to allow for wildlife migration through the site.

3. The project will be completed over a period of 2 to 3 years, with 7-to 9-month construction periods each year, weather dependent.
4. The project is proposed to generate up to 75MWdc of PV solar energy for distribution to utilities and communities in the region.
5. The Comprehensive Plan's Land Use Element designates the subject parcel as Rural.
6. The subject property is zoned Forest and Range. The surrounding properties are zoned Commercial Forest, Forest and Range, and Rural-3.
7. The purpose and intent of the Forest and Range zone is to provide for areas of Kittitas County wherein natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged.
8. The solar farm is considered a "Major Alternative Energy Facility" (KCC 17.61.010.9) and certain components of the solar farm (overhead transmission line and substation) are considered "Special Utilities" (KCC 17.61.010.2). According to the Kittitas County Code a "Major Alternative Energy Facility" and "Special Utilities" are allowed with a Conditional Use Permit in the Forest and Range zoning district, subject to the conditions set forth in Chapter KCC 17.60A Conditional Uses and KCC 17.61 Utilities. KCC 17.61.020.4; 17.61.020.6.
9. An administrative site analysis was completed by the staff planner in compliance with Kittitas County Code Title 17A, Critical Areas. Wetlands, wildlife habitat areas, and geologically hazardous areas were identified onsite.

Procedural Background for the Subject Application

10. On August 18, 2009 Teanaway Solar Reserve, LLC ("TSR" or "the applicant") submitted to Kittitas County Community Services Department ("CDS") an application for a Conditional Use Permit ("CUP"), a draft Development Agreement ("DA") for the project, and an expanded SEPA Environmental Checklist dated August 14, 2009. The expanded SEPA Checklist included a *Sensitive Species Report*; a *Wetland Delineation Report*, a *Cultural Resources Report*, and a *Zone of Visual Influence Memorandum*.
11. On August 22, 2009 the County deemed the application complete and sent a letter to the applicant stating this conclusion.
12. On September 3, 2009 a Notice of Application was issued. This notice was mailed to government agencies, adjacent property owners, and the applicant. The public notice period lasted from September 3, 2009 to September 18, 2009. A notice of application was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. Written comments were received and included in the record for consideration.
13. On September 2, 2009, the applicant's authorized agent signed an Affidavit of Posting, confirming that in accordance with Kittitas County Code 15A.03.110, this project was accurately posted with the "Land Use Action" sign as provided by Community Development Services. The Affidavit of Posting was returned to the planner and is included as part of the record.
14. The County reviewed comments with the Applicant and requested that additional studies addressing issues raised by the comments be submitted by February 22, 2010.

15. In February 2010, TSR supplemented its CUP application and Expanded SEPA checklist with additional reports and information per the County's request including, but not limited to, a Geology and Soils Hazard Evaluation, a Fugitive Dust Control Plan, a Vegetation Management Plan, a Hydrologic Analysis, a Wildlife Mitigation Plan, and a Transportation and Road Plan.
16. The Applicant submitted additional hydrology and stormwater modeling as well as executed agreements between the Applicant and WDFW and the Kittitas County Fire Protection District 7 in June of 2010.
17. Based upon a review of these materials, on July 15, 2010 the County issued a SEPA Mitigated Determination of Non-significance (MDNS). The Board finds that the notice of said determination was provided to all required parties of record pursuant to 43.21C RCW and that said notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. The last day to appeal this decision was July 29, 2010 at 5:00 PM.

Conduct of Hearing

18. On August 11, 2010 a consolidated open record hearing was held to consider the SEPA Appeal and the underlying Conditional Use Permit. Testimony was taken from those persons present who wished to be heard. On July 15, 2010, due notice of the CUP public hearing was given as required by law, and the necessary inquiry was made into the public interest to be served by this proposed project.
19. The public hearing was conducted in the standard manner for a Board of Adjustment consolidated hearing to consider an application for conditional use permit. County staff presented an overview of the project and summarized its Staff Reports on the CUP, including the recommended conditions of approval. The applicant made their presentation requesting approval of the CUP. Public testimony was taken from 18 citizens.

Conditional Use Permit

20. The Board of Adjustment finds that the proposed development has met the requirements of KCC 17.60A.010 Review criteria—Conditional uses, which include the following:
 1. The Board of Adjustment shall determine that the proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
 2. The Board of Adjustment shall determine that the proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that (1) it will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or (2) that the applicant shall provide such facilities or (3) demonstrate that the proposed use will be of sufficient economic benefit to offset additional public cost or economic detriment. (Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)
21. The Board of Adjustment finds that the proposed development has met the requirements of KCC 17.61.030 Review Criteria—Special utilities and associated facilities, which include the following:
 1. The board of adjustment shall determine that adequate measures have been undertaken by the proponent of the special utility and/or associated facility to reduce the risk of accidents caused by hazardous materials.

2. The board of adjustment, as required by existing statutes, shall determine that the proposed special utility and/or associated facilities are essential or desirable to the public convenience and/or not detrimental or injurious to the public health or safety, or to the character of the surrounding neighborhood.

3. The board of adjustment shall determine that the proposed special utility and/or associated facilities will not be unreasonably detrimental to the economic welfare of the county and/or that it will not create excessive public cost for public services by finding that: (a) It will be adequately serviced by existing services such as highways, roads, police and fire protection, emergency response, and drainage structures, refuse disposal, water and sewers, and schools; or (b) The applicant shall provide such services or facilities.

4. Special utilities and/or associated facilities as defined by this chapter shall use public rights-of-way or established utility corridors when reasonable. Although Kittitas County may map utility corridors, it is recognized and reaffirmed that the use of such corridors is subject to conditional use approval and just compensation to the landowner for the use of such corridor. While a utility corridor may be used for more than one utility or purpose, each utility or use should be negotiated with the landowner as a separate easement, right-of-way, or other agreement, or other arrangement between the landowner and all owners of interests in the property. Any county map which shows utility corridors shall designate such corridors as "private land closed to trespass and public use" where such corridors are on private land. Nothing in this paragraph is intended to conflict with the right of eminent domain.

5. The board of adjustment shall consider industry standards, available technology, and proposed design technology for special utilities and associated facilities in promulgating conditions of approval.

6. The construction and installation of utilities and special utilities may necessitate the importation of fill material which may result in the displacement of native material. The incidental generation of earthen spoils resulting from the construction and/or installment of a utility or special utility, and the removal of said material from the development site shall not require a separate zoning conditional use permit.

7. The operation of some utilities and special utilities identified within this chapter may necessitate unusual parcel configurations and/or parcel sizes. Such parcels: (a) Need not conform with applicable zoning requirements; provided, they comply with the procedures provided in KCC Title 16, Subdivisions, and so long as used for a utility or special utility; (b) Are not eligible for any other use or any rights allowed to nonconforming lots in the event the utility or special utility use ceases; (c) Shall continue to be aggregated to the area of the parent parcel for all other zoning and subdivision requirements applicable to the parent parcel. (Ord. 2001-12)

22. According to KCC 17.60A.020, in permitting conditional uses the Board of Adjustment may impose such conditions as it deems necessary to protect the best interests of the surrounding property or neighborhood or the county as a whole. The Board of Adjustment grants this Conditional Use Permit subject to the following conditions are required for approval of the Conditional Use Permit.

1. All development, design and construction shall comply with Kittitas County Code, Kittitas County Zoning and the 2006 International Fire and Building Codes, including those mitigation measures listed as "Code Mitigation" in the SEPA Staff Report, dated July 14, 2010.
2. All development, design and construction shall comply with those mitigation measures listed as "Voluntary Mitigation" in the SEPA Staff Report, dated July 14, 2010.


3. All development, design and construction shall comply with the SEPA mitigation measures listed in the MDNS, dated July 15, 2010.
4. The applicant shall enter into a Development Agreement with the Kittitas County Board of County Commissioners.

II. DECISION

The Conditional Use Permit is approved.



Daryl Akkerman, Chairman, Board of Adjustment



Date

ATTACHMENT D: FIRES SERVICES AGREEMENT

Contents:

Fire Protection Agreement

Date: February 17, 2010

Pages: 16

FIRE PROTECTION AGREEMENT
(Teaway Solar Reserve)

This FIRE PROTECTION AGREEMENT ("Agreement") is entered into this 17th day of FEBRUARY, 2010, between KITTITAS COUNTY FIRE PROTECTION DISTRICT NO. 7, a municipal corporation ("District"), American Forest Land Company, LLC, a Wyoming limited liability company ("AFLC"), Teaway Solar Reserve, LLC, a Wyoming limited liability company ("TSR"), and Morton Land & Timber, Inc. ("Morton"). Collectively, the District, AFLC, TSR, and Morton are referred to herein as the "Parties."

RECITALS

AFLC is the asset manager of the approximately 982 acres of real property legally described on Exhibit A, attached hereto ("Property").

AFLC and Morton have entered into lease agreements with TSR pursuant to which TSR has leased the Property for purposes of constructing and operating a solar reserve facility on a portion of such Property, as generally depicted on Exhibit B.

As of the date hereof, the Property is not within the boundaries of any legally existing fire protection district.

AFLC, Morton, and TSR desire to have the District provide, and the District is willing to provide, emergency fire, supportive medical, and other standard services as are currently enjoyed by residents and businesses that are within the legally established boundaries of the District.

AFLC, Morton, and TSR, with cooperation of the District, intend to pursue annexation of the Property to the District promptly upon receipt of an approved conditional use permit and development agreement from Kittitas County authorizing AFLC and/or TSR to utilize the Property for purposes of operating a solar energy facility.

In the period preceding annexation of the Property into the District, AFLC, Morton, and TSR desire that the District provide emergency fire and supportive medical services to the Property.

In consideration of the benefits received to each of the Parties, the Parties agree as follows.

1. DEFINITIONS

For the purpose of this Agreement and any amendments hereto, the following capitalized terms shall have the meanings set forth herein, and all definitions shall be applicable to the singular and plural forms of such terms:

1.1 Annexation means the successful annexation of the Property to the District, as accomplished in accordance with the petition procedures for annexation set forth in Chapter 52.04, RCW.

1.2 Assessed Value means the assessed value of real and personal property as determined by the Kittitas County Assessors Office, as such assessed values may increase or decrease from year to year.

1.3 CUP means the conditional use permit issued by Kittitas County to TSR for construction and operations of a solar energy reserve facility on the Property.

1.4 Development Agreement means the development agreement approved by the Kittitas County Board of Commissioners authorizing TSR to construct and operate a solar energy reserve facility on the Property.

1.5 District means Kittitas County Fire District #7 (dba Kittitas County Fire & Rescue 7), a Washington municipal corporation.

1.6 District Boundaries means that real property that is part of the officially established boundaries and assessed value calculations for the District, as recognized by Kittitas County and the State of Washington.

1.7 Fee means the amount of money equivalent to that which would be assessed by Kittitas County against the Property, on an annual basis, for taxes to be distributed to the District if the Property were within the legally established boundaries of the District.

1.8 Fire Protection Area means the real property legally described on Exhibit A, attached hereto, corresponding with the Kittitas County Assessor tax parcel numbers identified on Exhibit A (as such Exhibit A may be amended from time to time upon mutual agreement of the District, AFLC, Morton, and TSR as applicable). The "Fire Protection Area" is synonymous with the Property.

1.9 Levy Rate means the annual levy rate the District is allowed to collect as determined by the Kittitas County Auditor's Office in compliance with State laws.

1.10 Property means the roughly 982 acres of real property legally described on Exhibit A, attached hereto, corresponding with the Kittitas County Assessor tax parcel numbers identified on Exhibit A (as such Exhibit A may be amended from time to time upon mutual agreement of the District, AFLC, Morton, and TSR as applicable).

1.11 Services mean emergency fire, supportive medical, and other standard emergency response services that are currently enjoyed by residents and businesses that are within the District Boundaries, without any lesser or greater responsibility or obligation than exists with respect to persons and property within the District Boundaries.

2. TERM

This Agreement shall be effective upon mutual execution, and shall continue until the annexation of the Property into the District is completed or until January 31, 2013, whichever occurs first, unless this Agreement is mutually extended by the Parties.

3. SERVICES

The District shall provide Services to the Property for such time as TSR and AFLC are in good standing with respect to their obligations under this Agreement. Such Services shall be rendered on the same basis and with the same standard of care as the District provides to persons and property within the District Boundaries. The District shall have no liability to TSR, Morton, or AFLC for impacts on Service resulting from circumstances beyond the District's control. In the event of simultaneous fires within the District Boundaries and the Property, whereby persons or facilities of the District are taxed beyond their reasonable ability to render equal protection, the District shall have sole discretion, without liability, as to the priority in responding to calls and emergencies. The District shall be the sole judge as to the most expeditious manner of handling and responding to emergency calls. AFLC, Morton, and TSR hereby grant the District such rights of use and access to the Property as reasonably necessary for provision of the Services, together with rights of use and access to such portions of the real property situated adjacent to the Fire Protection Area as may be reasonably necessary for the District's access to, and protection of, the Fire Protection Area. By way of example, the District may need or desire to provide a buffer around the Fire Protection Area reasonably designed to help protect and provide Services to the Fire Protection Area.

4. FEES AND REPORTING

4.1 Initial Payments. Within fourteen (14) days of mutual execution of this Agreement, AFLC or TSR shall pay to the District One Thousand Five Hundred Dollars (\$1500) to offset the attorney and administration fees incurred by the District in conjunction with preparation of this Agreement. Additionally, AFLC and TSR shall be obligated to pay the Fee, as prorated for such portion of the calendar year of 2010 that remains from the date

acceptance
of mutual of this Agreement. Such Fee shall be tendered to the District within fourteen (14) days of receipt of an invoice from the District.

4.2 Annual Payments. Prior to March 1st of each year, beginning with the 2011 calendar year, AFLC shall submit to the District a copy of the Kittitas County Assessor's Records for the Property, together with AFLC's estimate of the Fee due for the 12-month calendar year. The District shall then calculate the Fee based on the levy collection rate for such tax year, as set by the Kittitas County Auditor's Office. The District shall send to AFLC and TSR at the addresses set forth herein an invoice stating the Fee owed and the period that such Fee covers. AFLC or TSR shall pay the Fee to the District, at the address stated on the invoice within thirty (30) calendar days of the date of invoice.

4.3 Annexation Payment/Prepay. Upon Annexation, as contemplated below, all owners of real property within the Fire Protection District and any additional area that is included in Annexation, shall pay the levy collection rate to Kittitas County as part of owner's property taxes, all in accord with the processes prescribed in the Revised Code of Washington for fire protection districts. The foregoing notwithstanding, in the event that the date of Annexation occurs between August 1 and December 31 of any year, then AFLC and TSR shall be responsible for paying to the District, directly, the Fee corresponding with the upcoming calendar year of January 1-December 31. In such event, the District shall cooperate with AFLC and TSR in ensuring that no duplication of the AFLC/TSR Fee occurs through the Kittitas County Assessor's Office.

5. ANNEXATION

+ Development Agreement

Promptly upon receiving a CUP_A from Kittitas County, AFLC and TSR shall consult with the District about whether there is additional property owned by AFLC adjacent to the Fire Protection Area that should be included in the petition for annexation that is contemplated herein.

+ Development Agreement
Within one hundred twenty (120) days after issuance of the CUP_A and the expiration of all applicable appeal periods of the CUP_A, AFLC and TSR shall prepare and deliver to the District a petition for Annexation of the Property to the District, which petition and associated submittals shall comply with the procedures and standards for annexation by petition as set forth in Chapter 52.04 RCW. AFLC and TSR shall coordinate with the District to ensure timely tender of the petition for Annexation to Kittitas County Fire District No. 7, and fulfillment of the requisite process for Annexation, as set forth under Chapter 52.04, RCW. The costs associated with Annexation, regardless of whether Annexation is successful, shall be fully borne by AFLC and TSR, including, but not limited to, any reasonable administrative or legal fees incurred by the District in conjunction with Annexation.
and Development Agreement

If Annexation does not occur, despite full compliance with the procedures of Chapter 52.04 RCW, then the District may, in its sole discretion, terminate this Agreement at any time upon thirty (30) days' advance written notice to AFLC and TSR. Upon such termination, the District may notify Kittitas County and such other agencies or entities as appropriate, that the District is no longer has a commitment to provide Services to the Property.

6. SERVICE LIMITATIONS

NOTWITHSTANDING ANY SUGGESTION TO THE CONTRARY IN THIS AGREEMENT, THE DISTRICT MAKES NO GUARANTEE OR ASSURANCE OF PROVIDING RESPONSES WITHIN ANY SPECIFIC PERIOD OF TIME, OR OF THE NUMBER AND TYPES OF EQUIPMENT, AND NUMBER OF PERSONNEL THAT WILL RESPOND AT ANY PARTICULAR EMERGENCY. THE DUTY OF THE DISTRICT TO PROVIDE SERVICES UNDER THE PROVISIONS OF THIS AGREEMENT IS A DUTY OWED TO THE PUBLIC GENERALLY AND BY ENTERING INTO THIS AGREEMENT, THE DISTRICT DOES NOT INCUR OR INTENT TO INCUR ANY SPECIAL DUTY TO AFLC, TSR, MORTON, OR OWNERS OR OCCUPANTS OF THE PROPERTY. ACCORDINGLY, THE DISTRICT SHALL ENJOY ANY AND ALL DEFENSES, CLAIMS OF IMMUNITY AND PROTECTIONS ENJOYED BY ANY OTHER PUBLIC ENTITY PROVIDING GOVERNMENTAL SERVICES TO THIS AREA.

7. LIMITED JURISDICTION

The Parties acknowledge that the proposed Fire Protection Area is in an unincorporated part of Kittitas County and that the Kittitas County government is responsible for administering and enforcing county codes, laws, rules, regulations and policies including the International Fire Code and the International Wildland Urban Interface Code. Pursuant to RCW 52.12.031(6) the Fire District is empowered to perform building and property inspections it deems necessary for fire prevention and pre-fire planning within the Fire Protection Area provided that any building or inspection codes used by the Fire District shall be limited to the applicable codes adopted by Kittitas County (or the state, county, city, town, with jurisdiction over the protected property) but that such provision does not grant code enforcement authority to the District.

8. NOTICES; JOINT AND SEVERAL LIABILITY

AFLC and TSR shall be jointly and severally liable for the obligation to timely pay to the District the Fee, along with any and all obligations set forth hereunder.

9. TERMINATION

9.1 Termination by the District. In addition to any remedies provided elsewhere in this Agreement or available in law and equity, the District may terminate this Agreement upon thirty (30) days' advance written notice to AFLC and TSR if, at any time, AFLC and TSR have failed to fulfill their obligations hereunder or cure a default thereof. Such termination by the District may be based upon, among other things, a failure by AFLC or TSR to pay Fees when due or to exercise good faith and reasonably diligent efforts for Annexation.

9.2 Termination by Parties. Any of the Parties to this Agreement may terminate this Agreement upon just and reasonable cause, provided that notice of the intent to terminate hereunder is provided to the nonterminating Parties in writing at 180 days in advance of the proposed date of termination, and such date of termination shall occur on either January 1 or July 1 of the calendar year. The Parties agree that failure to obtain an approved CUP and DA shall be considered just and reasonable cause for termination. If termination is properly effectuated on July 1, the prorated portion of the annual Fee shall be returned to AFLC or TSR (whichever paid the Fee). Subject to any prepayment obligations set forth in Section 4.3, this Agreement shall automatically terminate upon successful Annexation of the Property into the District Boundaries.

10. NOTICES

Whenever a provision is made under this Agreement for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either personally or sent by United States mail, certified, postage prepaid, or by pre-paid nationally recognized overnight courier service, addressed at the addresses set forth below or at such address as the party may advise the other from time to time.

If to the District:

Attn. Ray Risdon
KCFD #7
P.O. Box 777
South Cle Elum, WA 98943

If by hand delivery:

Attn. Ray Risdon
KCFD #7
123 East First Street
Cle Elum, WA 98922

If to AFLC:

Attn. David Bowen
American Forest Land Co., LLC
700 E. Mountain View, #507

Ellensburg, WA 98926

If to TSR:

Attn. Howard Trott
Teaway Solar Reserve, LLC
218 E. 1st St., Suite B
Cle Elum, WA 98922

If to Morton:

Attn. Wayne Schwandt
c/o WLS and Assoc.
965 Grand Blvd.
Bellingham, WA 98229

11. GENERAL

11.1 Severability. If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

11.2 Modification. This Agreement, with Exhibit A and Exhibit B, represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of this Agreement shall be binding on either of the parties unless executed in writing by authorized representatives of each of the parties. The Agreement shall not be modified, supplemented or otherwise affected by the course of dealing between parties, absent mutual execution of a written amendment or supplement to this Agreement of equal formality to this Agreement.

11.3 Benefits. This Agreement is entered into for the benefit of the parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

11.4 Waivers. The failure of any person to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

11.5 Attorney Fees; Enforcement. In the event a suit is brought by any of the Parties to enforce the terms of this Agreement, the prevailing party shall be entitled to reimbursement for attorney fees and all costs and expenses reasonably incurred in preparation for and in prosecution of such action in addition to taxable costs, all as permitted by law.

11.6 Covenant Running with land. This Agreement shall be a covenant running with the Property and may be recorded with the Kittitas County Auditor.

11.7 Authority to Sign. Each of the undersigned hereby represents and warrants that he/she has authority to bind the party for which he or she is signing, and further represents and warrants that this Agreement has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

11.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action to enforce or interpret this Agreement shall be in Kittitas County Superior Court, State of Washington.

11.9 Assignment: This agreement may not be assigned by either party without prior, written consent of the other parties.

BOARD OF COMMISSIONERS, KITTITAS COUNTY FIRE DISTRICT 7

By: Robert M. Cernick Date: 2-17-10
Robert M. Cernick, Chair

AMERICAN FOREST LAND COMPANY, LLC

By: _____ Date: _____
David Bowen, President

TEANAWAY SOLAR RESERVE, LLC

By: _____ Date: _____
Howard Trott, Managing Member

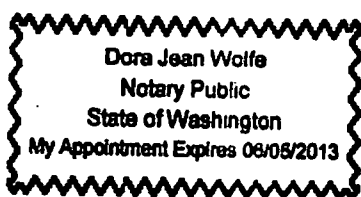
MORTON LAND & TIMBER INC.

By: _____ Date: _____
Wayne Schwandt, Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF KITTITAS)

On this 17th day of February, 2010, before me, a Notary Public in and for the State of Washington, personally appeared ROBERT CERNICK, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Chairman of the Board of Commissioners for KITTITAS COUNTY FIRE DISTRICT NO. 7 to be the free and voluntary act and deed of said municipal corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Dora Jean Wolfe
NOTARY PUBLIC in and for the State of Washington,
residing at Clatsop
My commission expires: 06/05/2013

11.6 Covenant Running with land. This Agreement shall be a covenant running with the Property and may be recorded with the Kittitas County Auditor.

11.7 Authority to Sign. Each of the undersigned hereby represents and warrants that he/she has authority to bind the party for which he or she is signing, and further represents and warrants that this Agreement has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

11.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action to enforce or interpret this Agreement shall be in Kittitas County Superior Court, State of Washington.

11.9 Assignment: This agreement may not be assigned by either party without prior, written consent of the other parties.

BOARD OF COMMISSIONERS, KITTITAS COUNTY FIRE DISTRICT 7

By: _____ Date: _____
Robert M. Cernick, Chair

AMERICAN FOREST LAND COMPANY, LLC

By: David B. Bowen Date: 3/23/10
David Bowen, President

TEANAWAY SOLAR RESERVE, LLC

By: _____ Date: _____
Howard Trott, Managing Member

MORTON LAND & TIMBER INC.

By: _____ Date: _____
Wayne Schwandt, Secretary

STATE OF Washington)
) ss.
COUNTY OF Kittitas)

On this 23rd day of March, 2010, before me, a Notary Public in and for the State of Washington, personally appeared David Bowen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the PRESIDENT of AMERICAN FOREST LAND COMPANY, a Wyoming limited liability company, to be the free and voluntary act and deed of said company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Michael P. H.
NOTARY PUBLIC in and for the State of Washington
residing at Ellensburg
My commission expires: 12-30-11

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2010, before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of TEANAWAY SOLAR RESERVE, a Wyoming limited liability company, to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2010, before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of MORTON LAND & TIMBER INC., a _____ company, to be the free and voluntary act and deed of said company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My commission expires: _____

11.6 Covenant Running with land. This Agreement shall be a covenant running with the Property and may be recorded with the Kittitas County Auditor.

11.7 Authority to Sign. Each of the undersigned hereby represents and warrants that he/she has authority to bind the party for which he or she is signing, and further represents and warrants that this Agreement has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

11.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action to enforce or interpret this Agreement shall be in Kittitas County Superior Court, State of Washington.

11.9 Assignment: This agreement may not be assigned by either party without prior, written consent of the other parties.

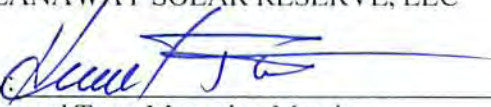
BOARD OF COMMISSIONERS, KITTITAS COUNTY FIRE DISTRICT 7

By: _____ Date: _____
Robert M. Cernick, Chair

AMERICAN FOREST LAND COMPANY, LLC

By: _____ Date: _____
David Bowen, President

TEANAWAY SOLAR RESERVE, LLC

By:  _____ Date: 3/23/2010
Howard Trott, Managing Member

MORTON LAND & TIMBER INC.

By: _____ Date: _____
Wayne Schwandt, Secretary

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2010, before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of AMERICAN FOREST LAND COMPANY, a Wyoming limited liability company, to be the free and voluntary act and deed of said company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My commission expires: _____

STATE OF Washington)
) ss.
COUNTY OF King)

On this 23rd day of March, 2010, before me, a Notary Public in and for the State of Washington, personally appeared Howard Trott, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Managing Member of TEANAWAY SOLAR RESERVE, a Wyoming limited liability company, to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Karen M. Reef
NOTARY PUBLIC in and for the State of
Washington, residing at Shelton
My commission expires: 8-16-10



STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2010, before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of MORTON LAND & TIMBER INC., a _____ company, to be the free and voluntary act and deed of said company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My commission expires: _____

11.6 Covenant Running with land. This Agreement shall be a covenant running with the Property and may be recorded with the Kittitas County Auditor.

11.7 Authority to Sign. Each of the undersigned hereby represents and warrants that he/she has authority to bind the party for which he or she is signing, and further represents and warrants that this Agreement has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

11.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action to enforce or interpret this Agreement shall be in Kittitas County Superior Court, State of Washington.

11.9 Assignment: This agreement may not be assigned by either party without prior, written consent of the other parties.

BOARD OF COMMISSIONERS, KITTITAS COUNTY FIRE DISTRICT 7

By: _____ Date: _____
Robert M. Cernick, Chair

AMERICAN FOREST LAND COMPANY, LLC

By: _____ Date: _____
David Bowen, President

TEANAWAY SOLAR RESERVE, LLC

By: _____ Date: _____
Howard Trott, Managing Member

MORTON LAND & TIMBER INC.

By:  _____ Date: 3-15-10
Wayne Schwandt, Secretary

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2010, before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of AMERICAN FOREST LAND COMPANY, a Wyoming limited liability company, to be the free and voluntary act and deed of said company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2010, before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of TEANAWAY SOLAR RESERVE, a Wyoming limited liability company, to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My commission expires: _____

STATE OF Washington)
) ss.
COUNTY OF Whatcom)

On this 15th day of March, 2010, before me, a Notary Public in and for the State of Washington, personally appeared WAYNE SCHWANDT, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Secretary of MORTON LAND & TIMBER INC., a STOCK company, to be the free and voluntary act and deed of said company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Ludmila Pace
NOTARY PUBLIC in and for the State of Washington,
residing at Mount Vernon
My commission expires: 07-25-2011



**EXHIBIT A
PROPERTY/FIRE PROTECTION AREA**

The approximately 982 acres of real property legally described as including:

All of Section 22, T20N, R 16.E., W.M.,

AND

The North Half of the Northeast Quarter of Section 23, T20N, R 16.E., W.M.,

AND

The Northwest Quarter of Section 23, T20N, R 16.E., W.M.,

AND

The North Half of the Southwest Quarter of Section 23, T20N, R 16.E., W.M.,

AND

A portion of the NE $\frac{1}{4}$ of Section 27, T20N, R16 E., W.M.,

All situated within Kittitas County, Washington, and being substantially as identified as the "proposed project area" on the following page (Exhibit B).

Such real property corresponds to and includes the following Kittitas County Assessor Tax Parcel Numbers:

504935

514935

534935

614935

18669

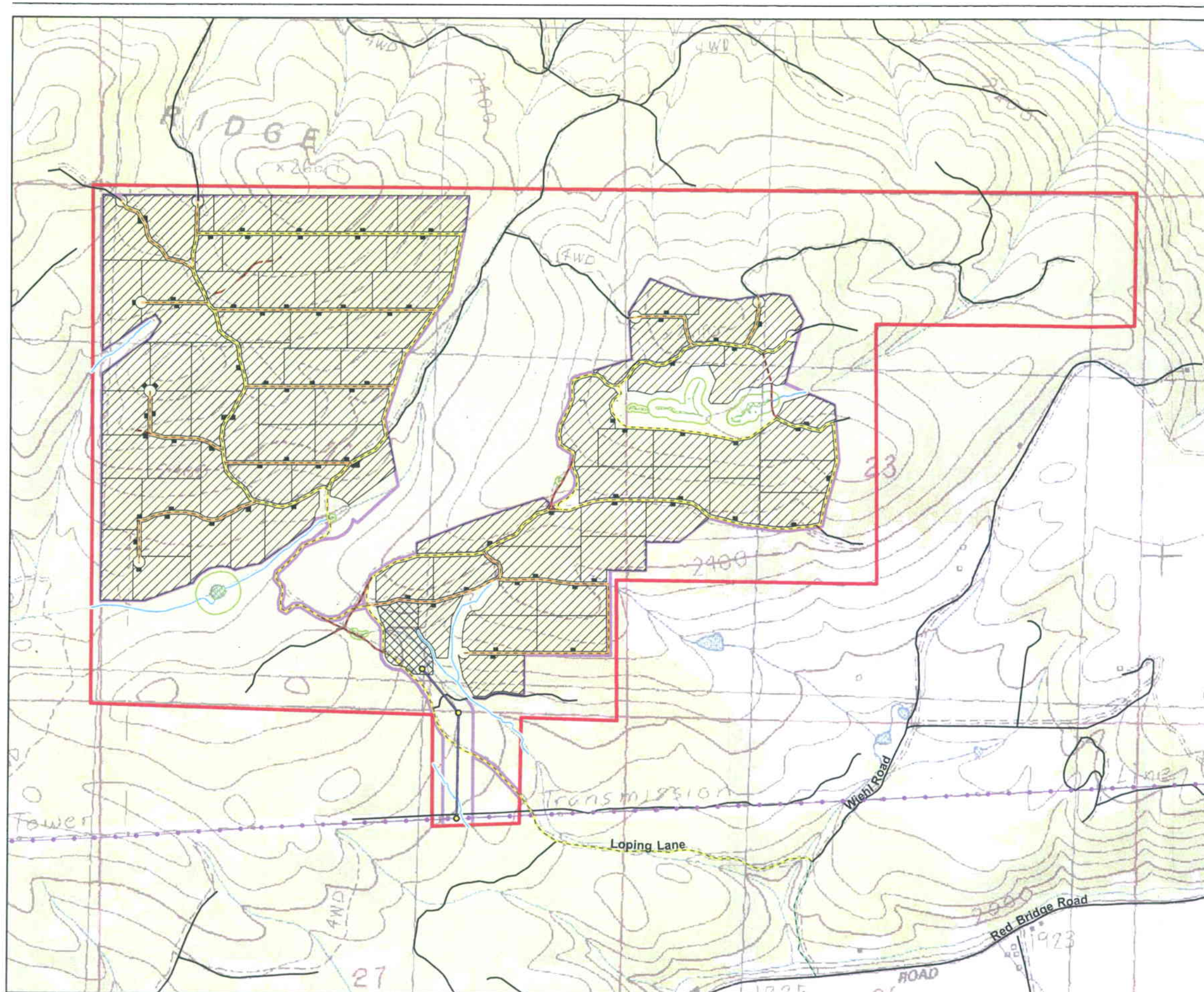
ATTACHMENT E: PROPOSED SITE LAYOUT

Contents

Proposed Site Layout

Date: February 2010

Pages: 4



- LEGEND**
- Proposed Project Features**
- Proposed Project Area (982 Acres)
 - Proposed Project Site (477 acres)
 - Proposed PV Array Block
 - Proposed Field Inverter and Field Transformer
 - Proposed Substation/O&M Facility
 - Proposed Transmission Line¹
 - Proposed Transmission Structure
 - Primary Access Road
 - Secondary Access Road
 - Proposed Improved Existing County Access Road
 - Proposed Improved Existing Private Access Road
 - Existing Maintenance Road (Planned Decommissioning)
- Existing Features**
- Existing BPA Transmission Line and ROW
 - Existing Road
 - Stream
 - Stream Buffer
 - Wetland
 - Wetland Buffer

Note:
 1. TSR has delineated a 300' area within which the BPA transmission line could be sited. Of this 300' area, a maximum of 200' will be cleared for the placement of the BPA transmission line. Final design and placement to be determined by BPA.

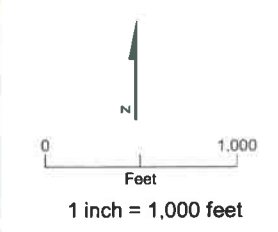
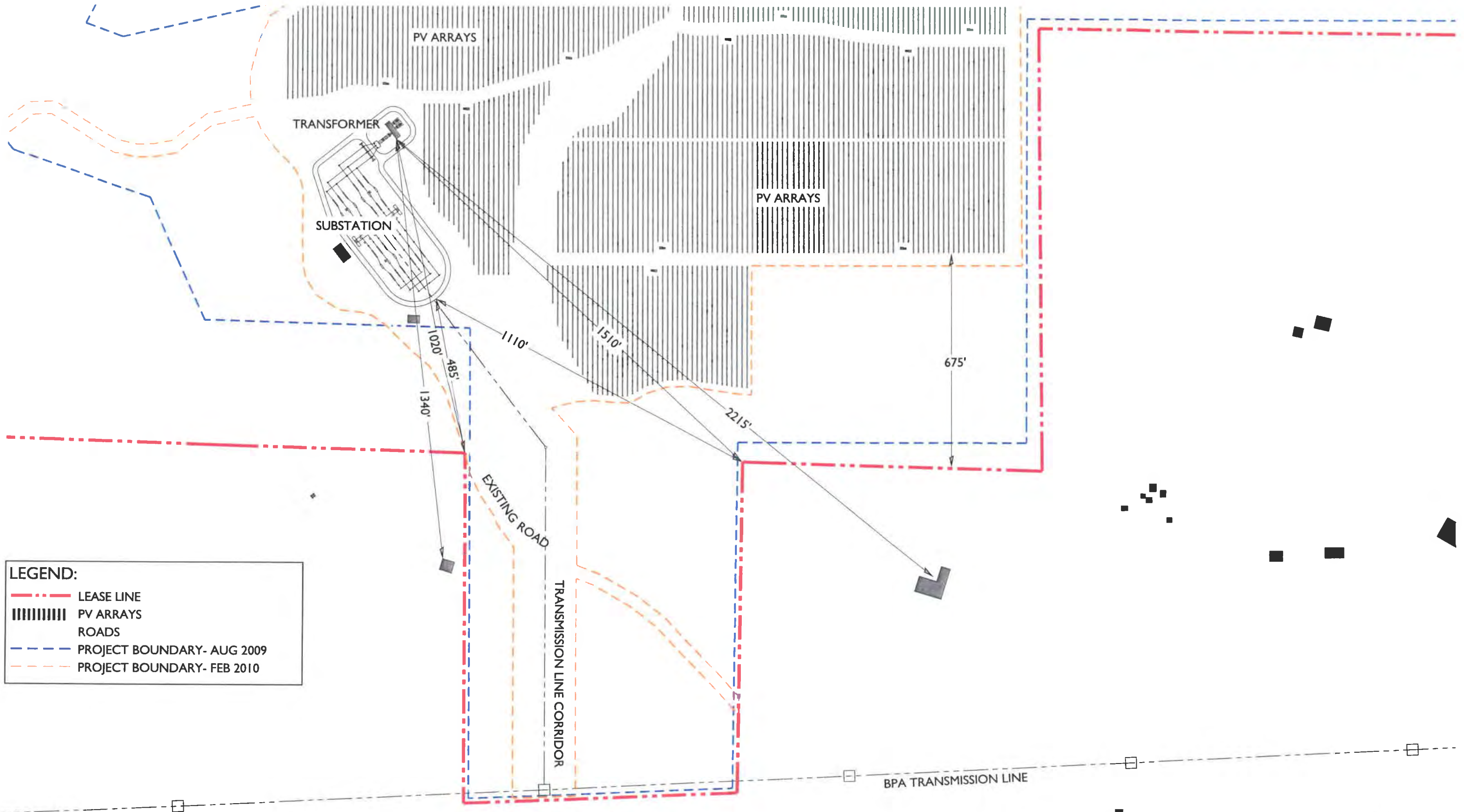


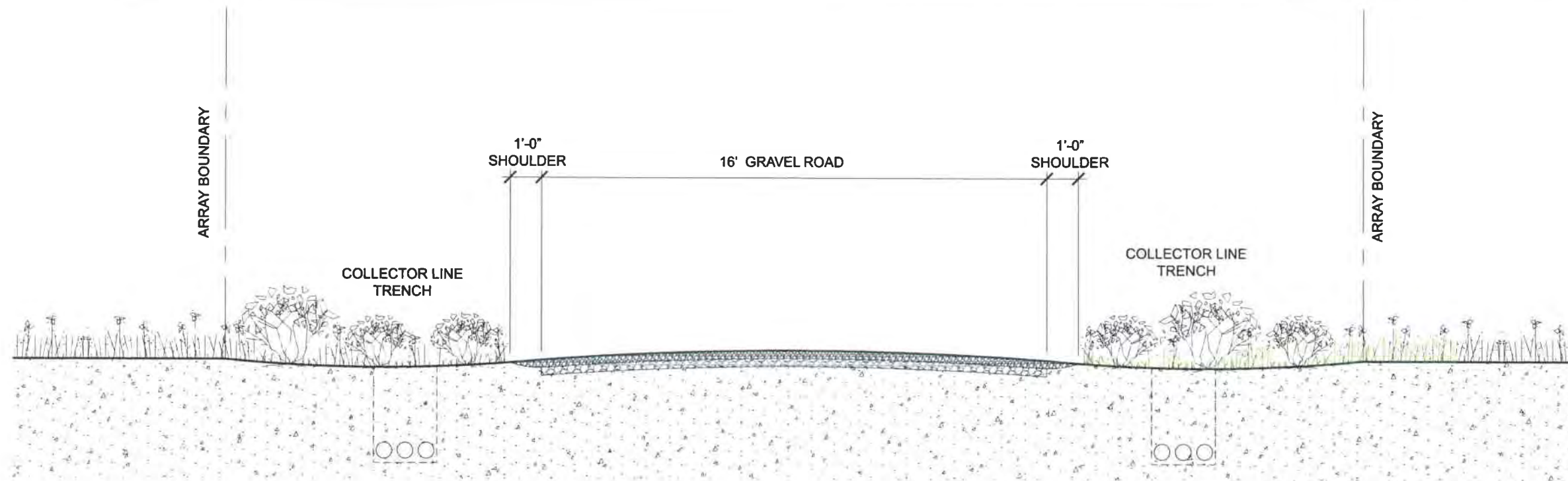
FIGURE 4
Proposed Site Layout
 Teanaway Solar Reserve
 Kittitas County, Washington



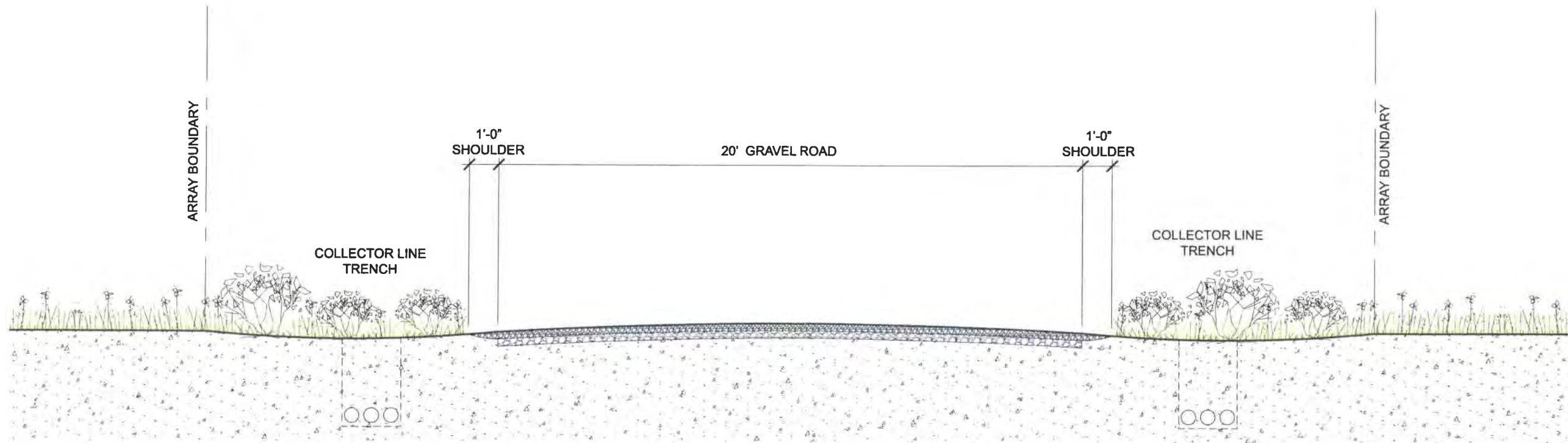
LEGEND:

- · - · - LEASE LINE
- PV ARRAYS
- ROADS
- PROJECT BOUNDARY- AUG 2009
- PROJECT BOUNDARY- FEB 2010

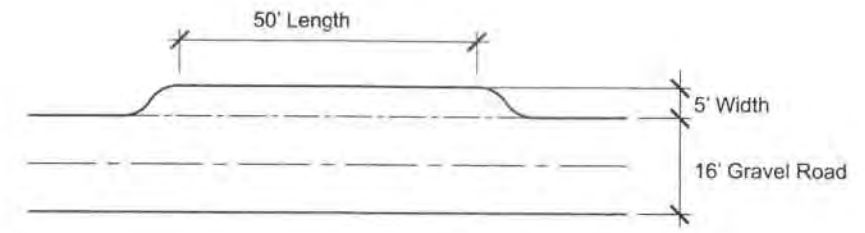




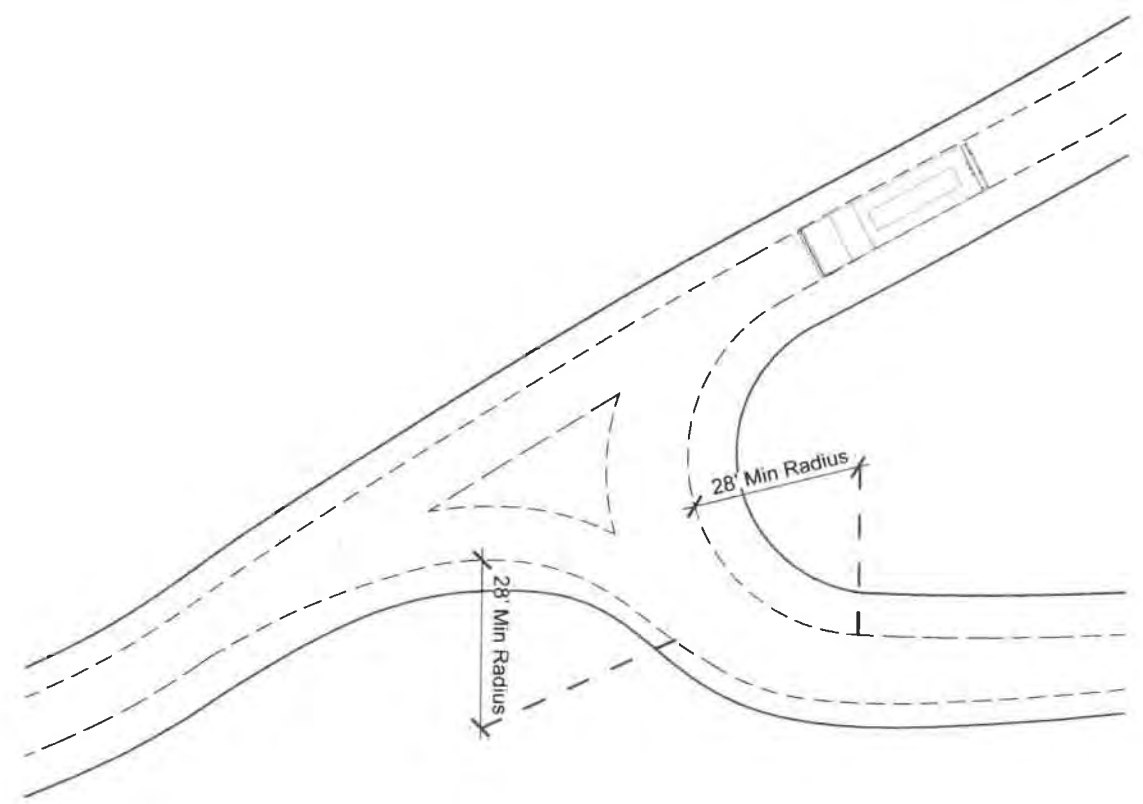
TYPICAL 16' ROAD SECTION



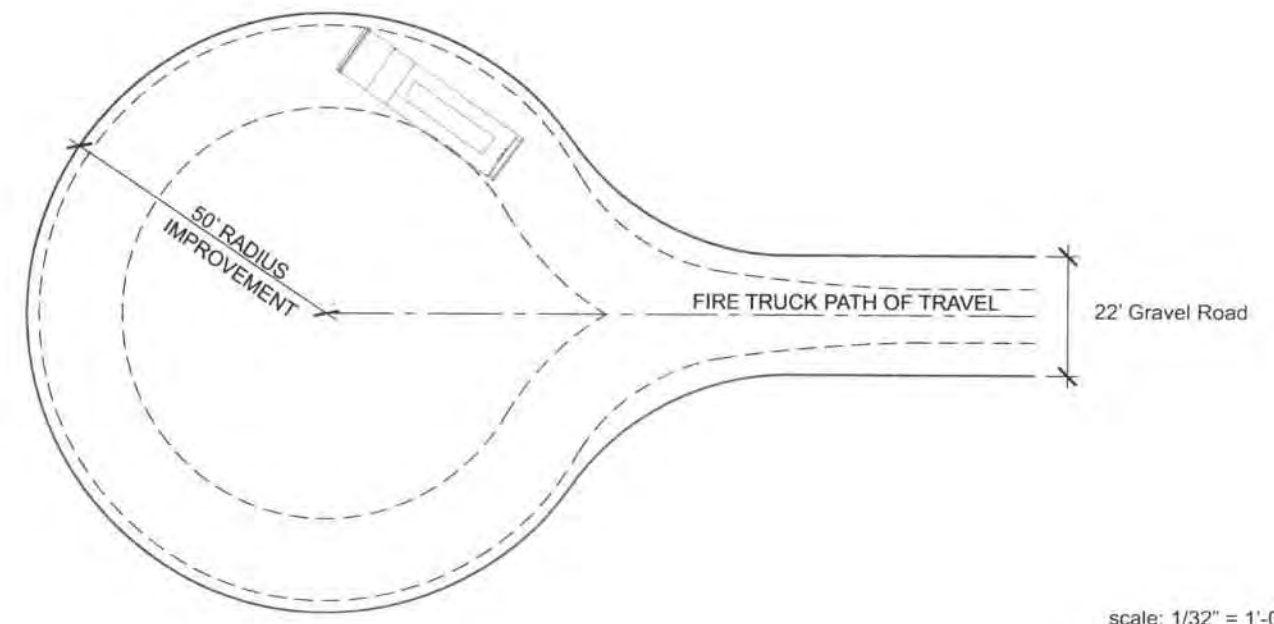
TYPICAL 20' ROAD SECTION



TYPICAL ROAD TURNOUT



TYPICAL ROAD INTERSECTION RADIUS



TYPICAL ROAD TURNAROUND

