

**MITIGATION AGREEMENT  
BETWEEN  
WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE  
AND  
TEANAWAY SOLAR RESERVE LLC**

**I. INTRODUCTION**

Teaway Solar Reserve LLC (TSR) is seeking approval of a Conditional Use Permit (CUP) (CU 09-0005) from the Kittitas County Board of Adjustment (BOA), and a Development Agreement (DA) from the Kittitas County Board of County Commissioners (BOCC) to construct and operate the proposed Teaway Solar Reserve Project (Project), as shown in Exhibit A. Washington Department of Fish and Wildlife (WDFW) has a mandate to preserve, protect, manage, and perpetuate the state's fish and wildlife resources including habitat.

**A. Purpose and Intent**

WDFW has reviewed the impact of the Project as proposed on the date of this agreement and agency staff previously provided input regarding impacts to habitat for elk and other wildlife, surface water runoff, vegetation management, and other environmental issues, including the potential need for an environmental impact statement. Pursuant to the commitments and conditions herein, the CUP, DA and associated SEPA documentation, this Mitigation Agreement addresses the mitigation that is required to mitigate adverse impacts associated with the project proposal to fish and wildlife resources, including elk habitat, to a less than significant level.

**B. Resolution of Issues**

TSR has undertaken initial and supplemental site impact assessments to identify and quantify wildlife, wildlife habitat, runoff, vegetation, and other impacts expected from the construction, operation, maintenance, and decommissioning of the Project. The anticipated impacts have been identified and proposed mitigation measures to offset adverse impacts are consistent with the *WDFW Wind Power Guidelines* (April 2009). WDFW has reviewed and commented on TSR's impact assessments and the Parties have agreed that the commitments for mitigation measures listed in Exhibit B will mitigate for impacts from the Project raised by WDFW's South Central Region (Region 3), including those by WDFW Wildlife Biologist Mark S. Teske in comments filed with Kittitas County.

**C. Wildlife**

TSR assumes complete responsibility and liability for any and all damages to project infrastructure resulting from wildlife activity within the project boundary. TSR will release, waive and forever discharge WDFW and the agency's employees, directors or agents and covenant not to sue with respect to any and all claims, causes of action, demands, damages, or expenses of whatever nature related in any way to damage caused by wildlife. TSR will assume all costs associated with hazing, relocating or removing problem wildlife and TSR will coordinate with WDFW prior to taking any of these actions with problem wildlife.

**D. Change in Project Design**

WDFW based its review of the Project on a site visit conducted on March 15, 2010, as well as TSR's project plans and specifications as of the date this Agreement was finalized. At the discretion of WDFW, any subsequent material changes to the project plans or design may trigger amendments to this Agreement or rescission of this Agreement and development of a new agreement.

**II. APPLICANT'S COMMITMENTS**

TSR agrees that the mitigation measures identified in this Mitigation Agreement shall be implemented if construction of the proposed Project proceeds pursuant to current project plans and the CUP and DA. The Parties agree that TSR will comply with any CUP or DA requirements, or SEPA conditions that set stricter standards regarding protection of fish, wildlife or their habitat, than those contained in this Agreement. TSR commits to the conditions and mitigation measures set out in Exhibit B, attached hereto and incorporated by reference herein as if fully set out.

**III. WITHDRAWAL OF OBJECTIONS**

Based on this Mitigation Agreement, the site visit, and the information provided to WDFW by TSR, WDFW agrees that this Project is consistent with the WDFW Wind Power Guidelines (April 2009) and that mitigation for this Project as set forth in Exhibit B offsets the adverse project impacts to fish and wildlife. Therefore, based upon TSR's commitments herein, and upon compliance with mitigation measures proposed in the CUP, DA, and accompanying SEPA documentation, WDFW agrees that TSR's compliance with the terms of this Agreement will mitigate adverse impacts to fish and wildlife resources, including elk habitat, to a less than significant level.

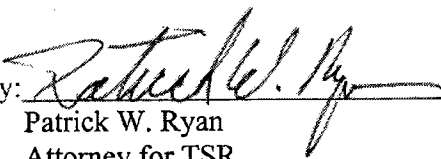
**TEANAWAY SOLAR RESERVE LLC**

By:   
Howard Trott, Managing Member

Dated: April 16, 2010

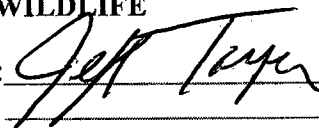
*Approved as to form:*

**PERKINS COIE LLP**

By:   
Patrick W. Ryan  
Attorney for TSR

Dated: April 16, 2010

**WASHINGTON DEPARTMENT OF FISH & WILDLIFE**

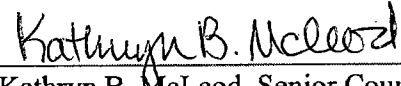
By:   
Asst. Director

Dated: April 18, 2010

*Regional*

*Approved as to form:*

**WASHINGTON ATTORNEY GENERAL**

By:   
Kathryn B. McLeod, Senior Counsel  
Attorney for WDFW

Dated: April 22, 2010

**EXHIBIT A**  
**PROJECT SITE PLAN**

*See Attached*



## EXHIBIT B

### APPLICANT COMMITMENTS AND MITIGATION MEASURES

#### I. ON-SITE MITIGATION

1. TSR will permanently impact 477 acres of Class II habitat, requiring a mitigation value of 2:1, or 954 acres, under the *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 as depicted on Exhibit A (Mitigation Area). 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. 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 Section II. 2 (Off-Site Mitigation).
2. 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.
3. 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. TSR will form a Technical Advisory Committee, which shall include at least one representative of WDFW, to 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.
4. TSR will control the spread of noxious weeds caused by the Project. Prior to construction, TSR will present a Noxious Weed Control Plan to the Kittitas County Noxious Weed Control Board for review and approval.

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:
- 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.
  - 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.
  - Artificial lighting will be directed on Project facilities to avoid light disturbance to surrounding wildlife mitigation areas and potential wildlife corridors.
  - 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.
  - Overall site selection is designed to avoid all areas with documented endangered, threatened species.
  - 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.
  - 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.
  - 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 whenever 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.
  - 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.
  - TSR shall ensure that the hydrology of the seasonal streams on-site is not altered.
  - 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.

- During project construction, vehicle servicing and refueling will occur in a temporary staging area equipped for fuel or oil spills.
- Onsite vehicles used during construction, operation, maintenance, and decommissioning will be monitored for petroleum leaks.
- 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.
- 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.
- Cleanup materials will be kept readily available onsite, either at the equipment storage area, O&M building or on the construction contractor's trucks.
- Speed limits on access roads will be set at 20 m.p.h. in order to minimize vehicle strikes on wildlife.
- 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.

## II. OFF-SITE MITIGATION

1. *The Washington Department of Fish and Wildlife Wind Power Guidelines* (April 2009) 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 *Guidelines*. As provided in Section I.1. of this Exhibit B, a minimum 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 or 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 in Section I.1 (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, as provided in Section II.2 below.

2. 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 its Mitigation Obligations; proximity and similarity of the replacement habitat to the 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 unreasonably 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.