

**HAND DEIVERED:**

Kittitas County  
Board of Commissioners  
205 W 5th AVE STE 108  
Ellensburg WA 98926-2887  
Mark McClain, Chairman

**COPY TO:**

Kittitas County Community Development Services  
411 N Ruby ST, Suite 2  
Ellensburg WA 98926  
Kirk Homes, Director

**RE: Notice of Administrative Appeal and Comment Letter  
SEPA Mitigated Determination of Non-Significance  
Teaway Solar Reserve; County File No.: CU-09-0005**

To Whom It May Concern:

This Notice of Administrative Appeal and Comment Letter is filed by James Brose and Paige Green Dunn, both landowners located directly adjacent to the proposed site. This letter and the accompanying fee have been timely filed and we preserve our standing to appeal Kittitas County's issuance of the threshold decision of "Mitigated Determination of Non-Significance" (MDNS).

The County has failed to properly and adequately evaluate the environmental impacts of the proposed site, including but not limited to direct, indirect, and cumulative adverse impacts to scenic resources, water and air quality, critical habitat and wildlife resources, and recreational resources; impacts to the local neighborhood from wildfire safety and evacuation routes; and impacts to other sensitive and protected areas; and noncompliance with applicable land use requirements.

The County's threshold determination under the State Environmental Policy Act (SEPA) must be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal." WAC 197-11-335. The SEPA determination in the instant case was issued despite the complete absence of any alternative site analysis study as required under RCW 443.21C.030 and the material non-disclosure or misrepresentation of essential information. The Environmental Checklist for this action fails to accurately describe and evaluate the potential impacts of this action, and thus the County failed to provide "reasonably sufficient" information before issuing its threshold determination.

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KITTITAS COUNTY BOARD OF COMMISSIONERS  
Kirk Homes

We respectfully request that the County withdraw the MDNS, replace it with a Determination of Significance (DS), and prepare an EIS. See WAC 197-11-340 (lead agency “shall withdraw a MDNS if . . . there is significant new information indicating, or on, a proposal’s probable significant adverse environmental impacts; or . . . [t]he MDNS was procured by misrepresentation or lack of material disclosure.”).

#### **A. Introduction: The State Environmental Policy Act**

SEPA’s general purpose is to require consideration of environmental factors at the earliest possible stage in order to allow decisions to be based on a complete disclosure of environmental consequences. See generally, *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wash. App. 408, 225 P.3d 448 (2010); *Stempel v. Dept. of Water Resources v. City of Kirkland*, 82 Wn. 2d. 109, 118 (1973). Under SEPA, agencies are required to engage in an open and public study of environmental impacts at the earliest possible time. RCW § 43.21C.030(b). This threshold consideration of environmental factors must be integrated into early planning in order to avoid thwarting SEPA’s policies. See WAC § 197-11-300. The threshold determination is required so that actions do not improperly avoid environmental scrutiny at an early stage. *Juanita Bay Valley Community Ass’n v. City of Kirkland*, 9 Wn. App. 59, 73 (1973). The regulatory agency must be able to show that environmental factors were actually considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA. *Id.*

The lead agency must assess the “likely” cumulative, direct, indirect, short-term, and long-term impacts to the environment. WAC 197-11-030(2)(b), (2)(g); see also *State Environmental Policy Act Handbook* (SEPA Handbook) at 2 (2003). The lead agency “shall not limit” its consideration only to impacts within the boundaries of its jurisdiction. WAC 197-11-060(4). In addition, SEPA provides lead agencies with the substantive authority to mitigate likely adverse impacts to the natural and built environment. RCW § 43.21C.030.

SEPA requires that the environmental analysis include discussion of specific resources. The SEPA official “shall” consider whether a “proposal may to a significant degree”:

- (i) Adversely affect environmental sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;
- (ii) Adversely affect endangered or threatened species or their habitat;
- (iii) Conflict with local, state, or federal laws or requirement for the protection of the environment;
- (iv) Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.

WAC 197-11-330(3)(e) (emphasis added).

An environmental impact statement is required when the impacts from a proposed project would be significant. WAC § 197-11-794(1). Washington courts have interpreted this provision as requiring an EIS “whenever more than a moderate effect on the quality of the environment is a reasonable probability.” *Norway Hill Preservation & Protection Ass’n v. King County Council*, 87 Wn. 2d 267, 273 (1976). The Supreme Court held that SEPA “mandates that an EIS should be prepared when significant adverse impacts on the environment are ‘probable’, not when they are ‘inevitable.’ The *absence of specific development plans should not be conclusive* of whether an adverse environmental impact is likely.” *King County v. Boundary Review Bd.*, 122 Wn. 2d 648, 663, 860 P.2d 1024 (1993) (emphasis added).

## **B. Factual Background.**

Teaway Solar Reserve, LLC (TSR) has submitted a Conditional Use Permit (CUP) application and Development Agreement to develop a solar farm generating up to 75 megawatts of photovoltaic for distribution to utilities and communities through a substation interconnection point on the Pacific Northwest power grid. The project site is located in unincorporated Kittitas County and consists of 982 acres and the solar farm will, according to their estimates, use approximately 500 acres of the project site. The reported surface area of the solar panels would cover about 160 acres and other development disturbances would include clearing and grading, access and maintenance roadways, staging areas, utility ditches, transmission towers and poles, substation, building and panel footings, solar modules, and other infrastructure.

TSR claims that this will be the nation’s largest solar installation placed on the American Forest Land Company (AFLC) property on the forested Cle Elum Ridge. This solar array would be approximately 1.5 miles wide and would require the clear cutting of closer to 600 acres of the forest off of Loping Lane and Weihl Road. The panels would be situated at elevations up to 2,600 feet in the snow and would be visible for many directions for up to eight miles.

The construction would occur over a three year period and would require some 5,300 truckloads of materials up Weihl road with up to 450 worker per day on the site. The plan calls for 400,000 panels to be mounted on steel polls driven into the ground with a steel “vibration hammer” causing considerable noise for many of us as these footings are established.

The site is currently zoned as Forest and Range land. Land use history included forestry, cattle grazing, ranch, open space, and recreation. Historical recreational activities have occurred on the project site, which included hiking, bird watching, native plant walks, biking, horseback riding, hunting, cross-country skiing, and orienteering. The property consists of an open canopy Ponderosa/Douglas fir forest with intermittent meadows, seasonally flooded wetlands, a small, artificially created pond, seasonal streams, and natural drainage corridors through undulating hills and dales with outcrops of widely-scattered boulders. Several logging roads, access roads, and mammal trails traverse the site. Much of the land appears to have been logged and thinned within the

last 20 to 25 years and some thinning has reportedly occurred as recently as 2001. Still the site averages hundreds of trees per acre. Some with bases about 18 inches across, others are 10-12 feet in height.

The priority habitat, priority areas, and special or sensitive areas that exist on the project site are listed below:

**Freshwater Wetlands:** Transitional lands between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water were observed as evidenced by dominant hydrophytic plants and wetland hydrology indicators such as water stained leaves, surface soil cracks, sparsely vegetated concave surfaces, algae mats, and drainage patterns.

**Riparian:** Areas adjacent to seasonal or perennial aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other were observed contiguous to the ordinary high water mark of several on-site streams.

**Aspen Stands:** Mixed stands of aspen were observed contiguous to a small pond and this stand of aspen extended within the drainage corridor to the pond at a distance of several hundred feet.

**Migration Corridors:** Areas regularly used by animals as travel routes between seasonal ranges were observed throughout the site, especially along several mammal trails and old logging roads. The property provides excellent habitat for large mammals to meander freely while providing good shelter and a variable food source. Evidence of large mammals which frequent the site include elk, deer, cougar, coyote, and black bear (scat). It has been reported that large herds of elk and deer move onto and through the project site in early October and many stay in the area until June.

**Elk Herd Winter Range:** Features observed on the project site include elk footprints, droppings, bones, fur, and pathways. One remnant female elk was observed just east of the project site in September 2009.

**Foraging Areas:** Feeding areas that may be regularly used by individuals or groups of animals were observed near several mammal pathways located adjacent to open grass covered areas scattered with pockets of shrubs.

**Breeding Areas:** Features associated with producing and rearing young (i.e., nest trees, burrows, den) have been reportedly observed on the project site. A coyote den was reportedly observed on the eastern portion of the project site by a local neighbor.

**Regularly Used Perches:** Habitat features (dead and broken-topped trees) are regularly used by birds (i.e. eagles, hawks) for perching.

**Snags and Downed Logs:** Logs greater than or equal to 12 inches in diameter at the largest end and greater than or equal to 20 feet long and snags with excavated holes were observed at several locations on the project site.

**Waters of the State, Natural Waters, and Adjacent Riparian-Shorelines:** Shorelines of the State were not identified on the project site. Waters of the State were observed. The intermittent seasonal and/or ephemeral streams observed on the project site eventually flow into the Teanaway River and into the Yakima River.

**Priority Fish in Natural Waters, and/or Adjacent Riparian-Shorelines:** Fish-bearing streams were not identified on the project site. The Teanaway River (about 1 mile east) is a fish-bearing stream for bull trout and likely presence of steelhead and other resident fish. The Yakima River (several miles south) is a fish-bearing stream for bull trout and other resident fish.

**Instream:** The combination of physical, biological, and chemical processes and conditions that interact to provide functional life history requirements for seasonal or perennial instream fish or wildlife resources. The streams have natural features (water, food, protection, escape, residence) that provide a good resource for wildlife.

**Western Bluebird Non-Artificial Nesting Sites:** Several groups of these birds were observed on the project site in September 2009.

**Biodiversity Areas and Corridors:** Biodiversity areas and corridors that have habitat that are relatively important to various species of native wildlife were observed throughout the project site. Corridors to other open and undisturbed lands are greater than 250 feet wide at several boundaries.

**Thin-Stemmed Persistent Vegetation with Seasonally Inundation:** Habitat suitable for egg-laying by amphibians may be present in several of the seasonal wetlands, pond, and in some of the natural drainage corridors. Drainage corridors and streams on the project site more than likely provide pathways for several amphibians to move freely up onto the project site from the Teanaway River and associated wetland system.

**Occurrence:** It has been reported that lizards (unknown species) are commonly observed on the site during the summer months. Owl hoots (unknown species) are also commonly heard during the summer months, especially in the denser stands of evergreen trees with open understories near the eastern part of the site. Other important birds observed by others on the site include quail and wild turkey.

**Neighborhood Residents Live Adjacent to the Site:** Approximately two dozen homes are located in the neighborhoods immediately adjacent to the proposed site. The only access for most of them is via Wehl road. There is no second access point for emergency vehicles or evacuation.

### **C. Principal Arguments on Appeal.**

We commissioned Jonathon Kemp, a wildlife and fisheries biologist, to review TSR's SEPA Checklist, Development Agreement and CUP application. Kemp issued two formal opinion letter recommending that Kittitas County issue a Determination of Significance for this project and urging that the County require an EIS. We attached both the letters as Exhibit A, and incorporate their content herein by this reference.

Without waiving our right to appeal on any issue, we make the following major arguments in support of the County changing its threshold determination to a DS.

#### **1. The County Failed to Properly Evaluate the Fire Protection Plan**

The County has not properly considered the potential for harm due to lack of appropriate evacuation routes during a wild or man-made fire. It has, therefore, ignored the precedent set out in *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wash. App. 408, 225 P.3d 448 (2010).

The 960 acre site is currently working ponderosa forest. The Neighborhood of roughly two dozen homes is directly adjacent to the site and is also heavily treed. It also has only one entrance which is up a steep gravel drive called Weihl road. There are no other entrances or exits.

A Wildfire burned this entire site approximately 80 years ago and also prior to that perhaps 120 years ago. This entire site burned and there is considerable evidence remaining of these fires. A six acre electrical substation, 90 inverter buildings, 400,000 solar panels, vehicle traffic, plus miles of buried power cables will significantly add to the potential for a fire on this site.

To make matters worse, there is also a well-moratorium in place for the entire site and there is absolutely no access to water. The applicant says it will truck in water. With the historical evidence of fire, and the lack of water, the County has erred in not appropriately considering evacuation routes and fire suppression issues.

In *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wash. App. 408, 225 P.3d 448 (2010), a case with very similar facts, the Court of Appeals, Division 3, held that an EIS was required under SEPA where a development was in an area that had a high fire risk, had only two egress points, and the fire evacuation analysis failed to consider addition traffic from the development.

A review of TSR's application shows no serious consideration of evacuation routes in the case of a fire. Further, it glosses over how it will fight a fire on this forested or the adjacent neighborhood. An EIS will address these concerns and a DS should be issued on this basis alone.

**2. Failure to conduct and Alternate Site Analysis as required by RCW 43.21C.030**

The County has failed to conduct an alternate site analysis is required under RCW 43.21C.030, which states in part:

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) *alternatives to the proposed action;*

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and ir retrievable commitments of resources which would be involved in the proposed action should it be implemented;

(Emphasis Added).

There is no analysis at all by the County or TSR of any proposed alternative sites that could support a solar installation of this magnitude. The site is located on the eastern slope of the forested Cascade Mountains at an elevation of 2600 feet. It regularly gets 3 feet of snow in the winter. Surely, a location in the sage brush country of Eastern Kittitas County, which is 1000 feet lower with less snow and more sun could support this type of installation easily. Yet no such study was conducted.

**3. Failure to Ensure Consistency with Critical Areas Ordinance, Which Has Not Been Updated as Required by State Law**

During review under SEPA, the decision maker must determine “whether the proposal is consistent with the requirements of the critical areas ordinance.” WAC 197-11-908. On information and belief, the County has not yet adopted its Critical Areas Ordinance (CAO) as required under SEPA and therefore does not provide any applicable analysis of potential impacts to critical areas. Under SEPA, the County must assess the project’s consistency with the CAO. At a minimum, this requires a description of what resources are specifically covered by the CAO and what resources may be impacted by the newly allowed uses in the proposed code amendments. The County has not made available any such analysis. Thus, it is not possible for the decision maker and the public to determine whether sensitive resources covered by the CAO may be affected by the proposed changes.

#### **4. Special and Sensitive Areas Not Properly Mitigated**

SEPA requires that the environmental analysis discuss specific resources. The SEPA official “shall” consider whether a “proposal may to a significant degree . . . [a]dversely affect environmental sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness.” WAC 197-11-330(3)(e)(I). The proposed facility would likely cause significant impacts to multiple sensitive areas in the vicinity. These include the Teanaway River, Cle Elum Ridge, and Yakima River Gorge and related watersheds. In addition, the County has failed to ensure that environmental impacts to these areas have been thoroughly analyzed. *See Swift v. Island County*, 87 Wn. 2d 348, 552 P.2d 175 (1976) (requiring an EIS for a residential development that would have significantly impacted sensitive areas in the vicinity, including Whidbey Island Historical District, which is listed on the National Register of Historic Sites, Fort Casey Historical State Park, and Crockett Lake, which is valuable waterfowl and shorebird habitat that is designated by the Audubon Society as an Important Bird Area).

##### **a. Aspen Stands**

The aspen stand needs to be better characterized, measured, and protected or mitigated. The entire drainage corridor containing the aspen stand needs to be studied in more detail to determine if it meets the criteria for being a wetland.

##### **b. Streams and Riparian Zones**

Six “*ephemeral*” streams were identified on the site; however, these streams and associated riparian zones were not studied in detail and were not flagged for verification purposes. GPS points on a map do not allow easy viewing of boundaries of critical areas and buffers for field verification purposes. The streams on the site appear to be intermittent streams, not ephemeral streams. Intermittent streams provide more habitat and biodiversity as compared to ephemeral streams. The riparian zones within these stream corridors were not flagged for verification purposes. GPS points on a map do not allow easy viewing of boundaries of critical areas and buffers for field verification purposes.

##### **c. Freshwater Wetlands**

Twelve wetlands were identified on the site however these areas were not flagged for verification purposes. GPS points on a map do not allow easy viewing of boundaries of critical areas and buffers for field verification purposes. The likely functional degradation of these wetlands after construction of the project was not discussed in sufficient detail. There is no supporting evidence that there will be “*no impacts to wetlands or waters from the construction of the solar PV arrays, etc*” as stated on page 45. One of the reasons that there is “*no evidence of amphibians or invertebrates*” in eleven of the wetlands is because the study was performed during the dry summer



months, for a period of only 5 days in the field. Many of these animals have moved to upland areas in these drier months. These animals depend on and use wet corridors during wet weather months such as late March, April and early May, which was not studied. Best professional judgment to determine wetland functions for these seasonal wetlands would be in the early spring time not the summer as was done by the applicant. The spring will provide better assessment of these seasonal wetlands for invertebrates, amphibians, aquatic birds, and aquatic mammals.

**d. Thin-Stemmed Persistent Vegetation with Seasonally Inundation**

Habitat suitable for egg-laying by amphibians may be present in several of the seasonal wetlands, man-made pond, intermittent streams, and in some of the natural drainage corridors. Drainage corridors and streams on the project site more than likely provide pathways for several amphibians to move freely up onto the project site from the Teanaway River and associated wetland systems.

**e. Perches and Snags**

Logs greater than or equal to 12 inches in diameter at the largest end and greater than or equal to 20 feet long and snags with excavated holes were observed at several locations on the project site. Broken and dead-topped trees were identified as perches. These features were not discussed in the application.

**f. Biodiversity Areas and Corridors**

Biodiversity areas and corridors that have habitat that are relatively important to various species of native wildlife were observed throughout the project site. Corridors to other open and undisturbed lands are greater than 250 feet wide at several boundaries. These features were not discussed in the application.

**5. Failure to Ensure Compliance with Wildlife Laws.**

Elk habitat does occur on the proposed site. Just because the PHS database does depict this on their map does not mean that the site does not provide habitat for these animals. Elk do use the proposed site as documented by several landowners in the area. Much of the information submitted by the applicant in February 2010 relates to the movement and habitat for elk and not the other animals that have been observed on the site and adjacent to the site, could be present on the site, and has suitable habitat for several other priority and sensitive animals.

According to the submitted documents in August by the applicant, up to 4 sensitive wildlife species (black-backed woodpecker, northern goshawk, mountain quail and elk) have the potential to occur in the vicinity of the survey area. Of equal importance is the needed study and assessment for these sensitive wildlife species. The property provides excellent habitat for these sensitive animals to meander freely while

providing good shelter and a variable food source for survival. Evidence of large mammals which frequent the site include elk, deer, cougar, coyote, and black bear (scat). The field survey identified a total of 10 bird and 2 mammal species. A white-headed woodpecker was observed on or very near the site. This bird is a state candidate species. These diverse species were identified in several habitat niches thereby providing evidence of a well connected community.

The submitted document recommends “*further protocol - level survey for individual species if suitable habitat has been identified*”. Suitable habitat has been identified on the proposed site for various woodpeckers, blue birds, owls, northern goshawk, mountain quail, cougar, elk, etc. Therefore a much more intensive survey with specific requirements according to each particular individual wildlife species needs to be undertaken as was recommended.

The County should require a more detailed bird study on the project site to include the possible identification and mapping of owl, mountain quail, turkey, blue bird, heron, eagle, hawks, songbirds, woodpeckers (i.e. black-backed woodpecker), or other sensitive birds. A nocturnal bird (i.e. owl) study should occur during the evening and night hours. Several groups of suspect western blue birds were observed on the project site in September 2009 and by nearby landowners over the years. Owl hoots are commonly heard by many landowners during the summer months on and near the project site. According to the applicant, northern spotted owl and mountain quail do occur within three miles of the project area. Other sensitive birds observed by others include wild turkey. The project site does provide suitable habitat for owl and mountain quail.

A bat habitat assessment and evening survey for bats and nocturnal birds was not undertaken. Bats do occur on the site and should be investigated.

**a. Noncompliance with the Bald Eagle Protection Act.**

There is no real evidence of compliance with the Bald Eagle Protection Act, RCW Chapter 77.12 and regulations promulgated pursuant thereto, WAC 232-12-292, despite the presence of bald eagles and their habitat within the planning area. There is little evidence that the Washington Department of Fish and Wildlife has been consulted pursuant to the Bald Eagle Protection regulations.

**b. Noncompliance with the Federal Bald and Golden Eagle Protection Act.**

The Environmental Checklist does not properly discuss the potential for the proposed action to result in violations of the Bald and Golden Eagle Protection Act (“BGEPA”), 16 USC § 668–668d. The BGEPA prohibits any person, association, partnership or corporation from taking a bald or golden eagle at any time or by any manner without a permit. 16 USC § 668(a). A permit may be issued only if the take would be compatible with the preservation of the species. *Id.* § 668a.

### **c. Noncompliance with the Endangered Species Act.**

Under the federal Endangered Species Act of 1973 (ESA), 16 U.S.C. §§ 1531-1544, “take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). Section 9 of the ESA prohibits both acts that would “take” a species, as well as acts *that would cause an act* that constitutes a “taking.” The Ninth Circuit has held that “a habitat modification which significantly impairs the breeding and sheltering of a protected species amounts to ‘harm’ under the ESA.” *Marbled Murrelet v. Babbitt*, 83 F.3d 1060, 1067 (9th Cir. 1996).

The Environmental Checklist fails to properly address potential impacts to threatened and endangered species from projects allowed through the proposed ordinance. The County merely states that such species occur in the County near the site, as depicted on WDFW priority habitat and species maps. The County provides absolutely no information on whether the proposed changes could stimulate development that may negatively impact these species. In addition, the County fails to demonstrate that the proposed action will be in compliance with Section 9 of the ESA.

### **d. Noncompliance with the Migratory Bird Treaty Act.**

The federal Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712 (MBTA), requires that the U.S. Fish and Wildlife Service (FWS) enforce the MBTA against “any person, association, partnership, or corporation” that “by any means or in any manner,” pursues, hunts, takes, captures, kills or attempts to take, capture or kill a migratory bird or any part, nest or eggs of any migratory bird. 16 U.S.C. §§ 703, 707. Under the MBTA, a person may take or kill migratory birds only as permitted under FWS regulations and based on the FWS’s determination that the take or kill is compatible with the migratory bird treaties. *Id.* §§ 703, 704. FWS’s determination must take into account scientific factors such as species abundance and distribution, migratory patterns, and breeding habits, as well as the economic value of birds. *Id.* § 704. The killing of a single migratory bird is sufficient to create criminal liability. *United States v. Corbin Farm Service*, 444 F.Supp. 510 (E.D. Cal), *aff’d*, 578 F.2d 259 (9th Cir. 1978). The killing of a migratory bird does not need to be intentional and the killing can occur “by any means or in any manner.” *United States v. Moon Lake Electric Ass’n, Inc.*, 45 F.Supp. 2d 1070, 1075–79 (D. Col. 1999) (upholding the prosecution of a utility for unintentionally electrocuting and killing seventeen birds).

The Environmental Checklist fails to properly acknowledge this Act, let alone the potential to result in violations of the Act by allowing large-scale solar energy facilities to be operated with little to no review and protection for migratory birds. The County fails to demonstrate how allowing large-scale solar facilities throughout the County with minimal or no environmental review would be consistent with the MBTA.

#### **6. Failure to Adequately Consider Potential Impacts to Water Resources.**

The Environmental Checklist falls far short of evaluating the potential impacts of the proposed action on water resources and the County's approach violates SEPA. The whole hillside along Red Bridge Road is unstable. Even during normal winter snow runoff the creeks are all full and drain into the Teanaway River in a muddy mess. The Teanaway River hosts a number of ESA Listed Species including Bull Trout and Steelhead. In January 2009, the floods took out HWY 970 along with Red Bridge Road in a few spots. A significant amount of FEMA money was used to repair this damage.

TSR wants to put up numerous solar panels on the site. There will be numerous access roads and lots of trenching for power lines which will require all of the trees to be cut because the roots will be compromised or the trees are simply in the way. In addition, a buffer will be created by cutting trees and clearing vegetation. The first problem is that the solar panels don't allow water to pass through them and will act just like a giant glass surface. Second, clearing this huge amount of trees and other biomass will further reduce the ability of the land to absorb this run off. This area already floods every spring. Unless extraordinary measures are taken to mitigate, the flooding will be far worse.

The County must properly evaluate these factors and demonstrate that the potential environmental impacts of its proposed action were considered and *properly* mitigated.

#### **7. Failure to consult with tribal governments.**

The County has not demonstrated whether it has consulted with tribal governments in the region—particularly tribes (such as the Yakama Nation) with ceded lands in the affected area. Tribal governments have strong interests in protecting natural and cultural resources, and must be consulted regarding the potential effects of the proposed action and the reasonable alternatives.

#### **8. Failure to consider the precedent set by this project.**

The SEPA official "shall" consider whether a "proposal may to a significant degree . . . "[e]stablish a precedent for future actions with significant effects." WAC 197-11-330(3)(e)(iv). The County has failed to adequately consider the degree to which approving this project as proposed would establish a precedent for future actions with significant effects. For example, if the County approves the project as proposed, it will establish a precedent that large-scale quasi-industrial solar facilities may be constructed in other counties without any significant environmental review for impacts to scenic resources.

## **9. Other Concerns**

### **a. Identified Artifacts**

It has been reported that an adjacent landowner found a possible Native Indian artifact (arrowhead) in an area very close to or on the project site boundary. Due to this reported artifact that was found to be very close to or on the project site a detailed cultural/heritage study should be performed to determine if any archeological sites of significant importance are on or adjacent to the project site. The statement on page 59 that “*no landmarks or other evidence of historic, archaeological, scientific, or cultural importance are known to be on or adjacent to the site*” is incorrect.

### **b. Carbon Sequestration**

The existing habitat on the proposed site provides an unknown value for carbon sequestration and one needs to consider the loss of such value if this project is built. Other sites without an established forested community and with less complex structure would offer a much better alternative for this project.

### **c. Other Considerations Not Addressed**

Development on a site with 5 natural, sensitive, and priority habitats which are well connected, maintain biodiversity, and provide a wealth of wildlife and plant life as well as containing sensitive and possible priority species which have not been adequately studied such as owls, blue birds, mountain quail, turkey, heron, eagle, hawks, woodpeckers, bats, and cougars) will be significantly impacted and thereby affect the quality of the environment.

Other sites should be considered for the proposed project which would include topographically flat lands, sites with less habitat features, abandoned sites, tilled or grazed agricultural sites, privately-owned degraded lands, brownfield sites, and sites closer to urban areas to minimize the loss of connected, open, and diverse habitat such as what is found on the proposed location.

The potential for significant environmental damage to habitat and species that will more than likely occur to the proposed site even with mitigating measures needs to be further studied. This decision requires a concerted effort with all stakeholders to be sure that the selected site does not cause irreparable damage to the environment, even with the proposed mitigating measures, not only for the proposed project site but for lands connected to it.

The applicant states on Page 16: “*In the event that the applicant decides to terminate operation of the project the project will be decommissioned and the site will be restored*”. The discussion for the possible decommissioning of the site is mentioned in detail **17 times** in the Expanded SEPA Environmental Checklist (See Page 16, 21, 23, 28, 35, 37, 39, 42, 49, 51, 55, 56, 58, 59, 65, 66, & 67). We have learned in the past that to

restore developed sites to re-create a natural environment after a project has served its' intended purpose or if it is deemed to be not economically feasible is very costly and labor intensive and many times does not succeed as designed and planned. If this project will be decommissioned in the near future, for whatever reason, than it is more imperative to develop the project in an area with fewer natural environmental features.

The SEPA Environmental Checklist provides a conceptual and limited representation of the property and did not provide time and date studies to accurately present site conditions and species which reside and use the site. These studies need to be performed during the four seasons and in the evening and night hours to more accurately determine the species which inhabit and use the site. The supplemental submittal did not include performing any further field studies beyond the limited 5 days of work performed last summer. This makes it difficult if not impossible to analyze the true environmental impacts for the proposed project.

The loss of priority habitat, priority areas, and special or sensitive areas for the items are cumulatively significant environmental impacts. The project as proposed will more than likely significantly impact resident and migratory priority, special, and/or sensitive species, many which have not been adequately studied, and will more than likely permanently damage the 5 natural, sensitive, and priority habitats, even by implementing the proposed mitigating measures.

The applicant states in the Executive Summary that "*the primary reason an Environment Impact Statement (EIS) has been requested is based entirely on the size of the project*". The primary reason for requesting that an EIS be performed is not based entirely on the size of the project. An EIS is being requested due to the more than likely negative impacts to wildlife, habitat, wetlands, streams, riparian zones, plants, biodiversity, connectiveness, open space, and identified cultural artifacts on the proposed site that will significantly affect the quality of the environment.

#### **10. Inadequate analysis of cumulative impacts.**

Under SEPA, the lead agency is specifically required to consider whether several marginal impacts when considered together may cumulatively result in a significant adverse impact. WAC 197-11-792(2)(c)(iii). The likelihood of an accumulation of adverse impacts of solar energy and industrial development in this region is identifiable and must be included in the agency's SEPA analysis. The above 10 points articulated in this Appeal letter have the cumulative effect of requiring a DS.

#### **D. Conclusion**

TSR is proposing to clear a square mile of working forest for a quasi-industrial purpose and yet the county is attempting to avoid requiring a simple Environmental Impact Statement. The sheer size and scale of this project should trigger an EIS. Given the serious and adverse environmental impacts that would likely result from the proposal, the County must prepare an EIS that provides the public with adequate information about

# **Exhibit A**

the proposed action, its reasonably foreseeable impacts, and the reasonably available alternatives. By avoiding its responsibilities to consider the impacts now, and virtually eliminating any requirement to consider the impacts of specific project proposals later, the County is making a significant legal error.

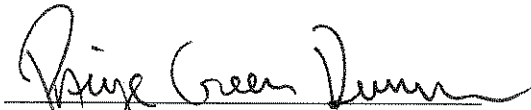
The County should take the money and resources that it will cost to mount a doomed effort to defend its MDNS against legal challenges and apply them to the cost of producing a valid and legally adequate EIS.

Thank you for the opportunity to file this Notice of Appeal and Comment Letter, which preserves our standing. Please direct all correspondence for this appeal to James Brose at P.O Box 177 Cle Elum, WA 98922.

Sincerely,



James Brose  
Adjacent Property Owner  
951 Loping Lane  
Cle Elum, Washington



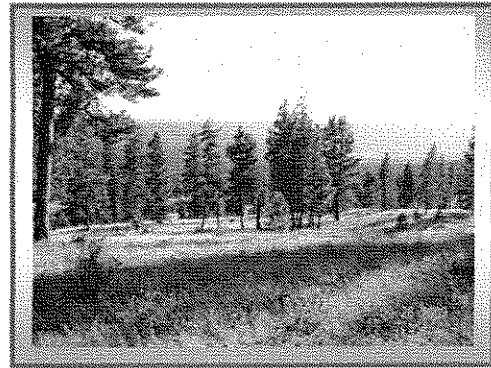
Paige Green Dunn  
Adjacent Property Owner  
1370 Loping Lane  
Cle Elum, Washington

CC: Citizen's Alliance for a Rural Teanaway, a Non-Profit Corporation  
Friends of the Teanaway River  
Howard Trott, Managing Director, Teanaway Solar Reserve, LLC





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December 10, 2009

Mr. James Brose  
Citizens Alliance for a Rural Teanaway (CART)  
P.O. Box 177  
Cle Elum WA 98922

**RE: Professional Opinion Statement  
Proposed Teanaway Solar Reserve Project (CUP-09-00005)  
Northeast of the City of Cle Elum off of Highway 970  
Cle Elum, Unincorporated Kittitas County WA**

Dear Mr. Brose:

EnCo Environmental Corporation (**EnCo**) appreciates the opportunity to provide a professional opinion to the Citizens Alliance for a Rural Teanaway (CART) regarding the proposed Teanaway Solar Reserve project within the Teanaway River Watershed. The purpose of this letter is to make a professional opinion pertaining to the support documents for the proposed project and its' potential, as planned, for impacts to the environment.

Teanaway Solar Reserve, LLC has recently submitted a Conditional Use Permit (CUP) application and Development Agreement to develop a solar farm generating up to 75 megawatts of photovoltaic for distribution to utilities and communities through a substation interconnection point on the Pacific Northwest power grid. The project site is located in unincorporated Kittitas County and consists of 982 acres and the solar farm will use approximately 580 acres of the project site. The reported surface area of the solar panels would cover about 160 acres and other development disturbances would include clearing and grading, access and maintenance roadways, staging areas, utility ditches, transmission towers and poles, substation, building and panel footings, solar modules, and other infrastructure.

The site is currently zoned as Forest and Range land. Land use history included forestry, cattle grazing, ranch, open space, and recreation. Historical recreational activities have occurred on the project site, which included hiking, bird watching, native plant walks, biking, horseback riding, hunting, cross-country skiing, and orienteering.

The property consists of an open canopy Ponderosa/Douglas fir forest with intermittent meadows, seasonally flooded wetlands, a small, artificially created pond, seasonal streams, and natural drainage corridors through undulating hills and dales with outcrops of widely-scattered boulders. Several logging roads, access roads, and mammal trails

EnCo Environmental Corporation – Site Assessment ▪ Wetland ▪ Remediation ▪ Habitat

traverse the site. Much of the land appears to have been logged and thinned within the last 20 to 25 years and some thinning has reportedly occurred as recently as 2001.

The information presented in this letter was made after reviewing several readily available documents submitted with the County CUP application and Development Agreement; specifically the SEPA Environmental Checklist with supplemental environmental studies performed by an environmental engineering firm. In addition, I obtained information from local sources and interviewed several nearby and adjacent landowners who are very familiar with the natural wildlife and habitat within the project site boundary. I have personally visited the proposed project site three times since the summer of 2008, and am quite familiar with the general lay of the land, its surroundings, vegetation patterns, and wildlife habitat. EnCo's field work included performing a reconnaissance-level assessment.

### **PRIORITY HABITAT, PRIORITY AREAS, AND SPECIAL OR SENSITIVE AREAS**

The priority habitat, priority areas, and special or sensitive areas that were observed or indicated on the project site are listed below.

**Freshwater Wetlands:** Transitional lands between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water were observed as evidenced by dominant hydrophytic plants and wetland hydrology indicators such as water stained leaves, surface soil cracks, sparsely vegetated concave surfaces, algae mats, and drainage patterns.

**Riparian:** Areas adjacent to seasonal or perennial aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other were observed contiguous to the ordinary high water mark of several on-site streams.

**Aspen Stands:** Mixed stands of aspen were observed contiguous to a small pond and this stand of aspen extended within the drainage corridor to the pond at a distance of several hundred feet.

**Migration Corridors:** Areas regularly used by animals as travel routes between seasonal ranges were observed throughout the site, especially along several mammal trails and old logging roads. The property provides excellent habitat for large mammals to meander freely while providing good shelter and a variable food source. Evidence of large mammals which frequent the site include elk, deer, cougar, coyote, and black bear (scat). It has been reported that large herds of elk and deer move onto and through the project site in early October and many stay in the area until June.

**Elk Herd Winter Range:** Features observed on the project site include elk footprints, droppings, bones, fur, and pathways. One remnant female elk was observed just east of the project site in September 2009.

**Foraging Areas:** Feeding areas that may be regularly used by individuals or groups of animals were observed near several mammal pathways located adjacent to open grass covered areas scattered with pockets of shrubs.

**Breeding Areas:** Features associated with producing and rearing young (i.e., nest trees, burrows, den) have been reportedly observed on the project site. A coyote den was reportedly observed on the eastern portion of the project site by a local neighbor.

**Regularly Used Perches:** Habitat features (dead and broken-topped trees) are regularly used by birds (i.e. eagles, hawks) for perching.

**Snags and Downed Logs:** Logs greater than or equal to 12 inches in diameter at the largest end and greater than or equal to 20 feet long and snags with excavated holes were observed at several locations on the project site.

**Waters of the State, Natural Waters, and Adjacent Riparian-Shorelines:** Shorelines of the State were not identified on the project site. Waters of the State were observed. The intermittent seasonal and/or ephemeral streams observed on the project site eventually flow into the Teanaway River and into the Yakima River.

**Priority Fish in Natural Waters, and/or Adjacent Riparian-Shorelines:** Fish-bearing streams were not identified on the project site. The Teanaway River (about 1 mile east) is a fish-bearing stream for bull trout and likely presence of steelhead and other resident fish. The Yakima River (several miles south) is a fish-bearing stream for bull trout and other resident fish.

**Instream:** The combination of physical, biological, and chemical processes and conditions that interact to provide functional life history requirements for seasonal or perennial instream fish or wildlife resources. The streams have natural features (water, food, protection, escape, residence) that provide a good resource for wildlife.

**Western Bluebird Non-Artificial Nesting Sites:** Several groups of these birds were observed on the project site in September 2009.

**Biodiversity Areas and Corridors:** Biodiversity areas and corridors that have habitat that are relatively important to various species of native wildlife were observed throughout the project site. Corridors to other open and undisturbed lands are greater than 250 feet wide at several boundaries.

**Thin-Stemmed Persistent Vegetation with Seasonally Inundation:** Habitat suitable for egg-laying by amphibians may be present in several of the seasonal wetlands, pond, and in some of the natural drainage corridors. Drainage corridors and streams on the project site more than likely provide pathways for several amphibians to move freely up onto the project site from the Teanaway River and associated wetland system.

**Occurrence:** It has been reported that lizards (unknown species) are commonly observed on the site during the summer months. Owl hoots (unknown species) are

also commonly heard during the summer months, especially in the denser stands of evergreen trees with open understories near the eastern part of the site. Other important birds observed by others on the site include quail and wild turkey.

## PREVIOUS STUDIES BY THE APPLICANT

The field studies for this planned project were performed on June 16<sup>th</sup> through June 19<sup>th</sup> and on July 9, 2009, for a total of five (5) days. The field work did not include performing seasonal assessments and inventories for wildlife, birds, and plants. This brief survey does not adequately address the seasonal variation and numbers of a given species that can occur in any given season. Additional Baseline studies need to be performed to incorporate seasonal variances. This work effort should include gathering information from local naturalists as well.

It is the opinion of this writer that the environmental-related items, surveys, and/or studies listed below were not adequately addressed in the proposed project support documents and are in need of further study and evaluation.

1. Perform a more detailed assessment of the elk populations on the project site during the months when they would be expected to be present.
2. Intuitive and complete native plant floristic surveys were not performed in the springtime when many of the wild flowering plants can be adequately observed and keyed. A more detailed sensitive/priority plant survey needs to be undertaken at the appropriate time(s) of the year. Also local plant enthusiasts, naturalists, and botanists should be consulted.
3. Perform a more detailed bird study on the project site to include the identification and mapping of owl, quail, turkey, blue bird, heron, eagle, hawks, songbirds, woodpeckers, or other sensitive birds.
4. A detailed insect survey should be undertaken and the results presented.
5. A bat habitat assessment should be undertaken and results presented.
6. The aspen stand needs to be characterized, measured, and protected or mitigated if it is determined to be a priority area. The entire drainage corridor containing the aspen stand needs to be studied in more detail to determine if it meets the criteria for being a wetland.
7. Specific details on mitigating measures were not clearly identified from the effects of the planned clearing and de-vegetation to the priority and/or sensitive native vegetation and wildlife habitat.
8. Possible negative impacts to the functions and values of the wetlands and streams from the effects of the proposed development within and extending beyond the standard buffers were incomplete and not clearly discussed.
9. Stormwater runoff **quantity** flowing off of the impervious solar modules and other constructed impervious surfaces to the Teanaway River; a Section 303(d) river and to the Yakima River needs further investigation and assessment.
10. Surface water hydrology patterns to maintain a drinking water source for animal use and to prevent documented and reported down slope flooding during the wet weather months needs further study and protection measures.

11. Stormwater runoff **quality** from washing/rinsing solar modules and the use and application of weed control measures (pesticide and herbicide use) needs further assessment and management.
12. The effects of the near surface groundwater table and quality due to increased stormwater runoff and infiltration rates needs to be addressed.
13. Determine the status of local groundwater withdrawal moratoriums and if present, prohibit the installation of any groundwater well on the project site. Determine the status of any recorded water wells on the project site using the Washington State Well Log Database. Water storage may be needed on or near the project site to contain or extinguish potential grass or forest fires. This needs to be studied further.
14. A vegetation management plan needs to be prepared to protect natural areas from over growth and spreading of nuisance, exotic, or non-indigenous native vegetation from standard seed mixtures to be planted for erosion and sediment control and beneath the solar panels. In addition, non-native vegetation growing in any fence line will need to be controlled to prevent spreading to natural areas.
15. Wildlife corridors will need protection from lighting features by installing or incorporating mitigation measures such as: installing blinds, fences, or by positioning and aligning lights so not to be directed into natural areas.
16. The effects of noise during construction, operation, and maintenance needs to be further studied and mitigating measures undertaken. Study needs to include possible noise generated from the solar panels during operation, precipitation event, re-alignment, and wind movements over and under the panels.
17. Prohibit fencing in areas frequented by migrating wildlife such as elk.
18. Estimate the extent of and mitigating measures for sediment and dust control.
19. Provide further study to determine what the setbacks will be for the project. Setbacks need to be determined by combining fire protection, preservation of habitat and wildlife, security, preserving or enhancing functions and values or critical areas, and minimizing the loss of natural views to the adjacent landowners.
20. The possible effects of burning cleared and grubbed vegetation to surrounding wildlife and humans needs to be studied and controlled in a safe manner.
21. The boundary flags associated with the twelve (12) wetland edges and the 6 stream ordinary high water marks, and the associated riparian zones to these streams were missing for field verification purposes. Boundary flags need to be placed on all critical areas and riparian zones, including those within about 300 feet from the project edge so that others can observe and verify these edges.
22. Wetland/stream/riparian/upland test plot locations were not marked in the field for verification. These need to be depicted with flags or stakes in the field.
23. Five of the six identified streams were classified by the applicant's consultant as "ephemeral" and one of the six being "intermittent". Five of these 6 streams were classified as "seasonal" by WDNR. These streams need to be further characterized (i.e. how long does water flow in the streams after precipitation events and how long do they flow in the early growing season after snow melt and spring rains) to see if they may or may not afford wider buffer protection based on their type.

24. The environmental engineering firm's Cultural Resource Report, labeled as Attachment C, was "*privileged and confidential for restricted distribution*" therefore this document was not available for review at this time. This document needs to be made available to the general public.
25. It has been reported that an adjacent landowner found a possible Native Indian artifact (arrowhead) in an area very close to the project site boundary. Due to the reported artifact that was found to be very close to the project site a detailed cultural/heritage study should be performed on the project site to determine if any archeological sites of significant importance need to be protected or mitigated.

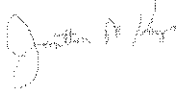
The SEPA Environmental Checklist provides a conceptual and limited representation of the property and in my opinion did not provide adequate study to present actual site conditions over four seasons. This made it difficult if not impossible to analyze the true environmental impacts for the proposed project. The Purpose and Need statement that the project will "*avoid environmentally sensitive areas*" was not adequately demonstrated.

The magnitude of this project, loss of priority habitat, priority areas, and special or sensitive areas for wintering deer, coyote, cougar, and elk, alteration of hydrology, changes in storm water quantity and quality, and other items presented in this letter appear to be cumulatively significant. The project as proposed will more than likely significantly impact resident and migratory priority, special, and/or sensitive species and will permanently damage the Ponderosa forest and meadow communities and winter range habitat for large mammals.

It is therefore the opinion of this writer that the project, as proposed, should be subject to further and extensive environmental analysis including but not limited to a complete Environmental Impact Statement (EIS) with an alternative site analysis and economic feasibility study under the State Environmental Policy Act (SEPA) review process. This process must allow ample opportunity for public review and comment before any determination on the CUP is made. It is also my opinion that Kittitas County issue a Determination of Significance for this proposed project until these issues can be further studied.

If you have any questions concerning my opinion you can contact me by telephone (243.841.9710) or by e-mail at [jkemp@encoec.com](mailto:jkemp@encoec.com).

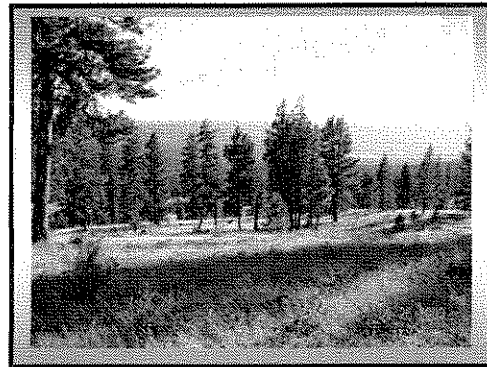
Sincerely,



Jonathan M. Kemp  
Wildlife & Fisheries Biologist  
Principal, EnCo Environmental Corporation



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www.encoec.com



March 17, 2010

Mr. James Brose  
Citizens Alliance for a Rural Teanaway (CART)  
P.O. Box 177  
Cle Elum WA 98922

**RE: Professional Opinion Statement after Supplemental Application  
Proposed Teanaway Solar Reserve Project (CUP-09-00005)  
Northeast of the City of Cle Elum off of Highway 970  
Cle Elum, Unincorporated Kittitas County WA**

Dear Mr. Brose:

The purpose of this letter is to present an updated professional opinion statement pertaining to the applicant's supplemental application materials, a revised CUP application, draft Development Agreement, and expanded SEPA checklist that were received by Kittitas County on February 22, 2010 for the above-referenced project. EnCo prepared a letter dated December 10, 2009 based on the August 2009 CUP submittal. This letter provides an updated response to the February CUP supplemental application.

#### **RESUBMITTED DATA BY THE APPLICANT**

The resubmitted data package did not include performing additional field studies and assessments. As was stated before, the field studies for this planned project were performed on June 16<sup>th</sup> through June 19<sup>th</sup> and on July 9, 2009, for a total of 5 days. The limited field work undertaken by the applicant did not include performing seasonal investigations for range wildlife, mammals, reptiles (i.e. lizards), amphibians, birds, and plants. The assessment also did not include performing evening and night time studies for sensitive or priority nocturnal animals such as owls and bats. The brief survey performed last summer does not adequately address the seasonal variation and numbers of a given species that can occur in any given season.

It is the opinion of this writer that there are still several environmental-related items, surveys, and/or studies listed below that have not been adequately studied in the proposed project support documents. Not addressing these items will significantly affect the quality of the environment on the project site.

## WILDLIFE

Elk habitat does occur on the proposed site. Just because the PHS database does depict this on their map does not mean that the site does not provide habitat for these animals. Elk do use the proposed site as documented by several landowners in the area. Much of the information submitted by the applicant in February 2010 relates to the movement and habitat for elk and not the other animals that have been observed on the site and adjacent to the site, could be present on the site, and has suitable habitat for several other priority and sensitive animals.

According to the submitted documents in August by the applicant, up to 4 sensitive wildlife species (black-backed woodpecker, northern goshawk, mountain quail and elk) have the potential to occur in the vicinity of the survey area. Of equal importance is the needed study and assessment for these sensitive wildlife species. The property provides excellent habitat for these sensitive animals to meander freely while providing good shelter and a variable food source for survival. Evidence of large mammals which frequent the site include elk, deer, cougar, coyote, and black bear (scat).

The field survey identified a total of 10 bird and 2 mammal species. A white-headed woodpecker was observed on or very near the site. This bird is a state candidate species. These diverse species were identified in several habitat niches thereby providing evidence of a well connected community.

The submitted document recommends "*further protocol - level survey for individual species if suitable habitat has been identified*". Suitable habitat has been identified on the proposed site for various woodpeckers, blue birds, owls, northern goshawk, mountain quail, cougar, elk, etc. Therefore a much more intensive survey with specific requirements according to each particular individual wildlife species needs to be undertaken as was recommended.

Perform a more detailed bird study on the project site to include the possible identification and mapping of owl, mountain quail, turkey, blue bird, heron, eagle, hawks, songbirds, woodpeckers (i.e. black-backed woodpecker), or other sensitive birds. A nocturnal bird (i.e. owl) study should occur during the evening and night hours. Several groups of suspect western blue birds were observed on the project site in September 2009 and by nearby landowners over the years. Owl hoots are commonly heard by many landowners during the summer months on and near the project site. According to the applicant, northern spotted owl and mountain quail do occur within three miles of the project area. Other sensitive birds observed by others include wild turkey. The project site does provide suitable habitat for owl and mountain quail.

A bat habitat assessment and evening survey for bats and nocturnal birds was not undertaken. Bats may occur on the site and should be investigated.



## NATIVE PLANTS

According to the submitted documents in August, up to 12 native plants were identified as potentially occurring in the vicinity of the survey area in late June and early July of 2009. Native plant floristic surveys were not performed in the early springtime (April and May) when many of the native plants are in full bloom and can be more easily observed and identified. A more detailed sensitive/priority plant survey needs to be undertaken in April through May.

Also it is very important to contact local plant enthusiasts, naturalists, and botanists to document the plant species they have identified over the years. Based on review of the re-submittal this task was not undertaken by the applicant. The limited field survey last summer identified a total of 81 plants. These diverse species of plants were identified in several habitat niches thereby providing evidence of a well connected and established community.

## PRIORITY HABITATS IDENTIFIED BY APPLICANT SURVEY

**Aspen Stand:** The aspen stand needs to be better characterized, measured, and protected or mitigated. The entire drainage corridor containing the aspen stand needs to be studied in more detail to determine if it meets the criteria for being a wetland.

**Streams and Riparian Zones:** Six “*ephemeral*” streams were identified on the site; however, these streams and associated riparian zones were not studied in detail and were not flagged for verification purposes. GPS points on a map do not allow easy viewing of boundaries of critical areas and buffers for field verification purposes. The streams on the site appear to be intermittent streams, not ephemeral streams. Intermittent streams provide more habitat and biodiversity as compared to ephemeral streams. The riparian zones within these stream corridors were not flagged for verification purposes. GPS points on a map do not allow easy viewing of boundaries of critical areas and buffers for field verification purposes.

**Freshwater Wetlands:** Twelve wetlands were identified on the site however these areas were not flagged for verification purposes. GPS points on a map do not allow easy viewing of boundaries of critical areas and buffers for field verification purposes. The likely functional degradation of these wetlands after construction of the project was not discussed in sufficient detail. There is no supporting evidence that there will be “*no impacts to wetlands or waters from the construction of the solar PV arrays, etc*” as stated on page 45. One of the reasons that there is “*no evidence of amphibians or invertebrates*” in eleven of the wetlands is because the study was performed during the dry summer months, for a period of only 5 days in the field. Many of these animals have moved to upland areas in these drier months. These animals depend on and

use wet corridors during wet weather months such as late March, April and early May, which was not studied. Best professional judgment to determine wetland functions for these seasonal wetlands would be in the early spring time not the summer as was done by the applicant. The spring will provide better assessment of these seasonal wetlands for invertebrates, amphibians, aquatic birds, and aquatic mammals.

## **OTHER PRIORITY, SPECIAL, OR SENSITIVE AREAS IDENTIFIED**

**Thin-Stemmed Persistent Vegetation with Seasonally Inundation:** Habitat suitable for egg-laying by amphibians may be present in several of the seasonal wetlands, man-made pond, intermittent streams, and in some of the natural drainage corridors. Drainage corridors and streams on the project site more than likely provide pathways for several amphibians to move freely up onto the project site from the Teanaway River and associated wetland systems.

**Perches and Snags:** Logs greater than or equal to 12 inches in diameter at the largest end and greater than or equal to 20 feet long and snags with excavated holes were observed at several locations on the project site. Broken and dead-topped trees were identified as perches. These features were not discussed in the application.

**Biodiversity Areas and Corridors:** Biodiversity areas and corridors that have habitat that are relatively important to various species of native wildlife were observed throughout the project site. Corridors to other open and undisturbed lands are greater than 250 feet wide at several boundaries. These features were not discussed in the application.

## **OTHER CONCERNS**

**Identified Artifacts:** It has been reported that an adjacent landowner found a possible Native Indian artifact (arrowhead) in an area very close to or on the project site boundary. Due to this reported artifact that was found to be very close to or on the project site a detailed cultural/heritage study should be performed to determine if any archeological sites of significant importance are on or adjacent to the project site. The statement on page 59 that "*no landmarks or other evidence of historic, archaeological, scientific, or cultural importance are known to be on or adjacent to the site*" is incorrect.

**Carbon Sequestration:** The existing habitat on the proposed site provides an unknown value for carbon sequestration and one needs to consider the loss of such value if this project is built. Other sites without an established forested community and with less complex structure would offer a much better alternative for this project.

Development on a site with 5 natural, sensitive, and priority habitats which are well connected, maintain biodiversity, and provide a wealth of wildlife and plant life as well as containing sensitive and possible priority species which have not been adequately studied such as owls, blue birds, mountain quail, turkey, heron, eagle, hawks, woodpeckers, bats, and cougars) will be significantly impacted and thereby affect the quality of the environment.

Other sites should be considered for the proposed project which would include topographically flat lands, sites with less habitat features, abandoned sites, tilled or grazed agricultural sites, privately-owned degraded lands, brownfield sites, and sites closer to urban areas to minimize the loss of connected, open, and diverse habitat such as what is found on the proposed location.

The potential for significant environmental damage to habitat and species that will more than likely occur to the proposed site even with mitigating measures needs to be further studied. This decision requires a concerted effort with all stakeholders to be sure that the selected site does not cause irreparable damage to the environment, even with the proposed mitigating measures, not only for the proposed project site but for lands connected to it.

The applicant states on Page 16: "*In the event that the applicant decides to terminate operation of the project the project will be decommissioned and the site will be restored*". The discussion for the possible decommissioning of the site is mentioned in detail **17 times** in the Expanded SEPA Environmental Checklist (See Page 16, 21, 23, 28, 35, 37, 39, 42, 49, 51, 55, 56, 58, 59, 65, 66, & 67). We have learned in the past that to restore developed sites to re-create a natural environment after a project has served its' intended purpose or if it is deemed to be not economically feasible is very costly and labor intensive and many times does not succeed as designed and planned. If this project will be decommissioned in the near future, for whatever reason, than it is more imperative to develop the project in an area with fewer natural environmental features.

The SEPA Environmental Checklist provides a conceptual and limited representation of the property and in my opinion did not provide time and date studies to accurately present site conditions and species which reside and use the site. These studies need to be performed during the four seasons and in the evening and night hours to more accurately determine the species which inhabit and use the site. The supplemental submittal did not include performing any further field studies beyond the limited 5 days of work performed last summer. This makes it difficult if not impossible to analyze the true environmental impacts for the proposed project.

The loss of priority habitat, priority areas, and special or sensitive areas for the items are cumulatively significant environmental impacts. The project as proposed will more than likely significantly impact resident and migratory priority, special, and/or sensitive species, many which have not been adequately studied, and will more than likely

permanently damage the 5 natural, sensitive, and priority habitats, even by implementing the proposed mitigating measures.

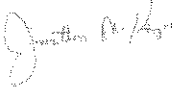
The applicant states in the Executive Summary that *"the primary reason an Environment Impact Statement (EIS) has been requested is based entirely on the size of the project"*. The primary reason for requesting that an EIS be performed is not based entirely on the size of the project. An EIS is being requested due to the more than likely negative impacts to wildlife, habitat, wetlands, streams, riparian zones, plants, biodiversity, connectiveness, open space, and identified cultural artifacts on the proposed site that will significantly affect the quality of the environment.

As stated before, the project, as proposed, needs to be subject to further and extensive environmental analysis including but not limited to a complete EIS with an alternative site analysis and economic feasibility study under the State Environmental Policy Act (SEPA) review process.

This letter should be made as a public record before the closing date of submittals so that it will be reviewed by the County's SEPA Responsible Official for the forthcoming SEPA threshold determination.

If you have any questions concerning my opinion you can contact me by telephone (243.841.9710) or by e-mail at [jkemp@encoec.com](mailto:jkemp@encoec.com).

Sincerely,



Jonathan M. Kemp  
Wildlife & Fisheries Biologist  
Principal, EnCo Environmental Corporation