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VIA U.S. MAIL

Kittitas County Board of Adjustment
Chairman Akkerman, Ms. Larsen, Mr. Bossart, Mr. Kloss, and Mr. Goeben
c/o Mandy Weed, Clerk
Kittitas County Community Development Services
411 North Ruby W Street, Suite 2
Ellensburg, WA 98926

**Re: Teanaway Solar Reserve
Conditional Use Permit Application (CU-09-00005)**

Dear Chairman Akkerman and Members of the Board:

The Applicant, Teanaway Solar Reserve, LLC submits this pre-hearing letter in support of the above-referenced conditional use permit ("CUP") application to construct and operate a solar energy facility in Upper Kittitas County.¹ The County has prepared a Staff Report for the CUP Application ("CUP Staff Report") and, except as noted otherwise, TSR agrees with its analysis and conclusions.² The County has also completed its SEPA review and issued a mitigated determination of nonsignificance ("MDNS") for the proposal.³ As set forth in the CUP

¹ As noted in the record, TSR submitted its CUP application in August 2009 (Exhibit 1), and supplemented it with additional information in February 2010 (Exhibit 5) with supplemental mitigation, technical reports, studies, and analyses. Unless otherwise noted, this letter relies on its February 2010 CUP application.

² For purposes of this letter, TSR also adopts the County's August 4, 2010 Exhibit List. The CUP Staff Report is identified therein as Exhibit 18. Pursuant to the accompanying Supplemental Exhibit List, TSR asks this letter be admitted into the record as Proposed Supplemental Exhibit 22.

³ As provided in the Staff MDNS Report (Exhibit 12), SEPA Appeal Report (Exhibit 17), TSR's Letter to the Board of Adjustment Opposing the MDNS Appeal (Exhibit 21), and elsewhere in the record, the County issued the MDNS based on the comprehensive environmental analysis conducted by TSR for its proposed solar energy project, the full review of that analysis by multiple state and local expert agencies, the Yakama Nation, and the public, the resulting

71795-0001/LEGAL.18908546.1

application,⁴ the CUP Staff Report and the additional points provided below, we respectfully ask the Board to grant the CUP for the project. As noted in the CUP Staff Report, the CUP application and project meet all of the criteria applicable to conditional use permits generally, and specifically those for the proposed solar energy facility.

A. Project Description.

TSR proposes to construct a solar energy farm within approximately 982 acres of leased, private land. The property is zoned Forest and Range (F/R), which permits solar energy farms with conditional use approval.⁵ The site is located in a rural area approximately 4 miles northeast of Cle Elum in Township 20N, Range 16E, within Sections 22, 23, and 27. Upon completion, the proposed project will be capable of producing up to 75MWdc of renewable PV solar energy.⁶ The project will interconnect to the existing Bonneville Power Administration (BPA) Rocky Reach - Maple Valley Transmission Line, which crosses through the southern portion of the project site and the surrounding neighborhood.⁷

Although the project area is 982 acres in size, TSR will only disturb up to 477 acres—less than one-half of the total project acreage. The remaining acreage will remain undisturbed and will be preserved throughout the life of the project as wildlife habitat.⁸ The 477 acres will be developed to include the project's components, including two solar array fields, a substation, a transmission line, and other supporting equipment.⁹ TSR has microsituated the project's components to avoid all

voluminous record created in this matter, and the County's extensive consideration of the project's probable environmental impacts based on that record. The referenced Exhibits and record also amply provide the reasons why the SEPA appeal should be dismissed.

⁴ See Exhibit 5, pg. 3-3 – 3-11.

⁵ See, e.g., Kittitas County Code ("KCC") 17.61.020.4: 17.61.020.6.

⁶ Recent State legislation chapter 19.285 RCW requiring energy from renewable resources suggests there will be an increased regional demand for solar-generated energy. See, e.g., RCW 19.285.040. The Northwest Power and Conservation Council's 6th Power Plan (February 2010) ("Power Plan") at page 3-2 also predicts that regional demand for electricity will increase by approximately 6,000 average megawatts by 2030. Pursuant to the accompanying Supplemental Exhibit List, TSR asks that a copy of the Power Plan this letter be admitted into the record as Proposed Supplemental Exhibit 23.

⁷ See, e.g., Exhibit 5.A (Figures – Figure 2).

⁸ See, e.g., Exhibit 11 (Mitigation Agreement Between Washington State Department of Fish and Wildlife and Teanaway Solar Reserve LLC, dated April 18, 2010) ("WDFW Mitigation Agreement").

⁹ See, e.g., Exhibit 7.F (Updated Site Plan – Fig. 4) and Exhibit 5.A (Figures – Figure 4).

sensitive or critical areas and their buffers, and to further lessen any visual impacts.¹⁰ The project has also been redesigned so that a corridor ranging between 700-1900 feet between the two solar fields will remain open and undeveloped to allow wildlife, especially elk, to continue to migrate through the project site.¹¹ Moreover, the solar panels will be placed in rows with approximately 8-12 feet of separation, which is wide enough to also allow wildlife migration.¹² Disturbed areas will be reseeded with native grasses, and low-growing, natural vegetation will be permitted to grow in between the rows of solar panels.¹³ Notably, of the 477 acres that will be potentially disturbed by this proposal, less than a total of one acre will be converted to impervious surfaces.¹⁴

B. The Kittitas County Code Permits Solar Energy Facilities Within the Forest and Range Zone as a Conditional Use.

The project area is zoned Forest and Range.¹⁵ The conditional uses permitted for property zoned Forest and Range include "major alternative energy facilities," which include "solar farms."¹⁶ As the CUP Staff Report points out, portions of the proposal—the substation and transmission line—also qualify as "special utilities" under KCC 17.61.010.2(b), (c).¹⁷ Special utilities are

¹⁰ See, e.g., Exhibit 7.D (Updated Hydrologic Report – Appendix A, Figure 3); see also Exhibit 7.E – .F.

¹¹ See, e.g., Exhibit 11 (WDFW Mitigation Agreement – Exhibit A).

¹² See, e.g., Exhibit 5.F.x (Attachment J - Figures Referenced in Text; Figures 4b, 4c).

¹³ See, e.g., Exhibit 11 (WDFW Mitigation Agreement), pg. 5; Exhibit 13 (MDNS), pg. 6.

¹⁴ See, e.g., Exhibit 5.F.vi (Attachment F, pgs 5-6 & Table 2).

¹⁵ See Exhibit 5.A (Figures – Figure 6).

¹⁶ KCC 17.61.020.4.b; KCC 17.61.010(9), (15). A conditional use is a zoning tool used by municipalities to provide flexibility to the zoning code. A conditional use permit is generally referred to as a use "which is permitted by zoning regulations subject to approval by the administrative body charged with issuing permits." *Lund v. City of Tumwater*, 2 Wn. App. 750, 754, 472 P.2d 550 (1970). This is consistent with definition of conditional use provided by the KCC: "a use permitted subject to conditions." KCC 17.08.055.

¹⁷ TSR does not necessarily agree that the transmission line and electrical substation warrant separate consideration under different criteria. The transmission line and substation are required to transfer energy from the solar fields to the existing BPA transmission line, and are thus essential elements of the solar farm—the solar farm cannot exist without them. Accordingly, all of the project's components should be considered uniformly. Compare KCC 17.61.010(12) (defining "solar farm" as a "facility") and KCC 17.61.17 (defining "wind turbines" to include the turbine apparatus and "any other buildings, support structures, or other related improvements necessary for the generation of power"). Moreover, the plain intent of the special utility designation appears aimed at large transmission lines—like the BPA line—that are constructed independently of energy generation development. Nevertheless, the transmission line and substation are separately addressed and fully meet the approval criteria for

permitted as conditional uses on property zoned Forest and Range, and subject to the special utility criteria set forth in KCC 17.61.030.¹⁸

C. The Proposed Solar Reserve Satisfies the Conditional Use Criteria.

The Kittitas County Board of Adjustments should approve TSR's application for a conditional use permit if the application meets the County criteria. Public opposition is an improper basis upon which to deny a conditional use.¹⁹ Generally, the burden of demonstrating that a conditional use meets the applicable criteria falls upon the applicant—in this case TSR. However, when a municipality uses general criteria for CUP approval, the burden rests on local government to demonstrate that the proposed conditional use does not satisfy the general criteria.²⁰

The criteria for a CUP in the Forest and Range zone are general and set forth in KCC 17.61.010 as follows:

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 costs or economic detriment.

"special utilities" under 17.61.030 as provided in the CUP Application, CUP Staff Report, the record, this letter, and elsewhere in the record.

¹⁸ KCC 17.61.020.6; KCC 17.61.030.

¹⁹ See *Maranantha v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d 985 (1990).

²⁰ See *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 797, 903 P.2d 986 (1995) (citing *Pentagram Corporation v. City of Seattle*, 28 Wn. App. 219, 228-29, 622 P.2d 892 (1981)).

D. The Proposed Teanaway Solar Reserve Satisfies the Kittitas County Criteria for a Conditional Use Permit.

1. The Proposed Solar Reserve is Essential and/or Desirable to the Public Convenience.

The public convenience prong in the Kittitas County Code is similar to conditional use criteria in most other jurisdictions and requires a demonstration of public need or necessity prior to conditional use approval.²¹ In considering this criterion, the type and nature of the proposed project is especially important. And on this basis alone, the proposed energy facility should be held to be both essential and desirable to the public convenience.

There can be no dispute that energy generation is essential to our society and quality of life. Moreover, both the Federal and State government have declared that alternative energy production is particularly within the public interest. For example, the Washington State Legislature has recognized that alternative energy development is essential to the public convenience:

The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest. . . .²²

²¹ A number of courts in other jurisdictions have determined that conditional uses cannot be denied due to the lack of a need for the conditional use even when the local jurisdiction's criteria for conditional use approval require that the use be reasonably necessary for the convenience of the community. 3 Edward H. Ziegler, Rathkopf's The Law of Zoning and Planning, 61:26, fn.11 (2009). All that is required to satisfy the public convenience standard a demonstration that the proposed use and its location will not have a detrimental effect on the public health and safety:

[A]n application for a [conditional use] may not be denied if no zoning evil or disadvantage is found to attend such use. In such case, a denial can not be justified merely because the zoning board finds that there is no community need for the facility at the specific location. Such a result would not constitute the appropriate discretionary weighing of zoning harms against community benefits from the facility at that location but an administrative veto of a perfectly legitimate and socially useful facility not hurtful to the community in any zoning sense at all.

Griggs v. Zoning Bd. Of Adjustment of Borough of Princeton, 75 N.J. Super., 438, 445, 183 A.2d 444, 450 (App. Div. 1962). To the extent an actual demonstration of need is required, it is generally sufficient to demonstrate that the conditional use will serve the general public as opposed to the applicant and persons in the immediate neighborhood. *Preston v. Zoning Bd. of Review of City of Cranston*, 92 R.I. 463, 169 A.2d 908 (1961).

²² RCW 64.04.140. See also RCW 36.63.080, .090 (encouraging County planning commissions to adopt development regulations to encourage and protect access to direct sunlight for solar energy facilities).

The State also requires that utilities acquire 15 percent of their energy from renewable sources, excluding hydropower, by 2030.²³ The Northwest Power and Conservation Council's 6th Power Plan (February 2010) ("Power Plan") at pg. 3-2 also predicts that regional demand for electricity will increase by approximately 7,000 average megawatts by 2030.²⁴ Kittitas County also recognizes the importance of alternative energy development:

Kittitas County recognizes the value of facilitating the construction and operation of both alternative and conventional energy producing facilities in the reducing the disruption of commerce and governmental services caused by potential energy shortages, all of which adversely affect the economy, public health, safety and welfare.²⁵

There can be no question that the proposed solar facility, which will have a capacity to produce up to 75 MWdc of renewable energy to satisfy regional future energy demands and state renewable energy portfolio requirements, is both desirable and essential to the public interest.²⁶

2. The Proposed Solar Facility is Not Detrimental or Injurious to the Public Welfare or Character of the Surrounding Neighborhood.

The proposed solar facility is not detrimental or injurious to the public welfare or character of the surrounding neighborhood. When considering whether the proposed project will be detrimental to the public welfare or the character of the surrounding neighborhood, the Board cannot limit its review to just the existing uses and landscape, but must also consider uses that are allowed outright in the Forest and Range zone without a conditional use permit.²⁷

The proposed solar facility will not have any greater impacts on the surrounding neighborhood than uses permitted outright in the Forest and Range zone. The Forest and Range zone permits a number of uses with potential impacts that far exceed those of the proposed solar farm that do

²³ RCW 19.285.040.

²⁴ Pursuant to the accompanying Supplemental Exhibit List, TSR asks that a copy of the Power Plan be admitted into the record as Proposed Supplemental Exhibit 23.

²⁵ Kittitas County Ordinance No. 2001-12.

²⁶ See also section D.3 below for discussion of regional economic benefits projected from the proposed solar facility.

²⁷ See *Hansen v. Chelan County*, 81 Wn. App. 133, 139, 913 P.2d 409 (1996) (noting that a CUP cannot be denied unless impacts from the conditional use are found to be greater than the impacts of uses allowed within the given zone).

not require any conditional use approval.²⁸ For instance, envision the impacts associated with a 477 acre hog or poultry farm, or 477 acre rock quarry mining operation, or nearly 25 homes or lodges.²⁹ These uses are permitted outright in the Forest and Range zone *without* a conditional use permit and the current proposal's potential to negatively impact the character of the neighborhood must be assessed against these allowed uses.³⁰ Considering the traditional areas of potential impacts established under SEPA for analysis in a SEPA checklist (earth, air, water, plants, animals, energy and natural resources, environmental health, noise, housing, light and glare, aesthetics, recreation, historic and cultural preservation, transportation, public services, and utilities),³¹ it is difficult to conceive of a potential impact from the proposed solar facility that would exceed the impacts generated from a similarly sized hog or poultry farming operation in the same area. Thus, while the proposed solar energy farm will alter the character of the neighborhood, as would *any* development, it will not be detrimental or injurious to it any more than allowed uses would.³²

Moreover, existing development in the neighborhood already consists of electric transmission facilities. The BPA Rocky Reach – Maple Valley transmission line is a 345 Kv line which extends through the southern portion of the site and the surrounding neighborhood along its approximately 135-mile route through urban and rural areas of Kittitas County.³³ The line was constructed in 1958, and includes a right-of-way that ranges from 150-300 feet. The landowners in the neighborhood purchased their properties with full knowledge that the 50-year old transmission line crossed through or close to their properties. The existing transmission line, along with the allowed uses in the F/R zone, helps define the character of the neighborhood. Thus, TSR's proposal to utilize property for energy production cannot be viewed as injurious or detrimental to the character of the neighborhood, but rather an extension of it.³⁴

²⁸ See KCC 17.56.020.

²⁹ This is not to besmirch these industries, but only to provide a proper point of reference for comparative purposes.

³⁰ KCC 17.56.020(3), (7) & (8).

³¹ See WAC 197-11-960.

³² The County's Comprehensive Plan is also indicative of the character of rural areas, and the CUP Staff Report already addresses how and why the proposed project is consistent with its pertinent planning goals and policies. See Exhibit 18, pgs. 1-3.

³³ See, e.g., Exhibit 5.A (Figures -- Figure 2).

³⁴ Exhibit 5.F.xii (Attachment L - Potential Visual Impact Assessment; compare Appendix B, Figures 10a [existing BPA ROW] and 10b [showing proposed interconnect transmission line]).

3. The Proposed Solar Reserve will Not Create an Excessive Public Cost for Facilities and Services.

The second prong of 17.60A.010 ensures that there are adequate services for the proposed use:

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 costs or economic detriment.³⁵

This criteria is satisfied if TSR demonstrates that any one of the three findings is satisfied.

This project will have minimal impact on public services, if any. Among other examples found in the record, including the CUP Application,³⁶ Expanded SEPA Checklist,³⁷ MDNS,³⁸ and Staff Reports,³⁹ the project is designed and conditioned to minimize or eliminate demand for public services. The project will not require water or sewer services, waste disposal will be handled by TSR, and the project is not expected to create an excessive demand on public schools. Even in those instances where demands may be expected, TSR has made provisions that those services will be provided with no out-of-pocket expense from the County. TSR will install appropriate stormwater controls to handle any increase runoff from the project, will improve access roads (Loping Lane and Wiehl Road) to fire code standards, will adequately pay (initially through contract, then through annexation) for the provision of fire and emergency services to the site through an agreement with Kittitas County Fire District #7,⁴⁰ and will restrict access to the site by a locked gate and a security guard will be on-site, which will further reduce demand for police

³⁵ KCC 17.60A.010.2 (emphasis added).

³⁶ Exhibit 5.

³⁷ Exhibit 5.F.

³⁸ Exhibit 13.

³⁹ Exhibits 12, 17, 18.

⁴⁰ This is in addition to the provision of fire protection services for the project area by WDNR.

services. As a result, the proposal will not impact services in a manner that will cause an excess cost to the public.

Even if the Board were to conclude that the project will increase demand for public services that TSR has not specifically addressed, which it should not, there is ample evidence in the record that the economic benefit derived from the proposed facility will more than offset any increase in demand and the associated cost:

- Sales tax revenue from an estimated \$97.5 million of locally purchased goods during three year construction window;
- Sales tax revenue from an estimated \$525,510 of locally purchased goods during operation;
- The creation of approximately \$1.5 to \$1.8 million dollars in additional property tax revenue; and
- The creation of 200 near-term jobs and 35 long-term jobs.⁴¹

These economic benefits from employment and tax revenue generated by this proposal more than compensate for any increase in demand for public services from this property.

E. To the Extent they Apply, the Transmission Line and Substation Satisfy the Criteria for a Special Utility.

The KCC designates certain components of the project – namely electrical transmission lines exceeding 115,000 volts and electrical substations - as "special utilities."⁴² Under the County's Code, special utilities are permitted as conditional uses and subject to a separate set of criteria set forth in KCC 17.61.030.⁴³ The proposed solar farm does include a transmission line and substation that will transfer electricity from the solar farm to the existing BPA transmission line.

⁴¹ See Exhibit 5.F.xiv. (Attachment N – Economic Analysis).

⁴² KCC 17.61.010.2.b, c. As previously stated, the new 345-kV Project transmission line will interconnect to BPA's existing Rocky Reach to Maple Valley 345 kV transmission line. The Project described in the SEPA Checklist is inclusive of all facilities and resources required to make this interconnection and the corresponding environmental analysis is complete. As part of its interconnection requirements, BPA will ultimately control the design, construction and operation of the substation and interconnection transmission line. BPA considers interconnection requests in accordance with the rules and procedures set forth in BPA's Open Access Transmission Tariff ("OATT"). Pursuant to the accompanying Supplemental Exhibit Request, TSR asks that a copy of the OATT be admitted into the record as Proposed Supplemental Exhibit 27. TSR submitted its request to BPA for interconnection service (request G0393, effective 11/17/2009 at 9:30 am) and its request is currently under consideration by BPA. See also Exhibit 8, and Proposed Supplemental Exhibit 29, beginning pg 192.

⁴³ KCC 17.61.020.6; KCC 17.61.030.

1. **KCC 17.61.030.1—The Transmission Line and Substation Contain Very Few Hazardous Materials and All Reasonable Measures Have Been Taken to Reduce the Risk of Accidents.**

The substation and the transmission line will be off limits to the general public. The transmission lines and towers will not be accessible to the public and the substation will be fenced off. The substation itself may contain transformers filled with mineral oil; however, the transformers will be placed on concrete and surrounded with secondary containment to prevent any leaks from leaving the concrete pad. Basic safety and fire protection equipment will be strategically located throughout the site.

2. **KCC 17.61.030.2—The Transmission Line and Substation are Desirable for the Public Convenience and Not Detrimental to the Surrounding Neighborhood.**

This criteria is identical to the criteria for a CUP discussed in sections D.1-2 above, TSR incorporates that discussion here by reference. As noted, the electric power generation—especially renewable energy—is both essential and desirable to the public convenience. Also the transmission line and substation are not detrimental to the surrounding neighborhood. The surrounding neighborhood is already defined, in relevant part, by an existing, high-voltage power line. Moreover, the transmission line and substation have no greater impacts than other uses allowed without conditional use approval in the Forest and Range zone such as concentrated animal operations.

3. **KCC 17.61.030.3—The Transmission Line and Substation will Not Create Excessive Demands for Public Services.**

This criteria is also largely identical to the criteria for a CUP discussed in section D.3 above. TSR incorporates that discussion here by reference. In sum, the entire project, including the transmission line and substation, create very little demand for public services. In those areas where greater demands are anticipated, TSR has made adequate provision to accommodate those services. For instance, TSR entered into an agreement with the Kittitas County Fire District No. 7 to provide for fire and emergency services. TSR has also agreed to improve Wiehl Road and Loping Lane to fire code standards in order to better accommodate emergency vehicles and additional traffic.

4. **KCC 17.61.030.4—The Transmission Line and Substation Take Full Advantage of the Existing Utility Corridor.**

The project is ideally situated so that the transmission line does not need to cross any leased property to reach the existing BPA line. As the criteria suggests, government agencies do have

the ability to condemn property to establish utility corridors if necessary. This particular site makes the exercise of that power unnecessary because the transmission line crosses directly through the site.

5. KCC 17.61.030.5—The Transmission Line and Substation will be Constructed and Designed in Accordance with Industry Standards as Established by BPA.

The transmission line and substation will be constructed in accordance with all applicable industry standards. As noted in the application materials, ultimate design and construction of the transmission line and substation will be subject to the requirements of the Bonneville Power Administration.

6. KCC 17.61.030.6—Construction of the Transmission Line and Substation Will Not Result in the Significant Displacement of Native Material.

TSR has tentatively located the substation and transmission line in areas that will require minimal grading. If fill is required, TSR will use clean, native soils.

7. KCC 17.61.030.7—Construction of the Solar Farm, including the Transmission Line and Substation, Will Not Require Parcel Reconfiguration.

This criteria is not applicable because TSR does not propose, and the solar farm does not require, parcel adjustments or parcel reconfigurations.

F. Conclusion

In sum, the proposed solar farm is necessary to assist in meeting the strong public interest in ensuring that future energy demands may be met, as well as meeting the renewable energy mandates set by the State of Washington. It has been carefully designed, reviewed, and mitigated to ensure that all potential adverse impacts are nonsignificant. The solar farm itself has no greater impacts than many other uses permitted in the Forest and Range zone without conditional use approval. The proposed project will demand few public services and will provide significant economic benefits in the form of sales and property tax revenue. We believe this project is good for Kittitas County, and good for Washington. We agree and support the County's conclusion that the proposed solar farm meets the approval criteria for a conditional use permit.⁴⁴ Accordingly, we respectfully request that the Board of Adjustment approve TSR's

⁴⁴ See Exhibit 18.

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CUP application, subject to the voluntary, Code required, and SEPA required mitigation measures outlined in the Staff MDNS Report.⁴⁵

Very truly yours,



Patrick W. Ryan

cc: Anna Nelson
CH2MHill
Teaway Solar Reserve, LLC

⁴⁵ See Exhibit 12.