**KITTITAS COUNTY**

**LAND USE HEARING EXAMINER**

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| **In Re:** | ) | |
| | ) | **CU 15-00006** |
| **IRON HORSE SOLAR FARM** | ) | |
| | ) | **PETITIONER'S OPENING** |
| | ) | **MEMORANDUM WITH REGARD TO** |
| | ) | **SEPA ADMINISTRATIVE APPEAL** |
| | ) | |

This memorandum is filed by "Safe Our Farms! Say No to Iron Horse" ("Save Our Farms" or "Appellant").[1] Appellant filed a Notice of Administrative Appeal on August 24, 2016. The appeal was filed pursuant to KCC 15.04.210 and associated applicable provisions.[2]

## I. INTRODUCTION

This is a highly controversial project. OneEnergy Development LLC ("Applicant" or "OneEnergy") submitted a proposal for development of a 47.5 acre solar farm within the heart of prime Kittitas County farmland.[3] The project proposal displaces existing farmland and has

[1] Appellant is a nonprofit association of property owners and interested parties impacted by the proposed solar farm project. Representative Association members include steering committee members Craig and Patricia Clerf, Robert and Sherre Clerf, Rolf Williams, Carol Martinez, Jack and Jon Clerf, Roger and LaVelle Clerf, Brandon and Megan Meeks, and William Craig ("Steering Committee"). Association members include a significant number of adjacent or impacted property owners or farm operators within the vicinity of the proposed solar farm project.

[2] Hearing Examiner issued Order on Prehearing Conference on September 8, 2016. ("Prehearing Order"). The Prehearing Order required submission of witness lists, legal briefing and memorandum and exhibits to be identified for purposes of the hearing. This memorandum is submitted in accordance with the Prehearing Order.

[3] The project location consists of four parcels totaling 67.8 acres of prime farm land. The property has been the site of historic farming operations and will displace all farming activity on the subject parcel. The proposal is classified as a "major alternative energy facility" which includes hydroelectric plants, solar farms and wind farms that are not a "minor alternative energy facility". KCC 17.61.010(9). A "minor alternative energy facility" or "minor alternative energy system" means a fuel cell or a facility for the production of electrical energy meeting the requirements of KCC 17.61.010(11). All parties agree that the proposed solar farm is a "major alternative energy facility". The proposed use is a "conditional use" in the Rural Working zoning district.

significant impacts on adjacent farms and residents. Overwhelming public comment opposes the proposal at this location.[4]

This matter comes before you with two primary components: (1) an administrative appeal of the State Environmental Policy Act (SEPA) threshold determination process and issuance of a Mitigated Determination of Nonsignificance (MDNS); and (2) a conditional use permit application for authorization of a "major alternative energy facility" within the Agriculture 20 (A-20) zoning district. This memorandum will address issues related to the SEPA appeal.

The procedural provisions of the State Environmental Policy Act (SEPA) constitute an "environmental full disclosure laws". *Norway Hill Preservation & Protection Ass'n v. King County,* 87 Wn.2d 267, 272 (1976). SEPA attempts to shape the state's future environment by deliberation, not default. *Stempel v. Dep't of Water Res.,* 82 Wn.2d 109, 118 (1973). In essence, SEPA requires that the "presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations." RCW 43.21C.030. A responsible agency must show that it considered the relevant environmental factors and that its decision to issue any determination of nonsignificance was based on information sufficient to evaluate the proposal's environmental impact. *Wenatchee Sportsmen Ass'n v. Chelan County,* 141 Wn.2d 169, 176 (2000). The purpose of an environmental checklist and review is to ensure that an agency, at the earliest possible stage, fully discloses and carefully considers a proposal's environmental impact before proceeding to decision making. *Spokane County v. Eastern Wash. Growth Mgmt. Hr'gs Bd.,* 176 Wn. App. 555, 579 (2013). If the environmental record does not contain sufficient information to make a threshold determination, the applicant must be required to submit additional necessary information for purposes of environmental review. WAC 197-11-335(1); *Moss v. City of Bellingham,* 109 Wn. App. 6, 14 (2001).

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[4] Kittitas County has reviewed two prior solar farm project applications: (1) Teanaway Solar Reserve (CU-09-00005); and (2) Osprey Solar Farm Conditional Use Permit (CU-13-00004) and Shoreline Substantial Development Permit (SD-13-00001). Osprey Solar Farm was proposed by OneEnergy Development, LLC and proposed construction and operation of a 13.6 acre photovoltaic solar powered generation facility on approximately 112 acres. The property was zoned Agriculture-20. The project site did not include prime farmland and had significant buffering between the proposed project and adjacent land uses. There was minimal adverse comment with respect to the application.

The environmental record in this case is based primarily upon unsubstantiated assumptions, conclusions and speculation. There is very little substantive study, analysis or review. Significant impacts such as light and glare are left to speculation and unsupported reference to remote websites. Meaningful public participation and comment was denied by the improper use of "optional DNS process" under WAC 197-11-355. Significant environmental information was received after the close of public comment with the practical preclusion of meaningful public and agency comment. Despite the receipt of supplemental and significant environmental information and preclusion of public comment, Kittitas County proceeded to issue an MDNS. This appeal is the public's only available recourse for provision of comment.

## II. PROCEDURAL BACKGROUND

OneEnergy Development submitted an application for approval of a photovoltaic project known as Iron Horse Solar ("Project"). The Project has a maximum size of 4.5 megawatt ("MW") and is located on a 68 acre site of prime farm land. The project will occupy approximately 47.5 acres along Clerf Road just east of Kittitas, Washington. The proposed facility would be subject to a long term arrangement with Puget Sound Energy. The proposal is characterized as a "major alternative energy facility". KCC 17.61.010(9). The subject property is located within the Agriculture 20 (A-20) zone. The A-20 zone is an area wherein farming, ranching and rural lifestyles dominate characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses and to protect the rights and traditions of those engaged in agriculture. KCC 17.29.010.

The Conditional Use Permit Application was submitted to Kittitas County Community Development Services (CDS) on November 12, 2015. The initial application was deemed incomplete and additional materials requested from the applicant. A revised project application was submitted on March 3, 2016 together with an updated narrative and SEPA Checklist. This report lacked substantive support. The application was deemed complete on May 12, 2016. A Notice of Application for the Conditional Use Permit and Environmental Review ("Notice of Application") was issued utilizing procedures of WAC 197-11-355. The Notice of Application was issued on May 23, 2016 with written comments due by June 7, 2016. The public and agencies were given one opportunity to comment.

Kittitas County acted as lead agency for the SEPA Environmental Checklist and Threshold Determination. While the Notice of Application indicated that CDS was expecting to issue a Determination of Nonsignificance, neither the notice nor record included any summary or disclosure regarding mitigation or conditions on the threshold decision. Extensive public comment was received with respect to the original application and environmental information. After receiving overwhelming negative comment, Applicant placed the project on hold and proceeded with preparation of significant new and supplemental environmental information. CDS summarized the process as follows:

> On June 27, 2016 the application was placed on hold by the applicant and review was temporarily suspended. On July 15, 2016 *the applicant requested that review continue and submitted supplemental documentation with respect to comments received.* After a detailed review of SEPA Checklist, the project narrative *supplemental submission, and proposed measures* a SEPA official determined that there would be no significant adverse environmental impacts under the provisions of WAC 197-11-350.

Neither the public nor impacted agencies were provided an opportunity to comment upon the "supplemental submissions" or "proposed mitigation measures." This process is the antithesis of "full disclosure" contemplated and required by SEPA.

SEPA Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) on August 10, 2016. Appellants filed a timely appeal of the threshold determination and environmental review process.

## III. ARGUMENT AND AUTHORITIES

Appellants have set forth issues and considerations in its Notice of Administrative Appeal. The issues, comments and contents of the Notice of Administrative Appeal are incorporated by this reference as well as all comment letters provided with respect to the project proposal.

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

SEPA's 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;
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> (ii) Adversely affect endangered or threatened species or their habitat;
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> (iii) Conflict with local, state, or federal laws or requirement for the protection of the environment;
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> (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. Kittitas County Denied Parties an Opportunity to Comment Upon Supplemental Environmental Information.**

Kittitas County initially proceeded utilizing the "optional DNS process" of WAC 197-11-355.[5] Kittitas County issued its Notice of Application on May 23, 2016. The notification contained the following directive with respect to environmental review:

> The County expects to issue a Determination of Non-Significance (DNS) for this proposal, and will use the optional DNS process, meaning this may be the only opportunity for the public to comment on the environmental impacts of the proposal. Mitigation measures may be required under applicable codes, such as Title 17 Zoning, Title 17A Critical Areas, and the Fire Code, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared. A copy of the threshold determination may be obtained from the County.

The Notice of Application required comments to be provided by June 7, 2016. Interested parties provided comments that are a part of the administrative record.

Subsequent to submission of comments, Applicant suspended processing of the application and then supplemented its environmental and application materials by letter dated July 14, 2016. The submission included the following statement:

[5] A normal environmental review process allows the public and agencies two opportunities to comment upon environmental matters. An initial notification and opportunity to comment is provided in the context of the Notice of Application. The lead agency is required to make all environmental documents available for review and as a condition to commenting. WAC 197-11-504. The method of notice is set forth in WAC 197-11-510. The final threshold decision must then be circulated with notice and opportunity to comment.

> OER recognizes the volume of comments received during the public comment period and *is furnishing additional information* to support the project application and address areas of public concern. The purpose of the enclosed documentation is to ensure that the record reflects OER's response to the comments received by Kittitas County Community Development Services ("KCCDS").

The comments were provided in the context of environmental review of the project.

The Optional DNS process is authorized by WAC 197-11-355. The process allows for a single integrated comment period for purposes of obtaining comments on the Notice of Application and environmental matters. In processing an application under WAC 197-11-355, the "...responsible official shall consider timely comments on the Notice of Application." Applicant submitted additional information and Kittitas County was required to recirculate the earlier notice. By way of analogy, a lead agency is required to withdraw its notification and processing where there is significant new information on the application. WAC 197-11-340 (3). Kittitas County was required to provide a second opportunity to comment based upon the new additional and supplemental information contained in applicant's submission of July 14, 2016.

**C. Environmental Checklist and Information Was Incomplete, Inaccurate and Insufficient Environmental Information and Documentation.**

Under SEPA, a local government processing a permit application must make a "threshold determination" of whether the project is a "major action significantly effecting the quality of the area." RCW 43.21C.030(2)(c); *Sisley v. San Juan County,* 89 Wn.2d 78, 82-83 (1977). In order to facilitate the "threshold determination," the applicant must prepare an environmental checklist, which must provide information reasonable sufficient to evaluate the environmental impact of the proposal. WAC 197-11-315 to 335. An integral component of the review process is solicitation of public and agency comment.

The courts have recognized that mitigation may be utilized to bring projects into compliance with SEPA without promulgation of an Environmental Impact Statement (EIS). See e.g. *Moss v. City of Bellingham,* 109 Wn. App., 23-24. The court in *Moss* set forth the following recognized rule:

> For the MDNS to survive judicial scrutiny, the record must demonstrate that "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA," and that the decision to issue an MDNS was based on information sufficient to evaluate the proposal's environmental impact.

See also, *Anderson v. Pierce County,* 86 Wn. App. 290, 302 (1997). Information forming the basis of a threshold determination and associated mitigation measures must be substantive, specific and sufficient are required to assure SEPA mandated compliance. "The procedural duties imposed by SEPA – full consideration to environmental protection – are to be exercised to the fullest extent possible to ensure that the attempt by the people to shape their future environment by deliberation, not default will be realized." *Eastlake Community Council v. Roanoke Associates, Inc.,* 82 Wn.2d 475, 490 (1973).

The environmental information forming the basis for issuance of a Mitigated Determination of Nonsignificance is deficient in aspects disclosed through the comment process and include the following:

- Light and Glare Hazard. Applicant failed to provide any substantive environmental information with respect to light and glare generated by the project. No "Visual Impact Assessment" was required or provided for the proposal. The sole reference offered as technical support is a publication referenced as "Solar Glare Hazard Analysis Tool (SGHAT) developed by the Sandia National Laboratory (available at www.sandia.gov\glare). The reference reflects that "...SGHAT is widely used within the solar industry." OneEnergy submitted supplemental information with respect to the project proposal and included the following comment regarding light and glare hazards:

  > When designing solar farms, OER uses the publically-available Solar Glare Hazard Analysis Tool (SGHAT) developed by the Sandia National Laboratory (available at www.sandia.gov\glare) to determine the potential for glare from any given project. SGHT is a widely used tool within the solar industry. OER has undertaken multiple glare analysis studies of the Project. *These studies* estimate the intensity, time-of-day and duration of reflective glare upon stationary observation points and views (including multi-story homes and other stationary objects). *OER's glare studies* included view point from I-90, Clerf Road, Caribou Road, Hemingston Road, Hazel Lane, and Vantage Hwy.

None of the studies are included in the record. The referenced website is nonfunctional and unavailable for review. The record lacks any meaningful information with respect to light or glare impacts from the proposal.

Kittitas County has previously considered solar projects and required submission of a "Potential Visual Impact Assessment". E.g. *Teanaway Solar Reserve Potential Visual Impact Assessment* prepared by CH2MHILL. The Visual Impact Assessment included specific study and information with respect to visual impacts upon adjacent properties located and identified radius from the project proposal. This same standard should be applied in this case.

Applicant provided specific information and photographs regarding glare from the Wild Horse solar project. See photos attached to our Notice of Appeal. According to Google Earth, the location of the residence located at 820 Caribou sits ~ 80 feet above the proposed site and the view from the house cannot be preserved nor glare be mitigated.

- Aesthetics: Aesthetics have not been properly addressed. Under light and aesthetics, only the height of the panel was addressed, and from the plans, the panels already meet the requirements. Views will be drastically altered, and property values will be impacted negatively. No attempt at meaningful mitigation has been made in the MDNS for any neighbors of this project. See photos of existing views vs. proposed.

- Vegetation Management Plan is Inadequate and Incomplete. The project is proposed in an area of prime farmland and agricultural operations. Vegetation management (specifically weed control) has not been properly addressed in the MDNS. The plan submitted by the applicant is deficient in describing how the new proposed vegetation will be irrigated and maintained. Weed management is critical in farm areas. The mitigation requirement for irrigation access is incomplete and vague. It does not describe how access will be provided, and the 30 foot buffer is insufficient to maintain the irrigation ditch. The irrigation easement owner has not been contacted to address how the right of way will be maintained. Also, the MDNS is not clear on who is responsible for maintaining that buffer and recourse to us if they do not? It is also not clear on how or whether traditional maintenance methods will be continued.

- Inadequate Study and Mitigation with Respect to Critical Area and Water Resources. Another concern not addressed by mitigation clearly is vagrant water runoff. There has been and will be flooding in the future, as evidenced by photographic evidence and flood maps. Areas where flood waters will or may be diverted from existing are known but not disclosed or addressed.

- Riprarian Planting Plan. Environmental review failed to develop detailed riparian planting plans and vegetation restoration plans. State of Washington Department of Fish and Wildlife (WDFW) provided the following comment to Kittitas County following the close of the comment period:

> This correspondence as requested by OneEnergy to be sent to Kittitas County that OneEnergy and WDFW is proceeding with working together to resolve issues that we raised in our June 6, 2016 letter to the county. We will be coordinating further on the riparian planting plan, vegetation restoration plan and incidental avian monitoring plan. WDFW will review the updated exhibits C and G that OneEnergy provided to WDFW on July 13 and will plan on submitting comments back to OneEnergy by the end of next week, July 22, 2016.

This information and material must be in the environmental record and mitigation made specific to these measurements. It is inappropriate to proceed with issuance of an MDNS without full opportunity to comment thereon.

In regards to the 100 foot buffer and Riparian Planting Plan along Caribou Creek, at the end of the life of the project, will the 100 foot buffer remain? That was not clearly addressed in the MDNS.

- Habitat Impacts. Environmental Review Contains Inadequate Mitigation with Respect to Habitat Impacts. SEPA MDNS provides as follows with respect to avian monitoring plans:

> 15. The applicant shall develop an Incident Monitoring Plan in conjunction with, and approved by, the Washington State Department of Fish and Wildlife (WDFW). The plan and program shall be required to be in effect for a period of five years. The plan will designate thresholds and metrics to establish if additional monitor is required beyond a period of five years

The Incident Avian Monitoring Plan should be developed in advance of environmental determination and not deferred to a later nonpublic process. The plan should be in place and specifically applicable to the project at time of review by responsible officials.

- Site Plan. Applicant provided no visual depiction of the proposed solar farm and development of more than 48 acres of intense solar panels. The record is void of any meaningful information regarding visual impacts. Appellant provided a graphic depiction in its appeal submission.

- Farmland. The site is at least 93.3% prime farmland. Soils reports from the USDA indicate the land is suited for irrigated crop production and livestock grazing. Crops include hay, oats, wheat, corn, potatoes and peas are among the crops grown. Currently growing alfalfa and timothy hay. These are very productive fields worked for at least 100 years. There is no discussion, information or disclosure regarding impacts to prime farmland or farm operations. Light and glare from the solar farm will have significant adverse impact on farm operations.

- Weed-free native seed mixture…not defined, not finalized. No information about how this replanting will be maintained. (No plans to irrigate.) There are "native" plants that are considered weeds in our hay crops and are detrimental to the value of our crops.

- This project will result in the conversion of rural land to industrial/utility use, at least for the lease period of 25-36 years.

- This project will potentially impact our ability to receive aerially agricultural spraying, as our applicator has a policy that prevents him from spraying a certain distance from solar facilities due to glare and/or added cost of application methods to farmer.

- Decommissioning of Project.

  Neither SEPA Checklist nor original application addressed impacts associated with decommissioning of the project. Kittitas County has historically undertaken extensive environmental analysis with respect to impacts associated with decommissioning of solar projects. See e.g. *Teanaway Solar Reserve-Expanded SEPA Checklist.* SEPA MDNS and environmental review fail to discuss or consider significant environmental impacts associated with decommissioning options and simply provided:

  > 35) Financing of the decommissioning options must be approved by the County, and may include but not be limited to assignment of funds, a bond, or other financial measures equaling one hundred and twenty-five percent (125%) of the estimated costs of the decommissioning efforts.

  The mitigation measure is incomplete and lacks specific direction and clarity with respect to decommissioning conditions. Environmental review may not be deferred but must be undertaken at the outset and prior to project approval.

- Habitat. The animals listed in the supplemental materials are still incorrect and misleading, and incomplete. The animals seen on the property include raptors, deer, river otters, blue herons, geese, ducks, coyotes, rabbits, raccoons, and

various other animals. Migrating geese have been seen many times on this property. OER states that they "plan to" incorporate WDFW recommendations into the site design. Deferral of environmental analysis is improper.

- Noise. What sources of energy will be used to power the motors to rotate the panels and how much noise will they generate. OER reply materials say 0 dB. How many motors will there be total? 75 DBA x how many units? The distance to some residences is less than 400 feet OER supplied for informational. Actually, 150 feet. Noise from inverters and numerous (hundreds?) of panel rotator motors will raise the baseline noise signature incompatible with the character of the neighborhood, e.g. non-ag noise; it is industrial in nature and a constant occurrence during all daylight hours. That does not fit the rural character via sound. In addition, the disruption of the thousands of piles that will be driven will be insufferable. Decommissioning will also be a long time, noisy endeavor.

**D. SEPA Responsible Official Failed To Properly Evaluate Impacts of Project Proposal on Agricultural Lands.**

The project site is zoned Agriculture-20 (AG-20) and has been designated agricultural resource lands of long term commercial significance. SEPA Checklist and environmental review require disclosure and assessment of land use impacts from the proposed project. SEPA Checklist discloses that the subject property has been historically farmed and contains "prime" soils for agriculture production. WAC 197-11-960. The project site is located within a significant farm region.

Environmental review fails to adequately assess at least the following critical information:

- Full and complete assessment of farmland productivity, crop yields and economic impacts associated with removal of farmland.
- Amount of agricultural land converted to other uses.
- Impacts of the proposal on surrounding working farm business operations.
- The current comprehensive plan designation.
- Proposed measures to reduce or control impacts to agricultural lands.

The SEPA official "shall" consider whether a "proposal may be significant degree…[a] 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." WAC 197-11-330(3)(e)(I). The proposed facility will have significant impacts to prime farmlands.

**E. Failure to Conduct Alternate Site Analysis Required by RCW 43.21C.030.**

The County has failed to conduct an alternative site analysis as 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:
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> (i) the environmental impact of the proposed action;
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> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
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> (iii) *alternatives to the proposed action*;
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> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
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> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(Emphasis added).

There is no analysis at all of any proposed alternative sites that could support the solar installation. The site is located with prime farmlands and extensive properties are available outside of farm areas for development of a solar installation. Reference is made to two other projects – Osprey Solar Farm and Teanaway Solar Reserve. Both projects offer solar options without disruption of prime farmland. Environmental review is deficient in failing to consider project alternatives.

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## CONCLUSION

Appellant requests that the threshold determination be withdrawn; required information developed and submitted to the SEPA Responsible Official; and public be provided with an opportunity to comment upon the new and complete environmental information.

Dated this 22nd day of September, 2016.

MEYER, FLUEGGE & TENNEY, P.S.
Attorneys for Petitioners

James C. Carmody, WSBA 5205

## CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I served a copy of this document in the manner indicated:

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| Andrew L. Kottkamp<br>Kittitas County Hearing Examiner | Email: andy@wenatcheelalw.com |
| Timothy L. McMahan<br>Stoel Rives<br>Attorneys for OneEnergy Development LLC | Email tim.mcmahan@stoel.com |
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**DATED** at Yakima, Washington, this 22 day of September, 2016.

Deborah Girard

Deborah Girard, Legal Assistant

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