

**KITTITAS COUNTY, WASHINGTON**

**IN RE: CU 15-0006 (SEPA Appeal)**

**OneEnergy Iron Horse Solar Farm**

**Applicant’s Responsive Legal Argument re Appeal of SEPA MDNS**

**A. INTRODUCTION**

The appellants’ opening legal memorandum concerning SEPA is, for the most part, a rehash of the SEPA appeal, with one significant exception. Appellants place heavy emphasis on the County’s review of the Teanaway Solar Reserve project, apparently contending that it is applicable precedent for Iron Horse. They use the Teanaway decision to support their contentions that the MDNS and staff recommendations for Iron Horse are flawed.

**B. ARGUMENT**

The Teanaway project is unhelpful to the appellants. Appellants “cherry pick” from this decision and environmental record, to support contentions that the Iron Horse MDNS is deficient and that the Project is proposed “in the wrong place.” The opposite is true. The Teanaway project has been heavily litigated and, to OneEnergy’s knowledge, has not been built. OneEnergy takes no position regarding the legal sufficiency of the Teanaway project, including its MDNS. However, rather than showing any deficiency in the CDS review of the Iron Horse project, the Teanaway project punctuates the depth and legal sufficiency of the Iron Horse review and MDNS. OneEnergy submits the following Teanaway documents for the record:

- (1) Mitigated Determination of Non-Significance (MDNS), July 15, 2010
- (2) Notice of Decision on SEPA Appeal, August 17, 2010
- (3) Findings of Fact and Decision, August 12, 2010

Project Scale and Location: The Teanaway Solar Reserve was proposed in 2009. The site is four miles northeast of Cle Elum on the eastern slopes of the Cascades. It is a 986 acre site, proposing a 477 acre area of land disturbance and development, including solar modules,

field inverters, field transformers, electrical conductors, a separate substation, an O&M building, an overhead transmission line, and new access and maintenance roads.

Iron Horse: Iron Horse proposes a 47.5 acre site, with few related and supporting facilities, no O&M building, no substation, no transmission line, and no offsite access roads. A fraction of the size of the Teanaway Solar Reserve, CDS's consideration and environmental review of the Iron Horse project is considerably more detailed and comprehensive in its rigor and sufficiency.

Habitat: The Teanaway site was proposed in a diverse habitat area, characterized by WDFW as "Class II" habitat, which WDFW considers to have "one of the highest priorities for current statewide conservation action in Washington," including associated "species of greatest conservation need." (WDFW Wind Power Guidelines (2009)). Elk winter range habitat was a keen interest of WDFW. WDFW requested, and the County required nearly 200 acres of land set aside and managed through a conservation easement or other similar tool, along with a financial contribution, all secured by a financial instrument such as a bond.

Iron Horse: Land currently being cultivated is Class IV habitat -- a preferred location for energy facility development. No mitigation is required, as Class IV land is considered to have "low habitat value." (WDFW Wind Power Guidelines).<sup>1</sup> Appellants contend that development on nearly 1000 acres of highly diverse and sensitive (Class II) habitat designated in part for its value in providing elk with winter range habitat needs is a superior location, as compared to the 47.4 habitat Class IV Iron Horse land, having little natural habitat value. (Opening SEPA Memorandum, p. 13). This contention punctuates the chief irony and legal deficiency in this appeal. The opposition is not genuinely about habitat, and it is not about negative impacts to farming. It is fundamentally a contention that aesthetic impacts should be experienced not by these landowners, but by

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<sup>1</sup> The Teanaway project relied on the WDFW Wind Power Guidelines for identifying, evaluating and mitigating habitat impacts.

unnamed others, in some other location, preferably a critical habitat area remote from residential back yard locations.<sup>2</sup>

Environmental Review: Teanaway was permitted subject to an MDNS. The MDNS acknowledged the applicant's preparation of a "Potential Visual Impact Assessment," but no glare analysis. Given the scale, varied topography, and potential regional visual effects, an applicant-prepared visual assessment was reasonable. The only mitigation associated with the visual assessment was selective tree plantings in locations not identified in the MDNS. OneEnergy is unable to find any decommissioning plan requirement or condition, either in the MDNS or the CUP decision. The MDNS required but deferred submittal and review of the following plans and compliance documents: (1) noxious weed control plan -- the MDNS recognizes the importance of consideration by the Weed Control Board; (2) the conservation easement; (3) assurances or financial security to ensure compliance with WDFW mitigation requests; (4) tree planting plan; (5) traffic mitigation plan; and (6) construction road signage plan.

Iron Horse: For a project a fraction of the size of the Teanaway project, with massively fewer actual, substantiated probable significant adverse environmental impacts, the MDNS is considerably more detailed than the Teanaway MDNS, with extensive mitigation measures addressing potential environmental impacts. The Iron Horse MDNS appropriately defers a handful of final items and plans, but provides sufficient "bookends" and guidance for the preparation of those plans, bolstered by the complete County record. Unlike the Teanaway project, Iron Horse must prepare a decommissioning plan, the fundamental content of which is addressed in the application and environmental record. Similar to Teanaway, Iron Horse must prepare a weed control plan, but the MDNS appropriately conditions this plan as a pre-construction requirement, allowing the full engagement with the

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<sup>2</sup> Even the Teanaway opposition was initiated by residents who lived well outside of the farming valley of Kittitas County, but were able to see the facility.

Kittitas County Weed Control Board, contemporaneous with the final design and commencement of construction.

SEPA Appeal; Decision: In Teanaway, opponents filed a SEPA appeal. The appeal document is not reproduced, as it has little bearing on these proceedings. The appellants requested the preparation of an EIS, and raised a host of issues regarding the alleged substantive and procedural deficiencies of the MDNS. The Board of Adjustment denied the appeal, with findings and conclusions that accurately reflect Washington law governing many of the same procedural issues raised in the Iron Horse appeal.

### C. CONCLUSION

The Teanaway project is not helpful to the appellants, and only punctuates the sufficiency of the MDNS issued for the Iron Horse project. If there is an applicable precedent, it is the Osprey project. That said, as is clear from the record of each of these facilities, the County independently and appropriately considered the environmental impacts of the Iron Horse project, and there is absolutely no legal or procedural basis to require the preparation of an EIS for this small project. The County's SEPA process fully complies with Washington law. No mistake was made, either procedurally or substantively.

The appeal should be denied.

DATED: October 6, 2016.

STOEL RIVES LLP

By: /s/ Timothy L McMahan  
Timothy L. McMahan, WSBA #16377  
[tim.mcmahan@stoel.com](mailto:tim.mcmahan@stoel.com)