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August 24, 2016

RECEIVED

AUG 24 2016

HAND DELIVERED:

Kittitas County
Board of Commissioners
Room 109, County Courthouse
205 W 5th Avenue
Ellensburg, WA 98926

1st ___ 2nd ___ 3rd ___
KITTITAS COUNTY BOARD OF COMMISSIONERS

**Re: Notice of Administrative Appeal and Comment Letter
SEPA Mitigated Determination of Non-Significance
Iron Horse Solar Farm Conditional Use Permit (CU-15-00006)**

Dear Board of Commissioners:

This Notice of Administrative Appeal is filed by "Save Our Farms! Say No to Iron Horse" ("Appellant"). Appellant is a nonprofit association of property owners and interested parties impacted by the proposed solar farm project. 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 Mecks, and William Craig ("Steering Committee"). Association appeals the issuance of Mitigated Determination of Nonsignificance (MDNS) for Iron Horse Conditional Use Permit (CU 15-00006).

This Notice of Appeal and the accompanying fee have been timely filed by parties with standing. The administrative review failed to properly and adequately evaluate and assess the environmental impacts of the proposed project, including but not limited to direct, indirect, and cumulative adverse impacts to agricultural resources; impacts to the local neighborhood, impacts to other sensitive and protected areas; noise, alternatives and decommissioning of project.

State Environmental Policy Act (SEPA) requires that the threshold determination be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal." WAC 197-11-335. Applicant failed to provide sufficient and complete disclosures with respect to the proposal. Issues were identified in public comment. The SEPA determination case was issued without alternative site analysis study as required under RCW 43.21C.030 and the material non-disclosure or misrepresentation of essential

information. The Environmental Checklist failed to provide "reasonably sufficient" information before issuing its threshold determination.

We respectfully request that the County withdraw the MDNS, replace it with a Determination of Significance (DS), and require preparation of an Environmental Impact Statement (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 . . . MDNS was procured by misrepresentation or lack of material disclosure.").

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;
- (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. Project Proposal.

OneEnergy Development, LLC has submitted a Conditional Use Permit (CUP) application for development of a solar farm generating up to 4.5 megawatt ("MW") of photovoltaic for distribution to utilities and communities. The project site consists of 47.5 acres of leased farm land owned by Bill Hanson, 10290 Vantage Highway, Ellensburg, Washington 98926. The property is zoned Agriculture-20 (AG-20) and has been designated as farmland of long term commercial significance. The intent of the zoning classification is to preserve fertile farmland and protect farms from encroachment by nonagricultural uses. Growth Management Act (GMA) directs that agricultural resource lands be enhanced, maintained and protected. RCW 36.70C.020(8). Incompatible uses are to be discouraged.

The Project would contain approximately 18,594 solar photovoltaic ("PV") panels installed on a racking system that follows the sun throughout the day to maximize energy output. The racking system and panels would be supported by steel piles driven to a depth of six (6) to eight (8) feet below grade. The top of the panels would reach to a height of approximately eight (8) feet. In addition to the steel support system and PV panels, the project would include inverters to convert direct current ("DC") power from the sun into AC power that the utility uses throughout its system. Each inverter would be coupled with a medium voltage step-up transformer to increase the voltage of the power to be consistent with the utility line installations.

The project characterized the proposal as a "Major Alternative Energy Facility" application included a SEPA Checklist (revised). Public comment is included in the administrative record and such comments are incorporated reference in this appeal.

C. Mitigated Determination of Significance.

Kittitas County Community Development Services through its SEPA Responsible Official Robert "Doc" Hansen (Interim Director/Planning Official) issued a State Environmental Policy Act Mitigated Determination of Nonsignificance (MDNS) for the Iron Horse Solar Farm (CU-15-00006) on August 10, 2016. Appeals to the threshold determination were to be filed with the Kittitas County Board of

Commissioners no later than 5:00 p.m., August 24, 2016. This appeal is filed in accordance with the notice instructions.

Responsible Official determined that the "...proposal will not have a probable significant adverse impact on the environment." The lead agency adopted certain mitigation measures for the purported purpose of reducing impacts from the project to a level of non-significance. The MDNS further provides that "...[f]ailure to comply with the mitigation measures identified ... will result in the issuance of a Determination of Significance (DS) for this project". The MDNS process is authorized by regulation and court decisions as a vehicle to reduce project impacts below a threshold of significance. WAC 197-11-350 and *Anderson v. Pierce County*, 86 Wn. App. 290 (1997). An agency must use the environmental checklist and document its conclusions regarding significance or nonsignificance. *Spokane County v. Eastern Washington Growth Management Hearings Board*, 176 Wn. App. 555, 578-59 (2013).

D. Principal Issues on Appeal.

1. SEPA Responsible Official Failed To Properly Evaluate Impacts Of Project Proposal On Agricultural Lands Of Long Term Commercial Significance.

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)(1). The proposed facility will have significant impacts to prime farmlands.

2. Failure to Conduct on Alternate Site Analysis as 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:

- (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 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.

3. Kittitas County Denied Parties an Opportunity to Comment Upon Supplemental Environmental Information.

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 supplemented its environmental and application materials by letter dated July 14, 2016. The submission included the following statement:

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 failed to provide timely comments on the application and the additional information mandated subsequent notification to interested parties and opportunity to comment upon the additional information. The 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.

4. Failure To Disclose and Assess Impacts Associated With Project Decommissioning.

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.

5. Inadequate Review of Light, Glare and Aesthetics.

Applicant has failed to provide any photographs, drawings or demonstrative material disclosing the actual project and improvements.¹ No detailed information was provided in the Environmental Checklist with respect to glare. Supplemental information was provided but the public was denied an opportunity to comment. The fact is that solar panels create glare. See attached photos of blinding glare from a solar farm in Kittitas County at the Wild Horse Wind and Solar Farm. 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. The proposed site is poor for many reasons.

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.

6. 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.

7. 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.

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

¹ References are made to greenhouses, gravel mining operations and other unrelated land uses. Placement and configuration are unknown to the public.

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 was not provided or made available for public comment or review. 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.

8. 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.

9. Failure to Consider the Precedent Set by This Project.

The SEPA official “shall” consider whether a “proposal may be 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 without any significant environmental review for impacts of significant impacts on farmlands and alternative site considerations to scenic resources within the county.

10. Inadequate Analysis of Cumulative Impacts.

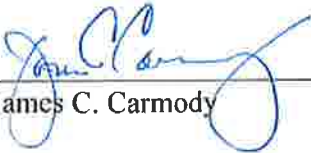
Under SEPA, the lead agency is specifically required to consider whether several marginal impacts when considered together may cumulatively result in a significant adverse impact. WAC 197-11-792(2)(c)(iii). The likelihood of an accumulation of adverse impacts of solar energy and industrial development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

CONCLUSION

OneEnergy Resources is proposing a quasi-industrial land use on land and areas designated as farmlands of long term commercial significance. The serious and adverse environmental impacts to such resource lands mandates the preparation of an Environmental Impact Statement (EIS) that provides the public and decision makers with adequate information about the proposal.

Submitted this 24th day of August, 2016.

MEYER, FLUEGGE & TENNEY, P.S.
Attorneys for Save Our Farms! Say No to Iron Horse



James C. Carmody

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Attachments - (9) 9x12 photographs



Administrative APPEAL

ATTACHMENT 1/9

ATTACHMENT A: (3) IMAGE OF LAND BEING WORKED AS RURAL WORKING LAND



Admin Appeal

ATTACHMENT 2/9



Admin Appeal
Attachment 3/9



Admin Appeal

Attachment 4/a



Admin Appeal
Attachment 5/9



Admin Appeal
Attachment 619



Admin Appral
Attachment 7/9

~~ATTACHMENT A. (S) IMAGE OF PREVIOUS FLOODING IN THE PROJECT AREA~~
JANUARY 17, 2011



Admin Appeal
Attachment 8/9



Admin Appeal
Attachment 9/9



Kittitas County Office Of The Treasurer
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Phone (509) 962-7535 Fax (509) 933-8212

Cash Receipts

Receipt Number: 2016-5965 Date: 08/24/2016

Received From: DEBBIE M BOCC-DEBBIE

Check Amount: \$780.00

Cash Amount: \$0.00

Other Amount: \$0.00

Total Amount: \$780.00

Deputy: CECILIAR Receipt Type: CHK

Template:

Comments:

CSR 2016-4315
780

<u>FundCode</u>	<u>GLCode</u>	<u>Description</u>	<u>Amount</u>
402	204213458910	CDS APPEALS FEES	\$780.00
Total Amount:			\$780.00

Kittitas County Treasurer's Office
Submitted By: CECILIA RAHME