

BURDEN OF PROOF STATEMENT – COMPLIANCE WITH ZONING ORDINANCE

Proposed Project will satisfy applicable provisions of the Kittitas County Code, including Title 17, Zoning.

TITLE 17.61.020

A) 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

The State of Washington has enacted aggressive legal and policy standards in pursuit of more renewable energy generation within its borders. Washington's Renewable Portfolio Standard ("RPS") mandates that fifteen percent (15%) of Washington's electricity be generated from renewable energy sources by 2020, with a ramp-up of increasing targets, including the next tranche of nine percent (9%) by 2016. This Project will help the State meet these objectives and create more clean energy generation in Washington. This Project will deliver all of its output to the electricity grid through the PSE distribution system.

The Project will be the largest solar project in Washington and is desirable to the public convenience because it will fortify the County's electric grid with clean, local power. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations.

This Project will generate approximately 10,379 MWh of clean electricity each year, which is enough to power more than 950 average American homes and result in an annual emissions reduction of over 15.7 million pounds of CO₂e (equivalent to removing roughly 1,500 passenger vehicles from the road).

B) 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.

The city of Kittitas is a small community with a population of approximately 1,450 people. The town has a rural character with deep roots in agriculture. The City of Ellensburg lies just 10 miles west and is home to a much larger population of approximately 18,175 people and Central Washington University. ~~Both communities have shown support for renewables through approving wind development, such as the Wild Horse Wind Project and the Kittitas Valley Wind Project, as well as the Wild Horse Solar Facility and the Ellensburg Community Solar Project.~~

- i. This project will be serviced by existing facilities including but, not limited to, existing roads, highways, and police and fire protection.
- ii. Any additional facilities required by this Project will be provided by OER. These facilities may include utility infrastructure on Clerf Road, appropriate access improvements to comply with public works or Washington Department of Transportation, additional safety training for the local fire department, and all necessary equipment.
- iii. The power generated from this Project will primarily be absorbed in PSE's service areas in and near Kittitas. The total Project capital investment is estimated to be approximately \$11.2 million. Beyond generating a source of renewable energy, this Project will deliver numerous economic benefits through direct capital investment in the local and regional economy.

In addition to local hired project development technical support and the spike of local spending during the construction period and a hired regional labor force, the Project will generate a consistent revenue stream over the operation life through recurring annual lease payments, which will bring revenue to the landowner as a different commercial enterprise; property taxes, which will generate revenue for Kittitas County, an injection that will contribute to the provision of improved roads, quality education, police, fire, and other municipal needs that would benefit the entire community; and long-term operations and maintenance expenses spent regionally.

C) The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.

OER is dedicated to using best management practices during all phases of development, construction and operations. This Project will comply with any and all relevant development standards laid out by Kittitas County code.

D) The proposed use will mitigate material impacts of the development, whether environmental or otherwise.

OER employs a rigorous site selection process to mitigate, to the largest extent feasible, negative environmental impacts while partnering with landowners and local residents to generate positive community impacts and economic development for Kittitas County.

The development process for this Project began in 2013 and OER has been working through the due diligence process to ensure the least amount of impacts while developing the Project to achieve successful financing and operations. OER has been and will continue to work to mitigate impacts. OER is committed to developing well-sited projects that avoid sensitive habitats and engages agencies early and often, as represented by Appendix D, demonstration of correspondence with WDFW for review.

E) *The proposed use will ensure compatibility with existing neighboring land uses.*

The Project will be compatible with all neighboring land use. The Project will have very limited visual or auditory impacts, keeping with the rural nature of the City of Kittitas, as further described in the Project narrative above.

F) *The proposed use is consistent with the intent and character of the zoning district in which it is located.*

The Parcel is currently zoned AG-20. Kittitas County Code states that alternative energy facilities may be authorized in this zoning. This Project is a clean energy generator defined in Chapter 17.61 as a "Major alternative energy facility" means a hydroelectric plant, solar farm, or wind farm that is not a minor alternative energy facility." The Project is consistent with the intent and character of the zoning district. As defined in 17.61.020 Permitted and Conditional Uses, "Major alternative energy facilities may be authorized in the Agriculture-20, forest and range, commercial agriculture, and commercial forest zones as follows:...All other major alternative energy facilities may be authorized as a conditional use."

G) . The proposed conditional use is outside of Urban Growth Areas, the proposed use:

i. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, specifically GPO 6.36, which states an intent to develop a criteria and design standard for siting solar farms in the county.

ii. Preserves "rural character" as defined in the Growth Management Act by fitting into the patterns established by the county in RCW 36.70A.030 (15). The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. Native grasses will be planted beneath

the panels. The low-lying natives and native grasses will perpetuate the visual landscapes of open space and vegetation that are traditionally found in rural areas.

The project is compatible with use of the land by local wildlife. OER will continue to work with WDFW to address concerns related to existing wildlife habitat. Additionally, this Project will continue the protection of natural surface water and groundwater flows and surface water recharge and discharge areas. This Project will not inhibit traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas as local farming practices will continue and no job opportunities will be lost. The Project will not require an extension of urban governmental services.

i. The Project requires only rural governmental services such as but not limited to, police and fire protection services.

ii. This Project does not compromise the long term viability of the agricultural resource value of this parcel. This Project will temporarily remove a maximum of 47.5 acres for a term to be no longer than 36 years from agricultural production. The landowner will have the ability to continue using the remainder of the land holdings for agricultural uses for the duration of this term. Within one year from the date the lease expires or terminates, all solar facilities and related infrastructure shall be removed and the land shall be returned to its original state at which time the land can return to an agricultural resource.

VI. PROJECT ANALYSIS – COUNTY CODE

Consistency with the provisions of KCC 17.60A, Conditional Uses:

As mentioned above a conditional use permit allows the county to consider uses which may be essential or desirable, but which are not allowed as a matter of right within a zoning district. It allows an applicant to exercise their rights to utilize their property in temporary or hard-to-classify uses, or land uses with potentially significant environmental or other negative impacts. KCC 17.60A.015 provides guidance for the review of a conditional use permit through review criteria. In order for a conditional use permit to be approved it must demonstrate the following:

- 1. 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.**

Applicant Response: The State of Washington has enacted aggressive legal and policy standards in pursuit of more renewable energy generation within its borders. Washington's Renewable Portfolio Standard ("RPS") mandates that fifteen percent (15%) of Washington's electricity be generated from renewable energy sources by 2020, with a ramp-up of increasing targets, including the next tranche of nine percent (9%) by 2016. This Project will help the State meet these objectives and create more clean energy generation in Washington. This Project will deliver all of its output to the electricity grid through the PSE distribution system.

The Project will be the largest solar project in Washington and is desirable to the public convenience because it will fortify the County's electric grid with clean, local power. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations.

This Project will generate approximately 10,379 MWh of clean electricity each year, which is enough to power more than 950 average American homes and result in an annual emissions reduction of over 15.7 million pounds of CO₂e (equivalent to removing roughly 1,500 passenger vehicles from the road).

County Response: RCW 19.285 Energy Independence Act in its declaration of policy states that:

“Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington State and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.”

RCW 82.16.110 in its findings and intent conveys:

“The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington State has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made

renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington State."

RCW 80.60.005 concurs in its findings:

"The legislature finds that it is in the public interest to:

- (1) Encourage private investment in renewable energy resources;*
- (2) Stimulate the economic growth of this state; and*
- (3) Enhance the continued diversification of the energy resources used in this state."*

The applicant has stated that 40 to 60 jobs will be created during the construction phase of the project, and that where feasible, local labor will be hired. No taxpayer money is being used for the project and the property tax revenue increase for the life of the project is estimated at \$873,048. This Project will generate approximately 10,379 MWh of clean electricity each year, which is enough to power more than 950 average American homes and result in an annual emissions reduction of over 15.7 million pounds of CO₂e (equivalent to removing roughly 1,500 passenger vehicles from the road). Mr. Hanson is utilizing his property in his best interests. The property is subjected to no permanent change, damage, or encumbrance.

Webster's dictionary defines detrimental as "causing damage or injury; obviously harmful". A multitude of concerns were raised within the comment letters with respect to the potential detrimental effects of the proposed Solar Farm. In the Environmental section above the applicant has provided substantive and empirical data, studies, and research which demonstrated to the satisfaction of the SEPA Official of Kittitas County that there would be no adverse environmental impacts as a result of the construction and operation of the project. Outside of the environmental realm other concerns expressed within the comment letters that the project may be detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood include:

Loss of farmland and/or dangerous precedent to oversaturation of solar farms: The application should be considered on its own merits; the repercussions or ramifications of the cumulative effect of a land use type need to be dealt with within the confines of some other forum. The discussion at hand is about this project, in this place, by this person, at this time. That being said, the Kittitas County Comprehensive Plan lists 516,797 acres of land as being designated as agricultural use. The proposed solar farm project acreage to be removed represents 0.0009% of that acreage. The removal is temporary, and the land, as per the MDNS, will be restored to an agriculturally productive level upon decommissioning of the project. The property belongs to a private individual entering into a private contract, with a private corporation for a permitted conditional use. Nothing within the county code or comprehensive plan establishes or even contemplates an appropriate or acceptable threshold for "how much is enough" or "how much is too much" when it comes to Major Alternative Energy Facilities. The conditional use is deemed appropriate for 1,425,612 acres within the county; to date there are 13.6 acres of land approved for development as a Major Alternative Energy Facility in Kittitas County.

Loss of farming jobs: No data or research was presented with respect to this assertion. According to the application, the property owner retains 500+ acres of land in production; a reduction of less than 10% in the working area of the farm could conceivably manifest itself in a loss of hours for some individuals employed by the applicant. The extent which the loss of those hours would cause damage or injury is not discernable. As mentioned above there are over a half million acres of agriculturally designated lands in

the county; by applying a proportional perspective one could only conclude that the damage to the agricultural workforce bottom line would be negligible.

Aesthetics and appearance: The specifics on the potential injuries in this realm range from diminished property values, to diminished view quality, to loss of tourism, to change in historical character. No data or research was presented to support these assertions. There is no doubt that the conversion from 47 acres of green hayfield to 47 acres of glass, aluminum, and silicon represents a dramatic change. One must be careful however not to automatically equate contrast with quality, encumbrance, or injury. The applicant submitted some empirical and research data which indicates that there is “...no impact in home values due to the adjacency to the solar farm as well as no impact to adjacent vacant, residential, or agricultural land.” and that there was “no negative impact on the adjoining properties.” Another study espoused that “A review of literature nationwide shows little evidence that solar arrays influence nearby property values.” Notwithstanding the above, staff acknowledges that this issue is perhaps the most challenging characteristic to quantify and address. The applicant points out that “Given the fact that solar PV facilities are a relatively new land use, limited peer-reviewed studies exist regarding potential impacts on the values of adjacent and surrounding properties.” It is undeniable that aesthetic appeal or lack thereof with respect to anything is subjective; and there can be no doubt that some unknown percentage of the population would find the appearance of the proposed project unappealing. What can’t be known, or at least has not been demonstrated at this time is the source, magnitude, and influence that that disdain.

Would the troubling appearance of the project carry as much intensity if it were happening someplace disconnected from the commenters’ sphere of influence? Staff feels compelled to place some measure of weight on an affirmative answer for that question. One year ago, a nearly identical, albeit smaller, project on the other side of the valley, on Agriculture 20 working farm land was proposed, noticed, published, and given substantial press coverage. No negative comments were submitted with respect to that application. There were in fact, four letters from the general population which were completely in favor of the project.

Judging the magnitude of the lack of appeal may be the most elusive metric to quantify. No evidence, studies or data have been presented to provide support for actual detrimental or injurious impacts to the public health, peace, or safety or to the character of the surrounding neighborhood. Given the established desirability of the proposed project, Staff feels compelled to support an affirmative response to this conditional use permit criteria.

It should be noted at this time that several concerns or statements articulated within the comment letters submitted were deemed by the county as “not germane” to the discussion. The expense of the energy produced, the viability, efficiency, or cost effectiveness of the project; questions or statements about being below the “fog line”; requests for free or reduced electricity to the neighbors; market factors stimulating or driving the project; statements that other property is available; or the overabundance of existing power. All of these topics/questions/requests extend beyond the jurisdictional framework of the county. Mr. Hanson is leasing property to a private corporation who is speculating that the electricity produced will cost less than what the market will pay. Whether that is true or what they do with the product they produce are functions of capitalism, economics, and a free market economy; and as such are not a determination that the county can or should make. Staff concludes that the project as proposed is 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 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

- A. The proposed use 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**

- B. The applicant shall provide such facilities; or**
- C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.**

Applicant Response: The city of Kittitas is a small community with a population of approximately 1,450 people. The town has a rural character with deep roots in agriculture. The City of Ellensburg lies just 10 miles west and is home to a much larger population of approximately 18,175 people and Central Washington University.

- i. This project will be serviced by existing facilities including but not limited to, existing roads, highways, and police and fire protection.
- ii. Any additional facilities required by this Project will be provided by OER. These facilities may include utility infrastructure on Clerf Road, appropriate access improvements to comply with public works or Washington Department of Transportation, additional safety training for the local fire department and all necessary equipment.
- iii. The power generated from this Project will primarily be absorbed in PSE's service areas in and near Kittitas. The total Project capital investment is estimated to be approximately \$11.2 million. Beyond generating a source of renewable energy, this Project will deliver numerous economic benefits through direct capital investment in the local and regional economy.

In addition to local hired project development technical support and the spike of local spending during the construction period and a hired regional labor force. the Project will generate a consistent revenue stream over the operation life through recurring annual lease payments, which will bring revenue to the landowner as a different commercial enterprise: property taxes, which will generate revenue for Kittitas County, an injection that will contribute to the provision of improved roads, quality education, police, fire, and other municipal needs that would benefit the entire community; and long-term operations and maintenance expenses spent regionally.

County Response: The applicant has demonstrated that there would be no negative economic impacts to the county. The applicant has stated that 40 to 60 jobs will be created during the construction phase of the project, and that where feasible local labor will be hired. No taxpayer money is being used for the project and the property tax revenue increase for the life of the project is estimated at \$873,048. There would be no significant detrimental effects to or increased demands on public services. Existing off sight roads and infrastructure are sufficient to service both the construction and operational phases of the project. As mitigated, the project would not result in an increased need for fire, police, school, public transit, irrigation, refuse, water or septic systems, health care or other public services. As mitigated, there are no costs or detriments for economic benefit to offset.

3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.

Applicant Response: OER is dedicated to using best management practices during all phases of development, construction, and operations. This Project will comply with any and all relevant development standards laid out by Kittitas County code.

County Response: As mitigated and conditioned the project will be in full compliance with all relevant Titles and chapters of Kittitas County Code including but not limited to:

KCC Title 8 Health, Welfare, and Sanitation
KCC Title 9 Public Peace, Safety, and Morals
KCC Title 10 Vehicles and Traffic
KCC Title 12 Roads and Bridges
KCC Title 13 Water and Sewers
KCC Title 14 Buildings and Construction
KCC Title 15 Environmental Policy
KCC Title 17 Zoning
KCC Title 17A Critical Areas
KCC Title 20 Fire and Life Safety

4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.

Applicant Response: OER employs a rigorous site selection process to mitigate, to the largest extent feasible, negative environmental impacts while partnering with landowners and local residents to generate positive community impacts and economic development for Kittitas County. The development process for this Project began in 2013 and OER has been working through the due diligence process to ensure the least amount of impacts while developing the Project to achieve successful financing and operations. OER has been and will continue to work to mitigate impacts. OER is committed to developing well-sited projects that avoid sensitive habitats and engages agencies early and often, as represented by Appendix D, demonstration of correspondence with WDFW for review.

County Response: As mitigated (see environmental section above) the use will mitigate material impacts.

5. The proposed use will ensure compatibility with existing neighboring land uses.

Applicant Response: The Project will be compatible with all neighboring land use. The Project will have very limited visual or auditory impacts, keeping with the rural nature of the City of Kittitas, as further described in the Project narrative above.

County Response: As mitigated the use will be compatible with neighboring land uses. See criteria 1 above.

6. The proposed use is consistent with the intent and character of the zoning district in which it is located.

Applicant Response: The Parcel is currently zoned AG-20. Kittitas County Code states that alternative energy facilities may be authorized in this zoning. This Project is a clean energy generator defined in Chapter 17.61 as a "'Major alternative energy facility' means a hydroelectric plant, solar farm, or wind farm that is not a minor alternative energy facility." The Project is consistent with the intent and character of the zoning district. As defined in 17.61.020 Permitted and Conditional Uses, "Major alternative energy facilities may be authorized in the Agriculture-20, forest and range, commercial agriculture, and commercial forest zones as follows: ... All other major alternative energy facilities may be authorized as a conditional use."

County Response: The use is consistent with the intent and character of the zoning district in which it is located (see comprehensive plan section above).

7. For conditional uses outside of Urban Growth Areas, the proposed use:

- A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;**

Applicant Response: Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, specifically GPO 6.36, which states an intent to develop a criteria and design standard for siting solar farms in the county.

County Response: See comprehensive plan section above.

B. Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15));

Applicant Response: Preserves "rural character" as defined in the Growth Management Act by fitting into the patterns established by the county in RCW 36.70A.030 (15). The low lying panels will be unobtrusive to any view sheds and won't alter Kittitas Valley's rural character in operations. The facility will be quiet and have very few moving parts and thus will not pose a threat to public health, peace or safety. Native grasses will be planted beneath the panels. The low-lying natures and native grasses will perpetuate the visual landscapes of open space and vegetation that are traditionally found in rural area.

The project is compatible with use of the land by local wildlife. OER will continue to work with WDFW to address concerns related to existing wildlife habitat. Additionally, this Project will continue the protection of natural surface water and groundwater flows and surface water recharge and discharge areas. This Project will not inhibit traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas as local farming practices will continue and no job opportunities will be lost. The Project will not require and extension of urban governmental services.

County Response: See comprehensive plan section above

C. Requires only rural government services; and

Applicant Response: The Project requires only rural government services such as but not limited to, police and fire protection services.

County Response: Existing off sight roads and infrastructure are sufficient to service both the construction and operational phases of the project. As mitigated, the project would not result in an increased need for fire, police, school, public transit, irrigation, refuse, water or septic systems, health care or other public services. As mitigated, there are no costs or detriments for economic benefit to offset.

D. Does not compromise the long term viability of designated resource lands.

Applicant Response: This Project does not compromise the long term viability of the agricultural resource value of this parcel. This Project will temporarily remove a maximum of 47.5 acres for a term to be no longer than 36 years from agricultural production. The landowner will have the ability to continue using the remainder of the land holdings for agricultural uses for the duration of this term. Within one year from the date the lease expires or terminates, all solar facilities and related infrastructure shall be removed and the land shall be returned to its original state at which time the land can return to an agricultural resource.

County Response: There are no resource lands adjacent to or impacted by the proposed project.

This proposal is consistent with the Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As mitigated and conditioned, believes that the proposal meets or exceeds all of the criteria listed under KCC 17.60A.015 specifically, and Title 17 generally.

Consistency with the provisions of KCC 17A, Critical Areas:

Staff has conducted an administrative critical area review in accordance with KCC 17A and found that this proposal has two environmental elements that warrant additional scrutiny:

1. **Caribou Creek:** Caribou Creek a Type 2 fish bearing stream is located along the west side of the project site. The stream has been altered from a naturally meandering streambed to a straight line bed running directly south to Clerf Road along the west edge of the property. As mentioned in the environmental review, under the recommendations of the WDFW, the county has imposed a 100 foot buffer from the ordinary high water mark. No development, structures, excavation, or clearing of existing vegetation may occur within the buffer. Additionally under the provisions of the MDNS a Riparian Planting Plan shall be developed in conjunction with and approve by the WDFW which will improve habitat and assist with lowering stream temperatures.

2. **Floodplain:** There is an associated floodplain with Caribou Creek (FIRM panels 5300950580B & 5300950557B). A floodplain development permit will be required for the construction of the fence in within the floodplain. Furthermore should the final site plan contemplate photovoltaic panel installation within the floodplain, a permit will be required.

Consistency with the Shoreline Master Program:

There are no Shorelines of the State associated with the project.

Consistency with the provisions of KCC Title 12, Roads and Bridges:

As conditioned, the proposal is consistent with the provisions of KCC Title 12.

Consistency with the provisions of KCC Title 13 Water and Sewers

As conditioned, the proposal is consistent with the provisions of KCC Title 13 Water and Sewers

Consistency with the provisions of KCC Title 14.04, Building Code:

As conditioned, the proposal is consistent with the Kittitas County Building Code

Consistency with the provisions of KCC Title 15 Environmental Policy

As conditioned, the proposal is consistent with the provisions of KCC Title 17A Critical Areas

Consistency with the provisions of KCC Title 20 Fire and Life Safety

As conditioned, the proposal is consistent with the provisions of KCC Title 20 Fire and Life Safety

VIII. RECOMMENDATION

As conditioned below, staff finds that the application is not detrimental to the general public health, safety or welfare and meets the basic intent and criteria associated with Title 12, Title 13, Chapter 14.04, Title 15, Chapter 17.29, Chapter 17.60A, Title 17A, and Title 20 of the Kittitas County Code and the Kittitas County Comprehensive Plan. **Staff recommends approval of the Iron Horse Solar Farm Conditional Use Permit subject to the following findings of fact and conditions:**

Staff Recommended Findings of Fact