

Land use # 13

Written Testimony by – Dr. Donald Chance
EFSEC Land-Use Suitability Hearing – December 12, 2017
Columbia Solar Project – Tuusso
Project Tracking Code 2017-05-03441

For the public record the following written testimony is being provided by Donald Chance who resides in the Badger Pocket area of the lower Kittitas Valley, engaged in modest scale Christmas tree production. Mr. Chance is a retired land-use and environmental planner, and a legislative affairs specialist who's career spans 45 years. He holds a B.S. in Forestry and Wildlife, Masters in Urban and Regional Planning, and Ph.D. in Environmental Design and Planning. Mr. Chance was a city and county planning director over the course of his career in Oregon, Washington, and Montana. He also was employed as a legislative affairs specialist in planning, development, and environmental issues for 20 legislative Sessions by the Association of Washington Business, Washington forestry corporations, Washington homebuilder interests, Wildlife Federation interests and local governments. During that time he was one of the principle actors in dozens of land-use, development, and environmental related legislative enactments including SEPA, GMA, habitat acquisition programs, the Columbia River Gorge National Scenic Area, National Nature Resources Planning Act, water rights legislation, and industrial siting and liability issues. Just prior to retirement he served as the executive director of the 17,000 acre Columbia Development Authority, negotiating among other activities, the planned establishment of a 1,000 to 1,200 acre industrial solar project in Eastern Oregon to provide financial support for a newly established wildlife refuge.

Washington State Land-Use Policy - Issues of Statutory and Project Review Consistency

Professional land planners, land planning systems, and the laws that provide the foundation for land planning are constantly evolving to deal with new land use issues that often explode overnight, driven by changes in technology and growth patterns. In the late 1980s and early 1990s it was cell towers when the nation went cellular. Cell tower placement was highly controversial nationwide until zoning codes were perfected to get the **RIGHT LAND USE IN THE RIGHT LOCATION**. A more recent challenge has been marijuana growing and processing for Washington state planners. This was new land-use territory for planners and we struggled. Today, most jurisdictions treat such greenhouse operations as industrial in nature, not agricultural. With proper zoning placement their accommodation has ceased to be controversial in many jurisdictions, and predictability has been provided for the industry.

The very recent initiatives to develop for the first time large numbers of modest scale industrial solar projects is the latest example of a technology/business model driven by tax credits and well intentioned renewable energy requirements that is provoking planning system adjustments. While Kittitas County has responded to the challenge and has in place thoughtful zoning criteria for the evaluation and placement of solar projects that are consistent with GMA standards that have been upheld by the courts, the Tuusso proposal is the first major solar cluster proposed on high value, prime irrigated farm lands confronting EFSEC. The precedent that will be set in the review and final determination will have powerful implications for the Kittitas Valley and other areas of the state dependent upon prime agricultural resource lands.

Solar project controversies proposed on prime irrigated farm ground have recently erupted as a major and growing land-use controversy across the West, and both states and local governments are responding to protect the resource and redirect solar development to suitable sites. That

growing controversy threatens the public image and acceptance of renewable energy projects in the future. Legislative adjustments may be necessary, as is currently the case in the state of Oregon, but a more efficient way to defuse the controversy and provide needed guidance to the industry is with the proper precedent in rejecting projects on prime agricultural land following by new WAC rules under EFSEC that more definitively coordinate with the State's adopted land-use policies as embodied in the GMA.

SEPA in WAC 197-11-330(3)(i) already requires EFSEC to consider if the proposal will "adversely affect environmentally sensitive or special areas, such as loss or destruction of ...prime farmland". Moreover, the Washington State Supreme Court's *Soccer Fields* decision concluded that a "net loss of designated agricultural land" violates the GMA. EFSEC and the current Administration need to recognize that the Tuusso proposal represents the first of what almost certainly will be a flood of small scale solar development projects that require a more traditional treatment in project review consistent with State land-use policy. Such projects in the numbers likely to be proposed in the future require different considerations than a multi-state powerline corridor or a once in a generation large-scale nuclear power facility. When the EFSEC statute was written in 1970 it was done so for a specific reason with a specific class of very large projects in mind. The current statutory provisions for EFSEC did not envision potentially hundreds of small scale solar industrial projects being proposed - a land-use of such scale and character that it would normally fall within the purview of local government planning with the statutory require for consistency with the State's GMA goals and standards.

Urban in character, these projects are being proposed in rural communities in areas on high value natural resource lands. The inappropriate placement of these projects in the wrong locations presents a serious planning challenge with a multitude of implications for rural communities and the state-at-large. They would constitute a direct contradiction, if approved, of the State's broader land-use policy agenda and associated regulatory system as embodied in the GMA. It is a public policy issue that needs to be resolved quickly and with forethought if:

- 1) Future public opinion regarding industrial solar projects is not to be seriously damaged as has become a commonplace issue in the UK and Europe;

- 2) The State is going to maintain consistency in its land-use objectives, goals, and policies, avoiding what will be viewed by observers and actors in the planning and development arena as an inconsistent and clearly hypocritical posture; and

- 3)The State is going to maintain the long-term protection of scarce prime agricultural resources which were created over 100 years of public and private investment in regional irrigation networks. That investment approaches one billion dollars. A four billion dollar public water project is now being implemented over a 20 year time period to enhance the existing system - the Yakima River Basin Project.

While EFSEC currently has the statutory authority to review all renewable energy projects as supported by court decision, it also has a responsibility to seek consistency with the broader land-use policies of the State as embodied in the GMA and decisions of the Growth Management Hearing Boards if it wants to maintain public trust and moral authority. Just because EFSEC may currently have the authority to override established State land-use policy after SEPA compliance, doesn't mean it should, or that it can't make it's determinations consistent with State and local land-use policy as embodied in the GMA.

The Washington GMA was largely modeled after the Oregon GMA, adopted in 1974 and considered by most planners and planning academics across the nation to be the most effective land planning program among the 50 states. Both the Oregon and Washington statutes have at their core the protection of high value, natural resource lands, particularly Class I and Class II Prime agricultural resources for the current and future benefit of society. Another pillar of both Acts included in statutory language is the encouraged coordination of state agency actions with the goals, policies, and plans that constitute each state's respective overarching land-use planning policies.

Oregon tends to be several steps ahead of Washington due to the 16 year difference in GMA adoption dates in responding to and perfecting land use responses to new situations such as small scale solar projects. Oregon in the case of solar has an "alternative analysis" requirement whereby the applicant has the burden of proof to show that alternative project sites do not exist outside prime resource lands. A very recent court case before Oregon's Land Use Court of Appeals confirmed this requirement and rejected an 80 acre solar project proposed on high value agricultural lands in Jackson County. Legislation is pending supported by the Oregon Farm Bureau, conservation groups, and the State agencies to close the one remaining loophole for solar projects under 12 acres in size that may be located on prime resource lands. A very recent court decision in Kittitas County also confirmed the County's action to deny a solar project as inconsistent with County placement criteria, criteria that were consistent with Washington GMA requirements.

The inappropriate placement of these types of projects concentrated in large numbers in a confined, high value agricultural resource area such as the Kittitas Valley constitutes a real threat to the agricultural economic base and rural character of the community. The five Columbia Solar Projects proposed are only part of eighteen (18) projects in the same location that the community is aware of under consideration. Many more are likely, undermining the long-term economies of scale necessary to keep agricultural operations sustainable in the Valley and the area's rural character, a standard in the GMA.

Kittitas County is the only jurisdiction in the Puget Sound Energy service area with the attributes to meet Westside interest in increased renewable energy. The lower Kittitas Valley has already absorbed significant renewable energy development far in excess of any other jurisdiction in the Seattle Metro service area. The potential precedent of allowing the Tuusso project on high value and scarce irrigated agricultural lands must be taken in context. **A key component to judge the environmental and community impacts associated with the decision in the SEPA analysis is that of the "cumulative effects" associated with any precedent that would be set.** The cumulative effect of the decision would likely result in dozens of similar projects on this same high value conservation resource. In short, the decision does have the very real potential to undermine the local resource base and economy. Moreover, it's not necessary. In contrast to the limited 90,000 acres of high value, irrigated farm land in the valley, there exists an estimated 14 million acres of low value, shrub-steppe acreage in Eastern Washington and Oregon. The Washington DNR has identified thousands of acres in Kittitas County that meet industry siting criteria on Trust Lands that reportedly the State would welcome

solar development upon. One analysis has concluded that there are at least 18,000 acres available that meet industry siting criteria in lower Kittitas County outside of prime agricultural areas. This is not the first time that statutory and WAC coordination has been required in the State's environmental, project siting, and land planning mechanisms. In fact, it has been a commonplace occurrence as policy circumstances and project technologies have evolved over time. In 1985 SEPA required a major rewrite for statutory coordination with the Forest Practices Act and Shorelines Act, and extensive modernization. In 1995 a similar effort was required for GMA, SEPA, and Shorelines. EFSEC now has the opportunity with the Tuusso proposal to set the land-use placement direction for large numbers of small scale solar projects and provide the foundation for future WAC development that provides predictability for the industry while upholding the most basic considerations of the State's land-use policy to conserve prime agricultural assets.

It is ironic that policies designed to advance energy conservation goals may have the perverse effect of causing great harm to long established conservation and land-use policy for the retention of high value nature resource lands. Both objectives can be advanced, but only with rational project placement.

Like all land-uses, industrial solar projects have their place. These types of projects can be accommodated in Kittitas County and elsewhere without impacting prime agricultural soil resources and local rural communities who's economic base is largely dependent on agriculture. **The right use in the right location.**

Issues of SEPA Review

It is assumed that EFSEC staff is currently involved in the scoping process under SEPA, although I have been unable to get any confirmation to this effect, and that the December 12, 2017 hearing is part of the scoping procedure. As such I am offering the following comments regarding what should be a SEPA determination of significance and elements to be included in the associated scoping review.

1. The project requires an extensive 'cumulative impact analysis' that takes into account the impacts that will occur due to the implications of the precedent that project approval would set within the Kittitas Valley and the state-at-large. That analysis should include but not be limited to the following considerations:

- a. Impact on rural character due to the placement of numerous urban character, industrial land-uses in an area of regional landscape significance for the state.
- b. Impact on the community's economic base, including employment, associated with the potential development of significant numbers of similar projects as a result of the precedent set due to lose of agricultural activity.
- c. Impact on surrounding property values.
- d. Cumulative Impact on the economies of scale necessary to maintain a viable irrigated agricultural economy in the Kittitas Valley.

2. Each proposed site should have a visual analysis conducted regarding both immediate perimeter effects and regional viewshed effects.

3. An alternative siting analysis should be required that considers the availability of alternative sites outside of irrigated agricultural lands along with a comparative analysis of the scarcity of high value agricultural irrigated acreage vs shrub-steppe acreage locally and regionally.

Issues of Due Process

I have a number of concerns regarding due process and procedural conformance with the application.

1) Having reviewed the criteria in WAC 463-43-040 for qualifying for the expedited review process it is clear that the project does not remotely meet the standard. The project is not consistent and in compliance with existing county land-use plans and permit review criteria certified by the State under GMA. Those same plan and standards provisions have been recently acknowledged as appropriate by the courts, and a similar project with the same siting characteristics denied with the denial upheld by the courts. Moreover, the County is in the process of revising existing plan and standards provisions regarding solar projects and that process should be respected.

The proposal also does not meet the second significant criteria for expedited processing – that the proposed energy facility can be mitigated to a nonsignificant level under SEPA. As a former designed SEPA Official and an environmental planner and natural resource specialist with 45 years of experience, I see no way to effectively mitigate impacts of the proposal to a nonsignificant level except by alternative placement on different sites outside of the irrigated valley, which always has been a viable option that should have been pursued. The environmental impacts associated with the five developments are significant and require a Declaration of Significance. A scoping process needs to occur with public input. The precedent setting implications of the project trigger real concerns of ‘cumulative impacts’ in a variety of areas, including impact on the local agricultural economic base, impact on rural character and a landscape of regional significance, conflict with State land-use policy regarding high value resource lands, the impact on substantial public investments in regional irrigation, and the fundamental reduction of prime agricultural soils in production.

2) EFSEC’s staff decision to lump five projects of this scale, widely separated geographically and with individual attributes and potential impacts into a single application only makes sense from the perspective of applicant convenience. It has confused the public and caused response difficulties for public agencies as witnessed in the gymnastics that reviewers are going through to try to separate individual comments for five projects in one correspondence. It certainly violates every principle of project review practiced by local planning agencies across the nation. No local planning agency would call five subdivision proposals widely separated, a single application. EFSEC procedures have not caught-up with this new class of project, a format more suited to the experience of local planning departments.

The last time EFSEC attempted this format was for the five WOOPs power plants. It certainly did not work then and it is a bad idea now. What criteria will EFSEC use in the future for such processing? Are five projects, 10 projects, 20 projects the threshold? One company or multi-company packages acceptable. Within a single county or across jurisdictional lines? How close in proximity do the projects have to be to qualify for the treatment? In short, there was no criteria for this decision reflecting, again, the nature of this new class of numerous, small scale projects which is new territory for EFSEC project review.

Thank you for this opportunity to provide comments.

Regards,

A handwritten signature in black ink, appearing to read 'Donald Chance', written in a cursive style.

Donald Chance, Ph.D.