

Land use #11

JEFF DUNNING
FAMILY FARMING AND RANCHING IN VALLEY SINCE 1890's
20 YEARS IN KITTITAS COUNTY IRRIGATION CANAL MANAGEMENT
MEMBER OF THE ORIGINAL YAKIMA BASIN INTEGRATED PLAN COMMITTEE

EFSEC TESTIMONY DECEMBER 12, 2017
Re:
TUUSSO APPLICATION FOR EXPIDITED PROCESS

Lack of State and County Regulation Anticipation of New Technology

Current state statutes as well as county zoning codes in Washington State could not foresee the impacts and land-use issues arising with the placement of multiple, modest-scale, solar facilities on prime resource farmlands, lands designated as being of long-term commercial significance in locations such as Kittitas Valley. The result is a lag period where time is needed for local and state code adoption to properly incorporate such project technology into land-use policy in accordance with the Growth Management Act (GMA) and local land-use planning and zoning.

Large Scale Solar Facilities vs. Multiple Small Scale Solar Facilities

In other states larger scale solar development in the recent past has primarily involved large, well-capitalized companies, sensitive to appropriate project placement working with communities. That has changed. There is now an influx of smaller companies, some, seemingly not as sensitive to local concerns and often pressured due to financial considerations. This creates a tendency to take advantage of states and communities whose codes have not foreseen the rapid growth impacts of solar technology on the smaller scale.

Need for Multiple Small-Scale Solar Facility Compliance with GMA

Our state's 1990 GMA is largely based on the Oregon GMA adopted in 1974. At the heart of both is the protection of high value natural resource lands; particularly prime agricultural lands, designated as being of long-term commercial significance. Washington RCW's 36.70A.030(2),(11),(18), 36.70A.170, 36.70A.177 (1), (2)(a) and other subsequent RCW's related to the GMA define these lands, their varying soil types guiding prioritization for local zoning purposes as required under the GMA.

Kittitas County, after much litigation, finally fell into compliance with our state GMA. Along with that we have been the states' test ground for wind, ground water and now solar issues. Chapter 17.31, the county's Commercial Agricultural Zone (CAZ) states: "The commercial agricultural zone is an area where farming and ranching are the priority." Prioritizing agricultural practices in that zone was based on preserving those lands whose soil classifications make the lands within the zone prime agricultural resource lands of long-term commercial significance to be preserved for those activities in the future thus fulfilling state law and the intent of the GMA RCW's. TUUSSO has referred to their proposed solar facilities as solar farms yet when it comes to EFSEC they become energy facilities. Kittitas County Code 17.08.250: "Farm" means an area of land devoted to the production of field or truck crops, livestock or livestock

products, which constitute the major use of such property." Kittitas County Code 17.08.187: "Conservation or resource values means the use and sustainability of the land for farm, agricultural or forest production and the perpetual retention of the land for such purpose." These also are in strict compliance with the GMA. Considering the millions of public dollars invested in the irrigation infrastructure in Kittitas county, the impact our state 5 year lose it or lose it water policy could have, and, the amount of available, non-irrigated land in the county, one questions whether a private industrial development such as that before the council should be placed on any of the limited amounts of irrigated lands in Kittitas County.

Precedence from Experience of Others

In late October the Oregon Land Use Board of Appeals (LUBA) reversed a solar project approval granted by the Jackson County Board of County Commissioners. The developer had stated to the BOC that due to its comparative advantage of being located in an area with adequate sunlight, desired flat topography and, near an electrical substation, Jackson County Commissioners should approve the project location on prime agricultural resource farmland. The Oregon Farm Bureau and 1000 Friends of Oregon brought action. As a result, the board of appeals ruled that Jackson County BOC was incorrect in approving the project location on prime farmland based on the developers' stated justifications. LUBA's ruling found that if proximity to the criteria the developer cited were a legitimate reason for converting farmland such "exceptions would become commonplace...". LUBA also found that Oregon's goal of energy conservation is not a requirement to build new renewable energy facilities. The developer justifications in Jackson County are NEARLY INDENTICAL to those being put forth in Kittitas County by a solar development company wishing to locate 5 industrial type facilities on irrigated prime farmland of long-term commercial significance.

RCW 80.50.010 Legislative finding—Policy—Intent.

...*"The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.*

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to

promote air cleanliness; and to pursue beneficial changes in the environment.”

Nowhere in Chapter 80.50 can one find a reference to the development, regulation and siting of energy facilities such as MULTIPLE, small-scale solar facilities lumped together in one application and proposed to be located at five singular sites each having their own distinct characteristics. In 2001 such projects were not on anyone's radar. A reading of RCW 80.50 does not reveal language referring to "sites" plural, only reference to "site" in the singular, leaving the question of how a decision pertaining to 5 individual sites with individual characteristics of soil class and rural character can be considered under one EFSEC application.

Contradictions in Washington State Land Use Policy Regulation

Counties and municipalities collectively have spent millions of dollars in order to comply with the GMA. The lumped-together application before the council for consideration of expedited approval reveals an OBVIOUS CONFLICT within our state land-use policy system. It certainly begs the legal question of the purpose and force of the GMA and the findings and rulings of the Growth Management Hearings Board if this council can simply ignore both as well as county codes in making determinations that affect state instituted land-use policies by simply ignoring them. The result leaves us all with confusion.

Establishment of Local Siting Criteria/Zoning Codes/GMA Compliance

TUUSSO seeks expedited approval through EFSEC bypassing, without consideration, our county efforts to establish proper siting and other related criteria for the location of solar facilities. Some of the lands in the application cited for the solar facilities are lands designated as being of long-term commercial significance in accord with the GMA. Each individual site has its own individual soil classifications and rural characteristics and therefore must be considered individually in order to be in accord and compliance with the GMA. More of these land soils designated as being of long-term commercial significance and within the CAZ cannot be made They are as environmentally sensitive as the lands the solar company states it is avoiding the use of due to environmental sensitivity. That sensitivity holds true to those who live on and farm those lands, in most cases being held by families for generations with the intent of passing them on.

The Right Land Use in the Right Location

I have not spoken with anyone in the valley who is opposed to solar development; the general consensus is it needs to be the right land-use in the right location. The rulings in Oregon and a recent ruling in Kittitas County Superior Court establish precedence in land-use policy that will help guide decisions such as the one before this council

toward a result that avoids further litigation. Our state needs revised land-use policy and regulating that is consistent, cohesive, and recognizes the importance of preserving rural character and the limited amount of agricultural lands of long-term commercial significance. THE RIGHT LAND USE IN THE RIGHT LOCATION.

Respectfully Submitted,

Jeff Dunning

Jeff Dunning

509-607-1207

110 W 6TH Ave #250

Ellensburg, WA 98926

P51ranch@yahoo.com