

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: The application for a Special Use Permit by **NextEra Energy Resources Development LLC**

Mount Vernon Battery Energy Storage System Project

PL23-0408 (SUP)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant, NextEra Energy Resources Development LLC, requests approval of a Special Use Permit application to allow for the construction of a new utility-scale Battery Energy Storage System (BESS) with a 115-kilovolt (kV) generational-interconnect (“gen-tie”) line to interconnect to the Puget Sound Energy (PSE) Fredonia substation.

Decision: The requested Special Use Permit is approved as a use for the applicant, with conditions.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at a properly noticed public hearing.

FINDINGS OF FACT

I.

Applicant: NextEra Energy Resources Development LLC
700 Universe Boulevard, E5E
Juno Beach, FL 33408

Property Owner: Sierra Pacific Real Estate LLC
PO Box 496028
Redding, CA 96049

Puget Sound Energy
PO Box 97034
Bellevue, WA 98009

Site Address: The west side of McFarland Road (P131483), south of Ovenell Road, with the adjacent easterly properties addressed at 14658, 14660 and 14662 Ovenell Road

Legal Description: **P129949:** LOT 1 OF SIERRA PACIFIC BINDING SITE PLAN, RECORDED UNDER AF#200911160068, SE1/4 SEC 9 TWP 34 RGE 3. SURVEY AF#201003170060

P21265: LOT B OF BOUNDARY LINE ADJUSTMENT ON QUIT CLAIM DEED RECORDED UNDER AF#200903180106, DESCRIBED AS FOLLOWS: LOT 'B' AS CREATED BY BOUNDARY LINE ADJUSTMENT QUIT CLAIM DEED RECORDED MARCH 4, 2008, UNDER COUNTY AUDITOR'S FILE NO. 200803040059, SAID LOT BEING A PORTION OF TRACT 2 OF SKAGIT COUNTY SHORT PLAT NO. 44-87, APPROVED DECEMBER 29, 1987, AND OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 34 NORTH, RANGE 3 EAST W.M EXCEPT THAT PORTION LYING SOUTHERLY OF THE CENTERLINE OF THAT CERTAIN 50-FOOT WIDE OIL PIPELINE EASEMENT CONVEYED TO TRANS MOUNTAIN OIL PIPELINE CORPORATION BY INSTRUMENT DATED JULY 9, 1954 AND RECORDED SEPTEMBER 16, 1954 UNDER COUNTY AUDITOR'S FILE NO. 506571 IN THE AUDITOR'S OFFICE OF SAID COUNTY AND STATE. SURVEY AF#201003170060

Assessor's Parcel No(s): P129949 and P21265

Lot Size: 22.56 acres, of which 17.7 are dedicated to the proposed use.

Zoning: Bayview Ridge Heavy Industrial (BR-HI)

- Airport Environs Overlay (AEO)
- Bayview Ridge Urban Growth Area

Water Supply: NA

Sewage Disposal: NA

Application Date: August 23, 2023

Determination of Completeness: September 12, 2023

Adjacent Water Body: NA

Shoreline Designation: NA

Statewide Significance: NA

SEPA Review: A Mitigated Determination of Nonsignificance (MDNS) was issued on June 11, 2024, and published on June 13, 2024. No Appeal filed.

Notice Information: Notice of Development Application, published on 10/5/23.
Notice of Public Hearing, mailed on or about 11/26/24, posted 11/27/24, and published 11/28/24.

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act
 - RCW 36.70B, Local Project Review
 - RCW 90.58, Shoreline Management Act of 1971 (“SMA”)
 - RCW 90.84, Wetlands Mitigation Banking
- Washington Administrative Code (WAC)
 - WAC 173-60, Maximum Environmental Noise Levels
 - WAC 173-200, Water Quality Standards for Groundwaters
 - WAC 173-201A, Water Quality Standards for Surface Waters
 - WAC 173-700, Wetland Mitigation Banks

- WAC 197-11, SEPA Rules
- Skagit County Code (SCC)
 - SCC 14 – Unified Development Code
 - SCC 14.02 – General Provisions
 - SCC 14.02.070 – Office of the Hearing Examiner
 - SCC 14.06 – Permit Procedures
 - SCC 14.16 – Zoning
 - SCC 14.16.190, Bayview Ridge Heavy Industrial (BR-HI)
 - SCC 14.16.210, Airport Environs Overlay (AEO)
 - SCC 14.16.215, Bayview Ridge Urban Growth Area
 - SCC 14.16.900, Special Use Permit Requirements
 - SCC 14.22 – Land Disturbance
 - SCC 14.24 – Critical Areas Ordinance
 - SCC 14.24.250, Wetland Alternative Compensation Projects
 - SCC 14.28 – Concurrency
 - SCC 14.32 – Stormwater Management
- Skagit County Shoreline Master Program of 6/29/76, as amended by Skagit County Board of Commissioners through 7/10/95 (SMP)
- Skagit County Comprehensive Plan of 6/30/16, as amended by Skagit County Board of Commissioners through 12/19/23 (SCP or “Comprehensive Plan”)
- Skagit County Hearing Examiner’s Rules of Procedure (SCRE), as authorized by Skagit County Commissioners per Resolution #R20240280 on 12/16/24

Hearing Date: 12/20/24 at 9:00 AM

Testifying Parties of Record:

Brandon Black, Senior Planner
 Skagit County Planning & Development Services
 1800 Continental Place
 Mount Vernon, WA 98273

Chibuijem Ajulu, Senior Project Manager
 NextEra Energy Resources
 700 Universe Blvd. E5E
 Juno Beach, FL 33408

Sarah Twitchell, Environmental Project Manager
 NextEra Energy Resources

700 Universe Blvd. E5E
Juno Beach, FL 33408

Josh Adams, Engineering Manager
NextEra Energy Resources
700 Universe Blvd. E5E
Juno Beach, FL 33408

Connie Krier
86717 Helmick Ln.
Sedro Wooley

Sandy Bourgeois
16298 Donnelly
Mt. Vernon

Jim Sorensen
11370 Walker Rd.
Mt. Vernon, WA

Norm Jenkins
11545 Waker Rd.
Mt. Vernon, WA

Mike Busch
14578 Avon Allen Rd.

Julie Miner
13007 Avon Allen Rd.
Mt. Vernon, WA

Nick Crandall
11412 Michael
Burlington

Susanne Rohner

B. Norris

Scott Patterson
Bow, WA

Terry Nelson
701 Whatcom Ct.
La Conner, WA

Gary Wallace

Dan Lefeber
1317 South Anacortes St.
Burlington, WA

Ingrid Hinton
22128 State Re. 9, #178
Mt. V 98274

Celeste Frisbee
26593 Hoehn Rd.
Sedro-Wooley

Lee Bolling, PE
Coffman Engineering
1101 2nd Ave #400
Seattle, WA 98101

Tim McMahan
Stoel Rives, LLP
760 SW Ninth Ave., Suite 3000
Portland, OR 97205

Hearing Examiner Exhibit List:

1. Skagit County Planning and Development Services Findings of Fact, dated December 12, 2024.
2. Special Use Permit application, received August 26, 2023.
3. Special Use Permit application narrative received August 26, 2023.
4. “Appendix B Figures” Vicinity Map/Site plan packet received August 26, 2023.

5. State Environmental Policy Act (SEPA) checklist received August 26, 2023.
6. Wetland Delineation Report received August 26, 2023.
7. Hydrogeological Site Assessment Report prepared by associated earth sciences incorporation dated June 2, 2023, received August 26, 2023.
8. Cultural Resources Survey Report summary and associated Inadvertent Discovery Plan Procedures received August 26, 2023, redacted.
9. Conceptual Landscape Plan dated June 28, 2023, received August 26, 2023.
10. Notice of Development Application published on October 5, 2023, and associated affidavit of publication and Certification of Posting.
11. Letter to the applicant requesting additional information dated November 16, 2023.
12. Response received from applicant March 15, 2024, addressing the items requested within the Department's November 16, 2024, information request.
13. Revised Special Use Permit application narrative received March 15, 2024.
14. "Critical Areas Review for Parcel P129949" received March 15, 2024.
15. Spire BESS Wetland Delineation Report dated February 17, 2021 (Jacobs Memorandum for Wetland W1) received March 15, 2024.
16. Spire BESS Wetland Delineation Report dated March 2023 (Jacobs Memorandum for Wetland W2 – W7 on P21265) received March 15, 2024.
17. The Wetland Mitigation Bank Use Plan dated August 2023 received March 15, 2024.
18. Spire Wildlife and Habitat Survey dated March 5, 2021 (Jacobs Memorandum for P129949) received March 15, 2024.
19. Spire Wildlife and Habitat Survey dated January 31, 2023 (Jacobs Memorandum for P21265) received March 15, 2024.
20. Department of the Army (USACE) letter dated March 23, 2021 (Jurisdictional determination for Wetland W1 and Ditch E on P129949) received March 15, 2024.
21. Department of the Army (USACE) letter dated January 5, 2024 (Jurisdictional determination for Wetland W3 and Ditches D, E, and F on P21265) received March 15, 2024.
22. Joint Aquatic Resources Permit Application (JARPA) Form signed by the applicant August 24, 2023, received March 15, 2024.
23. SEPA checklist received March 15, 2024.
24. Development Standards Summary Table received March 15, 2024.
25. County Correspondence 2020 – 2023 document received March 15, 2024.
26. Skagit PUD Statement of Fire Flow Capacity dated March 7, 2024, received March 15, 2024.
27. NextEra Battery Energy Storage Description informational document received March 15, 2024.
28. Commissioning Plan received March 15, 2024.

29. The Decommissioning and Site Restoration Plan received March 15, 2024, cover sheets only.
30. Hazard Mitigation Analysis for Outside Ground Mounted Battery Energy Storage Systems draft report dated February 19, 2023, received March 15, 2024, cover sheets only.
31. Fire Protection Technical Assistance Report dated March 8, 2024, received March 15, 2024, cover sheets only.
32. Fire Emergency Response Procedure received March 15, 2024.
33. SEPA Mitigated Determination of NonSignificance (MDNS) issued June 11, 2024, and published June 13, 2024.
34. Affidavit of publication, confirmation of receipt and publishing by, and to, the State Department of Ecology website, and Certificate of Posting on-site attached on June 13, 2024.
35. Email correspondence and “No Conflict” letter from Olympic Pipe Line Company dated and received July 17, 2004.
36. Additional information coversheet addressing project revisions received July 30, 2024.
37. Revised Special Use Permit application narrative received July 30, 2024.
38. Updated site plan prepared by Coffman Engineers dated July 2024, received July 30, 2024.
39. Additional information coversheet addressing project revisions/amendments received October 17, 2024.
40. Revised Special Use Permit application narrative received October 17, 2024.
41. Revised/updated JARPA and updated Wetland Mitigation Bank Use Plan dated October 7, 2024, based on Department of Ecology comments regarding wetland impacts, received October 17, 2024.
42. Updated/Revised site plan prepared by Coffman Engineers dated September 2024, received October 17, 2024.
43. Spill/Contingency Plan example.
44. Nextera Energy Mount Vernon Battery Storage Project informational flyer
45. Assessor’s Section Map
46. Skagit County IMap “*Pipeline Transmission Systems*” map.
47. Skagit County IMap Aerial Photos and Airport Environs Overlay maps.
48. Pacific Northwest National Laboratory (PNNL) reference document dated October 2023.
49. Assessor’s Office property information sheets.
50. Copy of recorded Sierra Pacific Binding Site Plan (Auditors File #20091116068).
51. Record of Survey for Puget Sound Energy (Auditors File #201008300121).
52. Notice of public hearing published November 28, 2024.
53. List of Neighbors and Parties of record who were mailed the Notice of Public Hearing.
54. Public Comments, as of 12/19/24 at 5:30pm

55. Stewards of Skagit Letter, dated 12/18/24.
56. Public Comments received on day of hearing;
57. Decommissioning and Site Restoration Plan received by Dept. on March 15, 2024, filed at Hearing with Office of Hearing Examiner.
58. Hazard Mitigation Analysis for Outside Ground Mounted Battery Energy Storage Systems draft report dated February 19, 2023, received by Dept. on March 15, 2024, filed at Hearing with Office of Hearing Examiner.
59. Fire Protection Technical Assistance Report dated March 8, 2024, received by Dept. on March 15, 2024, filed at Hearing with Office of Hearing Examiner.
60. Power Point of Applicant, displayed at hearing
61. Sign In Sheets from Hearing

II.

The proposed Mount Vernon Battery Energy Storage System (BESS) Project would be situated on 17.7 fenced acres of parcels P129949 and P21265 in Bayview Ridge Heavy Industrial Area with fencing, internal roads, and control systems to support the primary use. The Project site is entirely privately owned and encompasses parcel P129949 and the southern half of parcel P21265, as well as small portions of tax lots P21272 and P21273; all four project parcels are in the Bayview Ridge Heavy Industrial (BR-HI) zoning district, the Bayview Ridge Urban Growth Area (UGA), and the Airport Environs Overlay (AEO). The surrounding area is dominated by mixed conifer and deciduous forests and industrial operations that include a pipeline easement, substation, concrete mixing plant, and lumber processing operations.

A BESS is a sealed energy storage system that ties into the existing energy grid in Skagit County maintained by Puget Sound Energy (PSE). This proposed BESS would store up to four hours of 200 megawatt-hours (MWH) of energy (800 MWH) inside up to three hundred and sixty-eight container-cabinets, with associated inverters and transformers. The operation of this BESS project as proposed would emit no heat, noise, odors, smoke, dust, nor vibrations detectable offsite. Aside from construction, there would be very little traffic generated by the site.

This proposed use would also include the use of a 115-kilovolt generational-interconnect (“gen-tie”) line, which would extend approximately 1,750 feet northwest to

interconnect to the PSE Fredonia Substation. The proposed use would provide local power capacity and grid resiliency in the nearby communities of Bay View, Avon, Mt. Vernon, Burlington, and the greater Skagit County area.

The gen-tie line's exact nature will not be determined until the building permit will be issued, but may be underground, use existing pole infrastructure, or use new poles limited in height by the zoning to under 50 feet.

III.

There was both supportive and critical public comment, in writing and orally; though the majority of critical comment came orally and was the majority of public comment. The critical public comment came primarily in two broad concerns: 1.) concerns over the safety of Lithium-ion batteries; and 2.) concerns over environmental/safety preservation and responsibility, including financial responsibility for the end of the twenty-year expected lifecycle of the batteries if not replaced. Some specific factual findings are being made with greater detail in regard to these public concerns.

Lithium-ion Batteries

Lithium-ion batteries are a type of solid-state rechargeable battery where lithium-ions, suspended in an electrolyte, move from negative to positive electrodes and back when recharging. Typically, lithium-ion batteries are used in utility-scale applications when rapid, short-term deployments of power are needed. For example, lithium-ion batteries can smooth the intermittent generation from solar modules to deliver consistent and predictable power to the grid.

Lithium-ion batteries can be a safety hazard if not properly engineered and manufactured because they have flammable electrolytes that, if damaged or incorrectly charged, can lead to explosions and fires. There was a great deal of comment urging the hearing examiner to view the batteries as too dangerous to be used, describing them as highly flammable, explosive, and poisonous to the environment. In this case, however, there was not significant credible evidence,

aside from hearsay anecdote, that this use would present any potential adverse effects on the general public health, safety, and welfare, including the health and safety of the community. In fact, there was expert testimony and foundation regarding the great lengths and testing involved to establish safety and containment in regular operation and in the statistical unlikely event of failure. The general concern about fires or an explosion in a BESS project in California testified to by some of the public, apparently resulted in no groundwater or air pollution, having been contained as designed. Lithium-ion batteries, to which some public commenters saw as an explosive threat (or in one case conflated with the generic named drug Lithium¹) have become ubiquitous in American society; featured widely in portable consumer electronics, laptop computers, cellular phones, and electric cars.² The overwhelming amount of evidence in the record demonstrates a great deal of engineering safeguards, process, and procedure being put forward, in the same or not greater manner than applied to the consumer Lithium-ion batteries that surround us constantly.

Environmental/Safety Preservation & Responsibility

There were concerns raised about fiscal, environmental, and operational responsibility for the decommissioning plan given the lifespan of the battery being lengthy and the Decommissioning and Site Restoration Plan, Hazard Mitigation Analysis for Outside Ground Mounted Battery Energy Storage Systems, and Fire Protection Technical Assistance Report, only being provided to the Hearing Examiner and the public in a redacted form with no substantive information.³ This has been remedied by the Office of the Hearing Examiner by way of taking the full materials into the public record used for this decision.⁴ These materials include details about promised surety bonds, and detailed plans, technical and operational, which have been approved by the Department. The use would require specified stormwater pollution and

¹ Lithium salts, generally lithium carbonate (Li_2CO_3), an oral psychiatric medication primarily used for bipolar disorder and for major depressive disorder; a completely different compound than that in batteries.

² Albeit that there are a wide variety of Lithium-ion battery types, to which the Hearing Examiner cannot pretend to be an expert on identifying the ideal chemical compound for these specific batteries, but only adjudge the matter based on the facts in the record specific to the proposal.

³ See *generally* Exs. 29, 30, and 31

⁴ See *generally* Exs. 57, 58, and 59.

prevention plans and a temporary erosion and sediment control plan, in accordance with a required NPDES General Construction Stormwater Permit, and a Fire Protection Plan to minimize the risk of contaminants accidentally reaching wetlands or the groundwater table.

Some concerns were raised over the despoilation of wetlands and the use of a mitigation bank. A mitigation bank is a properly developed collection of existing, created, restored or enhanced wetlands and their protective buffers that are created or established using best available science to provide mitigation credits to offset future adverse impacts to wetlands from approved projects elsewhere pursuant to the requirements of state law.⁵ Mitigation Banks are “off-site compensation” that allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity, to achieve a statutory policy of creating several larger wetlands over many small wetlands.⁶ The project site has limited area on the parcels for development as varied small wetlands break the site up, the topography is not conducive for piecemeal wetland restoration in place, with seven distinct small wetland areas. Wetland functions and values were assessed for delineated wetlands using Ecology’s Washington State Rating System for Eastern Washington; overall, the wetlands provide low to moderate levels of water quality, hydrologic, and habitat functions.⁷

The proposed Wetland Bank is the Skagit Environmental Wetland Mitigation Bank, which is located in the same watershed as the site (WRIA 3).⁸ The bank was authorized and approved for use in 2013 by the agencies with jurisdiction for the purposes of reintroducing wetland hydrology to the area and clean up from prior dairy farm operations. The bank hydrology of the proposed Mitigation Bank is primarily from shallow groundwater, creek channels and ditches, and the habitat types available at the bank are analogous to that proposed to be removed. There will be specific legal findings made regarding the use of Mitigation Banks as proposed in this project.

The project as proposed is sited to avoid impacts to higher functioning Category III wetlands located immediately northeast of the project in the portion of parcel P21265 that

⁵ SCC 14.04.020 at “mitigation Bank” referencing RCW 90.84 and WAC 173-700

⁶ SCC 14.24.250(4)

⁷ Ex. 41 at 25

⁸ Ex. 41 at 8

touches Ovenell Road. The gen-tie line as proposed would avoid all impacts to waterbodies and wetlands.

IV.

The Skagit County Planning and Development Services Staff (the “Department”) have recommended approval of the requested Special Use Permit in a “Skagit County Planning and Development Services Findings of Fact,” dated December 12, 2024 (“Staff Report” **Ex. 1**).

The Applicant has indicated there are no factual or legal inaccuracies in the Staff Report’s findings or conclusions, and that they agreed with the conditions proposed.

The Findings of Fact and Conclusions of Law in the Staff Report, a copy of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by the findings herein.

V.

SCRE §20(B) allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness to appear in person and be cross examined.

VI.

SCRE §14 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection by the Applicant or the Department was made to any of the 60 exhibits that were admitted into the record. Ex. 61 was added post-hearing administratively as not substantive to the decision.

VII.

Any Conclusion of Law below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

Scope of Hearing, Jurisdiction, & Concurrency

Whenever possible, development applications are consolidated and reviewed according to the highest standard of all the permits, with some exceptions outlined in the law.⁹

In this case the highest application level is the Special Use Permit proposal that contemplates a Major Utility Development which must be heard by the Hearing Examiner,¹⁰ as a Level II review by the Hearing Examiner.¹¹

Nature of Use

In Skagit County, “Utility Development” includes, but is not limited to, facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products.¹² This proposed use is a utility development, as it stores and transports electrical energy. It is not large enough to serve a region-wide presence, but also larger than the needs of a small, localized community around the site, making it a major but not regional development.¹³

This proposed project is a Major Utility Development use proposal.

Zones

The purpose of the BR-HI zone is to allow for industrial developments that have the potential for more than a minimal level of disturbance to adjacent properties.¹⁴

⁹ SCC 14.06.060

¹⁰ SCC 14.16.190(5)(c)

¹¹ SCC 14.06.120

¹² SCC 14.04.020 at “Utility Development”

¹³ *Id.*

¹⁴ SCC 14.16.190(1)

The primary purpose of the AEO zoning overlay for the Hearing Examiner’s purposes is to reduce any loss of airport operations by limiting and defining the circumstances under which Skagit Regional Airport may be considered a nuisance.¹⁵

The Bayview Ridge Urban Growth Area overlay establishes additional development standards for the area in anticipation of possible future urban annexation, in the areas of street standards, water, stormwater, sewage, and subdivision planning requirements.¹⁶

As part of an analysis for a Special Use Permit, the use in this location must meet all the requirements of the underlying zone and overlapping overlays.

II.

Mitigation Banking

Mitigation banking and mitigation banks are a standing part of Skagit County’s policies regarding wetland mitigation.¹⁷ Mitigation Banks are “off-site compensation” that allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity, to achieve a statutory policy of creating several larger wetlands over many small wetlands.¹⁸

The project site has limited area on the parcels for development as varied small wetlands break the site up, the topography is not conducive for piecemeal wetland restoration in place. Given the nature of the property, and the existing mitigation bank in Skagit County in the form of the 396 acre Skagit Environmental Wetland Mitigation Bank, is of particular good use for off-site compensation as it is located in the same watershed (WRIA 3), which meets the first criterion of the Critical Areas Ordinance regulation of Wetland Alternative Compensation Projects, summarized as follows:

- (1) (a)** Off-site compensation shall occur within the same drainage basin of the same watershed where the wetland loss occurs...

¹⁵ SCC 14.16.210(1)(c)(i)

¹⁶ SCC 14.16.215(3)

¹⁷ See SCC 14.04 at ‘Mitigation Bank and ‘Mitigation Banking,’ see *throughout* SCC 14.04, and SCC 14.24.250(4).

¹⁸ SCC 14.24.250(4)

- (b)** Off-site compensation can be allowed only under 1 or more of the following circumstances:
- i.** On-site compensation is not feasible due to hydrology, soils, or other physical factors;
 - ii.** On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a Federal, State, or local public safety directive;
 - iii.** Potential functions and values at the site of the proposed restoration are greater than the lost wetland functions and values; or
 - iv.** When the wetland to be altered is of a limited function and value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functions and values possible.
- (2)** Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of Subsection (3)(a) of this Section and the mitigation sequence outlined in SCC 14.24.080.
- (3)** Selecting Compensation Sites. Except in the case of cooperative compensation projects in selecting compensation sites, applicants shall pursue locations in the following order of preference:
- a)** Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists;
 - b)** Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists.
- (4)** Innovative Wetland Mitigation Projects. The Administrative Official may encourage, facilitate, and approve innovative wetland mitigation projects... if it is demonstrated that all of the following circumstances exist:
- a)** Creation of 1 or several larger wetlands may be preferable to many small wetlands; and
 - b)** The group demonstrates the organizational and fiscal capability to act cooperatively; and
 - c)** The group demonstrates that long-term management of the compensation area will be provided; and
 - d)** There is a clear potential for success of the proposed compensation at the identified compensation site; and
 - e)** Wetland mitigation banking programs consistent with the provisions

outlined in [State Law and Administrative Guidelines] will be considered as a method of compensation for unavoidable, adverse wetland impacts associated with future development.

The Mitigation Bank portion of the proposal, as recommended by the Depart, and with conditions imposed in this decision, meets the legal criteria above, especially as the hydrology and habitat types available at the bank site provide ecologically appropriate mitigation for Project impacts as well as being in the same watershed nearby and is established to restore former wetlands.

III.

Special Use Permit

To provide a means to recognize and approve land uses that are not specifically identified as “allowed” or “permitted” uses, there are Special Use Permits for certain identified activities.¹⁹ In the BR-HI Zone, “Major Utility developments are Hearing Examiner Special Uses.”²⁰

A Special Use Permit must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district.²¹ The criteria are as follows:

- A.** The proposed use will be compatible with existing and planned land use.
- B.** The proposed use complies with the Skagit County Code.
- C.** The proposed use will not create undue noise, odor, heat, vibration, air, and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- D.** The proposed use will not generate intrusions on privacy of surrounding uses.

¹⁹ SCC 14.16.900(1)(a)

²⁰ SCC 14.16.190(5)(c)

²¹ SCC 14.16.900(1)(a)

- E. The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- F. For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.
- G. The proposed use is not in conflict with the health and safety of the community.
- H. The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
- I. The proposed use will maintain the character, landscape, and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.²²

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, and only with such conditioning and restrictions, the project would be compliant with all of the above applicable Special Use criteria. The sealed batteries at the BESS facility’s fire risk is low and can be managed by conditioning with strict IFC criteria, and the project can comply with the UGA and AEO requirements including the general zone requirements. This zone is an appropriate use, and appears by policy to be designed to focus such uses in as this is “industrial developments that have the potential for more than a minimal level of disturbance to adjacent properties.”²³

Consequently, subject to conditions of approval, the Special Use Permit should be approved.

IV.

²² SCC 14.16.900(1)(b)

²³ SCC 14.16.190(1)

Conditions

Conditions deviate from those proposed by the Department and agreed to by the Applicant, to better address a level of accountability, clarity, enforceability, and public concern and reconcile those issues with the Skagit County Comprehensive Plan and its goals; and some conditions are rearticulated and reincorporated from the SPEA decision to assist the public in understanding transparently the requirements on the Applicant if they wish to proceed, though those SEPA requirements would still be binding even if not articulated here.

V.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Special Use Permit shall be granted to the applicant for the construction of a new utility-scale Battery Energy Storage System, at an unaddressed site, Mt. Vernon, WA, located primarily upon APN#s P129949 and P21265, subject to the following conditions:

1. The applicant must obtain all necessary permits and approvals.
2. The applicant/proposal must comply with all relevant provisions of Skagit County Code 14.16 the Zoning Ordinance.
3. The applicant/proposal must comply with WAC 173-60 and SCC 14.16.840, Performance Standards for noise, vibration, and light conditions.
4. The project will require a land disturbance (grading) and/or building permit.
5. The project will be required to meet all applicable requirements of SCC 14.22, 14.32, and Skagit County's NPDES requirements.
6. The project site is located within Skagit County's NPDES permit (coverage area) and subject to the requirements of the NPDES permit and DOE Stormwater Management Manual.
7. Based on the extent of proposed site improvements a drainage plan and report prepared

by a civil engineer licensed in the State of Washington will be required.

8. The proposal must comply with the mitigation conditions listed within the SEPA Threshold Determination (MDNS) issued on June 11, 2024.
9. Development is limited to those activities described in the SEPA checklist, issued development permit approvals, and supporting documents. Significant deviation from the proposal requires additional review and approval by Skagit County Planning and Development Services.
10. Since permitting is required by both the Washington State Department of Ecology and the US Army Corps of Engineers, compliance with the Critical Areas Ordinance is being completed using Jurisdictional Substitution pursuant to SCC 14.24.040(3). Skagit County Planning and Development Services will need to review those other agency approvals and include any conditions necessary to ensure compliance with the intent of SCC 14.24. The applicant must provide the Department with applicable agency approvals and proof of purchase for required mitigation bank credits prior to the issuance of any Land Disturbance Permits.
11. Inadvertent Discovery Plan. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Should archaeological resources (e.g., shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Local Government Archaeologist, 360-586-3088) and the following Nations' Tribal Historic Preservation Offices should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s):

Upper Skagit Indian Tribe
Scott Schuyler, Cultural Resources
sschuyler@upperskagit.com
Phone: 360-854-7009

Swinomish Indian Tribal Community
Josephine Jefferson, THPO
jjefferson@swinomish.nsn.us
Phone: (360) 466-7352

Samish Indian Nation

Jackie Ferry, THPO
jferry@samishtribe.nsn.us
Phone: 360-293-6404 ext. 126

Compliance with all applicable laws pertaining to archaeological resources is required. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultations with the affected parties as to the future preservation, excavation, and disposition of the remains.

- 12.** The site owner/operator must provide a hazard mitigation plan, emergency response plan, and training on an annual basis for local emergency responders. The plan must include an on-site emergency response coordinator as a central point of contact for all involved responding to emergency agencies, including any required subject matter experts (SMEs).
- 13.** At a minimum, the site owner/operator must also provide this documented emergency response plan annually for review by the Authority Having Jurisdiction (AHJ). The plan shall also be reviewed and amended whenever a change in facility design, construction, operation, or any maintenance affecting emergency response planning.
- 14.** A copy of the SEPA MDNS, approved special use permit and issued Forest Practice Conversion permit must be kept onsite and made available to inspecting agencies. Failure to comply with any of these conditions will result in all work on the site being stopped until the condition is remedied. All the conditions of those permits are conditions of this use permit, including, but not limited to:
 - A.** Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, must be in place prior to the placement of any fill material. The applicant must maintain all temporary

erosion/sedimentation control measures in accordance with the Skagit County Stormwater Management Ordinance. Said measures must remain in place until the completion of the project.

- B.** The applicant must comply with the Northwest Clean Air Agency (NWCAA) requirements.
- C.** The applicant must comply with the provisions of Chapters 14.22 and 14.32 of the Skagit County Code, the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces. Best Management practices shall be utilized throughout the life of the project.
- D.** The applicant must comply with Fire Code Standards, NFPA'S, NEC, and IFC Codes.
- E.** All installed systems, equipment, and components must be listed as UL 9540 and 9540A compliant.
- F.** The applicant must provide a hazard mitigation, emergency response plan and training to local and regional fire authorities.
- G.** The applicant must provide a finalized maintenance, repair, and decommissioning plan to the Department within six (6) months of the issuance of the building permit, subject to approval by the Department or subject to revisions as required by the Department.
- H.** An engineered soils compaction report must be required for all structures placed on fill material.
- I.** The applicant must comply with all relevant provisions of 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance).
- J.** The proposal, and site development, must comply with all applicable requirements of SCC 14.16, and specifically SCC 14.16.190 (BR-HI), SCC 14.16.210 (Airport Environs), SCC 14.16.215 (Bayview Ridge UGA), SCC 14.16.800 (Parking), SCC 14.16.830 (Landscaping), SCC 14.16.835 (Pipeline safety), and SCC 14.16.840 (Performance Standards).
- K.** Pursuant to SCC 14.16.210(3)(c)(iii), stormwater management features, including stormwater detention or retention ponds, must be designed in accordance with the WSDOT Airport Stormwater Guidance manual.
- L.** Possible intrusions into the imaginary surface contours established for the airport environment must be considered with any new development. Per FAA 14 CFR 77, the applicant is required to submit FAA Form 7460-1 Notice of Proposed Construction or Alteration. This form must be submitted at least 45 days before the start date of the proposed construction or alteration or the date an application or a construction permit is filed, whichever is earliest. Additional requirements may apply. The Port advises the applicant to consult the FAA for more information.

- M.** The applicant must comply with the provisions of Washington State Administrative Code (WAC) 173-200 & 173-201A as required to prevent surface water quality and groundwater impacts. Best Management Practices must be utilized to prevent interference and/or degradation of water quality.
 - N.** An approved/issued Class IV General Forest Practice Permit shall be obtained from the Washington State Department of Natural Resources prior to harvest of any trees onsite. A copy of the DNR issued Class IV General Forest Practice Permit must be provided to Skagit County's Planning & Development Services Department.
 - O.** No track out of dirt, debris, or rocks onto the county road/rights-of-way is permitted. For the duration of construction activities, the applicant must sweep, as needed, track out off the county roadways adjacent to the ingress and egress associated with the proposed site.
 - P.** Structures must meet current I-Codes including Washington State Energy Codes.
 - Q.** This project may be subject to one of Ecology's National Pollutant Discharge Elimination Systems (NPDES) permits. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project. Contact the WSDOE Bellingham Field Office at (360) 927- 4900.
 - R.** Should any human remains, archaeological, historic or cultural materials be discovered during construction, work in the affected area shall cease immediately and the area shall be secured. Within 24 hours of the discovery, or as soon thereafter as possible, the developer shall notify the Skagit County Sheriff's office, Skagit County Planning and Development Services, the Washington State Department of Archeology and Historic Preservation and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer shall retain the services of a professional archaeologist to prepare such an assessment. Project work in the affected area shall only continue when in conformance with applicable state and federal laws.
- 15.** Spill Containment/Contingency Plan (SCP) must be prepared and kept on site. Per the recommendations within the (Hydro-geo) report: the facility operator must designate an employee, or employees, to implement the SCP, including keeping the SCP updated and performing the required monthly inspections. Copies of the SCP document and inspections forms must be maintained by the facility operator and made available to Skagit County upon request. In the event of an emergency, all emergency response agencies listed in the Spill Management plan, including DEM, must be immediately notified.
- 16.** Emergency Routes: an evacuation sheet shall be posted and orally communicated to

on-site personnel. The evacuation procedures must be discussed at periodic safety meetings and covered during new employee orientation.

17. Contractors must be notified of the acceptable truck route to and from the site. The Truck Route during construction shall be via Ovenell Road to State Route 20. If truck traffic needs to travel north, the truck route shall utilize Farm To Market Road to Josh Wilson Road to connect to Interstate 5.
18. The maximum height within the BR-HI zone is 50 feet. The gen-tie line must either be buried underground or utilize existing PSE pole infrastructure. If new poles are required, the height of the gen-tie poles must not exceed the maximum height of 50 feet without the approval of a variance.
19. Compliance with the State call-before-you-dig laws (811) must be adhered to.
20. Prior to the issuance of Development permits for the proposed project, the applicant will be required to record a Title Notice with the Skagit County Auditor's Office that includes the following language: *"The above-referenced property is located wholly or partially within the Skagit County Pipeline Consultation Area, defined by Skagit County Code as the area within 100 feet of any hazardous liquid or natural gas transmission pipelines."*
21. Landscaping per SCC 14.16.830 shall be installed prior to final construction permit approval and occupancy/operation unless Performance assurance bonding is allowed, and approved, for a specific reason. Ongoing monitoring and maintenance will be required by SCC 14.16.830(6)(f). Broken or dead landscaping shall be replaced.
22. An Avigation Easement and Title Notice may be required by the Port of Skagit at the time of Development permit review, if not already completed.
23. Development shall comply with SCC 14.16.900 regulating Special Use Permits in unincorporated Skagit County including but not limited to:
 - A. All special uses, including master planned resorts, shall require a development project be commenced for the entire parcel within 2 years of the permit approval, unless development is phased. For the purposes of this Section, "commenced" shall mean either (1) the use permitted by the permit has been established or (2) a complete building permit has been filed with Planning and Development Services for the principal building which will allow the use. Upon building permit approval, the principal building shall be completed (i.e., final inspections completed) within 3 years. Those portions of the property, which are not included within the development area and

where the above time frames are not met, shall automatically be removed from the special use approval, unless a phasing plan is approved pursuant to Subsections (1)(d)(i) and (iii) of [SCC 14.16.900]. For purposes of this Subsection, “development area” shall mean all portions of the site needed to meet [Skagit Unified Development Code] requirements, such as lot coverage and setbacks.

24. If approved, a copy of this decision shall be submitted with the first Development Permit application and referenced within future permit application submittals.
25. All outstanding planning review fees shall be paid prior to final approval.
26. Prior to any development activity being taken pursuant to a building permit, Financial Security(-ies), in a form and coverage and in a value subject to Department pre-approval, for must be filed with the Department and any other place the Department requires to ensure performance of: development associated environmental mitigation; use decommissioning; and site restoration. Such Financial Security make take the form of a performance bond, letter of credit, or other form of surety issued by a surety registered with the Washington State Office of the Insurance Commissioner and is, at the time of delivery of the bond, letter of credit, or other form of surety, on the authorized insurance provider list published by the Insurance Commissioner. The Financial Security will be in an amount equal to 100% of the estimated costs for Mount Vernon Battery Storage’s obligations noted above. The surety will be for a term of at least one (1) year, and will be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of the agreement or until the secured decommissioning obligations are satisfied, whichever occurs later.

NOTICE OF POTENTIAL REVOCATION & PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause of its revocation.

Complaints regarding a violation of this permit’s conditions should be filed with Skagit County Planning and Development Services. Violations of permit conditions may result in revocation (or modification) of the permit, administrative action under SCC 14.44 (including monetary penalties), and the violations being declared a public nuisance.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE SKAGIT COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to the Skagit County Board of Commissioners pursuant to the provisions of SCC 14.06.110. The appellant shall file a written notice of appeal within 14 calendar days of the final decision of the hearing examiner, as provided in SCC 14.06.110(13) or SCC 14.06.120(9), as applicable; for shoreline permit applications, by filing notice of appeal within five days of the decision.

More detailed information about reconsideration and appeal procedures are contained in the Skagit County Code Title 14.06 and which is available at <https://www.codepublishing.com/WA/SkagitCounty/>

DATED this January 2, 2025



Rajeev D. Majumdar
Skagit County Hearing Examiner