



Planning & Development Services

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SKAGIT COUNTY PLANNING & DEVELOPMENT SERVICES BEFORE THE ADMINISTRATIVE OFFICIAL

ADMINISTRATIVE INTERPRETATION 2024-02 FINDINGS, CONCLUSIONS, & DECISION

Application: SCC 14.06.040 – Request for an Administrative Official Interpretation

Decision Authority: Director of Planning and Development

File Number: PL24-0171

Applicant: Cloudbreak Energy Washington LLC
4845 Pearl E Cir, Suite 118 #53242
Boulder, Colorado 80301

Surveyor / Contact: Toyer Strategic Advisors, Inc.
3705 Colby Avenue, Suite 1
Everett, Washington 98258

Property Owner: Wynn and Castorena Revocable Trust
Wynn Kelly T Trustee
Castorena Lesa R Trustee
14263 Calhoun Road
Mount Vernon, Washington 98273

Parcel Number(s): P22873

I. SUMMARY

Toyer Strategic Advisors, on behalf of Cloudbreak Energy Washington LLC, requests a two-part Administrative Official Interpretation (“AOI”):

1. Acknowledge the definition for net metering systems and the ‘net metering systems, solar use’ has a limited application to individual residential uses.
2. Determine that a solar energy facility which produces electric energy to provide power supply in support of base loads (as envisioned by the applicant) is a utility development and meets is either a minor or major utility development under SCC 14.06.020.

This request follows recent enquiries about using parcel P22873 for a 15.75-acre solar electricity generation facility.

As set forth below, based on the information known to the County, the Administrative Official finds that:

1. The definition of net metering system is not limited to individual residential uses.
2. A solar energy generation facility that generates and transports electrical energy is either a “Major Utility Development” or a “Major Regional Utility Development” pursuant to SCC 14.04.020.

II. AUTHORITY

Administrative Official Interpretations are authorized by SCC 14.06.040(3) which permits the Administrative Official authority to issue decisions “as to the meaning, application or intent of any of the provisions of SCC Title 14”. An AOI is a Level 1 application type pursuant to SCC 14.06.050(a)(xii).

Notice of the AOI was published in the Skagit Valley Herald on 6 June 2024. A sign was posted on the land and letters sent to landowners within 300ft of the site on 6 June 2024.

Comments were received from the public. The comments were generally non-responsive to the specific questioned posed in the AOI request, but rather raised concerns as to suitability and impact of the contemplated project itself. This AOI is limited in scope to the specific questions asked, and in no way addresses whether a special use permit, if applied for, would be granted.

III. AOI REQUEST

Cloudbreak Energy Washington contemplates developing P22873, located on the northern side of Calhoun Road between Bradshaw Road to the east, and Best Road to the west, for the purpose of a 15.75-acre solar electricity generation facility (“solar farm”). The property is zoned Agricultural – Natural Resource Land (“Ag-NRL”).

The County has advised the applicant on numerous occasions that this use is not permitted in the Ag-NRL. In response, this AOI request was submitted to the County.

IV. DEPARTMENTAL FINDINGS

A solar electricity generation facility, or “solar farm” is a large-scale renewable energy generation facility. It consists of large amounts of photovoltaic panels which convert sunlight into electricity to be fed back into the broader electrical grid. Solar farms have become more widespread as the energy network continues to shift away from fossil fuels towards more renewable forms of energy generation.

A solar farm is distinct from a “net-metering system”. Although both operate on similar principles, a solar farm involves a much larger land area and requires extensive open space to generate solar energy for direct sale to the energy grid. In contrast, net-metering systems are designed to offset the energy consumption of a host site.

. Ag-NRL land typically consists of large, flat, and open parcels with minimal structures or vegetation to block sunlight. Consequently, there is growing interest in occupying Ag-NRL land for these projects.

V. DEPARTMENTAL ANALYSIS

The AOI contains two questions which relate to distinctly separate matters. The first, the definition of net metering systems. The second, utility developments and the kind of utility development a solar farm would be.

The AOI follows a proposal to use land in the Ag-NRL for a 15.75 acre solar farm. Whilst the principal question for determination is whether a solar farm is a utility development, the question regarding net metering systems must still be addressed.

The following will address each question separately below.

Question 1: Whether the “net metering systems, solar use” is limited to individual residential uses.

A net metering system is defined as an electrical energy generation system that (1) generates less than 100 kilowatts;¹ (2) is located on the property it serves; (3) operates in parallel with the power from the utility; and (4) primarily offsets power that would have been purchased from the utility. SCC 14.04.020. A solar net metering system is simply one that uses solar energy to generate power. *Id.* The definition of net-metering systems does not preclude non-residential use.

Question 2: Whether a solar energy facility, which produces electric energy to provide power supply in support of base loads (as envisioned by the applicant), is a utility development and meets is either a minor or major utility development under SCC 14.06.020.

Utility developments are defined as a “facilities and services that generate, transport, process, or store ... electrical energy.” SCC 14.04.020. Clearly a solar farm generating electricity satisfies the definition of a utility development. But it not obvious what kind of utility development a solar farm would be.

The code provides three kinds of utility development:

Minor Utility Development: an unmanned utility development designed to serve a small local community that would be considered a normal utility service for the area.

Major Utility Development: A utility development that is not a minor utility development or a major regional utility development.

Major Regional Utility Development: A utility development that is designed to serve a region.

SCC 14.04.020.

2.1. The solar farm contemplated here would not be considered a minor utility development.

It is unlikely a solar farm could be considered a “Minor Utility Development”. First, a solar farm supplying the power grid would not be considered ‘normal’ to the area and would not be limited to serving a ‘small, local community’. “Minor Utility Developments” are those smaller features typically seen in the area. These include such things are utility poles, exchanges, transformers, transmission pipes, etc. The 15.75-acre solar farm generating over 100 megawatts of power proposed by Cloudbreak would explicitly not fall within this “minor” category of utility development. This is particular the case in land zoned for natural resources.

Second, a minor utility development is confined to developments serving “a small local community.” This requirement is read by the Department as requiring a local service. There is nothing to suggest that the service the proposed solar farm would provide would be limited to the small community it would be located, but would serve the broader community.

¹ 100 kilowatts is equivalent to .1 megawatts.

2.2. A solar farm, as contemplated here, would not be a major regional utility development, but would be a major utility development.

As it is established that a Solar Farm is not a “Minor Utility Development”, its classification as a “Major Utility Development” hinges on whether it could be classified as a “Major Regional Utility Development”. A “Major Regional Utility Development” is a utility development designed to serve a region. SCC does not define what constitutes a region. SCC 14.04.020. It does however give substance to the word ‘regional’ through associated uses, and that usage provides that for something to be of ‘regional’ status, it must be sufficiently large enough to serve the County and neighboring Counties. AOI 2023-01 at pp.4–5.

The question of whether Solar Farms, by definition, are Major or Major Regional Utility Developments is one determined by the specific facts of any given application for such a use and could reasonably be either depending on its size.

There are two Skagit County matters which assist in the distinction of “major” and “major regional” utility developments. These include the Goldfinch AOI and a permit (PL08-0075) issued for a major utility development within the Ag-NRL zone.

The Goldfinch AOI was issued on February 1, 2023. It concluded that a Battery Energy Storage System (BESS) that could theoretically provide up to 60% of Skagit County’s overall energy demand was considered a “Major Utility Development”. AOI 2023-01 at p.6. This finding was based on specifics of the proposal, including capacity and overall intent of the project. In particular, the BESS was designed to serve only Skagit County. The AOI concluded that “that it could benefit people outside of Skagit County does not defeat the intent of the project”.

Permit PL08-0075 sought approval to construct an anaerobic digester facility to process cow manure, extract methane gas, and burn it to create electricity which was to be fed into the local grid within the Ag-NRL zone. The operation was carried out on 2.8 acres of leased land and would create 1.5 megawatts of electricity whilst also providing fiber bedding as a by-product to be sold back to nearby farms. As part of this permit process, it was recommended by Skagit County Planning and Development Services and confirmed by the Skagit County Hearing Examiner that the facility was a “Major Utility Development”. Albeit, at the time a “Major Utility Development” was defined as a “utility developments designed to serve broader community area, or are manned” it provides a contextually appropriate scale of operation that is considered beyond a ‘minor utility development’.

The proposed Cloudbreak solar farm is not expected to serve areas beyond Skagit County. The applicant suggests that up to 473 dwellings could be served by the solar farm. It would be connected to the local grid as opposed to the transmission grid. The proposed scale of the solar farm would be more intensive than the anaerobic digester facility and less intensive than the Goldfinch BESS system.


Therefore, based on the information provided for purposes of this AOI, the Cloudbreak solar farm would be considered “Major Utility Development”. This however does not preclude a future application from being considered a “Major Regional Utility Development” should a sufficiently sized operation be proposed.

Even if a proposal is determined to be a “Major Utility Development” and not a “Major Regional Utility Development”, Skagit County Code 14.16.400(h) requires *that, “there is no other viable parcel or non-agricultural designated land to serve the affected area. Analysis of alternatives to the development of the utility in the natural resource land must be provided.”*

VI. CONCLUSION

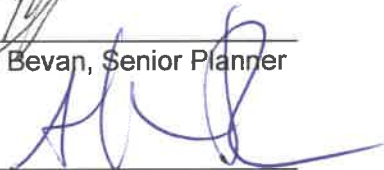
1. A net metering system is an accessory use and is not limited to only be an accessory to a residential use.
2. A solar energy generation facility, as contemplated here, would be classified as a "Major Utility Development".
3. Any future application for a solar energy generation facility will be reviewed on its own merits and any future classification of solar energy generation facilities will be consistent with the Code, this AOI, and any other relevant law and regulations.
4. This AOI is limited to the questions asked. The Administrative Official recognizes, from comments received from this project, that there are concerns with the proposal relating to a loss of productive agricultural land and flood risk hazard. As this AOI is limited to the specific question of what type of land use a solar energy generation facility is, these concerns have not been considered. Any major utility development (solar farm) sought to be placed within the Ag-NRL would require a Hearing Examiner Special Use Permit, which would require the applicant to demonstrate it satisfied the special use permit requirements, SCC 14.16.900, the requirements of the zone (including that "there is no other viable parcel or non-agricultural designated land to serve the affected area"), SCC 14.16.400(4)(h), and any other requirements of the Skagit County Code are satisfied. The concerns raised will be fully considered in the course of any such review.

Prepared By:



Angus Bevan, Senior Planner

Reviewed By:



Allen Rozema, Assistant Director

Approved By:



Jack Moore, Director

Date of Decision: 24 June 2024

A level I decision may be appealed to the Hearing Examiner by the applicant or by parties who have commented on the proposal by filing a written Notice of Appeal, together with the applicable appeal fee, with the Administrative Official within 14 days of the date the Notice of Decision was issued. If a Notice of Decision is not required, because the decision is exempt pursuant to SCC 14.06.200(1), then any appeal shall be filed within 14 days of the date the Administrative Official makes the decision. SCC 14.06.110(7).

Appeals must be submitted by: 8 July 2024