



Friends of Toppenish Creek

August 5, 2023

To the Hearing Examiner, City of Sunnyside:

Re SEPA 2022-0200: This is a motion to change from a closed record hearing to an open record public hearing

On July 6, 2023, the Friends of Toppenish Creek filed an appeal with the Community and Economic Development Director/SEPA Responsible Official for the City of Sunnyside regarding a Mitigated Determination of Non-Significance (MDNS) for a proposed development of an approximately 50-acre digester within the Port of Sunnyside's (the "Port") Midvale Industrial Park in the Heavy Industrial (M- 2) zoning district, File number 2022-0200.

On July 26, 2023, FOTC received notification that this appeal will be heard by the City of Sunnyside Hearing Examiner on August 23, 2023, in a closed record public hearing.

FOTC submits this motion to change that hearing from a closed record hearing to an open record hearing for the following reasons.

First: FOTC intends to show that Sunnyside Renewable Natural Gas (SS RNG) did not supply sufficient information in their submitted Environmental Check List to allow the SEPA official to determine whether there will be significant adverse environmental and public health impacts from this project. See WAC 197-11-060 and WAC 197-11-080, which are incorporated by reference into the Sunnyside Code at SSC 18.04.020.

Under a closed records hearing, FOTC would not be able to provide additional data that proves adverse environmental impacts.

For example:

Sections B.2.b and B.2.c of the SS RNG SEPA Check List say:

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so generally describe.

Response: Background concentrations will be accounted for in the Air Permit.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

Response: We will use Best Available Control Technology (BACT) as being modeled by the air permitting process.

This response violates SSC 18.04.120.E.3. The response does not provide any data on the air permit application. The response does not list off-site sources of emissions. The response does not list potential air emissions from the operation such as NOx emissions from transport of

feedstocks or digestate, or management of emissions from storage of feedstocks and digestate on the project site. The response does not describe cumulative air impacts that will result when emissions from the SS RNG project are added to existing emissions from other operations at the Port of Sunnyside.

If this information is excluded from a closed record public hearing because it was not previously addressed, then FOTC will be unable to prove air quality related adverse environmental and public health impacts.

Second: There was no open record public hearing on the proposed SS RNG project, File Number 2023-0200. This omission makes it impossible to conduct a closed record public hearing in compliance with: Sunnyside Code 2.46.120,

SSC 2.46.120 Open record public hearing.

A. Before rendering a decision or recommendation on any application, the Hearing Examiner shall hold at least one open record public hearing thereon.


Legal Definitions of Open Record and Closed Record hearings are provided in RCW 36.70B.020 and WAC 197-11:

"Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

"Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

According to FOTC's reading of the law, there can be no closed record public hearing absent a previous open record public hearing.

Sincerely,


Jean Mendoza

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