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**I. Adequacy of Pre-project Avian Assessments**

While the application does include a significant volume of data collected regarding avian use of the project area, unfortunately the quality of that information does not match the quantity. As the record clearly shows, there are significant gaps and omissions in the baseline avian use data. Seattle Audubon has highlighted these deficiencies numerous times throughout this proceeding, including as early as our August 21, 2009 “Statement of Legal Issues and Positions” as well as during the adjudicative hearing in January 2011. Without adequate baseline avian use data, there is insufficient information to properly evaluate what the potential impacts of the project would be on avian species. Specific inadequacies in the baseline avian use data include:

A) The failure to conduct even the most rudimentary information review of existing information on avian species and potential habitats in the project vicinity. The Applicant’s avian expert witness admitted under cross examination that he had not inquired about existing avian use data with public agencies such as the U.S. Forest Service (USFS) and the Washington Department of Natural Resources (DNR) even though each of these public resource agencies manage significant land parcels with similar avian species and habitat conditions to the project site (managed commercial forest lands that have had significant timber harvest and regeneration) in the immediate vicinity of the project area. (Transcript at page 701, lines 6-7)

In addition to the failure to even inquire about potential avian use data from resource agencies with significant commercial forest lands in very close proximity to the project area, the applicant also failed to review avian use data collected for other wind power projects proposed for sites in mountainous coniferous forests with cool wet conditions in Washington State. The pre-filed testimony of the Applicant’s avian expert

1 witness notes the existence of such projects (Exhibit 6.04r, page 33 line 21-25), yet  
2 nothing in the application, pre-filed expert testimony or rebuttal testimony indicates that  
3 the applicant conducted any review of the publicly available avian use data collected for  
4 these projects.

5 The WDFW guidelines explicitly call for the applicant to review multiple sources  
6 of existing information, including resource agencies, local experts, recognized databases,  
7 and data gathered at other wind facilities or other types of projects. (Exhibit 6.09c, page  
8 3) The applicant's avian expert witness acknowledged he failed to undertake such an  
9 information review, dismissing the value of doing so. (Transcript page 699, line 8  
10 through page 702, line 8) His testimony indicated that he didn't look for such info  
11 because he doubted any data existed and if it did, it would be unlikely to be of value.  
12 (ibid.)

13 Such summary dismissal of potential avian use data for habitats similar to the  
14 WRE project area, without ever inquiring if any data exists or determining the  
15 applicability or usefulness of such data, is a major flaw in the pre-project assessment for  
16 this proceeding.

17 B) In addition to this failure to identify and review information for comparable  
18 habitats, the avian use data the Applicant *did* use for comparison purposes is misleading,  
19 inappropriate, and of minimal value. The data used is drawn from very different habitats,  
20 either from arid, agricultural / shrub steppe lands in the Pacific Northwest or deciduous  
21 forests of the eastern United States. (Transcript page 703, lines 22-24) These ecosystems  
22 are markedly different from the Whistling Ridge project area and would logically be  
23 expected to have a different variety of bird species, with different levels of abundance  
24 within and among species. The applicant seeks to frame the central question regarding  
25 avian use at the project site as "*Is the total number of birds detected at the project site*

1 *more or less than the total number of birds detected at other wind power sites?”* (Exhibit  
2 6.03)

3 More appropriate questions for the council to consider regarding avian use of the  
4 project site are “*How does bird use of this site compare to other sites with similar habitat*  
5 *conditions?”* and “*For the bird species that do utilize this project site, what is their*  
6 *relative abundance at the site?”*

7 As the applicant’s avian expert witness Mr. Johnson admitted under cross  
8 examination, he does not know if the project site has relatively high or low abundance of  
9 specific bird species. (Transcript p. 708, lines 10-13) The information review and the  
10 survey data collection conducted on behalf of the applicant can shed no light on this  
11 central issue.

12 Mr. Johnson also claims the info in his direct testimony is the “best available  
13 science” for predicting avian impacts at the project site. (Transcript p. 702, lines 9-14)  
14 Yet he acknowledges that his data does not include any information on relative species  
15 abundance nor did he look for other data. (Transcript p. 708, lines 20-23 and page 702,  
16 lines 2-8)

17 3) The avian use information provided by the applicant also fails to adequately address  
18 issues regarding several sensitive species identified as occurring at the project site. For  
19 example, the Olive-sided Flycatcher is a federal species of concern and the Vaux’s Swift  
20 is a state candidate species for listing. Both species were detected at the project site  
21 during multiple avian surveys. Both forage for insect prey on the wing and would likely  
22 utilize the cleared areas associated with the project turbines. The council should require  
23 the applicant to more fully evaluate this issue and document the facts underlying these  
24 type of statements.

1           The pre-project assessment studies revealed troubling information regarding the  
2 locations where multiple sensitive bird species were detected. For example avian expert  
3 witness Don McIvor testified that it is concerning that 100% of the Olive-sided  
4 Flycatcher observations recorded during surveys at the site in 2006 were within the rotor-  
5 swept area (Transcript page 831 lin1 1 through page 832 line 2)

6           In addition, Mr. Johnson was offered by the applicant as an avian expert witness  
7 on sensitive avian species, yet he was unable to correctly identify the basic habitat  
8 characteristics for a key sensitive species occurring at the project site, inaccurately  
9 suggesting the Olive-sided Flycatcher is most often associated with riparian corridors  
10 when in fact they utilize edge habitat. (Transcript page 704 line 17 through page 705 line  
11 5.) He also was unable to provide basic information on the relative abundance of  
12 multiple other sensitive species occurring at the project site. (Transcript page 708, line  
13 13)

14           Mr. Johnson also provided testimony regarding the Partners in Flight (PIF) North  
15 American Landbird Conservation Plan. (Exhibit 6.04r, page 30, line 13 through page 32,  
16 line 3). He indicates that PIF has readily available data for the bulk of North American  
17 land birds (Exhibit 6.04r, page 31, line 17) and that PIF also has relative abundance  
18 counts that they have used for bird population estimates (Exhibit 6.04r, p 31, lines 7-9).  
19 Yet under cross examination he admitted that he had not looked at that data for  
20 information regarding sensitive species such as the Olive-sided Flycatcher or the Vaux's  
21 Swift, both of which occur at the project site. (Transcript page 710, lines 16-19)

22           If this project is to be permitted, there is a need to first complete much more  
23 thorough pre-project avian assessments.

24  
25           **II. Proposed Turbine Siting**

1           The applicant has proposed siting wind turbines in close proximity --  
2 approximately one mile away -- to the known location of a recently detected Northern  
3 Spotted Owl (Transcript page 783, lines 6-8). The presence of this owl is very  
4 significant, given the threatened status of the species and the absence of any detected  
5 owls in the project area for many years. (Exhibit 5.04 page 2, fourth paragraph)

6           It is important for the council to do everything possible to avoid harm to this  
7 species. The DNR has entered into an HCP for the owl habitat located immediately  
8 adjacent to the project's northern boundary (Exhibit 1.16c, page 3, 7<sup>th</sup> paragraph) in order  
9 to protect this threatened species.

10          The applicant's owl expert witness testified that it is common for spotted owls to  
11 travel 2 plus miles in a day. (Transcript, page 765, lines 20-25) He stated that they can  
12 fly great distances (Transcript page 766, line 4) and that the provincial range of these  
13 birds can be fairly large. (Transcript page 766, lines 21-22)

14          While the testimony indicates that the spotted owl may well travel in and through  
15 the project site, unfortunately the applicant has not identified the specific locations where  
16 the project turbines would be sited. Instead, the applicant has proposed that the council  
17 simply recommend to the Governor approval of more generic "turbine strings", allowing  
18 the applicant wide discretion in where to install the actual turbines. (Transcript page 159,  
19 lines 2-8)

20          This approach makes it impossible for the council to adequately evaluate the  
21 potential impacts of the project on wildlife species such as the threatened Northern  
22 Spotted Owl. This "turbine string" approach is contrary to the WDFW guidelines that  
23 state that the primary purposes of pre-project assessment studies include designing "the  
24 project layout (e.g. turbine locations) so that impacts on biological resources are avoided  
25 and/or minimized." (Exhibit 6.09c, page 3, section 1.1)

1           Despite this clearly stated purpose for the pre-project assessment, the avian and  
2 owl expert witnesses were never consulted by the applicant regarding potential impacts  
3 on biological resources of turbine locations. (Transcript at page 714, lines 9-24 and page  
4 770 line 19-23)

5           In addition, while the record includes a letter from the U.S. Fish and Wildlife  
6 Service (USFWS) in which they concur that the project is not likely to adversely affect  
7 the spotted owl, (Exhibit 5.04) that letter contains numerous factual errors, mis-  
8 statements, omissions, and oversights regarding the status of the owl detected in the  
9 vicinity of the project lands, calling into question the validity of that concurrence.  
10 (Transcript page 783, line 1 through page 784, line 25) Although some of these errors  
11 appear to be relatively small, several indicate a significant lack of knowledge regarding  
12 the on-the-ground situation for the owl detected in the project area.

13           The USFWS apparently was unaware that the owl was moving around the area,  
14 with multiple detections more than 2 miles apart as well as detections much closer to the  
15 proposed turbine string location that noted in the letter. (Transcript page 783, lines 6-8)  
16 The USFWS also apparently was unaware that the project site contains suitable spotted  
17 owl habitat beyond the approximately 2 acres located at the northern end of the turbine  
18 string (for example compare Exhibit 5.04, page 3, second paragraph to the testimony of  
19 the applicant's expert owl witness at Transcript page 760, line 20 thorough page 761, line  
20 6). While it is unknown whether more accurate information regarding the status of the  
21 owl and the habitat in the area would have changed the concurrence by the USFWS, the  
22 agency clearly made its determination based on incomplete data.

23           In addition, the DNR, which is the land manager for the habitat where this new  
24 owl was first detected (Transcript page 762, line 18 through page 763, line 3) and the  
25 responsible entity for implementing the HCP intended to protect owls such as this one,

1 specifically states in its comment letter on the project DEIS that the project may interfere  
2 with a spotted owl's ability to disperse from the DNR HCP conservation area to other  
3 areas in the vicinity. (Exhibit 1.16c, page 3)

4 In light of these facts, the council should specifically require that all turbines  
5 locations for the project be specifically identified in the certification documents, and that  
6 all turbines be located at least 2 miles from any detected owl detection site. A new  
7 consultation with the USFWS should also be initiated.

8

### 9 **III. Post-construction Monitoring**

10 If the council decides to recommend site certification for this project, there is a  
11 need to include very explicit post-construction monitoring requirements. Given the  
12 testimony regarding the value of such monitoring provided both by the applicant's avian  
13 expert witness Mr. Johnson (Transcript page 726, line 6 through page 728, line 13) and  
14 the Counsel of the Environment's avian expert witness Mr. McIvor (Transcript page 826,  
15 line 12 through page 830, line 23), it is critical that the council clearly identify the type,  
16 intensity, frequency, and duration of such monitoring surveys.

17 In addition to the standard mortality surveys are called for in the guidelines  
18 (Exhibit 6.09c page 6), given the unique nature of this project, these studies should be  
19 extended in their duration beyond only two years. (ibid) And given the acknowledged  
20 challenges in conducting such carcass surveys in a forested landscape versus more open  
21 habitat, (Transcript page 731, line 3 through page 733, line 17) the council should  
22 increase the frequency and / or intensity of the surveys to compensate for those  
23 challenges.

24 In accordance with RCW 80.50.040, the council must prescribe the means for  
25 monitoring the effects of project operation in order to assure compliance with the

1 certification. A detailed monitoring program should be developed prior to project  
2 approval, not left to be determined after the fact.

3 In addition to surveys for carcasses of avian mortalities, it is also important to  
4 conduct post-construction surveys of live birds. (Transcript page 826, line 12 through  
5 page 830, line 23) Such studies will help evaluate the extent to what project construction  
6 and operation displaces species from the project area and the abilities of various bird  
7 species to adapt to the project presence (transcript page 726, line 13 through  
8 page 727, line 20)

9

#### 10 **IV. Habitat Mitigation**

11 If constructed, this project will entail the permanent loss of 60.7 acres of habitat, as well  
12 as the temporary loss of another 53.6 acre of habitat (Application, Table 2.1-1) In  
13 addition, there will be a significant number of additional acres of habitat that would likely  
14 be degraded in order to maximize the wind resource (see discussion of tree height  
15 management discussion in Application page 2.3-9 through page 2.3-12) as well as to  
16 facilitate potential carcass surveys (see Transcript page 732, lines 1-25)

17 WAC 463-62-040(2)(a) states that “An applicant must demonstrate no net loss of  
18 fish and wildlife habitat function and value.” This unambiguous language makes it  
19 incumbent on the applicant to provide replacement habitat to mitigate for the areas  
20 impacted by the development. This is also consistent with the language in the Wind  
21 Power Guidelines that calls for “Like-kind” mitigation (Exhibit 6.09c page 9, last  
22 paragraph). And while the guidelines are not mandatory, the rules in WAC 463-62-010  
23 are specifically “requirements” that the council “shall” apply to site certification  
24 agreements. WAC 463-62-040(2)(d) also states that the ratio of replacement habitat to  
25 impacted habitat shall be greater than 1:1.

1 In addition, the Wind Power Guidelines state that “the replacement habitat should  
2 be negotiated in consultation with WDFW and the permitting authority.” (emphasis  
3 added, Exhibit 6.09c, page 9) The applicant has proposed a land parcel as mitigation  
4 habitat (Exhibit 1.03r) Unfortunately, that parcel does not meet the standard set in the  
5 WAC of no net loss of “habitat function” nor the Guidelines standard of “like-kind.” In  
6 addition, there is no indication anywhere in the record for this proceeding of the applicant  
7 negotiating or consulting with EFSEC, the permitting authority, regarding replacement  
8 habitat values and functions.

## 9 10 **V. Adaptive Management**

11 The applicant’s avian expert witness provided testimony regarding the value and  
12 importance of conditioning any permit for the project on future project operational  
13 decisions being based on the data collected during avian post-construction monitoring  
14 programs. (Transcript page 728, lines 2-13) Seattle Audubon strongly agrees with having  
15 the council including this type of adaptive management requirement in a site certification.  
16 The WDFW Guidelines explicitly call for a Technical Advisory Committee (TAC) to  
17 make suggestions to the permitting authority regarding the need to adjust mitigation and  
18 monitoring requirements based on results of monitoring data (Exhibit 6.09c page 6). The  
19 council should establish the specific details for the TAC, including the composition of it  
20 membership, its specific authority, independence from the applicant, and resources ,  
21 including funding, to carry out those responsibilities. A key piece of adaptive  
22 management is ensuring that the permitting agency retain the ability to enforce all the  
23 conditions of the permit. In this instance, Seattle Audubon urges the council to include a  
24 “re-opener” clause in the site certification that explicitly states that the council shall re-

1 evaluate the terms of the certification if the TAC identifies areas of concern regarding  
2 avian impacts form project operation.

3

4 **VI. Conclusion**

5 As the Council considers whether to recommend site certification for this project,  
6 and if so what conditions should be included, it is essential that you fully evaluate the  
7 impacts the project would have on wildlife. You should identify appropriate avoidance  
8 and mitigation measures as well as prescribe the means for monitoring the effects of  
9 project operation in order to assure compliance with the certification. Thank you for  
10 consideration of Seattle Audubon's views.

11

12

13 SIGNED this 18<sup>th</sup> day of March, 2011 at Seattle, Washington.

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17

A handwritten signature in cursive script, appearing to read "Shawn Cantrell", written over a horizontal line.

18 Shawn Cantrell