



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

August 11, 2023

J. Richard Aramburu  
705 Second Avenue, Suite 1300  
Seattle, WA 98104-1797

ELECTRONIC DELIVERY ONLY

RE: Response to Horse Heaven Hills letter dated August 2, 2023

Dear Mr. Aramburu,

Thank you for your letter, dated August 2, 2023. In it, you pose questions as a result of Mr. Dave Kobus's deposition. The letter posed two questions: the first being a request for confirmation that EFSEC did not require alternative project layouts be present in the Application for Site Certification (ASC); the second being a request for confirmation that EFSEC can or would issue the permits indicated that would otherwise be issued by the Benton County Fire Marshal.

In response to your first question, I offer the following thoughts. The section of the Washington Administrative Code (WAC) cited in the letter, WAC 463-60-296, is incongruous with the statement quoted by Mr. Kobus. The language in WAC 463-60-296 is in reference to information submitted to EFSEC by an applicant in its application for site certification. The statements quoted from Mr. Kobus are in reference to the alternatives analysis performed by EFSEC staff within the Environmental Impact Statement (EIS). These are separate documents with separate requirements. Requirements for information presented in the application are indicated in WAC 463-60. Requirements for the alternatives analysis in an EIS are indicated in WAC 197-11-440(5) and adopted by WAC 463-47-020. The statements quoted by Mr. Kobus are in reference to the EIS impact analysis and are in accordance with WAC 197-11-440(5)(d), "*When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site...*".

Additionally, WAC 463-60-010 states that "*The application shall provide the council with information regarding the applicant, the proposed project design and features, the natural environment, and the built environment. This information shall be in such detail as determined by the council to enable the council to go forward with its application review.*" To this point, if details in the subsequent sections are not needed for review of the application, they are not

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required. It is at the discretion of EFSEC when to require additional details of information outlined in subsequent sections of 463-60.

In response to your second question, the statements quoted from Mr. Kobus are in reference to RCW 80.50.120 which states, *“The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not.”* Additionally, WAC 463-28-020 which states, *“The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provides that the state preempts the regulation and certification of the location, construction, and operational conditions of certification of energy facilities.”*

EFSEC staff have historically coordinated with local fire districts and/or Washington State Patrol in the review and issuance of such permissions, and authority to do so falls within EFSEC’s guiding statute and rules.

I trust this serves your needs in response to the questions posed, but please feel free to reach out if there are any additional questions or concerns.

Sincerely,



Sonia E. Bumpus  
EFSEC Director

Cc: Parties of Record  
Amí Hafkemeyer, EFSEC  
Jon Thompson, AAG