

August 25, 2024

Energy Facility Site Evaluation Council
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Horse Heaven Wind Project – Applicant Comments on Council’s Reconsidered Site Certification Agreement and Conditions, for Consideration, August 29, 2024

Dear Chair Drew and Councilmembers:

Scout Clean Energy (“Scout” or “Applicant”), on behalf of the Horse Heaven Clean Energy Center (the “Project”), continues to appreciate the Energy Facility Site Evaluation Council’s (“Council” or “EFSEC”) consideration of the Project. On May 25, 2024, the Governor remanded the Council’s recommendation to approve the Project, as mitigated by Site Certification Agreement (“SCA”) conditions, and specifically directed the Council to “reconsider the conditions and mitigation in its recommendation in favor of an approach to mitigation that is more narrowly tailored to the specific impacts identified,” and that is limited “to those measures that are reasonably and feasibly consistent with achieving the full or near-full clean energy generation capacity of the proposed Project.”¹

Scout appreciates EFSEC staff’s efforts to develop mitigation measures that are narrowly tailored to mitigate impacts while achieving the proposed generation capacity. Scout sees progress in the draft provided on August 19, 2024 (“proposed SCA”). Specifically, Scout agrees with the eastern battery energy storage system’s exemption from Spec-5 in the proposed SCA.²

However, the proposed SCA’s version of mitigation measure Spec-5 still does not meet the Governor’s objectives and poses significant practical obstacles that jeopardize the Project’s feasibility. As stated in the Applicant’s Petition for Reconsideration, the Council is shirking its primary duty *to site the Project*, instead impermissibly deferring that key decision until after the SCA is issued. Moreover, the Council proposes to relegate that decision to a Pre-operational Technical Advisory Group (“PTAG”) and to Washington Department of Fish and Wildlife (“WDFW”) staff through the measure’s blind adoption of inaccurate and poorly controlled Priority Habitat and Species (“PHS”) data unintended for regulatory purposes. In addition to the discussion below, in Exhibit A to this letter Scout has prepared recommended revisions to the proposed measure Spec-5 to cure the current issues.

¹ Letter from Jay Inslee to Kathleen Drew (the “Governor’s Letter”), at 3 (dated May 23, 2024).

² See Proposed SCA, Appendix 2.

I. Spec-5 remains too broad and ambiguous, and likely would arbitrarily exclude large areas that will gut the Project’s generating capacity.

Proposed Spec-5 still threatens to exclude large areas of the Project because there are no clear objective criteria delineating when a nest is “available” or when habitat is “viable.” As a result, the measure still risks gutting large siting areas due to outdated documentation of historical and other non-viable nests. Nor does it follow the Governor’s specific guidance on Spec-5.

As currently proposed, Spec-5 allows turbines, solar arrays, and BESS siting between 0.6-2 miles of a known ferruginous hawk nest only if “the nesting site is no longer available” or “the foraging habitat within the 2-mile radius is no longer viable for the species.”³ But Spec-5’s current wording does not comply with the Governor’s directive to limit mitigation to “times and places where hawks are present”⁴ because as written, the measure’s ambiguous criteria for which nests are “available” and what surrounding habitat is “viable” could trigger avoidance zones around any nest, even historical nest sites where ferruginous hawks have not been present for decades. We believe this is not the Council’s intended outcome, but absent clarifying revisions to Spec-5, it is the likely outcome. Adding objective criteria is critical to prevent precisely what the Governor prohibited; large areas of the Project being excluded “based on the radii of historic hawk nests.”⁵ To remedy this we have offered revisions to Spec-5 that more clearly outline the process for determining when a nest is viable and to better explain what is required in a project-specific ferruginous hawk management plan, should infrastructure need to be sited within 2 miles of a viable nest location. *See Exhibit A.*

A. EFSEC must clarify when a “nesting site is no longer available” to uphold the Governor’s directive that Project exclusions are narrowly tailored to “times and places where hawks are present.”

Spec-5 does not describe when “a nesting site is no longer available.” As explained in Scout’s prior submissions, more objectivity and specificity are needed to prevent a future situation in which scientists (or Councilmembers) must debate over a nest location’s availability and viability.⁶ The Council has several options to remedy this issue. The Council could utilize WDFW’s existing classification for nesting structures⁷ and/or the more specific criteria provided by Scout in its April Comment Letter.⁸ Defining these key terms will ensure that mitigation is narrowly tailored to where ferruginous hawk are present or likely to occur. In our revised version

³ Proposed SCA, Appx. 2, at 12 (August 19, 2024).

⁴ Governor’s Letter at 5.

⁵ Governor’s Letter at 5.

⁶ Letter from Scout Clean Energy, Horse Heaven Wind Project, to EFSEC - Applicant Comments on Practical and Policy Problems with EFSEC Proposed Recommendation to the Governor 13-14 (“Apr. Comment Letter”) (Apr. 10, 2024); Letter from Scout Clean Energy, Horse Heaven Wind Project - Applicant Comments and Concerns on EFSEC Proposed Final Action (Jan. 19, 2024) (“Jan. Comment Letter”);

⁷ E.g., “gone,” “remnant,” “poor”.

⁸ Apr. Comment Letter at 15; Jan. Comment Letter at 4.

of Spec-5, attached, we provided clear definitions of what should be considered a viable or non-viable ferruginous hawk nest location. *See Exhibit A.*

Rather than leaving these determinations to a volunteer Pre-operational Technical Advisory Group (PTAG), we recommend that WDFW, the state’s natural resource agency with jurisdiction over state-listed species, agree to adopt the nest viability parameters presented in the attached revised Spec-5, in order to create a Project-specific ferruginous hawk nest database that will be relied upon to regulate ferruginous hawk nests as described in Spec-5. This database would incorporate existing PHS nest location information, as well as field-verified data from Scout’s biologists’ site surveys, to create a list of all documented ferruginous hawk nests in the Project area and surrounding areas, with their current condition compiled, all in one place. This list would serve as an up-to-date, field-verified inventory to inform the viability assessment contemplated in Spec-5.

B. EFSEC’s proposed habitat viability clarification is not narrowly tailored to mitigate impacts without decreasing the Project’s generation capacity.

EFSEC has attempted to clarify Spec-5 by stating that habitat is “no longer viable” when it “has been *altered by landscape-scale development* (conversion to cropland, residential development, industrial development) rendering the territory non-viable. This could include habitats that have been altered such that *insufficient native or foraging habitat remains*,” (“non-viable habitat”).⁹ This language does not provide sufficient bounds to clearly formulate the Project’s final layout. For example, it is unclear from this definition when alterations are “landscape-scale development” or “insufficient native or foraging habitat remain[s].” That is, Spec-5 provides no threshold for when habitat is so altered by landscape-scale development that it is non-viable or the amount or quality “native or foraging” habitat “sufficient” to warrant an exclusion zone.

Scout’s comment letters provide several methods to clarify this ambiguity. One option would be including the viability flowchart in Scout’s April Comment Letter.¹⁰ Alternatively, incorporating WDFW’s guidance for the species (2024) would be the most straightforward way to do so. EFSEC could define viable habitat as the “natural vegetation and agricultural types” identified in Table 2 of WDFW 2024 and recognize that ferruginous hawk do not nest in areas where more than 30% of the core area is cropland.¹¹

⁹ Proposed SCA, Appx. 2, at12 (August 19, 2024).

¹⁰ Apr. Comment Letter at 14-15; *see also*, Scout Clean Energy’s Motion for Reconsideration, 24 (May 20, 2024);

¹¹ *See* Apr. Comment Letter at 14; WDFW, Management Recommendations for Washington’s Priority Species: Ferruginous Hawk 7 (January 2024); *see also* Adjudication Exhibit EXH-4015_X, Draft Management Recommendations for Washington’s Priority Species: Ferruginous Hawk, James W. Watson & Jeffrey M. Azerrad (July 5, 2023) (WDFW Draft Management Recommendations) at 6-7 tbl. 2.

As outlined in previous submissions, the uncertainty caused by Spec-5’s ambiguous language poses serious problems for technical and practical viability.¹² Under the current iteration, biologists likely will disagree whether specific FEHA nests or habitat is not viable. If applied incorrectly and without scientific foundation, the viability determination could force elimination of key components, including turbines, solar facilities, and BESS, substantially decreasing generation capacity.

The Council must clarify when a “nesting site is no longer available” and use an unambiguous, narrowly tailored definition of non-viable habitat. See Exhibit A.

II. By impermissibly deferring and relegating viability determinations to the PTAG after site certification, Spec-5 will prevent final Project design, incapacitating and further delaying construction.

Continuing its unprecedented approach, proposed Spec-5 delegates the nest viability determination to the PTAG.¹³ Unlike the well understood role of a Technical Advisory Committee, which has a largely *advisory* role, the PTAG, would review and make conclusions dictating final Project design even before the Project is built.¹⁴ This delegation to this novel entity is problematic for several reasons. **First**, by deferring the technical nest site viability determination until *after* SCA issuance, proposed Spec-5 will delay final Project design for many months (or even longer). This delay is completely unworkable, as it leaves Scout with no certainty to develop final engineering or finalize the critical agreements and financing needed to actually construct the Project. **Second**, giving the PTAG this authority violates Washington law prohibiting an agency from delegating its discretionary or quasi-judicial authority, like the authority to make substantive decisions over Project components and exclusion zone locations.¹⁵ **Third**, it is not “reasonably and feasibly consistent with” achieving “full or near-full clean energy generation capacity” because the viability determination affecting final Project build-out will not be conducted by EFSEC staff or Councilmembers, but rather PTAG members several months later who are far too attenuated to implement the Governor’s directive.¹⁶ **Fourth**, the delay and uncertainty posed by this condition will chill future clean energy development by making it impossible for Scout, and future project developers, to determine project viability, negotiate energy off-take or sale agreements, secure necessary project financing, develop any

¹² Apr. Comment Letter at 16; Scout Clean Energy, Petition for Reconsideration, Exhibit K: Letter from PGE to EFSEC (Apr. 10, 2024);

¹³ Proposed SCA, Appx. 2, 12-13.

¹⁴ Scout Clean Energy, Petition for Reconsideration at 12.

¹⁵ See *Application of Puget Sound Pilots Ass’n*, 63 Wn.2d 142, 145 (1963) (It is a general principle of law ... that a delegated power may not be further delegated by the person to whom such power is delegated. (quoting 42 Am. Jur. Public Administrative Law § 73)); *Wash. Fed’n of State Emps. v. State Dep’t of Gen. Admin.*, 152 Wn. App. 368, 385 (2009) (General Administration Department engaged in improper delegation by delegating to other agencies its task to regulate governmental bidding process).

¹⁶ See Apr. Comment Letter at 1.

realistic construction timeline, or even determine whether any SCA amendments are necessary.¹⁷ The proposal here—which would place not just minor construction details but *final Project design in the hands of non-Councilmembers and would require consideration and approval of detailed, biological information during Council meetings—goes much further, risking derailing the Council’s monthly meetings for several years to come.* By omitting the complicating middle-process of the PTAG and issuing clearer criteria, the Applicant could develop viability determination applications, and EFSEC could review and approve or deny them, without risking hundreds of interim decisions requiring Council approval.

Simply put, the PTAG would unnecessarily delay and incapacitate the Applicant’s cost-conscious value-based engineering efforts in favor of singularly focused and overly restrictive conservation initiatives. *The Council must remove the PTAG’s authority to make substantive conclusions impacting viability determinations and thus final project design.*

In addition to the Spec-5 problems discussed above, Scout also notes that proposed measure Spec-5’s reliance on the date of start of construction, rather than date of SCA execution, poses significant feasibility problems and should be revised, as proposed in Exhibit A.¹⁸

CONCLUSION

In sum, as proposed, Spec-5 does not comply with the Governor’s letter and ignores the Governor’s most specific critique of the Council’s many mitigation measures. It is critical that these remaining problems be addressed to accomplish the Governor’s directive, uphold the Council’s duties, and ensure the full or near-full generation capacity of the approved Project without further delay.

If the Council finalizes this Proposed SCA with the current deficiencies, the Governor can—and must—use his plenary authority to override EFSEC’s decision, and to ensure the mandates of the Energy Facility Site Location Act and the state’s climate goals are met. We urge the Council to uphold its duties and ensure a meaningful clean energy future for Washington.

¹⁷ See e.g. Apr. Comment Letter at 16; Scout Clean Energy, Petition for Reconsideration, Ex. E, Letter from Renewable Northwest, Horse Heaven Project - Stakeholder Comments and Concerns on EFSEC Proposed Final Action, at 1 (Apr. 10, 2024); Scout Clean Energy, Petition for Reconsideration, Ex. B, Letter from American Clean Power Association & Energy and Wildlife Coalition to EFSEC, Horse Heaven Project -Stakeholder Comments and Concerns on EFSEC Proposed Final Action, at 1, 2 (Apr. 8, 2024) ; Scout Clean Energy, Petition for Reconsideration, Ex. F, Letter from GE Vernova to EFSEC, Horse Heaven Project - Stakeholder Comments and Concerns on EFSEC Proposed Final Action, at 1 (Apr. 9, 2024)

¹⁸ In addition, to the extent that any of Scout’s concerns as asserted in previous submissions, including our January Comment Letter, April Comment Letter, and its Petition for Reconsideration have still not been addressed, we reassert them here. See Jan. Comment Letter; Apr. Comment Letter, Scout Clean Energy, Petition for Reconsideration.



Scout Clean Energy LLC
1805 29th Street, Suite 2050
Boulder, CO 80301
(303) 284-7566

Sincerely,

A handwritten signature in blue ink that reads "Michael Rucker".

Michael Rucker, President and Chief Executive Officer
Scout Clean Energy

Horse Heaven Wind Farm LLC
Site Certification Agreement
EXCERPTS - Appendix 2. Mitigation
Measures

Spec-5 Ferruginous Hawk: The Certificate Holder shall not site any wind turbines, solar arrays, or BESS within a 0.6-mile (1 km) radius surrounding ferruginous hawk nests listed in a WDFW-established, project-specific regulatory version of the PHS database. The project-specific database will differentiate between viable and non-viable ferruginous hawk nests.

Ferruginous hawk nests are considered viable if:

- The nest is documented as “Good” or “Fair” in the PHS regulatory database project-specific database and Certificate Holder’s nest surveys on the effective date of the SCA, and
- The nest has breeding habitat, as listed in Table 2 of WDFW (2024), that represents more than 30% of the total area within the 2-mile radius of the nest location for the species identified in the Certificate Holder’s nest surveys, and/or

Ferruginous hawk nests are considered no longer viable if:

- The nest is no longer available (i.e., is listed as Gone, Remnant, or Poor condition in the project-specific database PHS or the Certificate Holder’s nest survey data), or
- Breeding habitat, as listed in Table 2 of WDFW (2024), does not represent more than 30% of the total area within the 2-mile radius of a viable nest location for the species.

Appropriate mitigation to address any ferruginous hawk nest sites that may be newly established by the species and confirmed by future nest surveys between the SCA effective date and the time of construction will be evaluated addressed via the adaptive management strategy specified in measure Wild-1.

The Certificate Holder shall avoid siting wind turbines, solar arrays, and BESS within a 0.6-2-mile radius surrounding viable, documented, a ferruginous hawk nest as described above, unless the Certificate Holder is able to demonstrate that:

—unless a ferruginous hawk management plan is completed, as described below compensation habitat, as described below, will provide a net gain in ferruginous hawk habitat.

and either:

- the nesting site is no longer available (i.e., is listed as Gone, Remnant, or Poor condition in PHS or the Certificate Holder’s nest survey data), or
- the foraging breeding habitat, as defined by listed in Table 2 of WDFW (2024), does not represent more than 30% of the total area within the 2-mile radius of a is no longer viable nest location for the species.

Habitat considered no longer available viable for ferruginous hawk would include habitat that does not meet the definition of breeding habitat in WDFW 2024. If a 2-mi core area around a nest location contains less than 30% viable habitat, has been altered by landscape scale development (conversion to cropland, residential development, industrial development) rendering the territory nest location will be considered non-viable. This could include habitats that have been altered such that insufficient native or foraging habitat remains. Project turbines, solar arrays, or BESS shall not be sited within 2 miles of a viable ferruginous hawk nest without prior approval by EFSEC based on the process described below.

The extent of component encroachment into the core area of a viable nest, -described above habitat in ferruginous hawk territories, defined as the area within a 2-mile radius surrounding documented that nests,

Commented [A1]: Revision recommended to add clarity and incorporate current science into development of avoidance areas.

Commented [A2]: Proposed revisions provide clarity drawn from PHS existing nest classification system and WDFW 2024, the species’ management recommendation guidance. First, any land cover or vegetation types not on that list would be considered non-viable (See WDFW 2024, Table 2 on Page 9). Second, incorporating the guidance’s science with respect to a 30% habitat metric. See WDFW 2024 guidance at p.7 (“Effects of cultivation on ferruginous hawk nesting have been studied extensively in grassland habitats in Alberta where ground squirrels were the primary prey ...In that study, hawk densities were greatest on random survey plots where ≤10% of the land was in cultivation. Hawk densities declined in areas where cultivated lands exceeded 30% (Schmutz 1999).”)

Commented [A3]: Proposed revisions provide clarity drawn from PHS existing nest classification system and WDFW 2024, the species’ management recommendation guidance. First, any land cover or vegetation types not on that list would be considered non-viable (See WDFW 2024, Table 2 on Page 9). Second, incorporating the guidance’s science with respect to a 30% habitat metric. See WDFW 2024 guidance at p.7 (“Effects of cultivation on ferruginous hawk nesting have been studied extensively in grassland habitats in Alberta where ground squirrels were the primary prey ...In that study, hawk densities were greatest on random survey plots where ≤10% of the land was in cultivation. Hawk densities declined in areas where cultivated lands exceeded 30% (Schmutz 1999).”)

Commented [A4]: Per comment below regarding Measure PHS-2, by relying on the date of “time of construction,” these two measures defer any certainty on final project design until the day construction begins. This is not feasible and will bar project development. Moreover, by staggering EFSEC’s review of the final project design, this timeline unnecessarily wastes the Council’s resources by requiring a piecemeal review process.

Any new nests are best addressed through adaptive management. The revisions proposed incorporate the approach employed in Spec-1 and Spec-2, for example.

Commented [A5]: Clarifying to avoid interpretation that only PHS-documented nests are included.

Commented [A6]: Proposing for internal consistency with use of “viable” below.

Commented [A7]: “Territory” typically refers to a group of nests, which is not the intended meaning here. Propose changing for clarity.

may vary depending on the type of infrastructure proposed (i.e., turbine, solar array, BESS). If siting of these components within 2 miles of a nest is considered by the Certificate Holder, the Certificate Holder shall ~~develop, develop a Project-specific ferruginous hawk mitigation and management plan in consultation with the PTAG~~ for approval by EFSEC, ~~which includes:~~

1. ~~A description of a~~ A set of habitat parameters to document whether habitat in a core ~~range-area~~ is considered non-viable. ~~T~~ the results of habitat surveys and their relation to these habitat parameters ~~shall be reviewed by the PTAG and approved by EFSEC.~~
2. A description of the current ~~nearest~~ viable nesting habitat, ~~and~~ available nesting sites, and a description of documented use of ~~nesting locations and associated~~ the core habitat by ferruginous hawk available through historic background information or field-based surveys.
3. A description of the type and location of infrastructure proposed within the core ~~habitat area~~.
- ~~1.~~ The proximity of infrastructure to any known nest ~~site or location and associated~~ suitable foraging habitat.
- ~~2.~~
4. ~~In the event that a Project component is proposed for siting within the 2-mile buffer, the Certificate Holder shall, in consultation with the PTAG, develop a Project-specific ferruginous hawk mitigation and management plan for approval by EFSEC.~~
5. A description of efforts to site Project infrastructure to avoid core ~~breeding and foraging~~ habitat in ~~the core area~~, identified as the area within 2 miles of nests documented in PHS data and the Certificate Holder's nest surveys:
 - a. If Project turbines, solar arrays, or BESS are sited within 2 miles of a ~~viable~~ ferruginous hawk nest, the infrastructure shall be ~~reviewed by the PTAG and approved by EFSEC.~~
 - b. Additional mitigation measures shall be developed to reduce potential ferruginous hawk strikes with turbines, including curtailing turbine operation within the 2-mile core habitat of any ~~actively occupied~~ active nests diurnally during the breeding and rearing periods when ferruginous hawks are present in Benton County.
 - ~~c.~~ The plan shall explain how and where the Certificate Holder will create new offset habitat to mitigate for direct and indirect habitat loss within the 2-mile core area of ~~viable~~ ferruginous hawk nests documented in PHS data and the Certificate Holder's nest surveys.
- ~~A~~
6. ~~A~~ description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.
7. A description of pre- and post-monitoring programs that will be conducted to establish:
 - a. Habitat use within the Lease Boundary.
 - b. Mapping of ground squirrel colonies and other prey ~~within the Lease Boundary and any accessible areas (i.e., publicly accessible or access granted by a private land owner/landowner) outside of the Lease Boundary.~~
 - ~~e.~~ Identification of potential flyways between nest sites and foraging habitat and monitoring of ~~e-c.~~ potential flyways to inform final turbine siting and orientation.
 - ~~e-d.~~ Ongoing monitoring of nest use and ~~territory~~ success.
8. A description of restoration activities that will be undertaken during Project decommissioning to enhance ferruginous hawk habitat in disturbed areas.

Commented [A8]: As detailed in the comment letter, EFSEC's delegation of these aspects of the avoidance areas and mitigation measures impacting final project design to the PTAG is improper, inefficient, and unwarranted.

All substantive aspects of Spec-5 can and should be implemented by the Applicant based on existing WDFW authorities and approved directly by EFSEC staff and the Council.

Commented [A9]: Revisions intended to clarify meaning of this requirement. As worded, it is unclear what this description is intending.

Commented [A10]: Again, revising to clarify intent of this description.

Results of ferruginous hawk monitoring programs and adaptive management will continue through Project operation and decommissioning, ~~as set forth in [Wild-1]~~, with review by the TAC and approval by EFSEC.

Exemption from Spec-5 for East BESS: The Certificate Holder intends to locate the East BESS within the footprint of the East Substation, which is itself located within 0.6-miles of a documented ferruginous hawk nest. The East BESS is exempted from the 0.6-mile and 2-mile buffers described in this measure so long as it remains co-located with the East Substation and remains subject to the other requirements of this measure.

Commented [A11]: Revision proposed to ensure internal consistency with established monitoring program.

While the substation is not subject to buffer requirements of this mitigation measure, absent this exemption, relocation of the BESS would be required. ~~The rationale for this exemption is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.~~

Rationale: The mitigation measure avoids and reduces potential loss of ferruginous hawk habitat, disturbance to ferruginous hawk, and ferruginous hawk mortality, while allowing for adaptive management throughout Project construction and operation. ~~The rationale for the exemption of the East BESS is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.~~

* * *

PHS-2 Firefighting Aircraft Standoff Buffers: No wind turbines shall be sited within 0.25 miles of the maximum perimeter of one or more historic wildfires that have been recorded between January 1, 2000 and the ~~start of construction~~time of SCA ~~execution~~.

Rationale: The Washington Department of Natural Resources (DNR) has stated that any firefighting aircraft in service with their agency would observe a minimum of a 0.25-mile standoff buffer from wind turbines during aircraft operation. This mitigation measure ensures that DNR firefighting aircraft can safely and effectively be deployed to areas of higher wildfire likelihood within and adjacent to the Project Lease Boundary to assist in firefighting when needed.

Commented [A12]: Revision proposed to ensure internal consistency of structure of conditions in Appendix 2 of the SCA.

Commented [A13]: Revision proposed to ensure necessary certainty in final project design before beginning of construction, and to facilitate more efficient, consolidated EFSEC review. As written, this would practically delay the final layout indefinitely based on a moving target and unnecessarily stagger EFSEC's final review.

**Horse Heaven Wind Farm LLC
Site Certification Agreement
EXCERPTS - Appendix 2. Mitigation
Measures**

Spec-5 Ferruginous Hawk: The Certificate Holder shall not site any wind turbines, solar arrays, or BESS within a 0.6-mile (1 km) radius surrounding ferruginous hawk nests listed in a WDFW-established, project-specific regulatory version of the PHS database. The project-specific database will differentiate between viable and non-viable ferruginous hawk nests.

Ferruginous hawk nests are considered viable if:

- The nest is documented as “Good” or “Fair” in the project-specific database and Certificate Holder’s nest surveys on the effective date of the SCA and
- The nest has breeding habitat, as listed in Table 2 of WDFW (2024), that represents more than 30% of the total area within the 2-mile radius of the nest location for the species.

Ferruginous hawk nests are considered no longer viable if:

- The nest is no longer available (i.e., is listed as Gone, Remnant, or Poor condition in the project-specific database or the Certificate Holder’s nest survey data), or
- Breeding habitat, as listed in Table 2 of WDFW (2024), does not represent more than 30% of the total area within the 2-mile radius of a viable nest location for the species.

Appropriate mitigation to address any ferruginous hawk nest sites that may be newly established by the species and confirmed by future nest surveys between the SCA effective date and the time of construction will be addressed via the adaptive management strategy specified in measure Wild-1.

The Certificate Holder shall avoid siting wind turbines, solar arrays, and BESS within a 0.6-2-mile radius surrounding viable ferruginous hawk nest as described above, unless a ferruginous hawk management plan is completed, as described below.

Project turbines, solar arrays, or BESS shall not be sited within 2 miles of a viable ferruginous hawk nest without prior approval by EFSEC based on the process described below.

The extent of component encroachment into the core area of a viable nest, described above, defined as the area within a 2-mile radius surrounding that nest, may vary depending on the type of infrastructure proposed (i.e., turbine, solar array, BESS). If siting of these components within 2 miles of a nest is considered by the Certificate Holder, the Certificate Holder shall develop a Project-specific ferruginous hawk mitigation and management plan for approval by EFSEC, which includes:

1. A description of a set of habitat parameters to document whether habitat in a core area is considered non-viable, the results of habitat surveys and their relation to these habitat parameters.
2. A description of the current nearest viable nesting habitat and available nesting sites, and a description of documented use of nesting locations and associated core habitat by ferruginous hawk available through historic background information or field-based surveys.
3. A description of the type and location of infrastructure proposed within the core area.
4. The proximity of infrastructure to any known nest location and associated suitable foraging habitat.
5. A description of efforts to site Project infrastructure to avoid breeding and foraging habitat in the core area, identified as the area within 2 miles of nests documented in PHS data and the Certificate Holder’s nest surveys:
 - a. If Project turbines, solar arrays, or BESS are sited within 2 miles of a viable ferruginous hawk nest, the infrastructure shall be approved by EFSEC.

- b. Additional mitigation measures shall be developed to reduce potential ferruginous hawk strikes with turbines, including curtailing turbine operation within the 2-mile core habitat of any active nests diurnally during the breeding and rearing periods when ferruginous hawks are present in Benton County.
- c. The plan shall explain how and where the Certificate Holder will create new offset habitat to mitigate for direct and indirect habitat loss within the 2-mile core area of viable ferruginous hawk nests documented in PHS data and the Certificate Holder's nest surveys.
- 6. A description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.
- 7. A description of pre- and post-monitoring programs that will be conducted to establish:
 - a. Habitat use within the Lease Boundary.
 - b. Mapping of ground squirrel colonies and other prey within the Lease Boundary and any accessible areas (i.e., publicly accessible or access granted by a private landowner) outside of the Lease Boundary.
 - c. Identification of potential flyways between nest sites and foraging habitat and monitoring of potential flyways to inform final turbine siting and orientation.
 - d. Ongoing monitoring of nest use and success.
- 8. A description of restoration activities that will be undertaken during Project decommissioning to enhance ferruginous hawk habitat in disturbed areas.

Results of ferruginous hawk monitoring programs and adaptive management will continue through Project operation and decommissioning, as set forth in Wild-1, with review by the TAC and approval by EFSEC.

Exemption from Spec-5 for East BESS: The Certificate Holder intends to locate the East BESS within the footprint of the East Substation, which is itself located within 0.6-miles of a documented ferruginous hawk nest. The East BESS is exempted from the 0.6-mile and 2-mile buffers described in this measure so long as it remains co-located with the East Substation and remains subject to the other requirements of this measure. While the substation is not subject to buffer requirements of this mitigation measure, absent this exemption, relocation of the BESS would be required.

Rationale: The mitigation measure avoids and reduces potential loss of ferruginous hawk habitat, disturbance to ferruginous hawk, and ferruginous hawk mortality, while allowing for adaptive management throughout Project construction and operation. The rationale for the exemption of the East BESS is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.

* * *

PHS-2 Firefighting Aircraft Standoff Buffers: No wind turbines shall be sited within 0.25 miles of the maximum perimeter of one or more historic wildfires that have been recorded between January 1, 2000 and the time of SCA execution.

Rationale: The Washington Department of Natural Resources (DNR) has stated that any firefighting aircraft in service with their agency would observe a minimum of a 0.25-mile standoff buffer from wind turbines during aircraft operation. This mitigation measure ensures that DNR firefighting aircraft can safely and effectively be deployed to areas of higher wildfire likelihood within and adjacent to the Project Lease Boundary to assist in firefighting when needed.