

**BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of the Application  
of:

Scout Clean Energy, LLC, for  
Horse Heaven Wind Farm, LLC,  
Applicant

DOCKET NO. EF-210011

**SUPPLEMENTAL  
RESPONSIVE TESTIMONY  
OF DON MCIVOR**

**Q:** In your responsive testimony dated July 5, 2023, you responded to a question about whether a 2-mile radius core use area offset for ferruginous hawks was reasonable and referenced the Applicant's proposed .25 mile offset which you stated was derived in consultation with WDFW. What was your understanding of the basis for the conclusion that the .25 mile offset recommendation was derived in consultation with WDFW?

**A:** At the time of my responsive testimony of July 5, I understood the proposed 0.25-mile buffer to have been derived in consultation between WDFW and the Applicant and with reference to WDFW's 2004 guidelines<sup>1</sup> for management of the State's priority bird species.

In reference to the ferruginous hawk, both the USFWS (in this region) and WDFW's 2004 guidelines were non-prescriptive, offering some latitude for buffers to be tailored to accommodate project-specific needs. Although the 0.25-mile buffer struck me as relatively small (e.g., Region 6 USFWS requires a 2-mile buffer), I assumed based on the citations given in the Application and supporting materials that WDFW had approved the 0.25-mile buffer based on situational knowledge of the project site.

**Q:** Can you tell me whether it was your understanding that the .25 mile offset recommendation was a recommendation that was made by WDFW to the Applicant?

**A:** It was my understanding that the 0.25-mile offset was a recommendation from WDFW to the Applicant. This understanding on my part is based on the citations given in the Application and supporting materials. I was not a part of any of these exchanges, so could only interpret the Application materials as they were presented.

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<sup>1</sup> Larsen, E. M., Azerrad, J., M., and N. Nordstrom, Editors. 2004. WDFW's Management Recommendations for Washington's Priority Species – Volume IV: Birds. Washington Department of Fish and Wildlife, Olympia.

1 **Q:** Subsequent to your testimony, did you have the opportunity to review the deposition  
2 transcript of Mr. James Watson, research scientist, employed by WDFW that was taken  
3 on July 14, 2023, and exhibits?

3 **A:** Yes, I reviewed Mr. Watson’s testimony and exhibits from his deposition of  
4 July 14, 2023.

4 **Q:** What exhibits did you review?

5 **A:** I reviewed the following exhibits:

- 6 • Wilson, J. W. and I. N. Keren, *Repeatability in migration of Ferruginous*  
7 *Hawks (Buteo regalis) and implications for nomadism*, The Wilson Journal  
8 of Ornithology 131(3):561-570 (2019).
- 9 • Watson, J. W., R. W. Davies, and P. S. Kolar. 2023. *Contrasting home*  
10 *range characteristics and prey of sympatric hawks (Buteo spp) nesting in*  
11 *the Upper Columbia River Basin*, Northwestern Naturalist 104(1):37-47.
- 12 • Hayes, G. E. and J. W. Watson, *Periodic Status Review for the Ferruginous*  
13 *Hawk*, Washington Department of Fish and Wildlife, Olympia, Washington.  
14 30+iii pp. (2021).
- 15 • Watson, *et. al.* Long-term changes in populations of nesting raptors and  
16 common ravens in wind-power developments along the mid-Columbia  
17 River. [PowerPoint presentation].
- 18 • WDFW letter to EFSEC, dated January 11, 2022, on the subject of  
19 Ferruginous Hawk.
- 20 • Memorandum from Troy Rahmig et al. to Dave Kobus, January 20, 2022,  
21 on the topic of the “Application of novel ferruginous hawk data and  
22 recommendation for the HHH Memorandum.”

23 There were other exhibits presented by Mr. Watson with which I was already  
24 familiar with, including the revised Application for Site Certification, Appendix  
25 L, and the Population Viability Analysis of Ferruginous Hawk completed by  
26 Mr. Jansen (WEST, Inc.) in November 2022.

19 **Q:** Based on your review of Mr. Watson’s deposition and exhibits, what is your  
20 understanding of WDFW’s current recommendation pertaining to exclusionary zones  
21 for wind turbine citing within core use areas for ferruginous hawks in the Project?

21 **A:** My understanding based on Mr. Watson’s testimony and exhibits is that WDFW  
22 is recommending a 2-mile buffer around all ferruginous hawk active and  
23 historic nest site core areas. The buffer would exclude the construction of wind  
24 turbines within the 2-mile buffer zone.

24 **Q:** What is your understanding of the basis of WDFW’s current recommendation?

25 **A:** The state conservation status of the ferruginous hawk in Washington has been  
26 revised from threatened to endangered, a much more precarious situation than  
was recognized at the time of the initial project application. Also, Watson’s  
research on the ferruginous hawk in the Columbia Basin indicates a negative

1 interaction between the species and wind energy facilities. There appear to be  
2 multiple mechanisms behind the reduction in hawk numbers around these  
facilities, more factors than direct mortality related to turbine collisions.

3 **Q:** Does this recommendation apply to only the occupied territories of ferruginous hawks  
4 or does it also include historic nesting territories?

5 **A:** As I understand Mr. Watson's testimony, the recommendation extends to both  
6 active and historic nesting territories.

7 **Q:** Has this recommendation been formalized through formal agency guidance?

8 **A:** As I understand Mr. Watson's testimony, the recommendation has been given  
9 verbally and/or in written communications.

10 **Q:** After your review of the deposition transcript and exhibits, do you agree or disagree  
11 with WDFW's current recommendation for turbine siting within core use areas for  
12 ferruginous hawks in the Project?

13 **A:** I agree with WDFW's current recommendation to place a 2-mile buffer around  
14 active and historic territories. The downward population trend of the  
15 ferruginous hawk needs to be reversed to affect the recovery of this endangered  
16 species. The 2-mile buffer is already a compromise over protecting the  
17 geographically larger home ranges around these territories. The 2-mile buffer  
18 would permit project implementation while preserving opportunities for species  
19 recovery.

20 **Q:** Does that change your answer as to whether you agree or disagree that the 2-mile  
21 radius core use area offset recommendation is reasonable? Why or why not?

22 **A:** Yes, this does change my answer. Placing wind turbines with the 2-mile core  
23 area would not be responsive to WDFW's management needs and the recovery  
24 needs of the ferruginous hawk.

25 **Q:** After reviewing Mr. Watson's testimony and accompanying exhibits, do you have any  
26 additional concerns regarding the Project's impacts on the ferruginous hawk?

**A:** Yes, I have additional concerns.

Implementing a 2-mile core area buffer would not eliminate the potential for  
significant project-related impacts to ferruginous hawks. The buffer might  
reduce the likelihood of direct mortality, but because these birds forage 10km or  
more from their nest sites, there would still likely be movement of birds—and  
exposure to risk—among the installed turbines.

Also, direct mortality (strikes) appears to be only one source of negative  
impacts. The indirect impacts are harder to quantify and appear to manifest over  
several years. These indirect impacts may include reduction in prey, intolerance  
of humans and infrastructure, and intraspecific competition as more  
disturbance-tolerant species increase in the project area.

1  
2 **Q:** After reviewing Mr. Watson’s testimony and accompanying exhibits, do you  
3 recommend any additional measures to mitigate the Project’s impacts on the  
4 ferruginous hawk?

5 **A:** Yes. I believe I mentioned the concept of curtailment in my previous testimony,  
6 but primarily in the context of migratory tree bats. In his testimony, Mr. Watson  
7 mentioned the possibility of installing IdentiFlight technology at the site, a tool  
8 which integrates with curtailment. Such a system could reduce the risk of strikes  
9 not only to ferruginous hawks, but potentially other bird species of concern as  
10 well.

11 The downward trend in ferruginous hawk populations at the site is troubling and  
12 adds complexity to the mitigation concept. If the trend continues and the  
13 population further retracts from the region, the risk of strike mortality drops  
14 concomitantly, and management activity directed at reducing strikes becomes  
15 increasingly moot. However, if the species is to recover, preserving suitable  
16 habitat to be re-occupied by an expanding population is critical.

17 Some form of monitoring beyond the industry standard of two years also seems  
18 to be warranted. Jansen (2023)<sup>2</sup> has posited that encroaching development and  
19 the extent of agricultural land conversion in the area has surpassed the threshold  
20 at which ferruginous hawk populations can persist in the area. As Watson  
21 testified, some of the impacts of wind energy development on ferruginous  
22 hawks are manifested over a longer time scale. Long-term populations trends  
23 (beyond two years) could have implications for how the Horse Heaven project  
24 is managed (in an adaptive management context), as well as how WDFW  
25 manages the recovery of the ferruginous hawk on a wider geographic scale.

26 **Q: No further questions.**

I declare under penalty of perjury of the laws of the State of Washington that the  
above testimony is true and correct to the best of my knowledge.

DATED this 11th day of August 2023, at Twisp, Washington.



Don McIvor

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<sup>2</sup> Jansen, E. W. 2023. 2023 Raptor Nest Surveys for the Horse Heaven Clean Energy Center, Benton County, Washington. Prepared for Horse Heaven Wind Farm, LLC., Boulder, Colorado. Prepared by Western EcoSystems Technology, Inc. (WEST), Corvallis, Oregon. August 3, 2023. 26 pages + appendices.

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DATED this 11th day of August, 2023.

BOB FERGUSON  
Attorney General



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