

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

In the Matter of:

Docket No. EF-220011

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

Application Docket No. EF-220011

REPORT TO THE GOVERNOR ON APPLICATION DOCKET NO. EF-220011

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I. Executive Summary

A. Application:

On February 8, 2021, Scout Clean Energy, LLC (Scout or Applicant) filed an Application for Site Certification (ASC or Application) to construct and operate the Horse Heaven Wind Farm (Project or Facility), a renewable energy generation facility including wind and solar energy generation with battery energy storage systems (BESS) and supporting facilities. Scout is a renewable energy company headquartered in Boulder, Colorado.

The Project: The Project's Lease Boundary as proposed would encompass approximately 72,428 privately-owned acres principally used for dryland wheat farming. The Facility would be in the Horse Heaven Hills area of unincorporated Benton County, Washington, approximately 4 miles south/southwest of Kennewick and the larger Tri-Cities urban area, along the Columbia River (the Site). The Application seeks authority to operate no more than 231 wind turbines that would generate up to 1,150 megawatts (MW) and solar arrays that would generate up to 800 MW, along with up to two BESS facilities.¹ The wind turbines and supporting facilities would encompass an 11,850-acre Micrositing Corridor within the Project Lease Boundary; the Micrositing Corridor is approximately 25 miles in length and extends eastward from Benton City to Finley.² The Solar Siting and BESS areas would encompass 10,755 acres, of which 5,447 acres are proposed to be occupied by up to two solar arrays.

B. Recommendation:

The Energy Facility Site Evaluation (EFSEC) Council recommends the governor approve in part, the Horse Heaven Wind Facility in Benton County. The Council also recommends that certain conditions be imposed insofar as the application is approved, as discussed below.

The Council carefully considered: 1) the statutory policies on need for abundant clean energy sources to meet the state's greenhouse gas reduction obligations and to mitigate the effects of climate change while ensuring through reasonable methods that all energy facilities will produce minimal adverse impacts on the environment (Revised Code of Washington (RCW) 80.50.010); 2) public comments, 3) the record, findings and conclusions of the Adjudicative Order; 3) the Final Environmental Impact Statement (EIS); 4) the issues raised in government-to-government consultations with affected federally recognized tribes; and 5) commitments made by the Applicant in its Application, at hearings, and in other relevant documents.

The Council concludes that the conditions identified in this report, and that are set forth in the accompanying draft Site Certification Agreement, are reasonable methods to minimize the adverse

¹ The original Application (filed February 8, 2021) sought authority to operate up to 244 wind turbines and up to two solar arrays. See Application, Section 2.3 and Tables 2.1-1 and 2.3-1. Scout filed subsequent updates to and a Final Application (filed almost 3 months after the adjudicative hearing on November 8, 2023) that sets out this ultimate requested scope of its proposal.

² For an overview of the Project boundary and its overall layout options see Application Figure 2.3-1 (Turbine Layout Option 1 – 244 turbines with maximum height of 499 feet) and Figure 2.3-2 (Turbine Layout Option 2 – 150 turbines with maximum height of 657 feet). The subsequent figures in the ASC illustrate the Micrositing Corridors.

impacts of the Project proposal on the environment and on the broad interests of the public, including affected tribes, while still recognizing the need for abundant clean energy. The Council recommends requiring a reduced Project footprint to reduce impacts to wildlife, visual resources, and tribal cultural resources including sacred places. The identified mitigation measures result in a Project that is significantly reduced in scope and less prominently visible. With the recommended mitigation measures, the proposed Project meets the requirements of applicable law and comports with the policy and intent of Chapter 80.50 RCW.

II. Detailed Summary of the Application and the Council's Review Process

A. Scout Clean Energy and the Horse Heaven Wind Farm

The Application: On February 8, 2021, Scout Clean Energy, LLC filed an Application for Site Certification to construct and operate the Horse Heaven Wind Farm, a renewable energy generation facility including wind and solar energy generation with battery energy storage systems and supporting facilities. Scout is a renewable energy company headquartered in Boulder, Colorado.

The Project: The Project's Lease Boundary as proposed would encompass approximately 72,428 privately-owned acres principally used for dryland wheat farming. The Facility would be in the Horse Heaven Hills area of unincorporated Benton County, Washington, approximately 4 miles south/southwest of Kennewick and the larger Tri-Cities urban area, along the Columbia River (the Site). The Application seeks authority to operate no more than 231 wind turbines that would generate up to 1,150 MW and solar arrays that would generate up to 800 MW, along with up to two BESS facilities.³ The wind turbines and supporting facilities would encompass an 11,850-acre Micrositing Corridor within the Project Lease Boundary; the Micrositing Corridor is approximately 25 miles in length and extends eastward from Benton City to Finley.⁴ The Solar Siting and BESS areas would encompass 10,755 acres, of which 5,447 acres are proposed to be occupied by up to two solar arrays.

B. The Council and the Application Review Process

The Council is a Washington state agency established under RCW 80.50.010 to advise the Governor in deciding which proposed locations are appropriate for siting specified energy facilities, including alternative energy resource facilities that choose to apply for certification under RCW 80.50. RCW 80.50.060(1)(b). The Council's mandate is to balance need for abundant energy at a reasonable cost with the broad interests of the public. RCW 80.50.010; see also Washington Administrative Code (WAC) 463-47-110.

³ The original Application (filed February 8, 2021) sought authority to operate up to 244 wind turbines and up to three solar arrays. See Application, Sections 2.1 and 2.3 and Tables 2.1-1 and 2.3-1. Scout filed a subsequent update, dated 12/9/22, and a Final Application submitted September 25, 2023, which sets out this ultimate requested scope of its proposal.

⁴ For an overview of the Project boundary and its overall layout options see Application Figure 2.3-1 (Turbine Layout Option 1 – 244 turbines with maximum height of 499 feet) and Figure 2.3-2 (Turbine Layout Option 2 – 150 turbines with maximum height of 657 feet). The subsequent figures in the ASC illustrate the Micrositing Corridors.

Council representatives participating in this proceeding are Kathleen Drew, Council Chair; Elizabeth Osborne, Department of Commerce (Commerce); Eli Levitt, Department of Ecology (Ecology); Mike Livingston, Department of Fish and Wildlife (WDFW); Lenny Young, Department of Natural Resources (DNR); Stacey Brewster, Washington Utilities and Transportation Commission (UTC); and Ed Brost, Benton County. Adam Torem, Administrative Law Judge, was retained by the Council to facilitate the adjudicative process.

The Council's review of the Project application for site certification consists of multiple separate and distinct procedural steps. A detailed summary of the activities associated with each step are listed below.

C. Informational Public Hearing

EFSEC must conduct a public informational hearing in the County of the proposed project not later than sixty days following the receipt of an application. RCW 80.50.090(1), WAC 463-26-025. This hearing shall consist of a presentation of the proposed project by the applicant and the general public shall be afforded an opportunity to provide written or oral comments. WAC 463-26-025.

Consistent with this requirement, the Council conducted a Public Informational Hearing on March 30, 2021. Due to restrictions around public gatherings associated with the COVID-19 pandemic, this meeting was not held locally, but virtually through a Microsoft Teams platform. Pursuant to RCW 80.50.090 (1) and WAC 436-26-025, EFSEC staff and the Applicant gave presentations about the Project proposal and EFSEC application review process. The Counsel for the Environment was introduced and provided a description of the duties of this position. EFSEC provided public notice and invited the public to comment at this hearing.

The Council received a total of 33 oral comments during the Public Informational Public Hearing and an additional 135 written comment letters. The comments included both support and opposition to the Project as well as concern that the Project proposal did not qualify for the expedited review process⁵. Comments expressed concern for potential impacts to wildlife, tourism, viewshed, recreation, economy, native grassland and shrub-steppe habitat, property values and taxes, agriculture, aesthetics, and solid waste. In addition, comments on the EFSEC process, energy production and cost, perceived need for renewable energy sources, and dispatchable seasonal energy were received.

D. Land Use Consistency Hearing

Subsequent to the public informational hearing, EFSEC must conduct a land use consistency hearing pursuant to RCW 80.50.090(2) and WAC 463-26-050. The Council must then decide whether the proposed site is consistent and in compliance with local land use plans and zoning ordinances. RCW 80.50.090(2); see also WAC 463-26-110.

⁵ The Applicant requested expedited process in writing, pursuant to RCW 80.50.075(1), in the cover letter submitted with the initial application. Subsequently, the Applicant withdrew the request for expedited process in a [letter dated March 29, 2021](#).

The Council held a Land Use Consistency hearing virtually on March 30, 2021, to determine whether the Project's use of the proposed site is consistent with local or regional land use plans and zoning ordinances in effect at the time the Application was submitted. RCW 80.50.090, WAC 463-14-030. Information was provided by both the Applicant and the County at this hearing. The Council allowed for but did not receive any testimony from members of the public. The Council determined the Project to be consistent with Benton County land use plans and zoning ordinances in effect as of February 8, 2021, the filing date of the application.⁶

E. Compliance with Chapter 80.50 RCW and State Environmental Policy Act

EFSEC must comply with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, which requires consideration of probable adverse environmental impacts of governmental action and possible mitigation. EFSEC SEPA rules are set out in Chapter 463-47 WAC. The Council's SEPA responsible official is the EFSEC Executive Director. WAC 463-47-051. Following initial review of the application materials, the responsible official issued a Determination of Significance and Scoping Notice on May 11, 2021. Subsequently, a Draft EIS was issued for a 45-day public comment period on December 19, 2022, and a public hearing was held on February 1, 2023. EFSEC received X public comment submission on the Draft EIS which were reviewed and considered for EFSEC's preparation of the Final EIS document. The responsible official issued the Final EIS containing responses to comments on October 31, 2023.

The Final EIS provided a Project description and a discussion of the affected environment for each SEPA resource, this discussion is in Chapter 3 of the Final EIS. Project impacts for each SEPA resource are discussed in Chapter 4 and Cumulative impacts are discussed in Chapter 5 of the Final EIS.

All mitigation measures identified in the Final EIS for this Site Certification Agreement (SCA) and the basis for implementation can be found at the end of each resource section in Chapter 4 of the Final EIS.

EFSEC's environmental review in the Final EIS identified "significant unavoidable impacts" to multiple resources, as described below. Mitigation measures were identified in the to reduce impacts; however, certain impacts would remain significant even after the identified mitigation is imposed:

- **Cultural Resources – Traditional Cultural Properties (TCPs):** The presence of TCPs within and near to the Project Lease Boundary has been confirmed through coordination with Affected Tribes. As these TCPs have been identified throughout the Project Lease Boundary, they will be unavoidably impacted by the Project through physical encroachment, denial of tribal access to public lands, visual clutter, dust, noise, and other effects. The mitigation identified in the Final EIS to reduce these impacts is Cultural Resources-1, requiring that the Applicant and EFSEC continue engagement with affected

⁶ See Council Order No. 883.

tribes throughout the life of the Project to identify any measures that could effectively reduce impacts to TCPs.⁷

- Visual Aspects – Wind Turbines: The wind turbines proposed in Turbine Option 1 and Turbine Option 2, as defined in the Final EIS, would dominate views from many Key Observation Points and the landscape would appear strongly altered for residents, commuters, and recreationalists. The Visual-1, Visual-2, and Visual-3 mitigation measures identified in the Final EIS require the Applicant to locate all turbines at least 0.5 miles from any non-participating residences, prohibit any advertising, antennas, or other piggybacking on turbines, and require that the turbines be cleaned whenever they accumulate staining or dirt.⁸
- Recreation – Paragliding and Hang-Gliding Safety: There are approximately 20 known launch sites for paragliders and hang gliders within and near the Project Lease Boundary. Recreational gliders launching from these sites during Project operation would bear the risk of potential collision with turbines or supporting infrastructure and the reduction in safe landing space in the event of an in-flight emergency. The wake zones created by turbines' operation would also require additional caution from pilots when flying within areas approximately 3,000 feet downwind of the turbines. The Recreation-3 mitigation identified in the Final EIS requires the Applicant to coordinate with local and regional recreation groups in the development and maintenance of an adaptive safety management plan for recreational gliders.⁹

F. Tribal Engagement and Government-to-Government Consultation

RCW 80.50.060(8) requires EFSEC to provide early and meaningful participation and to gather input from federally recognized tribal governments that possess resources, rights, or interests reserved or protected by federal treaty, statute, or executive order in the area where an energy facility is proposed, including early and meaningful participation and input during the siting review process and in ongoing compliance monitoring of proposed energy facilities.

The chair and designated staff must offer to conduct government-to-government consultation to address issues of concern raised by such a tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the proposed energy facility and to seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights. The Council is directed to propose resolutions to issues raised during consultation. This section provides details on the tribal engagement for the Project, pursuant to RCW 80.50.060(8).

EFSEC seeks to avoid, minimize, or mitigate adverse effects on tribal resources and rights and aims to implement methods for increased protection of tribal cultural resources, archaeological sites, and sacred sites during the energy facility siting process. EFSEC recognizes that the Project is located within the area that was historically occupied by the

- Confederated Tribes and Bands of the Yakama Nation (Yakama Nation),
- Confederated Tribes of the Umatilla Indian Reservation [Cayuse-Umatilla-Walla Walla]

⁷ Final EIS Section 4.9, pages 4-323 – 4-325, 4-341, and 4-344 and Tables 4.9-10a, 4.9-10b, and 4.9-10c

⁸ Final EIS Section 4.11, pages 4-378 – 4-406 and Table 4.10-14b

⁹ Final EIS Section 4.12, pages 4-479 – 4-481 and Table 4.12-5b

(CTUIR),

- Nez Perce Tribe (Nez Perce), and
- Wanapum Tribe.

Following receipt of the ASC and the Applicant's request for expedited processing per RCW 80.50.075(1) on February 8, 2021, EFSEC notified tribal nations throughout Washington state regarding receipt and processing of the ASC on February 17, 2021. Notices announcing the March 30, 2021, Public Informational Hearing and Land Use Hearing were issued to tribal nations on March 2 and 9, 2021. On April 29, 2021, EFSEC issued letters to tribal governments and nations across Washington State announcing an EIS would be prepared and that the Cultural Resource coordination with the Department of Archaeology & Historic Preservation (DAHP) had been initiated. The letter requested coordination with the tribal governments regarding cultural resources. The direct mailing of notices were sent to:

- Confederated Tribes and Bands of the Yakama Nation,
- Confederated Tribes of the Chehalis,
- Confederated Tribes of the Colville Reservation,
- Confederated Tribes of the Umatilla Indian Reservation,
- Cowlitz Indian Tribe,
- HOH Indian Tribe,
- Jamestown S'Klallam Tribe,
- Kalispel Tribe,
- Lower Elwha Klallam Tribe,
- Lummi Nation,
- Makah Tribe,
- Marietta Band of the Nooksack Tribe,
- Muckleshoot Indian Tribe,
- Nez Perce Tribe,
- Nisqually Indian Tribe,
- Port Gamble S'Klallam Tribe,
- Puyallup Tribe,
- Quileute Nation,
- Quinault Indian Nation,
- Samish Indian Nation, Sauk-Suiattle Tribe,
- Shoalwater Bay Indian Tribe,
- Skokomish Indian Tribe,
- Snoqualmie Indian Tribe,
- Spokane Tribe,
- Squaxin Island Tribe,
- Stillaguamish Tribe of Indians,
- Suquamish Tribe,
- Swinomish Indian Tribal Community,
- Tulalip Tribes,
- Upper Skagit Tribe, and the
- Wanapum Tribe.

Following the May 11, 2021 SEPA Determination of Significance, scoping Notices were issued May 27, 2021, directly to the same tribal nations that received notices for the Public Informational Hearing and Land Use Hearing. EFSEC received SEPA scoping comments from the Yakama Nation in a letter dated May 19, 2021¹⁰. EFSEC received scoping comments from the CTUIR in a letter dated June 10, 2021¹¹. EFSEC recognizes that government-to-government consultation, as envisioned in RCW 43.376, the 1989 Centennial Accord, and the 1999 Millennium Agreement is distinct from the required regulatory public comment periods and staff-level engagement. During EFSEC's review of the application the CTUIR and Yakama Nation requested formal consultation with EFSEC.

¹⁰ In their [May 9, 2021 letter](#) the Yakama Nation requested EFSEC consider energy production needs and impacts to Traditional Cultural Properties. (fill in footnote description)

¹¹ In CTUIR's [June 10, 201 Scoping Comment letter](#) (fill in footnote description)

The CTUIR requested formal consultation with EFSEC in a letter dated April 9, 2021¹². The CTUIR Cultural Resources Protection Program (CRRP) conducted research on the traditional uses associated with the Project area. The CTUIR provided an Executive Summary of the Traditional Use Study of the Project to EFSEC June 2022. Impacts to native place names associated with ancient use and knowledge of the land and beliefs about the culture and nature of the world, historic properties of religious and cultural significance, potential for disturbance of sacred ancestral burials, loss of access to First Foods, adverse effects to wildlife, and the loss of storytelling sites were identified in the summary. The CTUIR notified EFSEC in a letter dated October 10, 2023, that the CTUIR “have come to a mutual agreement to mitigate the adverse effects the Project will have on cultural resources and historic property of religious and cultural significance to the CTUIR” with Horse Heaven Wind Farm, LLC (the Applicant). The CTUIR stated that their “concerns have been addressed for the proposed Project with respect to cultural resources and historic properties of religious and cultural significance to the CTUIR”. As the CTUIR indicated that their concerns had been independently addressed, no subsequent formal consultation occurred between EFSEC and the CTUIR.

During EFSEC’s preparation of the Project Draft EIS, Yakama Nation cultural resource program staff provided valued technical review and comment on the Affected Environment and Analysis of Potential Impact for the Historic and Cultural, Wildlife and Habitat, and Vegetation resources. This coordination and document review continued through the publication of the Final EIS on October 31, 2023. During technical coordination between EFSEC and Yakama Nation staff, the Yakama Nation requested formal consultation with EFSEC expressing concerns regarding the impacts and characterization of archaeological resources, impacts to historic properties of religious and cultural significance to Indian Tribes (commonly referred to as traditional cultural properties or places, or TCPs), and wildlife. EFSEC provided a formal letter from the EFSEC Chair to initiate formal consultation on January 5, 2023¹³. Consequently EFSEC received an invitation from the Yakama Nation Council for the EFSEC Chair to attend the March 2023 Yakama Nation Council meeting. Attendance by the EFSEC Chair and staff at the Yakama Nation Council meeting constituted formal consultation and initiated a series of focused Project meetings between EFSEC staff, Yakama Nation staff, Yakama Nation legal counsel, and DAHP beginning in April 2023 and continuing into 2024.

The meetings focused on potential impacts to cultural resources and wildlife. Consultation and continued dialogue with the Yakama Nation provided an effective way to share information and better understand concerns and impacts related to TCPs. This coordinated effort informed the SEPA process and mitigation measures included in the Final EIS and Site Certification Agreement. Mitigation identified as Cultural Resources-1, or CR-1, as Traditional Cultural Properties Mitigation (see Site Certification Agreement Appendix 2). Cultural Resources-1 requires that the Applicant and EFSEC continue engagement with affected tribes throughout the life of the Project to identify any measures that could effectively reduce impacts to TCPs. The Yakama Nation staff also provided a confidential map of project impacts to TCPs that were included under separate cover to the Council with the Final EIS, which was then considered by the Council during deliberations.

¹² [April 9, 2021 CTUIR Consultation Request Letter](#) (insert footnote here)

¹³ [January 5, 2023 Yakama Nation Consultation Letter](#) (insert footnote here)

The Yakama Nation petitioned for, and was granted, intervention status during the adjudicative proceedings. Information provided during that process was considered by the Council in development of the Adjudicative Order, No. 892, and ultimately, in this recommendation.

Informed in part by this government-to-government consultation and tribal engagement, the Draft and Final EIS identified significant impacts to tribal cultural resources. In a letter dated January 25, 2023¹⁴, DAHP stated:

DAHP concurs that the proposed project will have significant direct and cumulative impacts on cultural resources including Traditional Cultural Properties, archaeological sites, and the larger cultural and natural landscapes that hold these significant cultural, historic, sacred, and tribal places.

G. Adjudicative Proceeding

The Council's adjudicative process, as outlined in RCW 463-30, its participants and the Council's findings and conclusions regarding the contested issues are set out in detail in the Adjudicative Order, Order No. 892, Attachment 4 to this Recommendation. This Recommendation Order will generally cite, rather than restate, Adjudicative Order content. The Adjudicative Order, pursuant to RCW 34.05.461(4), confined its scope to the matters of record and did not consider the SEPA process.

As a result of confidential evidence presented by Yakama Nation elders and the Tribe's archaeologist in the adjudicative hearing, the Council learned that constructing the Horse Heaven Wind Farm would result in unavoidable negative impacts to Yakama Nation (TCPs). The Council found in the adjudicative order that Scout's Project design does not sufficiently avoid or minimize impacts to Yakama Nation TCPs. Those impacts can be reduced by altering Project design in order to meet the directive in RCW 80.50.060(8) to seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources.

In the Adjudicative Order, on the topic of wildlife impacts, the Council found that numerous environmental stressors, including loss of shrub-steppe habitat, are negatively influencing the ability of ferruginous hawks to persist in Washington State, and that the Project, as proposed, would pose a new and significant threat to the ferruginous hawk. The Council also found that the Applicant had not offered sufficient assurance or identified sufficient mitigation measures to demonstrate the Project would produce only minimal adverse effects on the ferruginous hawk. The Council concluded that additional mitigation measures must be imposed on the Project to protect existing ferruginous hawk nests and habitat and also to minimize impacts on the ability of ferruginous hawks to return to certain areas of historic usage. The Council also found that pronghorn antelope travel through and forage within the Project boundary and that the Project's solar arrays will diminish and fragment pronghorn grazing habitat. However, there is insufficient research or data available to fully understand the potential impact of wind turbines on pronghorn antelope and their ability to make use of habitat in and around wind farms.

¹⁴ [January 25, 2023 DAHP Review Letter](#) (insert footnote here)

Based on public comments and testimony presented in the adjudication, the Council found that the Project, as proposed, would visually transform the region and, due to the location of wind turbines along ridgelines, be especially impactful on the communities of Benton City and the City of Kennewick due to an undesirable “skylining” effect. Tourists who come to Benton County to enjoy Eastern Washington’s wide-open spaces and unobstructed views would no longer be able to do so within sight of wind turbines or solar arrays. The Council finds the Project, as proposed, would negatively impact recreational opportunities currently enjoyed by local hang gliders and paragliders. The Council further found the Project would alter views previously enjoyed by hikers, bikers, and tourists visiting the region.

Although the Applicant complied with EFSEC’s established standard to prevent wind turbines from looming over residential structures neighboring the Project, the elimination of turbines from certain areas within the proposed micro-siting corridor is needed to minimize the visual impact of the Project on the Tri-Cities region and on Yakama Nation TCPs.

Finally, the Council heard concerns from witnesses that it is not possible to use aerial firefighting to suppress wildland fires among and adjacent to wind turbines. Adjudication witnesses spoke particularly to the use of aerial fire suppression on the slope and ridgeline immediately to the north of and paralleling the Project area.

III. RCW 80.50.010 Standard for Recommendation

State law establishes policies that inform how the Council is to exercise its authority to develop a recommendation to the Governor on an application for site certification.

With regard to need for clean energy facilities and the interests of the public, RCW 80.50.010 provides as follows:

It is the policy of the state of Washington to reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities.

...

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of all energy facilities . . . will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

State policy mandates the development of power that satisfies renewable energy requirements. Washington's emissions reduction requirements include a statewide 45 percent reduction by 2030, 70 percent reduction by 2040, and 95 percent reduction by 2050. RCW 70A.45.020(1)(a)(ii)–(iv). The Climate Commitment Act contemplates that meeting Washington's climate goals will require coordinated, comprehensive, and multisectoral implementation of policies, programs, and laws. RCW 70A.65.005(2) Among the State's economic and climate policies is the Clean Energy Transformation Act ("CETA"), which requires all electric utilities serving retail customers in Washington to be greenhouse gas neutral by 2030. By 2045, utilities cannot use offsets anymore and must supply Washington customers with electricity that is 100 percent renewable or non-emitting. Amid this broader policy context, the Washington legislature recognizes in RCW 80.50.010 the need for clean energy and has directed the Council to encourage the development of clean energy sources and the provision of abundant clean energy at reasonable cost.

Another aspect of need for clean energy facilities, regarding the economic viability of an applicant's project and aspects of market demand, was resolved in *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 197 P.3d 1153 (2008). Need in this regard is an applicant's business decision and is outside the scope of Council review.

In summary, in its recommendation to the Governor, the Council must carefully consider the evidence in the record and seek a balance between the need for clean energy at a reasonable cost and the need to ensure that the location of energy facilities will produce minimal adverse effects on the environment.

IV. Applying the Statutory Standard to the Information Presented

The Council has considered the application for site certification, the adjudicative record, the Final EIS, the public comments, government-to-government consultations with the Yakama Nation, and the agreement between the applicant and the Confederated Tribes of the Umatilla Indian Reservation. As a result of this review, the Council finds that the project should be approved but with conditions, including the elimination of project elements from the portions of the proposed Project area where the adverse impacts are highest. The Council is persuaded that the project, as proposed, presents compounding impacts to a number of resources of concern, including, but not limited to: the ferruginous hawk, wildlife movement corridors, shrub-steppe habitat, noise, visual aesthetics, shadow flicker, archaeological and architectural resources, traditional cultural properties, and recreational opportunities.

As a starting point, the mitigation measures identified in the Final EIS should be required as conditions of approval for the reasons described in that document. The Final EIS anticipated and identified mitigation for impacts raised by public commenters, the adjudication witnesses, and the Yakama Nation.

In addition to the mitigation identified in the Final EIS, in order to minimize multiple, compounding impacts, the Council recommends that turbines be excluded from the sections of the wind micro-siting corridor identified as "Class 3 Impact" in Figures 2-5 and 2-6 of the Final EIS.

The Council recommends excluding all such turbines and their associated sections of the wind micro-siting corridor from development. All Class 3 turbines are within 2 miles of a historically identified ferruginous hawk nest. The Council heard testimony and received evidence that 2-mile buffers around both active and historic nest sites are critical for ferruginous hawks, a state endangered species. The Council believes that prohibiting the siting of wind turbines in these areas would not only minimize habitat disruption and risk of turbine strikes for ferruginous hawks if they use or return to these nesting areas, but would also result in substantial decreases in Project impacts to Yakama Nation cultural resources, the Horse Heaven Hills viewshed, paragliding and hang gliding, and areas of greatest concern regarding possible obstruction to aerial firefighting. This recommended restriction on the placement of wind turbines is set forth in Spec-5 in the draft site certification agreement. It replaces the Spec-5 mitigation measure from the Final EIS. In addition, and for the same reasons, the Council recommends prohibiting the siting of other primary project components (specifically solar arrays and BESS) within 0.5 miles of a historically identified ferruginous hawk nest. The Spec-5 mitigation measure has been included within Appendix 2 of the SCA.

Impacts to vegetation and habitat were identified in the Final EIS. The Final EIS found proposed solar arrays to be the most impactful Project component affecting habitats of concern. Installation of solar arrays are anticipated to result in approximately 94 percent of the permanent impacts to these habitat types (see Table 4.6-4 of the Final EIS). The Final EIS identified mitigation includes compensatory mitigation and revegetation monitoring where impacts are not avoided as outlined in Veg-4 from Appendix 2 of the SCA. But in consideration of the additional information from the adjudication and government-to-government consultation, the Council concludes that a more protective approach to mitigation for these impacts is warranted. The Council recommends that a more protective condition be imposed, which is identified as Veg-10 in Appendix 2 of the SCA. This measure would prohibit the siting of any solar arrays on rabbitbrush shrubland or WDFW-designated Priority Habitats. Given the overall impacts of the project on wildlife species of concern, the Council recommends avoidance as the most appropriate mitigation for Priority Habitat in the Project footprint.

Impacts to wildlife movement were also identified in the Final EIS. Project infrastructure, including solar array fencing, turbines, and linear features such as power lines were identified as creating barriers to movement for larger animals. Mitigation identified in the Final EIS, Hab-1, would require the creation of a Corridor Mitigation Plan for any Project components sited within movement corridors modeled as medium to very high linkage. However, again after a review of the entire record, including the adjudicative record, the Council has determined that additional restrictions are appropriate to further reduce impacts to wildlife movement through the Project. The Council therefore recommends modifying Hab-1 to prohibit the siting of any primary Project components (specifically wind turbines, solar arrays, and BESSs) in corridors modeled as medium to very high linkage and to prohibit the siting of any secondary Project components (i.e., roads, transmission lines, substations, MET¹⁵ and ADLS towers¹⁶, and laydown yards) in corridors modeled as high to very high linkage unless co-located with existing infrastructure, such as roads or transmission corridors. A Corridor Mitigation Plan would still be required for any secondary

¹⁵ Meteorological Towers (MET)

¹⁶ Aircraft Detection Lighting System (ADLS towers)

components sited in medium to very high linkage corridors. These changes will reduce Project impacts on modeled wildlife movement corridors and have been made following coordination with WDFW staff.

With the mitigation measures proposed in the Final EIS, conditions identified in the adjudicative order, and the foregoing additional conditions based on the Council's consideration of the public comments, adjudicative record, and government-to-government consultation, the Council finds that the Project conforms to the legislative intent expressed in RCW 80.50.010. Weighing the imperative to develop new sources of clean energy against the evidence of adverse project impacts, the Council finds it cannot recommend denial of the Project, but the majority of the Council concludes the most significant adverse effects of the Project, including the impacts to Yakama Nation TCPs will be minimized through all reasonable and available methods.

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V. Conclusion and Recommendation

On the basis of the entire project record, and with the conditions and modifications described in this report, the Council recommends that the Governor approve the Application and execute the draft site certification agreement.

The record before the Council supports the decision to recommend approval of the Project, subject to the restrictions on project infrastructure and the other mitigations and protective measures identified in this Recommendation. Including these elements in a Site Certification Agreement will, in the Council's judgment, minimize the adverse local impacts of the project as much as is reasonable consistent with the balancing of policies described in RCW 80.50.010. This will not fully mitigate all adverse impacts, particularly impacts to landscape and other natural features in and around the project site that the Yakama Nation has identified as having special cultural significance. However, the Council is persuaded that projects aimed at meaningfully mitigating climate change cannot be hidden from public view. Like all energy facilities, they will necessarily have impacts. The question is not whether all impacts must be avoided. They cannot be. Instead, the question is whether all reasonable measures have been required to mitigate and minimize them, with the full understanding of the tradeoffs and benefits of the project. Most important is encouraging the development of abundant clean energy at a reasonable cost to meet the state's greenhouse gas reduction obligations, and to mitigate the significant near-term and long-term impacts from climate change.

Signatures

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL

Kathleen Drew, Chair

Elizabeth Osborne
Department of Commerce

Eli Levitt
Department of Ecology

Mike Livingston
Department of Fish and Wildlife

Lenny Young
Department of Natural Resources

Stacy Brewster
Utilities and Transportation Commission

Ed Brost
Benton County

Notice to Parties About Procedures for Administrative Relief: Administrative relief may be available through a petition for reconsideration, filed within 20 days of the service of the Orders within the Recommendation Package to the Governor. If any such petition for reconsideration is filed, the deadline for answers is 14 days after the date of service of each such petition. Since all Orders contained within the Recommendation Package to the Governor are integral components of the recommendation and served as a package to the parties, the Council requires any request(s) for reconsideration to be filed on the full Recommendation Package, and not on individual elements of the package. The formatting of the petitions shall be governed by WAC 463-30-120 and shall be limited to 50 pages.

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Attachment 1:
Cover letter

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Attachment 2:
Index of Supporting Documentation

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Attachment 3:
File Name Abbreviations and Acronyms

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Attachment 4:
Order No. 892 Final Adjudicative Order

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Attachment 5
Draft SCA

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