Applicant-Proposed Changes to:

SITE CERTIFICATION AGREEMENT

FOR THE HORSE HEAVEN WIND FARM

between

THE STATE OF WASHINGTON

and

HORSE HEAVEN WIND FARM, LLC

This Site Certification Agreement (Agreement or SCA) is made pursuant to Revised Code of Washington (RCW) 80.50 by and between the State of Washington, acting by and through the Governor of Washington State, and Horse Heaven Wind Farm, LLC (Certificate Holder).

Horse Heaven Wind Farm, LLC and Scout Clean Energy LLC (Scout) filed, as permitted by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of a wind energy, battery energy storage system, and solar powered generation facility, to be located in Benton County, Washington. The Council reviewed Application EF-210011 and recommended approval of the Revised Final Application dated September 25, 2023 and execution of a draft Site Certification Agreement by the Governor. On April 29, 2024, the Governor approved this Site Certification Agreement authorizing Horse Heaven Wind Farm, LLC to construct and operate the Horse Heaven Wind Farm Project (Project).

The parties hereby now desire to set forth all terms, conditions, and covenants in relation to such site certification in this Agreement pursuant to RCW 80.50.100(2).

ARTICLE I: SITE CERTIFICATION

A. Site Description

The Certificate Holder plans to construct and operate a renewable energy-generating facility with a combination of wind and solar facilities, as well as battery energy storage systems (BESS). The project components will predominantly be on leased land within the Horse Heaven Hills area in unincorporated Benton County approximately four miles south/southwest of city of Kennewick and the larger Tri-Cities urban area. The legal description is included in Appendix 3 to this Agreement.

B. Site Certification

The State of Washington hereby authorizes Horse Heaven Wind Farm, LLC (Certificate Holder) and any and all parent companies, and any and all assignees or successors approved by the Council, to construct and operate the Horse Heaven Wind Farm Project as described herein, subject to the terms and conditions set forth in Council's Report to the Governor, Recommendation on Application Docket No. EF-220011 (Appendix 1 to this Agreement), and this Site Certification Agreement (SCA).

The construction and operation authorized in this Agreement shall be located within the areas designated herein and in the Application for Site Certification (ASC) submitted by Horse Heaven Wind Farm, LLC on February 8, 2021, revised June 15, 2022, December 29, 2022, and finalized September 25, 2023, as restricted in the Project Description set forth in Article I.C.

This Agreement authorizes the Certificate Holder to construct the Horse Heaven Wind Farm Project such that commercial operation commences no later than ten (10) years from the effective date of this SCA, subject to possible extension by the Council if construction is underway and proceeding to timely completion. Project construction must start within ten years of the effective date of the SCA as defined in WAC 463-68-030 and 463-68-040.

If the Certificate Holder does not begin construction of the Project within five (5) years of the effective date of the SCA, then at least ninety days prior to the end of the five year period, the Certificate Holder must report to the Council its intention to continue and will certify that the representations in the SCA, environmental conditions, pertinent technology, and regulatory conditions have remained current and applicable, or identify any changes and propose appropriate revisions to the Agreement to address changes as required in WAC 463-68-060. Construction may begin only upon prior Council authorization and approval of such certifications per WAC 463-68-070. If the Certificate Holder does not begin construction of the Project within ten (10) years of the effective date of the SCA all rights under this SCA will cease. If commercial operations have not commenced within 10 years of the effective date of the SCA, the Agreement expires unless the Council approves an extension of the term of the Agreement as requested by the Certificate Holder (WAC 463-68-080).

Subject to the restrictions described in Article I.C, below, the Project will consist of a maximum nameplate energy generating capacity of up to 1,150 Megawatts (MW) output as alternating current (MWac) and will include: wind turbines, photo voltaic (PV) panels, single axis tracking

PV modules and inverters, an electrical collection system, BESS, underground communication lines, Project substations, operation and maintenance facilities, access roads, interior roads, security fencing, a collector substation, electrical interconnection infrastructure, meteorological towers, and control houses. The Project may include up to four Project substations.

C. Project Description

~~Consistent with the Report to the Governor, Recommendation on Application Docket No. EF-220011, the following restrictions are imposed on the facility as described in the final ASC dated September 25, 2023:~~

~~1. Turbines shall not be constructed within a 2-mile radius of ferruginous hawk nests documented in the Priority Habitat and Species (PHS) database at the time of construction; other primary Project components, specifically solar arrays and BESS, shall not be sited within 0.5 miles of a documented ferruginous hawk nest (see Appendix 2; Spec-5 Ferruginous Hawk for additional details),~~

~~2. Primary Project components shall not be constructed within movement corridors modeled as medium to very high linkage, and secondary Project components shall be located outside of corridors modeled as high to very high linkage unless co-located with existing infrastructure, such as roads or transmission corridors (see Appendix 2; Hab-1 Wildlife Movement Corridors for additional details), and~~

~~3. Solar arrays shall not be sited on any rabbitbrush shrubland or WDFW-designated Priority Habitat types (see Appendix 2; Veg-10 Shrubland and PHS Avoidance for additional details).~~

The~~se~~ restrictions, detailed in full in Appendix 2, are imposed on the facility~~substantially reduce the project footprint as described in the final ASC~~. The project authorized by this Agreement, is defined by applying the ~~above~~ Appendix 2 restrictions to the project as described below.

The Project's Lease Boundary encompasses approximately 72,428 acres and is bisected by Interstate 82 (I-82) into a western project area and an eastern project area. The turbines and supporting facilities encompass an 11,850-acre Micrositing Corridor within the Project Lease Boundary. The Solar Siting Areas and supporting facilities encompass 10,755 acres, of which a maximum of 5,447 acres will be occupied by solar arrays totaling up to 800 MWac. The Maximum Extent of the Project is 72,428 acres. The Project will be accessed from I-82, State Route 221, State Route 397, County Well Road, Sellards Road, Webber Canyon Road, Locust Grove Road, and Plymouth Road.

The majority of the Project's Lease Boundary is privately owned; however, five Washington Department of Natural Resources (DNR) parcels that are in state trust lands are located within the lease boundary. Four of these parcels may contain turbines and supporting structures.

The Horse Heaven Wind Farm Project will consist of the following components:

1. *Micrositing Corridor.* The approximately 11,850-acre corridor in which turbines and supporting facilities shall be sited during the final design.

2. *Wind Turbine Generators (WTGs)*. The wind turbine model selection is dependent on the commercial availability and technology at the time of construction. The number of turbines will not exceed 222 and the maximum turbine height at blade tip will not exceed 671 feet. The impacts resulting from the final selected turbine model would not exceed those of the example models considered in the Final Environmental Impact Statement (EIS) and SCA.

3. *Solar Modules.* The solar modules, commonly known as solar panels, are electrical devices that use mono-crystalline, poly-crystalline, or CadTe cells to generate electricity by converting sunlight into Direct Current (DC) electrical energy.

4. *Solar Arrays*. A solar array is the complete power-generating unit, consisting of multiple solar modules, tracking systems, posts, and related electrical equipment. Solar arrays will occupy up to three distinct solar areas on no more than 5,447 acres surrounded by six-foot tall security fencing. The location of the solar arrays shall be selected from three proposed locations during the final design.

5. *Solar Siting Areas*. Solar Siting Areas consist of solar arrays, BESS, and substations.

6. *Tracking System.* The solar panels shall be mounted together into solar modules on a steel racking system which utilizes a single-axis tracking system (SAT).

7. *Posts.* The tracking system is secured by steel posts which serve as the foundation. The posts are driven into the ground to a depth of approximately eight to 15 feet depending on site specific soil conditions.

8. *Cabling.* Cables collect and aggregate DC electricity prior to conversion to AC and being sent to substations. Approximately 30,000 to 35,000 linear feet of low-voltage cabling will connect the solar modules of each string in series, and likely combined multiple strings to a single combiner box. Cabling from multiple combiner boxes connect single inverters to the collection system. Cabling is mounted to the tracking system, placed in cable trays, or buried.

9. *Inverters and Transformers*. The electricity produced by the solar panels is in direct current (DC) form and converted by and inverter into alternating current (AC). The electricity from the inverters will be routed to transformers that will increase the output voltage (660 volts per individual unit) to the collection system voltage (34.5 kV). The transformers may be co-located with the inverters or centrally located within the solar array.

10. *Electrical Collector Lines.* Underground collection lines will be installed to an approximate depth of 36 inches. Some collector lines will be installed on aboveground overhead structures when a buried cable is infeasible, such as a canyon crossing. Aboveground junction boxes will be installed as required for connections and splices for the collection lines, approximately every 5,000 to 8,000 feet.

11. *Fiber-optic Cables.* Fiber-optic cables used for telemetry, control, and communication purposes will be installed to an approximate depth of 36 inches in the same location as the collector lines.

12. *Facility Substation.* The Project includes up to four substations, of which two substations will be co-located with the Operations and Maintenance facilities. Three of the substation locations are within the western project area and one in the eastern project area. Each substation will permanently occupy a 4-acre site enclosed within a security wire mesh fence and will consist of substation transformers, circuit breakers, switching devices, auxiliary equipment, control enclosure (containing equipment for control, protection, monitoring, and communications), and other associated equipment and facilities.

13. *Operations and Maintenance Facilities.* The Project includes up to two Operations and Maintenance (O&M) facilities with one directly adjacent to the project's eastern substation and one located adjacent to the western step-up substation. Each O&M facility will occupy approximately four acres and will include a single or two-story building housing operating personnel, offices, operations and communication equipment, parts storage and maintenance activities, and a vehicle parking area. The O&M facilities will also include an outdoor storage area for larger equipment and materials. The O&M facilities will be entirely surrounded by security fencing.

14. *Civil Infrastructure*. Infrastructure will include access gates, internal access roads, and security fencing.

15. *Battery Energy Storage System.* The Project includes up to two AC-coupled battery energy storage systems (BESS) capable of storing and later deploying up to 300 MW of solar-generated electricity using lithium-ion batteries and supplying it back to the grid when needed. The BESS will be placed in equipment containers on a concrete slab. The equipment containers will hold the batteries, a supervisory and power management system, cooling system, and a fire detection system. The BESS enclosures will be secured with a fence.

16. *Meteorological Towers*. The Project includes up to four permanent unguyed meteorological towers (met towers) to obtain wind data for performance management during operations. The free-standing met towers will be located within the micrositing area with heights not to exceed the maximum hub height of the turbines (up to 411 feet). The permanent towers must be marked and lighted as specified by the Federal Aviation Administration (FAA).

17. *Aircraft Detection Lighting System*. The Certificate Holder will apply to the FAA for permission to install an Aircraft Detection Lighting System (ADLS). Up to five FAA-compliant ADLS radar sensor units mounted on radar towers will interface with the~~and a~~ supervisory control and data acquisition (SCADA) system and associated communications systems will control the FAA lighting~~be~~ mounted on turbine nacelles to turn off the FAA required lighting when no aircraft is in the vicinity~~with supporting systems mounted on meteorological towers~~.

18. *SCADA System and Communications System*. Safety and control mechanisms will be monitored using a SCADA system. Turbines, met towers, solar arrays, BESS, and substations will be connected to the SCADA system via fiber-optic cables for monitoring energy generation, storage, and electrical systems.

19. *Transmission Line*. The Project includes up to three single-circuit overhead transmission lines. Up to 0.5 miles of 230 kV to connect the eastern substation to the BPA Bofer Canyon Substation; up to 4.6 miles of 500 kV gen-tie from the Project's west substation to the BPA

Webber Canyon Substation; up to 0.35 miles of 500 kV gen-tie from the Project's west solar substation and switchyard at County Well Road to the BPA Webber Canyon substation; and up to 5.4 miles of 34.5 kV solar intertie connecting the Sellards Road solar array to the Project's west solar substation and switchyard at County Well Road. There is also an optional east-west inter-tie 230 kV single-circuit overhead transmission crossing Interstate 82.

20. *Temporary Laydown Yard*. Up to two temporary laydown yards in order to construct the Project are included. Two proposed laydown yards will be established within the Project Lease Boundary to facilitate the delivery and assembly of materials and equipment.

The location of Project facilities including, but not limited to, the wind turbines, solar panels, BESS, electrical collection and distribution system, electrical transformers, electrical generation tie lines, roadways, and other related infrastructure, is generally described in the final ASC, as modified by this Agreement. The final location of the wind turbines, solar panels and other project facilities within the Project Footprint may vary from the locations shown on the conceptual drawings provided in the ASC but shall be consistent with the conditions of this Agreement and in accordance with the final construction plans approved by EFSEC pursuant to Article IV.CC.

ARTICLE II: DEFINITIONS

Where used in this Site Certification Agreement, the following terms shall have the meaning set forth below:

1. "Application" or "ASC" means the Horse Heaven Wind Farm Final Application for Site Certification received on September 25, 2023 and revised layout changes received September 27, 2023.

2. "Approval" (by EFSEC) means an affirmative written decision by EFSEC or its authorized agents including those actions and consultations delegated to Council staff regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.

3. "Begin Commercial Operation" or "Beginning of Commercial Operation" means the time when the Project begins generating and delivering electricity to the electric power grid, other than electricity that may be delivered as a part of testing and startup of the Project.

4. "BMPs" means Best Management Practices.

5. "BPA" means Bonneville Power Administration.

6. "Certificate Holder" means Horse Heaven Wind Farm, LLC, any and all parent company(s), or an assignee or successor in interest authorized by the Council.

7. "CFE" means the Counsel for the Environment serving by appointment pursuant to RCW 80.50.080.

8. "Completion of Construction" means the time when all Project facilities have been substantially constructed and are in operation.

9. “Construction” means any of the following activities: Project Site clearing, grading, earth moving, cutting or filling, excavation, preparation of roads and/or laydown areas, foundation construction including hole excavation, form work, rebar, excavation and pouring of concrete for the inverter pads and switchyard, or erection of any permanent, above-ground structures including any solar tracking assemblies, the transformer, transmission line poles, substation poles, or meteorological towers.

10. “County” means Benton County, Washington.

11. “DAHP” means the Washington State Department of Archaeology and Historic Preservation.

12. “DS” means the Determination of Significance issued on May 11, 2021 by EFSEC.

13. “DNR” means the Washington State Department of Natural Resources.

14. “Ecology” means the Washington State Department of Ecology.

15. “Effective date,” for purposes of calculating deadlines under and expiration of this Agreement, means the date on which the Governor signs this Agreement, although the Agreement must also be signed by Horse Heaven Wind Farm, LLC to become binding.

16. “EFSEC” or “Council” means the State of Washington Energy Facility Site Evaluation Council, or such other agency or agencies of the State of Washington as may hereafter succeed to the powers of EFSEC for the purposes of this Agreement.

17. “EFSEC Costs” means any and all reasonable costs, both direct and indirect, actually incurred by EFSEC with respect to inspection and determination of compliance by the certificate holder with the terms of this Agreement.

18. “EIS” or “Final EIS” means the Horse Heaven Wind Farm Final Environmental Impact Statement issued by EFSEC on October 31, 2023.

19. “FAA” means the Federal Aviation Administration.

20. “Horse Heaven Wind Farm Project” or “Project” means those Horse Heaven Wind Farm Project facilities described Article I.C, including wind turbines, solar panels and their construction areas; electrical collection/interconnection and communication systems; electrical step-up and interconnection transformers; Battery Energy Storage System; access roadways; temporary construction-related facilities; substations: and other related Project facilities. The specific components of the Project are identified in Article I.C.

21. “Lease Boundary” means the total area leased by the Certificate Holder for the Horse Heaven Wind Farm Project.

22. “Micrositing” or “micro-siting” means the final technical and engineering process by which the Certificate Holder shall recommend to the Council the final location of project facilities on the Project Footprint.

23. “NPDES Permit” means National Pollutant Discharge Elimination System permit.

24. “Project”, see definition for “Horse Heaven Wind Farm Project”.

25. “Project Footprint” means the actual footprint of the Project as determined in accordance with Article I.C.

~~26. “PTAG” means Pre-operational Technical Advisory Group as described in Article IV.G.~~

~~27.~~26. “RCW” means the Revised Code of Washington.

~~28.~~27. “Site,” or “Project Site,” means the land on which the Horse Heaven Wind Farm Project is authorized to be constructed and operated, as determined under Article I.C.

~~29.~~28. “Site Certification Agreement,” “SCA” or “Agreement” means this formal written agreement between the Certificate Holder and the State of Washington, including all attachments hereto and exhibits, modifications, amendments, and documents incorporated herein.

~~30.~~29. “State” or “state” means the State of Washington.

~~31.~~30. “Substantial Completion” means the Project is generating and delivering energy to the electric power grid.

~~32.~~31. “TAC” means Technical Advisory Committee as described in Article IV.G and Article V.B.

~~33.~~32. “WAC” means the Washington Administrative Code.

~~34.~~33. “WDFW” means the Washington Department of Fish and Wildlife.

~~35.~~34. “WSDOT” means the Washington State Department of Transportation.

~~36.~~35. “WTG” means wind turbine generator.

ARTICLE III: GENERAL CONDITIONS

A. Legal Relationship

This Agreement shall bind the Certificate Holder, and its successors in interest, and the State and any of its departments, agencies, divisions, bureaus, commissions, boards, and its political subdivisions, subject to all the terms and conditions set forth herein, as to the approval of, and all activities undertaken with respect to the Project or the Site. The Certificate Holder shall ensure that any activities undertaken with respect to the Project or the Project Footprint by its agents (including affiliates), contractors, and subcontractors comply with this Agreement and applicable provisions of Title 463 WAC. The term “affiliates” includes any other person or entity controlling, controlled by, or under common control of or with the Certificate Holder.

This Agreement, which includes those commitments made by the Certificate Holder in the ASC, mitigation requirements included in the Final Environmental Impact Statement issued October 31, 2023, and conditions identified by the EFSEC Council within the recommendation report to the governor issued on April 29, 2024, constitutes the whole and complete agreement between the State of Washington and the Certificate Holder, and supersedes any other negotiations, representations, or agreements, either written or oral.

B. Enforcement

1. This Agreement may be enforced by resort to all remedies available at law or in equity.

2. This Agreement may be suspended or revoked by EFSEC pursuant to RCW 34.05 and RCW 80.50, for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, for violations of RCW 80.50 and the rules promulgated thereunder, or for violation of any applicable resolutions or orders of EFSEC.

3. When any enforcement action of the Council is required by or authorized in this Site Certification Agreement, the Council may, but shall not be legally obligated to, conduct a hearing pursuant to RCW 34.05.

C. Notices and Filings

Filing of any documents or notices required by this Agreement with EFSEC shall be deemed to have been duly made when delivery is made to EFSEC's offices at Energy Facility Site Evaluation Council, 621 Woodland Square Loop SE, Olympia, WA 985043, or to PO Box 43172, Olympia, WA 98504-3172.

Notices to be served by EFSEC on the Certificate Holder shall be deemed to have been duly made when deposited in first class mail, postage prepaid, addressed to the Certificate Holder at Horse Heaven Wind Farm, LLC, 1805 29th Street, Suite 2050, Boulder, CO 80301 c/o General Counsel, legal@scoutcleanenergy.com and dave@scoutcleanenergy.com.

D. Rights of Inspection

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site, the Project structures, buildings and facilities, underground and overhead electrical lines, and all records relating to the construction and operation of the Project to EFSEC and its designated representatives and to EFSEC contractors in the performance of their official duties. Such duties include, but are not limited to, environmental monitoring as provided in this Agreement and monitoring and inspections to verify the Certificate Holder's compliance with this Agreement. EFSEC personnel or any designated representatives of EFSEC shall follow all worker safety requirements observed and enforced on the Project Site by the Certificate Holder and its contractors.

E. Retention of Records

The Certificate Holder shall retain such records as are necessary to demonstrate the Certificate Holder's compliance with this Agreement.

F. Consolidation of Plans and Submittals to EFSEC

Any plans required by this Agreement may be consolidated with other such plans if such consolidation is approved in advance by EFSEC. This Site Certification Agreement includes time periods for the Certificate Holder to provide certain plans and other information to EFSEC or its designees. The intent of these time periods is to provide sufficient time for EFSEC or its designees to review submittals without delay to the Project construction schedule, provided submittals made to EFSEC and/or its designees are complete.

G. Site Certification Agreement Compliance Monitoring and Costs

The Certificate Holder shall pay to the Council all EFSEC costs incurred during the construction and operation of the Project to assure compliance with the conditions of this Agreement, as required by RCW 80.50.071(2). The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable procedures.

The Certificate Holder shall deposit with EFSEC a sum to guarantee payment of all EFSEC Costs as defined in Article II.16, consistent with RCW 80.50.071(2)(a), for the period commensurate with the activities of this Agreement.

H. Site Restoration

The Certificate Holder is responsible for site restoration pursuant to the Council's rules, WAC 463-72, in effect at the time of submittal of the Application.

The Certificate Holder shall develop an Initial Site Restoration Plan in accordance with the requirements set out in Article IV.R of this Agreement and submit it to EFSEC for approval. The Certificate Holder may not begin Site Preparation or Construction until the Council has approved the Initial Site Restoration Plan, and the required site restoration financial assurance.

The Certificate Holder shall submit a Detailed Site Restoration Plan to EFSEC for approval prior to decommissioning in accordance with the requirements of Article VIII.B of this Agreement.

I. EFSEC Liaison

No later than thirty (30) days from the effective date of this Agreement, the Certificate Holder shall designate a person to act as a liaison between EFSEC and the Certificate Holder.

J. Changes in Project Management Personnel

The Certificate Holder shall notify EFSEC of any change in the primary management personnel, or scope of responsibilities of such personnel, for the Project.

K. Amendment of Site Certification Agreement

1. This Agreement may be amended pursuant to EFSEC rules and procedures applicable at the time of the request for amendment. Any requests by the Certificate Holder for amendments to this Agreement shall be made in writing.

2. No change in ownership or control of the Project shall be effective without prior Council approval pursuant to EFSEC rules and procedures.

3. Repair, maintenance, and replacement of Project facilities:

   a. The Certificate Holder is permitted, without any further amendment to this agreement, to repair and maintain Project Facilities described in Article I.C, consistent with the terms of this Agreement.

b. The Certificate Holder shall notify EFSEC of the replacement of any significant portion of the Project Facilities at least thirty (30) days prior to the replacement occurring.

4. In circumstances where the Project causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement, or where such impacts are imminent, EFSEC shall take all steps it deems reasonably necessary, including imposition of specific conditions or requirements on the Certificate Holder as a consequence of such a situation in addition to the terms and conditions of this Agreement. Such additional conditions or requirements initially shall be effective for not more than ninety (90) days and may be extended once for an additional ninety (90) day period if deemed necessary by EFSEC to pursue ongoing, or continuing temporary, arrangements under other authority, including but not limited to RCW 34.05, RCW 80.50 RCW, or Title 463 WAC.

L. Order of Precedence

In the event of an inconsistency or apparent ambiguity in this Agreement, the inconsistency or ambiguity shall be resolved by giving precedence in the following order:

1. Applicable Federal statutes and regulations;

2. Applicable State of Washington statutes and regulations;

3. The body of this Site Certification Agreement, including any other provision, term, or material incorporated herein by reference or otherwise attached to, or incorporated in, this Agreement;

4. The application of common sense to achieve a result consistent with law and the principles effected in this document.

M. Review and Approval Process; Exceptions

1. Except for the Initial and Final Site Restoration Plans, prior to any site work, the Council may delegate to the EFSEC Director authority to approve or deny the construction and operational plans required by this Agreement. The EFSEC Director shall ensure that the construction and operational plans have been sufficiently reviewed prior to approval.

2. The EFSEC Director may allow temporary exceptions from plan requirements or provisions of the SCA when such exceptions are not contrary to the purposes of the SCA, provided that a record is kept, and Council members are immediately notified. Any Council member may within seven (7) days of the notice put the item on a Council meeting agenda for review.

ARTICLE IV: PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION

A. Plan Submission Requirements

All identified plans and submissions must adhere to the requirements and obligations set forth in relevant regulations, this Agreement and the ASC.

Unless otherwise noted, all plans and submissions required prior to beginning site construction activities are required to be filed with EFSEC ninety (90) days prior the start of Construction. The Certificate Holder shall not begin Construction activities until all applicable elements of the required pre-construction plans or commitments outlined in this Agreement and the ASC are in place, and Council approval of required plans and authorization to begin construction has been obtained.

B. Notice of Federal, State, and Local Permit Approvals

The Certificate Holder shall notify the Council of all Federal, State, and Local permits, not preempted by RCW 80.50.110 and 120, that are required for construction and operation of the Project, if any, and the anticipated date of permit issuance to the Certificate Holder. The Certificate Holder shall notify the Council when all required permits have been obtained, no later than ten (10) business days after the permit has been issued. Construction shall only be initiated upon EFSEC determination that all applicable permits have been issued.

C. Mitigation Measures

During construction, operation, decommissioning, and site restoration of this Project, the Certificate Holder shall implement the conditions set forth in this Agreement, including, but not limited to, commitments presented in the ASC, mitigation measures identified in the final EIS, and conditions identified in the recommendation to the governor (see Appendix 2 for a full list).

No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall file with EFSEC a comprehensive list of these conditions, or at such time defined within the condition. For each of these mitigation measures, the Certificate Holder shall in the same filing further identify the construction plan and/or operation plan addressing the methodology for its achievement.

The specific plans and submittals listed in the remainder of this Article IV, and Articles V, VI, VII, and VIII, shall incorporate these mitigation measures as applicable. The mitigation measures included in the final EIS are presented in their entirety in Appendix 2 of this Agreement.

D. Construction Stormwater Pollution Prevention Plan

1. Notice of Intent. No later than 60 days prior to the beginning of Site Preparation the Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities.

2. Construction Stormwater Pollution Prevention Plan. No later than 60 days prior to the beginning of Site Preparation, the Certificate Holder shall submit to EFSEC a Construction Stormwater Pollution Prevention Plan (Construction SWPPP). The Construction SWPPP shall meet the requirements of the Ecology stormwater pollution prevention program (WAC 173-230), and the objectives and requirements in Special Condition S.9 of the *National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activities* issued by the Department of Ecology on January 1, 2021 or as revised. The Certificate Holder shall include measures for temporary erosion and sedimentation control in the Construction SWPPP as included in the Stormwater Management Manual for Eastern Washington.

The Construction SWPPP shall identify a regular inspection and maintenance schedule for all erosion control structures. The schedule shall include inspections after significant rainfall events. Any damaged structures shall be addressed immediately. Inspections, and subsequent erosion control structure corrections, shall be documented in writing and available for EFSEC's review on request (see Appendix 2; W-6 Wetland SWPPP).

E. Temporary Erosion and Sediment Control Plan.

The Certificate Holder shall develop a Temporary Erosion and Sediment Control (TESC) Plan. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit the TESC Plan to the Council for approval and provide a copy to Ecology for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the TESC Plan. As an alternative to submitting a separate TESC Plan, the Certificate Holder may include measures for temporary erosion and sedimentation control in the Construction SWPPP required in Article IV.D.2, above.

F. Spill Prevention, Control and Countermeasures Plan

The Certificate Holder shall develop a Spill Prevention, Control, and Countermeasures Plan (SPCCP) in the event that quantities of materials maintained on site are of sufficient quantity to qualify, consistent with the requirements of 40 CFR Part 112 and shall adhere to requirements identified in this agreement and the ASC including an employee training plan to include the use of spill response equipment, orientations identifying the location of hazardous materials, proper storage of hazardous materials, and location of spill response equipment to ensure that workers are competent in spill response (see Appendix 2; W-5 Employee Training).

The Construction SPCC Plan shall include the Project Footprint, and all access roads. The Certificate Holder shall require all contractors working on the facility to have a spill prevention and countermeasure program consistent with the above requirements. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Construction SPCC Plan. All applicable elements of the Construction SPCC Plan shall be implemented prior to the beginning of Site Preparation.

Spill response equipment shall be stored in every project vehicle regularly accessing the site during construction, operation, and decommissioning (see Appendix 2; W-8 Spill Response Equipment). In addition, an oil pan shall be placed below heavy equipment when stored or not in use on site.

G. Pre-operational Technical Advisory Group

The Certificate Holder, in consultation with EFSEC, shall establish a Pre-operational Technical Advisory Group (PTAG) as defined by mitigation measure Hab-4 in Appendix 2. The PTAG shall be established at least one year prior to construction and is responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and wildlife habitat. The PTAG shall also provide advice on adaptive management. The PTAG shall be responsible for, at a minimum:

1. Reviewing and providing technical advice on Project wildlife and habitat management plans (e.g. ferruginous hawk management plans).

2. Reviewing and providing advice to EFSEC on pre-design and pre-construction data collection requirements to address Project mitigation measures and conditions or management plans.

3. Reviewing and providing advice to EFSEC on the final Project design.

4. Advising on thresholds to be applied to the Project that would trigger the requirement for additional mitigation measures.

The PTAG shall cease to exist once the Certificate Holder has completed all planned construction and shall be replaced by the Technical Advisory Committee (TAC). The PTAG may include representation by WDFW, DNR, interested tribes, Benton County, and the USFWS. The PTAG may also include local interest groups, not-for-profit groups, and landowners. The exact composition of the PTAG will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.

The Certificate Holder shall contact the agencies and organizations identified through discussions with EFSEC requesting that they designate a representative to the PTAG, and that the agencies or organizations notify EFSEC in writing of their PTAG representative and of their member's term of representation.

The Certificate Holder shall submit to EFSEC for approval proposed Rules of Procedure describing how the PTAG shall operate, including but not limited to a schedule for meetings, a meeting procedure, a process for recording meeting discussions, a process for making and presenting timely PTAG recommendations to the Council, and other procedures that will assist the PTAG to function properly and efficiently. The Certificate Holder will provide a copy of the proposed Rules of Procedure at the first PTAG meeting for review and comment. Any modifications to the Rules of Procedure suggested by the PTAG must be approved by EFSEC prior to adoption.

The PTAG will provide advice on adaptive management and the development of the final Project layout and design as defined in the final EIS mitigation measures in Appendix 2 of this SCA. The mitigation measures may not be limited to those listed in Appendix 2 and the ultimate authority to require implementation of additional mitigation measures, including any recommended by the PTAG, shall reside with EFSEC.

H. Indirect Habitat Loss Management Plan

The Certificate Holder shall in coordination with the PTAG develop an Indirect Habitat Loss Management Plan (IHLMP) that addresses potential indirect habitat loss resulting from the Project (see Appendix 2; Hab-5 Indirect Habitat Loss Management Plan). Compensatory habitat mitigation must fully offset the loss of habitat function and value. The IHLMP must be provided to the PTAG for review 90 days prior to construction. Approval of the IHLMP shall reside with EFSEC.

The objectives of the IHLMP would be to identify a Project-specific Zone of Influence (ZOI) and required mitigation based on the Project-specific ZOI. The Project-specific ZOI would be developed based on Project conditions and may differ from the ZOI presented in the EIS. The IHLMP would include:

1. A description of the study's purpose and objectives.
2. A description of methods to define Project-specific ZOIs (e.g., gradient analysis, nest density).
3. A description of data requirements to establish Project-specific ZOIs and field programs that would be implemented (pre-construction and post-operation).
4. A description of the duration of studies required to establish Project-specific ZOIs.
5. A description of criteria to be used to compensate for loss of habitat function and value.
6. An environmental effectiveness monitoring strategy of compensatory habitat to ensure that the habitat meets success criteria.

The IHLMP would also include a series of compensatory site-selection criteria, developed in consultation with the PTAG. The selection criteria would be used to evaluate candidate habitat compensation habitats through one or more actions of land acquisition, on-site easements and restoration (excluding areas impacted by the Project such as temporary laydown areas), and/or fee-based mitigation (see Appendix 2; Hab-8 Indirect Habitat Loss Compensation). The development of conservation easements shall be prioritized. Habitats that achieve more of the criteria would be identified as the preferential sites. Selection criteria would include, at a minimum:

1. Proximity to the Lease Boundary (e.g., hierarchy of preferences with respect to location – within the Lease Boundary being the highest priority, adjacent to the Lease Boundary being the second highest priority, and off site being the third priority).
2. Protection of existing native shrub-steppe or grassland habitats.
3. Encompassing sensitive or important wildlife habitat (e.g., mapped movement corridors, ferruginous hawk core habitat, HCAs, areas of high prey abundance).
4. Proximity to Project infrastructure.

~~Fee-based mitigation to compensate for the remaining permanent and altered (indirect) impacts to purchase other lands suitable as in-kind and/or enhancement mitigation shall be provided to WDFW, or a third party identified by WDFW, and agreed to by EFSEC to purchase other lands suitable as in-kind and/or enhancement mitigation. The fee-based mitigation rationale, including a description of how much compensatory habitat would be addressed through conservation easements (see Option 1 of the ASC Draft Wildlife and Habitat Mitigation Plan mitigation strategy) and the rationale for why fee-based mitigation is required shall be submitted to EFSEC for review and approval (see Option 2 and 3 of the ASC Draft Wildlife and Habitat Mitigation Plan). Fee-based mitigation shall be determined by market rates and land sales within the general vicinity of the Lease Boundary for lands containing comparable habitat types and quality present within the Lease Boundary.~~

~~**I. Total Financial Obligation**~~

~~Fee-based mitigation will be determined and agreed to by EFSEC as a Total Financial Obligation (TFO) (see Appendix 2; Hab-8 Indirect Habitat Loss Compensation). The TFO will be determined by multiplying the cost per acre by the total Compensatory Mitigation Acres (CMA) remaining after the application of conservation easements as detailed in Option 1 of the ASC Draft Wildlife and Habitat Mitigation Plan mitigation strategy. A one-time 15% premium to cover administration and management costs for the purchased lands shall also be applied to the TFO. The TFO would be calculated based on the following: *Average Comparable Land Sale Cost (per acre)*(CMA-Option 1 Acres)*1.15 = TFO*~~

~~If construction has not begun within 12 months of the approval of the TFO, the TFO identified will expire and must be recalculated prior to beginning construction.~~

~~J.~~G. Wildlife and Habitat Management Plan

The Certificate Holder shall develop a Wildlife and Habitat Mitigation Plan, in consultation with EFSEC and WDFW (see Appendix 2~~; Hab-8 Indirect Habitat Loss Compensation~~).

1. The Plan shall specify the Certificate Holder's plan for meeting Compensatory Mitigation Obligations. The Certificate Holder's Compensatory Mitigation Obligations will be met through the mechanisms identified in the final EIS and associated staff memos.

2. Pre-construction Project layout drawings will show expected permanent and temporary land disturbances.

3. The Plan shall include a process to determine the actual impacts to habitat following the completion of construction. In the event that actual impacts to habitat exceed the expected impacts determined prior to construction, the Habitat Mitigation Plan will include a mechanism for the Certificate Holder to provide supplemental compensatory mitigation (Supplemental Mitigation). In the event of such determination, WDFW shall provide evidence of such exceedance of impacts. Supplemental Mitigation, if any, would be proportional to impacts and may take the form of additional on-site habitat enhancement or the payment of an additional fee equivalent to the value of permanently disturbed project acres to WDFW in lieu of mitigation. Any supplemental mitigation

would be established in coordination with WDFW and reviewed and approved by the Council prior to implementation.

~~K.~~H. Raptor Nest Monitoring and Management Plan

Wind turbine buffer zones shall be established around all known raptor nests and be a minimum of 0.25 miles. The Certificate Holder shall prepare a Raptor Nest Monitoring and Management Plan for review by EFSEC ~~and the Pre-operational Technical Advisory Group (PTAG)~~ if buffer zones cannot be maintained (see Appendix 2**;** Wild-8 Turbine Buffer Zones).

~~L.~~I. Species Specific Mitigation Plans

Striped Whipsnake & Sagebrush Lizard: The Certificate Holder must conduct pre-construction surveys for the striped whipsnake and sagebrush lizard prior to alteration or destruction of suitable habitat (see Appendix 2; Spec-1 Striped Whipsnake & Sagebrush Lizard). The results of the surveys would be shared with EFSEC and WDFW and any necessary setbacks or modifications to the construction schedule to minimize impacts on species observed would be determined.~~WDFW shall be contacted prior to undertaking these surveys. If these species are identified through pre-construction surveys, the Certificate Holder shall prepare a Reptile Management Plan to reduce potential impacts on habitat, mortality, and barriers to movement for review by the PTAG and approved by EFSEC prior to implementation.~~

Burrowing Owl: The Certificate Holder shall conduct pre-construction burrowing owl surveys ~~within areas of direct loss (permanent, temporary, and modified) and associated Zones of Influence (ZOI)~~. The results of these surveys would be provided to ~~the PTAG and~~ EFSEC and WDFW. If active burrowing owl burrows are documented during pre-construction surveys the Applicant will coordinate with WDFW and EFSEC on any necessary buffers around active nests during construction~~used to inform the final Project layout. If active burrows are identified within the Lease Boundary, the Certificate Holder shall develop a Burrowing Owl Management Plan for review by the PTAG and approved by EFSEC prior to implementation per Appendix 2; Spec-4 Burrowing Owl~~.

Ferruginous Hawk: The Certificate Holder shall not conduct any prolonged (greater than 0.5 day) construction-related activities within 0.6 mile of an occupied (in use) ferruginous hawk nest site, as required in Larsen et al. 2004.~~The Certificate Holder shall not site any wind turbines within core habitat in ferruginous hawk territories, defined as the area within a 2-mile radius surrounding ferruginous hawk nests in the WDFW Priority Habitats and Species (PHS) data at the time of SCA execution and any nests added to the PHS data between SCA execution and the time of construction. Other primary Project components, specifically solar arrays and BESS, shall not be sited within 0.5 miles of a documented ferruginous hawk nest. Siting of solar arrays or BESS within 0.5-2 miles of a known ferruginous hawk nest or secondary project components (i.e., roads, transmission lines, substations, etc.) within 2 miles of a documented ferruginous hawk nest may be considered if the Certificate Holder is able to demonstrate all of the following:~~

~~The nest site is no longer available,~~

~~Foraging habitat is no longer viable to the species, and~~

~~Compensation habitat would provide a net gain in ferruginous hawk habitat.~~

~~Any Project infrastructure to be sited within two miles of a ferruginous hawk nest will require prior consultation with the PTAG and approval by EFSEC and will require a project specific Ferruginous Hawk Mitigation and Management Plan (see Appendix 2; Spec 5 Ferruginous Hawk). Results of ferruginous hawk monitoring programs and adaptive management would continue through Project operation and decommissioning with review by the TAC and approval by EFSEC.~~

~~M.~~J. Revegetation and Noxious Weed Management Plan

The Certificate Holder shall develop a Revegetation and Noxious Weed Management Plan, in consultation with EFSEC staff, WDFW, and Ecology.

1. The Plan must address vegetation management activities related to Project construction and operation.

2. The Certificate Holder shall develop the Plan to require all temporarily disturbed areas to be reseeded with an appropriate native seed mix selected in coordination with WDFW.

3. In consultation with WDFW, the Plan shall include a restoration schedule that identifies timing windows during which restoration should take place, and an overall timeline for when all restoration activities will be completed.

4. The Plan shall also include benchmarks and a timeline for revegetation success, and a plan for monitoring revegetation to ensure success.

5. This plan must address the requirements set forth in BCC 15.08.220 and WAC 463-60-332(3).

6. The Plan must specify methods that will be implemented for effective noxious weed control and revegetation.

7. The plan must identify mowing schedule for vegetation maintenance and must be restricted March 15 to May 15 and limited to the extent practicable from February 1 to March 15 and May 15 to September 30.

~~**N. Corridor Mitigation Plan**~~

~~The Certificate Holder shall develop a Corridor Mitigation Plan for any secondary Project components, as defined in Hab-1, to be sited within medium to very high linkage movement corridors, in consultation with the PTAG and reviewed and approved by EFSEC. The plan shall provide rationale for siting components within wildlife movement corridors as detailed in Appendix 2; Hab-1 Wildlife Movement Corridors. Results of corridor monitoring shall be reviewed annually with the TAC to evaluate the effectiveness and apply additional measures if necessary.~~

~~**O. Livestock Management Plan**~~

~~The Certificate Holder shall prepare a Livestock Management Plan with property owners and livestock owners to control the movement of animals within the Lease Boundary during construction, operation and decommissioning (see Appendix 2; LSU-1 Livestock Management Plan).~~

~~**P. Dryland Farming Management Plan**~~

~~The Certificate Holder shall prepare a Dryland Farming Management Plan for construction, operation, and decommissioning that outline communication requirements between the Certificate Holder and the landowners. The plan would establish work windows that would allow farmers uninterrupted access to their fields for dryland wheat planting and harvesting (see Appendix 2; LSU-2 Dryland Farming Management Plan).~~

~~Q.~~K. Adaptive Safety Management Plan

To mitigate the loss of safe recreation, use for recreation enthusiasts, the Certificate Holder shall coordinate with local and regional (when appropriate) recreation groups (e.g., the Northwest Paragliding Club, the Tri-City Bicycle Club) to develop and maintain an Adaptive Safety Management Plan to continue access to recreation activities in the Project area while keeping recreation enthusiasts safe (see Appendix 2**;** R-3 Recreation Safety Management Plan).

~~R.~~L. Initial Site Restoration Plan

The Certificate Holder is responsible for Project decommissioning and site restoration pursuant to Council rules. The Certificate Holder shall develop an Initial Site Restoration Plan at least 90 days prior to the beginning of site preparation in consultation with EFSEC staff pursuant to the requirements of WAC 463-72-040 in effect on the date of Application. The objective of the Plan shall be to restore the Project Site to approximate pre-Project condition or better (see Appendix 2; LSU-5 Site Restoration Plan. Refer also to Veg-7 Detailed Site Restoration Plan, ~~Hab-1 Wildlife Movement Corridors, Hab-8 Indirect Habitat Loss Compensation,~~ Spec-5 Ferruginous Hawk, Spec-9 Ring-necked Pheasant, and Spec-12 Townsend's Ground Squirrel for additional habitat and species-specific restoration requirements).

The Initial Site Restoration Plan shall be prepared in detail commensurate with the time until site restoration is to begin. The scope of proposed monitoring shall be addressed in the Initial Site Restoration Plan pursuant to the requirements of WAC 463-72-020.

The Plan shall include the following elements:

1. A detailed engineering estimate of the costs of the Certificate Holder or Transferee hiring a third party to carry out Site Restoration. A third party is a party who is neither a parent nor a subsidiary of the Certificate Holder. The estimate may not be reduced for "net present value" and may not include any salvage value that may be realized from the sale of facility structures or equipment, property interests, or other assets associated with the facility at the time of decommissioning and Site Restoration.

2. Decommissioning Timing and Scope, as required by Article VIII.D of this Agreement.

3. Decommissioning Funding and Surety, as required by Article VIII.Q of this Agreement.

4. Mitigation measures described in the final EIS, the Revised Final Application, and this Agreement.

5. A plan that addresses both the possibility that site restoration will occur prior to, or at the end of, the useful life of the Project and also the possibility of the Project being suspended or terminated during construction.

6. A description of the assumptions underlying the plan. For example, the plan should explain the anticipated useful life of the Project, the anticipated time frame of site restoration, and the anticipated future use of the Project Site.

7. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.

8. Performing an on-site audit and preparing an initial plan for disposing of hazardous materials (if any) present on the site and remediation of hazardous contamination (if any) at the site. In particular, if the Certificate Holder constructs the Project with solar panels incorporating hazardous materials, such as Cadmium Telluride, then the Certificate Holder shall use appropriate precautions during decommissioning and removal of the solar panels to safely dispose of and to avoid, and, if necessary, remediate any soil contamination resulting from the panels' hazardous materials.

9. An initial plan for restoring the Project Site, including the removal of structures and foundations to four feet below grade and the restoration of disturbed soils.

10. Provisions for preservation or removal of Project facilities if the Project is suspended or terminated during construction.

~~S.~~M. Construction Traffic Control Plan

The Certificate Holder shall develop a Construction Traffic Control Plan, in consultation with EFSEC, the Benton County Public Works Department, and WSDOT.

1. The Traffic Control Plan must address traffic management during improvement of highway access.

2. The plan must contain measures to facilitate safe movement of vehicles in the vicinity of the construction zone and be in accordance with 23 CFR Part 655, Subpart F.

~~T.~~N. Cultural and Archaeological Resources Unanticipated Discovery Plan

With the assistance of an experienced archaeologist, and in consultation with EFSEC, Department of Archaeology and Historic Preservation (DAHP), and any concerned Tribes, the Certificate Holder shall develop a Cultural and Archaeological Resources Unanticipated Discovery Plan for monitoring construction activities and responding to the discovery of archaeological resources or buried human remains.

1. Prior to construction, the Certificate Holder shall obtain any necessary DAHP permits and perform any additional necessary archaeological work in order to comply with RCW 27.53.

2. The recommended mitigation measures included in Appendix 2; Table CR-2 Summary of Recommendations for Archaeological and Architectural Resource Mitigation shall be used in development of mitigation strategies.

3. The Certificate Holder shall obtain all necessary DAHP permits and perform all necessary archaeological work in order to comply with RCW 27.53 prior to disturbing the site.

4. The Certificate Holder shall provide copies of the draft Cultural and Archaeological Resources Unanticipated Discovery Plan for comment from the Yakama Nation and other potentially affected tribes prior to EFSEC approval.

5. The Cultural and Archaeological Resources Unanticipated Discovery Plan shall include, but not be limited to, the following:

a. A copy of the final construction and micro-siting plans for the Project and shall provide for the avoidance of archaeological sites where practical.

b. For sites to be avoided, the boundaries of identified cultural resources and buffer zones located within project boundaries shall be staked in the field and flagged as no-disturbance areas to avoid inadvertent disturbance during construction. These site markings will be removed following construction.

c. The Plan shall address alternative mitigation measures developed in coordination with DAHP and affected tribes to be implemented if it is not practical to avoid archaeological sites or isolates.

d. The Plan shall address the possibility of the unanticipated discovery of archaeological artifacts during construction.

e. If any archaeological artifacts, including but not limited to human remains, are observed during construction, then disturbance and/or excavation in that area will cease, and the Certificate Holder shall notify DAHP, EFSEC, and any affected Tribes and, in the case of human remains, the County Coroner or Medical Examiner.

i. At that time, appropriate treatment and mitigation measures shall be developed in coordination with the agencies and tribes cited above and implemented following approval by EFSEC.

ii. The Certificate Holder Shall develop a Cultural and Archaeological Resources Monitoring and Mitigation Plan in coordination with the Yakama Nation, other ~~effected~~ affected Tribes, and DAHP and submit the plan for EFSEC for final approval.

iii. If Project facilities cannot be moved or re-routed to avoid the resources, the Certificate Holder shall contact EFSEC and DAHP for further guidance, which may require the implementation of a treatment plan. If a treatment plan is required, it shall be developed in consultation with DAHP and any affected Tribes.

Mitigation measures are intended to minimize impacts on historic and cultural resources with elevated sensitivity (precontact archaeological resources, National Register of Historic Places (NRHP)-eligible historic-period archaeological resources, TCPs, and unidentified historic and cultural resources), primarily through avoidance. If avoidance is not possible, the mitigation clarifies which resources would require a DAHP permit prior to disturbance. Mitigation

measures also identify instances where engagement with DAHP, Tribes, and/or landowners would be required.

~~U.~~O. Construction Emergency Response Plan

The Certificate Holder shall prepare and submit a Construction Emergency Response Plan.

1. The Certificate Holder shall coordinate development and implementation of the Plan with applicable local and state emergency services providers.

2. The Certificate Holder shall retain qualified contractors familiar with the general construction techniques and practices to be used for the Project and its related support facilities.

3. The construction specifications shall require contractors to implement a safety program that includes an Emergency Plan.

4. The Construction Emergency Response Plan shall include consideration of the items identified in Appendix P of the ASC.

~~V.~~P. Construction Fire Control Plan

The Certificate Holder shall develop and implement a Construction Fire Control Plan in coordination with state and local agencies to minimize the risk of accidental fire during construction and to ensure effective response to any fire that does occur on the Project Footprint at any time. The Certificate Holder shall submit the Construction Fire Control Plan to EFSEC for review and approval at least ninety (90) days prior to Construction and provide a copy to Benton County Fire Districts #1 and #5. The Certificate Holder shall not begin Construction prior to obtaining EFSEC approval of the Construction Fire Control Plan.

~~W.~~Q. Construction Health and Safety Plan

The Certificate Holder shall develop and implement a Construction Health and Safety Plan in consultation with local and state organizations providing emergency response services to ensure timely response in the event of an emergency.

~~X.~~R. Construction Site Security Plan

The Certificate Holder shall develop and implement a Construction Site Security Plan in consultation with local and state organizations providing emergency response services.

~~Y.~~S. Utilities

1. The Certificate Holder Shall identify the source of potable water for use during project operations and provide to EFSEC confirmation of availability of water via a drinking well permit or some other agreed upon mechanism for supply of potable water.

2. The Certificate Holder Shall provide certification of water availability for process waters used for site construction to include all Project actions, including vegetation management and solar panel washing.

~~Z.~~T. Soil Destabilization Notification and Fugitive Dust Control

The Certificate Holder must notify EFSEC of its intent to being construction at least 90 days prior to commencing construction. This notification is referred to as a Proof of Contact: Soil Destabilization Notification (see Appendix 2; A-2 Speed Limit). The Certificate Holder shall implement appropriate mitigation measures to control fugitive dust from roads and construction activities. The Certificate Holder shall use water or a water-based, environmentally safe dust palliative such as lignin, for dust control on unpaved roads during Project construction. The Certificate Holder shall not use calcium chloride for dust suppression.

~~AA.~~U. Construction Management Plan

The Certificate Holder shall, with the assistance of Council staff, develop a detailed Construction Management Plan in consultation with affected state and local agencies.

1. The Plan shall address the Construction phases for the Project and shall be generally based on the mitigation measures contained in this Agreement and the ASC.

2. The plan shall identify the construction management protocols used to address the mitigation measures contained in this Agreement and the ASC.

~~BB.~~V. Construction Schedule

No later than thirty (30) days prior to the beginning of Construction, the Certificate Holder shall submit to EFSEC an overall construction schedule. Thereafter, the Certificate Holder shall notify EFSEC of any significant changes in the construction schedule.

~~CC.~~W. Construction Plans and Specifications

The Certificate Holder shall submit to EFSEC those construction plans, specifications, drawings, and design documents that demonstrate the Project design will be in compliance with the conditions of this Agreement.

1. The Certificate Holder shall also provide copies to WDFW, Ecology, DAHP, and other agencies as EFSEC may direct, for comment.

2. The plans shall include the overall Project site plans, equipment, and material specifications.

3. The construction plans and specifications shall be in compliance with Benton County construction and building codes.

4. The plans shall identify any items relevant to the mitigation measures contained in this Agreement, the final EIS, and the ASC.

5. The Certificate Holder shall consult with emergency services suppliers prior to preparing final road construction plans, to ensure that interior all-weather access roads are sufficient to provide reliable access by emergency vehicles.

6. In its final design for construction, the Certificate Holder shall maximize the use of existing roads and pathways and minimize the construction of new roads as much as reasonable and practical to minimize disturbance of existing habitat. The final design

shall be subject to approval by EFSEC as part of the overall construction plans and specifications.

~~DD.~~X. Federal Aviation Administration Review

1. No later than thirty (30) days prior to the beginning of Construction, the Certificate Holder shall provide to EFSEC copies of the Determination of Non-Hazard certificates issued by the Federal Aviation Administration (FAA).

2. In accordance with RCW 70A.550.020, Laws of 2023, ch. 334, § 2, the Certificate Holder shall apply to the FAA for approval to install an aircraft detection lighting system (ADLS). There is the potential for additional impacts or permitting considerations associated with this installation. If approved by the FAA, EFSEC shall review the proposed ADLS system prior to installation to determine whether any additional permits and conditions are required. Any identified additional permits and conditions would be subject to review and approval by the Council.

ARTICLE V: PROJECT CONSTRUCTION

A. Environmental Monitoring During Construction

1. Environmental Monitor (EM). EFSEC shall provide on-site environmental monitoring for the construction phase of the Project, at the Certificate Holder's cost. The EM shall be an independent, qualified engineering firm (or a person) selected by EFSEC and shall report directly to EFSEC.

2. Environmental Compliance Program for Construction Activities. The Certificate Holder shall identify and develop an Environmental Compliance Program in consultation with the EM and other EFSEC designees.

a. The Environmental Compliance Program shall cover avoidance of sensitive areas during construction, waste handling and storage, stormwater management, spill prevention and control, habitat restoration efforts begun during the construction phase of the Project, and other mitigation measures required by this Agreement, the final EIS, and the ASC.

b. The Environmental Compliance program shall develop inspection criteria used to ensure relevant mitigation commitments, approved plans, and program avoidance activities are adhered to. Inspection criteria shall include inspection checklist items, "stop work" criteria, and procedures for responding to stop work notices and program deficiencies. The Certificate Holder shall implement the program to ensure that construction activities meet the conditions, limits, and specifications set out in the Site Certification Agreement, all Attachments thereto, and all other applicable state and federal environmental regulations.

3. Copies of Plans and Permits Kept on Site. A copy of the Site Certification Agreement, Plans approved by the Council or its designees, and all applicable construction permits shall be kept at the Project Site. The lead Project construction personnel and construction project managers will be required to read, follow, and be responsible for all required compliance activities.

4. Environmental Violations and Stop-Work Orders. Upon identification of an environmental noncompliance issue, the EM will work with the responsible subcontractor or direct-hire workers to correct the violation. If non-compliance is not corrected in a reasonable period of time, the EM shall request that EFSEC issue a "stop-work" order for that portion of the work not in compliance with Project environmental requirements. EFSEC will promptly notify the EM of any "stop work" orders that have been issued. Failure to correct a violation at the request of the EM may be considered by EFSEC in exercising its authority under RCW 80.50.155 to issue penalties to persons who violate the SCA or an EFSEC-issued permit.

B. Technical Advisory Committee

The Certificate Holder, in consultation with EFSEC, shall establish a Technical Advisory Committee (TAC) as defined in Appendix 2**;** Hab-4 Establish ~~PTAG and~~ TAC. The TAC shall be established prior to Project operation ~~and will replace the PTAG~~. The TAC shall exist for the life of the Project and will be responsible for, at a minimum:

1. Advising on the monitoring of mitigation effectiveness and reviewing monitoring reports.

2. Advising on additional or new mitigation measures that would be implemented by the Certificate Holder to address exceedances of thresholds.

3. Reviewing the results of annual data generated from surveys and incidental observations and providing recommendations for alternative mitigation and adaptive management strategies, as well as advising on aspects of existing mitigation that are no longer needed.

4. The TAC may include representation by WDFW, DNR, interested tribes, Benton County, and the USFWS. The exact composition of the TAC will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.

No later than ninety (90) days prior to the beginning of Commercial Operation, the Certificate Holder shall contact the agencies and organizations listed above requesting that they designate a representative to the TAC, and that the agencies or organizations notify EFSEC in writing of their TAC representative and of their member's term of representation. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall convene the first meeting of the TAC.

No later than sixty (60) days after the beginning of Commercial Operation, the Certificate Holder shall submit to EFSEC proposed Rules of Procedure describing how the TAC shall operate, including but not limited to a schedule for meetings, a meeting procedure, a process for recording meeting discussions, a process for making and presenting timely TAC

recommendations to the Council, and other procedures that will assist the TAC to function properly and efficiently. The Certificate Holder will provide a copy of the proposed Rules of Procedure at the first TAC meeting for review and comment. The TAC may suggest plan modifications; any such modifications must be approved by EFSEC.

The TAC will be convened for the life of the Project, except that EFSEC may terminate the TAC if:

1. The TAC has ceased to meet due to member attrition; or,

2. The TAC determines that all of the pre-permitting, operational and post-operational monitoring has been completed and further monitoring is not necessary; or

3. The TAC members recommend that it be terminated. If the TAC is terminated or dissolved, EFSEC may reconvene and reconstitute the TAC at its discretion.

The TAC will provide advice on adaptive management and the development of any additional mitigation measures beyond those listed in Appendix 2 of this SCA. The ultimate authority to require implementation of additional mitigation measures, including any recommended by the TAC shall reside with EFSEC.

C. Quarterly Construction Reports

The Certificate Holder shall submit quarterly construction progress reports to EFSEC no later than thirty (30) days after the end of each calendar quarter following the start of construction. Such reports shall describe the status of construction and identify any changes in the construction schedule.

D. Construction Inspection

EFSEC shall provide plan review and inspection of construction for all Project structures, underground and overhead electrical lines, and other Project facilities to ensure compliance with this Agreement. Construction shall be in accordance with the approved design and construction plans, and other relevant regulations. EFSEC may contract with Benton County, another appropriate agency, or an independent firm to provide these services.

E. As-Built Drawings

The Certificate Holder must provide an as-built report documenting the amount of temporary and permanent disturbance associated with the Project within 60 days of completion of construction. The Certificate Holder shall maintain a complete set of as-built drawings on file for the life of the Project and shall allow the Council or its designated representative access to the drawings on request following reasonable notice.

F. Habitat, Vegetation, Fish and Wildlife

The Certificate Holder shall use construction techniques and BMPs to minimize potential impacts to habitat and wildlife. In particular, construction of the Project shall be performed in accordance with mitigation items identified in the final EIS and Section 3.4 of the ASC.

Construction shall avoid removing or disturbing trees within the Project Lease Boundary, including any disturbance within the drip-line of the tree (including topping of the tree). Tree avoidance areas should be delineated using snow fencing or similar measures. Tree disturbance and removal of trees must have EFSEC prior approval including approval of a tree mitigation plan (see Appendix 2; Veg-1 Tree Avoidance).

Surveys for special status plant species shall be conducted if avoidance of Priority Habitat and/or areas that have high potential for occurrence of special status plant species is not possible (see Appendix 2; Veg-2 Pre-Disturbance Surveys for Special Status Plant Species). Surveys shall be conducted prior to both construction and decommissioning activities. The Certificate Holder shall modify the Project design to avoid the species or, where modification is not possible, additional mitigation measures must be submitted to EFSEC for consideration. Special status plant species findings shall be documented and provided to EFSEC in an annual report. Mitigation associated with the finding of special status plant species shall be tracked by an environmental monitor.

G. As-Built Report, Offset Calculation, and Monitoring Revegetation

Within 60 days of completing construction, the Certificate Holder shall provide an as-built report that documents the amount of temporary and permanent disturbance associated with the Project as described in Appendix 2**;** Veg-4 As Built Report, Offset Calculation, and Monitoring of Revegetation. EFSEC will use this report to determine the number of years that vegetation monitoring of temporary disturbance and modified habitat shall be conducted a**s** well as the success criteria for revegetation. Submittal of annual revegetation reports to document revegetation success are required until such time EFSEC determines that areas of modified habitat and revegetated temporary disturbance have met the success criteria.

H. Construction Noise

The Certificate Holder shall use construction techniques and BMPs to minimize potential impacts of construction related noise. In particular, construction of the Project shall be performed in accordance with mitigation items identified in the final EIS and ASC.

I. Construction Safety and Security

1. Federal and State Safety Regulations. The Certificate Holder shall comply with applicable federal and state safety regulations (including regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act), as well as local and state industrial codes and standards (such as the Uniform Fire Code). The Certificate Holder, its general contractor, and all subcontractors shall make every reasonable effort to maximize safety for individuals working at the Project.

2. Visitors Safety. Visitors shall be provided with safety equipment where and when appropriate.

J. Contaminated Soils

In the event that contaminated soil is encountered during construction, the Certificate Holder shall notify EFSEC and Ecology as soon as possible. The Certificate Holder shall manage,

handle, and dispose of contaminated soils in accordance with applicable local, state, and federal requirements.

K. Light, Glare, and Aesthetics

The Certificate Holder shall use construction techniques and mitigation measures identified in the final EIS and ASC related to light, glare, and aesthetics.

Lighting

1. The Certificate Holder shall implement mitigation measures to minimize light and glare impacts as described in the ASC and the final EIS (see Appendix 2; LIG-1 LEED-certified & Security Lighting).

2. The Certificate Holder shall minimize outdoor lighting to safety and security requirements. The Certificate Holder shall avoid the use of steady-burning, high intensity lights and utilize downward-directed lighting (see Appendix 2; LIG-1 LEED-certified & Security Lighting).

Glare

1. Solar panels with an anti-reflective coating shall be utilized.

Aesthetics

1. The Certificate Holder must institute the measures identified in the ASC and final EIS (see Appendix 2; VIS-1 Foreground Turbine Locations, VIS-2 Retain Natural-appearing Agricultural Landscape, VIS-3 Turbine Cleaning, VIS-4 Solar Array Vegetation, VIS-5 Opaque Fencing, VIS-6 Retain Natural-appearing Characteristics, VIS-7 Maximize Span Length, and VIS-8 Visual Clutter).

L. Construction Wastes and Clean-Up

The Certificate Holder's waste disposal plans and schedule shall be included in the site construction plans and specifications for review and approval by EFSEC.

1. The Certificate Holder shall dispose of sanitary and other wastes generated during construction at facilities authorized to accept such wastes.

2. The Certificate Holder shall properly dispose of all temporary structures not intended for future use upon completion of construction.

3. The Certificate Holder also shall dispose of used timber, brush, refuse, or flammable materials resulting from the clearing of lands or from construction of the Project.

ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO THE BEGINNING OF COMMERCIAL OPERATION

A. Plan Submission Requirements

All identified plans and submissions must adhere to the requirements and obligations set forth in relevant regulation, this Agreement, the final EIS, and the ASC.

Unless otherwise noted all plans and submissions required prior to beginning site operation are required to be filed with EFSEC ninety (90) days prior to the Beginning of Commercial Operation. The Certificate Holder shall not begin operation prior to all applicable elements of the required plans or commitments outlined in this Agreement, the final EIS, and the ASC are in place and Council approval of required plans and authorization to begin operation has been obtained.

B. Operations Stormwater Pollution Prevention Plan

The Certificate Holder shall prepare an Operations Stormwater Pollution Prevention Plan (Operations SWPPP) in consultation with Ecology.

1. The Operations SWPPP shall include an operations manual for permanent BMPs.

2. The Operations SWPPP shall be prepared in accordance with the guidance provided in the Ecology *Stormwater Management Manual for Eastern Washington, September 2019* or as revised.

3. The Certificate Holder shall annually review the Operations SWPPP against the guidance provided in the applicable *Ecology Stormwater Management Manual* and make modifications as necessary to the Operations SWPPP to comply with current requirements for BMPs.

4. The Operations SWPPP shall specify that water used for washing of the solar panels is to not contain any solvents or other additives.

C. Operations Spill Prevention, Control and Countermeasure Plan

The Certificate Holder shall update the SPCCP for Operations in consultation with Ecology, in the event that quantities of materials maintained on site are of sufficient quantity to qualify. Spill response equipment shall be stored in every vehicle accessing the site during construction, operation, and decommissioning. In addition, an oil pan shall be placed below heavy equipment when stored or not in use on site.

1. The Operations SPCCP shall be prepared pursuant to the requirements of 40 CFR Part 112, Sections 311 and 402 of the Clean Water Act, Section 402 (a)(l) of the Federal Water Pollution Control Act (FWPCA), and RCW 90.48.080.

2. The Operations SPCCP shall include the Project Footprint and all access roads as appropriate.

3. The Operations SPCCP shall be implemented within three (3) months of the beginning of Commercial Operation.

4. The Operations SPCCP must be updated and submitted to the Council every two (2) years.

D. Noxious Weed Management Plan

The Certificate Holder shall develop an updated Noxious Weed Management Plan, in consultation with EFSEC staff, WDFW, and Ecology. The updated plan must address any relevant changes to the vegetation or weed management requirements and protocols identified prior to beginning site operation.

E. Fugitive Dust

The Certificate Holder shall implement appropriate mitigation measures to control fugitive dust from roads and construction activities. The Certificate Holder shall develop a Dust Control Plan for operation and decommissioning (see Appendix 2; Veg-5 Operation and Decommissioning Dust Control Plan).

F. Post Construction Bird and Bat Fatality Monitoring Plan

Prior to initiation of operation, a Post Construction Bird and Bat Fatality Monitoring Plan shall be developed in coordination with the TAC and EFSEC (see Appendix 2; Wild-1 Post-Construction Bird and Bat Fatality Monitoring Program). Monitoring shall be conducted for a minimum of three years. The three years of monitoring need not be consecutive; however, all post construction monitoring shall be conducted within the initial five years of operation to document variation in annual fatality rates. The monitoring program must include survey methods, timing, and effort as described in the EIS and in the ASC Appendix M Bird and Bat Conservation Strategy. Surveys shall include carcass surveys and be conducted year-round in areas with turbines, solar arrays, and transmission lines at a minimum. The Adaptive management mitigation strategies should incorporate information gathered from the pre-construction baseline bat population surveys (see Appendix 2; Wild-1~~0~~ Pre-construction Bat Monitoring) and be periodically reviewed (minimum of every five years) with the TAC during operation to consider inclusion of new science and technologies that may more efficiently reduce bird and bat fatalities.

G. Shadow Flicker

The Certificate Holder shall develop a mitigation and complaint resolution procedure to respond to any residential complaints regarding shadow flicker (see Appendix 2**;** SF-2 Complaint Resolution). The mitigation plan will include avoidance, minimization, and mitigation of shadow flicker through turbine pausing, planting trees, shading windows, or other mitigation measures. The complaint monitoring plan will be reviewed and approved by EFSEC prior to operation.

H. Operations Emergency Plan

The Certificate Holder shall submit for the Council's approval an Operations Emergency Plan for the Project to provide for employee and public safety in the event of emergencies.

1. The Certificate Holder shall coordinate development of the plan with local and state agencies that provide emergency response services in the Project Footprint.

2. Periodically, the Certificate Holder shall provide the Council with updated lists of emergency personnel, communication channels, and procedures.

3. The Operations Emergency Plan shall be in compliance with WAC 463-60-352.

4. The Operations Emergency Plan shall address in detail the procedures to be followed in the event of emergencies as outlined in Appendix P of the ASC.

I. Operations Fire Control Plan

The Certificate Holder shall develop an Operations Fire Control Plan in coordination with state and local agencies, including Benton County Fire Districts #1 and #5, to minimize the risk of accidental fire during operation and ensure effective response to any fire that does occur. The Operations Fire Control Plan must consider and address potential wildfire risk minimization and response as well as provide alternatives to aerial firefighting, which will be unavailable within the Lease Boundary due to the hazards that turbines pose to aircraft.

J. Operations Health and Safety Plan.

The Certificate Holder shall develop and, after EFSEC approval, implement an Operations Health and Safety Plan. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the event of an emergency.

K. Operations Site Security Plan.

The Certificate Holder shall develop and implement an Operations Phase Site Security Plan.

1. The Plan shall include, but shall not be limited to, the following elements:

   a. Controlling access to the site by any visitors, contractors, vendors, or suppliers;

   b. Installing security lighting and fencing; and securing access to solar panels, pad transformers, pad-mounted switch panels and other outdoor facilities.

2. A copy of the final Security Plan shall be provided to EFSEC and other agencies involved in emergency response.

ARTICLE VII: PROJECT OPERATION

A. Plan Implementation and Adherence

The Certificate Holder shall adhere to and implement the provisions of the required plans, submittals, permits, the final EIS, the ASC, and any relevant regulation during project operation.

B. Water Use and Discharge

The Certificate Holder shall ensure that all stormwater control measures and discharges are consistent with the Operations SWPPP, required by Article VI.B and the Ecology *Stormwater Management Manual for Eastern Washington, September 2019* or as revised.

C. Spills Response Plan & Equipment

The Certificate Holder shall update and maintain the SPCCP as necessary. Spill response equipment shall be stored in every project vehicle regularly accessing the site during operation. In addition, an oil pan shall be placed below heavy equipment when stored or not in use on site.

D. Noise and Vibration Emissions

The Certificate Holder shall operate the Project in compliance with applicable Washington State environmental noise regulations WAC 173-60, WAC 463-62-030, WAC 173-58, and RCW 70A.20.

The Certificate Holder shall submit a Complaint-Based Noise Monitoring and Response Plan to EFSEC for review and approval prior to operation, to address low frequency noise and aeroacoustic noise (see Appendix 2; N-4 Noise Complaint Resolution Procedure, N-5 Operation Noise Complaint Resolution).

E. Fugitive Dust Emissions

The Certificate Holder shall continue to implement dust abatement measures in accordance with the Dust Control Plan.

F. Annual Monitoring Reports

The Certificate Holder shall submit annual vegetation monitoring reports to document the success of revegetation (see Appendix 2; Veg-2 Pre-Disturbance Surveys for Special Status Plant Species, Veg-3 Special Status Plant Species Education, Veg-4 As-Built Report, Offset Calculation, and Monitoring of Revegetation). EFSEC will determine the success criteria and at which time the annual vegetation monitoring reports are no longer required based on the reported results.

G. Habitat, Vegetation, and Wildlife BMPs

During Project operations, the Certificate Holder shall implement appropriate operational BMPs to minimize impacts to plants and animals. In addition to those BMPs, the Certificate Holder shall also take the following steps to minimize impacts:

1. Implementation of the Operations Fire Control Plan developed pursuant to Article VI.I, in coordination with local fire districts, to avoid accidental wildfires and respond effectively to any fire that might occur.

2. Operational BMPs to minimize storm water runoff and soil erosion.

3. Implementation of compensatory mitigation measures identified in the final EIS must be finalized within 6 months of Beginning of Commercial Operation.

4. Implementation of a plan to monitor revegetation and noxious weed control success and erosion caused by wind events. If deficiencies are confirmed, mitigation measures shall be instituted which shall be developed in coordination with WDFW and approved by EFSEC.

H. Safety and Security

1. Personnel Safety. The safety of operating personnel is governed by regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act. The Certificate Holder shall comply with applicable federal and state safety laws and regulations (including regulations under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act) as well as local and industrial codes and standards (such as the Uniform Fire Code).

2. Visitors Safety. The Certificate Holder shall require visitors to observe the safety plans and shall provide them with safety equipment where and when appropriate.

I. Dangerous or Hazardous Materials and General Waste Management

The Certificate Holder shall handle, treat, store, and dispose of all dangerous or hazardous materials including but not limited to those related to any battery backup power sources or the optional battery energy storage system in accordance with Washington state standards for hazardous and dangerous wastes, WAC 463-74 and WAC 173-303.

Following any abnormal seismic activity, volcanic eruption, severe weather activity, flooding, vandalism, or terrorist attacks the Certificate Holder shall inspect areas where hazardous materials are stored to verify that containment systems are operating as designed.

The certificate holder shall include in its waste management plan for general waste, a commitment to recycle project components when recycling opportunities are reasonably available for wastes generated during operations and maintenance.

J. Utilities

The Certificate Holder shall provide certification of water availability for process waters used for site operation and maintenance to include potable water for site operations staff, vegetation management, and solar panel washing on an annual basis.

K. Neighboring Land Uses

Benton County is a "Right to Farm" County, codified in Benton County Code Title 14, Chapter 14.01 and 14.02. This project is located within an agricultural area, and will be subject to impacts from nearby pre-existing agricultural practices including, but not limited to: marketed produce at roadside stands or farm markets, noise, odors, dust, fumes, operation of machinery and irrigation pumps, ground and aerial seeding and spraying, the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides and associated drift of such materials; and the employment and use of labor. Impacts resulting from these activities shall not be found to be a public or private nuisance if the farm operation was in existence before the date of this agreement.

L. Decommissioning of Individual Wind Turbine Generators

During the lifetime of the project, the Certificate Holder may choose, or be otherwise required to, decommission individual WTGs without the entire project being terminated pursuant to Article VIII of this agreement.

In accordance with Article III. K, of this agreement, individual WTGs found to cause unanticipated significant adverse impact(s) on the environment may have further operating conditions imposed by EFSEC, including permanent shutdown, decommissioning, and removal from the Project Area. In addition, EFSEC retains the authority to order removal of any individual WTG that remains inoperable or is not used for more than six months.

The Certificate Holder will disassemble and remove from the Project Area the WTG being decommissioned within one year of the last date the WTG produced power for sale.

Any foundations associated with a decommissioned WTG will either be removed immediately or during full Project decommissioning, consistent with Articles VIII(B) and VIII(D)(2).

The Certificate Holder shall notify EFSEC of its intent to decommission the turbine and shall provide a schedule for decommissioning activities.

M. Shadow Flicker Mitigation Measures

The Certificate Holder shall attempt to avoid, minimize, and mitigate shadow flicker at non-participating residents (see Appendix 2; SF-1 Shadow Flicker). Shadow flicker can usually be addressed by planting trees, shading windows or other mitigation measures such as programming. ~~As a last resort~~ the control system of the wind turbine ~~could be programmed~~ to ~~pause the blades~~cease operation during the brief periods when conditions result in elevated perceptible shadow flicker.

ARTICLE VIII: PROJECT TERMINATION, DECOMMISSIONING AND SITE RESTORATION

A. Legislated Requirements

Mitigation measures applied during decommissioning shall follow the applicable legislated requirements at the time of decommissioning (see Appendix 2; Veg-6 Decommissioning Legislated Requirements).

B. Detailed Site Restoration Plan

The Certificate Holder shall submit a Detailed Site Restoration Plan to EFSEC for approval within ninety (90) days from the time the Council is notified of the termination of the Project. The Detailed Site Restoration Plan shall provide for restoration of the Project Site within the timeframe specified in Article VIII.D, taking into account the Initial Site Restoration Plan and the anticipated future use of the Project Site (see Appendix 2; Veg-7 Detailed Site Restoration Plan, LSU-5 Site Restoration Plan). The Detailed Site Restoration Plan shall address the elements required to be addressed by WAC 463-72-020, and the requirements of the Council approved Initial Site Restoration Plan pursuant to Article IV.R of this Agreement. The Certificate Holder shall not begin Site Restoration activities without prior approval from the Council. The Certificate Holder shall consult with WDFW and Ecology in preparation of the Detailed Site Restoration Plan.

C. Project Termination

1. Termination of this Site Certification Agreement, except pursuant to its own terms, is an amendment of this Agreement.

2. The Certificate Holder shall notify EFSEC of its intent to terminate the Project, including by concluding the plant's operations, or by suspending construction and abandoning the Project.

3. The Council may terminate the SCA through the process described in WAC 463-66-090, and the Council may initiate that process where it has objective evidence that a certificate may be abandoned or when it deems such action to be necessary, including at the conclusion of the plant's operating life, or in the event the Project is suspended or abandoned during construction or before it has completed its useful operating life.

D. Site Restoration Timing and Scope

Site Restoration shall be conducted in accordance with the commitments made in the Detailed Site Restoration Plan required by Article VIII.B and in accordance with the following measures:

1. Timing. The Certificate Holder shall commence Site Restoration of the Project within twelve (12) months following the termination described in Article VIII.B above.

   The period to perform the Site Restoration may be extended if there is a delay caused by conditions beyond the control of the Certificate Holder including, but not limited to, inclement weather conditions, equipment failure, wildlife considerations, or the availability of cranes or other equipment to support decommissioning.

2. Scope. Site Restoration shall involve removal of all Project components, foundations, and facilities to a depth of four (4) feet below grade; restoration of any disturbed soil to pre-construction condition; and removal of Project access roads and overhead poles and transmission lines (except for any roads and/or overhead infrastructure that Project Footprint landowner wishes to retain) (all of which shall comprise "Site Restoration"). Site Restoration shall also include the use of appropriate precautions during decommissioning and removal of any hazardous material to safely dispose of and to avoid, and, if necessary, remediate any soil contamination resulting from the hazardous materials.

3. Monthly Reports. If requested by EFSEC, the Certificate Holder shall provide monthly status reports until this Site Restoration work is completed.

4. Restoration Oversight. At the time of Site Restoration, the Project Site will be evaluated by a qualified biologist to determine the extent of and type of vegetation existing on the site. Success criteria for Site Restoration will be established prior to commencement of decommissioning activities, based on the documented pre-construction conditions, experience gained with re-vegetation during operation and the condition of the Project Site at the time of Site Restoration. The restoration success criteria will be established in the Detailed Site Restoration Plan approved by EFSEC in consultation with the designated biologist. Once restoration of the Project Site is determined to be complete, a final report of restoration activities and results will be submitted to EFSEC in consultation with the designated biologist, for review and approval.

E. Decommissioning Noxious Weed Management Plan

The Certificate Holder shall develop and submit a Noxious Weed Management Plan (or extension of the current plan) to include prevention and control during decommissioning of the Project for EFSEC review and approval (see Appendix 2; Veg-8 Decommissioning Noxious Weed Management Plan). The plan shall include monitoring for three years following decommissioning of the Project.

F. Decommissioning-Stage Traffic Analysis and Routing Survey

A third-party engineer shall provide a traffic analysis prior to decommissioning (see Appendix 2; TR-3 Decommissioning Traffic Analysis). In addition, a decommissioning traffic routing survey shall be prepared by a third-party engineer with input from the Washington Utilities and Transportation Commission to determine if current traffic control systems at railroad crossings are appropriate or if additional mitigation is needed prior to decommissioning. (see Appendix 2; TR-4 Railroad Crossing Traffic Analysis).

G. Decommissioning-Stage Traffic and Safety Management Plan

The Certificate Holder shall consult with WSDOT and Benton County on the development of a decommissioning-stage Traffic and Safety Management Plan prior to decommissioning (see Appendix 2; TR-5 Traffic Analysis – Existing Laws at Decommissioning). The Traffic and Safety Management Plan must include a safety analysis of the WSDOT-controlled intersections (in conformance with the WSDOT Safety Analysis Guide) and recommend mitigation or countermeasures where appropriate. The analysis shall review impacts from decommissioning traffic and be submitted to WSDOT for review and comment prior to decommissioning.

H. Decommissioning Dust Control Plan

The Operational Dust Control Plan shall be updated for decommissioning (see Appendix 2; Veg-5 Operation and Decommissioning Dust Control Plan.

I. Decommissioning Fire Control Plan

The Certificate Holder shall develop a Decommissioning Fire Control Plan in coordination with state and local agencies, including Benton County Fire Districts #1 and #5, to minimize the risk of accidental fire during decommissioning and ensure effective response to any fire that does occur. The Decommissioning Fire Control Plan must consider and address potential wildfire risk minimization and response.

J. Housing Analysis

Prior to decommissioning, the Certificate Holder shall provide an up-to-date analysis on the availability of temporary housing for workers (see Appendix 2; Socio-ec-1 Decommissioning Housing Survey). If sufficient temporary housing for workers is not available, the Certificate Holder shall present EFSEC with options for housing workers from outside the community.

K. Site Restoration Financial Assurance

1. Except as provided in Article VIII.Q.3 below, the Certificate Holder or any Transferee, as the case may be, shall provide financial assurance sufficient, based on detailed engineering estimates, for required Site Restoration costs in the form of a surety bond,

irrevocable letter of credit, or guaranty. The Certificate Holder must also provide pollution liability insurance coverage in an amount justified for the project. The Certificate Holder shall include a detailed engineering estimate of the cost of Site Restoration in its Initial Site Restoration Plan submitted to EFSEC. The estimate must be based on the costs of EFSEC hiring a third party to carry out Site Restoration. The estimate may not be reduced for "net present value" or other adjustments. During the active life of the facility, the Certificate Holder or Transferee must adjust the Site Restoration cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument used to provide financial assurance and must increase the financial assurance amount accordingly to ensure sufficient funds for Site Restoration.

2. The duty to provide such financial assurance shall commence sixty (60) days prior to the beginning of Construction of the Project and shall be continuously maintained through to the completion of Site Restoration. Construction of the Project shall not commence until adequate financial assurance is provided. On or before the date on which financial assurance must be established, the Certificate Holder shall provide EFSEC with one of the following financial assurance mechanisms that is reasonably acceptable to EFSEC:

a. *Surety Bond*. The Certificate Holder or any Transferee, as the case may be, shall provide financial security for the performance of its Site Restoration obligations through a Surety Bond issued by a surety listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The Performance Bond shall be in an amount equal to the Site Restoration costs. A standby trust fund for Site Restoration shall also be established by the Certificate Holder or Transferee to receive any funds that may be paid by the surety to be used to complete Site Restoration. The surety shall become liable for the bond obligation if the Certificate Holder or Transferee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least one hundred twenty days after the Certificate Holder or Transferee and EFSEC have received notice of cancellation. If the Certificate Holder or Transferee has not provided alternate financial assurance acceptable under this SCA within ninety days of the cancellation notice, the surety shall pay the amount of the bond into the standby Site Restoration trust; or

b. *Irrevocable Letter of Credit*. The Certificate Holder or any Transferee, as the case may be, shall provide financial security for the performance of its Site Restoration obligations through an irrevocable letter of credit payable to or at the direction of EFSEC, that is issued by an institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency. The letter of credit shall be in an amount equal to the Site Restoration costs. A standby trust fund for Site Restoration shall also be established by Certificate Holder or Transferee to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit shall be irrevocable and issued for a period of at least one year, and renewed annually, unless the issuing institution notifies the Certificate Holder or

Transferee and EFSEC at least one hundred twenty days before the current expiration date. If the Certificate Holder or Transferee fails to perform Site Restoration, or if the Certificate Holder or Transferee fails to provide alternate financial assurance acceptable to EFSEC within ninety days after notification that the letter of credit will not be extended, EFSEC may require that the financial institution provide the funds from the letter of credit to be used to complete Site Restoration; or

c. *Guaranty*. Certificate Holder or any Transferee, as the case may be, shall provide financial assurance for the performance of its Site Restoration obligations by delivering a guaranty to fund the Certificate Holder or Transferee's Site Restoration obligations hereunder from an entity that meets the following financial criteria:

    i. A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or AAA, AA, A, or BBB as issued by Moody's;

    ii. Tangible net worth at least six times the sum of the current Site Restoration cost estimates;

    iii. Tangible net worth of at least ten million dollars; and

    iv. Assets in the United States amounting to at least ninety percent of its total assets or at least six times the sum of the current Site Restoration cost estimates.

d. The guarantor entity's chief financial officer shall provide a corporate guaranty that the corporation passes the financial test at the time the Initial Site Restoration Plan is filed. This corporate guaranty shall be reconfirmed annually ninety days after the end of the corporation's fiscal year by submitting to EFSEC a letter signed by the guaranteeing entity's chief financial officer that:

    i. Provides the information necessary to document that the entity passes the financial test;

    ii. Guarantees that the funds to finance required Site Restoration activities are available;

    iii. Guarantees that required Site Restoration activities will be completed;

    iv. Guarantees that within thirty days if written notification is received from EFSEC that the entity no longer meets the above financial criteria, the entity shall provide an alternative form of financial assurance consistent with the requirements of this section;

    v. Guarantees that the entity's chief financial officer will notify in writing the Certificate Holder or Transferee and EFSEC within fifteen days any time that the entity no longer meets the above financial criteria or is

named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy;

vi. Acknowledges that the corporate guaranty is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guaranty;

vii. Attaches a copy of the independent certified public accountant's report on examination of the entity's financial statements for the latest completed fiscal year; and

viii. Attaches a special report from the entity's independent certified public accountant (CPA) stating that the CPA has reviewed the information in the letter from the entity's chief financial officer and has determined that the information is true and accurate.

e. If the Certificate Holder or any Transferee fails to perform Site Restoration covered by the guaranty in accordance with the approved Initial or Final Site Restoration plan, the guarantor will be required to complete the appropriate activities. The guaranty will remain in force unless the guarantor sends notice of cancellation by certified mail to the Certificate Holder or Transferee and EFSEC. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Certificate Holder or Transferee and EFSEC. If the Certificate Holder or Transferee fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from EFSEC within ninety days after receipt of a notice of cancellation of the guaranty from the guarantor, the guarantor will provide such alternative financial assurance in the name of the Certificate Holder or Transferee.

3. If the SCA is transferred after its effective date pursuant to applicable EFSEC laws and regulations, EFSEC has the right to require, consider, and approve other financial security that would provide for the Certificate Holder's performance of its Site Restoration obligations pursuant to Article VIII.Q of this Site Certification Agreement.

ARTICLE IX: SITE CERTIFICATION AGREEMENT - SIGNATURES

Dated and effective this_____day of _____, 2024.

FOR THE STATE OF WASHINGTON

_____

Jay Inslee,
Governor

FOR HORSE HEAVEN WIND FARM, LLC

_____

Michael Rucker,
CEO of Horse Heaven Wind Farm, LLC

Applicant-Proposed Changes to:

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

1. **Earth Resources (Geo) Mitigation**

   Geo-1 Soil Management: Minimize soil disturbance activities with the potential for soil compaction when soils are saturated, such as following a major precipitation event (e.g., five-day antecedent rainfall of greater than 1.1 inches during mid-October to mid-April or greater than 2.1 inches during mid-April to mid-October). Direct construction away from areas with saturated soils and where drainage may concentrate until soils are no longer saturated. Limit vehicular traffic to established access roads. Where possible, leave existing vegetation root structure intact to enhance soil stability and infiltration capacity. Utilize best management practice (BMPs) such as low-ground-pressure and/or long-reach equipment, temporary matting and work pads, and localized engineered drainage improvements (e.g., interceptor drains, detention basins). Where soil compaction is observed to have occurred, decompact subsoils to a minimum depth of 18 inches or as identified in site reclamation plans and lease agreements.
   Rationale: This mitigation measure limits erosion and disturbance of natural soil profiles.

2. **Air Quality (A) Mitigation**

   A-1 Speed Limit: Traffic speeds on unpaved areas shall be posted at no more than 15 mph, rather than the Certificate Holder-proposed 25-mph limit. The Applicant shall provide training to all employees working on-site before they are allowed to drive into the construction area. Periodic speed checks shall be performed by the construction contractor's health and safety officer and reviewed by EFSEC monthly. If speeds are found to be routinely more than 15 mph, the Applicant shall submit a corrective action plan to EFSEC within 30 days of the finding.
   Rationale: Road-related fugitive dust emissions increase with increasing vehicle speed. Consequently, one of the BMPs for mitigation of road-related fugitive dust emissions is to limit vehicle speed. The Certificate Holder has proposed to limit vehicle speed to 25 mph. Access-road-related fugitive dust from construction vehicle traffic is the single largest source of PMio and $PM2._5$ emissions from Project construction and a lower vehicle speed limit of 15 mph will further reduce fugitive PMio and $PM2._5$ emissions.

   A-2 Proof of Contact: Soil Destabilization Notification: Certificate Holder shall submit a Proof of Contact: Soil Destabilization Notification to EFSEC at least 90 days prior to commencement of construction.
   Rationale: Fugitive dust emissions are a potential concern. This notification will facilitate EFSEC awareness of commencement construction so that compliance with implementation of all Certificate Holder-proposed BMPs can be field validated.

3. **Water Resources (W)**

   [Condition W-1 to be removed, as requested and justified in Applicant's Comments on the Project Draft EIS (Jan 2023), provided as Ex. L ("Scout Jan. 2023 DEIS Comments")]
   ~~**W-1 Least Risk Fish Windows:** Project construction and decommissioning within ephemeral and intermittent streams that have active water flow shall observe the least risk windows for spawning and incubating salmonoids, which are, conservatively, August 1 to September 15 for the Yakima and Columbia Rivers and their tributaries in Benton County (WDFW 2018). Ephemeral and intermittent streams would not be subject to least risk window restrictions while those streams are dry.~~

~~**Rationale:** This mitigation measure addresses potential impacts on surface water and fish habitat and will minimize risk to aquatic species.~~

W-2 Minimize Work in Heavy Rain: Project construction and decommissioning shall be minimized during rainy periods and heavy rain—in particular, work near ephemeral or intermittent streams.
Rationale: This mitigation measure addresses potential impacts of surface water and runoff and will minimize the risk of sediment release to surface water and wetlands.

W-3 Check Dams: As indicated in Ecology (2019) BMP C207E, check dams cannot be placed or used in streams unless approved by WDFW. Check dams used for work within ephemeral or intermittent streams shall be approved by EFSEC in coordination with WDFW and Ecology prior to use. Stream crossing designs and associated mitigation plans shall be provided and approved by EFSEC in coordination with WDFW and Ecology.
Rationale: This mitigation measure addresses the use of check dams on site, which will require approval by WDFW and Ecology prior to use.

W-4 Culvert Installation BMPs: Based on the Final ASC, one culvert is proposed along one intermittent stream. Installation of the culvert shall follow WDFW Fish Passage BMPs:

- Be oriented and aligned with the natural stream channel.
- Be constructed at or near natural elevation of the streambed to avoid or minimize potential flooding upstream of the crossing and erosion below the outlet.
- Use suitable measures to avoid or minimize water from seeping around the culvert.
- Use suitable measures to avoid or minimize culvert plugging from transported debris or bedload.
- Be regularly inspected and cleaned as necessary for the life of the Project (USDA 2012).
- Cover culvert with sufficient fill to avoid or minimize damage by traffic.
- Install culverts long enough to extend beyond the toe of the fill slopes to minimize erosion.

Rationale: This mitigation measure addresses permanent impacts on ephemeral streams. It provides specifications on culvert installation to enable assessment of the potential impacts.

W-5 Employee Training: An employee training plan shall be included as part of the SPCC Plan. For the duration of the Project, employees and workers on site shall receive appropriate training according to the employee training plan to ensure that any spills are reported and responded to in an appropriate manner (Ecology 1999). This shall include training on the use of spill response equipment and orientations identifying the location of hazardous materials, proper storage of hazardous materials, and location of spill response equipment to ensure that workers are competent in spill response.
Rationale: This mitigation measure addresses potential impacts on water quality including sedimentation and accidental spill. Employee training reduces the risk of human error and increases confidence in the effectiveness of spill response in the event of accidents such as an accidental spill.

W-6 Wetland SWPPP: A Stormwater Pollution Prevention Plan (SWPPP) shall be designed specifically for work within the Micrositing Corridor adjacent to the wetland (EIS Figure 3.4-1, Section 3.4). The SWPPP shall include BMPs from the Stormwater Management Manual for Eastern Washington (Ecology 2019). The plan shall include, but not be limited to, structural measures such as installation of silt fences and sediment ponds, and non-structural measures, including routine inspection and maintenance and enforcement of BMPs, to minimize surface water runoff generated from the construction activities to the wetland.
Rationale: This mitigation measure addresses potential impacts on the wetland situated near the Micrositing Corridor. The wetland is located downgradient from the construction area, so additional mitigation measures are proposed to avoid impacts.

W-7 Clear-Span 100-Year Floodplain: Clear-span the transmission line to avoid temporary disturbance to the 100-year flood plain. Site transmission line poles outside the 100-year floodplain.
Rationale: This mitigation measure addresses physical disturbance of the 100-year floodplain, a Critical Aquifer Recharge Area.

W-8 Spill Response Equipment: Spill response equipment, such as absorbent pads or compounds, shall be stored in every Project vehicle regularly accessing the site during construction, operation, and decommissioning, excluding employee personal vehicles. In addition, an oil pan shall be placed below heavy equipment when stored or not in use on site.
Rationale: This mitigation measure addresses spill response impacts by specifying locations for spill response equipment.

W-9 Minimize Water Use: During construction, operation, and decommissioning, water use shall be minimized where possible. During drought or water shortage, schedule adjustment shall be considered to minimize water needs on the site where possible, or additional alternate off-site water supplies shall be identified.
Rationale: This mitigation measure addresses impacts on public water supply and is proposed to minimize water use on site throughout the life of the Project.

W-10 Panel Washing: During drought or water shortage, panel washing shall be postponed or alternate off-site water sources could be identified to minimize impacts on public water supply. Panel wash water shall be recycled and re-used where possible during operation.
Rationale: This mitigation measure addresses impacts on public water supply and is proposed to minimize water use on site from panel washing, if required.

W-11 Concrete Batch Plant to Avoid Streams: Laydown areas or locations where temporary concrete batch plants will be sited shall be a minimum of 100 ft from mapped streams or waterbodies.
Rationale: Siting temporary concrete batch plants outside of stream and riparian areas reduces the potential impacts off accidents and malfunctions from release of concrete wash water on water quality.

4. **Vegetation (Veg) Mitigation**

Veg-1 Tree Avoidance: Construction shall avoid removing or disturbing trees within the Project Lease Boundary. Disturbance to trees includes any disturbance within the drip-line of the tree (i.e., the area from the edge of the outermost branches), including topping, which preserves an intact root system. Disturbance within the drip-line of the tree shall be avoided as this can lead to tree mortality. The avoidance area within the drip-line of trees in work areas shall be delineated using snow fencing or similar measure to improve the visibility of avoidance zones. Trees cannot be removed without pre-approval. Where tree disturbance cannot be avoided by the Project (e.g., near transmission lines), the number and location of the trees shall be provided to EFSEC, along with a statement justifying why avoidance cannot be achieved, and a mitigation plan. The mitigation plan shall include replanting trees within the Lease Boundary to maintain the diversity of habitat structures provided by trees and will require approval by EFSEC prior to proceeding.
Rationale: Trees are a rare feature on the landscape that provide habitat value to wildlife species and structural diversity. Replanting trees may be challenging in an arid environment, and there will be a time lag before trees reach the same size and age. Veg-1 seeks to avoid physical disturbance to existing trees.

Veg-2 Pre-Disturbance Surveys for Special Status Plant Species: Special status plant species are known to occur near the Lease Boundary. Areas with increased potential for special status plant species include areas of Priority Habitat and areas identified by the Certificate Holder as potential habitat for woven spore lichen. Where possible, disturbance to Priority Habitat and high potential areas will be avoided, but if avoidance is not possible, surveys for special status plant surveys will be conducted. Surveys shall be conducted by a

qualified professional. Surveys shall be conducted prior to both construction and decommissioning activities. All findings shall be documented and provided to EFSEC in an annual report. Where special status plant species are encountered within proposed disturbance areas, the Certificate Holder will modify the Project design to avoid the species or, where modification is not possible, develop additional mitigation measures based on discussions with EFSEC and WDFW, such as relocation where a species is tolerant of relocation; minimization; or other form of mitigation. Mitigation plans for encountered special status plant species will be provided to EFSEC for consideration and to provide additional direction. Any modifications to the Project design shall also be provided to EFSEC as part of the report. An environmental monitor shall be required to track any mitigation associated with the finding of special status plant species.
Rationale: This mitigation measure minimizes potential impacts on special status plant species by providing an opportunity to modify the design to avoid any identified plants, prior to actual disturbance activities during construction and decommissioning. It also provides the opportunity to apply additional mitigation should special status plant species be encountered within disturbance areas.

Veg-3 Special Status Plant Species Education: The environmental orientation provided to workers on site shall include information on special status plant species. This shall include diagnostic characteristics, suitable habitat descriptions, and photos of special status plant species with potential to occur within the Lease Boundary. A protocol shall be established for any chance find by workers, who shall notify the environmental monitor on site prior to proceeding with work. The environmental monitoring shall report any findings of special status plant species to EFSEC in a report, and EFSEC will consider these reports and provide additional direction on actions to address any impacts. Workers' completion of the environmental orientation shall be tracked by the Certificate Holder and provided in an annual report to EFSEC.
Rationale: This mitigation measure minimizes impacts on special status plant species by educating workers in identification and suitable habitat.

Veg-4 As-Built Report, Offset Calculation, and Monitoring of Revegetation: Within 60 days of completing construction, the Certificate Holder shall provide an as-built report that documents the amount of temporary and permanent disturbance associated with the Project. This shall include associated maps and georeferenced spatial files. The as-built report shall be factored into the final calculation of habitat offset based on the Certificate Holder-provided ratios. The acreages of modified habitat planted for the Project under the solar arrays shall also be included in this report. EFSEC will determine the number of years that vegetation monitoring of temporary disturbance and modified habitat will be conducted and the success criteria for revegetation. The success criteria will include measurable parameters that the Certificate Holder shall measure to determine whether successful revegetation has occurred. The Certificate Holder shall submit annual reports for each year of vegetation monitoring following construction to document the success of revegetation. At the end of the vegetation monitoring period, as determined by EFSEC, areas of modified habitat and revegetated temporary disturbance that have met the success criteria will be eligible for offset by the Certificate Holder at the respective ratios. Any areas of modified habitat or temporary disturbance that do not meet the success criteria after completion of revegetation monitoring will be considered permanent disturbance, and this will be added to the offset requirement.
Rationale: This mitigation measure addresses habitat offset by providing a final calculation of offset requirements based on actual disturbance. In addition, it addresses the uncertainty associated with the success of revegetation and, in particular, of restoring shrub-steppe ecosystems.

Veg-5 Operation and Decommissioning Dust Control Plan: A dust control plan shall be prepared for Project operation and decommissioning, similar to the dust control plan presented by the Certificate Holder. The plan will minimize impacts on vegetation from dust during the Operations and Decommissioning stages of the Project.

Rationale: This mitigation measure minimizes indirect impacts from dust during operation and decommissioning.

Veg-6 Decommissioning Legislated Requirements: If the applicable legislated requirements at the time of decommissioning are more restrictive than at the time of the execution of the SCA, the decommissioning measures will be updated to meet the new requirements.
Rationale: This mitigation measure enables adjustment of requirements based on changes in legislation once decommissioning occurs, based on the requirements at that time.

Veg-7 Detailed Site Restoration Plan: The Detailed Site Restoration Plan is a required, regulatory document. It shall be prepared and submitted for approval by EFSEC for final revegetation prior to Project decommissioning for the temporary and permanent disturbance areas. It will be adapted to include modified habitat.
Rationale: The Detailed Site Restoration Plan will be a living document. It shall include the methods, success criteria, monitoring, and reporting for revegetation at the end of the Project life. It shall also include provisions for adaptive management and shall be prepared based on any lessons learned from implementing the revegetation planned for the temporary disturbance from Project construction as described in Appendix N of the 2022 ASC (Appendix N, Horse Heave Wind Farm, LLC 2022).

Veg-8 Decommissioning Noxious Weed Management Plan: A Noxious Weed Management Plan (or extension of the current plan) to include prevention and control during decommissioning of the Project shall be prepared. This Plan shall include monitoring of the area for three years following decommissioning of the Project.
Rationale: This mitigation measure addresses noxious weeds during decommissioning. It is designed to minimize the introduction and spread of noxious weeds during decommissioning.

Veg-9 Maintenance of Solar Array Fence: During Project operation, the solar array fence shall be maintained, including removal of vegetation material that may become entwined in the fence. Monthly fence surveys shall be conducted during periods where the wildfire danger rating, as determined by DNR, is assessed as "low." When the wildfire danger rating is assessed as "moderate" or higher, weekly surveys shall be required.
Rationale: Vegetation material entwined within the solar array fence presents a fuel source for fire. Maintenance and removal will minimize this risk.

[Condition Veg-10 to be removed, as requested and justified in Applicant's Comments on EFSEC Proposed Final Action (Jan 2024), provided as Ex. D, Attachment A ("Scout Jan. Comment Letter"); and Comments on Problems with EFSEC Proposed Recommendation (Apr 2023), provided as Ex. D ("Scout Apr. Comment Letter")]
~~**Veg-10 Shrubland and PHS Avoidance:** No solar arrays would be sited on any rabbitbrush shrubland or WDFW-designated Priority Habitat types.~~
~~**Rationale:** Rabbitbrush shrubland and Priority Habitats serve a vital environmental need and face a number of threats from development. Preserving these habitat types from Project impacts serves to reduce impacts to the vegetation and wildlife that are dependent on them.~~

5. **Wildlife and Habitat**
   A. **Wildlife (Wild) Mitigation**
      Wild-1 Post-construction Bird and Bat Fatality Monitoring Program:
      Prior to initiation of operation, the Certificate Holder shall develop, ~~in coordination with the Pre-operational Technical Advisory Group (PTAG) and approval by EFSEC,~~ a post-construction bird and bat fatality monitoring program, which will be approved by EFSEC. Monitoring shall be conducted for a

minimum of three years. While the three years of monitoring need not be consecutive, all post-construction monitoring shall be conducted within the initial five years of operation to document variation in annual fatality rates. The program shall describe survey methods, timing, and effort as described in the Certificate Holder's Bird and Bat Conservation Strategy (Appendix M of the Final ASC). Surveys shall include carcass surveys to document the longevity of carcass persistence and detectability of carcasses. Surveys shall be conducted year-round to account for variation in bird and bat abundance and diversity. Additional surveys (e.g., survey frequency) shall be conducted during sensitive periods for birds and bats (e.g., migration periods). Surveyed area shall include turbines, solar arrays, and transmission lines at a minimum.

Bird and bat fatality adaptive management strategy development
Prior to initiation of operation, the Certificate Holder shall develop, ~~in coordination with the PTAG and approval by EFSEC,~~ an adaptive management strategy, which will be approved by EFSEC. The adaptive management strategy shall include additional mitigation measures to be applied during sensitive periods (e.g. migration) or if mortality thresholds are exceeded.

Migratory bat species are at risk of population level impacts due to wind power facilities and these species are most at risk of collisions with turbines during spring and fall migration. As such, adaptive management strategies will be applied during these sensitive periods, which are generally April to June (spring migration) and August to October (fall migration) (Hayes and Wiles 2013). Acoustic surveys during operation may be used to define a project-specific migratory period. Acoustic detectors may be deployed across the Lease Boundary prior to spring and fall migration to detect increased bat activity suggesting the onset of bat migration. These data will be used to adjust the generalized bat sensitive periods listed above. Similarly, acoustic data will be used to document the end of bat migration and when adaptive management strategies may no longer be required. Bat data shall be downloaded and analyzed on a weekly basis to document the start and end of migration.

Adaptive management mitigation strategies that will be considered include altering the operation of the turbines by increasing the cut-in speed to above 18 feet (5.5 meters) per second (Alberta Government 2013) and curtailing turbines during known bird and bat migration period. As noted in in Section 4.6.2.2, projected impacts of wind power projects estimate that wind power could result in mortality levels of 3 to 46 percent of the hoary bat population by 2050. Friedenberg and Frick (2021) conclude that a 5 m/s curtailment could avoid hoary bat extinction in several of the modeled scenarios. Acoustic monitors and smart curtailment may also be included in adaptive management to refine data on bat presence near turbines and when curtailment mitigation should be implemented. Mitigation strategies may be limited to groups of turbines based on the results of post-construction monitoring.

Bird and bat fatality adaptive management review
The Certificate Holder, the TAC, EFSEC, and WDFW will review the results of the bird and bat post-construction fatality monitoring program after each monitoring period to determine whether the mitigation measures outlined in the adaptive management strategy should be revised or adjusted. The data will also be used to determine whether monitoring efforts are sufficient to verify predicted impacts on birds and bats. EFSEC may require the Certificate Holder to conduct more intensive surveys (e.g., additional spatial extent or frequency) or extend the duration of post-construction monitoring beyond the minimum three years. The Adaptive management mitigation strategies shall be periodically reviewed (minimum of every five years) with the TAC during operation to consider inclusion of new science and technologies that may more efficiently reduce bird and bat fatalities.
Rationale: This mitigation allows for continued monitoring and adaptive management of potential Project-related wildlife mortalities.

Wild-2 Trash Containers: All trash containers shall be wildlife resistant.
Rationale: This mitigation measure reduces potential human-wildlife conflicts thereby reducing potential Project-related wildlife mortalities.

Wild-3 USFWS Eagle Consultation: The Certificate Holder shall provide EFSEC a summary of the consultation undertaken with the USFWS regarding eagle mortality.
Rationale: This mitigation measure allows for continued monitoring and adaptive management of potential Project-related impacts on eagles.

Wild-4 Pesticide Management Plan: The Certificate Holder shall avoid the use of pesticides, including rodenticides, during Project construction and operation. If pesticides are required, the Certificate Holder shall, prior to application of the pesticides, develop a management plan for submission to and approval by EFSEC that describes how the Certificate Holder will avoid and/or otherwise minimize potential impacts on wildlife, including all potentially impacted special status species.
Rationale: This mitigation measure reduces potential impacts on habitat and wildlife mortality while allowing for adaptive management of potential Project related impacts.

Wild-5 Construction Zone Management: The Certificate Holder shall limit construction disturbance by identifying sensitive areas on mapping and flagging in the field exclusion zones around any sensitive areas, including wildlife features, such as wildlife colonies, active nests, dens, and wetlands. Encroachment into exclusion zones required during construction shall be reviewed by the Certificate Holder's biologist to determine the impacts on the feature and recommend additional measures to manage impacts to the resource. The Certificate Holder shall provide information on where encroachment will be required, the rationale for encroachment, and additional mitigation measures for EFSEC to review prior to implementation. The Certificate Holder shall conduct ongoing environmental monitoring during construction to ensure that flagged exclusion zones are avoided.
Rationale: This mitigation measure reduces potential loss of habitat and wildlife mortality.

Wild-6 Wildlife Road Mortality Management: The Certificate Holder shall maintain a database of road mortalities throughout construction and operation as part of the operational procedures. The Certificate Holder shall review road-based mortalities annually and propose additional mitigation for areas under the control of the Certificate Holder where frequent mortalities or wildlife crossing observations occur. Additional mitigation measures may include speed control, signage, temporary road closures (e.g., during migration periods), or wildlife passageways and will be reviewed and approved by EFSEC prior to implementation.
Rationale: This mitigation measure allows for continued monitoring and adaptive management of potential Project-related wildlife mortalities.

Wild-7 Construction Hours: The Certificate Holder shall schedule construction activities to occur during daylight hours, when feasible, to reduce disturbance of nocturnal species and the need for nighttime lighting.
Rationale: This mitigation measure reduces disturbance to wildlife (i.e., indirect loss).

Wild-8 Turbine Buffer Zones: Wind turbine buffer zones shall be established around all known raptor nests and be a minimum of 0.25 miles. The Certificate Holder shall prepare a Raptor Nest Monitoring and Management Plan for review by EFSEC ~~and the PTAG~~ if buffer zones cannot be maintained.
Rationale: This mitigation measure reduces potential impacts on habitat and raptor mortality while allowing allow for adaptive management of potential Project-related impacts.

Wild-9 Breeding Bird Period Mitigation: Vegetation clearing and grubbing shall avoid local bird breeding periods, when feasible, to reduce potential destruction or disturbance of nesting birds. If avoidance of this period is not feasible, additional mitigation measures, such as pre-construction surveys for and buffering of active bird nests, shall be undertaken.
Rationale: This mitigation measure avoids or reduces potential bird mortality.

Wild-10 Pre-construction Bat Monitoring: The Certificate Holder shall conduct pre-construction surveys to develop an estimate of regional bat populations and identify to what degree seasonality affects the bat population in the area. The PTAG shall be contacted prior to undertaking these surveys and shall be involved in the development of the methodology and review of the results.
Rationale: This mitigation measure would provide baseline information necessary for adaptive management efforts to curtail bat mortality that is anticipated as a result of Project operation.

B. Habitat (Hab) Mitigation

[Condition Hab-1 to be removed entirely, as requested and justified in Scout Jan. 2023 DEIS Comments]

~~**Hab-1 Wildlife Movement Corridors:** The Certificate Holder shall locate primary Project components, specifically turbines, solar arrays, and BESS, outside of movement corridors modeled in Washington Wildlife Habitat Connectivity Working Group (2013) as medium to very high linkage. The Certificate Holder shall locate secondary Project components, such as roads, transmission lines, substations, MET and ADLS towers, and laydown yards, outside of corridors modeled as high to very high linkage unless co-located with existing infrastructure, such as roads or transmission corridors. The Certificate Holder shall provide rationale to EFSEC for any secondary components to be sited within medium to very high linkage movement corridors, and a Corridor Mitigation Plan shall be required that describes:~~

- ~~Extent of direct and indirect habitat impact within the movement corridor~~
- ~~Proposed measures to be implemented to reduce potential impacts on movement corridors (e.g., habitat enhancements to promote continued use of corridors)~~
- ~~Proposed features (e.g., open-bottom culverts) to accommodate wildlife movement for linear Project components (e.g., roads, powerlines)~~
- ~~Proposed restoration in movement corridors following Project decommissioning~~
- ~~Performance standards to assess the effectiveness of mitigation measures and restoration~~
- ~~Methods to monitor and measure performance standards~~

~~The Corridor Mitigation Plan shall be developed in consultation with the PTAG and reviewed and approved by EFSEC prior to implementation. Results of corridor monitoring shall be reviewed annually with the TAC to evaluate the effectiveness and apply additional measures if necessary. Data shall be provided to EFSEC with additional mitigation measures for review and approval prior to implementation.~~
~~**Rationale:** This mitigation measure reduces potential Project related barriers to wildlife movement while allowing for continued monitoring and adaptive management of potential Project related barriers.~~

[If Hab-1 is not removed entirely, the condition must be revised consistent with FEIS-recommended measure Hab-1, as stated below.]
The Applicant would locate Project components, including roads and powerlines, outside of movement corridors modeled in WWCWG (2013) as medium to very high linkage, to the extent feasible. The Applicant would provide rationale to EFSEC for siting components within movement corridors, and a Corridor Mitigation Plan would be required that describes:

- Extent of direct and indirect habitat impact within the movement corridor
- Proposed measures to be implemented to reduce potential impacts on movement corridors (e.g., habitat enhancements to promote continued use of corridors)
- Proposed features (e.g., open-bottom culverts) to accommodate wildlife movement for linear Project components (e.g., roads, powerlines)

- Proposed restoration in movement corridors following Project decommissioning
- Performance standards to assess the effectiveness of mitigation measures and restoration
- Methods to monitor and measure performance standards

The Corridor Mitigation Plan would be reviewed and approved by EFSEC prior to implementation. Results of corridor monitoring would be reviewed annually with the TAC to evaluate the effectiveness and apply additional measures if necessary. Data would be provided to EFSEC.

Hab-2 Canyon Crossings: Transmission line crossings of canyons and draws shall be minimized. Where crossings are required, the Certificate Holder shall provide EFSEC with rationale for the crossings and propose additional mitigation measures to reduce potential barriers to movement (e.g., retaining vegetation under transmission lines) and wildlife collisions (e.g., installing flight diverters on overhead lines). EFSEC will approve the final transmission line layout, mitigation, and adaptive management strategy.
Rationale: This mitigation reduces potential Project related barriers to wildlife movement while allowing for continued monitoring and adaptive management of potential Project related barriers.

Hab-3 Temporary Laydown Areas: Temporary laydown areas shall be situated out of native shrub-steppe habitat. Where temporary disturbance of shrub-steppe habitat is required, the Certificate Holder shall provide EFSEC with rationale and propose additional mitigation measures to reduce habitat loss.
Rationale: This mitigation measure avoids and reduces impacts to habitat while allowing for adaptive management of potential Project related habitat loss.

[Condition Hab-4 to be modified as follows, as requested and justified in Scout Jan. 2023 DEIS Comments. Because PTAG elimination also impacts conditions Hab-1, Hab-6, Wild-8, Spec-1, Spec-4, Spec-5, Spec-7, Spec-12, Spec-13, those conditions are also to be revised to implement this change.]
Hab-4 Establish ~~PTAG and~~ TAC: The Certificate Holder, in consultation with EFSEC, shall establish a ~~PTAG and~~ TAC. ~~The PTAG shall be established at least one year prior to construction and will be responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and wildlife habitat. The PTAG will also provide advice on adaptive management. The PTAG will be responsible for, at a minimum:~~

~~Reviewing and providing technical advice on Project wildlife and habitat management plans (e.g., ferruginous hawk management plan)~~

~~Reviewing and providing advice to EFSEC on pre-design and pre-construction data collection requirements to address Project mitigation measures and conditions of management plans~~

~~Reviewing and providing advice to EFSEC on the final Project design~~

~~Advising on thresholds to be applied to the Project that will trigger the requirement for additional mitigation measures~~

The Certificate Holder, in consultation with EFSEC, shall establish a TAC prior to Project operation. ~~The PTAG will cease to exist once the Certificate Holder has completed all planned construction and will be replaced by the TAC, which will exist for the life of the Project.~~ The TAC will be responsible for, at a minimum:

- Advising on the monitoring of mitigation effectiveness and reviewing monitoring reports
- Advising on additional or new mitigation measures that will be implemented by the Certificate Holder to address exceedances of thresholds

- Reviewing the results of annual data generated from surveys and incidental observations and providing recommendations for alternative mitigation and adaptive management strategies, as well as advising on aspects of existing mitigation that are no longer needed.

The ~~PTAG and~~ TAC may include representation by WDFW, the Washington Department of Natural Resources, interested tribes, Benton County, and the USFWS. The ~~PTAG and~~ TAC may also include local interest groups, not-for-profit groups, and landowners. The exact composition of the ~~PTAG and~~ TAC will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.
Rationale: This mitigation measure avoids and reduces impacts on wildlife and habitat, including habitat loss, wildlife disturbance, barriers to movement, and wildlife mortality. Further the mitigation measure will allow for continued monitoring and adaptive management of potential Project-related impacts.

[Condition Hab-5 to be removed, as requested and justified in Scout Jan. 2023 DEIS Comments.]
Hab-5 ~~Indirect Habitat Loss Management Plan:~~ ~~As noted by the Certificate Holder, the Project is expected to result in indirect habitat loss through loss of habitat function and changes in wildlife behavior in response to the Project. Further, as noted by the Certificate Holder, WDFW guidelines require that compensatory habitat mitigation must fully offset the loss of habitat function and value. To address indirect habitat loss associated with the Project, the Certificate Holder shall develop an Indirect Habitat Loss Management Plan that addresses potential indirect habitat loss resulting from the Project. The Certificate Holder shall work with the PTAG during the development of the Indirect Habitat Loss Management Plan (IHLMP) for review and approval by EFSEC. EFSEC and the PTAG will review the IHLMP prior to its implementation. The IHLMP shall be provided to the PTAG for review 90 days prior to construction.~~

~~The objectives of the IHLMP will be to identify a Project-specific ZOI and required mitigation based on the Project-specific ZOI. The Project-specific ZOI will be developed based on Project conditions and may differ from the ZOI presented in the EIS. The IHLMP shall include:~~

~~A description of the study's purpose and objectives~~

~~A description of methods to define Project-specific ZOIs (e.g., gradient analysis, nest density)~~

~~A description of data requirements to establish Project-specific ZOIs and field programs that will be implemented (pre-construction and post-operation)~~

~~A description of the duration of studies required to establish Project-specific ZOIs~~

~~A description of criteria to be used to compensate for loss of habitat function and value~~

~~An environmental effectiveness monitoring strategy of compensatory habitat to ensure that the habitat meets success criteria~~

~~The IHLMP shall also include a series of compensatory site-selection criteria, developed in consultation with the PTAG. The selection criteria will be used to evaluate candidate habitat compensation habitats. Habitats that achieve more of the criteria will be identified as the preferential sites. Selection criteria shall include, at a minimum:~~

~~Proximity to the Lease Boundary (e.g., hierarchy of preferences with respect to location— within the Lease Boundary being the highest priority, adjacent to the Lease Boundary being the second highest priority, and off-site being the third priority)~~

~~Protection of existing native shrub-steppe or grassland habitats~~

~~Encompassing sensitive or important wildlife habitat (e.g., mapped movement corridors, ferruginous hawk core habitat, HCAs, areas of high prey abundance)~~

~~Proximity to Project infrastructure~~

~~**Rationale:** This mitigation measure avoids and reduces disturbance to wildlife (indirect habitat loss) while allowing for ongoing monitoring, adaptive management, and offsetting of potential Project related impacts.~~

Hab-6 Project Layout & Design: The Certificate Holder shall work with EFSEC~~, with advice from the PTAG,~~ on the development of the final Project layout and design, including the application of Certificate Holder commitments and recommended mitigation measures.
Rationale: This mitigation measure avoids and reduces potential habitat loss and disturbance to wildlife (indirect habitat loss).

Hab-7 Decommissioning Roadway Requirements: All roadways constructed for the Project during the construction and operation phases shall be removed and restored during decommissioning. The Certificate Holder shall provide EFSEC with rationale and propose additional mitigation measures if roadways are not decommissioned post-operation.
Rationale: This mitigation measure restores habitat post-operation and reduces habitat loss.

[Condition Hab-8 to be removed, for consistency with removal of Hab-5, per Scout Jan. 2023 DEIS Comments.]
~~**Hab-8 Indirect Habitat Loss Compensation:** The Certificate Holder shall be required to provide compensation habitat loss and alteration (indirect habitat loss) (See Hab-5, Veg-4) through one or more actions of land acquisition, onsite easement and restoration (excluding areas impacted by the project such as temporary laydowns), and/or fee-based mitigation.~~

~~The Certificate Holder shall prioritize development of conservation easements (Option 1[1] in the Certificate Holder's Draft Wildlife and Habitat Mitigation Plan) and shall compensate for the remaining permanent and altered (indirect) impacts by providing money to WDFW, or a third party identified by WDFW, and agreed to by EFSEC, to purchase other lands suitable as in-kind and/or enhancement mitigation. The Certificate Holder shall provide EFSEC, for review and approval, with rationale for fee-based mitigation (Options 2 and 3 in the Certificate Holder's Draft Wildlife and Habitat Mitigation Plan) including a description of how much compensatory habitat will be addressed through Option 1 (conservation easement) and rationale for why fee-based mitigation is required.~~

~~The fee-based mitigation includes a per acre fee that shall be determined by market rates and land sales within the general vicinity of the Lease Boundary for lands containing comparable habitat types and quality present within the Lease Boundary. The per acre fee shall be developed by the Certificate Holder in consultation with WDFW and approved by EFSEC. The Total Financial Obligation (TFO) shall be determined by multiplying the cost per acre by the total Compensatory Mitigation Acres (CMA) remaining after the application of Option 1 mitigation strategy and shall include a one-time 15% premium to cover administration and management costs for the purchased lands. The TFO for compensatory mitigation shall~~

~~[1] Certificate Holder's Draft Wildlife and Habitat Mitigation Plan identifies three compensation options: Option 1 — Conservation easement within or adjacent to the Lease Boundary; Option 2 — Annual fee or lump sum payment provided to WDFW; Option 3 — payment to local land trusts, conservation organizations, or local tribes to support conservation projects.~~

~~be determined and agreed to by EFSEC 90 days before construction. If construction has not begun within 12 months of the approval of the TFO, the TFO identified shall expire and be recalculated prior to beginning construction. The TFO shall be calculated based on the following: *Average Comparable Land Sale Cost (per acre)*(CMA-Option 1 Acres)*1.15 = TFO* In addition to the wildlife and habitat mitigation measures, the following measures developed for the Vegetation chapter are applicable to wildlife and habitat.~~
~~**Rationale:** This mitigation measure clarifies the process to be followed in selection of offsetting habitat.~~

C. Special Status Species (Spec) Mitigation

[Condition Spec-1 to be modified, as requested and justified in Scout Jan. 2023 DEIS Comments.]

Spec-1: Striped Whipsnake & Sagebrush Lizard: The Certificate Holder shall conduct pre-construction surveys for sensitive reptile species prior to alteration or destruction of suitable habitat such as areas within the Lease Boundary identified as core habitat in GAP mapping, as well as shrubland (e.g., shrub-steppe, rabbitbrush). The results of the surveys would be shared with EFSEC and WDFW and any necessary setbacks or modifications to the construction schedule to minimize impacts on species observed would be determined. ~~WDFW shall be contacted prior to undertaking these surveys.~~
~~If these species are identified through pre-construction surveys, the Certificate Holder shall prepare a Reptile Management Plan to reduce potential impacts on habitat, mortality, and barriers to movement. The Reptile Management Plan shall describe:~~

~~How the Certificate Holder will avoid suitable habitat, including where the species were observed~~

~~How the Certificate Holder will implement management recommendations in Larsen (1997)~~

~~How the Certificate Holder will maintain rodent burrows in suitable reptile habitat (e.g., shrub-steppe)~~

~~Additional mitigation measures to reduce potential mortality of these species during the construction and operation stages of the Project~~

~~The Reptile Management Plan shall be reviewed by the PTAG and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management shall be reviewed by the PTAG and approved by EFSEC prior to implementation (see Hab-4).~~
Rationale: This mitigation measure avoids and reduces potential striped whipsnake and sagebrush lizard habitat loss and mortality while allowing for adaptive management throughout Project construction and operation.

[Condition Spec-2 to be removed, as requested and justified in Scout Jan. 2023 DEIS Comments.]
~~**Spec-2: American White Pelican:** The Certificate Holder shall maintain a database of American white pelican observations within the Project Lease Boundary. Observational data shall be reviewed with the TAC annually, and additional survey strategies shall be applied as needed to inform adaptive management.~~
~~**Rationale:** This mitigation measure allows for adaptive management of potential American white pelican mortality through Project operation.~~

Spec-3: Eagles: The Certificate Holder shall obtain any required federal approvals. The Certificate Holder shall continue ongoing coordination with the USFWS (Eagle Coordinator, Columbia Pacific Northwest Region) regarding an eagle take permit for incidental take of bald and golden eagles and shall continue to evaluate eagle risk to determine if an eagle take permit is appropriate considering the use of the Project by bald and golden eagles.

The Certificate Holder shall apply WDFW-recommended buffers for bald eagle and golden eagle nests (Larsen et al. 2004):

- Bald eagle — protected zone (400 feet) and conditioned zone (up to 800 feet beyond the protected zone)
- Golden eagle — 1.9 miles

Rationale: This mitigation measure avoids and reduces potential disturbance of eagle nests and eagle mortality.

[Condition Spec-4 to be modified, as requested and justified in Scout Jan. 2023 DEIS Comments.]

Spec-4: Burrowing Owl: The Certificate Holder shall conduct pre-construction burrowing owl surveys ~~within areas of direct loss (permanent, temporary, and modified) and associated ZOIs~~. The results of these surveys shall be provided to ~~the PTAG and~~ EFSEC and WDFW~~and used to inform the final Project layout~~. If active burrowing owl burrows are documented during pre-construction surveys the Applicant will coordinate with WDFW and EFSEC on any necessary buffers around active nests during construction.

~~Active burrows shall be retained and satellite burrows with characteristics used by burrowing owls shall be avoided where feasible to maintain habitat capacity.~~

~~WDFW-recommended seasonal buffers (0.5 miles) shall be applied around burrowing owl nests to avoid disturbing nesting burrowing owls, if present (Larsen et al. 2004). Seasonal buffers (February 15 to September 25) shall be applied during construction and for temporary disturbances, such as periodic maintenance, during operation.~~

~~If active burrowing owls are identified within the Lease Boundary, the Certificate Holder shall develop a species-specific management plan that describes:~~

- ~~The location of active burrows~~
- ~~How active burrows will be avoided through re-alignment or reconfiguration of Project features.~~
- ~~Additional mitigation measures that will be applied where disturbance to active burrows is expected (e.g., construction of artificial burrows)~~
- ~~Additional mitigation measures that will be applied during operation if burrowing owl mortalities are recorded.~~
- ~~How ongoing monitoring of active burrows will be undertaken.~~

~~The Burrowing Owl Management Plan shall be reviewed by the PTAG and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management shall be reviewed by the PTAG and approved by EFSEC prior to implementation (see Hab-4).~~

~~The Certificate Holder shall monitor access roads for burrowing owl use and mortalities. Mortalities shall be reported to the PTAG or TAC (depending on the Project phase) and EFSEC within 5 days of the observation. Incidental observations of burrowing owl use shall be provided to the PTAG (construction) or TAC (operation) on an annual basis.~~

Rationale: This mitigation measure avoids and reduces potential loss of burrowing owl habitat, disturbance to burrowing owls, and burrowing owl mortality, while allowing for adaptive management throughout Project construction and operation.

[Condition Spec-5 to be revised, as requested and justified in Scout Jan. 2023 DEIS Comments, and in Scout's Jan. Comment Letter and Apr. Comment Letter. Two proposed options for Spec-5 follow (in order of technical feasibility).]

[*Option 1*] **Spec-5: Ferruginous Hawk:** The Certificate Holder shall not ~~site~~ conduct any prolonged (greater than 0.5 day) construction-related activities within 0.6 mile of an occupied (in use) ferruginous hawk nest site, as required in Larsen et al. 2004. ~~any wind turbines within core habitat in ferruginous hawk territories, defined as the area within a 2-mile radius surrounding ferruginous hawk nests in PHS data at the time SCA execution and any nests added to the PHS data between SCA execution and the time of construction and in Horse Heaven Wind Farm, LLC (2022). Other primary Project components, specifically solar arrays and BESS,~~

~~shall not be sited within 0.5 miles of a documented ferruginous hawk nest. Siting of solar arrays or BESS within 0.5-2 miles of a known ferruginous hawk nest or secondary project components (i.e., roads, transmission lines, substations, etc.) within 2 miles of a documented nest may be considered if the Certificate Holder is able to demonstrate that the nest site and foraging habitat is no longer available to the species and that compensation habitat, as described below, will provide a net gain in ferruginous hawk habitat. Habitat considered no longer available for ferruginous hawk would include habitat that has been altered by landscape-scale development (cropland conversion, residential development, industrial development) rendering the territory non-viable. This could include habitats that have been altered such that no native or foraging habitat remains and no nesting structures exist. Any Project infrastructure to be sited within 2 miles of a ferruginous hawk nest will require prior approval by EFSEC based on the process described below.~~

~~The extent of Project component encroachment into 2-mile core habitat may vary depending on the type of infrastructure proposed (e.g., solar array, power line, road). If encroachment is considered by the Certificate Holder, the Certificate Holder shall provide the PTAG and EFSEC with:~~

1. ~~A set of habitat parameters, developed in consultation with the PTAG for approval by EFSEC, to document whether habitat in a core range is consider non-viable. The results of habitat surveys shall be reviewed by the PTAG and approved by EFSEC.~~
2. ~~A description of the current nesting habitat available and a description of documented use of 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.~~
4. ~~The proximity of infrastructure to any known nest site or suitable foraging habitat.~~

~~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 for approval by EFSEC, develop a Project-specific ferruginous hawk mitigation and management plan:~~

1. ~~A description of efforts to site Project infrastructure to avoid core habitat, identified as the area within 2 miles of nests documented in PHS data and Horse Heaven Wind Farm, LLC (2022):~~
   a. ~~If Project components are sited within 2 miles of a ferruginous hawk nest, the infrastructure shall be reviewed by the PTAG and approved by EFSEC.~~
   b. ~~The plan shall explain how and where the Certificate Holder will create offsetting habitat for direct and indirect habitat loss within the 2-mile core habitat of ferruginous hawk nests documented in PHS data and in Horse Heaven Wind, LLC (2022).~~
2. ~~A description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.~~
3. ~~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 items.~~
   c. ~~Identification of potential flyways between nest sites and foraging habitat.~~
   d. ~~Ongoing monitoring of nest use and territory success.~~
4. ~~A description of restoration activities that will be undertaken in disturbed areas to enhance ferruginous hawk habitat during Project decommissioning.~~

~~Results of ferruginous hawk monitoring programs and adaptive management will continue through Project operation and decommissioning with review by the TAC and approval by EFSEC.~~

Rationale: The mitigation measure avoids and reduces potential loss of nesting ferruginous hawks ~~habitat~~, disturbance to ferruginous hawk, and ferruginous hawk mortality, during the nesting period~~while allowing for adaptive management throughout Project construction and operation~~.

[Alternatively, in addition to Option 1, Spec-5 may be revised to also include 2-mile setbacks while reinstating the nest site viability assessment recommended in the FEIS, with "available" nest site clarifications proposed ***in Scout's Apr. Comment Letter.]***

[Option 2] **Spec-5: Ferruginous Hawk:** The Certificate Holder shall not conduct any prolonged (greater than 0.5 day) construction-related activities within 0.6 mile of an occupied (in use) ferruginous hawk nest site.

The Certificate Holder shall not site any ~~wind turbines~~Project components (primary or secondary) within a ferruginous hawk core ~~habitat in ferruginous hawk territories~~area, defined as the area within a 2-mile radius surrounding a ferruginous hawk nest site~~s~~ documented in poor, fair or good condition in PHS data (at the time of SCA execution) ~~and any nests added to the PHS data between SCA execution and the time of construction~~ and in Horse Heaven Wind Farm, LLC data (~~2022~~2017-2024), unless the criteria described below are met.

~~Other~~ P~~p~~rimary and secondary Project components~~, specifically solar arrays and BESS, shall not be~~ sited within a 2-mile radius of the nest sites described above ~~0.5 miles of a documented ferruginous hawk nest. Siting of solar arrays or BESS within 0.5-2 miles of a known ferruginous hawk nest or secondary project components (i.e., roads, transmission lines, substations, etc.) within 2 miles of a documented nest~~ may be considered if the Certificate Holder is able to demonstrate that, as described below, the nest site and foraging habitat is no longer available to the species and that compensation habitat ~~, as described below,~~ will provide a net gain in ferruginous hawk habitat. Habitat considered no longer available for ferruginous hawk would include habitat that has been altered by landscape-scale development (cropland conversion, residential development, industrial development) rendering the territory non-viable. This could include habitats that have been altered such that no native or foraging habitat remains and no nesting structures exist. For wind turbines, the relevant radius shall be measured from the nest point location to the outer edge of the proposed rotor-swept area (tower centerline to blade tip). Any Project infrastructure to be sited within 2 miles of a ferruginous hawk nest will require prior approval by EFSEC based on the process described below.

A nest site and foraging habitat is considered "available" for purposes of this condition when:

(a) at least 30% of the 2-mile core area surrounding the nest site is "available habitat" and no more than 66% of that core area is "cropland," as those terms are defined above and in WDFW's 2023 draft management recommendations for ferruginous hawk;

(b) the nest structure is in such condition that it could reasonably be rebuilt and used again for nesting by ferruginous hawk;

(c) the nest site is not located within 0.25-mile of an anthropogenic disturbance that has occurred since the last-documented ferruginous hawk occupancy and that would lead to a low likelihood the nest will be reoccupied by ferruginous hawk.

(d) the 2-mile core area surrounding the nest site is located within 10 kilometers of another nest documented as being occupied by ferruginous hawk since 1991; and

(e) the 2-mile core area surrounding the nest site contains available habitat as defined by EFSEC and WDFW's 2023 draft management recommendations for ferruginous hawk within 20 kilometers of a nest that has been used by ferruginous hawk within the past five years.

The extent of Project component encroachment into 2-mile core habitat may vary depending on the type of infrastructure proposed (e.g., wind turbine, solar array, power line, road). If encroachment is considered by the Certificate Holder, the Certificate Holder shall provide ~~the PTAG and~~ EFSEC with:

1. A set of habitat parameters~~, developed in consultation with the PTAG for approval~~ approved by EFSEC, to document whether habitat in a core range is considered ~~non-viable~~ available as described above. The results of habitat surveys shall be reviewed ~~by the PTAG~~ and approved by EFSEC.
2. A description of the current nesting habitat available and a description of documented use of 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.
4. The proximity of infrastructure to any known nest site or suitable foraging habitat.

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 for approval by EFSEC,~~ develop a Project-specific ferruginous hawk mitigation and management plan:

1. A description of efforts to site Project infrastructure to avoid core habitat, identified as the area within 2 miles of nest sites documented as poor, fair, or good in PHS data (at the time of SCA execution) and Horse Heaven Wind Farm, LLC data (~~2022~~2017-2024):
    a. If Project components are sited within 2 miles of ~~a ferruginous hawk~~such nest site, the infrastructure shall be reviewed ~~by the PTAG~~ and approved by EFSEC.
    b. The plan shall explain how and where the Certificate Holder will create offsetting habitat for direct and indirect habitat loss within the 2-mile core habitat of ~~ferruginous hawk~~the nest sites ~~documented in PHS data and in Horse Heaven Wind, LLC (2022).~~ .
2. A description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.
3. 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 items.
    c. Identification of potential flyways between nest sites and foraging habitat.
    d. Ongoing monitoring of nest use and territory success.
4. A description of restoration activities that will be undertaken in disturbed areas to enhance ferruginous hawk habitat during Project decommissioning.

Results of ferruginous hawk monitoring programs and adaptive management will continue through Project operation and decommissioning with review by the TAC and approval by EFSEC.

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.

[Condition Spec-6 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]

Spec-6: Great Blue Heron, Sandhill Crane, & Tundra Swan: ~~The Certificate Holder shall maintain a database of incidental observation of great blue heron, sandhill crane, and tundra swan foraging within the Lease Boundary during operation. Observational data and proposed adaptive management strategies shall be reviewed with the TAC annually (see Hab-4).~~

The Certificate Holder shall reduce the use of overhead power lines, where possible.

~~The~~If sandhill cranes are observed in the lease boundary the ~~C~~certificate Holder shall apply buffers recommended in Larsen et al (2004) sandhill crane feeding areas (0.5 miles) and roosting areas (0.3 miles)~~, if documented in the Lease Boundary~~.

Rationale: The mitigation measure avoids and reduces potential disturbance to and mortality of great blue heron, sandhill crane and tundra swan, while allowing for adaptive management throughout Project construction and operation.

[Condition Spec-7 to be removed and replaced with following language as requested and justified in Scout Jan. 2023 DEIS Comments.]

Spec-7: Loggerhead Shrike, Sagebrush Sparrow, Sage Thrasher, & Vaux's Swift: The Certificate Holder shall conduct pre-construction surveys for Loggerhead shrike, Sagebrush sparrow, Sage thrasher, and Vaux's swift nests for construction work proposed during the nesting season. If nesting Loggerhead shrike, Sagebrush sparrow, Sage thrasher, or Vaux's swifts are observed before or during construction the Certificate Holder will coordinate with EFSEC and WDFW to determine appropriate buffers from construction activity to minimize disturbance while the nest(s) are active. ~~The Certificate Holder shall maintain connectivity between natural habitat patches to reduce potential habitat loss and fragmentation. The Certificate Holder shall restore areas with shrubs, where feasible, to reduce potential habitat loss. The Certificate Holder shall avoid the use of insecticides and herbicides to reduce potential mortality and loss of prey items.~~

~~The Certificate Holder shall retain trees, shrubs, and hedgerows, as feasible, to reduce habitat loss.~~

~~The Certificate Holder shall consult with the PTAG and TAC and EFSEC if suitable habitat for loggerhead shrike, sagebrush sparrow, and sage thrasher cannot be avoided. If suitable habitat cannot be avoided, the Certificate Holder shall, in consultation with the PTAG for approval by EFSEC, develop nest set back buffers that are supported by literature to be applied during clearing and grubbing activities.~~

~~The Certificate Holder shall avoid clearing and grubbing during the active nesting period to reduce potential destruction of active nests and disturbance of nesting birds. If clearing and grubbing occurs during the nesting season, the Certificate Holder shall conduct pre-clearing surveys for active nests and maintain appropriate setback buffers around active nests.~~

~~Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).~~

Rationale: This mitigation measure avoids and reduces potential habitat loss, habitat fragmentation, and mortality to avoid and reduce impacts on loggerhead shrike, sagebrush sparrow, sage thrasher, and Vaux's swift. The measure allows for adaptive management throughout Project construction and operation.

[Condition Spec-8 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]

Spec-8: Prairie Falcon: The Certificate Holder shall conduct pre-construction surveys for prairie falcon nests for construction work proposed during the prairie falcon nesting season. If nesting prairie falcons are observed before or during construction the Certificate Holder will coordinate with EFSEC and WDFW to determine appropriate buffers from construction activity to minimize disturbance while the nest is active. ~~and the winter season preceding the start of construction and maintain a seasonal buffer of 2,640 feet from active nest sites (Larsen et al. 2004) to reduce potential destruction or disturbance of active nests.~~

~~Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).~~

Rationale: This mitigation measure avoids and reduces potential disturbance to prairie falcon, and prairie falcon mortality, while allowing for adaptive management throughout Project construction and operation.

Spec-9: Ring-necked Pheasant: The Certificate Holder shall consider using native grasses and legumes that support ring-necked pheasant in seed mixes applied during post-construction restoration of temporary disturbances and decommissioning to reduce potential habitat loss (Larsen et al. 2004).

Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).
Rationale: This mitigation measure reduces potential loss of ring-necked pheasant habitat and allows for adaptive management throughout Project construction and operation.

Spec-10: Black-tailed Jackrabbit & White-tailed Jackrabbit: The Certificate Holder shall conduct surveys for jackrabbit in suitable habitat identified through GAP predictive mapping.
If jackrabbits are identified, the Certificate Holder shall develop and implement a management plan with additional mitigation measures to reduce potential loss of habitat supporting jackrabbits.

Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).
Rationale: This mitigation measure reduces potential loss of black-tailed and white-tailed jackrabbit habitat, indirect habitat loss, habitat fragmentation, and mortality, while allowing for adaptive management throughout Project construction and operation.

Spec-11: Townsend's Big-eared Bat: The Certificate Holder shall restrict bat access to open water if the water could be contaminated.

The Certificate Holder shall retain old buildings, outbuildings, and trees where feasible.

The Certificate Holder shall report mortalities of Townsend's big-eared bat to EFSEC and the TAC. Bat mortality data and adaptive management strategies will be reviewed with the TAC annually (see Hab-4).
Rationale: This mitigation measure reduces potential loss of Townsend's big-eared bat habitat and mortality and allows for adaptive management throughout Project construction and operation.

[Condition Spec-12 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]
Spec-12: Townsend's Ground Squirrel: ~~The Certificate Holder shall conduct surveys for Townsend's ground squirrel colonies within the Lease Boundary in areas of the Project disturbance footprint to inform final design.~~

The Certificate Holder shall ~~avoid~~record and report any observations of Townsends's ground squirrel during pre-construction surveys. If the species is detected during pre-construction surveys the Certificate Holder shall work with EFSEC and WDFW to determine how to minimize habitat loss in occupied colonies during construction. ~~habitat loss within Townsend's ground squirrel habitat concentration areas, as well as known colonies, in final design. Additional Townsend's ground squirrel colonies identified through surveys shall be shown on Project mapping. If Project components are required in habitat concentration areas (rated as medium or greater) or near known colonies, the Certificate Holder shall prepare a species-specific management plan for areas where avoidance is not feasible. This plan shall provide rationale for why colonies cannot be avoided and shall detail additional mitigation measures to reduce impacts to Townsend's ground squirrel. Additional mitigation measures may include identification of setbacks, colony monitoring, habitat restoration, colony relocation, and reconstruction of habitat features. The plan shall also describe monitoring and adaptive management measures to be implemented during Project operation. The plans~~

~~shall be provided and discussed with the PTAG, and approved by EFSEC, if avoidance of identified ground squirrel colonies is not feasible.~~

Observational data and adaptive management strategies will be reviewed with the TAC annually during operations.

Rationale: This mitigation measure reduces potential loss of Townsend's ground squirrel habitat, disturbance of squirrel colonies, and Townsend's ground squirrel mortality, while allowing for adaptive management through Project construction and operation.

Spec-13: Pronghorn Antelope: The Certificate Holder shall limit fencing where feasible (e.g., around solar arrays). Final fencing layouts and design, including use of non-barbed-wire security fencing, shall be provided to ~~the PTAG and~~ EFSEC with rationale for fencing requirements.

The Certificate Holder shall design and implement a study of seasonal pronghorn antelope occurrence and use of the Lease Boundary before construction and during operation to document the change, if any, of pronghorn antelope presence, abundance, and habitat use within the Lease Boundary. ~~The PTAG will review and provide input to the study design.~~ The results of the study will be used to develop adaptive management measures to respond to changes in pronghorn antelope habitat use. Survey results and proposed adaptive management will be reviewed by the ~~PTAG and~~ TAC prior to implementation (see Hab-4).

The Certificate Holder shall maintain a potentially confidential database of pronghorn antelope observations, including details such as numbers, location, age, and sex, and shall make this database available to WDFW, EFSEC, and the Yakama Nation.
Rationale: This mitigation measure reduces potential disturbance to pronghorn antelope and barriers to pronghorn antelope movement, while allowing for adaptive management throughout Project construction and operation.

6. **Energy and Natural Resources (ENR)**

ENR-1 Water Source: The Certificate Holder shall provide an executed agreement to EFSEC that identifies the source and quantity of water intended to be supplied to the Project prior to its construction, operation, and decommissioning.
Rationale: Provides verification that water being used by the Project is originating from a sustainable source.

ENR-2 High-efficiency Electrical Requirements: The Certificate Holder shall install high-efficiency electrical fixtures and appliances in the O&M facility, BESS, and substations to reduce energy needs for the Project's operations stage.
Rationale: Reduces the Project's demands on energy and natural resources.

ENR-3 High-efficiency Security Lighting: The Certificate Holder shall install high-efficiency security lighting to reduce energy needs for the Project's operations stage.
Rationale: Reduces the Project's demands on energy resources.

ENR-4 Low-water Toilets: The Certificate Holder shall install low-water-use flush toilets in the O&M facilities to reduce the Project's water requirements during its operations stage.
Rationale: Reduces the Project's demands on water resources.

[Condition ENR-5 to be removed as requested and justified in Scout Jan. 2023 DEIS Comments.]

~~**ENR-5 Recycle Wash Water:** The Certificate Holder shall capture and recycle wash water to reduce the Project's water requirements during its operations stage.~~
~~**Rationale:** Reduces the Project's demands on water resources.~~

[Condition ENR-6 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]
ENR-6 Component Recycling: To retrieve as much of the natural resources used in construction and operation of the Project as possible, the Certificate Holder shall implement a waste management plan during facility operation that includes but is not limited to the following measures:

a) Training employees to minimize and recycle solid waste.
b) Recycling paper products, metals, glass and plastics.
c) Recycling used oil and hydraulic fluid.
d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste hauler.
e) Segregating all hazardous, non-recyclable wastes such as used oil, oily rags and oil-absorbent materials, and mercury-containing lights for disposal by a licensed firm specializing in the proper recycling or disposal of hazardous wastes.

At retirement, facility decommissioning and site restoration will be completed in accordance with SCA Article VIII. Specifically, Site Restoration shall involve removal of all Project components, foundations, and facilities to a depth of four (4) feet below grade and removal of Project access roads and overhead poles and transmission lines (except for any roads and/or overhead infrastructure that Project Footprint landowner wishes to retain) (all of which shall comprise "Site Restoration"). Site Restoration shall also include the use of appropriate precautions during decommissioning and removal of any hazardous material to safely dispose of and to avoid, and, if necessary, remediate any soil contamination resulting from the hazardous materials.

~~demolish and recycle all components of the Project that have the potential to be used as raw materials in commercial or industrial applications. For any Project components that the Certificate Holder deems non-recyclable, the rationale for that determination shall be presented to EFSEC for approval prior to the disposal of the components. If the Certificate Holder intends to leave any portion of the facility, including concrete foundations, they must submit a request to EFSEC in an update to their decommissioning plan.~~
Rationale: Reduces the Project's demands on natural resources.

7. Land and Shoreline Use (LSU) Mitigation

[Conditions LSU 1-3 to be removed as requested and justified in Scout Jan. 2023 DEIS Comments.]

~~**LSU-1 Livestock Management Plan:** The Certificate Holder shall prepare a livestock management plan with property owners and livestock owners to control the movement of animals within the Lease Boundary during construction, operation, and decommissioning.~~
~~**Rationale:** To limit conflicts between the Project and farmers and ranchers.~~

~~**LSU-2 Dryland Farming Management Plan:** The Certificate Holder shall prepare a dryland farming management plan for construction, operation, and decommissioning that outlines communication requirements between the Certificate Holder and the land owners. The plan shall establish work windows that will allow farmers uninterrupted access to their fields for dryland wheat planting and harvesting.~~
~~**Rationale:** To limit conflicts between the Project and farmers and ranchers.~~

~~**LSU-3 Livestock Management:** The Certificate Holder shall be responsible for ensuring that arrangements for the removal of all livestock have been made during Project construction and decommissioning.~~
~~**Rationale:** To limit conflicts between the Project and farmers and ranchers.~~

[Condition LSU-4 to be modified to ensure internal consistency with revegetation plan.]

LSU-4 Temporary Disturbance Restoration: After construction is completed, the Certificate Holder shall treat and revegetate all temporary disturbance areas in accordance with approved revegetation plan~~restore all temporary disturbance areas to their preconstruction status~~.

Rationale: This measure will allow the areas of temporary disturbance within the Lease Boundary to return to their preconstruction agricultural production levels as soon as possible.

LSU-5 Site Restoration Plan: Prior to decommissioning, the Certificate Holder shall submit a Detailed Site Restoration Plan, per WAC 463-72-050, for restoring the site to its preconstruction character. The Certificate Holder will be responsible for working with the landowner to return all agricultural land to its preconstruction status. If future site conditions or land ownership no longer allows for the land to be returned to agricultural production, the Certificate Holder shall submit a request to EFSEC for an alternative land use that shall be in alignment with the Lease Boundary's preconstruction rural character and resource value. If the Detailed Site Restoration Plan requests an alternative land use, EFSEC may require that the Certificate Holder provide additional mitigation to offset impacts from a permanent conversion of the land.

Rationale: This measure will assist in preventing conversion of a land use that is not in alignment with the Lease Boundary's current designation.

8. Historic and Cultural Resources (CR)

[Condition CR-1 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]

CR-1 Traditional Cultural Properties Mitigation: Ongoing engagement with affected Tribes could facilitate mitigation of any potential impacts on TCPs. Tribal review of site/engineering plans could provide input to guide design and avoidance, without confidential disclosure of locations. This engagement shall also include opportunities for identified stakeholders to evaluate the effectiveness of any implemented mitigation measures throughout the Project's lifecycle.

Appropriate mitigation measures may include (but are not limited to) the demarcation of "no-go," culturally sensitive areas to be avoided by contractors throughout the life of the Project, including redesign, refinement, and/or maintenance. The demarcation of culturally sensitive areas could also facilitate safe access to TCPs and/or other places of cultural significance for Tribes. If appropriate, the implementation of environmental enhancement measures (e.g., planting and/or screening) or the protection of certain aspects of the environmental setting may be considered in coordination with affected Tribes.

The CTUIR proposed several mitigation strategies (CTUIR 2021a, 2021b). Potential mitigation strategies include:

- Enable continued access for Tribes through an Access Agreement (e.g., continued access to First Foods).
- Create protections for natural resources that support First Foods procurement (e.g., preserve landforms, practice responsible stream management, avoid negative impacts on pollinator species).
- Perform off-site mitigation, including education and outreach work, to assist Tribes in the perpetuation of oral history and legends that would have been taught in-situ in the Area of Analysis; engage with Tribes on appropriate rehabilitation (closure) strategies for the safeguarding of viewshed and cultural landscapes.
- Notify ~~Include~~ Tribal representatives by offering the opportunity to be included during any ground-disturbing activities (Cultural Resource Monitor).
- Develop an agreement with the Tribes in anticipation of a time when the wind farm will be considered for disassembly to restore the landscape and viewshed.

Rationale: This measure will provide affected Tribes with an opportunity to continue discussions with the Certificate Holder and EFSEC throughout the life of the Project to identify and adapt mitigation practices to reduce impacts to TCPs.

CR-2 Archaeological and Architectural Resources Mitigation: Table 4.9-9 of Section 4.9 sets out proposed mitigation measures for historic and cultural resources potentially impacted by the Project. Any mitigation strategies shall be detailed in an agreement document between EFSEC, Washington State Department of Archaeology and Historic Preservation (DAHP), the Tribes, and the Project proponent.

Mitigation measures are intended to minimize impacts on historic and cultural resources with elevated sensitivity (precontact archaeological resources, National Register of Historic Places (NRHP)-eligible historic-period archaeological resources, TCPs, and unidentified historic and cultural resources), primarily through avoidance. If avoidance is not possible, the mitigation clarifies which resources will require a DAHP permit prior to disturbance. Mitigation measures also identify instances where engagement with DAHP, Tribes, and/or landowners shall be required.
Rationale: This measure will provide the Certificate Holder with instruction on how to avoid, minimize, or mitigate for any impacts to identified archaeological and architectural resources.

Table CR-2 Summary of Recommendations for Archaeological and Architectural Resources Potentially Impacted by the Project

Resource ID	Resource Type	Resource Sensitivity	Required Mitigation If Avoidance Not Possible
• 45BN2092 • 45BN2146	Archaeological Resources Precontact Isolates	Avoidance requested and recommended	• DAHP permit not required for disturbance • Further coordination with Tribes and DAHP
• 45BN261 • 45BN2090 • 45BN2153 (precontact component)	Archaeological Resources: Precontact or multicomponent sites	Avoidance requested and recommended DAHP-issued permit required prior to disturbance	• Further coordination with Tribes and DAHP
• 45BN2081 • 45BN2082 • 45BN2083 • 45BN2084 • 45BN2086 • 45BN2088 • 45BN2091 • 45BN2093 • 45BN2138 • 45BN2139 • 45BN2144 • 45BN2150 • 45BN2155 • 45BN2156 • 45BN2157	Archaeological Resources: Historic-Period Sites and Isolates	Determined not eligible for the NRHP	• None

• 45BN2158 • 45BN2163			

Table CR-2 Summary of Recommendations for Archaeological and Architectural Resources Potentially Impacted by the Project

Resource ID	Resource Type	Resource Sensitivity	Required Mitigation If Avoidance Not Possible
• 45BN205 • 45BN2085 • 45BN2087 • 45BN2089 • 45BN2140 • 45BN2141 • 45BN2142 • 45BN2143 • 45BN2145 • 45BN2147 • 45BN2148 • 45BN2149 • 45BN2151 • 45BN2152 • 45BN2153 (historic component) • 45BN2154 • 45BN2159 • 45BN2160 • 45BN2161 • 45BN2162	Archaeological Resources (Historic Sites)	Unevaluated for the NRHP	• DAHP permit required prior to any disturbance • Evaluate site for NRHP eligibility
• 667765 (Nine Canyon Road) • 721665 (McNary—Badger Canyon No. 1 Transmission Line) • 722996 (147407 E. Beck Road Residence) • 724939 (Farmhouse and Garage) • 724940 (Shop) • 724941 (Machine Shed) • 724942 (Grain Elevator and Grain Storage Silos)	Architectural Resources	Determined not eligible for the NRHP	• Notify DAHP of any anticipated physical impacts

Table CR-2 Summary of Recommendations for Archaeological and Architectural Resources Potentially Impacted by the Project

Resource ID	Resource Type	Resource Sensitivity	Required Mitigation If Avoidance Not Possible
• 721666 (McNary—Franklin No. 2 Transmission Line) • 722995 (Grain elevator) • 724937 (Nicoson Road Farmstead Barn Storage Building) • 724938 (Nicoson Road Farmstead Cribbed Grain Elevator)	Architectural Resources	Determined eligible for the NRHP	• Notify DAHP of any anticipated physical impacts
• N/A	Archaeological Resources and Architectural Resources	Unidentified historic and cultural resources	• DAHP permit required prior to any disturbance to archaeological sites • Further coordination with Tribes and • DAHP

Notes:
APP = Avoidance and Protection Plan; DAHP = Washington State Department of Archaeology and Historic Preservation;
NRHP = National Register of Historic Places; RCW = Revised Code of Washington

9. Visual Aspects, Light and Glare

A. Visual Aspects (VIS) Mitigation

Wind turbines:

VIS-1 Foreground Turbine Locations: Relocate turbines located within the foreground distance zone (0 to 0.5 miles) of non-participating residences to avoid completely dominating views from these highly sensitive viewing locations.
Rationale: This measure will reduce the level of visual contrast and prominence of turbines by requiring them to be sited further away from non-participating residences.

VIS-2 Retain Natural-appearing Agricultural Landscape: Do not place piggyback advertising, cell antennas, commercial messages, or symbols on proposed wind turbines.
Rationale: This measure will reduce the level of visual contrast of turbines by prohibiting advertising elements that would seem out of place when compared to the agricultural landscape.

[Condition VIS-3 to be modified as discussed with EFSEC staff during FEIS review, to add clarity to standard.]

VIS-3 Turbine Cleaning: Maintain clean nacelles and towers to avoid any spilled or leaking fluids accumulating dirt. When a sufficient number of nacelles (by a reasonable person standard) and/or towers are noticeably ~~not clean~~soiled, the deployment of a cleaning crew shall be required.
Rationale: This measure will reduce the level of visual contrast of turbines by ensuring that they remain a clean, consistent white/gray color that is less visually distinct on the existing landscape.

Solar arrays:
VIS-4 Solar Array Vegetation: Avoid complete removal of vegetation beneath solar arrays during construction, where possible. If site grading requires the removal of vegetation, the area will be revegetated and maintained during Project operation (BLM 2013).
Rationale: This measure will reduce the level of visual contrast between areas of exposed soil and adjacent undisturbed areas during Project operation.

[Condition VIS-5 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]
VIS-5 Opaque Fencing: Install opaque fencing to directly screen views of the solar arrays where sited within 0.5 miles of ~~linear viewpoints (including the alignment of1-82) or~~non-participating residences.
Rationale: This measure will minimize color contrast between the proposed fencing and the existing landscape, allowing it to blend into the setting more effectively.

Battery Energy Storage System:
VIS-6 Retain Natural-appearing Characteristics: Design BESS to blend with the adjacent agricultural character, including selecting materials and paint colors to reduce contrast with the existing setting.
Rationale: This measure will reduce the level of visual contrast between BESS facilities and the area's agricultural setting as the facilities will mimic design characteristics of agricultural structures in the area.

Substation and transmission lines:
VIS-7 Maximize Span Length: Maximize the span length across highways and other linear viewing locations to decrease visual contrast at the highway crossings.
Rationale: By moving the structures as far from the road as possible, the effect of those structures being located directly adjacent to these linear viewing locations will be reduced.

VIS-8 Visual Clutter: Choose the type of proposed transmission structure (H-frame or monopole) to best match the adjacent transmission lines.
Rationale: This measure will minimize visual clutter from the introduction of different structure types into the landscape.

B. Shadow Flicker (SF) Mitigation

[Condition SF-1 to be modified as follows to clarify and better connect requirements to specific conditions.]
SF-1: Shadow Flicker: The Certificate Holder shall attempt to avoid, minimize, and mitigate shadow flicker at non-participating residences. Shadow flicker can usually be addressed by planting trees, shading windows, or other mitigation measures, such as~~. As a last resort~~, programming the control system of the wind turbine ~~could be programmed~~ to cease operation during brief periods when conditions result in ~~a~~ elevated perceptible shadow flicker. Conditions that would result in perceptible shadow flicker at non-participating residences are expected to be infrequent, only occurring during limited periods with the correct angle of the sun, wind speeds, and unobstructed, clear sky conditions.
Rationale: This measure will reduce the impacts of shadow flicker to non-participating residences by taking preventative actions.

SF-2 Complaint Resolution: The Certificate Holder shall set up a complaint resolution procedure that shall include the following: 1) A 24-hour "hot line" or other form of communication that the public can use to report any undesirable shadow flicker associated with the operation of the wind turbines, with the ability to log the date and time of a complaint. This line of communication shall be maintained for at least one year, at which time it could be reassessed to continue or be terminated; 2) An attempt to contact the complainant within 24 hours; and 3) A requirement to report any complaints and their resolution to EFSEC during monthly reports to the Council.
Rationale: This measure will reduce the impacts of shadow flicker by allowing the Certificate Holder to better track the incidence of occurrence and requiring that they take prompt corrective action.

C. Light (LIG) Mitigation

LIG-1 LEED-certified & Security Lighting: The Project shall be constructed with LEED-certified building exterior(s) and security lighting to minimize vertical and horizontal illuminance.
Rationale: This measure will reduce the impacts of Project lighting at and beyond the Lease Boundary by more effectively focusing lighting on desires areas.

10. Noise and Vibration (N) Mitigation

N-1 Staging Noise: Avoid laydown and equipment storage/parking areas closer than 2,500 feet from the nearest NSR location.
Rationale: These laydown and storage areas will have more noise sources for longer periods of time than other areas; therefore, siting these locations further from NSR locations will limit the sound level and the duration that such equipment could impact an NSR.

N-2 Large Equipment Noise: Limit large, noise-generating equipment operations, such as earth-moving equipment, cranes, and trucks, as outlined in Table 4.11-8, to daytime hours (between 7 a.m. and 10 p.m.), and limit the loudest and most impulsive pieces of construction equipment and activities, such as pile-driver operations and blasting, to typical working hours only: 7 a.m. to 6 p.m., Monday through Saturday.
Rationale: This measure will ensure that a typical workday will not include pile-driver operations or blasting during evening hours (6 p.m. to 10 p.m.) but could include some on-site activities during nighttime hours such as early-morning setup and preparation for the workday. Nighttime operations will be atypical. The purpose is to limit noise impacts during sensitive hours while allowing contractors some flexibility.

N-3 Nighttime Noise: Monitor noise during nighttime construction operations (between 10 p.m. and 7 a.m.), when construction activities have the potential to impact NSRs or reduce activities to ensure that construction noise does not exceed state noise limits.
Rationale: This monitoring will take place throughout the entirety of the nighttime hours or until construction activities cease.

N-4 Noise Complaint Resolution Procedure: Update the Certificate Holder's noise complaint resolution procedure to better address and respond to noise complaints from the public. The updates should include the following: a complaint hotline during construction and providing a phone number to be posted on signage throughout the construction project and ensure that current site contact information is maintained with EFSEC. The Certificate Holder shall log all correspondence and promptly follow up with inquiries to provide appropriate resolution. The correspondence and resolutions shall be logged throughout the construction process, and the log shall be made available to EFSEC during routine reporting or upon request. During the operation stage, the site will be staffed and contact information shall be available.

Rationale: This measure will better address and respond to noise complaints from the public.

N-5 Operation Noise Complaint Resolution: Establish a noise complaint resolution procedure similar to that proposed for construction and decommissioning to better address and respond to noise complaints.
Rationale: This measure will better address and respond to noise complaints from the public.

11. Recreation (R) Mitigation

[Condition R-1 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]
R-1: Recreational Activities: The Certificate Holder shall coordinate with DNR, Benton County, and other entities (i.e., BLM) when appropriate to identify new, or participate in community planned, recreational activities and/or improve existing recreational activities within the Lease Boundary and/or in surrounding communities (e.g., multi-use trails). The cost of the mitigation shall not exceed $50,000 in fees and construction and be planned for completion within 5 (five) years of construction. Coordination entities may be consulted for impacts to recreation identified specific to their administered lands. The Certification Holder shall identify measures for EFSEC's approval prior to the start of construction. EFSEC will be responsible for determining if the Certificate Holder has sufficiently coordinated with all relevant entities that promote recreational activities within the vicinity of the Lease Boundary.
Rationale: To mitigate the potential loss of recreational activities due to the Project.

[Condition R-2 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]
R-2 Information for Recreationalists: The Certificate Holder shall provide a minimum of five informational boards approved by DNR and EFSEC at viewpoints within the Lease Boundary and/or in the surrounding communities associated with scenic areas of interest. The cost of the mitigation shall not exceed $25,000 in fees and construction costs and construction of the informational boards shall be completed within five years of the beginning of construction.
Rationale: To mitigate the loss of uninterrupted views of scenic viewpoints and provide information to the public regarding the Project, the Project's expected years of operation and the reclamation of the Project. Additionally, photographs of the viewshed prior to the construction of the Project shall be displayed, in color, on the informational boards.

[Condition R-3 to be modified as requested and justified in Scout Jan. 2023 DEIS Comments.]
R-3 Recreation Safety Management Plan: To mitigate the loss of safe recreation use for recreation enthusiasts, the Certificate Holder shall attempt to coordinate with local and regional (when appropriate) recreation groups (e.g., the Northwest Paragliding Club, the Tri-City Bicycle Club) to develop and maintain an adaptive safety management plan to continue access to recreation activities in the Lease Boundary while keeping recreation enthusiasts safe. This plan shall identify potential hazards within the Lease Boundary (e.g., construction on or near common bicycle paths, no fly zones, etc.) and provide opportunities within the Lease Boundary and/or in the surrounding communities to identify or improve other similar recreation use areas to offset any recreation removed from the Project area as a result of the Project. The cost of the mitigation shall not exceed $15,000 in fees and construction cost and be planned for completion within 5 (five) years of construction completion. Specific to paragliding, the Certificate Holder shall perform outreach to other regional paragliding entities to share the safety management plan to ensure that recreationists are aware of the limitations the Project creates for safe landing and safe air space. EFSEC will be responsible for determining if the Certificate Holder has sufficiently coordinated with all entities that promote recreational activities within the Lease Boundary.
Rationale: To mitigate the loss of safe use for recreation enthusiasts.

12. Public Health and Safety (PHS) Mitigation

PHS-1: Fire Suppression Aircraft Access: Due to first responder safety concerns, fire suppression aircraft are not anticipated to operate within or in close proximity to the Project footprint. However, in the event of a major wildfire occurring in an area where fire suppression aircraft may need access near the Project, whether related to the Project or resulting from another cause, the Certificate Holder shall shut down turbines temporarily.
Rationale: This mitigation measure will allow access for fire suppression aircraft carrying water and fire suppression chemicals, as needed.

13. Transportation (TR) Mitigation

TR-1 Load Movement: The load movement team shall review the procedures to be followed if the load should become lodged at a crossing and shall review the emergency contact numbers for each crossing daily—that is, before starting travel for the day.
Rationale: Ensures safe practices during the transportation of materials for construction and decommissioning.

TR-2: Train Safety Training: The Certificate Holder shall work with WSDOT and Operation Lifesaver to provide train safety presentations to employees and contractors to increase knowledge regarding train safety, including train track crossings. Since this measure cannot be required by EFSEC, it cannot be considered fully effective mitigation for the purpose of this analysis.
Rationale: Lessens potential collisions at train crossings.

TR-3 Decommissioning Traffic Analysis: A third-party engineer shall provide a traffic analysis prior to decommissioning. The traffic analysis will evaluate all modes of transportation (e.g., waterways, rail, roads, etc.) used for the movement of people and materials during decommissioning via the haul route(s) in Washington State.
Rationale: Ensures that no changes have occurred since the traffic analysis was originally provided prior to construction.

TR-4 Railroad Crossing Traffic Analysis: All railroad crossing and grade changes shall be included in a route survey performed by a third-party engineer with the Washington Utilities and Transportation Commission participating to determine if current traffic control systems at crossings are appropriate or if additional mitigation is needed prior to decommissioning. The route survey shall include anticipated traffic counts. Since this measure will require the participation of other agencies before it could be implemented, it cannot be considered fully effective mitigation for the purpose of this analysis.
Rationale: Ensures that no changes have occurred since the route survey was originally provided prior to construction.

TR-5 Traffic Analysis — Existing Laws at Decommissioning: The analysis of impacts from decommissioning is based on existing laws and regulations at the time when the Final ASC was submitted to EFSEC. The Certificate Holder shall consult with WSDOT and Benton County on the development of a decommissioning-stage Traffic and Safety Management Plan prior to decommissioning. The Traffic and Safety Management Plan must include a safety analysis of the WSDOT-controlled intersections (in conformance with the WSDOT Safety Analysis Guide) and recommend mitigation or countermeasures where appropriate. The analysis shall review impacts from decommissioning traffic and be submitted to WSDOT for review and comment prior to decommissioning. Since this measure will require the participation of other agencies before it could be implemented, it cannot be considered fully effective mitigation for the purpose of this analysis. EFSEC will work with the identified agencies to facilitate cooperation in implementing this mitigation measure.

Rationale: Ensures that no changes have occurred to the laws and regulations used in this analysis.

TR-6 Additional Route Analysis: The Certificate Holder provided a Traffic Impact Analysis (TIA) with the Final ASC (Horse Heaven Wind Farm, LLC 2023). Oversize truck routes to the Project Area were analyzed using 1-82, north through State Route 397, Locust Grove Road, and Plymouth Road. Additionally, the delivery of turbine towers was only analyzed from 1-82 to the Locust Grove/State Route 397 exit. The use of additional routes for oversize or overweight deliveries may require supplemental analysis and requires approval by EFSEC.
Rationale: Ensures consistency with state and county transportation plans and codes.

TR-7 Intersection Safety and Mitigation: Coordinate with WSDOT, Benton County, and EFSEC prior to construction and prior to demolition on potential mitigation for intersections with safety concerns.
Rationale: Ensures safe practices during the transportation of materials for construction and decommissioning.

14. Public Services and Utilities (PSU) Mitigation

PSU-1 Component Disposal Procedure: To address the potential for the inappropriate disposal of Project waste, the Certificate Holder shall dispose of all non-recyclable Project components in an appropriately licensed waste disposal facility.
Rationale: This mitigation measure prevents disposal of Project-related wastes in inappropriate landfills or unauthorized facilities.

15. Socioeconomics (Socio-ec) Mitigation

Socio-ec-1: Decommissioning Housing Survey: Prior to decommissioning, the Certificate Holder shall provide an up-to-date analysis on the availability of temporary housing for workers, consistent with the Washington Department of Labor & Industries guidelines. If sufficient temporary housing for workers is not available, the Certificate Holder shall present EFSEC with options for housing workers from outside the community.
Rationale: This mitigation measure will minimize adverse impacts on the availability of housing for residents of the surrounding communities.

Summary of Milestones and Timing Table

Timing	Mitigation Measure	Milestone	~~PTAG/~~TAC review
Construction			
~~One year prior to construction~~	~~**Hab-4**~~	~~Establishment of Pre-operational Technical Advisory Group (PTAG will be replaced by the Technical Advisory Committee upon the onset of operation).~~	~~NA~~
During appropriate season within 1 year prior to construction	**Spec-1, 4, 8, 10, 12**	pre-construction surveys	~~PTAG~~
180 days prior to construction	**Hab-6**	Final design	~~PTAG~~
90 days prior to construction	**Hab-1**	Corridor Mitigation if Plan, necessary	~~PTAG/~~ TAC
90 days prior to construction	**Hab-2**	Rationale for and mitigation of canyon and draw crossings	NA
90 days prior to construction	**Wild-8**	Raptor Nest Monitoring and Management Plan	~~PTAG~~
90 days prior to construction	**Hab-5**	Indirect Habitat Loss Management Plan	~~PTAG~~
90 days prior to construction, if needed	**Spec-5**	Ferruginous hawk Mitigation and Management Plan	~~PTAG/~~TAC
60 days prior to initiation of surveys (pre- construction).	**Spec-13**	Pronghorn antelope seasonal study	~~PTAG/~~TAC
60 days prior to construction, if needed	**Spec 1, 4, 10, 12**	Species specific management plans	~~PTAG/~~ TAC
Prior to construction	**Wild-5**	Flagging sensitive features and habitat	NA
Prior to construction	**Wild-9**	Pre-construction bird nest surveys, if necessary	NA
Operation			
60 days post-construction	**Veg-4**	As-built report and offset calculation	NA
Two years after commencement of operation	**Wild-1**	Review of post-construction fatality monitoring results	~~PTAG/~~ TAC
Annually during operation	**Wild-6**	Review mortality database and provide mitigation	NA
Annually during operation	**Spec-2, 4, 6, 7, 8, 9, 12**	Incidental databases	TAC
Annually during operation	**Spec-11**	Townsend's big-eared bat mortality database	TAC
Decommissioning			
60 days prior to initiation of decommissioning	**Veg-7**	Detailed Site Restoration Plan	NA
60 days prior to initiation of decommissioning	**Hab-7**	Rationale for and mitigation of remaining roadways, if any	NA

Notes: NA = Not Applicable; ~~PTAG = Pre-operational Technical Advisory Group;~~ TAC = Technical Advisory Committee

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April 8, 2024

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

Re: Horse Heaven Clean Energy Center Project – Stakeholder Comments and Concerns on EFSEC Proposed Final Action, April 8, 2024

Dear Chair Drew and Councilmembers:
The American Clean Power Association (ACP)[1] and the Energy and Wildlife Action Coalition (EWAC)[2] appreciate the opportunity to submit comments on the Horse Heaven Clean Energy Center Project (Horse Heaven Project). ACP is the national trade association representing the renewable energy industry in the United States which includes ACP's 800+ member companies. EWAC is a national trade association representing renewable energy companies and electric utilities in matters related to wildlife and natural resource policies, of which Scout Clean Energy is a member. Neither ACP nor EWAC file comments regarding permitting outcomes for specific projects, and we neither support nor oppose the Horse Heaven Project. As you will see below, we are filing comments in this project docket to express our serious concerns with the precedent that could be set by the procedural challenges experienced by this project and to convey the detrimental impact the outcome of these proceedings – if not remedied – will have on

[1] ACP is the national trade association representing the renewable energy industry in the United States, including in all aspects of offshore wind energy, bringing together over 800 member companies and a national workforce located across all 50 states with a common interest in encouraging the deployment and expansion of renewable energy resources in the United States. By uniting the power of wind, solar, storage, and transmission companies and their allied industries, ACP seeks to enable the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. Additional information is at http://www.cleanpower.org

[2] EWAC is a national trade association, formed in 2014, whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

Washington's renewable energy industry and the state's ability to meet its climate objectives.

Background

Washington's current renewable energy industry represents an $8 billion investment in wind, solar, and energy storage projects in the state. This investment has produced 3,606 megawatts (MW) of operating wind, solar, and energy storage capacity in Washington and significantly benefits the state's economy. The renewable energy industry is also an important job creator in Washington with a workforce of more than 9,600 people. Renewable energy projects invest in local communities, providing property, state, and local taxes totaling nearly $30 million annually. Additionally, renewable energy projects provide extra income to farmers, ranchers, and other private landowners through lease payments totaling over $27 million annually[3].

The state's pipeline of 680 MW of renewable energy projects in construction represents an additional $1 billion investment[4]. Further, based on data provided by wind turbine manufacturers, there are an additional 12 wind projects totaling approximately 3,000 MW of capacity in active development in the state. The Clean Energy Transformation Act[5] (CETA) in Washington and the federal Inflation Reduction Act[6] are poised to sustain and even increase the pace of development and investment in the state. However, a breakdown in the Energy Facility Site Evaluation Council (EFSEC) site certification process (EFSEC process) could threaten those future investments and the resulting economic and environmental benefits.

The Council's major changes to infrastructure siting requirements for the Horse Heaven Project are not based on sound science or other rational basis and will work against CETA by unnecessarily restricting responsible renewable energy development.

A fair and reliable permitting process requires that any changes to recommendations made in the Final Environmental Impact Statement (FEIS) are necessary, evidence-based, and well-reasoned. The purpose of the FEIS's thorough project review is to ensure responsible renewable energy development. However, in the example of the Horse Heaven Project, the Council's proposed late-stage changes to the FEIS-recommended measures ignore that careful review and the best available science and guidance. The

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[3] ACP Washington State Fact Sheet ("ACP Fact Sheet"), current through 3Q 2023: Washington_clean_energy_factsheet.pdf (cleanpower.org)

[4] ACP Fact Sheet

[5] SB 5116, 2019 http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5116-S2.SL.pdf?q=20210822161309

[6] Public Law 117-169, available at: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Council's shifting requirements for ferruginous hawk and habitat connectivity measures go beyond standard practice in the State, which is defined by the 2009 Washington Department of Fish and Wildlife (WDFW) Wind Power Guidelines[7] that have served as stable policy guidance for the renewable industry for over a decade. They also go beyond the recommendations and guidance of the U.S. Fish and Wildlife Service and other jurisdictions of which ACP is aware. The new requirements incorporate disjointed elements from unpublished guidance and rely on studies that are neither peer-reviewed nor project-specific and in at least one case extrapolate analysis and conditions from an unrelated industry sector with no explanation as to the applicability in this case. EFSEC is incorrectly adopting unpublished draft WDFW management recommendations for the ferruginous hawk into a regulatory framework in a move that is unprecedented for any other state-listed species. Similarly, EFSEC is utilizing desktop wildlife corridor modeling, completed over a decade ago, which was intended to inform transportation planning and conservation planning, as a regulatory overlay aimed at excluding new energy infrastructure. There is no evidence that these new requirements will result in any conservation gains beyond those provided by the wildlife measures already recommended in the FEIS. Thus, they will unnecessarily restrict responsible renewable energy development.

In fact, applying these new requirements may hinder conservation efforts in Washington by compromising the state's ability to comply with CETA. CETA requires all electricity used in Washington to come from sources that emit no greenhouse gases by 2045. Currently, 7.9% of Washington's electricity comes from wind, solar, and energy storage facilities[8]. To meet CETA's requirements, the pace of renewable energy development in Washington needs to increase – but a loss of confidence in the EFSEC process and the precedent that would be set by the overly restrictive wildlife measures being considered in the Horse Heaven Project review would instead have a chilling effect.

Arbitrary changes late in the permitting process erode procedural confidence and will have a chilling effect on future renewable energy investment in Washington. The major changes in infrastructure siting requirements that have been introduced for the first time during the Horse Heaven Project's recent Council meetings will erode industry confidence in the EFSEC process. These Council meetings occurred at a stage in the EFSEC process when major capital investments had been made to develop the proposed project and negotiations with state agency staff had reached a successful resolution. Such investment requires a high degree of confidence in the expediency, procedural reliability, and fairness of the EFSEC process. Confidence can be developed through transparency

[7] Washington Department of Fish and Wildlife. 2009. Wind Power Guidelines. Olympia, WA. 30pp.
Washington Department of Fish and Wildlife Wind Power Guidelines
[8] ACP Fact Sheet

and predictability of the review process. Unfortunately, EFSEC's recent actions risk undermining the clean energy industry's confidence in the review process through the precedents being set in this current proceeding.

Sweeping changes to the layout and capacity of a project made during the Council meetings have the potential to make it impossible to actually develop a project even if approved by EFSEC. A project that is permitted but cannot be financed and built because of unreasonable permit conditions imposed at the last minute in a multi-year review process should not be viewed as a success. Approved projects that nevertheless cannot be built due to unreasonable conditions will not provide any economic benefit and will not help the State get closer to meeting its mandated climate objectives.

Significant Council meeting changes that threaten the viability of a project, particularly changes that appear to be made arbitrarily and without sound scientific or other reasoned basis, indicate a disregard for both the investment in the project and the procedural confidence on which that investment was based. If the Horse Heaven Project is altered as proposed during the December and January Council meetings, it will signal to the rest of the renewable energy industry that the EFSEC process represents an extremely costly high-stakes gamble with their resources and capital. As a result, developers will be less likely to make the necessary investments to develop and permit projects through the EFSEC process.

This situation creates uncertainty for the future repowering of operating projects in the state, further compromising Washington's ability to meet CETA requirements without any conservation gains.

Renewable energy projects, particularly wind projects, currently operating in the vicinity of the Horse Heaven Project and throughout the state are likely to consider future repowering to increase project generation capacity, extend project operating lifespan, or both. Repowering is one of the least environmentally impactful actions that can be undertaken to boost renewable energy generation capacity and should be encouraged through state permitting processes. However, the precedent that would be set by the overly restrictive wildlife and habitat measures from the Horse Heaven Project review creates uncertainty for projects considering whether to exercise this option. If existing projects face restrictions or are entirely prohibited from repowering due to unsupported wildlife measures, Washington's ability to meet CETA requirements and the state's conservation goals will be further compromised.

Conclusion

Thank you for the opportunity to comment on the Horse Heaven Project and for your focus on these issues. ACP and EWAC urge restoration of a fair and reliable EFSEC process that recommends well-supported and reasonable conservation measures and limits late-stage shifts in recommendations only to those necessary, well-reasoned, and

justified by science or other publicly available evidence in the record. Doing so will help to ensure Washington state can achieve its climate objectives and reap the economic benefits of a growing renewable energy industry. Please don't hesitate to let us know if we can provide any additional information.

Sincerely,

Tom Vinson
Vice President, Policy and Regulatory Affairs
American Clean Power Association (ACP)

Quintana Hayden
Senior Director, Wildlife and Federal Lands
American Clean Power Association (ACP)

John M. Anderson
Executive Director
Energy and Wildlife Action Coalition (EWAC)

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITING EVALUATION COUNCIL

In the Matter of the Application of: Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC, Applicant.	DOCKET NO. EF-210011

APPLICANT'S POST-HEARING BRIEF

REDACTED
References Confidential Information Submitted by TYN

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I. INTRODUCTION

"We are the first generation to feel the impact of climate change and the last generation that can do something about it." Barack Obama

"I've dedicated my life in public service to defeating climate change." Governor Inslee

In the past several years, Washington State has considered and rejected large-scale energy projects due chiefly to concerns regarding climate change. Each of these projects—the Millennial Coal Facility in Longview, the Kalama Methanol project at the Port of Kalama, and the Tesoro oil terminal in Vancouver—was a regional facility considered by members of the public and agencies to be too large, with too many unmitigated environmental impacts. At around the same time, in Oregon, permitting agencies denied the Pembina Propane Terminal and the Jordan Cove LNG export terminal. The common factor leading to the demise of these facilities was the failure to address climate change.

Large-scale energy facilities are complex, challenging to site, and hard to permit due to multiple competing concerns. Projects aimed at meaningfully mitigating climate change cannot be hidden from public view. Like all energy facilities, they will naturally have impacts. The question is not whether all impacts must be avoided. They cannot be. Instead, the question is whether an applicant has, to the maximum extent feasible, proposed all reasonable measures to mitigate and minimize them, with the full understanding of the tradeoffs and benefits of the project. Most important is the furtherance of policy objectives and meeting legislative mandates to deliver zero carbon emission power.

The key question for the Washington Energy Site Evaluation Council ("EFSEC" or "Council") to answer is this: Is Washington capable of authorizing an ambitious, utility-scale renewable energy project, that will essentially displace a large fossil fuel plant, with 100% clean energy delivered to "load" with hybrid wind, solar, and battery storage technologies?

Though the Horse Heaven Energy Project ("Project") is large, its actual footprint is relatively small, touching very little sensitive habitat, proposing turbines away from residential areas, and sited almost entirely on farmlands hosted by willing farmers. The Applicant has heard the concerns of Native American Tribes and has taken action to avoid, minimize, and mitigate impacts they identified, offering sustained efforts to fund and invest in responsive programs. Finally, the Project breathes new life into a struggling agricultural economy and will create hundreds of new jobs.

This is the right project, in the right location, at the right time. Throughout the adjudication, Project opponents sought to prove that the Project is "too large" and proposed in the "wrong" location. In fact, the opposite is true. The Project is an ambitious effort to push forward Washington's Clean Energy Policy. It is hard to imagine a better location from a siting standpoint than this one: dominated by compatible agricultural uses, and away from generally remote and scattered sprawling residential development. Responding to questions from the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), Scout Clean Energy, LLC ("Scout") Project Manager Dave Kobus explained that the Project was designed to have the "lowest environmental impact" at a site "specifically chosen for its low relative environmental impact," adding that Scout has "done everything practical to design the site to minimize that impact, avoid where necessary, and, in fact, provide mitigation for where it can't be avoided."[1] Finally, time is running out for the State to meet its clean energy goals, and this Project takes a necessary and substantial step towards their achievement.

The Applicant has evaluated potential impacts of the Project, commissioned some of the most robust multi-year studies and surveys ever undertaken for land-based renewable energy projects, and worked with EFSEC staff to ensure that every impact is evaluated and that potential impacts are minimized and mitigated. The Applicant has prepared a substantial application and funded a multi-year environmental review, undertaken separately by EFSEC

[1] Deposition of Dave Kobus, July 21, 2023 ("Kobus Dep.") at 158:16-22 to 159:1-6.

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staff. The analysis of impacts below documents these efforts and makes clear that the Project is responsibly sited and mitigated to ensure protection of the natural and built environment while still supplying the State meaningful renewable energy it desperately needs.

II. BACKGROUND

A. The Proposed Project was strategically sited to avoid and minimize impacts.

Applicant submitted its initial Application for Site Certification on February 8, 2021. The Project proposes a wind energy micrositing corridor encompassing 11,850 acres and three solar siting areas.[2] By combining wind, solar, and battery energy storage systems, the Project will provide a nameplate generating capacity of up to 1,150 MW. The Applicant planned the Project to maximize flexibility, including two different turbine options, a different solar module selection, and the opportunity to update and provide final solar array layout options. That flexibility allows Applicant to ensure an efficient, stable power source with capacity to substantially displace the need for utility-scale fossil fuel generation while minimizing impacts. As WAC 463-60-116(2) requires, at least 30 days before the adjudication began, Applicant submitted an updated Application for Site Certification in December 2022 ("ASC"), which did not alter facility components but incorporated information from data requests and responses and additional studies completed after the initial Application was submitted.[3]

The Project is strategically sited in an agricultural but rapidly urbanizing locale, where the existing environment will partially obscure and therefore partially minimize impacts from the turbine views for most of the 200,000 people living in the Tri-Cities area. Most of the Project is sited on privately owned, non-irrigated land managed for dryland agriculture or under the conservation reserve program.[4] With their lease payments, farmers can protect their family legacies and continue farming right up to the turbines. The Project is

[2] December 2022 Updated Application for Site Certification ("ASC") at 2-1.
[3] ASC Cover Letter at 1 (June 15, 2022).
[4] *See* ASC at 2-7, 3-101, Table 3.4-1.

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close to the existing Nine Canyon Wind Project—a project that verifies the ability to maintain farms within a wind facility. Finally, rather than having to disturb additional habitat unnecessarily by running transmission lines, the Project site is already set up to access the regional transmission system through two Bonneville Power Administration high-voltage transmission lines.

B. The Council in Order 883 determined the Project is consistent with the County land use plan and zoning ordinances.

On March 30, 2021, the Council conducted a public hearing on the Project's land use consistency. On May 17, 2022, the Council issued Land Use Consistency Order 883 ("Order 883"), holding that under the applicable Benton County Code in effect when the initial Application was filed, the Project is a conditionally permitted use within Benton County's ("County") agricultural zone and thus consistent with the Code and Comprehensive Plan.[5]

C. A full Adjudication was held, facilitating discussion of all relevant issues.

Per RCW 80.50.090(4), the Council, with the help of an administrative law judge ("ALJ"), held adjudicative proceedings. Three entities filed requests for party status (Benton County (the "County"), Council for the Environment ("CFE"), and Scout), and two parties (Tri-Cities C.A.R.E.S. ("TCC") and Yakama Nation (together, "intervenors")) (collectively, the "Parties") intervened.

In spring 2023, the ALJ held a series of pre-hearing conferences to discuss procedure and identify disputed issues.[6] Over the summer, the Parties submitted three rounds of written testimony and had the opportunity to submit a pre-hearing brief.[7] Finally, the adjudication

[5] Order 883 at 4.

[6] *See* WAC 463-30-270; Second Pre-Hearing Conference Order at 2-5 (May 19, 2023); Order Overruling Parties' Objections to Second Prehearing Conference Order at 4 (June 12, 2023); Scout Clean Energy's Prehearing Brief at 4-5 (for full discussion of disputed issues).

[7] The ALJ also dispensed with several motions requesting a stay of the proceedings until issuance of the Final Environmental Impact Statement, Objections to the Second Prehearing Conference Order, Motions to Strike Testimony, Motions to Compel, and a Motion for Reconsideration. The ALJ also declined to dismiss the ASC, rejecting TCC's motion to dismiss for failure to comply with WAC 463-60-165 regarding water supply, holding TCC "fail[ed] to cite to any statutory provision allowing an ASC to be dismissed from

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concluded with an eight-day virtual hearing involving live testimony, questions from the Parties, Council members, and the ALJ, and another opportunity for public comment.

III. EFSEC REVIEW CRITERIA

The Energy Facility Site Locations Act ("EFSLA") authorizes EFSEC to administer Washington's energy facility siting process and identifies the Council's criteria for reviewing and making recommendations to the governor on applications for site certification of potential energy facilities.[8] The primary purpose of the EFSLA is

> 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.[9]

The law's policy is 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."[10]

Though the legislators used the term "balance," the statute does not impose a balancing test or require weighing project needs against project benefits. Instead, it provides several "premises," or factors, the Council must weigh when determining whether impacts can be mitigated, including "development and integration of clean energy sources" and provision of "abundant clean energy at reasonable cost," along with protection of environmental quality and environmental justice.[11] That is, the EFSLA does not task EFSEC with weighing the need for clean energy against potential impacts from a given facility;

EFSEC's application review process. There is no such authority…WAC 463-60-010 makes it clear that the Council determines whether the information submitted by an applicant is sufficient to allow EFSEC review." *See* Order Denying TCC Motion to Dismiss Application Due to Water Supply Issue at 2 (Aug. 7, 2023).

[8] RCW ch. 80.50.

[9] RCW 80.50.010.

[10] RCW 80.50.010; *see also Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, 178 Wn.2d 320, 340, 310 P.3d 780 (2013) (policy of EFSLA is to "balance the need for new energy production with environmental and societal considerations").

[11] RCW 80.50.010(1)-(6).

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rather, it declares the "pressing need" for such facilities and sets forth premises to guide the Council's determination of whether the proposed mitigation adequately addresses the Project's environmental impacts.[12]

EFSEC's own regulations support this interpretation.[13] Indeed, the Council is tasked with this overarching goal when applying the application review criteria in WAC Chapter 463-60, and construction and operating standards in WAC Chapter 463-62.

IV. ARGUMENT

A. The Project implements state climate law and policy.

EFSEC has always considered state climate law and policy a key part of its considerations. For example, in its Report to the Governor on the Vancouver Energy Terminal, a crude oil terminal facility, EFSEC stated: "[state statutes, policies, and plans] inform the Council that Washington State energy policies include the objectives of reducing dependence on fossil fuels and transitioning to a clean energy economy, with these goals balanced against the need to maintain the availability of energy at competitive prices for consumers and businesses."[14]

In 2022, the legislature made this consideration explicit by focusing EFSEC's mission "to reduce dependence on fossil fuels by recognizing the need for clean energy" to achieve the State's goals.[15] Due to the "pressing need for energy facilities," EFSEC's role is 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

[12] *See* WAC 463-60-021 (Council required to "recognize the pressing need" for increased energy facilities"); *Friends of Columbia Gorge*, 178 Wn.2d at 344 (explaining that petitioners, who were represented by the same counsel that represents TCC in this matter, "misunderst[ood] EFSEC's role in balancing competing interests," which is to determine mitigation "measures [] sufficient to show compliance" with RCW 80.50.010, not whether impacts outweigh net benefit of the project as a whole).

[13] *See* WAC 463-14-020 (confirming foremost "the pressing need for increased energy facilities" and specifying that when "acting upon any application for certification, the council action will be based on the policies and premises set forth in RCW 80.50.010").

[14] EFSEC, Report to the Governor on Application No. 2013-01 (Dec. 19, 2017).

[15] H.B. 1812, 67th Leg., Reg. Sess. (Wash. 2022) (enacted); *see also* RCW 80.50.010.

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land and its wildlife, and the ecology of state waters and their aquatic life."[16] Among the State's economic and climate goals is the Clean Energy Transformation Act ("CETA"), which requires all electric utilities serving retail customers in Washington to be greenhouse gas neutral by 2030.[17] By 2045, utilities cannot use offsets anymore and must supply Washington customers with electricity that is 100% renewable or non-emitting. Reaching this goal requires "at least 3,500 megawatts of renewable resources by 2027" and will require "adding more renewables as a means of displacing emissions both within their portfolio and in the broader market."[18]

That directive has been incorporated into these proceedings. As the ALJ noted, the Council cannot "ignore or second guess RCW 80.50.010's premise of encouraging the development and integration of clean energy sources, or the various other state laws mandating the transition to alternative energy resources, most significantly the Climate Commitment Act's cap-and-invest program, designed to eliminate [] all greenhouse gas emissions in Washington by 2050."[19]

CETA is not self-executing. Washington utilities must acquire power from utility-scale projects capable of supplying a robust supply, and those projects must secure site certification. The Horse Heaven Project's use of integrated wind, solar, and battery energy resources will not only help utilities meet CETA's requirements by developing a robust energy supply but will deliver that supply when it is needed most.

B. The Project takes advantage of uniquely favorable weather and transmission infrastructure for wind energy and is optimally scaled and configured to provide a meaningful amount of energy with the fewest impacts.

The Project's scale, location, and hybrid generation mix offer the quantity of energy demanded by utilities and provide opportunities to take advantage of strong "winter peaking" winds, enabling robust power to Washington to serve winter power needs. In his rebuttal

[16] RCW 80.50.010.
[17] S.B. 5116, 66th Leg., Reg. Sess. (Wash 2019) (enacted).
[18] Northwest Power and Conservation Council, Northwest Power Plan, 46 (2021).
[19] Order Overruling Parties' Objections to Second Prehearing Conference Order at 4.

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testimony, industry expert Dr. Greg Poulos explained the complexity of site selection and the rigorous analyses needed to consider a major utility renewable energy facility like Horse Heaven.[20] Dr. Poulos confirmed that the Project size is "consistent with the trend toward larger wind farms as the desire to transition to clean electricity production accelerates."[21]

As discussed, utilities must satisfy publicly demanded and statutorily required clean power, at large utility scale. This Project aims to meet this demand. Dave Kobus testified that the Project is favorable for regional utilities as it is coincident with peak loading demand.[22] Questioned about regional utilities' demand for the facility, Mr. Kobus testified that "all utilities in the region" are interested in the Project, including "Avista, Puget Sound Energy, Portland General."[23] When asked how many utilities are interested in buying the Project's output, Mr. Kobus answered:

> All of them, [p]lus - plus C&Is [commercial and industrial offtakers]. There's a high demand right now for clean energy. There's going to be shortages in the very near future. There's going to be slim pickings as to what's available to meet those demands. And the closer, the better. The closer we are to the load, the desired market, the better. They all want it. They're clamoring for it, [further confirming that] there's not enough to meet the demand.[24]

In the Pacific Northwest, that demand is particularly high in winter. Mr. Kobus explained:

> So there are peak winter loading demands. This region is a storm-driven climate. So when the winter storms come in and when the spring storms come in as the seasons change, that's when we get our peak generation. You know, as opposed to a gorge project per se, is more predominantly summer, summer peaking. This is winter peaking, and that's when the utilities' loads peak the largest. So the generation profile of this project is a very good match for the load profile that the utilities have to serve.
>
> Q. [Mr. Aramburu] Well, is it not the case that particularly wind during cold times in the Tri-Cities doesn't blow for days and days?
>
> A. There are times it doesn't blow for days and days, that's right.
>
> Q. So that's not coincident with peak loading demand, is it?

[20] EXH-1031_R at 3:21-25 to 6:1-24.
[21] EXH-1031_R at 8:2-4.
[22] Kobus Dep. at 89:20-25.
[23] Kobus Dep. at 90:3-5.
[24] Kobus Dep. at 91:6-16.

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> A. Sure is. Because when it does blow, there's a lot of it available. It's an intermittent resource. It generates when the wind blows, correct.[25]

This testimony further confirms Dr. Poulos's observation that "with batteries and solar energy, the Project energy production will project a much different annual energy generation profile than if it were only wind."[26]

Not only will the Project deliver winter-peaking utility power load at a substantial scale; it also includes "hybrid" wind, solar and battery technologies designed to optimize the power to best serve demand. Mr. Kobus explained,

> The intent is to optimize it so when you've got solar, when you've got that excess solar that's there and able to generate, you can divert it to charge the battery without using the transmission system. And so all of these things work together to optimize the project for the eventual offtaker.[27]

To optimize the Project and "meet evolving demand," the solar and battery resources are "clustered by the interconnection to minimize the amount of wires to make it as cost effective as possible."[28] Optimization also includes the "lowest environmental impact. [The project] has to be minimized to the extent practical related to the SEPA criteria."[29] The Applicant's intent is "to remain as nimble as possible to be able to eventually sell the maximum extent of the energy from this project" with the most mitigated impacts.[30]

C. The proposed Project satisfies the applicable CUP criteria with conditions to mitigate impacts from fire.

Any and all potential land use-related conflicts and local concerns can—and should—be mitigated through conditions imposed in the Site Certificate Agreement. In Order 883, the

[25] Kobus Dep. at 92:16-25 to 93:1-14.
[26] Poulos Rebuttal at 10:7-9. Dr. Poulos testified that meteorological measurements are taken, "and those guide the energy part of the process, and then there are constraints that come from a lot of different quarters, environmental, private landowners, and then ultimately the turbine models and various other construction costs are taken into account...." Day 7 Tr. at 1495:5-14 (Poulos).
[27] Kobus Dep. at 44:12-20.
[28] Kobus Dep. at 57:4-8.
[29] Kobus Dep. at 158:16-22.
[30] Kobus Dep. at 157:3-7.

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Council determined that the Project is "consistent and in compliance" with Benton County's zoning ordinance and land use plans.[31] Thus, the sole issue for consideration here is whether, informed by the Conditional Use Permit ("CUP") criteria, the Council should impose conditions akin to those the County would impose in its local permit process.

Under the Benton County Code ("BCC") in effect at the time the ASC was submitted, a CUP must be granted "if … *as conditioned*, the proposed use:"

> (1) Is compatible with other uses in the surrounding area …;
> (2) Will not materially endanger the health, safety, and welfare of the surrounding community …;
> (3) Would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood …;
> (4) Will be supported by adequate service facilities and would not adversely affect public services to the surrounding area; and
> (5) Would not hinder or discourage the development of permitted uses on neighboring properties ….[32]

Section 2.23.3.1 of the ASC analyzes these criteria, explaining how the Project complies with the BCC and mitigates potential impacts.[33] In rebuttal testimony, land use expert Leslie McClain responded to each of the County's primary concerns, point by point.[34] There appears to be little dispute as to the third criterion involving pedestrian traffic because the Project's traffic impacts will be minimal.[35] The remaining criteria are discussed below.

1. The County is trying to relitigate Order 883, rather than offer proposed conditions to address actual local concerns.

The County did not suggest any conditions to mitigate Project impacts because it continues to assert Order 833's "consistent and compatible" finding does not address whether a CUP would be issued in the first instance, even with conditions. The exchange between Council Chair Drew and County planner Greg Wendt during the hearing demonstrates the County's failure to help the Council evaluate potential conditions in relation to the

[31] EFSEC Order 883 at 9.
[32] Benton County Code ("BCC") 11.50.040(d) (emphasis added).
[33] ASC at 2-152 to 2-159.
[34] EXH-1023_R at 8-12.
[35] *See* ASC at 2-157 to 2-158.

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CUP criteria. Mr. Wendt admitted to not having considered (1) whether there were local concerns which could be addressed through conditions or (2) whether the CUP conditions imposed on the Nine Canyon project permitted by Benton County were applicable or useful here.[36]

By contrast, Scout emphasizes that the most logical starting point for CUP conditions is the CUP granted to the Nine Canyon project, another utility-scale wind farm "next door" to the Project site.[37] Scout further anticipates EFSEC will impose appropriate conditions to address local and Project-specific concerns. Ms. McClain has suggested such conditions, including the example conditions, to address fire risk and other concerns based on the requirements for other wind and solar facilities in the Northwest.[38]

2. The Project is compatible with existing uses because farmers will be able to continue farming around the turbines and invest lease payments into their long-term agricultural operations.

The record is replete with evidence that the Project's proposed use meets the County's first CUP criterion: it is compatible with other uses in the surrounding area. "Compatibility" is defined as "the congruent arrangement of land uses and/or project elements to avoid, mitigate, or minimize (to the greatest extent reasonable) conflicts."[39] Nor does it discourage development of permitted uses on neighboring properties under the last criterion. The Project is compatible with surrounding uses because it will allow for continued agricultural operations and discourage conversion of farmland to residential use.

Chris Wiley, representing a multi-generational Horse Heaven farming family, is resolute: "Absolutely I think [the Project] is compatible with dryland wheat farming."[40] Mr. Wiley "ran the numbers" and determined that "over 99 percent of our farmland will continue

[36] EXH-2002 at 3, 6, 11; EXH-2004_R at 6.
[37] *See* EXH-1023_R at 25. The Nine Canyon conditions are provided in EXH-1024_R through EXH-1030_R.
[38] EXH-1040_R at 14-17.
[39] BCC 11.03.010.
[40] Day 6 Tr. at 1095:23-25.

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to be normal operating farmland" after Project construction.[41] Moreover, some of the development, for example roads, "isn't really lost acreage" because for a dryland wheat farmer "having a gravel field road is a luxury."[42] Indeed, farming will continue for the vast majority of the lease area; the Project's permanent footprint would occupy just roughly 1% of the existing agricultural acreage in the County.[43]

The Project is also financially compatible with surrounding agricultural operations. In response to Council Chair Drew's questions about what landowners might do with lease revenues from the Project,[44] Mr. Wiley stated the payments will "incentivize[] [farmers] … to continue farming for years to come"[45] as they reinvest "the lease money with Scout … into their farm operations."[46] He spoke enthusiastically of a "miniature agricultural renaissance" enabled by the Project, allowing farmers to pay off debts, upgrade farming equipment, replace dilapidated facilities, and invest in new technologies.[47] Without the Project, Mr. Wiley justifiably fears the continued "bleeding" of farmland to housing development, calling urban sprawl the "biggest threat" to the agricultural character of the Horse Heaven Hills.[48]

The County's opposition to the Project's compatibility with surrounding land uses is undisciplined and out of touch with reality. Assistant County Planner Cooke conceded the County never reached out to local agricultural landowners to solicit their opinions on the Project,[49] instead, retroactively searching tax assessor's data for which participating landowners actually live in the Horse Heaven Hills,[50] without determining whether those landowners are in fact "absentee."[51] The County was also undisciplined in considering the

[41] Day 6 Tr. at 1098:8-13.
[42] Day 6 Tr. at 1099:23-1100:3.
[43] ASC at 4.2.1.2.
[44] Day 3 Tr. at 433:10-435:4.
[45] Day 6 Tr. at 1104:12-15, 1107:20-23.
[46] Day 6 Tr. at 1107-09.
[47] Day 6 Tr. at 1107:23-25-1109:14.
[48] Day 6 Tr. at 1118:23-25; *id.*, at 1104:7-11.
[49] Day 2 Tr. at 303:7-103.
[50] Day 6 Tr. at 1125:20-25, 1134:20-1135:25.
[51] Day 6 Tr. at 1134:20-1135:25.

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economic impacts of the Project on the surrounding community[52] and in its preference toward certain types of landowners in the region.[53] Remarkably, Ms. Cooke also went as far as to compare the Project to the Hanford Nuclear Reservation,[54] speculating the Project will "snowball" into the type of "energy reservation as Hanford is today."[55] Such hyperbole showcases the utterly subjective opinions of the County's planners. This is not a situation in which the federal government is asserting its eminent domain authority to develop nuclear reactors and plutonium processing facilities. Here, willing farmers are participating in the Project and will continue farming their land while receiving lease payments, in a complimentary, compatible relationship.

Ms. McClain corroborates Mr. Wiley's testimony. She explained, "the Nine Canyon wind farm [i]s a great example [of] where agriculture can coexist with wind farms, and many other wind projects across the Northwest where farmers are able to farm right up to the wind turbine pads."[56] She confirmed "the wind farms actually bring benefits to these ranches and wheat farmers by improving their access roads, reducing erosion and dust issues off their roads, and [providing] lease payments [to help] the farmers … reinvest in their farms and upgrade their equipment."[57] Ms. McClain's analysis found that "dryland wheat farming is compatible with wind projects and … there's plenty of examples to show that objectively."[58]

The County also expressed concerns that the Project would be incompatible with the local shrub-steppe ecosystem.[59] Ms. McClain pointed out the hypocrisy in these concerns "given the decades of County approvals of rural subdivisions and home sites which have massively degraded and diminished the shrub-steppe ecosystem and habitat, with little regard

[52] Day 2 Tr. at 335:8-337:9; Day 6 Tr. at 1124:1-20, 1125:17-25.
[53] Day 6 Tr. at 1126:2-20; 1138:6-18.
[54] Day 6 Tr. at 1129:12-1130:8.
[55] Day 6 Tr. at 1129:12-1130:8.
[56] Day 1 Tr. at 62:7-20.
[57] Day 1 Tr. at 62:7-20.
[58] Day 1 Tr. at 62:7-20.
[59] Day 2 Tr. at 340:10-19.

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for ecology or efforts to manage growth."[60] Nor would the Project, as Ms. Cooke implied, destroy "thousands and thousands of acres" of critical habitat;[61] in reality, it would permanently impact less than one hundred acres of grassland/shrubland and just two acres of sagebrush shrub-steppe habitat.[62]

Based on the compelling testimony from Mr. Wiley and Ms. McClain, and the proven track record of successful farming among wind turbines throughout the Northwest, the Project is clearly compatible with surrounding land uses in the Horse Heaven Hills.

3. Conditions proposed by Applicant adequately mitigate fire concerns and ensure that the Project will not endanger the health, safety and welfare of the surrounding community.

The County CUP criteria also include whether the project will endanger the "health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district."[63] The Project's potential fire risks received significant attention throughout the adjudication. TCC witness Fire Chief Lonnie Click expressed concerns about aerial firefighting around turbines.[64] TCC also expressed concern about the battery energy storage system ("BESS") facilities and how a BESS fire will be extinguished.[65]

These concerns are overstated. ASC Section 4.1.2 evaluates the risk of fire and explosion during construction and operation of the Project, noting the site has "little vegetation cover and few trees, presenting little to no inherent risk of fire or explosion."[66] While there may be some risk from combustible materials, the temporary use of diesel generators, and the BESS, these risks can be mitigated through precautionary measures and appropriate conditions. Ms. McClain testified that a fire caused by a wind turbine is an

[60] EXH-1023_R at 9.
[61] Day 2 Tr. at 340:17-19.
[62] Final ASC, Table 3.4-14 & 3-169.
[63] BCC 11.50.040(d)(2).
[64] *See* EXH-5912_S at 2.
[65] TCC Pre-hearing Brief at 4-5.
[66] ASC at 4-33.

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"extremely rare event"; she was "only aware of one [wind turbine-caused fire] occurring in the Northwest, and there are hundreds of turbines operating in the Northwest."[67]

With regard to aerial firefighting concerns, Mr. Click said he has only "local knowledge and experience"[68] and that the County fire district "does not own any aerial resources of its own,"[69] providing no evidence to rebut testimony that "aerial firefighting equipment … would be able to operate in the vicinity of the wind turbines safely."[70]

Finally, Applicant provided additional information regarding the proposed measures to mitigate a BESS fire. As Mr. Kobus testified, the National Fire Protection Association ("NFPA") recently updated its safety standards because it found that using water suppression during a BESS facility fire can actually "increase the fire associated with thermal runaway."[71] According to the NFPA, the safest designs of BESS facilities are modular, like the Project's,[72] designed to contain fires and to let them burn out on their own, without the need for high volumes of water or dangerous personnel involvement.[73]

It is common mitigation practice for permitting agencies to impose conditions on renewable energy projects to address fire risks.[74] Ms. McClain provided numerous examples of conditions aimed at the "extremely rare event" of a fire associated with renewable energy facilities, including requiring a fire management plan (that would include a plan for addressing a BESS fire) and emergency response plans that are submitted to EFSEC for approval prior to construction.[75] These plans are routine, imposed through conditions.

[67] Day 1 Tr. at 107:10-13.
[68] EXH-5912_S at 2.
[69] EXH-5631_R at 2.
[70] Day 1 Tr. at 112:6-22.
[71] Day 8 Tr. at 1722:10-12.
[72] Day 8 Tr. at 1718:17-18.
[73] Day 8 Tr. at 1724:17-1725:3.
[74] EXH-1040_R at 3.
[75] EXH-1040_R at 3-17.

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4. The Applicant proposed conditions to ensure that public services to the surrounding area will not be affected.

The Project's anticipated impact on local services is detailed in the ASC.[76] Of foremost concern to the County and TCC seems to be the possible effect on Benton County Fire District 1.

Again, emphasizing that the risk of fire is low, Scout proposes comprehensive mitigation measures aimed at improving the safety and reducing any burden the Project might otherwise impose on public agencies like Benton County Fire District 1.[77] A Draft Emergency Response Plan that addresses fire and other emergency procedures is included in ASC Appendix P. Scout is committed to coordinating with the Benton County Fire Marshal and other agencies to finalize the emergency response plans identified in ASC, Section 4.1.2.5, and will submit them to EFSEC for approval prior to construction. Scout is ready to coordinate with and train local emergency services personnel. Further, the Project is expected to generate significant increases in real estate taxes for the local area, increasing revenues that can support essential services.[78] Thus, the Project will not negatively impact public service providers in the area but rather may increase their capacity.

Ultimately, the Council should impose conditions akin to those created through local permitting processes by counties and siting councils throughout the region, like those for the Nine Canyon Project and discussed by Leslie McClain in her written and live testimony.[79]

D. The Project presents no risk of negative socioeconomic impacts and, in fact, could support important gains in energy justice.

1. Both academic literature and a site-specific analysis show the Project will not negatively affect property values.

Scout presented testimony from Washington economist Morgan Shook and real estate appraiser Andrew Lines from CohnReznick proving both that it is highly unlikely the Project

[76] ASC at 2-158.
[77] *See* ASC at 1-11.
[78] EXH-1039_R at 23; ASC Sec. 4.4.2.
[79] *See* EXH-1040_R at 14-17.

will harm neighboring property values, and that the local community is ultimately well-positioned to benefit from the Project's improvements to climate resiliency.

Mr. Shook submitted and opined on literature which illustrates that after decades of research, experts found that wind and solar facilities generally have no effect on nearby real estate values.[80] The best research on the impact of renewable energy development on property values utilizes peer review and incorporates comprehensive literature review, large amounts of data, boots-on-the-ground home visits, multiple statistical models (primarily hedonic models), and analysis of the stigmas potentially associated with wind and solar facilities.[81] The research from authors at the Lawrence Berkeley National Laboratory is particularly reputable[82] because those authors "are credible sources and the cumulative weight of their findings provides an emerging scientific consensus on the impact of facilities like the Project on property values."[83]

To provide site-specific analysis and corroborate the scientific consensus, Scout engaged Mr. Lines to develop local, original research on the potential property value impacts from the Project.[84] His report, which also contains a comprehensive literature review, synthesized interviews with market participants and analysis of local home sales data. The report also analyzed Project design in relation to existing homes, finding the Project's energy facilities "will be generally 3 miles away from any adjacent residential property owner."[85] The report concludes that the Project will not negatively impact nearby property values[86] and notes that renewable energy projects generate significant increases in real estate tax revenue for the local area, feeding back into essential services and schools.[87]

[80] EXH-1008 to EXH-1020.
[81] Day 3 Tr. at 494:24-496:6.
[82] *See* EXH-1010 to EXH-1015; EXH-1017 to EXH-1020.
[83] EXH-1051_R at 3.
[84] *See* EXH-1039_R; *see also* EXH-1038_R.
[85] EXH-1039_R at 23.
[86] EXH-1037_R at 3; EXH-1039_R at 5, 7, 23.
[87] EXH-1037_R at 3; EXH-1039_R at 5, 7, 23.

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No party offered compelling criticism of these studies. Efforts to undermine this overarching conclusion are unsupported by data and rest on overblown stigmas about the impacts of renewable energy development.[88] For instance, TCC witness Richard Hagar, who has no relevant professional experience, testified that Scout's property value analyses were not accurate because they did not include interviews with local real estate professionals or account for the fact that limited housing supplies may have skewed recent purchase data. Mr. Hagar did not even acknowledge the CohnReznick's site-specific analysis and his comments on the Berkeley Lab hedonic models "take the results out of context to insinuate a conclusion that the researchers do not find."[89]

Opposition to Scout's property value analyses attempts to impose subjective or politicized perspectives onto what should be an objective exercise. As Mr. Shook testified, the "studies are trying to find consistent measurable impacts. It does not necessarily mean … that a single property or single property buyer may be impacted … [s]ome people obviously would have a strong preference one way or the other. And this is why, when you look at the totality of those perspectives with respect to the revealed decisions that people make … in terms of how much they are paying for property … the analys[es] don't find any of those measurable impacts."[90] The limited negative "perceptions don't actually turn into … material effects."[91]

Finally, as Mr. Shook explained to Councilmember Levitt, communities that develop with an eye toward climate resiliency stand to benefit economically, including with respect to real estate values.[92] *Not* building energy system infrastructure to reduce carbon emissions is costly, as property values can decrease due to the effects of climate change.[93] At bottom, the

[88] EXH-1008; EXH-1051_R; Day 3 Tr. at 502-05 (M. Shook testifying on probative weight of various studies due to their methodological rigor and peer review).
[89] EXH-1051_R at 5.
[90] Day 3 Tr. at 500.
[91] Day 3 Tr. at 502.
[92] Day 3 Tr. at 513-14.
[93] Day 3 Tr. at 512.

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Project presents a tremendous opportunity for the economic benefit of the Horse Heaven community and, based on the scholarship and data, it is highly unlikely that the Project will harm neighboring property values.

2. The Project promotes environmental justice and does not disproportionally impact overburdened communities.

One of the Council's key site certification premises under the EFSLA is "to promote environmental justice for overburdened communities."[94] Washington law defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies."[95]

The Project promotes environmental justice in multiple ways. First, Scout has focused on ensuring the meaningful involvement of those affected by the Project. Based on information from Scout's local outreach and the Washington Environmental Health Disparities Map[96] and U.S. Environmental Protection Agency's (EPA) EJScreen,[97] Scout learned that the Project area and vicinity is home to a demographic population with higher than state average rates of limited English (with Spanish as the predominant language) and people of color (predominantly Latinx). Accordingly, Scout pursued media strategies to ensure that Project information was available to minority communities, including on bilingual radio networks and newspapers.[98] Second, the Project does not appear to pose a risk of disproportionate impact to overburdened communities. For example, the state disparities map shows that although the Project vicinity has slightly higher rates (compared to state averages) of unemployment, poverty and unaffordable housing rates are average to low. As detailed in ASC Sections 2.15.1 and 4.4.2.2 and testimony from Benton City

[94] RCW 80.50.010(2).
[95] RCW 70A.02.010(8).
[96] Available at https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map (last visited Oct. 12, 2023).
[97] Available at https://ejscreen.epa.gov/mapper/ (last visited Oct. 12, 2023).
[98] *See* ASC Sec. 1.12.3.

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Commissioner and labor leader Jessica Wadsworth,[99] the Project would bring additional well-paying jobs, improving unemployment in the area. The state mapping tool shows all other area "environmental effects" to be average or low when compared to state averages, except for slightly elevated rates of proximity to risk management plan facilities[100] and wastewater discharge. The Project will not contribute to either because it is not a risk management plan facility,[101] and will not generate significant wastewater discharges.[102] Finally, a key component of environmental justice is combatting climate change, the effects of which often fall disproportionately on already overburdened populations. The clean energy provided by the Project, and its investment in climate resiliency infrastructure, represent an important step toward reducing those effects.[103]

E. Scout has surpassed EFSEC's historic and cultural preservation requirements to ensure the long-term protection and perpetuation of Tribal resources.

Under the relevant EFSEC standard, applicants for site certificates must "coordinate with and provide a list of all historical and archaeological sites within the area affected by construction and operation of the facility to the Washington State office of archaeology and historic preservation[("DAHP"),] and interested Tribe(s)" and in their application:

> (a) Provide evidence of this coordination;
> (b) Describe how each site will be impacted by construction and operation; and
> (c) Identify what mitigation will be required.[104]

"Archeological" sites are undefined in EFSEC's statutes and rules, but DAHP's authorities define an "archaeological site" as "a geographic locality in Washington, … that contains archaeological objects,"[105] in turn defined as objects comprising "physical evidence of an

[99] EXH-1034_R.
[100] Risk management plan facilities are those that use extremely hazardous substances under EPA regulations.
[101] ASC at 4.1.2.2 and 4.1.2.5
[102] ASC Sec. 3.3.2
[103] Day 3 Tr. at 513:24-514:18 (economist Morgan Shook testifying that investing in clean energy infrastructure improves community resiliency).
[104] WAC 463-60-362(5).
[105] RCW 27.53.030(3).

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indigenous and subsequent culture, including material remains of past human life, including monuments, symbols, tools, facilities, and technological by-products."[106]

Distinct from that framework is the concept of traditional cultural property ("TCP"). In a policy memorandum, DAHP defines TCP as "a property or a place that is inventoried, or determined eligible for inclusion on the National Register of Historic Places [("NRHP")] or the Washington Heritage Register because of its association with cultural practices and beliefs that are (1) rooted in the community's history, and (2) are important to maintaining the continuing cultural identity of the community's traditional beliefs and practices."[107] These concepts may overlap: an archeological site may *also* be or contribute to a TCP; but not all TCPs are archeological sites.[108] But per DAHP guidance, a site is a TCP under Washington law only if it has formally been inventoried or deemed eligible for inclusion on state or federal historic registers.[109]

Notably, nothing in state or federal law—including in EFSLA—necessarily "protects" or renders off-limits archeological resources or TCPs from disturbance or development,[110] though under Washington law, an Archeological Excavation and Removal Permit from DAHP is required if activity will disturb any "historic or prehistoric archaeological resource or site."[111]

1. After its coordination and analysis HRA found, and DAHP concurred, that the Project could impact four precontact resources, all of which Applicant proposes to avoid.

With Historical Research Associates, Inc. ("HRA"), Scout engaged in more than five years of outreach and coordination with relevant agencies and affected Tribes, including

[106] RCW 27.53.030(2).
[107] DAHP Policy Number 12.1.2017, Traditional Cultural Properties at 1 (Dec. 1, 2017).
[108] Day 4 Tr. at 604:12-606:6 (Ragsdale).
[109] DAHP Policy Number 12.1.2017, *supra*. However, nothing in state or federal law requires that precontact archeological sites, including those comprising TCPs, be evaluated for NRHP eligibility, unless the relevant project involves some federal nexus (*see* National Historic Preservation Act), which this Project does not.
[110] Day 4 Tr. 607:20-609:13 (Ragsdale).
[111] RCW 27.53.060(1); Day 4 Tr. at 607:20-608:2, 608:22-609:8.

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Washington's Department of Natural Resources and DAHP, and the Yakama Nation and Confederated Tribes of the Umatilla Indian Reservation ("CTUIR").[112] Scout and HRA provided the cultural resource findings to DAHP and affected Tribes at multiple points throughout the analyses, seeking and incorporating their feedback into the final reports.[113] Scout also offered the Tribes the opportunity to meet to discuss the Project and potential concerns, attend site visits, exchange information about TCPs, fund additional studies into traditional Tribal use or import of the area, review and comment on HRA reports and project layout, attend and monitor the archeological field surveys, staff (with funding) field archeological technician positions during the field surveys, receive the field schedule prior to each field survey effort, and receive post-field survey summaries.[114]

Based on their outreach and analysis, Scout and HRA identified 41 archeological resources in total: 29 sites and 12 isolates.[115] Only four are from the precontact era (Nos. 45BN261, 45BN2090; 45BN2092, 45BN2146, and a single component of No. 45BN2153).[116] HRA recommended, and Scout proposes, to avoid all of those resources entirely, with no ground disturbance.[117] If it turns out that a resource cannot be avoided, then in accordance with state law, Scout would obtain a disturbance permit from DAHP, develop a research design in coordination with DAHP and any affected Tribe, and conduct research on the resource to get more information and determine its listing eligibility.[118]

DAHP reviewed and concurred with all HRA findings and recommendations.[119] Because all identified historical and archeological resources are proposed to be avoided, no

[112] *See* ASC Sec. 1.12.2.
[113] Day 4 Tr. at 600:2-25.
[114] *See* ASC Table 1.12.2; Day 4 Tr. at 602:17-604:4.
[115] ASC at 4-145 (see detailed description of resources at 4-145 through 4-151); *see generally* ASC Secs. 4.9.2 and 4.9.3; Day 4 Tr. at 587:3-20.
[116] ASC at 4-155 through 4-157.
[117] ASC at 4-154 through 158; Day 4 Tr. at 587:10-16, 598:22-599:19 (Ragsdale). This goes beyond the legal requirements, given that under state law, isolates need not be avoided. Day 4 Tr. at 587:16-20 (Ragsdale).
[118] Day 4 Tr. at 590:15-591:13; *see also* ASC at 4-154.
[119] Day 4 Tr. at 616:23-617:2.

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impacts are expected, and thus no specific mitigation measures were proposed in the ASC. Nevertheless, to *ensure* no impacts will occur, Scout proposes to engage a professional archeologist to:

- Develop and implement a Cultural Resource Preconstruction Survey and Avoidance Plan to provide protocols for preconstruction surveys of areas not previously surveyed (e.g., during final design and construction) and to outline cultural resource avoidance measures,[120] including that for precontact resources, avoidance buffers will measure 20 meters around the two [redacted] sites (45BN261 and 45BN2090) and 10 meters around the two [redacted] (45BN2092 and 45BN2146) and the multicomponent site (45BN2153);

- Develop an Inadvertent Discovery Plan and avoidance procedures under which, should subsurface archaeological resources be discovered, all activity in the vicinity will stop and a qualified archaeologist asked to evaluate the resource for listing or to conduct other appropriate investigations and to obtain relevant DAHP permits; and

- Develop and train workers on cultural resource protection, including regional context and archeological sensitivity education to ensure project workers stop construction and respond appropriately if a cultural resource is inadvertently discovered.[121]

Tribe-specific mitigation measures are discussed below.

2. Scout has conducted extensive Tribal coordination and incorporated feedback from the CTUIR and Yakama Nation.

a. After productive coordination, Scout and CTUIR have executed a mitigation agreement to protect and support CTUIR's natural and cultural resources and traditions.

Approximately 80 percent of the Project area—the entire eastern and central portion of the site—is located on lands ceded[122] and traditionally used by the CTUIR.[123] The CTUIR

[120] *See also* Day 4 Tr. at 589:20-590:3, 590:3-14.
[121] *See* ASC at 4-158 and 4-159 for more detail.
[122] Yakama Nation incorrectly represented in its Petition to Intervene in this adjudication that the entire Project area is located within Yakama Nation treaty-ceded lands. *See* Yakama Nation Petition to Intervene at 2 (Feb. 23, 2023).
[123] *See* EXH-1061_X (ASC Figure 2.1-1); EXH-1062_X (Washington Geospatial Open Data Portal Tribal Lands map); EXH-1063_X (Demonstrative Map showing project area with Tribal lands GIS map). These ceded lands represent areas where the CTUIR ceded title to their historic area of use to the U.S. Government under the Walla Walla Treaty of Camp Stevens, June 9, 1855.

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have been actively and productively engaged with Scout since early 2020, when the company first reached out to the Tribes about the Project and Scout's cultural resource investigations.[124] The CTUIR participated in HRA's field surveys, including staffing a CTUIR representative as a field archeological technician on the team. Through the CTUIR Cultural Resources Protection Program, it conducted an ethnobotanical survey and traditional use study of the Project to identify properties of religious and cultural significance to the CTUIR in the Project area and to assess impacts of the Project on the traditional uses of the area by the Imatalamłáma (Umatilla), Weyíiletpu (Cayuse) and Walúulapam (Walla Walla) people, who comprise the CTUIR.[125] The traditional use study is confidential to the CTUIR, but Scout understands that the executive summary has been submitted to the Council for review.

Specifically, as documented in the study, the CTUIR noted that the Project could adversely affect two significant cultural and religious sites, led to loss of access to First Foods procurement areas, and led to the inadvertent discovery of other Tribally significant resources. To address these impacts, the CTUIR proposed multiple mitigation measures, including access for Tribal members, off-site mitigation including education and outreach to ensure legends and stories associated with the land are perpetuated, and post-Project restoration agreements to restore the landscape and viewshed after the life of the Project.

The findings of the traditional use study informed initial mitigation proposals from the CTUIR.[126] After additional discussions with CTUIR Cultural Resources Protection Program and Tribal leadership, Scout and CTUIR have executed a mutual agreement to mitigate and resolve any effects of the Project on CTUIR cultural resources and historic property of religious and cultural significance.[127]

[124] ASC Table 1.12.2.
[125] *See* ASC at 1-66 and 1-67; Day 4 Tr. at 610:11-611:19.
[126] *See* ASC at 1-66.
[127] *See* October 10, 2023 Letter from N. Kathryn Brigham, CTUIR Board of Trustees, to Amy Moon, EFSEC.

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b. Scout has voluntarily committed to specific mitigation measures to respond to Yakama Nation's stated concerns.

Most of the remaining portion of the Project area, approximately 15-20 percent in the northwestern corner of the site, lies on lands ceded by Yakama Nation.[128] For more than five years, Scout has been engaging with the Yakama Nation, through direct communications with representatives of the Nation's Cultural Resource Program, Tribal members, and through coordination with DAHP.[129]

Despite these engagement efforts, Scout received only limited responses and information from Yakama Nation. Yakama Nation provided some comment to HRA on Scout's cultural resource reports and DAHP permit application materials, which was incorporated into HRA reports.[130] But Yakama Nation withheld information about most of its TCPs it claims are in the vicinity of the Project.[131]

In written direct testimony, Yakama Nation Cultural Resource Program ("CRP") Archeologist Jessica Lally submitted a TCP study containing generalized, high-level descriptions of purported TCPs near and within the Project area.[132] No specific geographic description or boundaries were provided. This information had never before been presented to Scout or HRA in the five years of coordination with the Tribe.[133]

During live testimony, Ms. Lally also presented "demonstrative evidence" showing large shaded areas (with no specific boundaries) purportedly associated with the TCPs described in the pre-filed report.[134] [redacted] with whom Scout has successfully

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[128] EXH-1063_X; [redacted] ASC Table 1.12.2.
[130] Day 4 Tr. at 606:11-607:18, 611:20-612:13 (Ragsdale testifying that J. Lally provided limited information on TCPs).
[131] Day 4 Tr. at 612:15-613:4 (Ragsdale testifying she had never seen the TCP information J. Lally submitted during adjudication).
[132] *See* EXH-4003_Confidential.
[133] Day 4 Tr. at 612:15-613:4, 615:23-616:22.
[134] Day 4 Tr. at 637:14-25.

resolved cultural resource concerns and with whom Yakama Nation has not communicated about the Project.[135] Yakama Nation shared this information with Chair Drew and Director Bumpus,[136] but not with Scout or HRA. As explained above, neither Scout nor HRA had seen the Yakama Nation TCP information until the live hearing and even then, no substantiating evidence was proffered.

[redacted]9[redacted].[137] **Importantly, these idiosyncratic definitions are completely distinct from and do not meet the TCP criteria under state law or administrative guidance**.[138] The generalized descriptions and classifications contained in Ms. Lally's TCP study are inconsistent with EFSEC's and even DAHP's cultural resource and TCP framework. Moreover, they lack sufficient detail to discern which, if any, of the features described are in fact TCPs or "archeological sites" that must be assessed and considered when developing mitigation under Council rules.

To be sure, it may seem counterintuitive to use western legal and academic constructs to describe or classify indigenous traditions or sites. But Yakama Nation's CRP is staffed by professional archeologists experienced in project planning and commercial development processes and therefore versed in both classification systems and more than capable of connecting the two to establish and protect valid TCPs and archeological sites.[139] No effort was made to do so, despite ample opportunity.

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[135] Day 4 Tr. at 675:8-10.
[136] Day 4 Tr. at 637:19-638:5.
[137] EXH-4003_Confidential at 3-7; Day 4 Tr. at 638:25-639:13.
[138] *See* DAHP Policy Number 12.1.2017, *supra*; *see also* National Park Service, National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties (1992), https://www.nps.gov/subjects/nationalregister/upload/NRB38-Completeweb.pdf.
[139] Day 4 Tr. at 653:23-654:22 (J. Lally testifying about professional knowledge and experience in preparing surveys for commercial projects by AT&T and PacifiCorp, among others).

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With all respect to the Tribe, its members and CRP, Yakama Nation's TCP claims must be considered in context and under the applicable regulatory criteria. *First*, [redacted] These areas are far from pristine. The vast majority are developed for agricultural production, industrial use, residential development, and large-scale energy infrastructure including transmission lines and the existing Nine Canyon Wind Project. Thus, even taking Yakama Nation's extensive TCP assertions as true, the area has already been impacted in substantial ways, far more substantially than as posed by this Project.[142] Moreover, [redacted].[143]

Second, Yakama Nation members' access to these areas is already significantly compromised. All the land within the Project Lease Boundary is privately owned, as is most of the surrounding land. Yakama Nation's treaty-reserved hunting, gathering, and pasturing rights extend only to "open and unclaimed land,"[144] which the Washington Supreme Court has held does not include private property.[145] Therefore, Yakama Nation Tribal members do

[140] EXH-4003_Confidential at 4.
[141] Day 4 Hearing Video, File "Confidential Hearing-20230821_103117-Meeting Recording" at 20:45-21:40.
[142] *See, e.g.*, [redacted]
Yakama Treaty of Camp Stevens, June 9, 1855.
[145] *State v. Chambers*, 81 Wn.2d 929, 935-36 (1973).

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not currently have physical or legal access to most of these areas.

Third, [redacted][146] According to the foremost administrative authority on TCPs, the National Park Service's National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties, a TCP eligible for the National Register (and therefore considered a TCP under Washington law, per DAHP Policy Number 12.1.2017) "must be a tangible property" like "a district, site, building [or] structure."[147] [redacted] Yakama Nation provides no evidence or legal authority to suggest otherwise. Though these resources may be important to the Tribe, they are not TCPs as defined by law to be assessed and considered under WAC 463-60-362(5).

Fourth, [redacted]

[146] EXH-4003_Confidential at 7-8.
[147] National Register Bulletin 38, *supra*, at 9.
[148] [redacted]

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Even taking all of Yakama Nation's contentions as true, [redacted], the vast majority of that area is now in private ownership and has already been significantly impacted by development, including adjacent wind energy development, which Yakama Nation does not appear to have opposed. Scout is not required, nor would it be appropriate, to mitigate for impacts already occurring on the land. And though Yakama Nation CRP and Tribal member witnesses claim Project impacts are unmitigable, the specific testimony suggests otherwise. Finally, nothing in EFSLA or state law necessarily restricts these TCP areas from further development.

Even so, Scout has heard Yakama Nation's concerns[149] and is committed to ensuring the protection of Tribal resources and sites. Based on Yakama Nation's feedback on the Project to date, including live testimony from Ms. Lally and Tribal members, Scout has voluntarily proposed to remove:

- [redacted]
- [redacted]

Though these turbine locations are highly valuable for wind energy generation, Scout has committed to removing these turbines to further avoid sensitive areas and the potential for interference with the Yakama Nation's tangible TCPs.

[149] [redacted] Day 4 Tr. at 692:25-693:18. The inclusion of these towers will have negligible ground disturbance and visual impact at the site, given their much shorter relative height (30 to 120 feet) and co-location with more dominant existing features at the site. More important, they will result in a net *reduction* of potential impacts to TCPs by allowing for reduced nighttime light interference, facilitating turbine lighting only when needed to ensure passing aircraft safety. *See* Final ASC Sec. 2.3.9.

[150] [redacted]

[151] *See* Sept. 26, 2023 Letter from Michael Rucker, Scout, to Sonia Bumpus, EFSEC re: Project Update Responding to Adjudication Concerns and Atts.

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F. The Applicant's visual analysis provides a worst-case scenario of the visual impacts and proposes mitigation of the worst visual impacts of the Project.

Under EFSEC's aesthetics standards, applicants must use an *objective* approach to:

> describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain. The presentation will show the location and design of the facilities relative to the physical features of the site in a way that will show how the installation will appear relative to its surroundings.[152]

An applicant must also "summarize ... the means to be utilized to minimize or mitigate possible adverse impacts during construction, operation, and decommissioning."[153] Accordingly, Applicant prepared an objective visual impact analysis and developed proposed mitigation measures to satisfy this standard.

1. Scout's objective analysis accurately describes the aesthetic impact of the Project relative to its surroundings.

Uncontroverted evidence shows that the Project will have a low to moderate visual impact in some areas and a moderate to high impact in others.[154] Two experienced visual assessment firms, TetraTech and SWCA, each prepared Visual Impact Assessments ("VIA") (one for the ASC and one under SEPA). Each used different methodologies, but they reached the same result, corroborating the accuracy of both assessments.

a. Applicant used a robust analysis to describe the degree of aesthetic impact proposed by the Project.

As required by the BLM VRM Methodology, the Applicant's VIA weighs the existing scenic quality (visual quality and viewer sensitivity), describes the contrast (change in visual scenery) created by the Project, and identifies the distance of the turbines to develop an overall visual impact rating for each representative viewpoint.[155] The VIA represents an industry standard approach that takes into account varied interests and multiple visual

[152] WAC 463-60-362(3).
[153] WAC 463-60-085(1).
[154] ASC at 4-89, Table 4.2.3-2.
[155] ASC at 4-89 to -90.

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conditions. Applicant created a project description and applied management goals from the Benton County Comprehensive Plan when determining the level of sensitivity of the Horse Heaven Hills and the overall impact.[156] Applicant then consulted with stakeholders, including the Benton County Planning Department, Benton City, and Yakama Nation, to identify Known Observation Points ("KOPs") representing cultural resources, residential, occupational, and recreational views.[157] Over several visits (to represent different environmental conditions), Applicant took numerous photos from the KOPs using a DSLR camera, following industry best practices, and developed them into the visual simulations in ASC, Appendix Q.[158]

The VIA completed by the Applicant is a "conservative" analysis that presents the "worst case" scenario.[159] To be sure, there are parts of the Horse Heaven Hills that are undeveloped, like the BLM land pictured heavily in the cross examination of Ms. Brynn Guthrie.[160] However, natural conditions in the Tri-Cities areas will reduce the visual impact on those areas, as portrayed in the VIA. For example, Applicant applied a dehazing filter, which simulates a clear day with no clouds or fog, to some of its simulations to present the "most visually impactful viewing conditions."[161] Dehazing was used after numerous trips to the KOPs at different times of the year.[162] Natural conditions, like humidity, can create hazy conditions that mitigate the visual context even in arid environments.[163] In other words, the Project's impact on the viewscape may at times be less significant than the VIA suggests.

[156] EXH-1036_R at 4.
[157] EXH-1021_R at 6-7.
[158] EXH-1021_R at 3.
[159] Day 7 Tr. at 1357:17-20 (B. Guthrie testifying about how the bare earth viewshed analysis is a conservative figure); EXH-1021_R at 4 (B. Guthrie rebuttal testimony noting that dehazing was undertaken to present the "worst-case" visibility for the project).
[160] Day 7 Tr. at 1343:20-1344:21 (testimony of B. Guthrie highlighting an area of viewpoint 10 that is BLM land).
[161] EXH-1021_R at 3.
[162] EXH-1021_R at 3-4.
[163] EXH-1021_R at 3-4.

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Applicant acknowledges that as objectively assessed in the VIA, the impact from most viewpoints would be "moderate to high."[164] But what the VIA does not do—nor should it—is assess whether that impact is positive or negative, or how a viewer will subjectively receive it. As Mr. Shook testified, social and economic research tries "to find consistent measurable impacts…. Some people obviously have a strong preference one way or the other. Some people may have a preference for [seeing turbines].... Some people may be completely agnostic or ambivalent to those views."[165] The purpose of the methodology and the VIA is an objective assessment of the *degree of change* without assigning subjective value judgments to that analysis.[166]

b. Applicant's analysis accurately describes viewshed impacts for most people in the Tri-Cities.

TCC raised several concerns about the VIA's conclusions but provided no objective analysis that supports those concerns.

First, TCC claims the Project will "impact more than 100,000 residents in the rural and urban areas of the Tri-Cities."[167] But TCC provides no analysis that explains how it reached this number. Applicant's VIA developed simulations for the most exposed viewpoints of the Project for the Tri-Cities and concluded that the impact from these locations would be moderate to high.[168]

TCC also argued that the turbines' proximity to urban areas necessarily renders the visual impact high. That ignores the actual visual impact of the turbines. The distance between the turbines and the Tri-Cities area ensures that for most viewers, the turbines will

[164] EXH-1021_R at 3-4; EXH-1036_R at 4; *see also* ASC, Appendix Q.
[165] Day 3 Tr. at 500:4:22 (Shook); *see also* Day 3 Tr. at 507:18-508:14.
[166] *See* BLM Handbook Manual 8400 at 6 (1984) ("The VRM system is designed to separate the existing landscape and the proposed project into their features and elements and to compare each part against the other in order to identify those parts which are not in harmony. … The decision on the amount of visual change that is acceptable is made by the field manager.").
[167] TCC's Prehearing Brief at 1.
[168] *See* ASC, Appendix Q, Fig. 13 Representative Viewpoint 9 (visual simulation from Benton City); ASC, Appendix Q, Fig. 11-12 Representative Viewpoints 8a & 8b (visual simulation from Kennewick); ASC at 4-89-90, Table 4.2.3-2.

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be in the far background. For example, the turbines are located at least four miles south of Kennewick and the Tri-Cities urban area.[169] As noted in the Kittitas Valley Wind, an object ceases to dominate the view when it is at a distance of 4x turbine tip height from the viewer.[170] The closest turbines are at least 31x turbine tip height from the nearest part of the Tri-Cities area and therefore will not loom over the Tri-Cities.

TCC also asserts, without evidence, that most viewers have an unobstructed view of the Horse Heaven Hills. First, the Horse Heaven Hills are not pristine, undeveloped hillsides. Of course there are areas that are and will remain undeveloped, like the adjacent BLM land pictured in TCC's cross examination of Ms. Guthrie.[171] However, existing transmission lines and roads traverse the Horse Heaven Hills and residential development.[172] Second, almost all views of the Horse Heaven Hills are obstructed in some form.[173] For most people in the Tri-Cities area, the area is not a rural, pristine undeveloped viewshed, but rather a developing environment with man-made structures and other visual obstructions.

2. Applicant has mitigated visual impacts by voluntarily using a 4x turbine height setback for virtually all turbines and removing some of the most visually impactful turbines.

RCW 80.50.010(2) directs the Council to take action that considers "the increasing demands for energy facility location and operation in conjunction with the broad interests of the public." In doing so, the Council is "not obligated to eliminate all negative impacts."[174] Applicant's carefully crafted Project layout and proposed mitigation measures effectively balance these considerations and comply with existing precedent.

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[169] *See* ASC at 2-1.
[170] Order No. 826 at 30-31, *In the Matter of Kittitas Valley Wind Power Project*.
[171] *See* Day 7 Tr. at 1343:20-1344:21 (B. Guthrie).
[172] ASC at 4-42 & Appendix Q, Fig. 8-1b Representative Viewpoint 5 (showing residential development on the Horse Heaven Hills); Day 7 Tr. at 1340:4-8 (B. Guthrie answering whether the Horse Heaven Hills contains development, stating, "It does contain some development. There are, as we saw, communication towers. In some cases, there's residential development[.]").
[173] *See* Day 7 Tr. at 1341:13-17 (Testimony of B. Guthrie, stating, "for all the viewpoints that we identified and used for our study, there are signs of development…. So it's just a part of the character of the area that [is] developed and developing[.]").
[174] Order No. 826 at 30, *In the Matter of Kittitas Valley Wind Power Project*.

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As discussed in ASC Section 4.2.3.4 and pages 1-12 and 1-13, Scout proposes measures to mitigate aesthetic impacts, including but not limited to providing and maintaining a clean facility free of debris and unused or broken equipment, using a uniform design for turbines, restoring vegetated areas after construction, and complete decommissioning and removal at the completion of the Project.[175]

Applicant also proposes to comply voluntarily with (at least) the 4x turbine tip height setback from residences adopted in the Kittitas Valley Wind project.[176] Applicant has located all but two turbines at least 2,684 feet, more than the 4x turbine tip height, from all non-participating residences.[177] This also complies with the County's 1,000-foot setback for wind turbines.[178] At a distance of 2,684 feet, the turbines will not "dominate a person's normal field of view," further mitigating impacts.[179]

Moreover, Applicant's turbine siting process used the industry standard targeted, objective approach that includes aesthetic mitigation. As Ms. Guthrie explained, the industry standard practice for deciding where to site and remove turbines requires a turbine-specific analysis to ensure that removed turbines have a direct and meaningful reduction of visual impacts.[180] The drastic measure of turbine removal from the micrositing corridors must also be balanced with other factors and Project benefits.[181]

Throughout the siting process, the Applicant used the VIA, among other factors, to make turbine placement decisions.[182] Recently, Applicant removed 13 turbines from the Project, including some of the most visually impactful,[183] which was reflected in the

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[175] ASC at 4-96.
[176] *See* Order No. 826 at 31, *In the Matter of Kittitas Valley Wind Power Project*.
[177] *See* ASC at 2-142.
[178] ASC at 2-142.
[179] ASC at 2-142; s*ee* Order No. 826 at 31, *In the Matter of Kittitas Valley Wind Power Project*.
[180] *See* EXH-1065_S_REVISED at 3.
[181] EXH-1065_S_REVISED at 3.
[182] EXH-1065_S_REVISED at 3.
[183] EXH-4014_X at 12.

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September 2023 Final Application for Site Certification ("Final ASC").[184] In subsequent correspondence, Scout proposes removing an additional nine turbines from the ridges near Webber Canyon.[185]

In contrast to Scout's established, surgical approach, TCC visual witness Dean Apostol's proposed approach is subjective, undisciplined, and untethered from any known or accepted methodology. Mr. Apostol's map and visual area reduction chart advocates for mitigation setbacks based on distances from the turbines to land use categories.[186] As Ms. Guthrie noted, those setbacks are completely arbitrary and irrelevant.[187] Unlike Mr. Apostol's unorthodox approach, Applicant considered actual visual impacts of each turbine, including how that impact is contextualized among surroundings.

For example, Applicant removed turbines 5, 6, 7, and 8,[188] which would have been proximate to the Horse Heaven ridgeline, impacting the viewshed of residences on Badger Road.[189] While these turbines were technically compliant with the Kittitas Valley Wind project setback, Applicant was able to double the distance between the nearest residence and the Project while further mitigating wildlife impacts.[190]

The Project, as currently proposed in the so-called "Moon Memo," responsibly sites turbine locations and mitigates for aesthetic impacts as required under EFSEC standards. Further mitigation or removal of turbines is unnecessary and inappropriate for three reasons. *First*, as explained above, Scout has committed to a 4x turbine tip height setback, which directly reduces visual impacts to surrounding areas. *Second*, for most residents in the Tri-Cities area, the turbines will be at least four miles away and already obstructed by

[184] *See* Final ASC Figures 2.3-1, 2.3-2.
[185] Sept. 26, 2023 Letter from Michael Rucker, Scout, to Sonia Bumpus, EFSEC re: Project Update Responding to Adjudication Concerns and Atts.
[186] *See* EXH-1065_S at 2, ln. 16-25 & 8, ln. 6-22.
[187] *See* EXH-1065_S_REVISED at 3, 8.
[188] EXH-1065_S_REVISED at 3.
[189] Day 7 Tr. at 1363:7-12 (testimony of B. Guthrie discussing the impact of the removal of turbines 5-8).
[190] EXH-1065_S_REVISED at 4; EXH-4014_X.

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development, vegetation, and topography. *Third*, and perhaps most concerning, further removal or a larger setback could set a dangerous precedent based only on the supposition that viewers in urban areas are opposed to these projects rather than any objective analysis of the actual visual impacts of each project.

In short, the Project as presented adequately identifies the visual impacts and, to the greatest extent possible, seeks to minimize those impacts while still developing a project that will meaningfully progress the State towards its clean energy goals.

G. The Applicant has utilized best available science to evaluate potential wildlife impacts and to inform tailored mitigation measures.

Under the EFSLA, facilities are to be sited where there are "minimal adverse effects on … wildlife."[191] To assess whether adverse effects are minimal, an applicant must "describe all existing…wildlife…on and near the project site which might reasonably be affected by construction, operation, decommissioning, or abandonment of the energy facility and any associated facilities" and develop a mitigation plan containing "a detailed discussion of mitigation measures, including avoidance, minimization of impacts, and mitigation through compensation or preservation and restoration of existing habitats and species, proposed to compensate for the impacts that have been identified."[192] The ASC and both the written and oral testimony provided throughout the adjudication make clear that Applicant addressed concerns about potential impacts to wildlife through data-driven measures.

[191] RCW 80.50.010.
[192] WAC 463-60-332(3).

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1. The Project has been carefully developed to avoid impacts to ferruginous hawks, including through siting on agricultural lands that provide only minimal habitat value to the species, and to mitigate for any potential adverse effects.

a. Ferruginous hawk populations have precipitously declined across their range and in the area due to numerous other existing threats, including from long-term conversion of suitable habitat to agricultural uses and more recent unchecked residential sprawl from Tri-Cities into the Horse Heaven Hills.

Of possibly the greatest concern to both the Applicant and the CFE are ferruginous hawks (*Buteo regalis*), a species of raptor whose population has been in steady decline in Washington for the last several decades.[193] To be sure, wind and solar farms in eastern Washington could have some impact on ferruginous hawks. But the reality is that anthropogenic, or man-made threats to the viability of the species, unrelated to the Project, far outweigh any potential negative impacts.[194]

The myriad threats to the continued existence of ferruginous hawks as a species include relatively discrete events like electrocutions on power lines,[195] collisions with vehicles, shootings,[196] poisoning,[197] predation by other species[198] and drought and disease.[199] Those threats are in addition to far more existential danger from the long-term effects of human disturbance[200] and from the greatest threat of all: the loss of habitat necessary for the

[193] *See* WAC 220-610-010; RCW ch. 77.15.
[194] Day 5 Tr. at 960:21-25, 961:1-20 (Erik Jansen ("Jansen")); *see also* Jason Fidorra Deposition, July 20, 2023 ("Fidorra Dep."), at 135-137 (describing various anthropogenic impacts on ferruginous hawk population); Day 6 Tr. at 1252:19-25 (Rahmig).
[195] James Watson Deposition, July 14, 2023 ("Watson Dep."), at 109.
[196] Watson Dep. at 108:23-25, 27:20-28:1.
[197] Day 8 Tr. at 1568:16 (Donald McIvor ("McIvor")); *see also* Watson Dep. at 109:18-110:1.
[198] Day 8 Tr. at 1644 (McIvor) (in response to questions from EFSEC Council Member Livingston); *see also* Watson Dep. at 110:9-14.
[199] Day 8 Tr. at 1644 (McIvor) (in response to questions from EFSEC Council Member Livingston); *see also* Watson Dep. at 111:6-19; Fidorra Dep. at 135:6-13.
[200] *See, e.g.*, Michael Ritter Deposition, May 31, 2023 ("Ritter Dep."), at 159:17-160:22 (urban sprawl and agricultural use have the greatest impact on ferruginous hawk populations in Benton and Franklin Counties).

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survival of both the ferruginous hawks and the species on which the hawks prey.[201]

Moreover, conditions at the ferruginous hawks' wintering grounds – that is, not within the Project footprint – also lead to the decline in the ferruginous hawk population.[202] The ideal habitat for ferruginous hawk is shrub-steppe or native grassland, which best supports its prey species. The reduction in the number of ferruginous hawks was first linked to a decline in prey species, which is directly tied to the loss of optimal habitat through agriculture and agricultural conversions.[203]

Most recently, pervasive and sprawling residential development in the Horse Heaven Hills area continues virtually unchecked,[204] driving off ferruginous hawks and reducing the availability of their prey. Indeed, there are several hundred acres of residential lots currently for sale on shrub-steppe habitat in the Horse Heaven Hills, some in locations where there are records of historical ferruginous hawk nests.[205] In contrast, only two acres of shrub-steppe habitat are proposed to be permanently impacted by the Project.[206]

The Applicant, with the help of its biologists, Troy Rahmig and Erik Jansen, has been studying ferruginous hawks and their use of the Project area since at least 2017, including surveys conducted in 2022 and 2023.[207] The last time a ferruginous hawk was identified using a nest within two miles of the Project site was four years ago, in 2019.[208] Since then, other raptors (owls, ravens, and a Swainson's hawk) have been documented using that

[201] Watson Dep. at 78:23-79:3; *see also id.*, at 101:15-18; Day 6 Tr. at 1252:19-25 (Troy Rahmig ("Rahmig")).
[202] Watson Dep. at 102.
[203] Watson Dep. at 27:9-19; *see also id.* at 85 ("going from a native habitat to an agricultural base has been obviously the main change").
[204] Watson Dep. at 99:10-12 (residential development and wildfires both impact shrub-steppe); *see also id.*, at 86:7-10, 110:4-8, 114.
[205] Day 5 Tr. at 962:5-963:13 (Jansen).
[206] Day 5 Tr. at 962:25-963:12 ("[W]hen you try to place the impacts from project development in context with other sources of anthropogenic disturbance in the Horse Heaven Hills, you can see that there are relatively fewer impacts to habitat compared to let's say upcoming housing development in the Horse Heaven Hills.").
[207] *See* Day 5 Tr. at 954:17-955:13 (Jansen).
[208] *See* Day 5 Tr. at 955:14-21 (Jansen).

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nest.[209] Simply put, while the Project area is part of the species' historical range, the data show that ferruginous hawks are not routinely using the Project location for nesting and, due to current land uses (agriculture) and future residential encroachment, there is no realistic possibility of restoration of habitat or recovery of the species in the area.

2. The Project avoids ferruginous hawk habitat by siting on agricultural land and includes proposed mitigation measures that further minimize anticipated impacts.

In every instance, the hierarchy of impact reduction is first to avoid, then minimize, and finally — if and only if avoidance and minimization cannot be accomplished — to mitigate negative effects to wildlife.[210] The Project has been thoughtfully designed with this hierarchy in mind, to reduce its impact on wildlife, including the ferruginous hawk. As currently proposed, this Project will not significantly contribute to the loss of ferruginous hawk habitat because it is almost completely sited on land that has already been converted to agriculture.[211] Still, acknowledging that even a small loss of habitat could be consequential, the Applicant has proposed mitigation that even District Wildlife Biologist Jason Fidorra agrees could fully compensate for the habitat loss.[212] By contrast, the extensive habitat lost to agriculture and rural suburban development is realistically impossible to reclaim.[213]

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[209] *See* Day 5 Tr. at 850:3-16 (Jansen).
[210] Fidorra Dep. at 90-91; *see also* Day 6 Tr. at 1175:20-1175:8, 1257:19-1258:25 ("[W]hat we're doing now is, it is all about avoidance and minimization and mitigation. … [T]he avoidance and minimization … is outlined in the application. There's additional detail in the habitat mitigation plan about minimization measures specifically for ferruginous hawk that were added in, in response to concerns by WDFW. And then there's a mitigation package proposed in the habitat mitigation plan. So the continuum of avoidance, minimization, and mitigation is … all contemplated during this application process.") (Rahmig).
[211] Fidorra Dep. at 124; *see also* Day 5 Tr. at 980:18-20 ("[M]ost [of] these turbines are getting placed in altered habitat. So there isn't this direct impact on quality shrubsteppe habitat.") (WDFW EFSEC Representative Livingston); Day 6 Tr. at 1251:1-3 (siting the project on agricultural lands is one of the best ways to avoid attracting ferruginous hawks to spots where they might be susceptible to turbine strikes) (Rahmig).
[212] Fidorra Dep. at 27-30; *see also id.*, at 114-15; Day 5 Tr. at 964 (Jansen).
[213] Fidorra Dep. at 121-122.

Scout is proposing several affirmative actions for that purpose. ***One*** is the commitment to protect up to 802 acres of habitat[214] in a historical nest location north of the Project, which includes 678 acres of shrub-steppe and 109 acres of agricultural land that will be restored to shrub-steppe.[215] ***Another*** is to install and maintain artificial nest platforms that, while not an ideal solution, could positively influence the species' population trajectory.[216] ***Third,*** Applicant will plant native grasses beneath the Project's solar arrays, which would encourage the presence of prey species and thereby provide a food source for the hawks, increasing the chance of nearby nesting.[217]

Project opponents contend there is a possibility ferruginous hawks could inadvertently be killed by turbine strikes. Although such an occurrence would be meaningful, the actual likelihood that a ferruginous hawk would be hit by a rotating blade is very low.[218] While any mortality is concerning, fatal collisions between ferruginous hawks and wind turbines are historically rare: in all of Washington State, there have been only four documented over the last 20-plus years.[219] Despite the unlikelihood a turbine would strike a ferruginous hawk, ***fourth***, Scout proposes an unprecedented five-year post-construction raptor nest monitoring effort, allowing for potential adaptive management should any nesting ferruginous hawks be detected within two miles. The Applicant is also proposing two years of post-construction fatality monitoring, consistent with published Washington Department of Fish and Wildlife ("WDFW") management recommendations, which would alert a technical advisory committee ("TAC") and the Project operator to the need to take further

[214] The actual amount will be relative to the applicable corresponding mitigation ratio for disturbed habitat.
[215] EXH-3017_X at 23, Table 5; Final ASC, Appendix L.
[216] Day 5 Tr. at 989:20-24 (Jansen).
[217] *See* Watson Dep. at 32:13-21; Day 8 Tr. at 1579:5-1581:17 (McIvor); *see also id.*, at 1655:19-23 (McIvor).
[218] Day 8 Tr. at 1634:22-1635:16 (McIvor) (in response to questions from EFSEC Chair Drew); *see also* Day 5 Tr. at 872:7-20 (Jansen).
[219] Day 8 Tr. at 1569:5-9, 1660:19-22 (McIvor).

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measures to protect against any additional accidental fatalities. CFE witness Don McIvor called this approach an "excellent proposal."[220]

Fifth, the Applicant has also incorporated no-activity buffers intended to reduce the Project's impacts on nesting ferruginous hawks. These buffers will be consistent with published WDFW management recommendations for the ferruginous hawk.[221] The buffers would be around ferruginous hawk nests, not Project infrastructure.[222] Importantly, although most stakeholders agree that some type of buffer would be appropriate, there remains disagreement as to their appropriate size.[223] Applicant intends to implement published recommendations to avoid impacts to nesting ferruginous hawks during the nesting season.[224] Others suggest that the buffer should be a full two miles, year-round, without regard to the impact that this expanded zone would have on the Project's ultimate viability.[225]

It is abundantly clear that the establishment of buffer zones should be based on the best available science, which the proposed two-mile buffer is not. As an example, the blanket recommendation of a two-mile buffer does not take into account impacts to the ferruginous hawk population from human activity.[226] To have the intended effect, decisions about where any buffers should be placed need to be more nuanced and responsive to individualized circumstances surrounding each nest location.[227]

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[220] Day 8 Tr. at 1603:21-1604:1 (McIvor).
[221] Eric Larsen et al., *Management Recommendations for Washington's Priority Species, Volume IV: Birds*, Washington Dep't of Fish and Wildlife (2004).
[222] Day 8 Tr. at 1589:15-19 (McIvor).
[223] Day 8 Tr. at 1659:10-22 (McIvor).
[224] Final ASC at 3-195, 3-196, Appendix L.
[225] As late as July 5, CFE's witness, Don McIvor, agreed that the Applicant had accurately quantified the project's potential impacts on ferruginous hawks. Day 8 Tr. at 1567:2-8 (McIvor). He subsequently changed his position, apparently for the sole reason that the Applicant did not incorporate a two-mile buffer around historic nests. Day 8 Tr. at 1630:6-9 (McIvor). McIvor could not say how much of the proposed project would be sidelined, how many turbines would have to be eliminated, or even whether the project would remain viable at all if a two-mile buffer is required. Day 8 Tr. at 1599:18-22 (McIvor).
[226] [redacted]
Day 5 Tr. at 926:10-20 (Jansen). U.S. Fish and Wildlife Service recommends a one-mile buffer. *See* Day 8 Tr. at 1562:18-25 (McIvor); *see also* Day 5 Tr. at 1596:15-23 (McIvor

Importantly, the Project's design is consistent with guidance published for wind projects by WDFW in 2009 and the WDFW ferruginous hawk management recommendations published in 2004.[228] Though not new, the 2004 recommendations are the most recent to have been finalized and the only ones to have been circulated and peer-reviewed to date and, therefore, the best available science on the subject. Though an update is in progress, it has changed substantively several times.[229] It currently exists only as an informal *draft*, is subject to future revision and peer review[230] and cannot possibly be interpreted as official agency guidance.[231]

In any event, a proffered WDFW representative agreed it would be possible for the Applicant to move forward with the Project in the absence of updated guidance, so long as best available science is being followed.[232] Nonetheless, WDFW continues to insist that the unpublished, non-peer-reviewed draft constitutes the best available science and should therefore govern decision-making.[233] By "best available science," WDFW apparently means "what department officials say."[234] In effect, WDFW is asking EFSEC to make a leap of faith and choose the government's position over the recent data amassed by the Project's scientific consultants. It should be clear, though, that private research, like that carried out by the Applicant's consultants, could in fact be the best available science.[235] In this instance, the Project's design, taking into account the modifications offered in the Moon Memo, is

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does not disagree that Utah and Colorado also recommend smaller buffers than those proposed in this case).

[228] It is worth noting that WDFW declined to participate in this adjudication. Fidorra Dep. at 101.

[229] Day 8 Tr. at 1618:8-1619:3 (McIvor).

[230] Day 8 Tr. at 1657:13-1658:20 (McIvor).

[231] Watson Dep. at 57:12-58:17 ("if we waited for scientific information to be in some official form before it became usable and applied, in the wildlife world things would go extinct every day, because we need to provide information as it's synthesized and published – as soon as it's published – both verbally and presentations and meetings and other places").

[232] Fidorra Dep. at 44.

[233] At the time, WDFW presumably said the very same thing about the 2009 guidelines, which Watson now claims were *not* the best available science. Waston Dep. at 55:16-17.

[234] Watson Dep. at 96:1-5 ("best available science has not necessarily been peer reviewed").

[235] Fidorra Dep. at 107-109.

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consistent with best available science.[236]

In the absence of consensus over what constitutes the best available science, even the CFE's witness, Mr. McIvor, conceded that the better approach would be to respond to actual conditions at the site, taking into account the empirical information collected through ongoing surveys.[237] Ferruginous hawks have very large home ranges and will not confine their movements to an artificially designated buffer.[238] Being able to tailor infrastructure location and operational decisions to actual area use patterns would undoubtedly minimize missed effects on the species. Additionally, it is well-established that ferruginous hawk use of the Project area is very low.[239] Adopting a site-specific, data-supported approach would eliminate the problem of divining the likelihood of reuse at historic but likely obsolete nests.[240] WDFW Lead Planner for Solar and Wind Energy Development Michael Ritter's proposal to keep non-occupied territories completely open against the very theoretical possibility that ferruginous hawks might someday use them again, despite continued agricultural use and residential development, is a prime example of a one-size-fits all approach, unsupported by science of any kind.[241] Mr. Ritter made that suggestion even while

[236] Day 6 Tr. at 1177:10-14 (Rahmig).
[237] Day 8 Tr. at 1589:5-1590:4 (McIvor); *see also id.*, at 1592:23-1593:4 (agrees that determination needs to be "nuanced and biologically informed approach to an offset") (McIvor).
[238] Day 8 Tr. at 1637:18-21 (McIvor); *see also id.*, at 1612:5-12 (ferruginous hawk ranges expanding because available prey is becoming scarcer) (McIvor).
[239] Day 5 Tr. at 934:23-935:3 (Jansen). One bird was observed flying in Webber Canyon in 2023, but the last bird observed physically on a nest in the Project area was in 2019. *Id.; see also id.*, at 955:14-21 (Jansen).
[240] Day 8 Tr. at 1601:24-1602:8 (McIvor); *see also* Day 5 Tr. at 954:10-16 (Applicant has not proposed setbacks at all historical nests, "because simply some of them are simply not on the landscape anymore") (Jansen); *id.*, at 991:21-992:2 ("[M]ajority of historical nests in the WDFW PHS database are considered gone, so no longer on the landscape, or in remnant condition, which is essentially defined as a scattering of sticks on the ground.") (Jansen). Additionally, "the occupancy rates of territories within the Horse Heaven Hills are below the statewide average." *Id.*
[241] Ritter Dep. at 91:11-19. Note that Mr. Ritter is clearly uninformed about the project or its potential impacts on wildlife. He repeatedly defers to Jason Fidorra and James Watson on specific issues. *See*, *e.g.*, Ritter Dep. at 68:21-24, 70:4-10, 71:2-5, 74:6-11, 75:15-23, 83:12-14, 84:2-6, 94:12-15, 126:13-16, 145:23-146:3, 1497:16-18 (deferring to Jason Fidorra); *see also id.*, at 27:13-19, 70:4-10, 74:6-11, 83:12-21, 84:10-24, 92:8-15, 94:21-24, 98:16-25, 99:1-3, 104:12-20, 105:408, 126:10-16, 146:5, 147:16-18 (deferring to James Watson). He

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acknowledging that the relevant nests may have gone unoccupied for more than two or three *decades*.[242] By contrast, with regard to historic nests,[243] Mr. McIvor very reasonably suggested that a process be established for identifying historic nests and determining whether there was any likelihood those were likely to be reused by ferruginous hawks.[244] Consistent with Mr. McIvor's approach, ***sixth***, the Applicant is proposing that the Project area be surveyed for nesting raptors for five years after construction.[245]

While the Applicant absolutely recognizes it has some responsibility to minimize the Project's impact on ferruginous hawks, it bears no responsibility for recovering the species or for restoring habitat that has been lost because of unrelated human activity. Certainly, it has no obligation to restore habitat lost due to the County's complicity in authorizing and permitting sprawling residential development on valuable shrub-steppe.[246] Nonetheless, WDFW is currently advocating that the Project be completely redesigned based on the unsupported theory of recovery of a species that has not nested in the area in four years, faces far more significant threats, and that in any case will almost certainly never return to the Project area in meaningful numbers.[247] Despite its recommendation that the Project be

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was unaware that the Applicant had submitted a Habitat Mitigation Plan. *See also* Ritter Dep. at 95:4-15. He did not know that the Applicant has proposed monitoring for ferruginous hawk activity. *Id.*, at 99:4-13. He could not say what protections would be afforded to endangered species. *Id.*, at 101:19-23 ("Depends. Federal species sometimes come with certain protections. State species, I'm not sure, but I don't believe there's a whole lot.").

[242] Ritter Dep. at 91:11-19.

[243] Note that there are no active ferruginous nests in the project area. *See* Day 8 Tr. at 1600:24-25 (McIvor). By the same token, McIvor could not say how many historic nests are present. He estimated there may have been 10-12 over a period of decades. *Id.*; *see also id.,* at 1600:19-23; Watson Dep. at 119:19-122:8 (Watson cannot say how many of the 16 historic territories within the project area have been occupied in the last two years and would not disagree if told that number was zero).

[244] Day 8 Tr. at 1602:1-8; *see also id.*, at 1615 (WDFW could be involved in process of evaluating whether historic nests could be viable for reoccupation) (McIvor)

[245] Day 5 Tr. at 971:4-9 (Jansen).

[246] *See*, *e.g.*, Ritter Dep. at 164.

[247] *See*, *e.g.*, Watson Dep. at 51:14-31 (it is not enough to protect areas acknowledged to be unoccupied; those areas should be "not just protected but even [be] improved [in] the quality, that needs to be maintained ***and improved*** in order to have those territories reoccupied to be able to recover the species" (emphasis added)).

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redesigned to avoid hypothetical impacts to the ferruginous hawk's historic and potentially obsolete range areas, the State has not itself acted to protect the species, nor has it updated its ferruginous hawk recovery plan or provided any funding to support the species' recovery.[248]

Climate change, too, poses a "giant" threat to both the ferruginous hawk and its prey. WDFW Research Scientist James Watson testified that climate change will lead to a significant loss of range for ferruginous hawks.[249] Mr. McIvor agreed, testifying that the Project's risk of contributing to ferruginous hawk declines "does need to be balanced against the fact that this project will address … climate change, which is also impacting the bird."[250] By asking EFSEC to impose potentially Project-killing conditions, WDFW is letting the perfect — not only minimizing impacts but also anticipating some future, theoretical species recovery — be the enemy of the good, reducing the impacts of climate change on ferruginous hawks and many other species, including humans.

The Applicant proposes a better, scientific approach through protection and restoration of habitat in an historically used nest location, the use of artificial nest platforms to boost population numbers, vegetation with native grasses under solar panels, data-supported buffers around historical nests, and at least five years of post-construction nest activity monitoring, to facilitate adaptive management techniques. In the unlikely event such monitoring suggests ferruginous hawks have returned to the area, with the help of the TAC, additional measures, including adaptive management, can be deployed to ensure protection of this elusive species.

3. Pronghorn antelope are neither threatened nor endangered; still, Applicant has mitigated for any potential adverse impact to the species.

Pronghorn antelope are a reintroduced species that are not listed as endangered or

[248] Ritter Dep. at 102:25-103:10. Note, however, that James Watson testified that a recovery plan was prepared in 1996 but that it has not been updated since that time. Watson Dep. at 30:3-18.

[249] Watson Dep. at 83:1-16; *see also* Day 8 Tr. at 1578:3-5 (McIvor agrees that climate change poses "giant threat"); *id.*, at 1584:7-14 (McIvor); Watson Dep. at 112:11-14.

[250] Day 8 Tr. at 1645:1-1646:5 (McIvor).

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threatened on any state or federal list, are not managed by WDFW,[251] and are generally treated as a game species throughout the American West, commonly hunted in many locations. Washington, too, classifies pronghorn as a game species, although currently without a designated hunting season.[252]

Despite protestations from Yakama Nation, the potential effects of the Project on the off-reservation pronghorn antelope population are likely to be minimal, and they are sufficiently addressed in the Application. Although some data has been collected, there are still significant gaps in the scientific community's understanding of the dynamics of pronghorn movement and use of the local habitat.[253] It is clear, however, that gaps in the available data should not delay siting of the Project.[254] For instance, the literature is unclear over whether antelope generally avoid wind facilities, and thus any concern that the Project would suddenly make the area inhospitable to the pronghorn is not substantiated by any data or other scientific evidence.[255]

In fact, the Project as currently designed would have only a minimal impact on pronghorn antelope. Roughly 84-85 percent of the Project is sited on agricultural land that is not the pronghorn's preferred habitat in any case.[256] And based on the data available, it appears pronghorn rarely, if ever, use the area of the Project where fenced solar arrays (the features that pose most likelihood of interference) are proposed.[257] The modifications

[251] Day 6 Tr. at 1183:23-1184:2 (Jansen).
[252] Fidorra Dep. at 124-25; *see also* Day 6 Tr. at 1232:19-20 (Rahmig).
[253] Fidorra Dep. at 58-59 ("We are not familiar exactly where they're fawning, the areas that are important to them for … rearing young, what the biggest threats to them [are] on the landscape. And so there's still a lot that we don't know. … [W]hile we know they're in this project area in the winter and we have incidental observations that they're there at other times of the year, including the spring and summer, we don't know to what extent they are present there."); *see also* Day 6 Tr. at 1209:12-1210:16 (raw data collected by the Yakama Nation must be analyzed, but unlikely that further analysis would prompt Applicant to change its position on pronghorn) (Rahmig).
[254] Day 6 Tr. at 1210:3-1211:20 (Rahmig).
[255] Day 8 Tr. at 1587:2-8; *see also* Day 6 Tr. at 1216:2-9, 1237:9-1238:9 (Rahmig).
[256] Day 6 Tr. at 1231:10-12.
[257] Day 6 Tr. at 1206:5-13 (Rahmig).

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proposed in the Moon Memo would reduce the impact on pronghorn still further.[258] Even Mr. McIvor testified that for mammals other than bats, including pronghorn antelope, the Applicant's proposed mitigation is reasonable and likely to be sufficient[259] and no further mitigation is warranted.[260] If by some chance that assumption proves incorrect, there are many possible mitigation options that a future TAC could recommend.[261]

4. The Technical Advisory Committee is an established tool to address any wildlife impacts through adaptive management; tailored, data-supported solutions; and future technological advancements.

Ultimately, the impacts to local wildlife will not be fully known until the Project is built and put into service. For that reason, a TAC is expected to oversee the effects of the Project and will be in a position to make recommendations to ameliorate any unforeseen negative consequences. The TAC is likely to include resource agencies with relevant oversight responsibilities[262] and can be expected to function over the life of the Project.[263]

The Applicant has proposed to supply wildlife monitoring for the entire life of the Project, and once those results start coming in, future operations can be fine-tuned to address the Project's impacts on multiple species.[264] As an example of how this would work, once the Project is operational, the TAC can craft appropriately tailored, data-driven curtailment strategies for species of concern like bats and ferruginous hawks.[265] Right now, the Applicant can estimate the prevalence of the bat population in the Project area, but it cannot predict with certainty how many bats might be killed until the facility is up and running.[266] Once that information is collected, the TAC can recommend and the operator can implement

[258] Day 6 Tr. at 1231:6-1232:3 (Rahmig).
[259] Day 8 Tr. at 1584:23-25 (McIvor).
[260] Day 6 Tr. at 1190:8-16 (Rahmig).
[261] Day 6 Tr. at 1234:3-12 (Rahmig).
[262] Day 5 Tr. at 970:14-971:10 (Jansen, responding to questions from Chair Drew).
[263] Day 6 Tr. at 1212:12-16 (technical advisory committee, "being seated for the life of the project, is really intended to help manage that uncertainty during project operations") (Rahmig).
[264] Day 5 Tr. at 879:4-880:8 (Jansen).
[265] Day 8 Tr. at 1606:4-21 (McIvor).
[266] Day 5 Tr. at 1023:6-12 (Rahmig).

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targeted curtailment in response to the data.[267] The same is true for the Project's impacts, if any, on the local pronghorn antelope population.[268]

There can be no serious doubt that data-driven decisions are preferable to blanket curtailment.[269] They also can incorporate future developments in technology. For example, technologies are emerging that will employ deterrence, rather than curtailment, as a means of minimizing the Project's impacts on wildlife, particularly bats.[270]

H. The Project complies with all applicable air quality standards and does not pose air quality risks.

RCW 80.50.010 directs the Council to consider whether a project will "promote air cleanliness."[271] Applicant has assessed the potential air quality impacts and proposes numerous mitigation measures.[272]

TCC witness Mr. Krupin raised concerns over the release of fugitive dust during Project construction:[273] he assumes that the entire Project lease boundary will generate construction dust emissions and worries about deferring the mitigation of fugitive dust to the

[267] Day 5 Tr. at 1035:15-1036:19 (Rahmig).
[268] Day 6 Tr. at 1208:6-1209:3 (Rahmig).
[269] An experiential, data-driven approach is absolutely necessary. To avoid strikes, Watson says there should be no turbine operation at all during the nesting season. Watson Dep. at 70:19-71:1. Moreover, he says it is not enough to shut down turbines in just the hawks' core areas. *Id.*, at 71:24-72:1 ("Yes, they use core areas, but they're also flying around and in and through other areas, so they're exposed as well to operating turbines."). His justification for that extreme position lacks logic demonstrates Watson's unwillingness to entertain even those proposals that would undoubtedly reduce threats to hawks. "[T]heir problem with species identification with the current IdentiFlight technology, that radar can identify but it also misidentifies eagles occasionally flying around turbines, which case you might have a strike that wouldn't have happened had the turbine been shut down during that time." If the curtailment program accidentally calls an eagle by another bird's name, it would shut down the turbine and there would be no strike. *See* Day 5 Tr. at 1036:16-19 (Rahmig).
[270] Day 6 Tr. at 1228:16-25 (Rahmig) ("[T]he acoustic deterrents are being deployed on projects right now. Mostly they're – it's being done in experimental fashion to figure out is it working, and if not, making adjustments, sort of in a research capacity. …[I]t's available now. It will certainly be refined, probably pretty heavily refined in the next three to five years as the data come in from the research projects that are undergoing – are underway.").
[271] RCW 80.50.010(2); WAC 463-62-070.
[272] ASC Secs. 3.2.2, 3.2.3.
[273] EXH-5302_T_REVISED at 97; Day 6 Tr. at 1153:19-1154:1 (Krupin).

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local permitting authority prior to construction.[274] Those concerns are unfounded. *First*, Mr. Krupin seems to ignore that dust-generating construction activities will occur only in the micrositing corridors, not the entire lease boundary.[275] *Second*, Applicant proposes several measures to mitigate fugitive dust, including reduced traffic speeds and dust-abatement and erosion control measures.[276] *Third* regulations contemplate the exact framework used in the ASC—that dust control mitigation measures are most appropriately addressed once more specific construction plans are developed.[277] *Finally*, Mr. Krupin's environmental expertise and concerns are questionable at best. Mr. Krupin conceded during live testimony he was merely "familiar" with air quality issues, lacked specific expertise, and could not recall what air permits Scout would ultimately be required to obtain or what air information is required to be in the ASC.[278] When asked by Councilmember Levitt whether TCC has actually engaged in environmental projects in the area, Mr. Krupin replied no, TCC's only work has been "on this project."[279]

V. CONCLUSION

The Horse Heaven Energy Project is large. It *must* be, to make even a dent in the State's renewable energy goals. It has been strategically sited (i) on sub-prime agricultural lands, with which its use is compatible, (ii) avoiding habitat and environmental impacts, (iii) in a viewshed already developed with existing energy infrastructure and residential development. For years, Scout engaged with affected Tribes to understand their concerns and has addressed those concerns through a mitigation agreement and voluntary commitments. The "pressing need" for clean energy ever present, the stage is set for the

[274] EXH-5302_T_REVISED at 100; Day 6 Tr. at 1155:23-1156:2 (Krupin).
[275] *See* ASC at 2-1, 2-5, Table 2.1-1.
[276] ASC at 3-61, 3-62.
[277] Day 6 Tr. at 1152:25-1153:6, 1155:9-1156:7 (Krupin).
[278] Day 6 Tr. at 1151:13-21, 1153:11-18, 1156:3-7.
[279] Day 6 Tr. at 1157:15-1158:10.

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Council to exercise its duties under RCW 80.50.010. Respectfully, Applicant requests the Council grant its request for site certification.

DATED: October 13, 2023.

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CERTIFICIATE OF FILING AND SERVICE

I hereby certify that on October 13, 2023, I filed the foregoing **APPLICANT'S POST-HEARING BRIEF** with the Washington Energy Facility Site Evaluation Council through electronic filing via email to adjudication@efsec.wa.gov.

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail at the email addresses listed on the attached Service List.

DATED: October 13, 2023.

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April 10, 2024

Energy Facility Site Evaluation Council
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Re: Horse Heaven Wind Project – Applicant Comments on Practical and Policy Problems with EFSEC Proposed Recommendation to Governor, April 17, 2024

Dear Chair Drew and Councilmembers:

On behalf of Scout Clean Energy (Scout or Applicant) and the Horse Heaven Clean Energy Center (the Project), we continue to appreciate the Energy Facility Site Evaluation Council's (Council or EFSEC) consideration of the Project throughout the application for site certification (ASC) and State Environmental Policy Act (SEPA) review processes. In particular, Scout appreciates the Council's January 31, 2024 (January Meeting) rejection of certain proposals to deviate from final environmental impact statement (FEIS) mitigation measures, including a proposal to eliminate the entire east solar field and Project components east of Straub Canyon.[1] However, after the decisions made during the deliberations at the January Meeting, **numerous fundamental problems remain in the Draft Site Certification Agreement (SCA).**

With its current proposal, the Council fails Washingtonians by not following through on its legislative mandates. In addition to the numerous *substantive* issues with the Council's proposal, which cause practical problems as detailed below, the Council's actions also suffer from rampant *procedural* flaws. As a result, it is impossible to discern what "Project" the Council is approving, or whether it is even commercially or technically viable. This obfuscation results from the Council's unsubstantiated claims declaring the Project feasible despite the proposed restrictions, its misrepresentation and misunderstanding of the biological data underlying its decisions, its disregard of Applicant's public comments, and improper delegation and deferral of its decision-making authority on final Project design to a Pre-operational Technical Advisory Group (PTAG) that will not even be convened until after certification.

Right now, not a single Councilmember could explain what the Project will look like once built, because it is unknown and wholly dependent on future decisions to be made by yet-unnamed PTAG members. When Governor Inslee is tasked to sign the SCA, if he asks what components the Project will contain or how much clean energy it will produce, the Council will have no answer. Even worse, the record reflects the Council may not even understand the biological data and technical considerations that should—and, under its legislative directives, must—underlie its decisions. On multiple occasions during Council meetings, Councilmembers admitted to being

[1] Scout reiterates and incorporates by reference its comments on the January Meeting, provided as Attachment A (the January Comments). This comment is based on EFSEC discussions during the Jan. and Feb. 2024 Council meetings and published draft recommendation documents.

unfamiliar with the FEIS and have hardly, if ever, referred to it. The primary purpose of the FEIS, which took *three years* to prepare and vet, was to inform Council decision-making. Proceeding in the face of such uncertainty displays laxity in purpose by the Council and a disservice to the State of Washington's energy facilities evaluation process. It creates an unpredictable planning environment for future energy developers and undermines the public's trust that State decision-makers are taking serious steps to solve climate change.

Among the significant *substantive* problems with the current proposal, the Council is:

- **moving the goalposts** by changing applicable wildlife standards **post-application** and creating "no-build zones" based on **first-of-a-kind** application of **unpublished draft guidelines** for ferruginous hawk (FEHA);
- violating its mandates that **mitigation must be both reasonable and science-based** by imposing extreme, unsupported setbacks from non-viable nests that strand project infrastructure without regard for Project viability;
- **duplicating and altering FEIS mitigation measures** without due diligence or regard for the careful SEPA analysis in the FEIS; and
- improperly relying on inaccurate WDFW Councilmember representations to utilize data tools unsuited for this regulatory application, while ignoring established wildlife policies.

***First,* and <u>most problematic,</u> the Council is rewriting the FEIS's Spec-5 to create absolute "no-build" zones around <u>non-viable</u> FEHA nest sites** (see SCA Art. IV.L, and App. 2, Spec-5). Eliminating any science-based viability assessment process for wind turbines (within 2 mi), solar or Battery Energy Storage System (BESS) siting (within 0.5 mi) unlawfully rejects the SEPA responsible official's expertise and is untenable from practical or policy perspectives.

Second, Spec-5's sole reliance on PHS data—which excludes seven years of site-specific raptor nest survey results completed by qualified biologists—is **<u>inadequately verified and updated</u>** and ignores the best available science.

Third, since PHS lacks proper accountability, and without clarification as to when a nest site and foraging habitat are "no longer available," the nest viability assessment in Spec-5 could be interpreted to **<u>eliminate a crucial substation and underground collection line that will strand substantial *allowed* generating resources</u>**.

Fourth, the Council's continued reliance on the misappropriated wildlife movement corridor modeling to eliminate Project components (see Art. I.C.2, App. 2, Hab-1) is scientifically and logically unsound and will have devastating effects on renewable energy siting in the State.

Fifth, Scout reiterates that several other FEIS and SCA measures (incl. Veg-10, Hab-5, and FEIS Figures 2-5 and 6-based exclusions) pose practical and logistical challenges and must be revised.

Finally, given the SCA's significant wind turbine reductions, Scout must reconsider its previous voluntary elimination of two turbines that still would be allowed under the recommendation. ***Further***, the SCA must be revised to retain flexibility to use wind turbine models that are available post-certification and that still ensure no greater impact than the models considered.

The following table summarizes the key problems and proposes specific solutions.

Table 1 – Most Pressing Practical and Policy Problems with Council's Proposal

Council Recommendation	Problem	Solution
	Spec-5	
Eliminates any science-based viability assessment to support (1) *wind turbine* siting within 2-miles or (2) *solar and BESS* siting within 0.5-mile of non-viable ferruginous hawk (FEHA) nest locations	• **This eliminates more than half of the Project's entire clean energy generating capacity, gutting the amount needed to meet State goals** • If applied to future projects, would restrict renewable energy siting on nearly a fifth of State's Columbia Plateau Ecoregion (plus other resource constraints) • Will not yield any actual benefit. Horse Heaven Hills are poorly suited for recovery of the species, with a nest occupancy rate nearly ten times below the statewide average • Deviation from FEIS's Spec-5 is unsupported by evidence, and is contrary to WDFW Wind Power Guidelines, analogous federal and other state regulatory framework, and even WDFW's unpublished draft FEHA management recommendations • See January Comments at 3-6, Atts. A-D; discussion below at 5-10	• At minimum, must reinstate FEIS-recommended viability assessment framework in Spec-5 (with clarification below) to apply best available science • Must reinstate nest viability assessment for *all* Project components, as recommended in FEIS • EFSEC must assess the viability of nest sites affecting critical infrastructure siting prior to the SCA draft approval (using site-specific data, discussed below)
Relies solely on PHS data to exclude siting areas	• **PHS data are outdated and unreliable.** Once nest sites are added (e.g., via lay person "call-ins") they are rarely, if ever, reevaluated or removed. There is no transparency as to how or when PHS data are updated • Specifically, **one nest site PHS-documented as "gone" will force elimination of 15 additional wind turbines** • PHS data do not include ongoing updates or site-specific data reflecting current conditions and thus do not represent the best available science • PHS data catalogue historical information but were never intended for this use • See January Comments at 4-6; discussion below at 10-13	• Viability assessment must rely on best available science (i.e., Scout's up-to-date, site-specific nest database), not outdated PHS data • Must either remove 23 "remnant" or "gone" nest sites from PHS database or confirm as non-applicable for setback restriction • Must clarify that the Spec-5 assessment be *"informed by nest site data that is documented in the PHS database but will ultimately be based on the Applicant's most current site-specific, annual raptor nest survey reports."*
Retains viability assessment process for siting secondary components, and for solar and BESS between 0.5-2 miles of non-viable nests, but provides no meaningful standard to determine viability	• Absent clarification of viability standards, proposed restrictions on secondary components could strand significant Project generating resources since PTAG approval is uncertain and untimely. **Documented nest sites [redacted] affect a substation and underground collection cable, potentially isolating and thus eliminating 40 *allowed* turbines, plus the 15 additional turbines noted above** • Current language is ambiguous absent any standard as to (1) when a "nest site" is "no longer available" or (2) how much "foraging habitat" must be present to support an "available" nest site • Ambiguity will cause future conflict between biologists without any clear standard • See January Comments at 4 and Att. D; discussion below at 13-16	• The Council must add to Spec-5 specific standards to make clear when a FEHA nest site and foraging habitat are considered "no longer available" • Scout has proposed a specific, science-based analysis and implementing language to clarify these key points. See p. 15 and Attachment A at 20
	Hab-1	
Restricts key wind turbines and transmission components due to purported wildlife movement impacts, based on decade-old transportation planning modeling	• **Eliminates 10 wind turbines** in medium to high-rated areas and **force rerouting secondary components through more difficult (impactful) terrain** to enable interconnection of 17 potentially stranded wind turbines (also discussed as to Spec-5) • **If applied broadly, would block siting on >5,200 sq mi of prime generation area** • The underlying data examined impact of large-scale transportation infrastructure like bridges and freeways—it is irrelevant to porous features like wind turbines or overhead/underground circuits • Movement data were never field-review confirmed and are outdated and inaccurate • See January Comments at 6-7; discussion below at 17-19	• Reject any SCA condition based on Hab-1 • If Hab-1 is retained, it must reflect the iteration recommended in the FEIS, authorizing siting of Project components within medium to very high linkage movement corridors with submission of rationale and Corridor Mitigation Plan

I. The Council must reconsider its SCA Art IV.L revisions to FEIS mitigation measure Spec-5 to uphold science over ideology and to avoid stranding key Project components.

The Council's rejection of the FEIS-recommended iteration of Spec-5 elevates aspirational ideology over science and site-specific data. The data and uncontroverted evidence in the record prove that nearly all FEHA nest site locations—which now will dictate infrastructure exclusion zones—have long been unoccupied and abandoned by FEHA. In most cases, not much more than a few sticks remain of nests documented decades ago, including those 23 nest sites confirmed by WDFW in the PHS database to be "gone" from the landscape.[2] Despite a subjective narrative from certain WDFW staff, the data prove that Horse Heaven Hills are simply not well-suited for species recovery, with an average FEHA nesting territory occupancy rate nearly *ten times* below the statewide average.[3] Logic and science dictate—and the FEIS rightly recommends—that any buffer around PHS-documented FEHA nests must include a science-based viability analysis process to assess nest presence, use, and viability. This ensures protection of actual FEHA nests, while still allowing siting around historical nests that are "gone" or are now located adjacent to sprawling residential development and long-established agricultural use. Furthermore, over time, as unoccupied nest sites age, the likelihood of reoccupation diminishes, so there must be a process to consider building Project components if nest sites are reclassified.

Now, in the eleventh hour, the Council rejects the FEIS-recommended viability assessment in Spec-5 for primary components, the wind turbines (within 2 miles of any documented nest site), and solar arrays and BESS (within 0.5 mile of the same). This proposal eliminates a majority of the Project's generation capacity and could functionally eliminate at least 40 otherwise allowable turbines, as well as 15 turbines in proximity to a nest that is classified as "gone," by stranding them from critical internal electrical interconnections, subject to PTAG approval, which is neither assured nor timely. As detailed in Scout's January Comments, the Council's changes impose an absolute buffer on all FEHA nests regardless of condition or history of activity, which is *four times* the size of buffers required by other wildlife agencies for *active* nests during the breeding season.[4] It far exceeds recommendations in WDFW's Wind Power Guidelines and goes beyond even WDFW's approach in its unpublished, draft management recommendations for the species, which recommend avoidance of **only valuable habitat**, not, as the Council proposes, avoidance of any land type within the 2-mile buffer. Such a drastic departure is unsupported by any specific evidence in the record. The Council must reconsider these revisions, to ensure its siting decisions are based on actual science, not aspirational ideology.

a. Eliminating the FEIS's recommended science-based nest viability assessment in Spec-5 is illogical, unprecedented, and unsupported by the record.

[2] See Table 2 below. The terms "gone" and "remnant" are standard within the raptor literature and are utilized by WDFW in the Wind Power Guidelines. See Patterns of Ferruginous Hawk (Buteo regalis) Nesting in the Horse Heaven Hills, Benton County, Washington, 2017-2019, 2022), Erik W. Jansen (June 5, 2022), Table 3, provided in Updated Application for Site Certificate (ASC), Appendix K, Report 23.

[3] Adjudication Exhibit EXH-3019_X_REDACTED, 2023 Raptor Nest Surveys for the Horse Heaven Clean Energy Center, Benton County, Washington, Erik W. Jansen (Aug. 3, 2023) (2023 Raptor Survey) at 19-20 (compare Horse Heaven Hills nesting territory occupancy during five-year survey period, 5.6%, with most recent statewide occupancy of 41.0%).

[4] See detailed discussion in Attachment A, January Comments at 5.

The Council's inflexible proposal imposes absolute buffers (2 miles for wind turbines, and 0.5 mile for solar and BESS) around all historical FEHA nest locations, with no available viability assessment to adjust the buffers based on the best available science. This proposal eliminates *a majority* of the clean energy benefit based on the purely hypothetical wish of a WDFW staff contingent that FEHA will return to the Project Area. This, despite that nesting here has rarely been documented in the last decade, with the last documented nesting attempt a single nest in 2019, **making wind turbine strike potential exceedingly rare**. The FEHA species simply is no longer present in this area. The reality is—and years of data prove[5]—that there is no realistic probability that FEHA will return to the Project Area, due to existing agricultural conversion and ongoing suburban residential development, or the historically documented nests that WDFW itself has classified as "remnant" or completely "gone."[6]

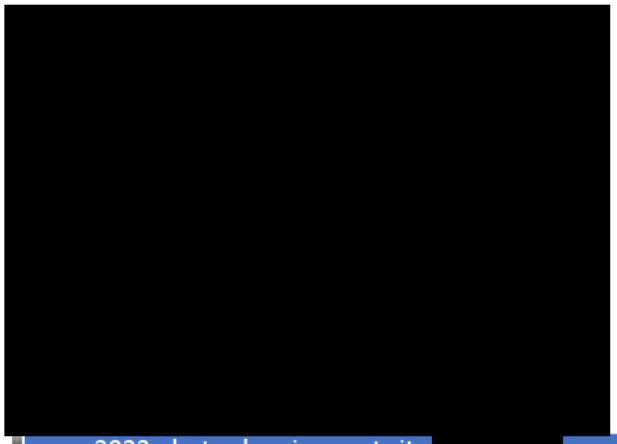
Despite WDFW staff suggestions otherwise, all data show that the Horse Heaven Hills are not critical or even promising habitat for FEHA recovery. The recent territory occupancy data prove that FEHA occupancy in the Horse Heaven Hills is far below statewide average occupancy rates, with a 5.6% nesting territory occupancy rate compared to around 40% statewide.[7] Biologist and FEHA expert Erik Jansen testified during the adjudication that based on "over a thousand hours of survey"[8] and PHS data analysis, the "majority of historical nests in the WDFW PHS database are considered gone, so no longer on the landscape, or in remnant condition, which is essentially defined as a scattering of sticks on the ground."[9]

The Council's proposed Spec-5 language bars any wind turbines within 2 miles, and any solar and BESS within a half mile, of even FEHA nests that have been destroyed to such an extent that *no evidence of their remains can be found*.[10] As part of Scout's survey work, qualified biologists visited *every* PHS-documented nest in the Project Area annually for six years, dating back to 2017, to document current conditions.[11] All nest sites or remnant piles of nest material that could be observed on the ground were photographed. Many FEHA nests in the Horse Heaven Hills have been so destroyed or otherwise removed from the landscape that no discernable evidence of them remained during the survey, thus there was nothing to photograph.[12] The Council's decision bars primary component siting around even these bare spots with nary a stick left to

[5] These data are confirmed in the FEIS, see Spec-5 (citing "Horse Heaven Wind Farm, LLC (2022)," Scout's survey reports in ASC, App. K).
[6] "Remnant" refers to where "only loose or scattered material remains at the nest site which would require *complete reconstruction* of the nest base, body, and bowl to be usable." Adjudication Exhibit EXH-3019_X_REDACTED, 2023 Raptor Nest Surveys for the Horse Heaven Clean Energy Center, Benton County, Washington, Erik W. Jansen (Aug. 3, 2023) (2023 Raptor Survey) at 6. "Gone" refers to a "previously documented nest determined to be completely missing or so degraded that only remnant material (scattered, loose sticks) were present, and that would need *complete reconstruction* in order to be used." *Id.* at 5.
[7] See 2023 Raptor Survey at 19; see also Patterns of Ferruginous Hawk (Buteo regalis) Nesting in the Horse Heaven Hills, Benton County, Washington, 2017-2019, 2022, Erik W. Jansen (June 5, 2022), provided in ASC, Appendix K, Report 23 (2022 Ferruginous Hawk Report).
[8] Adjudication transcript, Day 5, Aug. 22, 2023 at 935:1-6.
[9] Adjudication transcript, Day 5, Aug. 22, 2023 at 991:21-992:2.
[10] See 2022 Ferruginous Hawk Report at 8-11, tbl. 3.
[11] See 2023 Raptor Survey at 4-7, App. C.
[12] See, e.g., PHS-documented nests [redacted], referenced in ASC, Appendix K, Report 23.

photograph. Disallowing these features based on these non-existent, long-abandoned FEHA nest sites is disconnected from the reality of this species' current nesting behavior in the Horse Heaven Hills.[13]

For example, the nest site below showed at least *some* evidence of potential nest material that could be photographed:



2022 photo showing nest site [redacted] categorized as remnant. This nest has been unoccupied by ferruginous hawk for at least seven years, and less than 30% of the surrounding core area is breeding habitat. 2022 Ferruginous Hawk Report App. B, at 9.

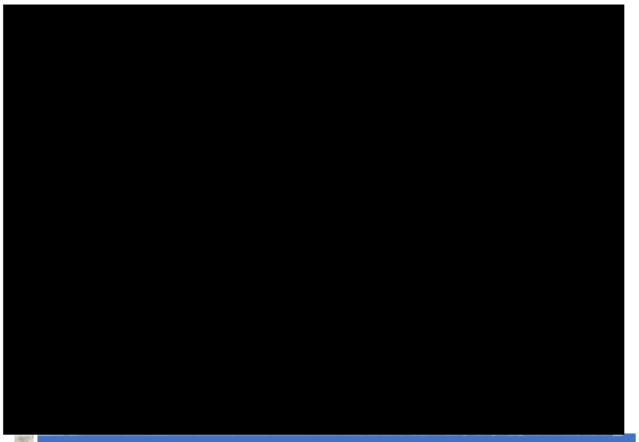
The Council's proposal also imposes absolute buffers around FEHA nest sites now completely surrounded by active residential development, primarily extra-urban development inexorably encroaching in the Horse Heaven Hills from the nearby Tri-Cities. As Mr. Jansen testified, real estate websites at the time of the adjudication showed *active residential sale listings on more than 300 acres of shrub-steppe habitat in the Horse Heaven Hills*.[14] And that number does not include the homes built in the area since that time, as Benton County continues to permit such development. In many areas surveyed along the [redacted], Scout's biologists measured a median distance of just 0.25 mile from residential development to a nest.[15] That numerous occupied residences are actively being developed well within a quarter mile of such documented nest sites shows both the futility and the arbitrariness of the Council's proposed siting buffers.

[13] The PHS database is rarely updated to remove historical nests classified as "gone." Although in December 2023, WDFW removed fourteen nests noted as "gone," it had not done so in recent memory, and certainly not since Scout began its survey work in 2017.

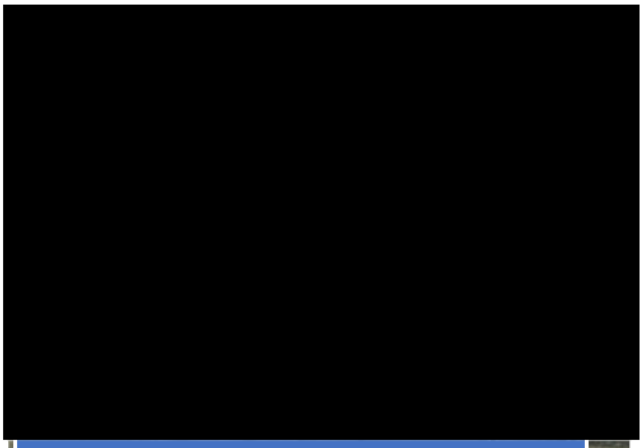
[14] Adjudication transcript, Day 5, Aug. 22, 2023 at 962:18-24 ("Other data indicates, so looking into the future, you can get on any type of real estate website there is -- Redfin, Zillow, Realtor.com -- and look at open real estate listings in the Horse Heaven Hills. Based on my recent analysis, there are over 591 acres for sale in the Horse Heaven Hills, and I believe over 60 percent of those acres are in shrub-steppe habitat.").

[15] Adjudication transcript, Day 5, Aug. 22, 2023 at 977:13-22 (Jansen).

This ever-expanding, sprawling residential development has vastly changed the current conditions and viability of PHS-documented FEHA nests in the Project Area. Below are two more examples of nests currently triggering the absolute buffers proposed by the Council:



2022 photo showing presumed location of nest site [redacted]; no identifiable nest structure remnants were observed. The large residence in the midground is just 43 meters from the documented location. This nest has been unoccupied by ferruginous hawk for at least seven years and less than 30% of the surrounding core area is suitable breeding habitat. 2022 Ferruginous Hawk Report App. B, at 19.



2022 aerial photo showing nest site [redacted] This nest is completely surrounded by residential development. [redacted] This nest has been unoccupied by ferruginous hawk for ast least seven years, and less than 30% of the surrounding core area is breeding habitat. 2022 Ferruginous Hawk Report, at 14.

Moreover, the larger, 2-mile exclusion buffer for wind turbines is unwarranted and unsupported in the record. The Council incorrectly assumes that wind turbine presence (and even passive solar arrays or BESS) would deter future nesting, but that large-scale residential development, active farming, and other land disturbances somehow do not. In actuality, FEHA's primary threat here is key foraging habitat loss from *sprawling residential and agricultural land conversion*, which has been occurring for decades with no end in sight, *not* turbine strikes or primary component installation and operation. As Counsel for Environment's (CFE) biology expert Don McIvor explained, "the probability of a strike is low."[16] Thus, at present in the area, wind turbines pose no more risk to the FEHA species than any other type of land development. And here, *unlike with sprawling (county-permitted) residential and agricultural development*, Scout assumes substantial responsibility to invest in concrete conservation actions and adaptive management. The substantial evidence and the FEIS support adaptive management practices to minimize strike risk in response to any FEHA nesting in the Project Area, *not* complete elimination of turbines within the buffers.

The Council's revisions to FEIS Spec-5 are unprecedented and will have a devastating effect on renewable energy siting in the State. Scout's January Comments describe how the Council's

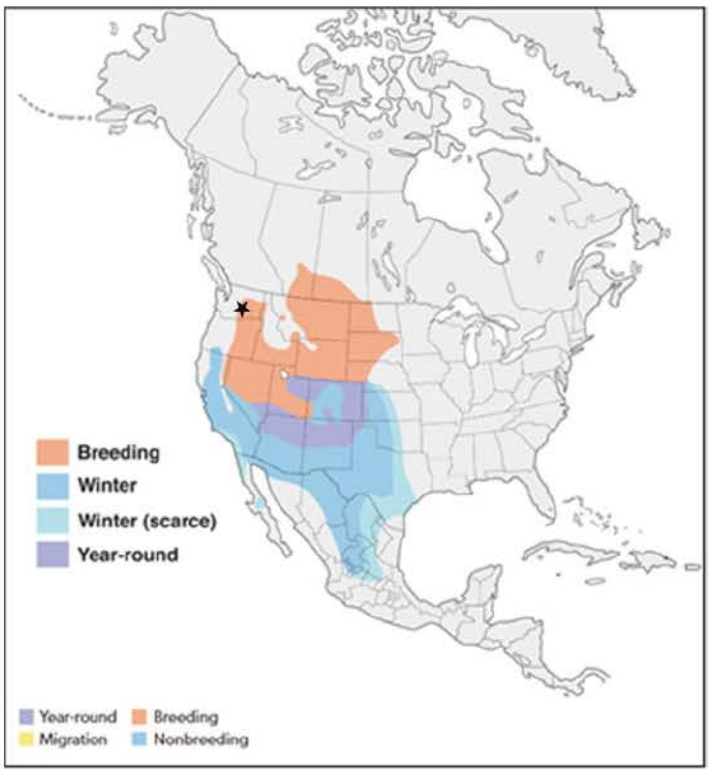
[16] Adjudication transcript, Day 8, Aug. 25, 2023 at 1605:11-16.

proposal stands in stark contrast to the FEIS, EFSEC precedent, and analogous regulatory treatment by the other jurisdictions with FEHA policies.[17]

Table 2 – Summary of FEHA Nest Site Setback Standards by Jurisdiction

Jurisdiction	Source of Setback Standard	Publish Date	Nest Setback miles/feet	Considers Nest Condition? Activity, time of year, habitat, other
Washington	Horse Heaven draft SCA	2024	2.0/10,560 For WTGs	**No consideration of nest activity, viability, or habitat assessment**
Washington	Draft Management recommendations for Washington's Priority Species – Ferruginous Hawk	Released 2023 (unpublished)	2.0/10,560	**Yes**. Habitat based analysis, site assessment, and mitigation.
USFWS Region 6	U.S. Fish and Wildlife Service (USFWS), Region 6 Wildlife Buffer Recommendations for Wind Energy Projects Version 3.0	2021	1.0/5,280	**Yes**. Setback is from active nests, with seasonal considerations.
Colorado	Recommended buffer zones and seasonal restrictions for Colorado raptors	2020	0.5/2,640	**Yes**. Setback is from active nests, with seasonal considerations.
Utah	Utah field office guidelines for raptor protection from human and land use disturbances	2002	0.5/2,640	**Yes**. Setback from active/occupied nests. Seasonal buffer.
Alberta, Canada	Recommended Land Use Guidelines for Protection of Selected Wildlife Species and Habitat within Grassland and Parkland Natural Regions of Alberta	2011	0.62/3,274	**Yes**. Setback is from active nests, with seasonal considerations.
Manitoba, Canada	Recommended Development Setback Distances and Restricted Activity Periods for Birds by Wildlife Feature Type	2021	0.62/3,274	**Yes**. Setback is from active nests, with seasonal considerations.

[17] See Attachment A, January Comments at 5.



Ferruginous hawk range map from Cornell lab of Ornithology. Star represents Project location.

These other jurisdictions have just as much—if not far more—at stake in the species' survival as Washington. As shown in the figure to the left, these jurisdictions support far more of the species' geographic range, including a larger percentage of breeding area.

Even so, these jurisdictions' FEHA setback recommendations are appropriately crafted and *qualified* to account for nest condition and activity, as supported by the biological survey data.

The proposal also goes beyond what is required for listed species under the federal Endangered Species Act (which FEHA are not), by proposing only *avoidance*, rather than mitigation or minimization, even absent any evidence of actual *take*. It also rests on tenuous legal grounds given that when Scout filed its application, the FEHA were not even listed as endangered. WDFW rushed to list this species during the Project's ASC review process and after Scout's detailed habitat and wildlife assessments conducted prior to filing the ASC. Yet the Council's proposal exceeds even WDFW's unpublished, draft management recommendations for the newly listed FEHA—recommendations that are not peer reviewed and to this day have not been formally adopted or finalized, much less released to the public for review[18]—because it implements avoidance of not just FEHA habitat but *all* land types within the buffer.

Even the Council for the Environment's (CFE) expert Mr. McIvor advocated for a "nuanced and biologically informed approach to an offset" (i.e., buffer).[19] He testified in support of "a process for identifying some of these historic sites and coming to an agreement that their likelihood of reuse would be slim or none."[20] As detailed in Scout's January Comments, **imposing an**

[18] The unpublished management recommendations only came to light because they were subpoenaed during the EIS Adjudication process, a copy which initially still had track changes and internal WDFW comments included. See EXH_4015_X. The draft policy is unvetted by the public or experts, is purely ideological, unrooted in any science, and runs counter to the findings of many other qualified biologists.
[19] Adjudication transcript, Day 8, Aug. 25, 2023 at 1592:23-1593:4.
[20] Adjudication transcript, Day 8, Aug. 25, 2023 at 1602:1-8.

absolute 2-mile buffer throughout the Columbia Plateau will prohibit wind siting over nearly a fifth of this entire geographic area.[21]

The absolute buffers are also unwarranted because they are entirely duplicative of the existing FEIS-recommended mitigation program. As discussed further below in Part 1.d, the Project's Habitat Mitigation Plan (HMP) summarizes anticipated impacts to PHS habitat types, including FEHA core habitat. Scout's HMP contains mitigation ratios negotiated with WDFW and EFSEC staff. It also identifies mitigation requirements for PHS habitat impacts and a Nest Management Plan for *any* encroachment to the Nest Buffer. To the extent that wind turbines, solar arrays and BESS within 2 miles or 0.5 mile of a nest impact any PHS habitat, the WDFW-approved HMP already ensures no net loss of function.

These buffers also take an unprecedented step further than WDFW's official policy for habitat management at wind energy facilities as outlined in the 2009 WDFW Wind Power Guidelines. The 2009 WDFW Wind Power Guidelines contemplate and allow for impacts to PHS habitat types, as long as there is no net loss of function, demonstrated through the completion of a Habitat Management Plan. The Council has now decided to disregard the 2009 Wind Power Guidelines and disallow development in these areas. This type of restriction has never been executed in energy facility siting, much less renewable energy facility siting, in Washington.

The Energy Facilities Site Locations Act directs EFSEC to weigh *all* the factors before it to responsibly site clean energy facilities. The Council's duty is *not* to administer and unlawfully demand that an applicant undertake measures to secure the recovery of a particular species. The Council cannot make ill-informed decisions based on hypothetical and unsupported data for one species that has virtually no chance of future Project Area occupancy. Scout urges the Council to consider its independent, unique role in the siting process, and the evidence before it, to reinstate a science-based nest viability assessment process for primary component siting.

The Council must reconsider its recent revisions to the FEHA nest site buffers and—at minimum—return to the Spec-5 language in the FEIS (FEIS Spec-5), making available a science-based nest viability assessment process for primary component siting.

b. The Council is implementing exclusion zones for this Project, and presumably all future renewable energy projects, based on a poorly controlled and misapplied PHS database that does not represent the best available science.

EFSEC is relying on outdated and incorrect information in creating "no build" exclusion buffers based solely on FEHA nest site locations documented in the PHS database.

It is readily apparent that WDFW does not regularly update the PHS database. FEHA nests dating back to the 1980s that have not been occupied for many years, and in some cases may have *never* been used by FEHA, remain in the database. WDFW also has not regularly updated nest conditions. The reality is that WDFW has to rely on opportunistic sightings and inconsistently available funding to survey nest locations rather than use systematic recurring

[21] See January Comments at 15.

approved surveys. Even when surveys do occur, WDFW does not remove from the database nests that are "gone" from the landscape. For example, WDFW has documented nests in trees that have since fallen, nest sites now located in the middle of a suburban neighborhood, and nests in a residential backyard,[22] but nevertheless has left them in the database. This makes sense if the intention is to maintain a historic record of an endangered species' nesting patterns, but it should not be used as the basis for conditions restricting renewable energy development.

In many instances, the WDFW data are simply incorrect. Scout began conducting raptor nest surveys in 2017. Those surveys clearly showed that some GPS coordinates for PHS-documented nests were inaccurate, and some nests were in the database twice. Table 3 below provides a list of 23 FEHA nests that have been characterized as "remnant" or "gone" in the PHS database and confirmed as such by Scout's site-specific surveys, yet they remain in the PHS database, even after the December 2023 update by WDFW. The Spec-5 mitigation measure must be revised to clearly identify these 23 "remnant" or "gone" nest sites as not being applicable for setback restriction or removed from the database.

Table 3 - "Remnant" or "Gone" Ferruginous Hawk Nests That Should Be Removed from the Project-Applicable PHS Database Based on Nest Condition

PHS Site Name	WDFW Territory Name	PHS ID[1]	HHCEC Nest ID	2023 Nest Condition[2, 3]
[redacted]	[redacted]	[redacted]	[redacted]	Gone
				Gone
				Gone
				Gone
				Gone
				Gone
				Gone
				Gone
				Gone
				Remnant
				Remnant
				Gone
				Remnant
				Gone
				Gone
				Gone
				Gone
				Gone
				Gone
				Gone
				Gone

[22] See discussion above at p. 7.

PHS Site Name	WDFW Territory Name	PHS ID[1]	HHCEC Nest ID	2023 Nest Condition[2, 3]
[redacted]	[redacted]	[redacted]	[redacted]	Gone
[redacted]	[redacted]	[redacted]	[redacted]	Gone

[1] Based on WDFW PHS Database Provided in December 2023.
[2] Based on Project Surveys.
[3] For all nests the nest condition was generally the same during surveys from 2017 – 2023. None of the nests shown were occupied by any species, including ferruginous hawk, nor have any of the nests improved in condition during that time, meaning no species have attempted to nest in these locations either.

Moreover, as Scout understands the Council's current proposal, the FEHA nest site exclusion zones posed by SCA Art. IV.L, Spec-5 will be dictated by the late-2023 PHS data *as they appear at present*, which represents a snapshot in time. This approach provides no avenue to update the exclusion zones for consistency with the most up-to-date site-specific survey data (which will be the best available science) that will be available post-SCA but pre-construction. Enabling an ongoing update mechanism like the viability assessment in FEIS Spec-5 is critical to incorporate future best available science in siting decision-making as time progresses. Ten years from now, when, in all likelihood based on current data, it will be clear the species will never return to the Horse Heaven Hills (given ongoing agricultural conversion and residential sprawl), there will be no way to revisit nest site viability to update Project siting based on current conditions.

The continued, misplaced use of the inaccurate, outdated PHS data will erode public and industry trust not only in WDFW as the resource agency of record in Washington State but also in the Council as the State's lead energy facility certification agency. The Council is statutorily required to use the best available science in its siting decisions. Accordingly, in implementing the viability assessment process discussed above, ***the Council must ensure that the assessment process utilizes the best available science, that is, Scout's up-to-date, site-specific nest survey data*** *that were collected to align with the U.S. Fish and Wildlife Service's Wind Energy Guidelines and the WDFW's Wind Power Guidelines.* Specifically, as with any Project-level assessment, Scout proposes to use the PHS data as a starting point, but then to rely on data collected by Project biologists, during raptor nest surveys conducted from 2017 to the present. The results of the Project-specific raptor nest surveys have been submitted to EFSEC and WDFW each year in raptor nest survey reports and are included in Appendix K of the ASC. When making determinations about the viability of a nest, and therefore any required mitigation measures for viable nests, Scout proposes to use information on location, nest condition, history of occupancy, and nearby threats based on recent data collected by Project biologists, not on the unverified PHS data. Accordingly, Scout requests that the Council add clarifying language to the first paragraph of Spec-5 to convey that: "*This nest availability assessment will be informed by nest site data that is documented in the PHS database but will ultimately be based on the Applicant's most current site-specific, annual raptor nest survey reports*."

If WDFW and EFSEC insist on using FEHA nest locations to inform exclusion zones, to uphold public and industry trust, they must immediately implement transparent quality control measures for the PHS database and identify any nest locations that are documented as "gone" or "remnant" condition as not being applicable for setback restriction. Further, going forward, EFSEC and WDFW's senior management must require that WDFW staff commit to review new information

and to update the PHS database with the results of raptor nest surveys.[23] For example, Scout has conducted six years of raptor nest surveys over a 7-year period (2017-2024[24]) in the Project Area. Raptor nest survey reports were submitted to EFSEC and WDFW following each survey year and are all attached to the Project Application. This is a considerable investment to understand both raptor nesting generally and FEHA nesting specifically. This data should be recognized and used to update the PHS database immediately. If WDFW does not review and adopt these recent data and develop further quality control practices, the Council's exclusionary buffers will not be based on best available science, and use of the defunct and disorganized database will undermine renewable energy siting in the State.

c. The viability assessment standards in Spec-5 must be clarified to avoid stranding significant generating resources.

Scout appreciates the Council's recent proposal to revise Spec-5 to allow secondary Project components within 2 miles and solar and BESS between 0.5 and 2 miles of PHS-documented nests based on a viability assessment, that is if the nest site and foraging habitat are "no longer available." However, the lack of clear thresholds in the Council's currently proposed Spec-5 makes it difficult to actually conduct that viability assessment or determine when such infrastructure would actually be allowed.

Request for clarification and supplementation of FEIS Spec-5:

Because FEIS Spec-5 does not define when a FEHA nest site is considered "no longer available," it provides no certainty for pre-construction Project design, erodes public trust, and improperly delegates viability determinations to the PTAG. Scout requests that the Council clarify those criteria in the SCA.

FEIS Spec-5 provides, in relevant part:

> Siting of features within 2 miles of a known ferruginous hawk nest may be considered if the Applicant is able to demonstrate that the **nest site and foraging habitat is no longer available to the species** and that compensation habitat, as described below, would provide a net gain in ferruginous hawk habitat. **Habitat considered no longer available for ferruginous hawk would include habitat that has been altered by landscape-scale development (cropland conversion, residential development, industrial development) rendering the territory non-viable.**

The bolded language is ambiguous from a biological perspective in two ways. ***First,*** there is no explanation of *when* a FEHA nest site is "no longer available." As explained in Scout's January Comments, more specificity is needed to prevent a future situation in which scientists must debate over the availability and viability of a specific FEHA nest. Various options have been presented, for example, Spec-5 could utilize WDFW's existing classification system in the PHS database (e.g., "gone," "remnant," "poor" condition) and/or the more specific criteria provided

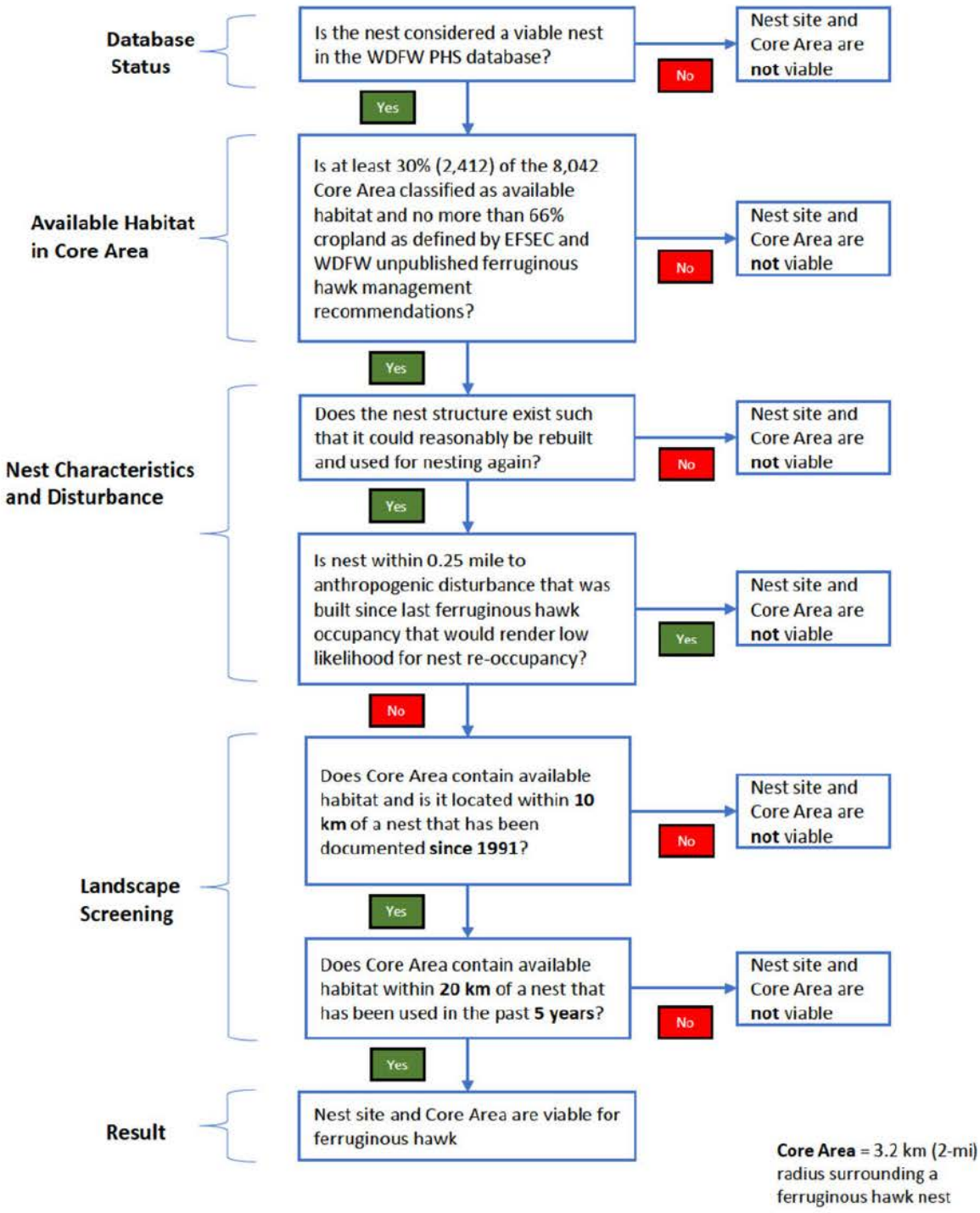
[23] These practices would follow the WDFW Wind Power Guidelines and the U.S. Fish and Wildlife Services Wind Energy Guidelines.
[24] 2024 survey commenced and still in progress.

by Scout in previous submittals to EFSEC staff. ***Second,*** the measure does not specify when associated "foraging habitat" is "no longer available." That is to say, Spec-5 provides no habitat threshold that would render "foraging habitat" no longer viable for use by FEHA. WDFW has stated that FEHA home range has less than 30% cropland[25] and has at least 50% shrub-steppe habitat.[26] Scout proposes Spec-5 be clarified to define "available foraging habitat" to require a maximum of 30% cropland and minimum of 50% shrub-steppe or grassland habitat within 2 miles of a FEHA nest site, as identified by WDFW. This approach utilizes WDFW's existing habitat profile percentages, with the addition of grassland, which according to even WDFW's unpublished FEHA management recommendations is a valuable habitat type for FEHA.[27]

Below is a more specific analysis provided by Scout and its biologists in previous submittals to EFSEC staff, which includes proposed language to reduce ambiguity and decrease the likelihood scientists will need to debate over FEHA nest availability. These proposed criteria, also provided in the January Comments at p. 19, are objective and rooted in established biological understanding to facilitate a streamlined and non-adversarial viability assessment process.

[25] 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.
[26] Larsen, E., J. M. Azerrad, and N. Nordstrom, Washington Department of Fish and Wildlife, Management Recommendations for Washington's Priority Species, Volume IV: Birds (2004) at 7-2, https://wdfw.wa.gov/sites/default/files/publications/00026/wdfw00026.pdf
[27] See WDFW Draft Management Recommendations, 6-7, Table 2.

Ferruginous Hawk Nest Viability Flowchart



The uncertainty posed in the Council's current iteration of Spec-5 creates serious problems for the technical viability of the Project. Under the current iteration, biologists likely will not be able to agree whether specific FEHA nest sites are "no longer available" in the Project Area. If applied incorrectly, the viability assessment determination could force elimination of key secondary components (a substation and underground collection line) necessary to connect the Project internally. This would cut off generation from clusters of wind turbine strings and part of the solar array in the eastern section of the Project, stranding key infrastructure. Specifically, three FEHA nests [redacted] could force elimination of secondary components that would in turn force removal of an additional 40 *allowed* turbines because it would be impossible to connect them into the Project due to being land-locked at this location. This, in addition to 15 more wind turbines precluded by a single nest site currently documented as "gone" in the PHS database.

The data surrounding these three particular FEHA nest sites show they *should* be considered "no longer available" under Spec-5's viability assessment. One of these nests is listed in the PHS database as completely "gone."[28] Another has not been occupied by a FEHA in 18 years and was last occupied by a common raven.[29] The third has not been occupied by a FEHA in 11 years and also most recently was occupied by a common raven.[30] And neither of the two nests still present on the landscape are surrounded by more than 30% suitable habitat.[31] Nevertheless, under the Council's current proposal, key secondary infrastructure could be eliminated based on the existence of small, fragmented pockets of foraging habitat within 2 miles of those nest locations.

Whatever the Council's ultimate decision on Spec-5, **these specific nest site locations must be addressed by the Council, due to their magnitude of impact on the viability of a significant portion of the Project.**

Accordingly, ***the Council must add clarifying language to Spec-5 to reduce ambiguity in the viability assessment applicable to secondary facilities to facilitate internal and external connection of key Project components.***

d. The Council is ignoring, and in some cases improperly overwriting, the significant FEHA habitat mitigation recommended in the FEIS and additional adaptive management measures proposed by Scout.

Eliminating Spec-5's viability determination for primary components is unnecessary based on the significant FEHA and habitat-related mitigation already established in the FEIS. Throughout its deliberations, the Council has focused on whether viable FEHA habitat is present but omitted any recognition of the highly relevant habitat-focused mitigation proposed by the HMP and the additional requirements established in the FEIS. The comprehensive framework of the FEIS's

[28] 2022 Ferruginous Hawk Report at tbl. 3, pg.9.
[29] *Id.*
[30] *Id.*
[31] HHECE, FEHA Core Area Parameter Summary, provided to EFSEC Staff on December 14, 2023. Scout has provided an updated version of the FEHA Core Area Parameter Study (transmitted on March 7, 2024) as Attachment B to this letter.

Spec-5, buttressed by other significant FEIS-recommended habitat and wildlife mitigation measures, has been carefully crafted and endorsed by Council staff and the SEPA responsible official as the optimal approach to maximize clean energy benefits while minimizing any adverse impacts.

The Project already includes a comprehensive HMP that commits to mitigate any habitat loss at ratios consistent with those outlined in the 2009 WDFW Wind Power Guidelines and agreed to by WDFW.[32] The new habitat will be provided in a location that has both historically supported FEHA and is prime FEHA habitat (intact shrub-steppe habitat) or will be restored shrub-steppe habitat through agricultural land conversion. This will not only *increase* the amount of valuable PHS habitat types in the region but do so in an area much better suited for species recovery.

The Council's proposed changes to Spec-5 as drafted in SCA Art. IV.L disregard the HMP and create new, overlapping mitigation plans. It is unclear why the Council refuses to read Spec-5 and the HMP together when the HMP was reviewed by EFSEC and WDFW staff and informs the SEPA responsible official's comprehensive mitigation proposal in the FEIS, including Spec-5. Not only does ignoring the HMP create a confusing compliance mechanism but rejecting its own SEPA responsible official's conclusions without any support for its rejection is improper and legally suspect.

The Council's rejection of the FEIS-recommended adaptive management measures is also unsound. The Council's recent proposal omits FEIS-recommended language establishing that "[a]dditional mitigation measures" like possible curtailment, would be developed in the unlikely event FEHA *are* documented as nesting in the Project Area in the future. Scout has repeatedly proposed options to manage the Project adaptively in case that occurs, and has submitted to EFSEC staff (1) suggestions about how to assess FEHA nest viability to better plan for potential, but extremely unlikely, future nesting activity and (2) commitments to monitor nesting activity and implement curtailment strategies to reduce any emerging risk to the species from wind turbine strikes.[33] But based on the discussions during the Council's meetings, it seems this information has not been presented to or understood by the Council. These adaptive management measures are scientifically supported, routinely implemented across the country, and effective to ensure no future impact to the species. As currently written, there is no requirement or opportunity to manage the Project adaptively.

II. The Council's continued reliance on the misappropriated wildlife corridor map to eliminate Project components is scientifically and logically unsound.

The FEIS's Hab-1 and the Council's proposed SCA, App. 2, Hab-1 amendments greatly restrict all Project components based on purported wildlife movement impacts and are scientifically and logically flawed. As detailed in Scout's January Comments, those restrictions are based on a decade-old, aspirational wildlife habitat connectivity modeling effort that has never been applied

[32] See ASC, Appendix L; FEIS, Ch. 4.5, Table 4.5-11.

[33] See email from Dave Kobus, Scout to Amy Moon, EFSEC, Mar. 10, 2022 2:47pm re Horse Heaven – Mitigation and Impact Information, and Attachment, The Role of the Technical Advisory Committee and Adaptive Management to Evaluate Post-Permit Impacts Ferruginous Hawk at the Horse Heaven Clean Energy Center, Benton County, Washington.

by Council to any other energy facility siting decision in the Council's history, including very recent EFSEC approved projects in the immediate vicinity, and for good reason. This proposal also eliminates a much-needed portion of the Project's generation capacity: It would functionally eliminate at least another 10 wind turbines by stranding them from necessary secondary components by disallowing critical internal electrical interconnections, and force rerouting certain secondary components through more difficult (impactful) terrain to enable interconnection of 17 other potentially stranded wind turbines (as noted in Spec-5 discussion above).

Specifically, the siting restrictions proposed in Hab-1 are unsound for several reasons, including:

- The wildlife corridor map was created to support long-term conservation planning and to inform building or retrofitting transportation infrastructure projects, like freeways and bridges, which *entirely block* wildlife movement. It was never intended—and should not be used—to restrict the siting of isolated structures like wind turbines and transmission line supports, which may shift but do not block wildlife movement.

- EFSEC has not imposed this restriction on any other recent energy project—including *solar* project components that do pose potential restrictions to wildlife movement.[34] There is nothing differentiating this Project from the previously approved projects not subject to any such restriction, nor any specific justification for the differential treatment.

- These wildlife map classifications are utterly irrelevant to the ASC evaluation because they have *never been confirmed by field review* and have not even been updated since 2013 with desktop review.

- Applying this restriction more broadly will block renewable energy siting in over 5,200 sq mi of the State, as detailed in Scout's January Comments.[35] Prohibiting siting on a vast swath of the State based on an outdated, misappropriated map is a clear and an avoidable error.

Several Councilmembers in the January Meeting rightly questioned the purpose and value of these restrictions. Chair Drew recognized that Hab-1 poses Project connectivity and stranded asset problems. Councilmember Brewster questioned whether transmission impacts would occur (to which the answer is yes). Councilmember Levitt noted the map's *transportation* planning origins and focus on the movement of various (unlisted) species, around *non-porous* infrastructure. Specifically, the modeling examined movement of 11 focal species, including two types of grouse, jackrabbits, and ground squirrels, chipmunks, beavers, and a salamander species.[36] Even the main proponent of the revised corridor restrictions, Councilmember Livingston, could not point to any WDFW research or data to support the change. He explained his position was based on generalized concerns about "remaining habitat" and species serving as

[34] See, e.g., discussion below regarding Goose Prairie, High Top, and Ostrea solar projects.
[35] See January Comments at 25.
[36] Columbia Plateau: Focal Species and Landscape Integrity Connectivity, Washington Wildlife Habitat Connectivity Working Group, https://waconnected.org/cp_focalspecies_landscapeintegrity/ (last accessed Mar. 14, 2024).

prey for FEHA like Townsend's ground squirrels (concerns that are already accounted for and addressed by *other* mitigation measures and Scout's HMP). But Councilmember Livingston pointed to no evidence—*because none exists*—to suggest that these small species' movement is at all affected by the type of Project components proposed. Yet, without further justification, the Council took action to maintain the exclusion.

Simply put, the Council is restricting the siting of isolated features like wind turbines and transmission line supports, with no evidence that the such features interfere with these small, ground-dependent species' (e.g. salamanders, squirrels, beavers and jackrabbits) movement.

Even if the Council relies on the movement corridor map to limit siting, the *additional* Council-proposed additional restrictions for Hab-1 that require wind turbines, solar arrays, and BESS to be located outside of movement corridor map's medium to very high impact areas without a variance process are cumulative, redundant, and unwarranted given the other significant wildlife and habitat mitigation measures already recommended in the FEIS. The FEIS measures are "good mitigation," as explained by EFSEC Director and SEPA responsible official Sonia Bumpus during the January Meeting. Those requirements include, but are not limited to:

- Habitat enhancements to promote continued use of corridors, such as revegetation of areas that may currently be in agricultural uses;
- Ensuring features (e.g., open-bottom culverts) to accommodate wildlife movement for linear Project components (e.g., roads, powerlines);
- Restoration in movement corridors following Project decommissioning;
- Performance standards and ongoing monitoring to ensure those standards are met; and
- If the monitoring review by the PTAG suggests the existing measures are ineffective, then additional mitigation will be implemented.[37]

These measures strike the right balance of "reduc[ing] potential Project-related barriers to wildlife movement while allowing for continued monitoring and adaptive management of potential Project-related barriers."[38] Moreover, these measures are layered on *in addition* to the existing suite of habitat and wildlife mitigation proposed in the FEIS. The Council in its public discussions to date has shown neither interest nor knowledge regarding these important SEPA-based measures, including WDFW approved direct mitigation ratios, which are established and biologically informed to ensure protection of PHS habitat types and FEHA food sources, among others.

III. Veg-10 is duplicative and unwarranted.

The proposed site certificate language in Veg-10 is inappropriate and duplicative of the pre-existing mitigation commitments in the HMP. Veg-10 prohibits solar arrays on WDFW Priority Habitats and rabbitbrush shrubland. However, as discussed above, the HMP already addresses PHS habitat types and rabbitbrush shrubland. Moreover, PHS habitat types and rabbitbrush shrubland are FEHA foraging habitat, and therefore, if within 2 mi of a nest would be addressed

[37] FEIS ES-28, 4–220 to 4-221.
[38] FEIS 4-221.

by Spec-5. Imposing Veg-10 goes beyond the 2009 WDFW Wind Power Guidelines by prohibiting impacts to PHS habitats and rabbitbrush shrubland when there is no net loss of function. In the event that PHS habitats and rabbitbrush shrubland are impacted, the HMP provides that Scout will preserve the same type of habitat to ensure no net loss of function.

Moreover, as detailed in Scout's January Comments, much of the land currently classified as "rabbitbrush" and thus proposed to be included within Veg-10's exclusion zone is recently expired USDA Conservation Reserve Program land that certainly will once again be tilled as active cropland—with no obligation to maintain it as available foraging habitat.[39] Further, rabbitbrush is not considered a Priority Habitat by WDFW, despite being treated as such by the Council. Finally, again, this restriction appears in no other site certificate approved by EFSEC to date. Most recently, EFSEC authorized construction of the Goose Prairie Solar, High Top Solar and Ostrea Solar projects and allowed siting of solar arrays on shrub-steppe habitats with a mitigation ratio between 2:1 and 1:1, depending on the nature of the impact. The mitigation ratios for impacts to WDFW Priority Habitats and rabbitbrush shrubland identified in the Project HMP were agreed to by WDFW staff and approved by EFSEC staff.

IV. Other problems with the Council's January Meeting proposals and the FEIS measures persist.

The Council's continued reliance on the multiple-resource impact classification system in FEIS Figures 2-5 and 2-6 to eliminate wind turbines is unclear, cumulative, and arbitrary. These figures are not based on publicly available information about what specific resource or impact correlates with the impact classification for each wind turbine. Indeed, no such information has been provided to Scout, despite multiple requests for the information and the Protective Order in place. In short, there is no information available to the public, or Scout, explaining why each "red" wind turbine has been classified as high or multiple impact, other than the fact that they are within 2 miles of FEHA nest locations in the PHS database. These figures' classifications are unintelligible without wind turbine location-specific information. To Scout's and its legal counsel's knowledge, this type of multiple impact classification system has never before been employed in an EIS, and certainly has never before been used to eliminate major project infrastructure.

Finally, Scout renews its strong objection to the novel elements relating to a "zone of influence" encompassing privately owned areas not controlled or accessible to Scout in FEIS Hab-5. And significant problems, including several that pose practical infeasibilities, persist with other elements of FEIS measures, as detailed in Attachment C. Scout requests that the Council consider these proposed changes to prevent significant practical and feasibility obstacles in Project implementation.

V. The Council's current proposals require Scout to reevaluate the voluntary wind turbine reductions previously presented.

As Scout has discussed with EFSEC staff, given the Council's proposed elimination of nearly half of all wind turbines proposed for the Project, every wind turbine site is precious and critical

[39] See January Comments at 9.

for the Project's clean energy generation capacity. Accordingly, Scout is reconsidering the previously voluntarily elimination of certain wind turbines, as discussed in a previous memorandum.[40]

VI. The Draft SCA must be revised to retain wind turbine model flexibility to respond to industry innovation.

Wind turbine technology is frequently improving and changing. As described in the Project ASC, Sec. 2.3.1, four mainstream wind turbine models depicting the range of turbine dimensions were presented to ensure that the final turbine model selected for the Project would not exceed the impacts analyzed by the Council. The ASC noted that these models represent a reasonable range of turbine options and parameters (e.g., size, rotor swept area, noise output), but that turbine technology continues to advance. The specific turbine models identified in the ASC in 2021 are no longer readily available in the utility scale commercial market. However, the SCA currently describes that the Project will utilize "one of four" specified wind turbine models. See SCA, Art. 1.C, p. 4. This description is inaccurate given ongoing changes in manufacturer offerings. However, the alternate turbines currently on the market would have similar or less impact on resources analyzed by the Council.

As identified in the ASC, the final number of turbines used, as well as the specific model used, must be determined *near the time of construction* and will reflect turbine availability, additional survey data, final engineering design, actual nameplate rating, and the Applicant's ongoing process of avoiding and minimizing potential impacts. This approach allows the Applicant to select the optimal turbine model available at the time they are acquired, while ensuring (1) that the turbines ultimately selected will result in no greater impact than has been allowed and certified in applicable authorizations and permits, and (2) that all the pre-construction conditions of these authorizations/permits are met.

Therefore, we suggest that the SCA Art. I.C.2. be revised as follows:

> *2. Wind Turbine Generators (WTGs).* The wind turbine model selection is dependent on the commercial availability and technology at the time of construction. The number of turbines will not exceed 222 and the maximum turbine height at blade tip will not exceed 671 feet. The final Turbine model that would be used for the Project would be a commercial choice based on Turbine availability and other factors present at the time of construction. However, any Turbine model used for the Project would be within the range of Turbine dimensions analyzed, would be certified to international standards and would be compatible with state-of-the-art grid technology. The impacts resulting from the final selected Turbine model would not exceed those considered and presented in the FEIS and SCA, with a maximum blade tip height no greater than 671 feet. ~~and will be one of four General Electric (GE) models: two with maximum blade tip height of 499 feet: GE 2.82 MW and GE 3.03 MW and two with a maximum~~

[40] See EXH_4014_X_CONFIDENTIAL, Memorandum from Dave Kobus to Amy Moon, re Anticipated Project Modifications, Aug. 9, 2023.

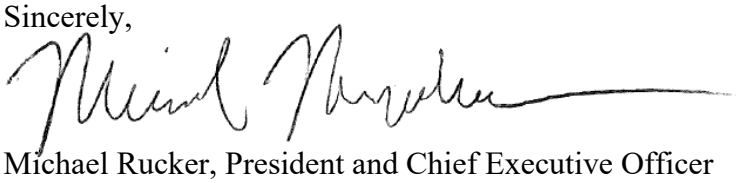
~~blade tip height of 671 feet: GE 5.5 MW and GE 6.0 MW~~. WTGs will be secured to a foundation.

CONCLUSION

Scout and EFSEC staff have worked closely and diligently over the past several years to facilitate a robust environmental review throughout the SEPA process. For the Council to reject the FEIS and the science behind its mitigation measures based on the unjustified opinions of individual Councilmembers, or a single commenting agency is disrespectful of the process, not to mention the time dedicated by EFSEC staff and the Applicant. It jeopardizes the future of Washington energy facility siting by setting dangerous precedent by presenting Washington as a place where it is difficult and unpredictable to do business and will undoubtedly cause energy companies to shy away from future investment in climate change mitigation. It is not just Scout sounding this alarm—comment letters from industry leaders including GE Vernova, Renewable Northwest and its members, and American Clean Power and Energy and Wildlife Action Coalition confirm the wide-ranging impacts this decision will have on renewable siting in the State.

Scout once again respectfully requests that the Council consider the revisions previously submitted by Scout to EFSEC staff, and reject the problematic proposals discussed in the January Meeting and summarized in this letter. The future of energy siting in Washington is at stake.

Sincerely,



Michael Rucker, President and Chief Executive Officer
Scout Clean Energy

Attachments

cc:

Dave Kobus, Scout Clean Energy
Linnea Fossum, Tetra Tech
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January 19, 2024

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

Re: Horse Heaven Wind Project – Applicant Comments and Concerns on EFSEC Proposed Final Action, January 24, 2024

Dear Chair Drew and Councilmembers:

On behalf of Scout Clean Energy (Scout) and the Horse Heaven Clean Energy Center (the Project), I write to express serious concerns about the Energy Facility Site Evaluation Council's (Council or EFSEC) recent proposals to alter Final Environmental Impact Statement (FEIS) mitigation measures and other aspects of the Project during the Council's December 20, 2023 meeting (the December Meeting).

Those ad hoc changes proposed, if pursued by the Council, are an arbitrary, drastic departure from established council precedent. Further, they are unsupported by scientific or any other evidence in the record and would render the Project both technically and economically non-viable without substantial amendment to the application. The Horse Heaven Clean Energy Center Project is a multi-technology, hybrid facility designed from the outset as an integrated renewable project. Yet in the December Meeting, the Council effectively carved up the Project without regard for the practical or precedential ramifications. In total, the Council's proposed changes would gut the Project's renewable energy generation capacity, reducing it from 1,150 MW to around a mere 236 MW of wind generation[1] and at most 500MWac solar generation from the western solar array. The proposals also run counter to state energy policy and the Council's own standards, have never been applied to any type of development in Washington, are more stringent than analogous standards imposed in other western states, and violate both the State Environmental Policy Act (SEPA) and Washington Administrative Procedures Act (APA). Also concerning, many detailed recommendations for mitigation measure improvements that were requested by EFSEC staff from Scout and had been previously provided to staff were not included in the presentation ultimately made to the Council.

We understand these proposed changes may be put before the Council for final approval at its upcoming meeting January 24, 2024. These changes suffer material deficiencies, as described below. Scout therefore respectfully requests that the Council reconsider and reject these changes, and instead consider the recommended revisions previously provided by Scout to EFSEC staff and noted below.

[1] Based on preferred model.

As detailed in the following sections, the changes proposed at the December Meeting are problematic in numerous ways:

- They likely render the Project non-viable in its current form by eliminating key pieces of connection and other supporting infrastructure, effectively stranding generation components;

- Eliminating the science-based exception to the 2-mile setback around historically documented ferruginous hawk nests is inconsistent with past Council practice, other jurisdictions, and the on-site biological data; would upend the existing mitigation framework; and poses grave ramifications for other new and existing renewable energy projects in the region;

- Relying on a decade-old wildlife movement model developed without any field review, which was intended to inform *transportation* planning, is unprecedented in a regulatory context, ignores current biological data and the porosity of the affected Project features, and would also impact an immense number of other projects across the State;

- Removing any Project infrastructure east of Straub Canyon, which has *never before been referenced as culturally significant*, violates the Council's coordination framework, is unsupported in the public or confidential Project record, and sets concerning precedent for other developers looking to site projects in the State;

- The proposal to eliminate the entire east solar field is based on a misunderstanding of the Project configuration, outdated information about site conditions, and ignores the lack of biological significance of the area affected;

- Finally, ongoing feasibility problems persist with various aspects of the FEIS-recommended mitigation measures, as enumerated below.

I. The Council's proposals render the Project technically and economically non-viable without substantial application amendment.

The current Project configuration is the result of years of careful research and planning, including engagement with key stakeholders and agency experts, to ensure minimization of impacts while maintaining the Project's commercial feasibility. The Council's recent discussion was made without consideration of key underpinnings of the Project configuration that facilitate its overall viability. Importantly, the Council's proposed changes would potentially render the Project infeasible by:

- **Eliminating a critical point of interconnection on the eastern portion of the site**. The unjustifiable elimination of the eastern grid interconnection isolates—and thus strands—wind turbines, solar panels and battery storage that would otherwise be buildable. Exceptions must be made for critical infrastructure, such as the interconnection with the existing power grid, to enable utilization of available Project components.

- **Eliminating infrastructure interconnecting otherwise viable wind turbines**. Zero tolerance for siting infrastructure between viable wind turbines in effect isolates those wind turbines from being constructed and operated absent internal connection. The electrical collection system is primarily buried underground which has no long-term impact on wildlife species movement. Exceptions must be made for this critical infrastructure to enable utilization of available Project components.

- **Reducing a key federal funding source associated with the retirement of the Boardman coal plant**. The unjustifiable elimination of the eastern half of the Project will limit availability of the federal Inflation Reduction Act incentive available for the remaining Project components, thus severely compromising Project economics and the climate goal associated with coal power retirement.

- **Likely forcing procurement of a taller wind turbine model**. The elimination of the eastern half of the Project, which would have been constructed first, and new longer permitting timeframe forced by that change, will mean Scout likely can no longer procure sub-500 foot blade-tip height wind turbine models (which are slated to be discontinued due to announced product manufacturing retooling for larger model production). The industry-standard wind turbine model available under the likely new permitting timeline will be a taller hub-height (576 feet, with a larger rotor) and require dual nacelle FAA lighting of every wind turbine and overall greater environmental impact.

If feasible at all, these changes will necessitate a major redesign of the remaining project components and include the acquisition of additional land holdings to facilitate the movement of facilities and equipment. These modifications will necessitate a significant amendment to the site certificate, which will set back the Project, and EFSEC's review process, by many months. This amendment and further delay will add substantial, unanticipated costs and risks, rendering Scout's substantial investments to date to develop the eliminated infrastructure unrecoverable. These additional delays and costs not only represent undue burden on Scout but also an increase in cost of the power for the eventual ratepayers of the State.

II. The Council's proposed revocation of a critical exception to the 2-mile buffer around historically documented ferruginous hawk nests contravenes the best available science, ignores and upends the existing mitigation framework, and sets dangerous precedent that will hobble Washington's renewable energy future.

In its December Meeting, the Council proposed revising FEIS mitigation measure Spec-5 to omit critical language that would have allowed for the siting of Project features within 2-miles of PHS-documented[2] ferruginous hawk nests when biological science shows that a particular nest site and foraging habitat is no longer "available" to this migratory species.

This proposal is unsound for numerous reasons. ***First***, this important exception was included in the FEIS because current field data shows that 84% of the historically documented nests in or around the Project area are no longer available for ferruginous hawk use, with almost half (47%)

[2] The PHS data includes all nests documented since 1976.

of documented nests currently listed as remnant or "gone" in the database.[3] The decline of ferruginous hawk in Washington has been primarily the result of foraging habitat loss due to agricultural conversion. This factor is apparent in the Horse Heaven Hills, where nearly all previously documented nests have less than 30% available foraging habitat within 2 miles. Even before the Project was proposed, ferruginous hawks have been essentially eliminated from the Horse Heaven Hills through this landscape-level conversion of habitat and encroachment of residential uses. The last active ferruginous hawk nests recorded within 2 miles of the Project was nearly five years ago, in 2019. No active nests have been documented since then, despite ongoing annual surveys by qualified biologists.[4]

But with the Council's revision, the 2-mile buffer would apply to any nest that *has ever been* documented as associated with a ferruginous hawk, going back to the 1970s, regardless of whether that nest exists today. There would be no opportunity to update the buffer based on current science. This, despite that many of the historically documented nests in Project area have since been destroyed (e.g., by wildfire) or are located adjacent to residential or commercial development and thus have zero likelihood of ever being used by the hawks again.[5] [redacted]

Second, the Council's proffered justification for eliminating the exception is invalid. The sole evident reason given by one Councilmember to justify elimination of the science-based exception was a subjective concern that allowing exception requests could require WDFW officials to engage with other biologists in a process to demonstrate and defend, based on scientific data, that specific hawk nest locations were or were not viable. Rather than attempt to craft the exception to avoid a perceived contentious process, the Council simply did away with the entire exception process, thereby imposing a categorical 2-mile buffer from Project infrastructure, with no evidence to support this drastic change.

The Council need not have done so. To the extent the Council is concerned about the biologist-to-biologist exception consideration process, Scout already proposed—and provided to Council staff—an objective, scientific criteria-based process to apply for exception requests.[6] Scout is unaware if the Council has seen these materials yet and is therefore providing them again as attachments to this comment letter. As these materials make clear, consideration of an exception from the 2-mile buffer would not be contentious or a subjectively adversarial endeavor, but rather a process of objectively applying accepted scientific criteria, a task well-familiar to WDFW officials.

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[3] See WDFW Priority Habitats and Species Database.
[4] See ASC, App K, including Report 23.
[6] See, e.g., Attachment A, showing three nests "documented in PHS data," yet one is now located directly adjacent to a residence, the others have been taken over by ravens or other resident raptor species for over a decade; see also Attachment B, showing total area of Project impacted by absolute two-mile buffer.
[6] See Attachment C, Scout-proposed changes to Spec-5 mitigation measure, provided via Kobus email to Moon, Greene (Dec. 14, 2023); see also Attachment D, Ferruginous Hawk Nest Viability Flowchart, outlining factors and specific criteria informing when nest is no longer considered viable.

Third, no other state or federal wildlife agency in the country imposes a 2-mile buffer on development around ferruginous hawk nests, let alone one for non-viable (or non-existing) nests. For context, U.S. Fish and Wildlife Service's (voluntary) guidance on the subject recommends a buffer of 1,600 meters, approximately one mile, from ferruginous hawk "nests *documented as occupied through recent pre-construction surveys*."[7] In Oregon, in considering a recent wind project, the Oregon Department of Fish & Wildlife recently recommended, and the Oregon Energy Facility Siting Council approved, a 0.25-mi setback around "active" ferruginous hawk nests.[8] USFWS's Utah Field Office recommends only a 0.5-mile buffer.[9] That buffer applies to both occupied and "unoccupied" nests, but a nest that remains unoccupied through even one breeding season is not subject to the buffer, as determined by a qualified wildlife biologist.[10]

To impose a *2*-mile buffer around *every* historically documented nest, with no science-based exception available, when such a requirement appears in *no* other state or federal regulatory program, all while the County continues to allow large-scale residential development within the buffer areas, is the very definition of arbitrary and capricious.

Fourth, the Council's proposal gave no consideration to the substantial existing ferruginous hawk mitigation already in place and upends the viability of the mitigation measures already negotiated with WDFW. For one thing, the Council ignored the present option to employ proven adaptive management capability addressed in the WDFW July 2023 ferruginous hawk draft guidance document to curtail wind turbines. This measure is an effective, scientifically accepted, commonly utilized mitigation measure for federally endangered species and far more appropriate here than complete elimination of infrastructure, based on the current data. Further, under the current negotiated mitigation ratios, with the elimination of much of the Project infrastructure, the compensatory acreage under the Council's recent proposal is so small, it would be impracticable to obtain and develop an on-site conservation easement at this scale. Moreover, the elimination of this extent of infrastructure challenges the viability of Scout's voluntary artificial nesting platform campaign, which is no longer warranted or supported under the Council's proposed cuts. In short, the Council's proposal forces the complete reconsideration and revision of the suite of mitigation measures recommended and fully understood in the FEIS.

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[7] U.S. Fish and Wildlife Service (USFWS), Region 6, Wildlife Buffer Recommendations for Wind Energy Projects (March 31, 2021), https://www.fws.gov/sites/default/files/documents/usfws-r6-wildife-buffer-recommendations-wind-energy-projects-v3-2021.pdf (emphases added). USFWS Region 1, which includes Washington, has not issued ferruginous hawk-specific guidance.

[8] See Memorandum from Greg Rimbach, Umatilla Dist. Wildlife Biologist, Oregon Department of Fish & Wildlife to Kathleen Sloan, Oregon Department of Energy re Oregon Department of Fish & Wildlife's Report on the Application for Site Certificate for the Nolin Hills Wind Energy Facility (Feb. 18, 2022), available as Attachment B to Final Order on Application for Site Certificate, In the Matter of Nolin Hills Wind Power Project (approved July 19, 2023) https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-NHW-APP-Final-Order-Attachments-B-U.pdf; *see also* Final Order, Attachment P-4, Wildlife Monitoring and Adaptive Management Plan, Secs. 1-2 (incorporating ODFW-recommended setback), https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-NHW-APP-Final-Order-Attachments-B-U.pdf.

[9] USFWS, Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances (Jan. 2002), Table 2, https://www.fws.gov/sites/default/files/documents/Utah_Field_Office_Raptor_Guidance.pdf.

[10] Id. at 21 ("The exact point in time when a nest becomes unoccupied should be determined by a qualified wildlife biologist *based upon a knowledge that the breeding season has advanced such that nesting is not expected*." (emphasis added)).

Fifth, with no scientific or data-based backstop, this requirement is ripe for inaccurate or mistaken reporting or abuse. WDFW would need to provide transparent information to show ground-truthing of reports by qualified biologists. Absent such a mechanism, even false or mistaken reports of ferruginous hawk nesting to the PHS program would be enough to effect development in a specific area. Under the Council's proposal, any documented nest, even erroneous ones, would trigger a 2-mile buffer.

Finally, imposition of an absolute 2-mile buffer sets dangerous precedent and invites litigation upon other clean energy project approvals. General application of the 2-mile buffer will (1) prohibit renewable energy development in a significant portion of the state and (2) prohibit repowering of *existing* projects *currently located* within the buffer area, that is, essentially any project located in Washington's Columbia Plateau.[11] Roughly 16% of the Columbia Plateau falls within 2 miles of documented ferruginous hawk nest locations. See, e.g., Attachment B (showing implications of 2-mile buffer from historical ferruginous hawk nests throughout the Columbia Plateau Ecoregion.) In particular, the Bonneville Power Administration's (BPA) Tri-Cities Reinforcement project is also affected by the proposed changes.[12] BPA is planning a 115 kV line crossing the escarpment to interconnect the 500 kV grid at the new Webber Canyon substation (the planned grid interconnection for the Horse Heaven Clean Energy Center) to the Tri-cities area infrastructure at Badger substation, which also would be prohibited under the 2-mile setback. Thus, if the Council elects to impose this requirement on this and other future proposed projects, it will not only compromise EFSEC's ability to approve repower requests for existing projects in the state but also drastically reduce the areas capable of supporting future renewable projects in the future.

III. The Council's reliance on a decade-old wildlife movement model developed without any field review principally to inform transportation planning ignores current biological data and the vast porosity of Project configuration.

The Council also proposed to revise FEIS mitigation measure Hab-1 to omit any exception or mitigation option based on actual site conditions and Project configuration, and instead simply to prohibit any Project components (including even roads and overhead powerlines) within certain modeled wildlife movement corridors. That decision was based not on current science but *on a single map* created based on desktop review in the early 2010s, by a WDFW-Washington Department of Transportation working group.

The Council's reliance on this map to inform and justify no-go siting areas is inappropriate for several reasons. When the working group created the modeled map, it expressly warned that "field review" would be needed to "ensure the linkages are viable."[13] That map, produced for planning purposes, was adopted and incorporated—*without update or field review*— into the FEIS. In its decade of existence, to Scout's knowledge the map has never before been used in

[11] See Attachment E, showing overall impact of two-mile buffer applied to Columbia Plateau generally, impact on other existing projects.
[12] This project would also be affected, blocked, by the wildlife movement setback imposed by Hab-1.
[13] See Washington Wildlife Habitat Connectivity Working Group, Washington Connected Landscapes Project: Analyses of the Columbia Plateau Ecoregion, Columbia Plateau Ecoregion Addendum: Habitat Connectivity Centrality (2013), Ch. 13, Figure 13.7, https://waconnected.org/wp-content/uploads/2013/07/ColumbiaPlateauAddendum_Chapter_13_CompositeMaps.pdf.

energy siting decisions. Importantly, a focal species analysis like that presented in the map is not unusual. But what *is* unusual is its application as a zero-tolerance tool in a specific siting decision, which goes far beyond the original or accepted use of such a model.

The council's reliance on that map is particularly egregious given that on-the-ground field review *has* been conducted in the area. Scout and its biologist experts conducted extensive multi-year site-specific surveys as documented in the application materials. Those data verified that the mapped linkage areas in question are majority disturbed developed and agricultural lands that no longer present viable linkages or habitat qualities as suggested in the 2013 map.

The Council's proposed revisions to Hab-1 are based only on the outdated map and do not consider the field review findings reflecting on the ground conditions. Thus, the proposed changes are unsupported by evidence in the record and certainly do not reflect the best available science on the subject.

Moreover, neither the Council's revisions nor its discussion during the December Meeting took into account the fact that the Project features prohibited in this area (e.g., wind turbine locations, underground or overhead utilities) are extremely porous.[14] These facilities would be present in discreet, isolated locations that would allow for continued movement amongst and in between the developed features. And at EFSEC staff's request, Scout has proposed to remove the portion of the East Solar Array located within the modeled wildlife corridor, so consideration of the potential for wildlife to move through that area has already been taken into account.

This revision, too, is unprecedented and would have grave consequences for the State's renewable energy future. Imposing this measure generally (i.e., prohibiting project features on all land designated as medium to very high linkage according to the map) would be precedent to prohibit any project siting on over 13,000 sq km or over 5,200 sq mi of the State.[15] And here too, based on the novel application of the map at issue, Scout and its biologists are unaware of any similar corridor modeling effort being applied in other jurisdictions in a direct regulatory context like the Council is proposing here.

IV. The Council's prohibition on any Project infrastructure east of Straub Canyon is unsupported in the public or confidential Project record.

Finally, in a particularly egregious instance of ad hoc decision-making during the December Meeting, minutes before its conclusion, one Councilmember proposed a "variant" for Council consideration that would "eliminate" all Project "work…east of Straub canyon," which is "roughly in the middle" of the Project area. This elimination, he claimed, was due to undisclosed traditional cultural properties (TCP), but no discussion or additional detail was provided. Nor was there any consideration of the commercial or generation-related implications of eliminating half the Project.

[14] See Attachment G, depicting Project area impacted by wildlife movement corridor classifications medium to very high linkage.
[15] See Attachment F, showing areas of State affected by movement corridor classifications.

Notably, this was the first time Scout had ever heard of the geographic landmark Straub Canyon, let alone its significance to any TCP. There has been no mention of it in Scout's more than five years of Tribal coordination and four plus years of coordination with the Department of Archaeology and Historic Preservation (DAHP). Indeed, DAHP concurred with *all* of Scout's cultural resource findings and recommendations, all of which proposed Project features east of Straub Canyon. Moreover, the area east of this Canyon rests on lands ceded and traditionally held by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), with whom Scout has closely coordinated and cooperated, including through execution of a mitigation agreement to address any cultural resource impacts in this area.[16]

The staff-recommended FEIS mitigation measure CR-1 appropriately proposed that ongoing engagement with affected Tribes could facilitate mitigation of any potential impacts on TCPs. To the extent any additional mitigation was needed, it identified numerous possible mitigation options modeled on those developed by the CTUIR. Importantly, *nothing* in CR-1 and nothing in either the public or confidential record[17] for this Project suggests there exist qualifying TCPs under Washington law or otherwise supports eliminating half of the Project area under the guise of protecting purported Yakama Nation (not CTUIR) resources. As noted during the adjudication, these areas comprise privately owned farmlands, to which Tribal members lack access or treaty rights. For the Council to consider such a measure—without any evidentiary support in the record and without any explanation for its decision to do so—not only violates the coordination standards in the Energy Facility Site Locations Act, but also SEPA and the APA.

More broadly, the implications of this decision for future energy facility siting in Washington State are dire. It suggests that the Council could redesign the Project and prohibit any portion of a project based on TCPs that are undisclosed to an applicant, even TCPs of Tribes with no treaty rights to the area. This leaves applicants with no possible way to determine which areas are or are not available for siting, even if they conduct all required Tribal and DAHP coordination and review. Energy siting in Washington would become a guessing game, one few developers will be willing to play given the substantial at-risk costs involved. If the Council proceeds with the recommended changes discussed at the December meeting, it is very likely developers of other projects will seek to avoid the EFSEC process for other now available permitting venues that assure greater predictability and adherence to important state climate policy, within a known legal and understood framework.[18]

V. The Council's proposed removal of the remaining portion of the east solar field is based on outdated information and ignores the biological significance of the area affected.

In the December Meeting, following the discussion of ferruginous hawk mitigation and wildlife movement corridors, the Council focused the discussion on the eastern solar array. Referencing

[16] Accordingly, Scout presumes that any unmitigated cultural resource impacts referenced by the Council at this juncture are those claimed by The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation).
[17] Subject to a Protective Order executed and in place in this matter, the Council and staff are able and obligated to disclose even sensitive and confidential information relevant to Scout's application and proposal in order to facilitate responsiveness.
[18] See Engrossed Second Substitute House Bill 1216, 68th Leg., Reg. Sess. (2023).

Figure 3.4-1 from the application, Chair Drew noted that the habitat types associated with the east solar field area are depicted as unidentified shrubland and various grasslands, and not agricultural land. She then voiced concern about siting Project features in this area based on purported foraging by unspecified "animals," siting on undeveloped land, and unspecified TCP or cultural impacts, and proposed the elimination of the entire east solar field from consideration. Underlying that proposal, Chair Drew explained, was her belief that Scout is currently studying multiple solar array sites, one on the east side and two on the west side, and that the determination of which one of these sites would be used had not yet been made.

Elimination of the east solar field on these grounds is unsound for at least three key reasons. ***First***, any impacts to habitat in this area have already been accounted for and addressed per established siting precedent and WDFW guidelines. As shown in Table 4.6-3 of the FEIS, the WDFW Wind Power Guidelines provide offsets in mitigation ratios for temporary and permanent disturbance for all infrastructure. These Guidelines, though originally applied only to wind energy, have recently been applied to solar projects and approved by EFSEC.[19] To eliminate the east solar field based on impacts that have already been mitigated per current standards is duplicative, unprecedented, and inappropriate. ***Second***, that the application includes the potential to site two solar arrays on the westside does not support eliminating the entire eastern array because, as described in Part I, major application amendment would be required to make that configuration possible. ***Third***, the proposal is based on outdated information. Though at present, the areas depicted as shrubland and grassland in this area are technically classified as such, this area is recently expired USDA Conservation Reserve Program (CRP) land that was required to be planted with a specifically approved grass mixture for the duration of the contract.[20] Now no longer under CRP management, the landowner is free to redevelop the land to be once again tilled and used as active cropland—with no obligation to maintain it as available foraging habitat. There is neither any EFSEC precedent nor evidence in the record to support restricting siting on CRP land and certainly not on post-CRP land poised for renewed agricultural use.

VI. Other feasibility problems persist with aspects of the FEIS mitigation measures.

Several other fundamental problems persist with respect to various elements of the FEIS-recommended mitigation measures, including but not limited to creation and composition of the preoperational technical advisory group, and unprecedented and unduly burdensome Project component recycling and wash water recapture and recycling provisions. Scout has previously provided suggestions to EFSEC staff to address and provide practical solutions to these problems.

Chief among the ongoing mitigation issues is the incorporation of a zone of influence concept in measure Hab-5. Hab-5 introduces the concept of a Zone of Influence around the Project site

[19] See, e.g., Revised Mitigated Determination of Non-Significance for EFSEC No. 2021-01, Goose Prairie Solar Project, Secs. 8, 9, https://www.efsec.wa.gov/sites/default/files/210012/00037/20210730_GP_SEPA_RevisedMDNS.pdf; Mitigated Determination of Non-Significance for EFSEC No. EF-220212, High Top Solar and Ostrea Solar Projects, Secs. 8, 9, https://www.efsec.wa.gov/sites/default/files/220212/20220930_HTO_MDNS_Final.pdf.

[20] Application for Site Certificate, Sec. 3.4.1.1.

boundary described in the ASC and requires additional future analysis of this area to determine whether and to what the extent indirect effect are likely to occur. The mitigation measure is arbitrarily included to mitigate for an effect that is not stated definitively and is not backed by any evidence of indirect effects from studies on other similar projects.

The WDFW 2009 Wind Power Guidelines make clear that the mitigation ratios utilized in the ASC and agreed to by Scout are intended to *fully* mitigate for both direct and indirect effects. Therefore, Hab-5 is cumulative and unnecessarily additive. Further, EFSEC has never addressed indirect effects on habitat or wildlife in this fashion in previously approved projects, instead typically relying on the established mitigation standards in the WDFW Wind Power Guidelines.

Finally, as written, Hab-5 is infeasible because it requires survey work and management on private lands that are outside of the Site Boundary and not under site control. Following completion of the FEIS, EFSEC Staff assured Scout that no such requirement to complete additional work on private lands not under lease agreement would be imposed, but those assurances were not presented to the Council for consideration during the December Meeting. Scout encourages the Council to remove this aspect of Hab-5 in the Final Order, as mitigation for indirect effects is already accounted for in the mitigation ratios agreed to and included in the ASC, or at the very least, to clarify and make the measure feasible by removing the requirement to complete field studies as described, e.g., that any analysis would be desktop only.

CONCLUSION

In sum, approving the Council's recent proposals would not only represent a drastic departure from the Council's own established precedent, it would mean that energy facilities are held to a far more stringent standard than *any other type of development* in the State. This is the exact opposite of the goal of EFSEC—to provide a one-stop, streamlined, process to approve projects objectively and uniformly. Accordingly, we respectfully request that the Council consider the revisions previously submitted by Scout to EFSEC staff, and reject the Council's proposed changes outlined above, including revision to Spec-5, Hab-1, and Hab-5 mitigation measures, and the proposals to eliminate the east solar field and Project features east of Straub Canyon.

Sincerely,

Michael Rucker, President and Chief Executive Officer
Scout Clean Energy

Attachments

Cc:

Dave Kobus, Scout Clean Energy
Linnea Fossum, Tetra Tech
Tim Thompson, Thompson Consulting Group

11

Tim McMahan, Stoel Rives
Ariel Stavitsky, Stoel Rives

Attachment A

WDFW Territory Name: [redacted]	# Nests Obs/WDFW Territory: 1/2
Description: Scrappy locust stand. Current threats: Residential development and loss of nesting substrate.	

Approximate location of Nest [redacted] in trees adjacent to home that was last observed around 2008.

[redacted]

Nest [redacted] and Nest [redacted], contained a common raven and Swainson's hawk respectively, in 2019. Both Inactive in 2022.

[redacted]

Attachment B

Confidential information redacted; For public disclosure

Horse Heaven Wind Project

SCOUT CLEAN ENERGY

Ferruginous Hawk Nest Buffers with Option 1 Infrastructure

BENTON COUNTY, WA

- Option 1 Turbine Layout
- Project Lease Boundary
- Radar Tower Collection Line
- Radar Tower Access Road
- Radar Tower
- Met Tower
- Met Tower Access Road
- O & M Facility
- 230-kV Intertie Transmission Line
- County Well Road 500-kV Transmission Line
- Collection Line
- Junction Box
- CraneCL
- CraneCL_Alt
- CraneCL_OnRoad
- CraneCL_OnRoad_Alt
- RoadCL
- RoadCL_Alt
- Intersection Improvement Area
- Battery Storage
- Laydown Yard
- BPA Substation
- Solar Siting Area
- Solar Array
- Solar Array Fencing
- Solar Array Road
- Wind Energy Micrositing Corridor
- Unsurveyed Micrositing Corridor

TETRA TECH

Reference Map

R:\PROJECTS\HORSE_HEAVEN_6430\EFSEC\MAPS\FINAL_ASC\FINAL_ASC.aprx\FERRUGINOUS HAWK OPT 1 PHS 2023

1:150,000 WGS 1984 UTM Zone 11N

PROPRIETARY AND CONFIDENTIAL

0 0.5 1 2 3 4 Miles

1/12/2024

NOT FOR CONSTRUCTION

Attachment C

Spec-5

The Applicant will, in coordination with EFSEC, WDFW, and the PTAG, **complete a Ferruginous Hawk Core Area Viability Assessment** of all previously documented ferruginous hawk nest sites in the WDFW PHS database and nest sites that were discovered during Project-specific surveys, that are within two miles of planned Project infrastructure. The goal of the viability assessment is to determine which core areas remain viable for current and future use by ferruginous hawks. Ferruginous hawk core areas consist of a nest location and a two-mile buffer around the nest.

The nest site and Core Area Viability Assessment and determination will consider the following parameters when determining nest site and core area viability:

1. The **history of nest occupancy** by ferruginous hawks and other large bird species, as documented in the WDFW PHS database and through Project-specific surveys. Routine annual re-occupancy of a PHS nest by a competitive species such as common raven should be considered as a factor that may reduce the likelihood of future viability of the core area.
2. **The current condition of the nest structure and nesting substrate**. Nests classified in a remnant or gone condition that display characteristics of no recent use based on historical and contemporary survey data should be considered as a factor that may reduce the likelihood of future viability of the core area. Nesting substrates (e.g., trees, rock outcrops, or ground) removed or disturbed by past anthropogenic impacts (e.g., cropland conversion, residential development, quarry development, or road construction) should be considered non-viable.
3. **Availability of suitable breeding habitat** for ferruginous hawk as defined by WDFW. Habitat considered unavailable or unsuitable would include habitat that has been altered by landscape-scale development (cropland conversion, residential development, industrial development).
4. The **proximity of nest sites to human development**, particularly recently built and planned or reasonably foreseeable residential development that has occurred since the nest was last documented as occupied by ferruginous hawk.
5. The **proximity of the core area to previously documented occupied or active nests** in the region according to WDFW draft management recommendations.

If a core area is determined to be non-viable, there will be no further restrictions nor management expectations on the placement of Project components in the core area. Siting of Project components in viable core use areas will only occur with EFSEC approval of a Ferruginous Hawk Nest Management Plan. **The Applicant would, in consultation with the PTAG for approval by EFSEC, complete a Ferruginous Hawk Nest Management Plan** that considers all viable core use areas where Project infrastructure is proposed, which would include the following:

1. A description of the current available nesting habitat in the core area
2. A description of ferruginous hawk use of the core area based on historical background information or Project-specific surveys.
3. A description of the type and location of infrastructure proposed within the core area, and the degree of hazard created by its placement and appropriate measures taken to minimize infrastructure in the core area if practical.
4. The proximity of Project infrastructure to any known nest and the amount of breeding habitat (e.g., shrub-steppe, grassland) to be impacted by Project components within the core area.

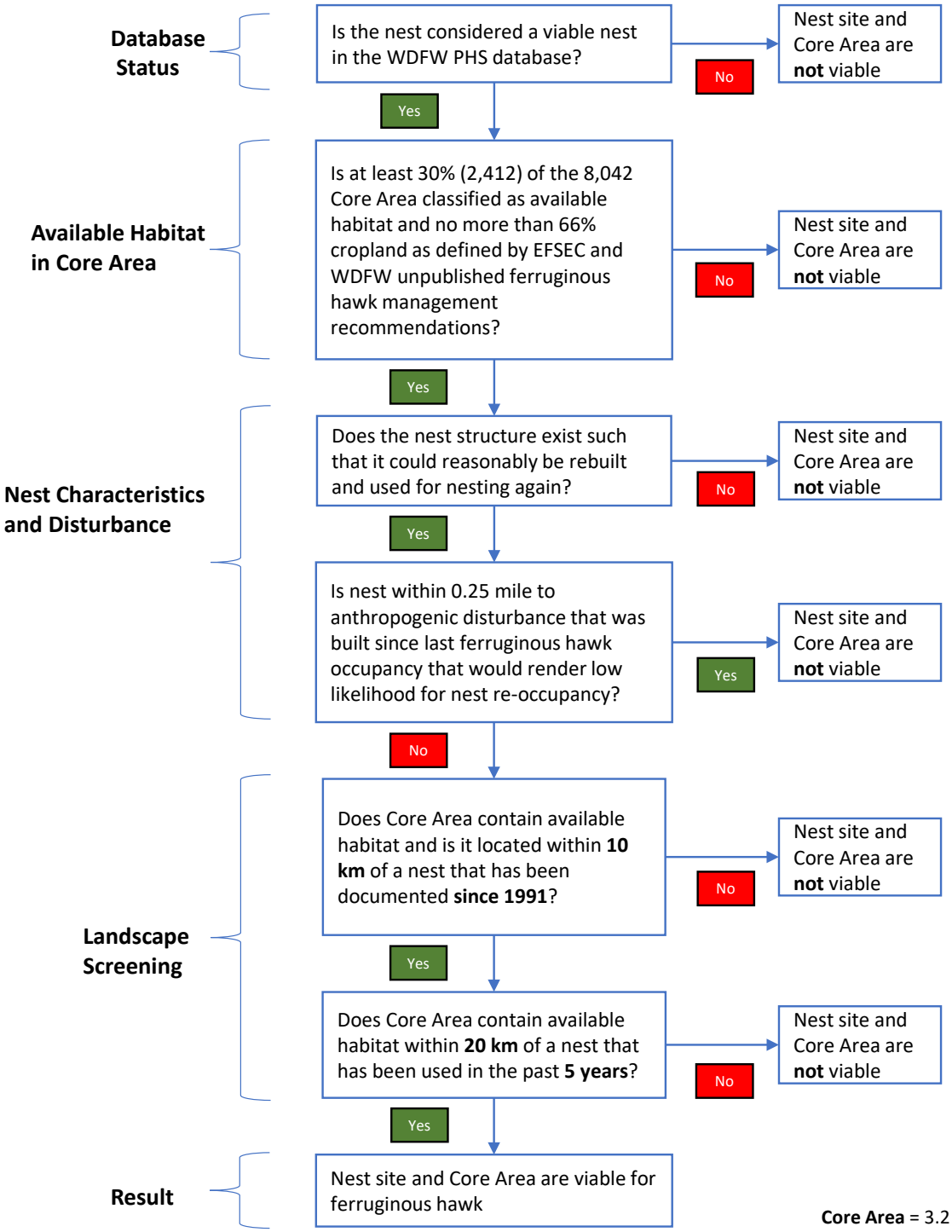
5. Additional mitigation, if deemed necessary by EFSEC, for loss of nesting habitat as described in the Applicants Habitat Mitigation Plan.
6. A process for monitoring nesting activity in the core area during Project construction or operation, as needed.
7. A process to employ further previously proven avoidance and minimization measures should ferruginous hawk nesting be detected in the future, either during construction or operation. This could include more intensive biological site monitoring at nest locations, manual or automated curtailment of turbines during key activity periods if it is determined that ferruginous hawks are at risk from turbine operation, or additional habitat-based mitigation that may be required to offset effects that become known later in time.

Results of ferruginous hawk monitoring programs and adaptive management strategies would continue through Project operation and decommissioning with review by the TAC and approval by EFSEC.

Rationale: This 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.

Attachment D

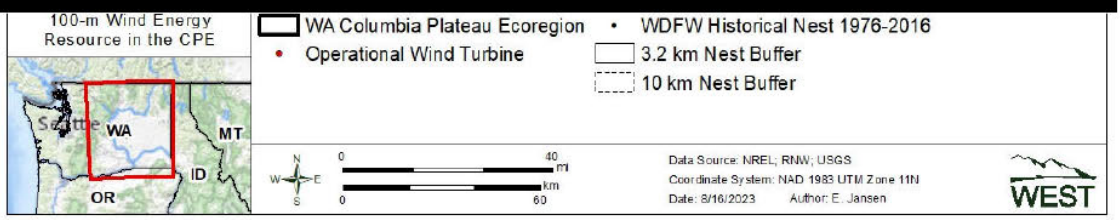
Ferruginous Hawk Nest Viability Flowchart



Core Area = 3.2 km (2-mi) radius surrounding a ferruginous hawk nest

Attachment E

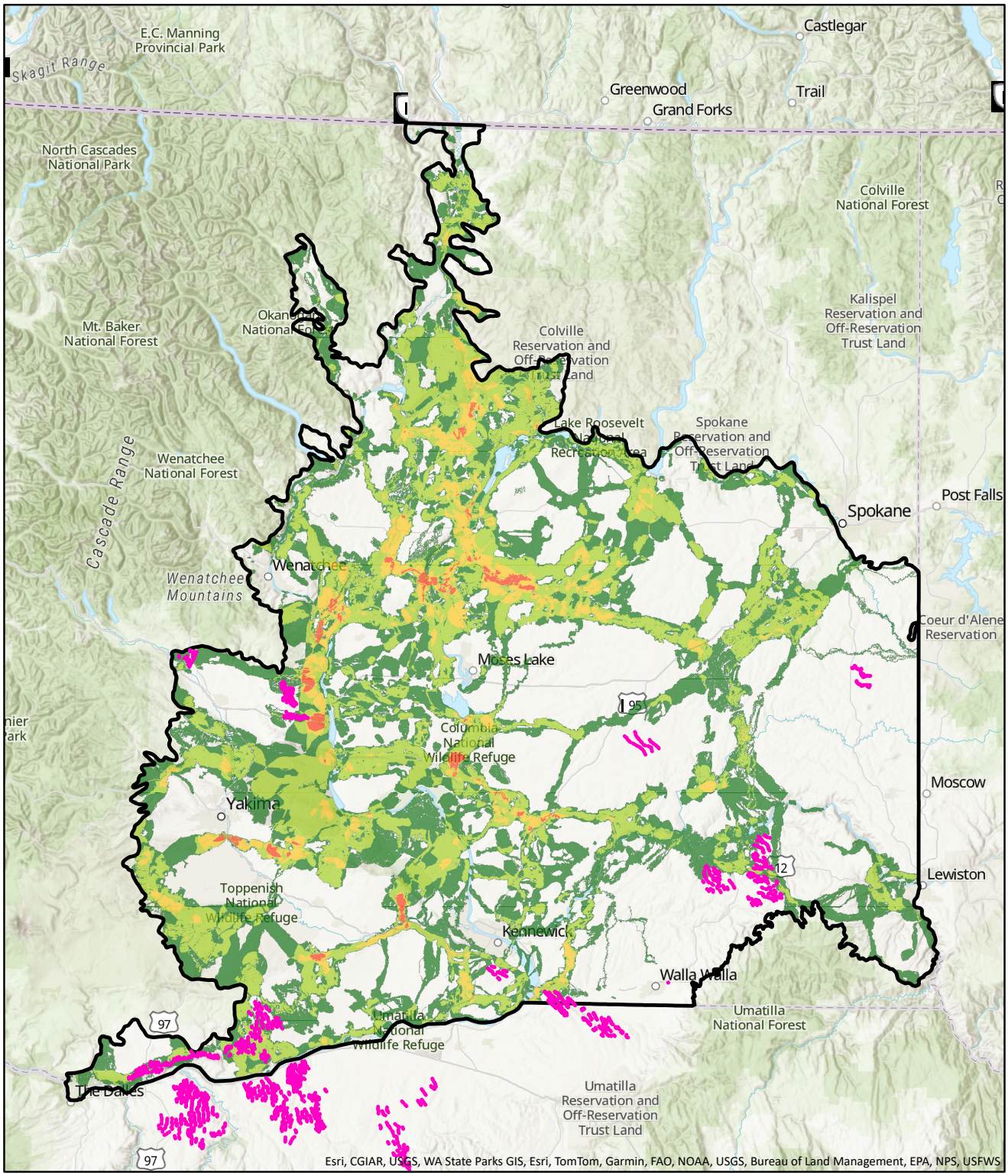
[redacted]



122103052.1 0066670-00001

Area within 2-mi Buffer (ac)	7,949.0
Area within 2-mi Buffer (mi2)	12.4
Total Area in CPE Encumbered by Buffer (ac)	1,487,342.0
Total Area in CPE Encumbered by Buffer (mi^2)	2,324.0
Total WA Private (mi^2)	17,029.8
Total Core Area in WA (mi^2)	**13.6%**
Total Area Encumbered by Project Nest Buffers (ac)	90,908.8
Total Area Encumbered by Project Nest Buffers (mi^2)	142.0
Project ASC Lease Area (ac)	72,428.0
Percent of Core Area compared to Lease Area	**126%**
Total Option 1 Turbines	244
Total Option 1 Turbines in 3.2 Core Area	131
Percent of Turbines in Core Area	**54%**
Micrositing Temporary	2,881.0
Micrositing Permanent	299.0
Solar Temporary	76.0
Solar Permanent	294.0
Solar Modified	6,276.0
Total Impacted	**9,826.0**

Attachment F



Wildlife Movement Corridors in the Columbia Plateau Eco Region

Wind Turbines

Columbia Plateau Eco Region

Movement Corridor Class

- Low
- Medium
- High
- Very High

0 50 100 200 Miles

1:2,000,000

Attachment G

Horse Heaven Wind Project

SCOUT CLEAN ENERGY

Wildlife Movement Corridors (Very High, High & Medium) with Option 1 Infrastructure

BENTON COUNTY, WA

- Option 1 Turbine Layout
- Project Lease Boundary
- Radar Tower Collection Line
- Radar Tower Access Road
- Radar Tower
- Met Tower
- Met Tower Access Road
- O & M Facility
- 230-kV Intertie Transmission Line
- County Well Road 500-kV Transmission Line
- Collection Line
- Junction Box
- CraneCL
- CraneCL_Alt
- CraneCL_OnRoad
- CraneCL_OnRoad_Alt
- RoadCL
- RoadCL_Alt
- Intersection Improvement Area
- Battery Storage
- Laydown Yard
- BPA Substation
- Solar Siting Area
- Solar Array
- Solar Array Fencing
- Solar Array Road
- Wind Energy Micrositing Corridor
- Unsurveyed Micrositing Corridor

TETRA TECH

Habitat Types and Subtypes

Grassland
- Eastside (Interior) Grasslands
- Non-native Grassland
- Planted Grassland

Shrubland
- Dwarf Shrub-steppe
- Rabbitbrush Shrubland
- Sagebrush Shrub-steppe

Reference Map

1:140,000 WGS 1984 UTM Zone 11N

PROPRIETARY AND CONFIDENTIAL

0 0.5 1 2 3 4 Miles

1/12/2024

NOT FOR CONSTRUCTION

R:\PROJECTS\HORSE_HEAVEN_6430\EFSEC\MAPS\FINAL_ASC\FINAL_ASC.aprx\WILDLIFE CORRIDOR OPT 1 2023

References Confidential Sensitive Wildlife Data

[redacted]

Horse Heaven Wind Farm

Potential Mitigation Changes - Applicant

Sean Greene, Environmental Planner

W-1: Least Risk Fish Windows

Original	Changes Based on Applicant Discussions
Project construction and decommissioning within ephemeral and intermittent streams would observe the least risk windows for spawning and incubating salmonoids, which are, conservatively, August 1 to September 15 for the Yakima and Columbia Rivers and their tributaries in Benton County (WDFW 2018).	Project construction and decommissioning within ephemeral and intermittent streams that have active water flow would observe the least risk windows for spawning and incubating salmonoids, which are, conservatively, August 1 to September 15 for the Yakima and Columbia Rivers and their tributaries in Benton County (WDFW 2018). Ephemeral and intermittent streams would not be subject to least risk window restrictions while those streams are dry.[1] [1] Following discussion with the Applicant and consultation with WDFW, it was determined that these fish window restrictions were only intended to apply to in-water work in streams with flowing water.

Veg-9: Maintenance of Solar Array Fence

Original	Changes Based on Applicant Discussions
During Project operation, the solar array fence would be maintained, including removal of vegetation material that may become entwined in the fence.	During Project operation, the solar array fence would be maintained, including removal of vegetation material that may become entwined in the fence. Monthly fence surveys would be conducted during periods where the wildfire danger rating, as determined by DNR, is assessed as "low." When the wildfire danger rating is assessed as "moderate" or higher, weekly surveys would be required. [1] [1] Establishes a more specific protocol and periodicity for fence clearing.

Exhibit D

Spec-12: Townsend's Ground Squirrel

Original	Changes Based on Applicant Discussions
The Applicant would conduct surveys for Townsend's ground squirrel colonies within the Lease Boundary in areas of the Project disturbance footprint (including ZOI) to inform final design…	The Applicant would conduct surveys for Townsend's ground squirrel colonies within the Lease Boundary in areas of the Project disturbance footprint ~~(including ZOI)~~[1] to inform final design… [1] Surveys within ZOI (0.5-mile buffer around Lease Boundary) would require Applicant to have access to areas outside of site control. Mitigation measure should remain effective with survey range limited to the Lease Boundary.

Vis-3: Turbine Cleaning

Original	Changes Based on Applicant Discussions
Maintain clean nacelles and towers to avoid any spilled or leaking fluids accumulating dirt, which would contrast with the clean, white/gray wind turbines and result in increased visual contrast within the landscape.	Maintain clean nacelles and towers to avoid any spilled or leaking fluids accumulating dirt, which would contrast with the clean, white/gray wind turbines and result in increased visual contrast within the landscape. When a sufficient number of nacelles and/or towers are noticeably not clean, the deployment of a cleaning crew would be required. [1] [1] Applicant has stated that the deployment of a cleaning crew is seldom performed for individual towers one at a time. This modification allows for some consolidation of cleaning efforts while also providing EFSEC leeway in determining whether or not a tower or nacelle is “clean.”

Vis-5: Opaque Fencing

Original	Changes Based on Applicant Discussions
Install opaque fencing to directly screen views of the solar arrays where sited within 0.5 miles of KOPs (including the alignment of I-82 and other linear KOPs) or residences. To allow the proposed fencing to blend into the setting, color-treat the fencing to minimize color contrast with the existing landscape.	Install opaque fencing to directly screen views of the solar arrays where sited within 0.5 miles of ~~KOPs~~ linear viewpoints (including the alignment of I-82 ~~and other linear KOPs~~[1]) or residences. To allow the proposed fencing to blend into the setting, color-treat the fencing to minimize color contrast with the existing landscape. [1] Clarifies that this measure applies to all linear and residential viewpoints, not just those specifically identified as KOPs within the Visual Simulations.

SF-1: Shadow Flicker Minimization

Original	Changes Based on Applicant Discussions
The Applicant would attempt to avoid, minimize, and mitigate shadow flicker at non-participating residences. Shadow flicker can usually be addressed by planting trees, shading windows, operational programming, or other mitigation measures. As a last resort, the control system of the wind turbine could be programmed to stop the blades during the brief periods when conditions result in a perceptible shadow flicker.	The Applicant would attempt to avoid, minimize, and mitigate shadow flicker at non-participating residences. Shadow flicker can usually be addressed by planting trees, shading windows, operational programming, or other mitigation measures. As a last resort, the control system of the wind turbine could be programmed to ~~stop the blades~~ cease operation during the brief periods when conditions result in a perceptible shadow flicker. Conditions that would result in perceptible shadow flicker at non-participating residences are expected to be infrequent, only occurring during limited periods with the correct angle of the sun, wind speeds, and unobstructed, clear sky conditions. [1] [1] Stopping/locking the turbine blades for extended periods or during high winds can damage the turbines. Ceasing operation of the turbine motors will allow the blades to spin freely in the wind, but at a lower rate than if the motor was engaged, reducing shadow flicker.

R-1: Recreational Activity Coordination

Original	Changes Based on Applicant Discussions
The Certificate Holder would coordinate with DNR and Benton County to identify new recreational activities and/or improve existing recreational activities within the Lease Boundary (e.g., multi-use trails).	The Certificate Holder would coordinate with DNR and Benton County to identify new recreational activities and/or improve existing recreational activities within the Lease Boundary (e.g., multi-use trails). The Applicant would identify measures for EFSEC's approval prior to the start of construction. EFSEC would be responsible for determining if the Applicant has sufficiently coordinated with all relevant entities the promote recreational activities within the vicinity of the Lease Boundary. [1] [1] Applicant was concerned that this measure was unbounded. Proposed change clarifies that there will be a reasonable limit to Applicant actions necessary to accomplish this mitigation.

R-3: Recreation Safety Management Plan

Original	Changes Based on Applicant Discussions
The Certificate Holder would coordinate with local and regional (when appropriate) recreation groups (e.g., the Northwest Paragliding Club, the Tri-City Bicycle Club) to develop and maintain an adaptive safety management plan, prior to construction and approved by EFSEC, to continue access to recreation activities in the Project area while keeping recreation enthusiasts safe. This plan should identify potential hazards within the Project Area (e.g., construction on or near common bicycle paths, Project-created no fly zones for recreation activities, etc.) and provide opportunities to identify or improve other similar recreation use areas to offset any recreation removed from the Project area as a result of the Project. Specific to paragliding, the Certificate Holder would perform outreach to other regional paragliding entities to share the safety management plan to ensure that recreationists are aware of the limitations the Project creates for safe landing and safe air space.	The Certificate Holder would attempt to coordinate with local and regional (when appropriate) recreation groups (e.g., the Northwest Paragliding Club, the Tri-City Bicycle Club) to develop and maintain an adaptive safety management plan, prior to construction and approved by EFSEC, to continue access to recreation activities in the ~~Project area~~ Lease Boundary while keeping recreation enthusiasts safe. This plan should identify potential hazards within the ~~Project Area~~ Lease Boundary (e.g., construction on or near common bicycle paths, Project-created no fly zones for recreation activities, etc.) and provide opportunities to identify or improve other similar recreation use areas to offset (see R-1) any recreation removed from the Project area as a result of the Project. Specific to paragliding, the Certificate Holder would perform outreach to other regional paragliding entities to share the safety management plan to ensure that recreationists are aware of the limitations the Project creates for safe landing and safe air space. EFSEC would be responsible for determining if the Applicant has sufficiently coordinated with all entities that promote recreational activities within the Lease Boundary. [1] [1] Applicant was concerned that this measure was unbounded. Proposed change clarifies that there will be a reasonable limit to Applicant actions necessary to accomplish this mitigation.

Exhibit D

April 10, 2024

Chair Kathleen Drew
Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, WA 98504

Re: Horse Heaven Clean Energy Center Project – Stakeholder Comments and Concerns on EFSEC Draft Site Certification Agreement, April 10, 2024

Dear Chair Drew and Councilmembers:

I. INTRODUCTION

Renewable Northwest is a regional, non-profit renewable energy advocacy organization, dedicated to decarbonizing the region by accelerating the transition to renewable electricity. Our members are a combination of renewable energy businesses and environmental and consumer groups.

Renewable Northwest is grateful for the opportunity to again provide comments related to the certification of the Horse Heaven Clean Energy Center ("Horse Heaven Project" or "Project"). Renewable Northwest previously provided comment during the open comment period on the Draft Environmental Impact Statement (EIS) for the proposed Horse Heaven Project. As stated previously, we wish to be clear that Renewable Northwest takes no position on the Horse Heaven Project itself. We maintain an organizational policy to not weigh in on individual projects, except in rare circumstances. This being one of those circumstances, we write to alert the Council of the dangerous precedent that EFSEC's current trajectory sets for the development of renewable energy in Washington state, and consequently the fate of Washington's clean energy transition.

In the last few months, we have heard broad concern from clean energy developers within Renewable Northwest membership about the Council's approach to the Horse Heaven Project. The Council's actions with respect to Horse Heaven have set off alarm bells for the broader clean energy community. This community is collectively dedicated to helping Washington achieve its nation-leading and deeply necessary clean energy and climate policy but is increasingly concerned that the state's current permitting environment may prevent policy success.

II. FEEDBACK

Role of the Energy Facility Site Evaluation Council

In 2022, the Energy Facility Site Evaluation Council (EFSEC) was modernized under HB 1812 explicitly to aid Washington's transformative clean energy transition.[1] The Council's work is guided by this overarching policy consideration, which is set forth explicitly in statute:

> *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.*

The agency is tasked with weighing challenging land use values decisions, while improving the existing energy siting review process:

> *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. In addition, it is the intent of the legislature to streamline application review for energy facilities to meet the state's energy goals.*

Furthermore, the agency must seek courses of action that:

> *. . . avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay while also encouraging meaningful public comment and participation in energy facility decisions.*

Renewable Northwest has chosen to comment on the Horse Heaven Project, as we believe EFSEC's recent actions suggest that the agency is departing from its intended purpose, as prescribed by the legislature. This departure jeopardizes the State's transition away from fossil fuels. The Council's role delineates a need to balance the development of clean electricity with environmental, cultural, Tribal, and public concerns. EFSEC's recent decision-making suggests the Council has continually prioritized these listed concerns over the urgent need for in-state clean electricity. As a result, the Council has imposed lengthy, unpredictable timelines and costly, unpredictable consequences on clean energy developers. It is our understanding that some of these consequences may have been based on concerns that the applicant never had the opportunity to respond to or that were unsupported by record evidence. Members of Renewable Northwest have communicated that it is becoming too expensive and too risky to develop projects in Washington under this permitting regime. Continuing this course of action may prevent Washington from meeting its Clean Energy Transformation Act (CETA) obligations and state energy goals, and may have direct impacts on local, vulnerable populations burdened by air pollution. We wish to illustrate these concerns in the comments below.

[1] Energy Facility Site Evaluation Council—Modification, HB 1812, 67th Leg. (2022). https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20240308095611

Precedent-Setting Environmental Mitigation Decisions

It is imperative that clean energy siting processes and decisions be transparently and consistently applied statewide, if Washington is to meet its CETA obligations. In Renewable Northwest's previous comments related to measures adopted in the Project's Draft EIS dated February 1, 2023, we raised process-related concerns regarding the use of unpublished, draft guidelines in decision-making. At the time, we wrote:

> *The Draft EIS departs from well-established and well-vetted practices enshrined in the Washington Department of Fish and Wildlife's ("WDFW") collaboratively developed Wind Power Guidelines. We recommend that these changes—and any change to established policy—occur, if at all, through a similarly inclusive process rather than project-specific SEPA review.*

Renewable Northwest maintains that the environmental mitigation decisions proposed in Horse Heaven's Final EIS represent significant changes to established policy. The use of a 2-mile buffer for ferruginous hawk nests and the use of maps created by the Washington Wildlife Habitat Connectivity Working Group carry implications for existing and future clean energy projects in Washington state. Project-specific SEPA review is not the avenue for sweeping, precedent-setting siting and permitting decisions.

However, these concerns have now been overshadowed by EFSEC's dramatic departure from the Final EIS itself and from scientifically-informed decision-making. Where the Final EIS allowed for the use of site-specific data to demonstrate lack of actual impacts, the Draft Site Certification Agreement removes that option and leans into unvetted tools as the final say in where development can and cannot occur. The result is that benefits to wildlife are speculative, while harm to the clean energy development necessary to abate climate change and protect threatened species is real and tangible. It is unclear how these actions sufficiently balance the increasing demands for clean energy and reduce our dependence on fossil fuels.

Use of Unpublished Guidelines in Decision-making

In the Horse Heaven Draft Site Certification Agreement, the Council has decided to adhere to WDFW's draft, unpublished management recommendations for priority species, rather than WDFW's existing published wind energy siting guidelines.[2] Renewable Northwest's—and the project applicant's—first encounter with these proposed mitigation requirements was their introduction into the Horse Heaven EFSEC adjudication hearings. Currently in Washington, clean energy developers abide by the 2009 *Washington Department of Fish and Wildlife Wind Power Guidelines*, which were developed through an inclusive policy-making process.[3] Regarding the Horse Heaven Project, EFSEC has instead chosen to abide by nonpublic ferruginous hawk guidelines that reach beyond the agency's public siting guidelines. As such, the Council has created a moving target, whereby clean energy developers attempt to permit projects following publicly available guidance, yet decisions are made using an alternate set of internal criteria. This inefficient decision-making process is financially unsustainable for clean energy developers, who must then operate under an unpredictable permitting regime. Lastly, this process hinders clean energy development and wastes critical time in the race to CETA's statutory requirement of greenhouse gas neutral electricity by 2030. Because the underlying management recommendations were not established

[2] Waston, J. W. and Azerrad, J. M. 2023, July 5. *WDFW Draft Management Recommendations for Washington's Priority Species: Ferruginous Hawk*.
[3] WDFW. 2009. *Wind Power Guidelines*. Olympia, WA.

using a public process, there has been no opportunity for experts outside the agency to vet whether the recommendations will actually protect species substantially enough to offset the recommendations' harm to Washington's clean energy goals.

Departure from Final Environmental Impact Statement

The Final EIS should represent, at its late stage in the environmental review process, comprehensive project review and signposts for responsible renewable energy development. After the release of the Final EIS for the Horse Heaven Project, the Council proposed ad-hoc project changes that go beyond the Final EIS's proposed environmental mitigation measures and do not reflect careful, scientific review. For example, the Final EIS recommends the following mitigation measures for ferruginous hawk nests:

> *The Applicant would avoid siting Project components within core habitat in ferruginous hawk territories, defined as the habitat within a 2-mile radius surrounding ferruginous hawk nests documented in PHS data and in Horse Heaven Wind Farm, LLC (2022). Siting of features within 2 miles of a known ferruginous hawk nest may be considered if the Applicant is able to demonstrate that the nest site and foraging habitat is no longer available to the species and that compensation habitat, as described below, would provide a net gain in ferruginous hawk habitat.*[4]

However, during the Council's December 20, 2023 meeting, the Council proposed eliminating this science-based exception and maintaining a 2-mile radius despite lack of viable habitat. Similarly, the Council eliminated the science-based exception for wildlife movement corridors (discussed in detail below under **Hab-1**), making changes that go beyond the mitigation measures recommended in the Final EIS. These two decisions alone eliminate at least 53% of the Horse Heaven Project, with no allowable exception for site-level scientific findings. Due to the structure of wind facilities and the need for connecting power lines and access roads, an *additional* 17% of turbines are also now at risk of removal from the Project.

We use these numbers to illustrate the impact of unplanned-for environmental mitigation measures and the impact of last-minute decisions by EFSEC. The Council's actions move away from the established site certification processes and past Council practice; they also set a precedent that mitigation measures can suddenly change at any stage during project permitting.

Major changes to infrastructure siting requirements that are introduced for the first time, late in the overall site certification process, erode industry confidence in the EFSEC permitting process. Clean energy project proposals require significant financial investment; in order to make such an investment, developers in turn require a high degree of confidence in the expediency, procedural reliability, and fairness of the EFSEC process.

Lack of Scientific Basis for Decisions

During the Horse Heaven Project site certification process, EFSEC has repeatedly drawn upon new, previously unused metrics and tools for environmental mitigation decisions. As stated, Renewable

[4] EFSEC. 2023, October. *Horse Heaven Wind Farm Final Environmental Impact Statement* (pp. ES-34).

Northwest is concerned with the use of draft guidelines and we reiterate that project-specific SEPA review is not the appropriate process for creating precedent-setting policy. Additionally, several of these new mitigation guidelines lack scientific basis or justification.

Spec-5: For the Horse Heaven Project, EFSEC is imposing a 2-mile setback around any historically documented ferruginous hawk nest, regardless of loss of habitat or nesting viability. As we understand, the severity of this setback is not a hawk mitigation measure that exists elsewhere in the United States or Canada. While ferruginous hawk may have a relatively small territory in Washington, we do not have assurance that sweeping new environmental mitigation measures will not similarly be applied by the Council ad-hoc to any number of other endangered species within the state, given that this measure has been imposed out of alignment with existing clean energy siting guidelines.

This restriction would likely impact clean energy projects already existing in the EFSEC permitting pipeline. For instance, a new policy this strict—if applied consistently—would prohibit repowering of existing clean energy projects currently located within the 2-mile ferruginous hawk nest buffer area. No clean energy developers in Washington were made aware of this restriction when their sites were originally proposed (or permitted). These guidelines will also presumably impact generation upgrades to existing projects and other transmission infrastructure projects throughout central Washington. We reiterate that shifting siting regulations after project proposal has significant financial impact on developers and serves as a deterrent for future projects.

The Council has proposed using the locations of historical ferruginous hawk nests found in the WDFW Priority Habitats and Species (PHS) Database.[5] However, WDFW's own website states the limitation of its mapping technology:

> *PHS map data is meant to serve as a starting point to identify priority habitats and species. It is not meant to replace or preempt more detailed field-based, site-level mapping. Site-specific surveys are usually needed to rule out the presence of priority habitats or species.*

Renewable Northwest then questions why all historical PHS-documented ferruginous hawk nests, regardless of said site-specific surveys, should be used as a metric for official clean energy site certification or land use decisions. This does not appear to be the intention of the tool itself.

Hab-1: Similar to Spec-5, EFSEC again departs from the Horse Heaven Final EIS with its unprecedented decision pertaining to wildlife corridors. The draft Site Certification Agreement determines that "Primary Project components shall not be constructed within movement corridors modeled as medium to very high linkage" according to maps produced by the Washington Wildlife Habitat Connectivity Working Group (2012). Horse Heaven's Final EIS originally allowed for a process to seek approval from EFSEC for siting project infrastructure in modeled wildlife movement corridors. EFSEC's decision to remove site-level exceptions and granularity from project siting is, again, a misuse of tools not designed to directly regulate clean energy projects. The Washington Wildlife Habitat Connectivity Working Group

[5] WDFW. *Priority Habitats and Species: Maps*.

report does not identify any intention of directly using this landscape modeling effort as specific setback or avoidance areas.[6] The report states the limitations of its ecoregional analysis:

> *There are limitations to the analysis which may include: (1) errors and limitations in spatial data, (2) reduced applicability outside the Columbia Plateau project area, (3) incomplete assessment of important habitats or linkages, (4) insufficient detail to prioritize habitats or linkages at a finer scale, and (5) lack of adequate field data to validate all model assumptions.*

This tool has not been applied towards project review and certification by EFSEC in the 12 years since its publication, so we fail to understand its sudden application to Horse Heaven. Renewable Northwest recommends the **Hab-1** mitigation measure be, at minimum, reverted to the version from the Final EIS, which allows for a more appropriate use of the tool.

As with WDFW's PHS database, Renewable Northwest continues to feel that EFSEC is using environmental mitigation tools in a way that aims to eliminate the impacts of siting clean energy, without sufficiently balancing Washington's dramatic and urgent need for these projects.

III. CONCLUSION

We appreciate the opportunity to submit comments once more regarding the Horse Heaven Project. The Washington State legislature has invested years of work into streamlining clean energy siting and permitting processes; we urge the Council to not regress on these improvements.

Respectfully submitted this 10th day of April, 2024,

/s/ Kate Brouns
Washington Policy Manager
Renewable Northwest
kate@renewablenw.org

/s/ Max Greene
Deputy Director
Renewable Northwest
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[6] WHCWG.
https://waconnected.org/wp-content/themes/whcwg/docs/WHCWG_ColumbiaPlateauEcoregion_2012.pdf

GE VERNOVA

April 9, 2024

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

Re: Horse Heaven Clean Energy Center Project – Stakeholder Comments and Concerns on EFSEC Draft SCA and Draft Governor's Recommendation

Dear Chair Drew and Councilmembers:

GE Vernova appreciates the opportunity to file the following comments to the Energy Facility Site Evaluation Council (EFSEC) regarding the House Heaven Clean Energy Center Project (the Project). As the nation's leading energy and technology innovation company, GE Vernova is committed to working with regulators and stakeholders at all levels as we work toward a successful energy transition.

As a project partner on the Project as well as a potential equity investor and equipment provider on other renewable energy projects under development in the state of Washington, GE Vernova respectfully shares these comments and concerns regarding the requirements EFSEC is placing on the Project as laid out in the Draft Site Certification Agreement (SCA) and the Draft Report to the Governor, issued on April 1st, 2024. Our goal as a global leader in wind turbine manufacturing is to support permitting initiatives to deploy clean energy in an efficient, environmentally sound and cost-effective manner.

EXECUTIVE SUMMARY

The State of Washington has positioned itself as a leader in the clean energy transition. First by passing the Clean Energy Transition Act (CETA), and most recently as a partner of the Pacific Northwest Hydrogen Association's (PNWH2) regional hydrogen hub, selected by the U.S. Department of Energy (DOE). Energy stakeholders recognize the state's leadership and for this reason are actively developing over 3,000 gigawatts of wind power projects across the state.

However, the recommendations and requirements by EFSEC in the Project's SCA will risk threatening both this Project and the state's overarching clean energy goals. For example, the Council's requirement establishing a 2-mile radius surrounding ferruginous hawk nests where no wind turbines can be sited is **the most restrictive setback for the species in North America and provides for no allowance to confirm whether a formally identified nest even exists in 2024 or is still capable of being used**. There is also no consideration of seasonal usage or habitat suitability. EFSEC's 2-mile radius restriction goes well beyond the 1-mile/1600 meter setback the U.S. Fish and Wildlife Service Region 6 recommends for active existing ferruginous hawk nests.

This new requirement could impact not only Horse Heaven, but all future wind projects, creating an unpragmatic hurdle toward the state's clean energy goals. This could significantly chill the willingness of investors and lenders to finance renewable energy projects in the State of Washington.

BACKGROUND ON GE VERNOVA

GE Vernova has pioneered technologies that have spurred world-transforming changes in the energy industry and are actively involved in all segments of the energy sector. We have long manufactured products designed to meet stringent government standards, while meeting customer requirements for safe, efficient, reliable, resilient, and affordable energy. Our technology produces one-third of the world's electricity, and our power generation equipment is deployed in more than 140 countries. In addition, GE Vernova equips 90% of transmission utilities worldwide, and 40% of the world's electricity flows via our software.

GE Vernova is unique among U.S. companies in designing and manufacturing industry-leading wind, gas, steam, and hydro-powered turbines, nuclear power generation technologies, power quality equipment, and hybrid power solutions, while incorporating the latest digital innovation. GE Vernova leads grid modernization and resilience efforts with a defense-in-depth approach to the design, development, deployment, and service of the world's most critical power systems. We service the products we sell, and we offer equipment upgrades that increase our products' efficiency and availability. Finally, through our Advanced Research Center (ARC), our scientists and engineers are focused on developing and improving breakthrough technologies to accelerate the energy transition including hydrogen, carbon capture and sequestration, and small modular reactors.

We have always embraced our diverse portfolio of energy products and solutions across GE Vernova. On April 2, 2024, we launched GE Vernova as a new, independent company, that will focus entirely on succeeding in the energy transition. We will be represented by approximately 70,000 employees worldwide and will use the combination of our technologies and expertise to help accelerate decarbonization efforts across the United States, while supporting domestic energy manufacturing and jobs—today and in the future.

Critical to GE Vernova's success is our commitment to sustainability. We will build on the 130-year history of GE to build a more sustainable electric system with a framework to electrify, decarbonize, conserve, and thrive. It is under this framework that we will work with governments, partners, customers, and other stakeholders, including the state of Washington.

GE Vernova's onshore wind business was established in 2002. According to the American Clean Power Association's Annual Market Report 2023, GE Vernova has 57% of the onshore wind turbine market, which we have held over the past six years. We have an established fleet of wind turbines in Washington and are eager to increase our wind turbine footprint in the state to help meet Washington's admirable clean energy targets.

CLEAN ENERGY IN WASHINGTON STATE

According to the U.S. Energy Information Administration (EIA), in 2022, hydroelectric power accounted for 67% of Washington's total electricity net generation from both utility-scale and small scale. Natural gas, nonhydroelectric renewable resources (mostly wind), nuclear energy, and coal provide almost all the rest of Washington's in-state electricity generation. Natural gas is the second largest in-state source of net generation, and it fueled 12% of the state's total electricity generation in 2022. Renewable resources other than hydroelectric power accounted for about 9% of state generation.

According to the American Clean Power Association's (ACP) state fact sheet, Washington currently has 3,606 megawatts of operating wind, solar and energy storage capacity, employs more than 9,600 people in the clean energy industry, and $8 billion of capital has been invested in wind, solar and energy storage in the state.

Washington is committed to take further steps to decarbonize and add more renewable generation to the state's grid. On May 7, 2019, Governor Jay Inslee signed into law the Clean Energy Transformation Act (CETA) to ensure the state's electricity supply is free of greenhouse gas emissions by 2045. CETA will require the development and installation of more carbon free resources, such as wind and solar to reach a 100% clean electricity supply.

According to the Department of Commerce, "by 2045, utilities must supply Washington customers with electricity that is 100% renewable or non-emitting with no provision for offsets." This can only be achieved by starting now and requiring urgency and near-term action.

Governor Inslee recognizes the sense of urgency. In his January 9, 2024, State of the State Address he stated:

> And the need for climate action is felt daily for Washingtonians living with pollution.
>
> There are neighborhoods today in Washington where people are dying two and a half years younger on average because of pollution.
>
> This pollution is harmful to the lives of Washingtonians in communities like Everett, Wenatchee, Mattawa, Spokane, **the Tri-Cities**, the Yakima Valley, Shoreline, South King County, and Tacoma. There are neighborhoods in these communities where people are forced to live sicker and die younger because of this pollution. [Emphasis Added.]

His message on urgency was also raised during a July of 2023 interview on ABC's "This Week" where he said, "[the] Earth is screaming at us," and went on to discuss the role of states:

> I do want to note that, that this is not just something for the federal government. States can act. Our state is acting. We have 23 states in the U.S. Climate Alliance. And this is necessary. We've had tremendous action under President Biden's leadership with the Inflation Reduction Act.

The Governor further stated in the interview:

> But **we need to go further and faster. And states can go further and faster.** And we are doing that.[1] [Emphasis Added.]

In addition, in October of 2023 the U.S. Department of Energy selected the Pacific Northwest Hydrogen Association's (PNWH2) Hub as a Regional Clean Hydrogen Hub. The coalition includes Washington, Oregon and Montana, and regional representatives from Tribal nations, labor, business and industry, higher education, and the environmental community. In an October 2023 Washington State Standard article, the Washington State Department of Commerce acknowledged that no new energy projects were specified in the region's hydrogen hub proposal, but they are working closely with renewable electricity project developers to ensure a stable, growing supply of clean energy is available to meet hydrogen production needs." This is in alignment with other analyses on renewable energy needs, including the 2021 Washington State Energy Strategy that anticipates a need to approximately double

[1] This Week' Transcript 7-23-23: Gov. Jay Inslee, Mayor Grace Elena Garner & Rep. Michael McCaul; https://abcnews.go.com/Politics/week-transcript-7-23-23-gov-jay-inslee/story?id=101581481

renewable capacity by 2050. Furthermore, in a letter to support a H2 Hub application, Governor Inslee listed the need to focus on wind and solar stating:

> "Focus on Renewables: Washington has the lowest carbon intensive grid in the United States. The opportunity to develop truly green hydrogen and understand how it fits into a modern decarbonized economy is possible today in the state of Washington. No other region is as advanced in this area."

However, a successful PNWH2 Hub can only be done with additional renewable energy projects being developed and commissioned now.

The development opportunities are due to strong public policies and programs in place, such as CETA, the U.S. clean energy tax credits, and the PNWH2 Hub. Combined, these initiatives are set to dramatically increase Washington's state's ability to meet its climate targets and ensure the state moves further and faster.

However, the State's climate targets, the ability to address pollution faster, and future energy growth opportunities will all be severely challenged by the unpragmatic constraints being placed on one Project. If EFSEC proceeds with its restrictive recommendations on the Horse Heaven wind farm it will not only put the State's climate targets at risk, but all future renewable projects, jobs, investments, and environmental benefits will also be at risk.

UNPRAGMATIC REQUIREMENTS IN THE SITE CERTIFICATION AGREEMENT (SCA)

On Monday, April 1, 2024, EFSEC made public a Draft Report to the Governor and the SCA. The most challenging requirement in the SCA is the requirement to establish a 2-mile radius surrounding ferruginous hawk nests where no wind turbines can be sited. This requirement is unpragmatic and overly burdensome, and goes well beyond what other North American environmental agencies have required.

Specifically, the SCA states:

> The Certificate Holder shall not site any wind turbines within core habitat in ferruginous hawk territories, defined as the area within a 2-mile radius surrounding ferruginous hawk nests documented in the WDFW Priority Habitats and Species (PHS) data at the time of construction. Other primary Project components, specifically solar arrays and BESS, shall not be sited within 0.5 miles of a documented ferruginous hawk nest. Siting of solar arrays or BESS within 0.5-2 miles of a known ferruginous hawk nest or secondary project components (i.e., roads, transmission lines, substations, etc.) within 2 miles of a documented ferruginous hawk nest may be considered if the Certificate Holder is able to demonstrate all of the following:
>
> 1. The nest site is no longer available,
> 2. Foraging habitat is no longer viable to the species, and
> 3. Compensation habitat would provide a net gain in ferruginous hawk habitat.
>
> Project infrastructure shall not be sited within two miles of a ferruginous hawk nest without prior consultation with the PTAG and approval by EFSEC and will require a project specific Ferruginous Hawk Mitigation and Management Plan (see Appendix 2; Spec-5 Ferruginous Hawk).

Results of ferruginous hawk monitoring programs and adaptive management would continue through Project operation and decommissioning with review by the TAC and approval by EFSEC.

The two main concerns with the 2-mile radius recommendation are:

1) EFSEC is establishing a nest setback requirement that is the most restrictive setback ever considered, significantly beyond what the U.S. Fish and Wildlife Service Region 6 recommends as well as what other states and Canadian provinces have established, and
2) The requirement was established with historical nest data from the Washington Department of Fish and Wildlife (WDFW) which we understand is not based on current information on whether a nest is active, within an area that can support habitat, or even if the nest still exists.

On the first point, most of the states in the ferruginous hawks breeding range have relied on the U.S. Fish and Wildlife Services (USFWS) Region 6 wildlife buffer guidance for wind projects, which recommends a 1600 meter (or approximately 1-mile) nest setback from active and occupied documented nests. USFWS Region 6 covers Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, and Wyoming. Both Colorado and Utah have established their own requirements of a 0.5-mile nest setback for active and occupied ferruginous hawk nests. The Canadian provinces of Alberta and Manitoba have implemented a 1000 meter (0.62-mile) nest setback requirement for active ferruginous hawk nests. The setback requirement imposed in the SCA goes well beyond the guidance adopted by other North American jurisdictions.

Regarding the data used in determining the 2-mile radius requirement, EFSEC is relying on incomplete, non-public, and non-peer-reviewed information. All wind farm projects now conduct science-based pre-construction nest surveys documenting all active and non-active raptor nests in the vicinity of the project site. This up-to-date current nest data should be the basis of any setback requirements rather than a historical database which has not been scientifically peer-reviewed to determine the current existence of active or potentially active nests in areas that can support ferruginous hawk habitat. The WDFW data should be updated to remove nests that are gone or are no longer viable because the nest's surrounding habitat is marginable or non-existent.

Furthermore, the USFWS guidance and standards adopted by other states and provinces give due consideration to the status of the nest (i.e., whether it still exists and is active or not) and whether the surrounding area is still capable of providing supporting habitat. The EFSEC proposal adopts the most restrictive setback radius requirement for ferruginous hawk nests in North America without any consideration to the nest's status or the surrounding area.

From our perspective, the adoption of draft non-peer reviewed unprecedented policy for mitigation measure represents arbitrary and capricious requirements that are scientifically unjustifiable.

IMPACT ON FUTURE PROJECTS

As stated by the Governor, we agree Washington State can do better, move faster, and go further. Onshore wind developers are currently contemplating multiple projects in Washington State. In fact, based on information we have compiled, there are **currently over 3,000 megawatts of active onshore wind development projects in development**. If completed, these projects could result in an additional $5-6 billion of clean energy infrastructure investment into the state.

However, EFSEC is creating greater risk and undermining the wind industry's confidence in the State's review process. Development of a wind, solar, and storage project requires significant time, capital, and perseverance to obtain the requisite land, power sale contacts, equipment supply contracts, and permits necessary to achieve a "ready to build" status where hundreds of millions of dollars in equity investment, construction loan financing, and tax equity financing are needed to bring the Project to fruition. Equity investors and lenders will not invest time and capital in a renewable energy project if there is uncertainty in the size and scope of the project that will ultimately be approved by the governmental regulatory agencies.

Here, the FEIS provided a clear roadmap for the size and scope of the Project. The Council has departed from the FEIS findings and recommendations without a record-based justification for doing so, and has taken steps to fundamentally alter the configuration of the Horse Heaven project. This course of action sends a strong signal to the renewables industry and its investors and lenders that it is now much more difficult and unpredictable to permit projects in Washington state. This ill-advised approach could significantly chill the willingness of investors and lenders to finance projects that are seemingly well advanced in permitting only to face last minute hurdles and changes advanced by EFSEC.

The Council's actions on the Horse Heaven project will frustrate the State's goals for renewable energy during a time of significant project development across the country spurred by the federal clean energy tax credits in the Inflation Reduction Act. Investors and lenders in renewable energy projects will invest their scarce capital in projects that have a much greater certainty of obtaining permits without the fear of last-minute changes and restrictions that are contrary to the findings and recommendations from the subject matter experts who conducted the underlying studies and prepared the environmental review documents.

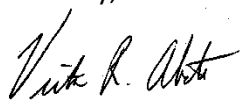
CONCLUSION

GE Vernova appreciates the opportunity to comment on the Horse Heaven Project. As a project partner, we want to see the Project become a success because of the many benefits it will bring to the state. However, a successful Project will also set a precedent, inviting others to invest, build and operate renewable energy projects in Washington state.

We also strongly believe the State of Washington is at a pivotal point. If EFSEC's current proposal is approved, it will not only negatively impact the Project, but we believe future renewable energy projects may be impacted. If Horse Heaven and future projects are impacted, this will put at risk future investments, jobs, and environmental benefits for the state.

Again, thank you for your consideration of these comments and please do not hesitate to let us know if we can provide any clarifications or additional information.

Sincerely,



Victor R. Abate
CEO, GE Vernova Wind

April 10, 2024

Kathleen Drew
Elizabeth Osborne
Eli Levitt
Mike Livingston
Lenny Young
Stacey Brewster
Energy Facility Site Evaluation Council
621 Woodland Square Loop SE
Olympia, WA 98503-3172

RE: Horse Heaven Clean Energy Center

Dear Chair Kathleen Drew and Council Members,

The Northwest & Intermountain Power Producers Coalition ("NIPPC") appreciates the opportunity to submit comments regarding the certification of the Horse Heaven Clean Energy Center ("Horse Heaven"). NIPPC generally does not submit comments regarding the merits of any specific individual project's application before the Energy Facility Site Evaluation Council ("EFSEC"), and does not comment here on any particular merits of Horse Heaven. NIPPC is submitting comments regarding the Horse Heaven application because of a unique and potentially long-term adverse effect on facility development in general and on Washington's ability to meet its carbon reduction mandates. NIPPC urges EFSEC to revisit its process, both for this application and for other open or future applications, to ensure that proposed mitigation measures for energy facilities are well-reasoned and well-supported. Additionally, NIPPC urges EFSEC to limit late-stage shifts in recommendations to those clearly justified by available evidence in the record.

NIPPC is a membership-based advocacy group representing competitive electricity market participants in the Pacific Northwest and Intermountain region. NIPPC has a diverse membership which includes independent power producers active in the Pacific Northwest and Western energy markets. The purpose of NIPPC is to represent the interests of non-utility market participants in developing rules and policies that help achieve cost effective power sales and a competitive electric power supply market in the Pacific Northwest. A competitive electric market in the Pacific Northwest is key to the development and repowering of projects in Washington that will allow the state to meet its clean energy goals in the most cost effective and reliable manner.

Having reviewed the EFSEC Horse Heaven certification process, NIPPC is concerned about a problematic precedent that may be created. In particular, NIPPC highlights the risks to the

broader power sector of two mitigation measures proposed by EFSEC as conditions for project approval: (1) adopting unpublished draft guidance establishing a continuous 2-mile setback zone around all active and historic ferruginous hawk nests, and (2) prohibiting infrastructure within a broad set of wildlife movement corridors mapped as part of an agency working group for transportation planning. Both of these approaches diverge from other standards NIPPC is aware of, including past EFSEC practice, and appear to have been only weakly vetted at a late stage in the application process.

NIPPC fears that EFSEC's recommendations in this project application will significantly limit the availability of renewable energy sites in Washington, regardless of the project developer. NIPPC notes that the measures proposed as certification conditions in EFSEC's review of this application appear to differ dramatically from other states and the federal government. For example, other jurisdictions that manage ferruginous hawk habitat have temporary setbacks of 0.5 to 1 mile for active nests.[1] While individual states appropriately retain discretion to set their own standards, the proposed departure from mitigation measures used for other projects appears to have little supporting rationale in the application record, including any apparent active nests reported in annual raptor nest survey efforts around the project. These particular conditions and the process by which they were recommended may erode the power sector's confidence in the siting process and could pose a material risk to Washington's energy transition, with deep potential reductions in land available for building or repowering energy facilities.

NIPPC urges EFSEC to revisit its approach in this application and other applications going forward to rely on well-reasoned, well-supported, and reasonable conservation measures. NIPPC emphasizes the importance of limiting late-stage shifts in recommendations to those justified by scientific or other relevant, publicly available evidence in the record. An effective, disciplined EFSEC process is vital to maintaining a competitive electric market in Washington and to building and repowering the facilities needed for utilities and other entities to comply with the state's decarbonization laws.

Thank you for considering our perspective.

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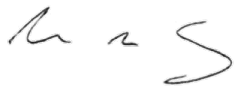
[1] *See, e.g.*, Laura A. Romin and James A. Muck, *Utah Field Office Guidelines for Raptor Protection From Human and Land Use Disturbances*, Table 2 at 29 (Jan. 2002), available at: https://www.fws.gov/sites/default/files/documents/Utah_Field_Office_Raptor_Guidance.pdf; U.S. Fish and Wildlife Service, *Region 6 Wildlife Buffer Recommendations for Wind Energy Projects* at 1 (Mar. 31, 2021), available at: https://www.fws.gov/sites/default/files/documents/usfws-r6-wildife-buffer-recommendations-wind-energy-projects-v3-2021.pdf; Wyoming Ecological Services Field Office, *Protections for Raptors*, Table 1 at 5 at (Mar. 9, 2022), available at: https://www.fws.gov/sites/default/files/documents/wyoming-ecological-services-field-office-raptor-guidelines-2022-03-09.pdf.

Sincerely,



Spencer Gray

Executive Director
Northwest & Intermountain Power Producers Coalition
sgray@nippc.org
(503) 482-9191

Energy Facility Site Evaluation Council
PO BOX 43172
Olympia WA, 98504-3172
sent via email: comments@efsec.wa.gov; and web form: https://comments.efsec.wa.gov/

March 13, 2024

RE: COMMENT ON HORSE HEAVEN WIND FARM – DOCKET 210011

Dear Chair Kathleen Drew and Council Members,

Brookfield Renewable offers the following comments to support a balanced site certification of the Horse Heaven Clean Energy Center (Horse Heaven). The applicant for this project, Scout Clean Energy, is a portfolio company of Brookfield Renewable. After our review of the Energy Facility Site Evaluation Council (EFSEC) certification process and recommendation for Horse Heaven, we have concerns that the proposed novel conservation mitigation measures will unnecessarily and significantly reduce the size of the project and establish a precedent that could place at risk Washington State's established decarbonization goals.

The current EFSEC mitigation proposal for wildlife movement corridors, and the 2-mile setback zone around all active and historic ferruginous hawk nests, would reduce the Horse Heaven project by 74%. This dramatic reduction of the project presents a danger to not only the viability of the project itself, but also to broader renewable resource development in the state. If left unchanged, we are concerned that the recommendation could establish a precedent that may compromise Washington's goal of developing a reliable, carbon-free, electric system by 2045, pursuant to Washington's Clean Energy Transformation Act (CETA) (SB 5116, 2019).

Achieving Washington's energy decarbonization goals depends on maintaining a timely, balanced, consistent and, most importantly, data-driven certification process for renewable energy development. The proposed mitigation measures for the Horse Heaven project, and the timing in which they were introduced, represent a significant departure from the established EFSEC site certification process. Specifically, we are concerned that the proposed broad conservation mitigation measures for the ferruginous hawk nests were introduced after the Final Environmental Impact Statement was published and were based on an outdated (2010) and broad-scale wildlife corridor map in the Washington Statewide Habitat Connectivity Analysis. The Working Group who conducted the analysis states that additional fine-scale data and periodic data updates are necessary for comprehensive planning and policy implementation (175).[1]

We therefore respectfully request that EFSEC reconsider the proposed mitigation measures for the Horse Heaven project. Specifically, for EFSEC to revert to the FEIS versions of Hab-1: Wildlife Movement Corridors and Spec-5: Ferruginous Hawk conditions, and to remove the Veg-10:

[1] Washington Wildlife Habitat Connectivity Working Group (WHCWG). 2010. Washington Connected Landscapes Project: Statewide Analysis. Washington Departments of Fish and Wildlife, and Transportation, Olympia, WA. Retrieved from: https://waconnected.org/statewide-analysis/.

Shrubland and Priority Habitat Avoidance proposed condition. We encourage EFSEC to maintain a balanced and reliable site certification process by vetting novel mitigation measures through a transparent and evidence-based public process that involves the council, its staff, the scientific community, and stakeholders. Thank you for your consideration of these comments.

Sincerely,

F. Mitchell Davidson
Managing Partner
Brookfield Renewable
646-992-2473
fmitchell.davidson@brookfield.com

Wednesday, April 10, 2024

Dear Chair Kathleen Drew and Council Members,

wpd USA Inc. is grateful for the opportunity to share our feedback regarding the certification of the Horse Heaven Clean Energy Center.

wpd USA Inc. takes seriously the need for bold action in the face of climate change. Fortunately, these values and actions are in close alignment with the bold climate leadership Washington state has displayed through advancing an aggressive decarbonization agenda. In our commitment to enabling the transition to a lower carbon economy, we must emphasize the importance of upholding a swift and reliable pathway for the development of renewable energy projects in Washington state.

As we review the Council's Horse Heaven certification process, we wish to express concerns about the problematic precedent EFSEC may be creating through its current trajectory. In particular, we highlight the risks associated with adopting a 2-mile setback zone around all active and historic ferruginous hawk nests and a decade-old desktop mapping effort of wildlife movement corridors, which is an approach that has not been thoroughly and scientifically vetted and diverges from any other standard seen in the country.

EFSEC's responsibility in reviewing clean energy projects and enabling responsible development that balances environmental impacts with project benefits is a critically important role and the cornerstone of Washington State's Environmental Protection Act. However, the process by which the projects are reviewed must be fair and balanced; inclusive and transparent; and based upon the best available science.

We fear that EFSEC's current approach, along with the adoption of draft guidance related to ferruginous hawk habitat and wildlife movement corridors falls short of that standard. Further, we fear the impacts of these actions will have a very damaging impact on the availability of renewable energy in Washington and the Pacific Northwest. Simply put – our region needs more renewable power: The state's Clean Energy Transformation Act, the Climate Commitment Act, the Low Carbon Fuel Standards, as well as commitments made around electrification and measuring in the federal Inflation Reduction Act are all poised to drive further demand and increase the pace at which utility-scale renewable projects must be built and operated.

We are troubled by EFSEC's departure from established site certification processes and the unilateral introduction of unvetted, unscientific changes to certification conditions.

A reliable permitting process necessitates evidence-based changes, well-reasoned recommendations, and transparency. These are the tenants that uphold and attract the private investment Washington state's clean energy future depends on. The proposed late-stage alterations to the Horse Heaven FEIS-recommended measures by EFSEC not only undermine what should be a careful review process, it erodes industry-wide trust and confidence and will establish a precedent that could pose a significant risk to Washington's clean energy transition.

wpd USA Inc. urges EFSEC to restore a fair and reliable process that recommends only well-reasoned, well-supported, and reasonable conservation measures. We emphasize the importance of limiting late-stage shifts in recommendations to those justified by science or other publicly available evidence in the record.

Thank you for considering our perspective and for your ongoing dedication to addressing these critical issues.

Sincerely,

WPD USA INC.
15710 JFK Blvd., Suite 550
Houston, TX 77032

Per: David Heiduck
Vice President Solar, wpd Canada

Respondent No: 134
Login: Anonymous
Email: n/a

Responded At: Apr 08, 2024 16:33:04 pm
Last Seen: Apr 08, 2024 16:33:04 pm
IP Address: n/a

Q1.	**First & Last Name**	Roger Ovink
Q2.	**Email address**	rogueo51@gmail.com
Q3.	**Are you part of an Agency or Organization?**	**Yes (please specify)** Citizens Climate Lobby, Richland, WA Chapter

Q4. **Share any comment**

I support approving two renewable energy projects: the Horse Heaven Wind Farm project, which includes wind turbines, solar collectors, and storage batteries; and the Hop Hills Solar project, which may also include storage batteries. Both projects would be in Benton County and due to local housing and industrial energy needs, these projects will help achieve the clean energy required for their success. Of particular interest is a proposed fertilizer plant by a Swiss firm that will run on renewable energy and have no carbon dioxide releases. This plant is supported by our local politicians plus Senators Murray and Cantwell. The Horse Heaven and Hop Hills project energy will be much needed for the success of this industrial endeavor, plus the energy and fertilizer projects will provide dozens, if not hundreds, of local good-paying jobs. Potential environmental impacts were identified for these projects, but they can be mitigated. The impacts are not “show stoppers” and should not require greatly modifying the projects from their initial proposals. It does not seem necessary that landscape view dislikes, potential wildfire fighting limitations, and limited potential Ferruginous hawk interference would require severe reductions in the Horse Heaven project. The views would be no more severely affected than the current presence of radio and television antenna placements and existing wind turbines; the project would provide enhanced road access to the top of the ridge and controlled burns along the ridge could prevent wildfires; and regular hawk and eagle use of areas near existing land uses are present throughout eastern Washington. As for the Hop Hills project, elevating the solar collectors and planting suitable pasture vegetation below them would result in continued sheep grazing in the developed area and no lost farm land. I encourage the approval of these two much-needed renewable energy projects.

Q5.	**Upload your document or picture (optional)**	not answered

Portland General Electric
121 SW Salmon Street • Portland, OR 97204
portlandgeneral.com

April 10, 2024

State of Washington
Energy Facility Site Evaluation Council
621 Woodland Square Loop SE
Olympia, WA 98503

RE: Horse Heaven Clean Energy Center Project – Comments on EFSEC Proposed Final Action

Chair Kathleen Drew and Councilmembers,

Portland General Electric (PGE) appreciates the opportunity to submit comments on the Horse Heaven Clean Energy Center Project (Horse Heaven Project). PGE is filing comments in the project docket to express concern with the process experienced by this project and to convey the potential unfavorable impact these proceedings could have not only on Washington's renewable energy industry, but on the broader region's ability to procure clean energy resources and meet shared climate goals.

PGE is a fully integrated Oregon electric utility that serves over 900,000 customers with a service area population of 2 million Oregonians. PGE is focused on decarbonizing our power supply in line with Oregon's ambitious clean electricity targets while delivering reliable and affordable service to customers.

Procedural clarity throughout the siting application process is critical for development of renewable projects. In the case of the Horse Heaven Project, significant changes proposed late in the siting process have raised questions about the commercial and technical viability of the project and the procedural confidence on which investment in the project was based. If the Horse Heaven Project is altered as proposed by the Council in its Draft Report to the Governor and Draft Site Certification Agreement, energy developers will see increased uncertainty about siting in Washington state since project mitigation measures have changed throughout the permitting process. As a result, developers may choose not to invest in developing renewable energy projects in Washington state.

To achieve Oregon's ambitious electricity decarbonization targets while meeting growing demand, PGE anticipates needing approximately 3,500-4,500 MWs of new non-emitting resources and storage between now and 2030. Like many other utilities, we will be looking to procure more renewables from around the Pacific Northwest to meet these goals and do so through a Request for Proposal (RFP). The RFP is a competitive bidding process through which a utility solicits

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proposals for electricity generation facilities, such as new solar and wind plants, battery storage facilities, or transmission capacity. The evaluation of bidders from throughout the Pacific Northwest in the RFP process includes an appraisal of timing and capability to bring projects online. For bidders to be successful in a utility RFP process, a predictable and reasonable siting process is critical.

Thank you for your focus on issues that will ensure a robust renewable energy industry in Washington state and protect the broader region's ability to procure clean energy resources to meet shared climate goals.

Sincerely,

Greg Alderson

Greg Alderson
Manager, Government Affairs
Portland General Electric

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A Yes.
Q And you referred to Mr. Rahmig's testimony on Wednesday.
He actually testified that the data is conflicting regarding whether antelope actually do avoid wind facilities; isn't that right?
A That's consistent with what I was just trying to say, yes. Yeah.
Q Okay. I want to talk for a bit about this two-mile offset.
On Page 11 of your testimony, you've taken issue with Mr. Neutzmann's one-size-fits-all approach to offset.
Do you see that?
A I'm -- I'm aware of that, the statement. I don't see it right now. But, yeah, I'm aware of that.
Q Let me see if I can -- well, at the first big answer, the one that is right by the cursor right there.
A Yeah.
Q You actually -- Neutzmann says there should be a two-mile offset, and you actually initially suggested that that two-mile offset is somewhat arbitrary; is that right?
A It is in the -- as I think I explained here, in the sense that the core areas around which this concept is

Page 1588

based are not a uniform circle. That's not how ferruginous hawks perceive the landscape. So it's easy, isn't it, to just draw a circle on the map and say two miles, we're done.
It's not necessarily a reflection of biological reality and how a hawk may be using the landscape. So I think that's the point that I was making.
And I think it would be possible, if the data are available, but I think it would be possible to look at these specific sites and understand a little bit better how hawk might be using them and to determine boundaries that are biologically appropriate to the situation.
But my level of understanding of this specific site is not adequate to go to that place. But I would hope that that level of understanding exists within WDFW and probably -- probably some of the West staff or Tetra Tech staff who have been working on this project probably have a better understanding of the landscape specifics.
Q I just need to say this because I like saying it. You don't expect ferruginous hawks to move in circles. You would expect them to move in something that is more like an asymmetric -- asymmetrical polygon; is that right?

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A At least not a circle, yes.
Q Okay.
A Something more abstract.
Q That's fair.
One of the things that I've -- that I've come across refers to it actually as an amoeba pattern.
A I like that, yeah. We'll -- we'll work with that.
Q And the answer that you've given is terrific in terms of -- in terms of the need to tailor offsets to this -- the needs of this specific site.
You actually referred to -- you advocate for a more nuanced and biologically informed approach.
Is that what you're talking about?
A Yes.
Q And just -- I want to just nail this down to be clear.
The two miles that Mr. Neutzmann talked about, that refers to the distance around nests, not the distance around equipment; is that correct?
A That's correct.
Q And your testimony, your initial testimony suggests that a better approach would be to respond to actual conditions at the site.
That's what we're talking about, isn't it?
A Yes.
Q And that's consistent with the suggestion you made in

Page 1590

your supplemental testimony that the buffer should be tailored to accommodate the project's specific needs, right?
A Yes.
Q But between your original testimony and this supplemental testimony, you actually changed your answer about a two-mile buffer; am I right?
A Yes.
Q And can you explain, please, how you came to make that change in your testimony?
A Sure.
Q What led to you making the change?
A Sure.
Well, let's see here. Keep me on track.
The -- initially when I submitted my first testimony, I was going off of two sources of information. One was the 2004 WDFW recommendations. And we've -- it's in the record. I'm sorry that the exact citation's not coming to mind. But it's long been a discussion here about a source of the offset figures.
And the other -- other background that I was using was the references from the application indicating that some personal communications had gone on, some consultation with WDFW, over this exact figure, and so

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it was my assumption at that time that the smaller offsets, which have fluctuated a bit in size, were derived from -- from consultation.

So since that time, I've had a chance to review Mr. Watson's testimony as well as his recent publications on the ferruginous hawk in Washington and in this area. And he makes -- he's brought up some new information that is, I think, very important to consider and very compelling. And the -- he -- the two-mile buffer is his recommendation, or maybe I should say more broadly, coming from WDFW.

And I think, first off, it's based -- more than any of these other numbers that have been put out for buffer size, it is based in traceable biology. In other words, the two miles is reflective of his findings of the size of core areas that ferruginous hawks use to maintain and occupy their nest territories. So we can tie that number back to a biological reality.

The second reason I think that the two-mile offset is valid is -- not quite sure what category to lump this into. Let's say more of a administrative category in the sense that WDFW is the agency that is responsible for managing this bird in the state. They're the agency that will be responsible for

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recovering this bird, recovering its populations in the state.

So I would give them significant deference in identifying what they need, what they believe is necessary to recover this bird's population within the state.

Q You didn't -- you sort of answered the question but not quite.

A Sorry.

Q Can you just tell me sort of mechanically, how did you come to make that change? Did somebody call you? Did you call somebody else to say, Hey, I got this wrong; I need to fix it?

How did it come about that you submitted supplemental testimony?

A I read Watson's -- as I said, read Watson's testimony, read his papers, and concluded that my initial testimony should be revised, was incorrect. And so I approached Ms. Reyneveld and said, I -- I think this needs to change.

Q So it was your idea to make the change?

A Yes.

Q Okay. And the change that you're talking about, that doesn't change your -- your conclusion that this needs to be a nuanced -- as you said, a nuanced and

Page 1593

biologically informed approach to an offset; is that right?

A That's correct. And if I could adjust a little bit to that.

Mr. Jansen has put forward some information -- which, again, is part of the record -- looking at the status of hawks in the project area; and specifically, nesting attempts, nesting territories. He has made a point through those submittals that there is encroachment on the site of residential developments. And some of those residential developments are in close proximity to historic ferruginous hawk nest sites.

So I think that that -- given the biology of the hawk, I think that's a valid concern. And I think that there is a logical conversation which should take place about whether some of those nesting territories in proximity to residential development are ever going to be viable again for the ferruginous hawk.

And this is a conversation that needs to come again from the managing agency, from WDFW. So I think they need to weigh in on that and really do a realistic assessment of what kind of territory can be maintained.

Because one of the things that's -- that's absolutely critical here with regards to this species is that even though we have unoccupied territories in

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proximity to the proposed project, we've got to maintain enough open territories suitable for reoccupation, that as the population starts to recover, it has places to go, it has places to reexpand into.

So that's really why it's so important to look at these historic sites and think about whether or not they could be repopulated as the -- as the ferruginous hawk recovers.

MS. PERLMUTTER: Your Honor, I'd ask that that entire response be stricken as nonresponsive.

JUDGE TOREM: Ms. Reyneveld.

MS. PERLMUTTER: With all respect -- with all respect to Mr. McIvor.

JUDGE TOREM: Ms. Reyneveld, any --

MS. REYNEVELD: I think it was responsive to her question.

MS. PERLMUTTER: Your Honor, if I may, it was not. I asked about just the appropriateness. I asked him if he continued then to believe that this should be -- the approach to buffers should be -- continue to be nuanced and biologically informed.

And although it was an interesting discussion and something that I will revisit in other ways, in terms of talking about the need to leave habitat open so that

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maybe these birds will come back someday, that -- that's all nonresponsive to my question.

JUDGE TOREM: I agree it was an interesting answer, but considering the original question, it was nonresponsive. So we'll strike anything that didn't go directly to Ms. Perlmutter's question. I'll work with the court reporter to take a look at that and strike the appropriate material later.

MS. PERLMUTTER: Thank you very much.

Mr. McIvor, again, no -- no disrespect meant.

Ms. Masengale, would you be so kind, please, as to put up Exhibit 3016_R?

Wow. Thank you.

Q (By Ms. Perlmutter) Mr. McIvor, we've already started by talking about Region 6 of Fish -- the U.S. Fish and Wildlife and your mistake that it's not a two-mile buffer; it's a one-mile buffer that they recommend. Is that right?

A That's correct.

Q And they don't -- they don't -- they don't require a buffer like that. That's just their recommendation; am I correct?

A I -- I would have to go back and look. My statement in my testimony, as you see, said "requires." I would have to go back and double-check as to whether that's a recommendation or a requirement.

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Q If I told you that it was a recommendation, you wouldn't have any problem with that?

A No, I wouldn't.

Q Okay. And various other states also propose buffers when it comes to ferruginous hawk interaction with wind facilities; am I right?

A I'm sure they do. I'm not aware of specifics. I would expect that they do. I am not aware of specifics on this question.

Q And just to be clear, the ferruginous hawk is not a federally listed species, is it?

A That's correct.

Q And so going back to these other states, Utah and Colorado, they both recommend narrower buffers, don't they?

A I'm sorry. I don't know.

Q Okay. If I told you they did, you wouldn't have any reason to disagree?

A No.

Q No, you would not disagree?

A No, I would not disagree.

Q Thank you.

And you would agree with me, please, that there's

Page 1597

no published guidance in Washington about what a buffer should be with regard to a ferruginous hawk territory; am I right?

MS. REYNEVELD: Objection as to the definition of "published guidance." I think that's vague and an issue that's in dispute.

MS. PERLMUTTER: Okay. Mr. McIvor -- Your Honor, I'm fine with that. I can change the question.

JUDGE TOREM: Yes, that's fine. Go ahead.

Q (By Ms. Perlmutter) Mr. McIvor, if I talk about published guidance, what does that mean to you?

A Well, publicly available information that has either appeared in a peer-reviewed journal or been issued by an agency or organization through their own channels.

Q Would you agree with me that Washington's -- Washington's DFW has not published guidance regarding buffers when it comes to ferruginous hawks and wind facilities?

A No. I would disagree with you. Because the 2004 priority habitats and species guidance does give some buffer recommendations. Not specific, as I recall, to wind energy, but to human disturbance activities. And it also gives some leeway to biologists to assign buffer sizes appropriate to the situation at -- at hand. Give some latitude for interpretation. I think that's a better way to say that.

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Q Thanks. That's helpful.

Looking at Page 3 of your supplemental testimony.

A Whoops.

Q You with me? Okay.

And, in fact, to go back to this previous answer, the question was asked whether the recommendation had been formalized through agency guidance, and you said that the recommendation was given verbally and/or in written communications.

When you say "verbally," you mean orally? Somebody said that?

A Yes.

Q And "in written communications," you mean by letters or e-mails rather than in a published document; is that right?

A That's correct.

Q Okay. On that same page, you say that the two-mile buffer would permit project implementation while preserving opportunities for species recovery.

What's the basis for that conclusion?

A Yeah, you know, I think a -- I think that's probably overstepping the bounds of my knowledge. I think we

Page 1599

would need some additional analysis to understand whether or not the project could be implemented in the presence of the two-mile buffer.

Q Okay. And just to be clear, you're not suggesting that responsibility for recovering the ferruginous hawk species rests on the applicant's shoulders, right?

A Absolutely not, no.

Q Okay. Yes, it does not rest on the applicant's shoulders?

A Correct. Correct.

Q Okay. And, in fact, there's no requirement that EFSEC consider the recoveries of species when issuing a site -- a site certification agreement; am I right?

A I -- I can't answer that question. I don't know.

Q Okay. If I told you I was right, you wouldn't have any reason for disagreeing with me?

A I would have no basis for arguing with you.

Q I love that. Thank you.

Can you say how much area would be taken out of availability if this two-mile buffer were imposed?

A No, I can't. Because I think there's insufficient information in my court for me to answer that question.

Q Can you tell me how many of the proposed turbines -- turbines would be eliminated by the two-mile buffer?

A No, I cannot.

Page 1600

Q Would the two-mile buffer apply to both active and historical nests?

A Yes. Yes, they would.

Q How many active ferruginous hawk nests are there in Washington State?

A Active. The last survey found 34 pairs of -- so 34 nesting territories.

Q And that's across the full state?

A Yes.

Q And what was the date of that last survey?

A I believe that was last year.

Q Okay. And how many active nests are there in the project area?

A There are none currently active as of this year.

Q How many historical nests are there in Washington State?

A I think it's 284. How's that for specific? That's what my memory recalls. Put that in the ballpark.

Q Good enough for me.

Of those 284, ballpark, how many of those are in the project area?

A Again, I -- I don't know exactly how many are in the project area. Historic, ballpark, probably 10, 12.

Q But you don't know that for sure?

A I don't know exactly, no.

Page 1601

Q Okay. And when we talk about historical nests, how far back are we going?

A Yeah, that's a good question.

I -- as far as I know, the record includes anything that's been located or detected since WDFW's been tracking these birds. I don't know that a historic nest site ever gets dropped out of the database.

Q So basically going back forever?

A Well, decades, yes.

Q Okay. Do you know what percentage of the historical nests in Washington State have never had any documented ferruginous hawk activity at all?

A No. A question for Mr. Watson, I believe. I don't know.

Q And would your answer be the same if I asked you about historical nests in the project area?

A Yes, it would be --

Q Okay.

A -- the same.

Q Is -- when you're talking about this two-mile buffer for historical nests, is there a cutoff date that we're looking at?

A This harkens back to the comment I made earlier about examining some of these historic nest sites that are in

Page 1602

close proximity to development. Because I do think there is a rational conversation about what could constitute a historic nest territory that has some probability of being reoccupied again in the future. And I think that there could be a process for identifying some of these historic sites and coming to an agreement that their likelihood of reuse would be slim or none.

Q So -- so I think I like where you're heading here, not that you care whether I like it or not.

But we're talking about -- we're going back to this sort of database nuanced approach; am I right?

A Yes. Yes, we are.

Q Okay. And would you agree to me that -- well, should the buffer apply to nests where activity has never ever been documented?

A Potentially, yes.

Q Okay. You listed in your -- in your -- let me just make sure I know which one.

In your supplemental testimony, you listed the materials that you reviewed before submitting that testimony, right?

A Yes.

Q Did you review the draft guidance that's currently under consideration at WDFW?

January 30, 2023

Sonia Bumpus, EFSEC Manager and SEPA Responsible Official
PO Box 43172
Olympia, WA 98504-3172

SENT VIA EMAIL AND US MAIL

RE: Scout Clean Energy Comments on Horse Heaven Wind Farm Draft Environmental Impact Statement

Dear Ms. Bumpus:

Please find attached to this letter our detailed comments concerning the Horse Heaven Wind Farm Draft Environmental Impact Statement (DEIS). We are providing you with the attached supporting documentation concerning a number of issues that address our broader thematic concerns related to habitat and wildlife issues. This supporting documentation also addresses clarification regarding the administration of a Technical Advisory Committee.

Generally, the DEIS is comprehensive and provides substantial analyses of environmental impacts, with detailed and clear mitigation measures that take into account the measures that the Applicant has built into its Application for Site Certification (ASC). Many of our comments address minor issues and corrections that should be accepted to improve the accuracy of the DEIS. However, several mitigation measures raise serious concerns that if not resolved could impact the economic viability of the project.

At its core, the Washington State Environmental Policy Act (SEPA) requires that an environmental impact statement include mitigation measures that are "reasonable and capable of being accomplished"; responsibility for implementing mitigation measures may be imposed upon an applicant "only to the extent attributable to the identified adverse impacts of its proposal." Voluntary additional mitigation may occur (see WAC 197-11-660).

Relative to the Council's responsibility to address guidelines for protection of the natural environment, EFSEC's rules specify that the energy facility application shall give due consideration to any project-type specific guidelines "established by state and federal agencies for assessment of existing habitat, assessment of impacts, and development of mitigation plans". The application shall describe how such guidelines are satisfied. For example, WAC 463-60-332(4) specifies that "*wind generation proposals shall consider Washington state department of fish and wildlife Wind Power Guidelines, August 2003, or as hereafter amended*."

Below is a summary of the more significant measures that we believe do not meet "reasonableness" and "attribution" tests in SEPA or align with the Wind Power Guidelines. Our supporting documentation attached to this letter on several of these issues provides more detailed analysis for your consideration.

1. **Indirect Habitat Loss (**Habitat Mitigation Measure 5): Scout's greatest concern with the DEIS is the novel concept of a 0.5 mile "zone of influence" (ZOI), ostensibly to address "indirect" impacts. See impact analysis discussion in DEIS Section 4.6.2 and mitigation measures Hab-5, Spec-4, Spec-12. The ZOI would be mandated around the facility infrastructure, with supplemental surveys and mitigation imposed in addition to the habitat mitigation plan negotiated with WDFW. The ZOI results in the duplication of mitigation measures and imposes unreasonable mitigation expense, disproportionate with the adverse impacts. Specifically, the DEIS acknowledges that this ZOI would create an additional buffered area of 53,128 acres to address "indirect impacts." This concept finds no support in the Guidelines. In fact, gradient analyses are considered as research, and the studies cited in the DEIS do not reflect the character and habitat of the facility site. Moreover, as discussed in Attachment 1 to our comments, the literature and studies cited to support the ZOI concept do not in fact support it at all. Instead, the ZOI would impose novel significant and unnecessary regulatory duplication under the guise of "indirect impact" mitigation and would require that Scout monitor speculative impacts on lands to "manage the ZOI" that are not within its legal control. Further, the ZOI would be imposed on agricultural and developed land, which accounts for 75% of the facility. This is a particular concern, given that the Guidelines have the overarching purpose to direct wind energy development toward agricultural and developed lands and away from areas with significant habitat values. Consequently, the Guidelines state that no mitigation is required for agricultural and developed lands. In sum, there is no precedent in the Northwest for the ZOI concept, which is unreasonable and incapable of being accomplished, with no meaningful scientific foundation.

2. **Special Status Species** (various Mitigation Measures): Mitigation Measure Spec-5 establishes a 2-mile buffer for the ferruginous hawk based on nesting database (PHS) locations. Thus, if a ferruginous hawk appears after the Project is built, it would trigger the installation of an extensive automatic curtailment protocol within a 2 mile buffer area. PHS data contains nests first documented a century ago that no longer exist on the landscape. This level of impact must be limited to bona fide and viable nesting pairs, which can only be determined by statistically significant survey results. As written, the Applicant would be guided to avoid building infrastructure in all of these locations to limit seasonal curtailment risk. Ferruginous hawk exhibit high nest fidelity, meaning breeding pairs may return to the same area to nest year after year. In fact, no nesting ferruginous hawks were observed within 2 miles of the planned site infrastructure during raptor nest surveys conducted in 2022. Hence, it is likely that the DEIS would require mitigation where there is no probable significant adverse impact to mitigate.

None of the other sensitive species listed in the DEIS are commonly found at operational wind facilities in the Columbia Plateau Ecoregion (CPE) of Washington and Oregon. In an assessment of direct impacts to bird populations in the CPE, population level effects to all sensitive species from wind energy operation, with the exception of ferruginous hawk, is unanticipated due to the relatively small number of fatalities documented and relatively large population sizes (Jansen 2023). This is true taking full account of the state and regional policies adopted to mitigate the

significant societal risks of climate change. The scope of the response for the recommended species-specific mitigation measures does not correspond with the level of biological impact for many of the species discussed.

Also, incidental observations (see e.g. Spec-6) to inform adaptive management measures provide a weak foundation to effectively modify Project measures that minimize impacts because site workers who are not trained to identify bird species in-flight will not be able to reliably report accurate observations. Adaptive management should be based on data from rigorous post-construction biological surveys that collect systematic data. Thus, separate species-specific management plans beyond what is proposed through the Wildlife Incident Reporting and Handling and System (WIRHS), and other wildlife fatality monitoring programs is unnecessary.

3. Locating Project Infrastructure Outside of Modeled Movement Corridors (Habitat Mitigation Measure 1; DEIS Section 4.6.2.5): The mitigation measure requiring no construction of infrastructure in wildlife corridors is not warranted due to the lack of impact in modeled wildlife movement areas. Movement models are very coarse and were not developed to be used in site-specific planning, but rather are meant to provide a regional perspective on habitats and connectivity generally, so were not intended to be regulatory boundaries. Further, the mitigation measure lacks specificity, clarity, and measurability. For example, connectivity corridors have been modelled for nearly a dozen wildlife species in the Columbia Plateau, yet the measure does not specify which species corridors to focus on or which models should be utilized. The term 'wildlife movement' is too broad a term to effectively design, quantify, and manage. Also, the requirement describing measures the Project will take for undetermined wildlife species to accommodate wildlife movement for power lines lacks scientific justification and credibility.

4. The Role of the Technical Advisory Committees (TAC) (Habitat Mitigation Measure 4; also see e.g. discussion on p. 4-193; and mitigation measures Wild-8, Hab-5, Hab-6, Spec-1, et al.): The DEIS appropriately relies on a Technical Advisory Committee ("TAC") to provide enduring post-construction monitoring of impacts for the operational duration of the Project. WAC 463-60-332(4) requires EFSEC's consideration of the WDFW Wind Power Guidelines (the "Guidelines") as a key measure in the application review and implementation. The implementation of operational monitoring by TACs is well established and detailed within the Guidelines. TACs are intended to be advisory, with multi-agency and stakeholder participation. Yet without precedent or clear explanation, the DEIS would require that a TAC be convened one year prior to construction—at a time when no operational monitoring is needed, and EFSEC is typically working with the applicant on pre-construction engineering plans and the like. Instead, the DEIS appears to empower the TAC to participate in construction phase regulatory review, in a role beyond "advisory." This role is infeasible, unnecessary, and unprecedented. In the attached comments, Scout proposes alternative language to address this problem, maintaining the important and routine role of the TAC during project operation as described in the Guidelines.

5. Wind Turbine Residential Setbacks: (Mitigation Measures Vis-1, SF-1): The DEIS abandons the Council's long-established standard to mitigate the visual impacts of wind facilities through a well understood setback requirement. In prior EFSEC facilities, EFSEC has imposed a setback standard of 4X wind turbine height from any non-participating residences.

Instead, the DEIS imposes a 0.5-mile setback, regardless of wind turbine height. This standard defies a practical, objective standard in prior site certificates that responds to the actual wind turbine height—the taller the wind turbine, the greater the setback distance. A 0.5-mile setback abandons a clear, objective, understandable standard that reflects and responds to the actual impact. In fact, non-EFSEC approved wind energy projects typically rely on the 4X residential setback standard adopted by EFSEC as a standard that is meaningful as wind turbine designs are increasing in rotor diameter for improved efficiency with corresponding increases in tower height.

Also, the DEIS establishes a new setback requirement in the state for shadow flicker mitigation at nearby residences. Because the Applicant is addressing shadow flicker concerns directly through agreements with participating residences, if maintained this mitigation measure should only apply to non-participating residences. In addition, this mitigation measure establishes in effect a zero tolerance for shadow flicker and requires curtailment. This requirement does not reflect an objective evaluation of impacts on residences and sets a precedent well beyond the annual 30 hour average industry standard the Applicant is committed to follow. This mitigation measure is not related to specific adverse environmental impacts, nor is it tied to policies, plans, rules, or regulations formally designated by an agency.

We appreciate the opportunity to comment on the DEIS.

Sincerely,

Matt Heck
Vice President, Horse Heaven Wind Farm, LLC

Attachments:
1. DEIS comments (supporting documentation and Excel spreadsheet)
2. DAHP Concurrence Letter and revised determination of eligibility letter
3. Benton County Code (applicable provisions) and Comprehensive Plan
4. SMID Water Bank Auction (acquired water rights)

Attachment 1
Applicant Comments on DEIS and Supplemental Documentation

Attachment 2
DAHP Concurrence Letter and revised determination of eligibility letter

Attachment 3
Benton County Code (applicable provisions) and Comprehensive Plan

Attachment 4
SMID Water Bank Auction (water rights)

Attachment 1
Applicant Comments on DEIS and Supplemental Documentation

Comment Number	DEIS Location	Mitigation Measure	Recommendation
1	ES-2.1		Section ES-2.1 of the DEIS reflects the maximum nameplate generaing capacity of up to 1,150 megawatts for the facility. The Applicant notes that the updated ASC, Section 2.3, provides clarification on the generating capacity of the project as follows: (since the time of the initial application) "BPA has since allowed interconnection requests that facilitate greater installed aggregate nameplate generating capacity, provided the instantaneous generation is controlled to not exceed the grid injection capacity, which is the maximum energy in MW that can be injected into the transmission grid at any instant in time without exceeding the allowable authorized grid injection capacity set by BPA (the transmission provider). Consequently, a generation facility may have a greater nameplate generating capacity than grid injection capacity by installing more Turbines or solar modules. This change by BPA does not alter the facility components proposed for the Project." As a result of this clarification, the Applicant requests that total nameplate generating capacity of the facility not be restricted by any Site Certification Agreement, but that any limits be identified based on project component impacts as described elsewhere in the ASC and DEIS. For example, no more than 244 turbines would be installed under any scenario; turbines would be no higher than 496 feet (under Turbine Option 1) or 671 feet (under Turbine Options 2); etc.
2	ES-35; Section 4.9.3, p. 4-312	CR-1	Revise CR-1 4th bullet to read "*Notify Tribal representatives by offering the opportunity to be included during any ground-disturbing activities (Cultural Resource Monitor)*" . This change is necessary to accommodate the desires of the First Nations for active involvement. Construction activities must be allowed to proceed if the First Nations choose to not be present.
3	ES-38	Vis-4	Delete duplicate Vis-4 mitigation action.
4	2.1.1		Recommend replacing Tables 2-2 and 2-3 in the DEIS with Table 3.4-14 in the ASC (also Table 3 in the Revised HMP Appendix L to the ASC) submitted in early January 2023), where impacts are shown, and Table 4 in the Revised HMP, Appendix L to the ASC, where the WDFW supported mitigation ratios are shown. Utilizing the impact acreage numbers in the tables in the ASC and Appendix L will make the impact and mitigation discussions in the DEIS align with standard practice in Washington EFSEC permitting. Changes in those tables should be carried through the document to ensure consistency. Calculations of permanent and temporary disturbance in Tables 2-2 and 2-3 do not coincide with definitions of permanent/temporary disturbance used in ASC. The draft EIS definitions of permanent vs temporary disturbance are not consistent with precedent for calculating impacts for solar facilities in Washington. The EIS includes all of the acres of habitat that will be modified by the Project (e.g., vegetated areas under solar arrays) as “permanent” impacts, which result in inflated assessments of Project impacts in multiple sections of the draft EIS. In the absence of WDFW solar siting guidelines, Applicants, EFSEC, and WDFW have been relying on the 2009 WDFW Wind Power Guidelines to inform mitigation decisions on solar projects. As projects have been proposed WDFW and EFSEC have accepted the characterization of impacts to habitat under solar panels as modified or altered, rather than permanent (which is equivalent to impermeable surfaces as defined in the 2009 Wind Power Guidelines) or temporary. Along with that separate characterization for habitat under solar arrays WDFW has supported modified mitigation measures that are less than those outlined for permanent (i.e. impermeable surface) impacts in the 2009 WDFW Wind Energy Guidelines. The mitigation ratios proposed for modified habitat are consistent with other recent solar projects approved by EFSEC (e.g., Goose Prairie Solar) and were supported by WDFW during coordination meetings in 2022. The intention was to align with the permitting norms that have been established by WDFW and EFSEC in the absence of solar siting guidelines, and to distinguish between mitigation requirements for impermeable surfaces such as roads or concrete foundations vs. the area inside the solar fenceline, which is modified but still provides wildlife habitat.
5	3.4.1		A review of NWI data against the micrositing corridor did not identify any emergent or palustrine wetland features. Detailed surveys did not identify wetland features within the micrositing corridor. Request EFSEC provide a map showing the location of this feature.
6	3.4.1.2		The draft EIS estimate of 842 acres of existing impervious surface within the Project Lease Boundary is overly conservative. Recommend revising this estimate consistent with Comment #4 on ASC Section 2.1.1. Developed/disturbed habitat contains, but is not the same as, impervious surfaces. As described in Section 3.4.1.1 of the ASC, habitat mapped as 'developed/disturbed' includes roads, buildings, and other structures, but also includes vegetated areas. "Vegetation that does occur in these areas consists primarily of ruderal species (i.e., species that colonize or thrive in disturbed areas), including many non-native species."
7	3.9.2.1		Page 3-149, first paragraph of section says "45BN2092 and 45BN2146 were identified through shovel testing,". Recommend changing the third sentence in 3.9.2.1 to read "Precontact isolates 45BN2092 and 45BN2146 were found on the ground surface and verified to be isolates through shovel testing".
8	3.9.2.1		Page 3-152, third full paragraph, states "..and HRA determined that neither site is eligble for listing in the NRHP...". Since HRA can only recommend action, the word "determined" should be replaced by "recommended".

Exhibit M

9	3.9.3.2, p. 3-154; 4.9.2.1, p. 4-282		Page 3-154, the grain elevator discussed here (ID 722995) and the two Nicoson buildings (724937 and 724938) were recommended as not eligible and DAHP concurred (see **Attachment 2** for concurrence letter); however, they are shown on WISAARD as eligible. HRA contacted DAHP to assess this discrepancy and DAHP subsequently issued a revised Determination of Eligibility (**Attachment 2**) concluding that they are eligible. However, they will not be physically disturbed by the project and there will be no significant impact to the resources. It is recommended that the 3rd paragraph on page 4-282 be revised as follows: The ~~two~~ remaining four historic-period architectural resource~~s —~~an electricity transmission line, resource 721666 (detailed in Section 3.9), the Nicoson Rd. barn storage building (resource 724937), the Nicoson Rd. cribbed grain elevator (resource 724938), and a grain elevator (resource 722995) —are eligible for listing under the NRHP. ~~Any impacts on these resources would be high in magnitude since they are evaluated as eligible for listing in the NRHP.~~ The Project will impact the environmental setting of these resources via s~~S~~ome local, short term, unavoidable impacts are anticipated to occur on the environmental setting of the resource~~s~~, through the alteration of the viewshed~~, though the integrity and context of location would remain~~ (with no impacts occurring to the ~~structures~~ resources themselves). However, setting is not one of the most important aspects of the resources' integrity, and a change to the setting does not result in a loss of their integrity (i.e., their ability to convey their NRHP significance), so the impact on the four resources would be negligible in magnitude.
10	3.9.5		Page 3-156, first paragraph of the section states "These include two sites with mixed components (e.g., both precontact and historic cultural materials)." Recommend changing "two" to "one", as only one site (45BN2153) has both types.
11	3.9.5		Table 3.9-3, Page 3-158, in the Table under 17302 County Well Road, recommend adding the other three Property IDs "724940, 724941, and 724942".
12	3.9.5, p. 3-158; 4.9.2.1, p. 4-282 and p. 4-285		Table 3.9-3, Page 3-158, in the Table under 45BN2148, this number is the archaeological component, the architectural component is the Nicoson Farmstead and DAHP Property ID's 724937 and 724938. Recommend changing "45BN2148" to "Farmstead Property ID's 724937 and 724938". Page 4-282, third full paragraph, instead of 45BN2148, it should be the Nicoson Farmstead - the archaeological site 45BN2148 is unevaluated for NRHP eligibility. Recommend changing "45BN2148" to "Farmstead Property ID's 724937 and 724938" at this location. Similarly, Table 4.9-3, page 4-285, 45BN2148 is the archaeological component; the architectural component is the Nicoson Farmstead and DAHP Property ID's 724937 and 724938. Recommend changing "45BN2148" to "Farmstead Property ID's 724937 and 724938".
13	4.2.2.7, 4.4.3	Geo-1	Instead of the current language of mitigation measure Geo-1, "To limit erosion and disturbance of natural soil profiles, soil disturbance would be postponed when soils are excessively wet, such as following a precipitation event," if EFSEC chooses to make this proposed mitigation a condition of the SCA, we recommend revising the measure to read: "Minimize soil disturbance activities with the potential for soil compaction when soils are saturated, such as following a major precipitation event (e.g., 5-day antecedent rainfall of greater than 1.1 inches in the dormant season or greater than 2.1 inches in the growing season). Direct construction away from areas with saturated soils and where drainage may concentrate until soils are no longer saturated, and limit vehicular traffic to established access roads. Where possible, leave existing vegetation root structure intact to enhance soil stability and infiltration capacity. Where necessary, utilize BMPs such as low-ground pressure and/or long-reach equipment, gravel or timber pads, and localized engineered drainage improvements (e.g., interceptor drains, detention basins). Where soil compaction is observed to have occurred, decompact subsoils to a minimum depth of 18-inches or as identified in site reclamation plans and lease agreements."
14	4.3.2.4	A-1	Condition A-1, requiring a speed limit during construction of 15 mph, is unworkable as written and we request that it be removed in accordance with WAC 197-11-660 (c). Heavy equipment (tracked vehicles, cranes, etc) will maintain speeds below 15 mph but it is unrealistic to expect construction workers driving from one part of the site to another to maintain speeds below 15 mph. In addition, maintaining speeds of 15 mph on any public unpaved roads would unreasonably delay local residents. Other measures as described in the ASC will reduce dust generation to an acceptable level during construction. The applicant reviewed site certification agreements previously issued by EFSEC for large scale renewable energy projects (e.g. Desert Claim, Goose Prairie, Kittitas Valley, Whistling Ridge, Wild Horse) and only one had a speed limit specified in the SCA; Kittitas Valley required construction vehicles to be limited to 25 mph. This is a reasonable measure and EFSEC should not require a more restrictive measure for the Horse Heaven project.

15	4.4.3	W-1	Recommend deletion of W-1. All site ephemeral and intermittent streams are dry for most of the year and work can safely be done in a wider work period than the typical tributary fish windows, which are based on streams with water present and direct connectivity to waters with fish use. As defined in WAC 220-660-110, authorized work times are based on reduction of impacts to fish life at sensitive life stages. Because the streams within the Project boundaries are not fish-bearing and do not have characteristics of streams that can provide fish habitat even if water were present, there would be no impact to fish life stages from Project work completed in the dry. Additionally, WAC 220-660-110 authorizes work outside of the defined fish windows when sufficient mitigation measures are in place that eliminate risk to fish life. Therefore, the concern over work in the streams within the Project boundary is to prevent impacts to downstream, fish-bearing waters such as sedimentation. This protection can be provided with BMPs including working exclusively in the dry and when no significant precipitation is forecast; installation of appropriate BMPs to prevent sediment from entering the stream in the event of precipitation, and prompt restoration of all impacts within channels prior to the end of dry conditions, including returning channels to existing grade and initiating revegetation. With these mitigation measures in place, there is no need to restrict work in the dry stream channels to the August 1 to September 15 window. Mitigation measure W-1 is not necessary to protect fish; less restrictive measures are available and required and adequately protect the resource consistent with state policy and standard measures. The proposed measure is not consistent with state guidelines or policy. Therefore, in accordance with WAC 197-11-660 (a) and (b), the proposed mitigation measure is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA.
16	4.4.3	W-7	Mitigation measure W-7 requires that the 100-year floodplain be clear-spanned. The floodplain is 360 feet wide at the planned crossing location and support structures can reasonably be placed outside of the floodplain. However, construction activities within the floodplain such as crossing with construction vehicles should be allowable in dry conditions with standard BMPs in place to prevent erosion. Recommend revising W-7 as follows: Clear-span the transmission line to avoid temporary disturbance to the 100-year flood plain. Site transmission line poles outside the 100-year floodplain. The mitigation measure addresses physical disturbance of the 100-year floodplain, a CARA. Clear-span would minimize physical disturbance associated with transmission line poles and is not intended to restrict other essential construction traffic activity.
17	4.4.3	W-8	Recommended mitigation measure W-8 would require spill response equipment in every vehicle accessing the site from construction through decommissioning. As written, this mitigation measure would require vendor, agency, and personal vehicles accessing the site to carry spill equipment. Recommend the measure be rephrased to read "Spill response equipment would be stored in ~~every~~ all project-owned vehicles ~~accessing the site~~, including work trucks and heavy equipment, during construction, operation, and decommissioning."
18	4.4.3; 4.7.2.4; 4.15.	W-10; ENR-5	The proposed mitigation measures W-10 and ENR-5 requiring recycling of solar panel wash water should be deleted because they are inconsistent with WAC 197-11-660, which requires that mitigation measures be related to specific adverse environmental impacts and that they be reasonable and capable of being accomplished. The impact of washing solar panels is correctly identified as 'negligible, temporary, unlikely, and confined' in Table 4.4-4b. Operational impacts on the public water supply are described as 'low', based on an analysis considering that all operational water would come from the City of Kennewick. Please see the Revised ASC submitted to EFSEC on December 30, 2022, for supplemental information on water sources; an alternate water source has been identified that does not rely on the City of Kennewick. In addition, **Attachment 4** provides documentation that Scout will be able to lease water from the Department of Ecology sufficient to supply water during construction and subsequent operations. Any public water supplier with available supply would not be adversely impacted by providing that water for agreed rates; if they do not have available water, they will not sell it. Therefore, the operational impact on public water supply would be negligible. Requiring such a measure is disproportionate to the degree of impact and for these reasons is inconsistent with WAC 197-11-660 and should not be included in the SCA.
19	4.6.2	Hab-5	Recommend removal of the analysis of indirect impacts and requirements for mitigation within a 0.5 buffer (Zone of Influence) around the Project boundary. Inclusion of analysis and mitigation for indirect habitat impacts results in a change in mitigation policy for Washington EFSEC projects and is infeasible to implement as written. For full explanation and rationale refer to **Response to Hab-5 in Attachment 1.**
20	4.6.2.5	Hab-1	Recommend removal of the Hab-1 Mitigation Measure from the DEIS. Regional wildlife corridor models are too coarse to be used for site-specific project siting and permitting and were not intended to be regulatory boundaries. For full explanation and rationale refer to **Response to Hab-1 in Attachment 1.**
21	4.6.2.5	Hab-2	Recommend changing Hab-2 Mitigation Measure to read: *Transmission line crossings of canyons and draws would be minimized. Where crossings are required, the Applicant would provide EFSEC with rationale for the crossings and propose any appropriate additional mitigation measures warranted to reduce potential barriers to movement and wildlife collisions. The mitigation measure reduces potential Project related barriers to wildlife movement while allowing for continued monitoring and adaptive management of potential Project related barriers.*

22	4.6.2.5	Hab-4	Recommended Hab-4 be removed and replaced with following text. For full explanation and rationale refer to **Response to Hab-4 in Attachment 1**. As a condition of permit approval, EFSEC will require a Technical Advisory Committee (TAC) be formed by the Certificate Holder to advise on the implementation of minimization and mitigation measures and monitoring studies during operations. The TAC will be established prior to commercial operations with representation from, but not limited to: WDFW, the Washington Department of Natural Resources (DNR), Yakama Nation and CTUIR resource experts, Benton County, the U.S. Fish and Wildlife Service (USFWS), landowner(s) and other local interest groups. The TAC will provide a neutral forum in which independent and informed parties can collaborate with the Certificate Holder, and make recommendations to the Certificate Holder and EFSEC, if the TAC deems additional studies or mitigation are warranted to address impacts that were either not foreseen in the Application or the Environmental Impact Statement (EIS), or exceed impacts that were projected (WDFW 2009, Section 3).
23	4.6.2.5	Hab-6	Recomend removal of Mitigation Measure Hab-6. A final Project design will be submitted to EFSEC prior to construction. Provided the design adheres to all requirements outlined in the Final EIS and Site Certification Agreement issued for the Project, no additional approvals should be required. If the Project varies from the terms and conditions of the FEIS or SCA then approvals will be sought through the standard process with EFSEC. Also refer to **Response to Hab-4 in Attachment 1** regarding the role of the TAC.
24	4.6.2.5		Spec-1 through Spec-13 are species related measures with the aim of identifying and minimizing effects on species during Project-related activities. They all involve pre-construction surveys and then some determination of whether further data collection or mitigation is required. We recommend removing these measures and consolidating them into one measure that captures the intent of Spec-1 through Spec-13. This approach is a better match for how surveys will actually occur and allows for close coordination with WDFW and EFSEC to determine if any additional surveys or mitigation should be completed. The recommended new mitigation measure is located below in this comment. The scope of the response for the recommended species-specific mitigation measures do not correspond with the level of biological impact for many of the species discussed. For example, one observation of one blue heron during an avian use survey. The mitigation measure (SPEC-6) that requires the Applicant maintain a database of incidental observations does not result in mitigation measures that reduce mortality. Separate management plans for individual species and survey requirements should be consolidated into one general preconstruction clearance survey requirement for Threatened, Endangered and Sensitive Species (TESS) survey to adequately address avoidance and minimization measures during construction. Incidental observations to inform adaptive management measures provides a weak foundation to effectively modify Project measures that minimize impacts. Adaptive management should be based on data from rigorous post-construction biological surveys that collect systematic fatality data. None of the sensitive species listed in the DEIS are commonly found at operational wind facilities in the Columbia Plateau Ecoregion of Washington and Oregon. In an assessment of direct impacts to bird populations in the CPE, populations level effects to all sensitive species, except ferruginous hawk, from wind energy operation is unanticipated due to the relatively small number of fatalities documented and relatively large population sizes (Jansen 2023). Thus separate management plans beyond what is proposed through the Wildlife Incident Reporting and Handling and System (WIRHS), and other wildlife fatality monitoring programs is unnecessary. Therefore, in accordance with WAC 197-11-660 (a) and (b), the proposed mitigation measure is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. As discussed in response to HAB-4 and HAB-5 (see **Attachment 1**), the development and advisory role of the TAC is intended to occur during the operational phase of the Project and not during the construction phase. The purpose of the TAC is advisory in nature and meant to review post-construction monitoring data and make suggestions to the project owner and EFSEC regarding the need to adjust mitigation and monitoring requirements based on results of monitoring data and other relevant data (WDFW 2009). The TAC is not meant to serve as an arbiter that deems the adequacy of a construction design or serve as a surrogate for a permitting authority. RECOMMENDED NEW SPEC-14: The Certificate Holder will complete a pre-construction survey for species identified as special-status in the ASC. The survey will be completed during a time of year when species are most likely to be detected (likely spring/summer), during the survey year prior to construction start. If any special-status species are observed during the pre-construction survey the Certificate Holder will coordinate with WDFW and EFSEC to determine if any additional minimization measures should be implemented during construction and if any additional surveys or data collection should be completed and the timing of that work.

25	4.6.2.5	Spec-1	In accordance with WAC 197-11-660 (a) and (b), proposed mitigation measure Spec-1 is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. Recommend revising Mitigation Measure Spec-1 as follows: The Applicant would conduct pre-construction surveys for sensitive reptile species prior to alteration or destruction of suitable habitat such as areas within the Lease Boundary identified as core habitat in GAP mapping, as well as shrubland (e.g., shrub-steppe, rabbitbrush). These surveys will be conducted along with surveys for other special status species as described in mitigaton measure **Spec-14.** The results of pre-construction surveys would be shared with EFSEC and WDFW and any necessary setbacks or modifactions to the construction schedule to minimize impacts on species observed would be determined. ~~ould be contacted prior to undertaking these surveys~~. ~~f these species are identified through pre-construction surveys, the Applicant would prepare a Reptile Management Plan to reduce potential impacts on habitat, mortality, and barriers to movement. The Reptile Management Plan would describe:~~ ~~▪ How the Applicant would avoid suitable habitat, including where the species were observed~~ ~~▪ How the Applicant would implement management recommendations in Larsen (1997)~~ ~~▪ How the Applicant would maintain rodent burrows in suitable reptile habitat (e.g., shrub-steppe)~~ ~~▪ Additional mitigation measures that would be implemented to reduce potential mortality of these species during the construction and operation stages of the Project~~ ~~The Reptile Management Plan would be reviewed by the TAC and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management would be reviewed by the TAC prior to implementation (see Hab-4).~~ The mitigation measure avoids and reduces potential striped whipsnake and sagebrush lizard habitat loss and mortality while allowing for adaptive management through Project construction and operation.
26	4.6.2.5	Spec-2	In accordance with WAC 197-11-660 (a) and (b), proposed mitigation measure Spec-2 is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. Recommend removal of Mitigation Measure Spec-2. Applicant will record and report any observations of America white pelican during recommended pre-construction surveys described above in **Comment 24.**
27	4.6.2.5	Spec-4	Recommend Mitigation Measure Spec-4 is revised as follows (see Comment 24 for proposed modified condition Spec-14): T~~he Applicant would conduct burrowing owl surveys within areas of direct loss~~ Applicant will record and report any observations of burrowing owl during recommended pre-construction surveys described in mitigation measure **Spec-14.** ~~(permanent, temporary, and modified) and associated ZOIs.~~ The results of these surveys would be provided to~~ the TAC and~~ EFSEC for review. ~~and used to inform the final Project layout.~~ ~~Active burrows would be retained and satellite burrows with characteristics used by burrowing owls would be avoided where feasible to maintain habitat capacity.~~ If active burrowing owl burrows are documented during pre-construction surveys the Applicant will coordinate with WDFW and EFSEC on any necessary buffers around active nests during construction. ~~Apply WDFW-recommended seasonal buffers (0.5 miles) (Larsen et al. 2004) for burrowing owl nests to avoid disturbing nesting burrowing owls, if present. Seasonal buffers (February 15 to September 25) would be applied during construction and for temporary disturbances, such as periodic maintenance, during operation.~~ ~~If active burrowing owls are identified in the Lease Boundary, the Applicant would develop a species-specific management plan that describes:~~ ~~▪ The location of active burrows~~ ~~▪ How active burrows would be avoided through re-alignment or reconfiguration of Project features~~ ~~▪ Additional mitigation measures that would be applied where disturbance to active burrows is expected (e.g., construction of artificial burrows)~~ ~~▪ Ongoing monitoring of active burrows~~ ~~The Burrowing Owl Management Plan would be reviewed by the TAC and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management would be reviewed by the TAC prior to implementation (see Hab-4).~~ ~~The Applicant would monitor access roads for burrowing owl use and mortalities. Mortalities would be reported to the TAC and EFSEC within 5 days of the observation. Incidental observations of burrowing owl use would be provided to the TAC on an annual basis.~~ The mitigation measure avoids and reduces potential loss of burrowing owl habitat, disturbance to burrowing owls, and burrowing owl mortality, while allowing for adaptive management through Project construction and operation.

28	4.6.2.5	Spec-5	Recommend changing Spec-5 Mitigation Measure to replace every occurrence where ferruginous hawk nests are mentioned with a new description as follows: "...*ferruginous hawk stick nests that have been occupied by a raptor species within the previous year's breeding season* ~~*nests documented in PHS data and in Horse Heaven Wind Farm, LLC (2021a)*~~ . PHS data contains nests first documented a century ago that no longer exist on the landscape. As written, the Project would be required to avoid these locations but this avoidance would have no material benefit to the species. Ferruginous hawk exhibit high nest fidelity, meaning breeding pairs may return to the same area to nest year after year; thus relying on the nesting status of the previous year is a useful indicator of what could occur the following year; however, this nesting pattern does not always transpire. For example, Nest 03 was occupied by a ferruginous hawk 2017–2019 but did not nest in 2022. The Applicant has committed to conduct raptor nest surveys annually at the Project for the first 5 years of operation and the results will be integrated into minimization measures through the adaptive management plan. The Applicant provided a revised Attachment L: Habitat Mitigation Plan to the ASC in December 2022 which includes more specificity about mitigation commitments regarding the location of mitigation lands, which are in alignment with the criteria included in Spec-5. The Applicant has also committed to implementing specific ferruginous hawk minimization measures and to installing nesting platforms in the ferruginous hawk core use area to improve nest productivity for the species. This was based on additional studies completed and submitted to EFSEC in December 2022, including the Ferruginous Hawk Population Viability Analysis, Ferruginous Hawk Resource Selection Function Analysis, and the Columbia Plateau Ecoysystem Cumulative Impact Assessment on Birds, Bats, and Land Cover.
29	4.6.2.5	Spec-6	In accordance with WAC 197-11-660 (a) and (b), proposed mitigation measure Spec-6 is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. Recommend removal of Mitigation Measure Spec-6. Applicant will record and report any observations of great blue heron, sandhill crane, or tundra swan during recommended pre-construction surveys described above in **Comment 24.** Larson et al. (2004) states Sandhill crane areas should be avoided but does not describe what activities would be permissible nor temporal aspects to the avoidance. Should mitigation measure Spec-6 be retained in the SCA, recommend greater clarity for buffers be provided on this mitigation measure. Recommended redline changes as follows: ~~The Applicant would maintain a database of incidental observation of great blue heron, sandhill crane, and tundra swan foraging in the Lease Boundary during operation. Observational data and proposed adaptive management strategies would be reviewed with the TAC annually (see Hab-4).~~ The Applicant would reduce the use of overhead power lines, where possible. If sandhill crane species are observed in the Lease Boundary, t~~T~~he Applicant would apply buffers recommended in Larsen et al (2004)(a) sandhill crane feeding areas (0.5 miles) and roosting areas (0.3 miles)~~, if documented in the Lease Boundary~~. ~~The mitigation measure avoids and reduces potential disturbance to and mortality of great blue heron, sandhill crane and tundra swan, while allowing for adaptive management through Project construction and operation.~~
30	4.6.2.5	Spec-7	In accordance with WAC 197-11-660 (a) and (b), proposed mitigation measure Spec-7 is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. Recommend removal of Mitigation Measure Spec-7. Applicant will record and report any observations of loggerhead shrike, sagebrush sparrow, sage thrasher, or Vaux's swift during recommended pre-construction surveys described above in **Comment 24.**
31	4.6.2.5	Spec-8	In accordance with WAC 197-11-660 (a) and (b), the proposed mitigation measure Spec-8 is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. If mitigation measure Spec-8 is retained in the SCA, recommend the following replacement language for Mitigation Measure Spec-8 (see **Comment 24** for proposed modified condition Spec-14): Applicant will record and report any observations of prairie falcon during recommended pre-construction surveys described in Spec-14. If nesting prairie falcons are observed before or during construction the Applicant will coordinate with EFSEC and WDFW to determine appropriate buffers from construction activity to minimize disturbance while the nest is active.
32	4.6.2.5	Spec-10	Recommend removal of Mitigation Measure Spec-10. Recommend reduction of impact magnitude from Medium to Low for Operations of Turbine Options and removal of mitigation measure. In accordance with WAC 197-11-660 (a) and (b), the proposed mitigation measure is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. Applicant will record and report any observations of jackrabbit during recommended pre-construction surveys described in **Comment 24.**

33	4.6.2.5	Spec-12	Recommend modifying Mitigation Measure Spec-12 as follows: ~~*The Applicant would conduct surveys for Townsend's ground squirrel colonies in areas of the Project disturbance footprint (including ZOI) to inform final design.*~~ *The* ~~*Applicant would*~~ *Applicant will record and report any observations of Townsend's ground squirrel during recommended pre-construction surveys described in Comment 25. If the species is detected during pre-construction surveys the Applicant will consider how to* ~~*avoid*~~ *minimize habitat loss in occupied colonies during construction* ~~*within Townsend's ground squirrel habitat concentration areas, as well as known colonies detected during pre-construction surveys in final design. Additional Townsend's ground squirrel colonies identified through surveys would be shown on Project mapping. and a species-specific management plan would be developed for areas where avoidance is not feasible. This plan would provide rationale for why colonies cannot be avoided and would provide additional mitigation measures, such as colony relocation and reconstruction of habitat features. The plans would be provided and discussed with the TAC, and approved by EFSEC, if avoidance of identified ground squirrel colonies is not feasible.*~~ *Observational data and adaptive management strategies would be reviewed with the TAC annually during operations . The mitigation measure reduces potential loss of Townsend's ground squirrel habitat, disturbance of squirrel colonies, and Townsend's ground squirrel mortality, while allowing for adaptive management through Project construction and operation.* The recommended measure to conduct ground squirrel surveys outside the Project lease boundary is beyond the control of the Applicant and is biologically unnecessary. Townsend's ground squirrel colonies are commonly found along roads, transportation rights-of-way, and other human development, thus indirect impacts to squirrel colonies outside the Project Boundary (particularly 0.5 miles away from disturbance) is not expected. Compensatory habitat mitigation for loss of habitat accounts for the loss of function and value to species that use the habitat, thus additional habitat mitigation for impacts to ground squirrels would duplicate the amount of mitigation the Project has already committed to. Precedent for how squirrel colonies are addressed during development can be referenced in the Goose Prairie Solar Project, permitted by EFSEC. No adjustments were made to final Project designs based on the presence of Townsend's ground squirrel colonies. Therefore, in accordance with WAC 197-11-660 (a) and (b), the proposed mitigation measure is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. Finally, the TAC is an advisory council that serves during the post-construction phase of the Project and per the Wind Power Guidelines its purview does not include Project design or construction elements.
34	4.6.2.5	Spec-13	In accordance with WAC 197-11-660 (a) and (b), the proposed mitigation measure is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. Recommend the following replacement language for Mitigation Measure Spec-13: The Applicant will negotiate access agreements for priority areas for the Yakama Nation and WDFW when needed to conduct desired pronghorn antelope surveys. Fencing around utility scale solar facilities is a US Fire and Electrical Code requirement. Pronghorn are a non-listed, introduced, and unregulated species that have limited use in the Horse Heaven Hills based on WDFW survey data. Once the Project is constructed, there are no feasible adaptive management strategies that would increase or decrease pronghorn use in the area.
35	4.6.2.5	Wild-1	Recommend changing Wild-1 Mitigation action to read as follows: "Upon completion of the two-year bird and bat post-construction fatality monitoring program, the Applicant would review the results with ~~EFSEC and WDFW~~ the TAC and determine whether additional monitoring and mitigation measures are necessary. This mitigation measure allows for continued monitoring and adaptive management of potential Project related wildlife mortalities."
36	4.6.2.5	Wild-5	Recommend revising Wild-5 Mitigation action to read as follows: "The Applicant would limit construction disturbance by identifying sensitive areas on maps and flagging any sensitive areas including wildlife features, such as wildlife colonies, active nests, dens, and wetlands in the field, but will be limited in circumstances to be allowed when the Applicant's biologist determines it not to be deterimental to the resource. The Applicant would conduct ongoing environmental monitoring during construction to ensure that flagged areas are avoided. This mitigation measure reduces potential loss of habitat and wildlife mortality."
37	4.6.2.5	Wild-6	Remove Wild-6 mitigation as it is redundant to the Applicant's mitigation as addressed on Page 4-190 "Personnel would be instructed to use the Applicant's incidental reporting process to document bird or bat casualties during construction of the Project." as well as in the Bird and Bat Conservation Strategy Section 7.2.1 Compliance and Reporting resource protection measures, including: 2) the importance of these resources and the purpose and necessity of protecting the resources, and ensuring this information is disseminated to applicable contractor personnel, including the correct reporting procedures. It also states that personnel will be instructed to use the HHWF incidental reporting process to document bird or bat casualties during construction at the Project.

38	4.7.2.4	ENR-6	Mitigation measure ENR-6 would require removal of wind turbine foundations below 3 feet bgs. Removal down to 3 ft bgs is standard practice for wind energy projects because that depth is adequate to avoid equipment strike from typical farming practice. Removal below this depth does not provide significant environmental benefit and is inconsistent with precedent (see e.g. Wild Horse SCA). The applicant has conferred with landowners and agreed to lease terms that require removal of foundations down to 3 ft bgs. Request the mitigation be modified to conform to standard practice as follows: To retrieve as much of the natural resources used in construction and operation of the Project as possible, the Applicant would demolish or remove all above ground level Project-related equipment and facilities from the Lease Boundary, and concrete foundations within 3 feet of the ground surface. If the Applicant intends to leave any other portion of the facility, ~~including concrete foundations,~~ they must submit a request to EFSEC in an update to their decommissioning plan.
39	4.7.2.4	ENR-7	Recommend that mitigation measure ENR-7 be revised similar to the Montague Wind condition described below to avoid ambiguity, with additional details to be provided in the decommissioning plan as it is developed consistent with timing in the SCA. The applicant is committed to recycling materials that can reasonably be recycled, such as metals, paper, glass, and recyclable plastic components. Used oils would be recycled. Appendix A to the ASC, Preliminary Decommissioning Plan, identifies additional recycling measures for solar module components, electrical wire, racking and fencing material, etc. However, mitigation measure ENR-7 as written is vague and risks requiring recycling of materials that could have theoretical potential for re-use but in practical terms no cost-effective process or plants have yet been developed. For example, some specialized project components such as lithium currently have very immature recycling markets. The Washington legislature is currently considering legislation that would support recycling such that wind turbine blades and solar panels would have markets available to allow recycling of these materials. We are hopeful that these markets will be developed by the time the project is decommissioned but request that if EFSEC opts to include this mitigation measure as a requirement in the SCA, that the measure be worded more carefully to make the requirement clear and tied to practical measures. In addition, please note that a search of previous SCAs in Washington did not identify recycling requirements for any projects but instead required development of a decommissioning plan to be approved by EFSEC. Site Certificates issued by Oregon EFSC identify recycling requirements in general but defer the details to a decommissioning plan. An example is Montague Wind, which includes the following requirement for both the construction and operations phases: **(112)** The certificate holder shall implement a waste management plan during facility operation that includes but is not limited to the following measures: (a) Training employees to minimize and recycle solid waste. (b) Recycling paper products, metals, glass and plastics. (c) Recycling used oil and hydraulic fluid. (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste hauler. (e) Segregating all hazardous, non-recyclable wastes such as used oil, oily rags and oil-absorbent materials, and mercury-containing lights for disposal by a licensed firm specializing in the proper recycling or disposal of hazardous wastes.
40	4.8.2, p. 4-281		Recommend revision of the draft EIS definitions in Section 4.8.2 of permanent vs temporary disturbance to be consistent with precedent for calculating impacts for solar facilities. The draft EIS includes all of the acres of temporary habitat alteration (e.g., vegetated areas under solar arrays) as “permanent” impacts, which result in inflated assessments of Project impacts in multiple sections of the draft EIS. The total acreage of agricultural lands that would meet the definition of a permanent (impermeable) impact is low – only about 489 acres. The remainder of the agricultural lands would have either temporary impacts or have habitat modification to grassland. As approved by WDFW for other projects in Washington, modified habitat within the solar facility does not warrant the same mitigation ratio as impermeable surfaces. All lands that are temporarily taken out of agricultural production would be returned to agricultural production at the end of the Project.
41	4.8.2.4	LSU-1, LSU-2, LSU-3	Recommend deletion of Mitigation Measures LSU-1, 2, & 3; Mitigation to limit conflicts between the Project and Lessors is considered overreach and unnecessary, as Project leases require such coordination over the term of the lease. State intervention and oversight in this arena is an unwarranted cost imposed on the certificate holder. The impacts associated with construction and decommissioning are short-term in nature and any damages are compensible. Recommend modifying Table ES-3a associated with Section 4.8 "Magnitude of Impact" from "Medium (operational changes)" to "Low".

42	4.9.1 4-278		On page 4-278, recommend revising the magnitude of impact rating scale as follows: Magnitude – Would the impact result in a direct or indirect alteration to the characteristics that would qualify the resource for inclusion in the NRHP in a manner that would diminish the resource's integrity, or, for precontact resources, does the impact result in a direct or indirect alteration to the resource itself or the surrounding environment? What is the resource sensitivity? Are Project-related impacts on historic and cultural resources negligible, low, medium, or high in terms of their severity? Resource sensitivity: Impacted resources are fully evaluated and not eligible for NRHP listing or are eligible but the impact will not result in an alteration to the characteristics that qualify the resource for inclusion in the NRHP in a manner that would diminish the resource's integrity. Additionally, applying an automatic rating of a high magnitude of impact to all NRHP-eligible resources, just because they are eligible, does not consider the fact that a resource will be impacted by the Project, but that impact is not on a characteristic of the resource that qualifies it for listing in the NRHP. For example, for some resources, the environmental setting is not a characteristic that qualifies them for the NRHP, so a change to the setting should not be rated as high; instead, it should be rated as negligible. This is the case with BPA transmission line 721666; the viewshed and environmental setting of this resource not a characteristic that qualifies it for inclusion in the NRHP, so a change to the viewshed is not a high impact. The remaining historic-period architectural resource—an electricity transmission line, resource 721666 (detailed in Section 3.9)—is eligible for listing under the NRHP. The Project will impact the environmental setting of this resource via some local, short term, unavoidable impacts through alteration of the viewshed (with no physical impacts to the transmission line resource itself). However, the setting is not an important aspect of the resource's integrity, and a change to the setting does not result in a loss of its integrity (i.e., its ability to covey its NRHP significance), so the impact on the resource would be negligible in magnitude.
43	4.9.2		Additional cultural resource investigations were completed in Fall 2022. These investigations demonstrated that resources 45BN2086, 45BN2088, 45BN2093, 45BN2157, and 45BN2158 are not eligible for listing on the NRHP and therefore do not require protection. This report will be provided to EFSEC as soon as reviews have been completed by tribal representatives and DAHP. Accordingly, the Final EIS should reflect updated information on eligibility and protection.
44	4.9.2.1		Table 4.9-3 states "Unevaluated or Not Eligible Precontact Isolates and Sites". Recommend deletion of "Unevaluated or Not Eligible" as precontact resources are not evaluated for the NRHP for this Project but are subject to state law.
45	4.9.2.1		Table 4.9-4 states "Not Eligible Precontact Isolate". Recommend deletion of "Not Eligible" as precontact resources are not evaluated for the NRHP for this Project but are subject to state law.
46	4.10.2.4	SF-1	Recommend changing SF-1 Mitigation Measure by replacing "nearby" with "non-participating" with respect to residences. Because the Applicant is addressing shadow flicker concerns directly through agreements with participating residences, this mitigation measure should only apply to non-participating residences. In addition, the following statement should be deleted; "As a last resort, the control system of the wind turbine could be programmed to stop the blades during brief periods when conditions result in a perceptible shadow flicker.", as it merely states the capability of software features and not required mitigation. In accordance with WAC 197-11-660, we request this change as it is not related to specific adverse environmental impacts, nor is it tied to policies, plans, rules, or regulations formally designated by an agency.
47	4.10.2.4 4-388 of DEIS	SF-2	Recommend the revision of SF-2 Mitigation Measure to refer to Mitigation Measure N-4 as they are duplicates and will be a common contact methodology.
48	4.10.2.4 p. 4-387	Vis-1	Recommend changing Vis-1 Mitigation Measure to read; Relocate wind turbines ~~located within the foreground distance zone (0 to 0.5 miles)~~to be at least four times the maximum blade tip height of the wind turbine rotor from nonparticipating residences~~ to avoid completely dominating views from these highly sensitive viewing locations~~. Siting the wind turbines this far~~urther~~ away would reduce the level of visual contrast and prominence (CESA 2011; BLM 2013). The draft EIS cites BLM 2013 guidance and CESA 2011 guidance for this recommended measure, but without noting the specific grounds. The report does not prescribe distance zones to be used to drive wind turbine placement or mitigate visual impacts. It actually states the opposite: *These distance zones are for use in conducting VRIs only. While distance is an important factor in the perception of visual contrast in the landscape (see Section 2.2.4), BLM distance zones are not used in visual contrast or impact analyses, or to identify appropriate mitigation (BLM Document pg 9)* . While wind turbines viewed within 0.5 mi from a non-participant residence would be in the foreground, EFSEC has previously established a precedent for setbacks for wind turbines of 4 x the MBTH (Kittitas Valley Wind, et al), which is an objective standard that provides a more nuanced approach to reducing impacts tailored to wind turbine size. The CESA document contains the following: *In closer proximity, turbines will appear larger, more prominent, and seen more clearly with more visible detail. The concepts of foreground, middleground, and background are often used to describe our visual experience of the landscape from different distances. Due to the size and high visibility of wind turbines, the distance zones historically used in visual analysis may need to be reconsidered. Certainly views of wind projects in middleground to background areas are an important consideration.* *Turbines viewed at distances of less than ½ mile (foreground) are likely to have the greatest impacts, and viewers will recognize a higher level of detail. At this distance, turbines appear as part of one's immediate surroundings. They may also be audible in certain conditions within this distance.*

Exhibit M

49	4.10.2.4 p. 4-387	Vis-4	Mitigation Measure Vis-4 is impractical and unnecessary, and should be eliminated. In accordance with WAC 197-11-660 (a) and (b), the proposed mitigation measure is not based on policies, plans, rules, or regulations, and is not related to specific adverse environmental impacts, and therefore it should not be included as a condition to the SCA. The BLM reference document (BLM 2013, Chapter 4) is not directly applicable to non-BLM land, but is simply a reference to be utilized where it may add value. Color-treatment primarily applies to solar thermal designs, not applicable to PV solar as panels cannot be treated. HHCEC will utilize bi-facial PV module design. *Per BLM 2013; Photovoltaic (PV) projects generally have lower visual impacts than the other technologies because of the low profile of the collector arrays and the lower reflectivity of the PV panels compared to the highly reflective mirrors used by the other technologies.* While color treating large tanks or storage buildings or other structures can be very effective visual mitigation per BLM's guidance, color treating photovoltaic panels is not feasible as it would interfere with energy conversion. Applying color treatments to support structures (stringer posts) would not be effective, because the posts are of small dimension and not highly visible because they are hidden by the panels. The visual simulations illustrate how the dark glass panels are the primary visual element of the solar field.
50	4.10.2.4, p. 4-387	Vis-6	Condition Vis-6; No non-participating residences are located adjacent to the solar arrays. The term 'viewpoint' is vague in this context; Key Observation Points were identified in the ASC to depict how the project would appear from various locations, but identification of a KOP for purposes of this analysis does not constitute identification of a viewpoint that requires protection. In addition, opaque fencing would create new adverse impacts to wildlife that we are trying to avoid by implementation of other measures such as raising fence off the ground. Opaque fencing would not alter visibility of panels from higher elevation KOPs such as Badger Mountain or Viewpoint 3. The applicant requests that if EFSEC opts to retain this mitigation measure as a condition to the SCA, that it be rephrased to require that only non-participating residences within 500 feet of a solar array be screened.
51	4.10.2.5		Recommend that the finding of unavoidable significant adverse impact in Section 4.10.2.5 is not warranted and should be de-escalated. The applicant acknowledges there would be a high degree of visual change from specific viewpoints, including residences and public areas where numerous wind turbines would be seen skylined across the ridgeline. However, the landscape from which the wind turbines could be seen is not protected, designated, or managed for scenic quality. No designated local, state or federal vistas or viewsheds have been identified. The surrounding landscape is of a highly modified, developed agrarian to suburban visual character, as exemplified by the presence of single family housing developments on many of the ridges within the Project vicinity. Following the CESA methodology for visual impacts used for preparation of the DEIS, the first criteria to determine the magnitude of visual impacts is "*does the project violate a clear written standard intended to protect the scenic values or aesthetics of the area or particular scenic resource* ." The Project does not "violate a clear written standard intended to protect the scenic values or aesthetics of the area or particular scenic resource" because no such written standard or resource is documented. Because the Project is proposed outside of and away from lands designated or protected for scenic quality, it is reasonable to assume that views within Project's setting will change over time. Lacking unmitigable adverse impacts to designated or documented protected sensitive views, it is recommended that the finding of unavoidable significant adverse impact is not warranted and should be de-escalated.
52	4.11.2.2		Page 4-411: Delete sentence *"The maximum modeled noise level at the one NSR with an in-pursuit status was 49 dBA at NSR 211. The maximum modeled noise level at the one NSR with an in-pursuit status was 49 dBA at NSR 211."* , since this landowner is not in-pursuit. Also delete the line item for NSR ID 211 in Table 4.11-8.
53	4.11.2.4, p. 4-420	N-3	Recommend revision of N-3 as follows: Monitor noise during nighttime operations (between 10 p.m. and 7 a.m.)~~, when operations have the potential to impact NSRs~~ of wind turbines that required noise reduction features or reduced operations to ensure that operation~~s~~al noise does not exceed state noise limits. This monitoring shall capture at least 72 hours of full power operation.
54	4.11.2.4, p. 4-420	N-4	The Applicant has proposed a complaint resolution procedure as identified in Section 4.1.1.3 of Updated ASC, "Utilize a complaint resolution procedure to address any noise complaints received from residents." The Applicant proposes revisions to Mitigation Action N-4 redlined as follows: N-4: Update the Applicant's ~~noise~~ complaint resolution procedure to better address and respond to ~~noise~~ complaints from the public. These updates should include ~~the following: a~~ complaint hotline during construction and provide a phone number to be posted on signage throughout the construction project and assure current site contact information is maintained with the EFSEC. The applicant would log all correspondence and promptly follow up with inquiries to provide appropriate resolution. The correspondence and resolutions will be logged throughout the construction process, and log will be made available to EFSEC during routine reporting or upon request. During the operations phase the site will be staffed and contact information will be available available.~~1) Set up a 24-hour "noise hot line" or other form of communication that the public can use to report any undesirable noise conditions associated with the construction of the Project, with the ability to log the date and time of a complaint. This line of communication would be maintained through the end of construction; 2) Make an attempt to contact the complainant within 24 hours; 3) Require that any complaints and their resolution be reported to EFSEC during monthly reports to the Council.~~

Exhibit M

55	4.11.2.4, p. 4-420	N-6	Recommend the deletion of N-6 Mitigation Measure. The Safety Manual described in ASC Section 4.1.2.5 would include contact information in case of safety issues or complaints about the Project. Complaints can be tracked through this process and responded to during normal working hours in a timely manner. Response during non-working hours to issues not related to safety is not justified and is not in accordance with WAC 197-11-660 (b) and (c) because the severity of the impact does not warrant providing extra staff to respond to complaints overnight.
56	4.12.2.5	R-1	The impact assessment for recreational impacts to use of DNR lands (Table 4.12-6) is overstated. DNR lands are currently under agricultural lease and are not used for recreation; therefore, conversion of DNR lands at the Sellards Road solar area to use for solar panels is not a high impact during any phase of the Project. Similarly, public roads in the Project vicinity are not often used by bicyclists; more heavily traveled bicycle trails are located along the Columbia River. Use of roads during construction for transport of equipment, materials, and workers would not significantly alter bicyclists' recreational opportunities in the Project vicinity. The actual impact on recreational opportunities resulting from Project construction, operation, and decommissioning would be negligible. Mitigation measure R-1 is disproportionate to the actual impacts on recreational opportunities resulting from construction of the project. Should EFSEC desire to retain a condition of approval relating to support for recreational opportunities, any measure requiring contribution to local recreational opportunities should be specific and measurable, such as the following: To mitigate the loss of recreational activities due to the Project, the Certificate Holder would coordinate with DNR and Benton County to identify new or participate in community planned recreational activities and/or improve existing recreational activities within the Lease Boundary and/or in surrounding communities (e.g., multi-use trails). The cost of the mitigation shall not exceed $50,000 in fees and construction and be be planned for completion within 5 (five) years of construction.
57	4.12.2.5	R-2	In order to make Mitigation Measure R-2 more clearly defined, should the Council decide to impose an approval condition on this topic, the applicant recommends the language be rephrased as follows: *To mitigate the loss of uninterrupted views of scenic viewpoints, the Certificate Holder would provide a minimum of five informational boards approved by DNR and EFSEC at viewpoints within the Lease Boundary and/or in the surrounding communities associated with scenic areas of interest. The cost of the mitigation shall not exceed $25,000 in fees and construction cost and be be planned for completion within 5 (five) years of construction completion.*
58	4.12.2.5	R-3	Mitigation measure R-3 is disproportionate to the actual impacts on recreational opportunities resulting from construction of the project. Impacts to bicycling would be limited and temporary. No mitigation for impacts to bicycling is warranted because there will be no significant loss of recreational opportunities. Should EFSEC desire to retain a condition of approval relating to support for recreational opportunities, it should be noted that the measure as phrased is not well defined. In order to make the mitigation measure more clearly defined, the applicant recommends the language be rephrased as follows: *...This plan should identify potential hazards within the Project Area (e.g., construction on or near common bicycle paths, no fly zones, etc.) and provide opportunities within the Lease Boundary and/or in the surrounding communities to identify or improve other similar recreation use areas to offset any recreation removed from the Project area as a result of the Project. The cost of the mitigation shall not exceed $15,000 in fees and construction cost and be be planned for completion within 5 (five) years of construction completion.*
59	4.14.2.4 4-489 of DEIS	TR-4	Recommend the deletion of TR-4 Mitigation Measure. Applicant proposal in ASC Section 4.3.3 addresses this potential for changes prior to construction. Applicant proposes to develop a detauled haul plan once wind turbines have been selected to confirm source locations and routes to be used during construction as well as anticipated loads and haul schedule. The current proposed Transportation Study provided would be verified and updated to include detailed condition assessments of roads to be used, structural assessments, and plans for improvementa and maintenance.
60	4.16.2.4	Socio-ec-1	Mitigation measure Socio-ec-1 would require an additional housing analysis prior to decommissioning. The justification for this measure is not clear; impacts to housing from decommissioning are assessed as negligible. In accordance with WAC 197-11-660, we request that this measure be removed as it is not related to specific adverse environmental impacts, nor is it tied to policies, plans, rules, or regulations formally designated by an agency.
61	Appendix 3.8-1		In Table 3.8-1A, PL Goal 4 Policy 1 states "..the Applicant's ASC provides documentation of tribal consultation." However, as described in Section 3.9, consultation between EFSEC and Tribes has not formally been initiated, and Scout and HRA's communication with the Tribes does not constitute consultation. Recommend revising this statement to replace "consultation" with "discussions".
62	Appendix 3.8-1 table 3.8-2A		Recommend changing various setback distances from property lines and roadways described in the draft EIS to reference the correct version of the BCC to clarify that the Project is in compliance with the standard that was in effect at the time the application was submitted. For example, references to wind turbine setbacks from dwellings in the draft EIS (Appendix 3.8-1 table 3.8-2A) are to a version of the Benton County Code that postdates the date of the application. The version of code in effect at the time the application was submitted (February 2021) states that all wind turbine bases must be set back from all dwellings not located on the same parcel at least one thousand (1,000) feet. Based on EFSEC precedent, a setback of four times the maximum blade tip height should be required. For the wind turbines described in Turbine Option 1, this setback distance is a minimum of 1,984 feet and for the wind turbines described in Turbine Option 2, this setback distance is a minimum of 2,684 feet. Similarly, the analysis references setbacks from exterior property lines and public road ROWs that were not in effect at the time the application was submitted. See **Attachment 3** for a copy of the BCC and Comprehensive Plan that was in effect at the time of application.

Attachment 1b – Supplemental Detail Regarding HAB-1, HAB-4, and HAB-5

RESPONSE TO HAB-1

Recommend removal of the Hab-1 Mitigation Measure from the DEIS.

Movement models are very coarse and were not developed to be used in site-specific planning, but rather are meant to provide a regional picture of habitats and connectivity generally. They were not intended to be regulatory boundaries. Further, the mitigation measure lacks specificity, clarity, and measurability. For example, connectivity corridors have been modelled for nearly a dozen wildlife species in the Columbia Plateau. The term 'wildlife movement' is too broad a term to effectively design, quantify, and manage. This recommended requirement lacks success criteria that makes the mitigation manageable. The requirement describing measures the Project will take for undetermined wildlife species to accommodate wildlife movement for power lines lacks scientific justification and credibility.

Further, the mitigation measure requiring no construction of infrastructure in wildlife corridors is not warranted due to the lack of impact in modeled wildlife movement areas. Additional information was provided on this topic under the Section 5.1 Landscape-level Impacts in the updated Habitat Management Plan, Appendix L to the Revised ASC, submitted in early 2023.

The following desktop resources were considered:

- Arid Lands Initiative (ALI) Spatial Conservation Priorities in the Columbia Plateau Ecoregion (ALI 2014);
- Priority Core Areas and Priority Linkage Areas (Great Northern Landscape Conservation Cooperative 2015); and
- Washington Wildlife Habitat Connectivity Working Group (WHCWG) Washington Connected Landscapes Project: Analysis of the Columbia Plateau Ecoregion (WHCWG 2012).

Each of these data sources identify landscape-level areas of importance to wildlife in the region, using a combination of data layers and key ecological attributes. These areas are generally described as:

- Priority Core Areas – Set of noncontiguous polygons selected by modeling where local protection and restoration actions can best contribute overall conservation goals (ALI 2014).
- Priority Linkages – Areas within the Columbia Plateau Ecoregion identified as important for maintaining movement opportunities for organisms or ecological processes (e.g., for animals to move to find food, shelter, or access to mates). In the WHCWG (2012) report, these are corridors identified by the models as important for wildlife movement between Habitat Concentration Areas (HCA).
- Linkage Network – System of habitats and areas important for connecting them. For the WHCWG linkage priorities, linkage networks represent the area encompassed by the combination of HCAs and modeled Priority Linkages that connect them (WHCWG 2012).

Connectivity along the east/west ridgeline to the north of the Project and the north/south corridor to the west of Interstate 82 has been avoided or minimized by designing the Project to avoid impacts to Priority Linkages. Along the northern ridgeline, wind turbines and associated roads have been set back and do not overlap with Priority Core Areas or High/Very High Linkage Areas (see Figure 1). Spacing between wind turbines along a string will be approximately 0.25 mile from the tower base and the perpendicular distance between strings will be much greater (approximately 0.5 to 1 mile), which would maintain open areas of habitat (agriculture, grassland, and shrub-steppe), facilitate wildlife movement, and maintain habitat connectivity. A small portion of the eastern solar array overlaps with, but does not substantially encroach into, a Linkage Area and thus would not impede species movement or habitat connectivity within the Linkage Area.

The two solar arrays located on the west side of the Project area do not overlap with a Priority Core Area or High Linkage Area. The fenced arrays will be raised 4 inches off the ground to allow for movement of small mammals. Wind turbines and associated infrastructure (with the exception of O&M buildings/substations) will remain unfenced, resulting in reduced habitat fragmentation and facilitate open movement of terrestrial wildlife species. By designing the Project in a manner that avoids or minimizes disturbances in modeled corridor areas, terrestrial wildlife corridors within the Horse Heaven Hills will be maintained.

The Project is not located within a migration route for big game species (WDFW 2020a). Although the Project provides low habitat value to mule deer (due to the extent of agricultural and developed land, which covers 75 percent of the Project Lease Boundary), one Least-Cost Path (LCP) modeled by the WHCWG (2012, 2013) passes through the Project along a north-south route west of and parallel to Highway 395. This LCP connects HCAs at the Hanford Site and Rattlesnake Hills in Washington to an HCA in Oregon between Pendleton and Heppner. This LCP falls outside the Solar Arrays but passes through the Micrositing Corridor. WDFW is currently working to further identify migratory corridors through research of mule deer movement; however, these are currently prioritized in the East Slope Cascades and East Columbia Gorge Mule Deer Management Zones and not the Columbia Plateau Mule Deer Management Zone (WDFW 2020b), where the Project occurs.

As the Project is not located within a migration route for big game species, impacts to big game migration routes are not anticipated from the Project. Although the Micrositing Corridor overlaps with one LCP modeled by WHCWG (2012, 2013), the Project Lease Boundary in general provides low-value habitat to mule deer and is unlikely to support large migrations of mule deer despite this modeled linkage. The modeled LCP that passes through the Project does not overlap with the fenced solar arrays (or the larger Solar Siting Areas), which are primarily located on agricultural and disturbed lands. This LCP is designated as low centrality; centrality is a measure of how important a habitat area or linkage is for keeping the overall connectivity network connected (WHCWG 2013). Therefore, construction and operation of the Project are not anticipated to constitute a barrier to deer movement.

RESPONSE TO HAB-4

Recommend Hab-4 is replaced with the language included at the end of this comment and, as such, the role of the TAC is modified as summarized in Table 1, which is adapted from Hab-4 as it appears in the DEIS.

The role of the Technical Advisory Committees (TAC) is discussed inconsistently across the DEIS and the roles and responsibilities outlined go beyond the description of a TAC in the WDFW Wind Power Guidelines and the norms by which several TACs are currently operating in Washington. In accordance with WAC 463-60-332 (4) Guidelines review, an energy facility application shall give due consideration to any project-type specific guidelines established by state and federal agencies for assessment of existing habitat, assessment of impacts, and development of mitigation plans. The application shall describe how such guidelines are satisfied. For example, wind generation proposals shall consider *Washington state department of fish and wildlife Wind Power Guidelines*, August 2003, or as hereafter amended. Other types of energy facilities shall consider department of fish and wildlife Policy M-5002, dated January 18, 1999, or as hereafter amended.

TACs are intended to be advisory in nature, as the name implies, and are intended to advise the Certificate Holder during construction, allowing the Certificate Holder to then coordinate with EFSEC, relaying the recommendations of the TAC. The DEIS lists the duties of the TAC, with most being in line with the role that TACs are intended to fulfill, according to the WDFW Wind Power Guidelines, but some are not. Also, the requirement to convene the TAC one year prior to construction is infeasible and out of sync with the notion described in the WDFW Wind Power Guidelines that: "*TACs generally function for the duration of the operational monitoring period. However, a TAC may reconvene to address an unforeseen circumstance outside the regular operational monitoring schedule.)* The WDFW Wind Power Guidelines further define a TAC as follows.

> *A Technical Advisory Committee (TAC) is recommended to function as a post-construction advisory committee to the project owner and the permitting authority. The TAC is responsible for reviewing results of post-construction monitoring data and making suggestions to the project owner and permitting authority regarding the need to adjust mitigation and monitoring requirements based on results of monitoring data and relevant data. Potential members include stakeholders from environmental groups, wind project owners and/or developers of the project, landowners, and county representatives, tribes, state and federal resource agencies.*
>
> *The range of potential adjustments to the monitoring and mitigation requirements should be clearly stated in the project permit. Adjustments should be made if unanticipated impacts become apparent from monitoring data. Such changes may include but are not limited to the following examples: reducing or eliminating the source of the impact, management plans, additional monitoring or research focused on understanding the identified impacts to particular species (e.g. bats), and creation of raptor nesting structures (artificial or natural, on or off-site). TACs should review and comment on the protocols for conducting the monitoring study and the procedures and form for reporting the information. Progress reports summarizing the monitoring results should be reported to the TAC on a regular basis, as agreed to by TAC members. Information from these meetings and mitigation and monitoring suggestions will be summarized by the WDFW TAC member and reported regularly to WDFW Headquarters in Olympia.*

TACs generally function for the duration of the operational monitoring period. However, a TAC may reconvene to address an unforeseen circumstance outside the regular operational monitoring schedule.

Recommend Hab-4 is replaced with the following language and, as such, the role of the TAC is modified as summarized in Table 1 (below), which is adapted from Hab-4 as it appears in the DEIS.

Recommended Replacement Language for Hab-4

As a condition of permit approval, EFSEC will require a Technical Advisory Committee (TAC) be formed by the Certificate Holder to advise on the implementation of minimization and mitigation measures and monitoring studies during operations. The TAC will be established prior to commercial operations with representation from, but not limited to: WDFW, the Washington Department of Natural Resources (DNR), Yakama Nation and CTUIR resource experts, Benton County, the U.S. Fish and Wildlife Service (USFWS), landowner(s) and other local interest groups. The TAC will provide a neutral forum in which independent and informed parties can collaborate with the Certificate Holder, and make recommendations to the Certificate Holder and EFSEC, if the TAC deems additional studies or mitigation are warranted to address impacts that were either not foreseen in the Application or the Environmental Impact Statement (EIS), or exceed impacts that were projected (WDFW 2009, Section 3).

The role of the TAC will include the following elements (WDFW 2009):

- Confirm consistency with the mitigation and restoration of permanent and temporary acres as defined in the Site Certificate Amendment.
- Review post-construction fatality monitoring results to confirm fatality rates are within the range of predicted bird and bat species groups for the region.
- Recommend additional minimization, mitigation measures, or conservation actions should monitoring results warrant them.
- To meet Project biological minimization objectives, the TAC will meet at least once per year during post-construction monitoring and convene for the life of the project unless TAC members recommend to EFSEC that the TAC be terminated. If the TAC is terminated or dissolved, EFSEC may reconvene and reconstitute the TAC at its discretion at any point during the life of the project.

Table 1. Recommended changes to TAC responsibilities identified in DEIS

Responsibility Listed in DEIS HAB-4	Recommended Change	Rationale
Providing input to, and review of, Project wildlife and habitat management plans (e.g., ferruginous hawk management plan)	No Change	
Review and provide advice to EFSEC on pre-design and pre-construction data collection requirements to address Project mitigation measures and conditions of management plans	Remove	Not appropriate because WDFW Guidelines state that TACs typically function for the duration of operations
Review and provide advice to EFSEC on the final Project design	Remove	TAC is an advisory body to the Applicant and should not have the authority to approve final Project design. Further, the TAC should not be convened until just prior to operations, meaning the design phase of the Project will have been completed.
Advising on thresholds to be applied to the Project that would trigger the requirement for additional mitigation measures	No change	
Advising on the monitoring of mitigation effectiveness and reviewing monitoring reports	No change	
Advising on additional or new mitigation measures that would be implemented by the Applicant to address exceedances of thresholds	Remove	The TAC can advise on the thresholds themselves, as described above, but discussion and approval of any required mitigation should be between the Certificate Holder and EFSEC.
Reviewing the results of annual data generated from surveys and incidental observations and providing recommendations for alternative mitigation and adaptive management strategies, as well as advising on aspects of existing mitigation that are no longer needed	No change	

RESPONSE TO HAB-5

Recommend removal of the analysis of indirect impacts and requirements for mitigation within a 0.5 buffer (Zone of Influence) around the Project infrastructure. Inclusion of analysis and mitigation for indirect habitat impacts results in a change in the application of mitigation guidelines for Washington EFSEC projects and is infeasible to implement as written. Utilization of a Zone of Influence in the DEIS analysis results in a fundamental change in mitigation policy that:

- is inconsistent with existing policy, and
- is based on a scientific justification using data from outside of eastern Washington, and
- results in a determination that there would be habitat loss outside of the Project, and
- is infeasible to implement due to lack of land control outside the Project boundary.

Each of the above items is described in detail below.

Fundamental Change in Application of Mitigation Guidelines

In accordance with WAC 463-60-332 (4) Guidelines review, an energy facility application shall give due consideration to any project-type specific guidelines established by state and federal agencies for assessment of existing habitat, assessment of impacts, and development of mitigation plans. The application shall describe how such guidelines are satisfied. For example, wind generation proposals shall consider *Washington state department of fish and wildlife Wind Power Guidelines*, August 2003, or as hereafter amended. Other types of energy facilities shall consider department of fish and wildlife Policy M-5002, dated January 18, 1999, or as hereafter amended.

Mitigation Measure Hab-5 requires the completion of an Indirect Habitat Loss Management Plan (IHLMP) to adequately address indirect habitat loss through loss of habitat function and changes in wildlife behavior that may result from the Project. The measures goes on to state that "*The objectives of the IHLMP would be to identify Project-specific ZOI and required mitigation based on the Project-specific ZOI*." This implies that additional mitigation will be needed, beyond what is included in the Wildlife and Habitat Management Plan, which was negotiated with WDFW during the application process. This is not a requirement that has been included in any EFSEC EISs or approval documents in the past, which makes its inclusion precedent setting. Because of the precedent setting nature of this requirement careful consideration is needed regarding the relevance, need, and execution of it.

Hab-5 relies heavily on the establishment of a 0.5-mile Zone of Influence (ZOI) around the Project infrastructure, though flexibility is given for the Project to establish a different ZOI through coordination with the Technical Advisory Committee (TAC). Definition of a Zone of Influence for renewable energy Projects effectively expanding the Project area, attempted quantification of indirect effects, and use of the ZOI to increase compensatory mitigation requirements, is a fundamental and significant change in mitigation policy. This concept is outside of the Washington Wind Power Guidelines, which were negotiated with a broad stakeholder base in 2009. Those guidelines were intended to stabilize the environment in which industry was developing and to clearly outline expectations from EFSEC and WDFW. Attempting to make this policy shift through a single Project SEPA EIS, without broader engagement of stakeholders and without a clear understanding of industry wide implications, not to

mention the State of Washington's ability to meet its renewable energy targets, is inconsistent with 463-60-332 (4) Guidelines review (included above).

The ZOI concept as addressed in the DEIS is a novel and creative way of discussing indirect impacts but the literature it relies on does not provide a solid foundation for the way in which the concept is applied, as demonstrated below. As described in the DEIS, species groups are affected by infrastructure Projects in different ways and a scientific peer-reviewed study that specifically addresses how infrastructure Projects affect wildlife in Washington would be necessary for this significant change in policy.

Consistency with Existing Policy

The 2009 Washington Wind Power Guidelines mentions indirect impacts in two locations:

1. In the Guiding Principles, on Page 3 (#5), it is stated that: "*Potential effects of wind turbine development may be direct (e.g., turbine collision resulting in mortality) or **indirect (e.g., displacement from territory)** and may have cumulative effects. These effects potentially include those related to road construction or maintenance, the loss or degradation of territories, and alteration of community dynamics (e.g., predator-prey interactions). These types of factors should be addressed in assessments, monitoring and mitigation strategies*."
2. Under 4.0 Research-Oriented Studies it is stated: "*At some Projects, additional studies that utilize pre-construction data may be conducted to test specific research hypotheses about impacts to a particular species or group of species. Rather than being necessary for pre-Project assessment, such studies are focused on research, such as **indirect impacts** (e.g., displacement, cumulative impacts, etc.), that potentially provide information for future Projects."*

The application for the Horse Heaven Wind Farm does address direct, indirect, and cumulative impacts as required by the Wind Power Guidelines. The Habitat Mitigation Plan, appended to the application and updated in December 2022, includes sufficient mitigation to address all impacts and was negotiated with WDFW. The mitigation package includes habitat mitigation at ratios consistent with the Wind Power Guidelines and, as presented in the December 2022 HMP, consistent with compensatory site-selection criteria outlined on Page 4-196 of the DEIS. The HMP also includes additional mitigation for habitats under solar arrays that may be modified, a contribution to the Friends of Badger Mountain on critical land acquisition Projects, and a commitment to install ten raptor nesting platforms to help boost raptor nest productivity in the region. Combined these efforts go beyond the habitat mitigation ratios outlined in the Wind Power Guidelines and do address indirect and cumulative impacts.

Scientific Basis for ZOI

As acknowledge by the Washington Wind Power Guidelines, little is known about how infrastructure projects, not to mention renewable energy projects, indirectly impact wildlife. In fact, under Section 4.0 Research-Oriented Studies it is stated: "*At some Projects, additional studies that utilize pre-construction data may be conducted to test specific research hypotheses about impacts to a particular species or group of species. Rather than being necessary for pre-Project assessment, such studies are focused on research, such as **indirect impacts (e.g., displacement, cumulative impacts, etc.),** that potentially provide information for future Projects."*

It is known that because species have different life histories and use habitats and the landscape differently, they are inherently affected differently by projects. As such, any attempt to designate a

single, generalized ZOI for all species, is biologically inaccurate and will not reflect the temporal or spatial response in behavior for most species. Further, what the ZOI justification in the DEIS demonstrates is that there is even less known about species that may actually be affected by the Project. The DEIS (§4-161) states Benitez-Lopez et al. (2010) was used as primary literature to determine the radial distance of the ZOI from all infrastructure, regardless of type. The scientific basis to use this type of analysis to define an area where wildlife could be displaced from or avoid habitat is inappropriate for a number of reasons. First, Benitez-Lopez (2010) conducted a global meta-analysis of responses of wildlife species and habitats that do not occur at the HHCEC, Washington, or even the Pacific Northwest. The study pooled wildlife responses of caribou in the Arctic tundra of Alaska (Cameron et al., 1992) to tropical bird species in the central Amazonian tropical forests of Brazil (Develey and Stouffer 2001). From crows at forested picnic areas in Australia (Piper and Catterall 2006) to reindeer in Norway (*Rangifer tarandus tarandus*; Nellemann et al. 2003), the application of Benitez-Lopez (2010) in the DEIS is biologically inappropriate and scientifically unjustified.

Second, the DEIS does not provide justification for how the 0.5 mi (800 m) threshold for species responses was determined. The majority (>50%) of bird species in Benitez-Lopez (2010) showed a behavioral response within 0.15 mi (240 m) of infrastructure (Figure 1). These shorter distances are more representative of grassland bird responses (262-328 ft [80-100 m]) cited earlier in the text (§4-160) and more representative of the species groups found at the Project (Leddy et al. 1999, Johnson et al. 2000, Erickson et al. 2004, Shaffer and Buhl 2016).

Third, Benitez-Lopez (2010) do not differentiate between types of infrastructure and grouped them together in the analysis. For example, Benitez-Lopez (2010) treated roads that receive 10 vehicles / week (Develey and Stouffer 2001) similar to roads that receive 52,000 vehicles /day (Meunier et al. 1999). The application of these types of studies in comparison with pre- or post-construction conditions at the Project has little merit and relevance.

Finally, the DEIS relies on studies one to two decades old, if not older in some cases, to characterize bird responses to anthropogenic sources. The DEIS dismisses a large body of more recent peer-reviewed scientific literature (Carlin and Chalfoun 2021, Hale et al. 2014, Hatchett et al. 2013, Mahoney and Chalfoun 2016, Miao et al. 2019, Marques et al. 2021, to name a few). Failure to incorporate more recent species and regionally appropriate science does not incorporate the best available science when attempting to evaluate indirect effects from renewable energy infrastructure on wildlife species. For these reasons, the broad generalizations and unproven scientific extrapolations do not provide a strong enough justification for the definitive application of the ZOI in the DEIS.

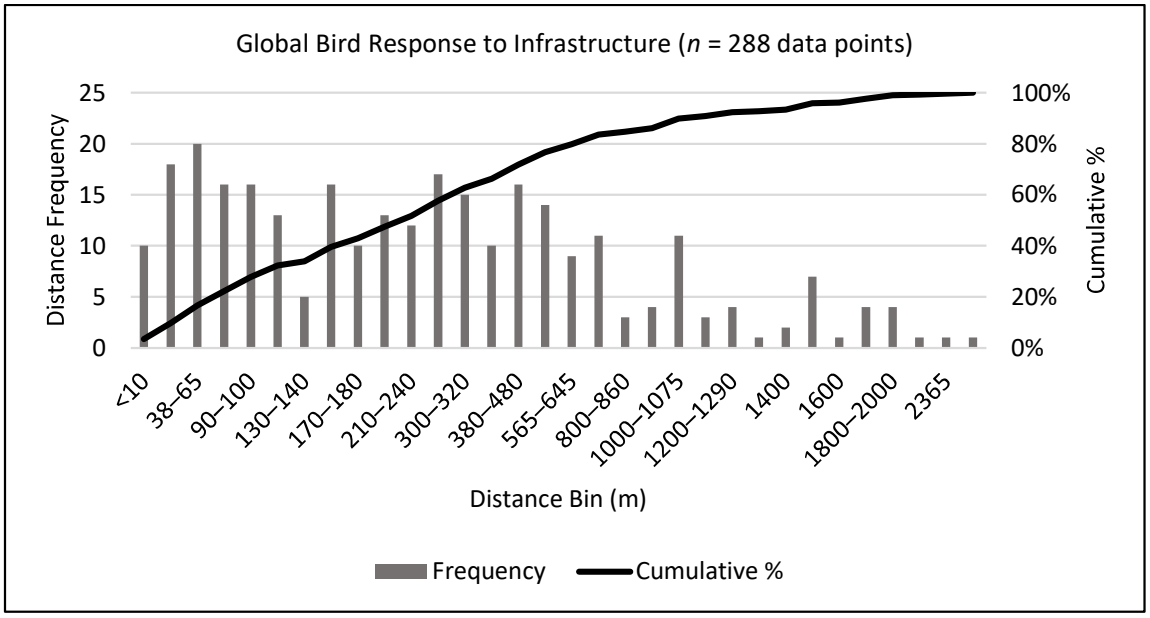

Figure 1. The frequency of avian studies from around the world and that showed a behavioral response (species avoidance and reduced density) by corresponding distance from the infrastructure (Benitez-Lopez 2010).

Improper Representation of Project Impacts

The Application acknowledges that both direct and indirect effects may occur from the Project. The DEIS goes further by quantifying acres of habitat by type within a 0.5-mile radius around all Project infrastructure and suggests that indirect habitat loss will occur. While habitat value may change outside of the Project, no habitat loss will occur. The phrase *indirect habitat loss* is an inaccurate representation of what may actually occur. When the 0.5-mile buffer is applied to the Project infrastructure it creates a buffered area of 53,128 acres. As summarized in Table 4.6-5 in the DEIS, 75% of the land inside the defined ZOI, or 39,868 acres, is either Agricultural or Developed. In the 2009 Wind Power Guidelines it is stated that those habitat types have low functionality for wildlife and do not require any compensatory mitigation for those habitat types. Those habitat types should be removed from the ZOI as there will be no indirect impacts to habitat or wildlife in those areas. That leaves 13,260 acres of habitat where indirect effects could occur. Further, the generalization of the ZOI does not account for the temporal effects that occur for some species where species become habituated to the disturbance and return to biological conditions that approximate pre-disturbance levels (Devereux et al. 2008). Finally the ZOI discusses the research that not all species will show avoidance of the infrastructure and, in fact, show attraction to the changed conditions (Marques et al. 2021). Any further analysis of indirect impacts in the ZOI with EFSEC or the TAC, should be limited to those 13,260 acres and include species-specific metrics for different infrastructure types. Table 2 summarizes the habitat types inside the defined 0.5-mile ZOI where indirect impacts may occur.

Table 2. Acres of Habitat Types with Potential to Support Wildlife Inside 0.5-mile ZOI.

Habitat Type	Acres
Eastside (Interior) Grassland	85
Grassland	4,576
Non-native Grassland	1,462
Planted Grassland	3,246
Dwarf Shrub-steppe	13
Rabbitbrush Shrubland	1,678
Sagebrush Shrub-steppe	1,019
Shrubland	1,181
Total	**13,260**

Improper Determination of Indirect Impacts to Habitat

The DEIS defines the Spatial Extent/Setting of impacts on wildlife and habitat as follows in the Table 4.6-1.

> ***Limited:*** *Small area of Lease Boundary or beyond Lease Boundary if duration is temporary.*
> ***Confined:*** *Within Lease Boundary.*
> ***Local:*** *Beyond Lease Boundary to neighboring receptors.*
> ***Regional:*** *Beyond neighboring receptors.*

The criteria for assessing the magnitude of impacts on wildlife habitat are summarized in Table 4.6-2 of the DEIS as follows:

Negligible
The incremental change is so small that it is neither detectable nor measurable and is not anticipated to influence the viability of a wildlife population or species.
Low
The incremental change may be measurable and could result in a minor influence on the short-term viability of a wildlife population; however, it is expected to be within the natural population variability and resiliency of a species and therefore not expected to impact the viability of the species or population over a longer period of time.
Medium
The incremental change is expected to result in a clearly defined change that could result in changes to the population over shorter and longer periods of time; however, it remains below a level of impact that could exceed the resiliency and adaptability limits of the population.
High
The incremental change is sufficiently large that it approaches or falls within the range of impacts that could exceed the resilience and adaptability of the species or population, potentially impacting the viability of the species or population.

In the summary of wildlife and habitat impacts tables for construction, operations, and decommissioning of the Project (Tables 4.6-11a-c) the magnitude, duration, and spatial extent of impacts was presented for all Project elements.

During the construction phase of the Project all impacts were rated as either negligible, low, or medium, with the exception of potential impacts on ferruginous hawks, which were rated as high. That means that in all of those cases the impacts are either *not anticipated to influence the viability of a wildlife population or species (Negligible), not expected to impact the viability of the species or population over a longer period of time (Low), or remains below a level of impact that could exceed the resiliency and adaptability limits of the population (Medium).* Further, all of the impacts, with the exception of Habitat Loss have a spatial extent of Limited (small area within the Lease Boundary) or Confined (within Lease Boundary).

It therefore seems incongruous that if all other impacts are confined to the Lease Boundary and are negligible to medium in magnitude, that habitat loss alone would be characterized as a Local impact, going beyond the Lease Boundary, even if the magnitude of that habitat loss *remains below a level of impact that could exceed the resiliency and adaptability limits of the population.* All of these ratings and spatial extents generally carry over into Project operation (table 4.6-11b) and decommissioning (Table 4.6-11c). The DEIS acknowledges that even impacts to ferruginous hawk during construction and operations, which are rated as high, would be confined to the Lease Boundary.

Nonetheless, mitigation measures were included for all species to effectively offset impacts that will by definition not result in changes to populations and in most cases are not even detectable. In order to ensure that mitigation is commensurate with the actual level of impact mitigation measures Spec-1, Spec-2, Spec-4, Spec-6, Spec-7, Spec-8, Spec-9, Spec-10, Spec-11, Spec-12, and Spec-13 should be removed.

Further, making a leap to determine that habitat would be impacted beyond the Lease Boundary (Local) when all other impacts to wildlife are within the Lease Boundary (Confined or Limited) seems disconnected. The requirements of mitigation measure Hab-5 and the concept of a ZOI seem to be creating a rationale for an impact that does not actually exist or at the very least, is poorly understood. As a result, Hab-5 should be removed from the DEIS.

Infeasibility of ZOI in Practice

The DEIS repeatedly mentions the need to manage habitat within the ZOI and to implement surveys and studies within the ZOI. Mitigation measures Spec-4 and Spec-12 require the Applicant to complete surveys in the ZOI and mitigation measure Hab-5 requires management of indirect habitat loss in the ZOI. This is impractical as the land outside the Project boundary is not under control of the Applicant. At best, aerial raptor nest surveys can be completed outside the Project boundary, as they were in support of the application, but the Applicant will not have access or authority on lands outside the Project boundary for any ground-based survey or management. The Applicant must respect private property ownership and property rights and cannot commit to measures that obligate the Applicant to secure more land. Any requirements to implement ground-based surveys, studies, or management outside the development corridor or to which are leased for Project purposes should be removed from the DEIS as they are impractical to implement.