BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of: Docket No. EF-220011 Scout Clean Energy, LLC, Horse Heaven Wind Farm, LLC, Applicant	Application Docket No. EF-220011

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

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I. Executive Summary

A. Application:

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

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

B. Recommendation:

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

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

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

[1] The original Application (ASC) (filed February 8, 2021) sought authority to operate up to 244 wind turbines and up to three solar arrays. *See Original Application, Section 2.3 and Tables 2.1-1 and 2.3-1.* Scout filed subsequent updates to the ASC. The Final ASC was received on September 25, 2023, which outlines the final requested scope of the proposal.

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

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

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

A. Scout Clean Energy and the Horse Heaven Wind Farm

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B. The Council and the Application Review Process

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

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

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

C. Informational Public Hearing

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

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

The Council received a total of 33 oral comments during the informational public hearing and an additional 135 written comment letters. The comments included both support and opposition to the Project as well as concern that the Project proposal did not qualify for the expedited review[5] process. Comments expressed concern for potential impacts to wildlife, tourism, viewshed, recreation, economy, native grassland and shrub-steppe habitat, property values and taxes, agriculture, aesthetics, and solid waste. In addition, comments on the EFSEC process, energy production and cost, perceived need for renewable energy sources, and dispatchable seasonal energy were received.

D. Land Use Consistency Hearing

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

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

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

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

EFSEC must comply with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, which requires consideration of probable adverse environmental impacts of governmental action and possible mitigation. EFSEC SEPA rules are set out in Chapter 463-47 WAC. The Council's SEPA responsible official is the EFSEC Executive Director. WAC 463-47-051. Following initial review of the application materials, the responsible official issued a Determination of Significance and Scoping Notice on May 11, 2021. Subsequently, a Draft EIS was issued for a 45-day public comment period on December 19, 2022, and a public hearing was held on February 1, 2023. EFSEC received 2,496 public comment submissions on the Draft EIS, which were reviewed and considered for EFSEC's preparation of the Final EIS document. The responsible official issued the Final EIS containing responses to comments on October 31, 2023.

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

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

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

- Cultural Resources – Traditional Cultural Properties (TCPs): The presence of TCPs within and near to the Project Lease Boundary has been confirmed through coordination with affected tribes. As these TCPs have been identified throughout the Project Lease Boundary, they will be unavoidably impacted by the Project through physical encroachment, denial of tribal access to public lands, visual clutter, dust, noise, and other effects. The mitigation identified in the Final EIS to reduce these impacts is Cultural Resources-1, requiring that the Applicant and EFSEC continue engagement with affected tribes throughout the life of the Project to identify any measures that could effectively reduce impacts to TCPs.[7]

[6] *See* Council Order No. 883.
[7] Final EIS Section 4.9, pages 4-323 – 4-325, 4-341, and 4-344 and Tables 4.9-10a, 4.9-10b, and 4.9-10c

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

F. Tribal Engagement and Government-to-Government Consultation

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

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

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

- Confederated Tribes and Bands of the Yakama Nation (Yakama Nation),
- Confederated Tribes of the Umatilla Indian Reservation [Cayuse-Umatilla-Walla Walla] (CTUIR),
- Nez Perce Tribe (Nez Perce), and
- Wanapum Tribe.

[8] Final EIS Section 4.11, pages 4-378 – 4-406 and Table 4.10-14b
[9] Final EIS Section 4.12, pages 4-479 – 4-481 and Table 4.12-5b

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

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

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

[10] In their May 19, 2021 letter, the Yakama Nation requested EFSEC consider energy production needs and impacts to Traditional Cultural Properties.

[11] In CTUIR's June 10, 201 Scoping Comment letter, CTUIR indicated concerns for impacts to several resources, including but not limited to, visual, cultural and historic, wildlife, and vegetation.

The CTUIR requested formal consultation with EFSEC in a letter dated April 9, 2021[12]. The CTUIR Cultural Resources Protection Program (CRRP) conducted research on the traditional uses associated with the Project area. The CTUIR provided an Executive Summary of the Traditional Use Study of the Project to EFSEC in June 2022. Impacts to native place names associated with ancient use and knowledge of the land and beliefs about the culture and nature of the world, historic properties of religious and cultural significance, potential for disturbance of sacred ancestral burials, loss of access to First Foods, adverse effects to wildlife, and the loss of storytelling sites were identified in the summary. The CTUIR notified EFSEC in a letter dated October 10, 2023 that the CTUIR "have come to a mutual agreement to mitigate the adverse effects the Project will have on cultural resources and historic property of religious and cultural significance to the CTUIR" with Horse Heaven Wind Farm, LLC (the Applicant). The CTUIR stated that their "concerns have been addressed for the proposed Project with respect to cultural resources and historic properties of religious and cultural significance to the CTUIR." As the CTUIR indicated that their concerns had been independently addressed, no subsequent formal consultation occurred between EFSEC and the CTUIR.

During EFSEC's preparation of the Project Draft EIS, Yakama Nation cultural resource program staff provided valued technical review and comment on the Affected Environment and Analysis of Potential Impact for the Historic and Cultural, Wildlife and Habitat, and Vegetation resources. This coordination and document review continued through the publication of the Final EIS on October 31, 2023. During technical coordination between EFSEC and Yakama Nation staff, the Yakama Nation requested formal consultation with EFSEC expressing concerns regarding the impacts and characterization of archaeological resources, impacts to historic properties of religious and cultural significance to Indian Tribes (commonly referred to as traditional cultural properties or places, or TCPs), and wildlife. EFSEC provided a formal letter from the EFSEC Chair to initiate formal consultation on January 5, 2023[13]. Consequently, EFSEC received an invitation from the Yakama Nation Council for the EFSEC Chair to attend the March 2023 Yakama Nation Council meeting. Attendance by the EFSEC Chair and staff at the Yakama Nation Council meeting constituted formal consultation and initiated a series of focused Project meetings between EFSEC staff, Yakama Nation staff, Yakama Nation legal counsel, and DAHP beginning in April 2023 and continuing into 2024.

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

[12] April 9, 2021 CTUIR Consultation Request Letter
[13] January 5, 2023 Yakama Nation Consultation Letter

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

Informed in part by this government-to-government consultation and tribal engagement, the Draft and Final EIS identified significant impacts to tribal cultural resources. In a letter dated January 25, 2023[14], DAHP stated:

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

G. Adjudicative Proceeding

The Council's adjudicative process, as outlined in RCW 463-30, its participants and the Council's findings and conclusions regarding the contested issues are set out in detail in the Adjudicative Order, Order No. 892, Attachment 1 to this Recommendation. This Recommendation Order will generally cite, rather than restate, Adjudicative Order content. The Adjudicative Order, pursuant to RCW 34.05.461(4), confined its scope to the matters of record and did not consider the SEPA process.

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

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

[14] January 25, 2023 DAHP Review Letter

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

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

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

III. RCW 80.50.010 Standard for Recommendation

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

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

> It is the policy of the state of Washington to reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities.
> . . .
> It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of all energy facilities . . . will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.
>
> It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

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

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

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

IV. Applying the Statutory Standard to the Information Presented

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

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

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

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

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

Impacts to wildlife movement were also identified in the Final EIS. Project infrastructure, including solar array fencing, turbines, and linear features such as power lines were identified as creating barriers to movement for larger animals. Mitigation identified in the Final EIS, Hab-1, would require the creation of a Corridor Mitigation Plan for any Project components sited within movement corridors modeled as medium to very high linkage. However, again after a review of the entire record, including the adjudicative record, the Council has determined that additional restrictions are appropriate to further reduce impacts to wildlife movement through the Project. The Council therefore recommends modifying Hab-1 to prohibit the siting of any primary Project components (specifically wind turbines, solar arrays, and BESSs) in corridors modeled as medium to very high linkage and to prohibit the siting of any secondary Project components (i.e., roads, transmission lines, substations, MET[15] and ADLS towers[16], and laydown yards) in corridors modeled as high to very high linkage unless co-located with existing infrastructure, such as roads or transmission corridors. A Corridor Mitigation Plan would still be required for any secondary components sited in medium to very high linkage corridors. These changes will reduce Project

[15] Meteorological Towers (MET)
[16] Aircraft Detection Lighting System (ADLS towers)

impacts on modeled wildlife movement corridors and have been made following coordination with WDFW staff.

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

V. Conclusion and Recommendation

On the basis of the entire Project record and with the conditions and modifications described in this report, the Council recommends that the Governor approve the Application and execute the draft Site Certification Agreement.

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

Signatures

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL

Kathleen Drew, Chair

Elizabeth Osborne
Department of Commerce

Eli Levitt
Department of Ecology

Mike Livingston
Department of Fish and Wildlife

Stacy Brewster
Utilities and Transportation Commission

Statement from Department of Natural Resources Council Member Lenny Young: I cannot recommend or support approval of this Project because I believe the terms and conditions set forth in this Report and the draft SCA do not sufficiently reduce impacts to Yakama Nation Traditional Cultural Properties (TCPs). These impacts are characterized as "High" (magnitude), both "Short Term" and "Constant" (duration), "Unavoidable" (likelihood of impact), and "Regional" (spatial extent or setting of impact) in the Final Environmental Impact Statement

(FEIS) for the Project. The FEIS summarizes significant unavoidable adverse impacts to Yakama Nation TCPs as "significant for partial or complete loss of traditional cultural properties."

Lenny Young
Department of Natural Resources

Statement of Benton County Council Member Ed Brost: This vote to approve the project is premature with several important issues yet to be clarified/defined.
Those issues include:

1) The number & type of wind turbines to be sited has not yet been determined or agreed to by the project developer and the Cities and County(ies) to be most impacted by the project. The much taller wind towers/ turbines should not be permitted due to the location of the project to nearby residences/communities and fire suppression responsibilities that have yet to be clarified and agreed to.
2) A power purchase/sales contract has not been finalized (e.g. in-state versus out of state purchase/use should be critical/determinative to a project permit/decision.
3) A decommissioning plan, including timeline and funding requirement has not been proposed or finalized.
4) The Governor's recent decision/agreement to remove the Snake River dams/hydro projects and their much firmer/dependable renewable power supply is totally inconsistent with building unreliable and intermittent wind power. and
5) The potential negative impacts to Tri-Cities area tourism, recreation, hiking, wineries, etc. should also be evaluated and avoided.

Ed Brost
Benton County

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

Attachment 1: Final Adjudicative Order 892

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Application of: Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC, Applicant	DOCKET NO. EF-210011 COUNCIL ORDER NO. 892 ADJUDICATIVE ORDER RESOLVING CONTESTED ISSUES

OVERVIEW

In this Order, the Energy Facility Site Evaluation Council (EFSEC or Council) resolves contested issues raised during the adjudication of Scout Clean Energy, LLC's (Scout or Applicant) Application for Site Certification (ASC) for the proposed Horse Heaven Wind Farm Project (Project). This Order informs EFSEC's recommendation to the Governor of the State of Washington (Recommendation).

EFSEC will forward the adjudicative record and this Order to the Governor. This Order is based on the record developed during proceedings conducted under the Administrative Procedure Act, Revised Code of Washington (RCW) 34.05, as required by RCW 80.50.090(3). The Council will also be sending a Recommendation to the Governor per RCW 80.50.100 that considers the adjudicative record and findings of this Order, the Final Environmental Impact Statement, the public comments, and input received through government-to-government consultation with federally recognized tribes required by RCW 80.50.060(8).

Conclusions. After considering all evidence and arguments of record, this Order makes the following principal conclusions: (1) The Project would support the state's clean energy goals as set forth in RCW 80.50.010. (2) The Horse Heaven Hills are a significant feature of the Tri-Cities area visual landscape. (3) The Project can be approved as a conditional use in Benton County's Growth Management Act Agricultural District based on the zoning ordinances that were in effect when the Application was filed on February 8, 2021. (4) The scope and scale of the Project as proposed would transform the Horse Heaven Hills. (5) The Horse Heaven Hills are culturally and spiritually significant to the Yakama Nation. Additional mitigation measures should be imposed to reduce impacts on Yakama Nation traditional cultural properties (TCPs). (6) The Project would have a significant visual impact on the region that is impossible to fully mitigate. Wind turbines should be excluded at least from ridgeline portions of the site where they would be prominently visible. (7) The Project requires additional mitigation measures based on the best available wildlife science to reduce potential wildlife impacts. (8) The Project would benefit the local economy by creating new jobs and generating new tax revenues. (9) The Project requires additional mitigation to address concerns associated with impacts to aerial firefighting.

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I. INTRODUCTION

A. PROCEDURAL SETTING

The Energy Facility Site Evaluation Council (EFSEC or Council) is an executive branch agency created by Chapter 80.50 Revised Code of Washington (RCW) to recommend to the Governor whether applications to construct proposed energy facilities on sites located within the state of Washington should be granted. If EFSEC recommends approval, the Council also recommends conditions for the siting, construction and operation of the proposed project. The Council conducted this adjudicative proceeding as part of its application review process pursuant to the Administrative Procedure Act, Chapter 34.05 RCW, as required by RCW 80.50.090(3) and Chapter 463-30 Washington Administrative Code (WAC).

B. THE APPLICANT AND THE PROJECT

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

The Project: The Project's Lease Boundary 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[1]. The Solar Siting Areas 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[2]. 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.

C. THE COUNCIL AND THE EFSEC REVIEW PROCESS

The Council is created in accordance with RCW 80.50.030. Its Chair is appointed by the Governor with the advice and consent of the Senate. The Departments of Commerce, Ecology, Fish and Wildlife, Natural Resources, and the Utilities and Transportation Commission appoint members to the Council, as does the county or city in which the proposed project is to be sited.[3]

[1] The original Application (filed February 8, 2021) sought authority to operate up to 244 wind turbines and up to two solar arrays. *See* Application, Section 2.3, and Tables 2.1-1 and 2.3-1. Scout filed subsequent updates to and a Final Application (received after the adjudicative hearing on September 25, 2023) that sets out this ultimate requested scope of its proposal.

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

[3] RCW 80.50.030 allows the Departments of Agriculture, Health, Military, and Transportation the option to appoint a representative to the Council for any project of specific interest to those agencies. In this matter, the Department of Agriculture initially indicated its interest in the proposed project but withdrew its councilmember following completion of the adjudicative hearings. The Department of Agriculture representative did not participate in any of the Council's deliberations on or votes regarding this application.

The Council for the Horse Heaven Wind Farm adjudication consisted of Council Chair Kathleen Drew and Members Elizabeth Osborne, Department of Commerce; Eli Levitt, Department of Ecology; Lenny Young, Department of Natural Resources; Mike Livingston, Department of Fish and Wildlife; Stacey Brewster, Utilities and Transportation Commission; and Ed Brost, Benton County.

Chapter 80.50 RCW sets out the Council's required procedural steps for reviewing an ASC.[4] The Council is required to send its report and make its recommendation to the Governor as to approval or rejection of an ASC within twelve months of receipt of a complete application, or such later time as mutually agreed by the Council and the Applicant.[5]

Initial Phase of Review. Scout filed its ASC with EFSEC on February 8, 2021. The Council held a virtual public informational hearing on March 30, 2021, and a land use consistency hearing immediately thereafter on the same night (*see* Section II of this Order). EFSEC then initiated its State Environmental Policy Act (SEPA) review (this environmental phase of the review process is briefly outlined below and fully described in the Final Environmental Impact Statement (EIS)). The Applicant filed updated and supplemental reports on multiple dates in late 2021. Without altering the scope of the proposed Project, Scout filed a consolidated update to its ASC on June 15, 2022. Some Councilmembers, along with interested members of the public, assembled in Benton County on the afternoon of November 1, 2022, for a site visit that included an Applicant-led tour of the proposed site and several key observation points.

Adjudicative Phase of Review (*see* Section III of this Order). On December 15, 2022, the Council's administrative law judge (ALJ) issued an *Order Commencing Agency Adjudication*. That order set a deadline of February 3, 2023, for receipt of petitions for intervention and scheduled a telephonic pre-hearing conference for March 10, 2023. The Applicant and Benton County were considered parties of right to the adjudication per EFSEC rule.[6] Counsel for the Environment (CFE) was a party by statute.[7] The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) and Tri-Cities Community Action for Responsible Environmental Stewardship (Tri-Cities CARES or TCC) were granted party status as intervenors.[8] Over the course of the next five months, the ALJ presided over a series of telephonic pre-hearing conferences, the parties pre-filed their witness testimony and supporting exhibits, and the ALJ ruled on various motions.[9]

As required by WAC 463-60-116(2), Scout filed its revised Application on December 29, 2022. The Council, assisted by its Administrative Law Judge, presided over 8 days of virtual adjudicative hearings between August 14, 2023, and August 25, 2023.[10] These hearings allowed

[4] *See* RCW 80.50.071 through RCW 80.50.100; *see also* Chapters 463-26 and 463-30 WAC.
[5] RCW 80.50.100(1)(a).
[6] *See* WAC 463-30-060(1) and WAC 463-30-050.
[7] *See* RCW 80.50.080; *see also* WAC 463-30-060(3).
[8] *Preliminary Order on Intervention* (March 9, 2023); WAC 463-30-091 and -092; *see also* WAC 463-30-060(4).
[9] The *Second Prehearing Conference Order* (May 19, 2023) memorialized the approved list of disputed issues to be adjudicated and adopted a procedural schedule discussed at the second prehearing conference held on March 20, 2023.
[10] On occasion, one or more Councilmembers were absent from portions of the adjudicative hearing sessions. In those instances, the absent Councilmember reviewed the transcript and exhibits admitted to the record.

for each party's witnesses to formally adopt pre-filed testimony under oath and then submit to cross-examination. Council members also posed their own questions to various witnesses. During the adjudicative hearings, the Council held a virtual public comment meeting on the evening of Wednesday, August 23, 2023.

The Council received pre- and post-hearing briefs from the Applicant, Benton County, Yakama Nation, and Tri-Cities CARES. As required by WAC 463-60-116(3), Scout filed its Application amendments on September 25, 2023, to include all commitments and stipulations made by the applicant during the adjudicative hearing process. On October 19, 2023, the Council initiated its deliberations on the evidence admitted, arguments presented, and public comments submitted to the adjudicative record. The disputed issues presented during the adjudication are now ready for resolution.

D. COMPLIANCE WITH RCW 80.50 AND STATE ENVIRONMENTAL POLICY ACT;[11] RECOMMENDATION TO THE GOVERNOR

In addition to the adjudicative process required by RCW 80.50.090, the Council must also comply with SEPA, RCW 43.21C and WAC 463-47. This order does not consider the contents of the Final EIS or its supporting documents. The Final EIS and its recommended mitigation measures are considered in EFSEC's Recommendation to the Governor.

E. PUBLIC COMMENT

The Council considered written and verbal public comments at each and every stage of its application review process. As relevant to the adjudication, the Council held a public comment hearing on August 23, 2023. This session allowed any person who had previously submitted a written comment on the proposed project to be heard in support of or in opposition to the Application.[12] 19 members of the public addressed the Council that evening. We attempt to capture a sampling of their words, feelings and messages in this section of our order.

The Council heard a variety of views and concerns about the Project's proximity to the urban Tri-Cities area, potential interference of wind turbines with aerial firefighting, dust generation during construction, expected impacts on wildlife migration, and detrimental changes in views from many homes in the area. Karen Brutzman questioned whether a wind farm could be considered "clean energy" when its construction would require extensive amounts of cement and concrete to be transported and poured. Several other local residents indicated their preference for more nuclear energy instead of large wind farms. A number of comments questioned why the Tri-Cities should bear the brunt of living next door to a massive wind farm when the power it generated was not needed locally.

Kennewick resident Pam Minelli, a member of Tri-Cities CARES, spoke to the concerns held by many in the local area. She explained "Tri-Citians support clean energy as shown by Nine

[11] The SEPA process is conducted separately from the adjudication and is discussed in this order solely to identify the additional environmental review occurring as part of EFSEC's application review process.
[12] RCW 80.50.090(4); WAC 463-14-030.

Canyon wind project, regional hydropower, and the nuclear power plant managed by Energy Northwest, but there is a strong local opposition to the enormous Horse Heaven wind project. It is too close to our homes, too close to the ferruginous hawk nests, too close to our communities and farms. Homeowners who paid extra for view properties will surely experience a loss when turbines industrialize their views. Less than 50 farmers will experience financial gain from their leases for this project, but their gain will result in the financial loss for thousands of homeowners."[13] Samuel Dechter echoed Ms. Minelli's message that the wind turbine towers are too close, too big and too high.

Benton County resident Rylan Grimes spoke in favor of the Project on behalf of the International Brotherhood of Electrical Workers (IBEW) Local Union 112, explaining the importance of the many good family-wage jobs the Project would bring to the community, both during and after construction. Michael Bosse and Jessica Wadsworth reiterated the beneficial impact of the Project on the local economy.

In addition to the members of the public who took the time to appear before the Council on August 23, 2023, Tri-Cities CARES submitted pre-filed testimony from a number of local residents expressing their own opinions and concerns on the Project. Because 23 of TCC's proposed exhibits set out individual views and did not speak on behalf of the community-at-large,[14] the ALJ designated these submissions as public comment.[15] The Council reviewed and read these items to better understand the concerns of individual homeowners. Most feared a negative impact on their property values if the Project is approved and built. Chris Upchurch, owner and winemaker of Upchurch Vineyard, shared similar concerns and also questioned the impact on tourism and the region's wine industry.[16]

The Council appreciates the time taken by members of the public to ensure their heartfelt thoughts and personal views were taken into consideration in EFSEC's review of this Project.

II. LAND USE CONSISTENCY[17]

RCW 80.50.090(2) requires the Council to "conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances on the date of the application."[18] On March 30, 2021, the Council held a

[13] Transcript, Adjudicative Hearing Day 8 / Public Comment Hearing at 29:5-17. Ms. Minelli also submitted pre-filed testimony (Exhibit 5602) as a TCC witness, focusing there on her concerns regarding the ferruginous hawk.
[14] *See* limitations on evidence regarding "local concerns, attitudes and opinions" set out in *Second Pre-Hearing Conference Orde*r (May 19, 2023), at page 2, footnote 1.
[15] *See Order Designating Certain TCC Testimony as Public Comment* (August 14, 2023).
[16] *See* Exhibit 5630.
[17] This section of the Order considers only land use "consistency." Section III sets out Benton County's criteria for and the Council's discussion regarding whether the Facility qualifies for a conditional use permit.
[18] *See also* WAC 463-26-050.

virtual[19] public hearing as directed by this statute. The Applicant and Benton County filed legal briefs and presented arguments for the Council's consideration.[20]

The Applicant contended its proposed Site must be found consistent and in compliance with Benton County's land use plans and zoning ordinances because its Facility met the code's definitions of a "Solar Power Energy Facility, Major" and of a "Wind Turbine Farm", both of which the zoning code allowed as a conditional use in Benton County's Growth Management Act Agricultural District (GMAAD). The Applicant also provided analysis of how its Facility would meet the County's criteria for a conditional use permit (CUP).

Benton County argued that siting the proposed Facility in an agricultural zone was inconsistent with its Comprehensive Plan's goal to preserve and protect prime agricultural land. The County conceded that the Facility might be allowed as a conditional use in its GMAAD, but only after the permitting authority held a more in-depth hearing.[21] The County also questioned whether the security fencing around the proposed solar arrays could comply with existing setback rules.

On May 17, 2022, the Council deliberated on the question of land use consistency. EFSEC had previously restated its established test for land use consistency in 2018 while considering the Columbia Solar Project.[22] Under that test, if the Council finds the relevant local land use provisions do not "expressly or by operation clearly, convincingly and unequivocally" prohibit the site, the site will be found consistent and in compliance with local land use provisions, even if a CUP might be required.[23]

Relying on this test, the Council determined the Horse Heaven Wind Farm was not a prohibited use within Benton County's agricultural zone. The Council also found the Facility would require a CUP. Therefore, the Council voted unanimously to approve Order No. 883, *Order Finding Proposed Site Consistent With Land Use Regulations* (*Land Use Consistency Order*), determining the Project to be consistent and in compliance with Benton County's comprehensive plan and the County's zoning ordinances in place at the time of Application. The *Land Use Consistency Order* deferred until the adjudicative hearing the questions of whether the Project could meet the County's CUP criteria and whether the Project might require a variance from the zoning code's setback requirements.[24]

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[19] EFSEC conducted this proceeding virtually due to the health risks presented by the ongoing COVID-19 pandemic.
[20] The Applicant did not present the Council with a certificate from local authorities attesting to the proposal's consistency and compliance with local land use plans and zoning ordinances. Therefore, the land use hearing was conducted in accordance with WAC 463-26-100 (instead of WAC 463-26-090).
[21] *See* Transcript of Land Use Consistency Hearing (March 30, 2021) at 21:11 – 22:2.
[22] *See* In re Columbia Solar Project, Docket EF-170823, Council Order – Expedited Processing, paragraph 35 (April 17, 2018). *See also* In re Tesoro Savage -- Vancouver Energy Distribution Terminal, Council Order No. 872, *Order Determining Land Use Consistency* (August 1, 2014) at 12:22-25, *citing* In re Transmountain Pipeline, Council Order No. 616 (May 26, 1981) at 3.
[23] *See also Land Use Consistency Order*, paragraphs 21-23 and 31.
[24] *See Land Use Consistency Order*, paragraphs 23, 33 and 36.

III. ADJUDICATIVE PROCEEDING

A. PARTIES

The parties to this adjudication appeared and were represented as follows:

Applicant, Scout Clean Energy: Timothy L. McMahan, Willa Perlmutter, Emily K. Schimelpfenig, and Ariel Stavitsky of Stoel Rives, Portland, Oregon.

Benton County: Kenneth W. Harper and Aziza L. Foster of Menke Jackson Beyer, Yakima, Washington.

Counsel for the Environment: Sarah M. Reyneveld, Office of the Attorney General, Seattle, Washington.

The Confederated Tribes and Bands of the Yakama Nation, Shona Voelckers, Ethan Jones, and Jessica Houston of the Yakama Nation Office of Legal Counsel, Toppenish, Washington.

Tri-Cities Community Action for Responsible Environmental Stewardship: J. Richard Aramburu, Law Offices of J. Richard Aramburu, Seattle, Washington.

B. NEED FOR THE PROJECT AND CONFORMITY WITH LAW

State law establishes EFSEC's priorities and policies for Council review of applications for site certification. RCW 80.50.010 states:

> The legislature finds that the present and predicted growth in energy demands in the state of Washington requires a procedure for the selection and use of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.
>
> 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 legislature finds that the in-state manufacture of industrial products that enable a clean energy economy is critical to advancing the state's objectives in providing affordable electricity, promoting renewable energy, strengthening the state's economy, and reducing greenhouse gas emissions. Therefore, the legislature intends to provide the council with additional authority regarding the siting of clean energy product manufacturing facilities.

> It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of all energy facilities and certain clean energy product manufacturing facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.
>
> It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. In addition, it is the intent of the legislature to streamline application review for energy facilities to meet the state's energy goals and to authorize applications for review of certain clean energy product manufacturing facilities to be considered under the provisions of this chapter.
>
> Such action will be based on these premises:
>
> (1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.
>
> (2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; to pursue beneficial changes in the environment; and to promote environmental justice for overburdened communities.
>
> (3) To encourage the development and integration of clean energy sources.
>
> (4) To provide abundant clean energy at reasonable cost.
>
> (5) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.
>
> (6) To 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.

The statute does not address the economic viability of an applicant's proposal, nor does it address market demand for power. Those aspects of an application, including individual applicants' business decisions, are beyond EFSEC's scope of review.[25]

Consistent with Washington State law and policy to support development of renewable resources and the integration of clean energy, the Council must balance the legislative directive to

[25] *Residents Opposed to Kittitas Turbines (ROKT) v. EFSEC*, 165 Wn.2d 275, 197 P.3d 1153 (2008).

provide for abundant clean energy at reasonable cost with the impact to the environment and the broad interests of the public.[26] This is no easy task. This Project's overall scope and scale presented a wide range of disputed issues. The Council's concern for minimizing impacts to Tribal Cultural Properties (TCP) and tribal heritage cannot be overstated. The Council also understands local concerns about visual impacts on aesthetics and recreational opportunities. The need to preserve the endangered ferruginous hawk and minimize impacts to other species found on the Site further complicated the Council's deliberations on the adjudicative record. The findings and conclusions set out in this order resolve the contested issues raised by the adjudicative parties' testimony and evidence and inform our ultimate recommendation.

C. LAND USE DETERMINATIONS – CONDITIONAL USE PERMIT PROVISIONS

The Council's *Land Use Consistency Order* concluded that Benton County's Growth Management Act Agricultural District (GMAAD), while primarily dedicated to agricultural uses, permitted wind turbine farms and major solar power generation facilities as a conditional use.[27] The Council found the proposed Project consistent and in compliance with Benton County's Comprehensive Plan and applicable zoning ordinances in effect as of February 8, 2021.[28]

The disputed land use issues presented during adjudication largely focused on Benton County Code (BCC) §11.50.040(d). That zoning code provision sets out Benton County's five criteria for granting a conditional use permit (CUP). In its entirety, that code states:

> Conditional Use-Permit Granted or Denied. A conditional use permit shall be granted only if the Hearings Examiner can make findings of fact based on the evidence presented sufficient to allow the Hearings Examiner to conclude that, as conditioned, the proposed use:
> (1) Is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
> (2) Will not materially 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;
> (3) Would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
> (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 in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district.

[26] *See Friends of the Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, 178 Wn.2d 320, 340, 310 P.3d 780 (2013).
[27] EFSEC Order 883, Finding of Fact 3 and Conclusion of Law 4, at page 8, paragraphs 26 and 30.
[28] EFSEC Order 883, Conclusions of Law 5 and 6, at pages 8-9, paragraphs 31 and 32.

> It is the applicant's burden to present sufficient evidence to allow the above conclusions to be made. If such evidence is not presented or all necessary reasonable conditions are not identified by the applicant so as to allow the Hearings Examiner to make the conclusions required above, the conditional use application shall be denied.

The parties presented general arguments about the Project's ability to meet these CUP criteria as well as specific arguments focused on each of the five individual criteria. We summarize their positions and then apply each of the County's CUP criteria to the Project.

General Concerns Regarding Benton County's CUP Criteria

Scout Clean Energy believes all potential land use-related conflicts and local concerns could, and should, be mitigated by conditions imposed in an SCA. Scout believes the Council should impose conditions akin to those Benton County would impose in its own local conditional use permitting process and also those conditions typically imposed by the Council and other permitting authorities on existing wind farm projects in the Pacific Northwest. Scout points to the nearby Nine Canyon Wind Project (Nine Canyon) to support its position. Nine Canyon is also located in Benton County's GMAAD and received three CUPs issued by Benton County.[29] Scout recognizes Nine Canyon is smaller in geographical area and includes fewer wind turbines (63), but Scout contended its proposed Horse Heaven Project can meet all CUP criteria and conditions Benton County imposed on Nine Canyon.

The County argued Horse Heaven Wind's size alone precludes its ability to qualify for a CUP. The County asserts a facility of this scope and scale would be wholly incompatible with outright permitted uses in the GMAAD and in conflict with all CUP criteria. The County also characterizes the Project as an "industrial" use and therefore improper in the GMAAD.[30] Further, the County contended the Project improperly converts Agricultural Lands of Long Term Commercial Significance (ALLTCS) by putting those lands to non-agricultural uses. According to Benton County, this conversion violates the mandates of the Growth Management Act (GMA), Chapter 36.70A RCW, the purpose of the GMAAD, and therefore also runs counter to the County's zoning and CUP requirements.

Tri-Cities CARES argued that Benton County's 2020 amendments to its Comprehensive Plan recognized the unique landscape of the Horse Heaven Hills and its ridgelines by adopting goals and policies intended to preserve and protect them. The Plan's section on Parks, Recreation, Open Space and Historic Preservation includes PL Goal 3 and Policy 5:

- PL Goal 3: Conserve visually prominent naturally vegetated steep slopes and elevated ridges that define the Columbia Basin landscape and are uniquely a product of the ice age floods.

[29] *See* Exhibits 1025 through 1030.
[30] *See* Benton County's Post-Hearing Brief at 11:5-6, 13:23 through 14:2 and 20:3-13; *see also* Transcript, Adjudicative Hearing Day 1 (Greg Wendt) at 203:24 and 211:8 through 213:22.

- Policy 5: Consider the preservation of the ridges and hillside areas through various development regulations.

TCC contended that Benton County followed its Plan by enacting various development regulations to zone the area for agriculture and prohibit residential subdivisions.

The Council is concerned with the size and scale of the project and its overall impact on the landscape of the Horse Heaven Hills. However, siting major solar power generation facilities and wind turbine farms on ALLTCS, even a project of the size Scout proposes, does not necessarily violate the GMA. Further, as recognized in our *Land Use Consistency Order*, the county plan and code in effect when the application was filed with EFSEC provide no outright basis to deny the application. Characterizing the Project as "industrial" and fundamentally incompatible with the GMAAD zone seeks to incorrectly apply Benton County's *current* zoning provisions which no longer list "solar power generation facility, major" and "wind turbine farm" as permitted uses subject to the CUP process. Again, this Council is evaluating the Project under the code in effect *at the time Scout filed its application*.

With regard to the County's contention that the Project violates the GMA, we reference the Department of Commerce's applicable rule. WAC 365-196-480(h), states, in part:

> Counties and cities are encouraged to adopt policies and regulations regarding the appropriate location for siting energy facilities on or adjacent to natural resource lands. Policies and regulations may emphasize dual-use strategies that preserve or improve natural resource lands, provide clarity to developers, and support renewable energy goals.

Benton County's zoning code in effect when Scout's application was filed, and as applied for the siting of the adjacent Nine Canyon Wind Farm, essentially reflected "dual-use strategies" for siting renewable energy facilities on natural resource lands "in ways that preserve those natural resource lands." Commerce's current GMA rules expressly authorize such an approach. Benton County's zoning code in effect in February 2021 effectively supported the state's renewable energy goals and was not inconsistent with the GMA's directive to preserve such lands.

TCC's reliance on the above-quoted 2020 amendments to the County's Comprehensive Plan is misplaced, particularly with regard to the CUP question before us. We note that Benton County did not raise such an argument regarding its own ordinance. We do not interpret the county's goal of conserving visually prominent naturally vegetated steep slopes or its policy of preserving the Horse Heaven Hills' ridges and hillside areas to alter the purpose of Benton County's GMAAD zoning designation. The Plan's GMAAD chapter includes a twenty-acre minimum lot size, with certain exceptions, to protect agricultural land use.[31] However, no provision of that chapter regulates the placement of homes, accessory buildings, or agricultural infrastructure from a visual impact standpoint.

[31] BCC 11.17.090, 100.

Finally, as a matter of law, an SCA executed by the Governor pursuant to RCW 80.50 cannot violate the Growth Management Act.[32] The Energy Facility Site Location Act (EFSLA) provides that "[t]he state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended."[33] EFSLA further provides that, if the Council recommends approval of an application for certification, it shall include conditions in the draft certification agreement "designed to recognize the purpose of" ordinances "that are preempted or superseded pursuant to RCW 80.50.110."[34] Thus, the Council is not bound to interpret or apply a county's conditional use criteria as the county would do, but if the Council recommends approval, it must include conditions designed to recognize the purpose of the local ordinances that the site certification agreement supplants.

Benton County CUP Criterion 1 – Compatibility

The County argued the key issue in the CUP analysis is compatibility, the first criterion set out in Benton County's applicable zoning code.[35] That first criterion provides that a CUP shall be granted only if the applicant can provide sufficient evidence to allow a finding that, as conditioned, the proposed use is "compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district."[36] Benton County's code defines "compatibility" as "the congruent arrangement of land uses and/or project elements to avoid, mitigate, or minimize (to the greatest extent reasonable) conflicts."[37]

The Applicant contended the Project is compatible with surrounding uses because it will allow for continued agricultural operations and discourage conversion of farmland to residential use. Leslie McClain, Scout's land use expert, cited to neighboring Nine Canyon wind facility as an example to demonstrate how dryland wheat farming and wind turbines can and do co-exist.[38] She explained that Scout proposed mitigation measures in its ASC to avoid or minimize potential conflicts with surrounding land uses in order to ensure compatibility.[39] Chris Wiley, a local landowner participating in the Project, confirmed his intention to continue and actually improve his family's multigenerational tradition of dryland wheat farming after construction of the Horse Heaven wind turbines.[40] Mr. Wiley testified to the compatibility of the Project on his agricultural property because it would not only allow continued farming on 99 percent of his acreage but also

[32] *See Residents Opposed to Kittitas Turbines,* 165 Wn.2d at 310 (holding that the Energy Facility Site Locations Act "can be properly read as a specific exception to the general goals and procedures of the GMA."); *see also* WAC 365-196-560(1) **("**Comprehensive plans and development regulations adopted under the [Growth Management Act] should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110.")
[33] RCW 80.50.110(2).
[34] RCW 80.50.100(2).
[35] *See* Benton County Pre-Hearing brief at 4:11-13 &7:11-15 and Benton County Post-Hearing Brief at 6:10-14.
[36] BCC 11.50.040(d)(1).
[37] BCC 11.03.010(53).
[38] Transcript, Adjudicative Hearing Day 1 (Leslie McClain), at 62:7-20.
[39] Exhibit 1023 at 14:10 through 20:4.
[40] Exhibit 1035 at 5:1-18; *see also* Transcript, Adjudicative Hearing Day 6 (Chris Wiley) at 1107:20 – 1110:17.

provide needed income every year making it easier to keep the farm in the family, regardless of the various uncertainties involved in crop production.[41]

The County contended that comparing the size, scale, and scope of the proposed Project with the outright permitted uses in the underlying zoning district demonstrates its incompatibility and incongruity with outright permitted uses. TCC presents a similar argument. As proposed, the Project would occupy over 100 square miles of the Horse Heaven Hills and permanently remove 10 square miles of protected farmlands from agricultural production. According to the County, no other permitted use in the zoning district is remotely comparable. In addition to agriculture, permitted uses in the GMAAD are mainly low-intensity in nature and limited to one or only a few parcels: agricultural stands, bakeries, commercial animal raising, community grange halls, commercial and private kennels, schools and churches.[42] The County argued the Project is significantly more intense than any of these uses because it covers a much larger land area, involves more ground disturbance, and is not "ancillary" to existing agricultural uses.[43] Further, the County says the Project cannot be considered complementary to any permitted uses based upon its scale and conflicts caused by its construction and operation.

Benton County acknowledges "wind turbine farms" of "two or more wind turbines on one parcel" were authorized in the GMAAD as a conditional use when Scout filed its application with EFSEC.[44] Even so, the County claims Nine Canyon's 63 turbines standing 265 feet tall can't be compared to Horse Heaven Wind's (originally) proposed 244 turbines standing 499 feet tall or the Project's alternative buildout of 150 turbines standing 657 feet tall. As proposed, Scout's Project would permanently impact 6,689 acres, equivalent to 1% of the County's GMAAD. Michelle Cooke, Benton County Planning Manager, explained that this footprint would result in the improper conversion of ALLTCS to non-agricultural uses and cause significant impacts to the economy of scale required for agricultural production in the County.[45] Ms. Cooke believes the Project's effect of fragmenting farming operations within and beyond its overall area will result in pressure to allow non-agriculture uses to replace what now exists as an intact regional agricultural area, likely creating a patchwork of semi-industrial sites.[46]

The County presented a number of additional arguments regarding the Project's conflict with the Growth Management Act, including the GMA's mandate that ALLTCS be preserved. As noted above (in the *General Concerns* discussion), as a matter of law, an SCA issued by EFSEC cannot violate the GMA. We acknowledge that even after decommissioning, the Project will result

[41] Transcript, Adjudicative Hearing Day 6 (Chris Wiley) at 1095:20-25 and 1098:1-13; Exhibit 1035 at 12:19-25.
[42] *See* Exhibit 2005 (BCC Chapter 11.17 -- examples taken from BCC 11.17.040 -- Allowable Uses); *see also* Benton County's Post-Hearing Brief at 10:10-11:21.
[43] *See* Benton County's Post-Hearing Brief at 13:7-13; *see also* BCC 11.03.010(1) for its definition of "ancillary" uses.
[44] *See* BCC 11.03.010(191)'s definition of "wind turbine farm;" *see also* BCC 11.17.070(t) and (cc) (as cited in our *Land Use Consistency Order* at paragraph 19; to prevent any confusion, we note that Benton County's Exhibit 2005 contains an updated version of BCC Chapter 11.17, one in which solar facilities and wind farms have been deleted from the listed conditional uses for the GMAAD).
[45] *See* Exhibit 2003 at 3:9-21.
[46] *See* Exhibit 2003 at 4:17 through 5:4, 8:16-27, and 9:26 through 10:13.

in a certain amount of ALLTCS being permanently lost but we do not find that fact alone to dictate a determination of inconsistency with the County's CUP criteria.

We believe the evidence offered by Scout demonstrates the compatibility of wind turbines with existing agricultural and other permitted uses in the GMAAD. The Council finds that agriculture can coexist with wind farms and, as Ms. McClain points out, likely bring benefits to farms and ranches in the area. We recognize and agree with the County's position that the overall size, scale and scope of the Project must be considered. However, BCC 11.50.040(d)(1) requires us to evaluate whether the Project is "compatible *with other uses in the surrounding area* or is no more incompatible than are any other outright permitted uses in the applicable zoning district" (*emphasis added*).

The County's position about the "intensity" of this Project is not supported by the language of its code or its argument that Nine Canyon's smaller size makes it somehow more compatible or a less intense use than Scout's proposed Horse Heaven Wind Farm.[47] Scout's Project would admittedly be the largest conditionally permitted use in the GMAAD, but when we consider the density of wind turbine infrastructure within the 11,805-acre micrositing corridor, the Project's "intensity" is markedly reduced. Viewed on a parcel-by-parcel basis, we find the Horse Heaven Wind Farm to be compatible with other uses in the surrounding GMAAD area because each individual turbine site would be ancillary to the agricultural uses surrounding it.

Benton County's "intensity" arguments are more persuasive with regard to the Project's solar arrays and associated BESS facilities. Those portions of the Project remove the most acreage from agricultural uses and their respective footprints will span more than one parcel. However, the zoning code, prior to more recent amendments, did not require "wind turbine farms" or "major solar generating facilities" to be limited to one parcel in the GMAAD, as it did in the rural residential zone. That was the case with Nine Canyon. We read that same code provision to allow wind or solar facilities covering more than one parcel.

After considering all evidence presented by Scout regarding compatibility and that presented by parties arguing in the alternative, we find the Project meets the first criterion of BCC 11.50.040(d).

Benton County CUP Criteria 2 & 4 – Impacts on Health, Safety, and Welfare & Public Services

We next address the second and fourth CUP criteria together because they both present overlapping questions regarding fire protection. Criterion 2 requires sufficient evidence to support a finding that, as conditioned, the proposed use will "not materially 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." Criterion 4 requires enough evidence to support

[47] No party presented evidence comparing Nine Canyon to the proposed Project to demonstrate that one or the other converted more agricultural land to tower footings or access roads on a per acre basis.

a finding that the proposed use, as conditioned, will "be supported by adequate service facilities and would not adversely affect public services to the surrounding area."

Scout believes that conditions to be imposed in an SCA ensure the Project meets the second CUP criterion. Scout's ASC evaluates the risk of fire and explosion during construction and operation of the Project in Section 4.1.2, noting the site has "little vegetation cover and few trees, presenting little to no inherent risk of fire or explosion" in the case of personnel error or equipment malfunction. Ms. McClain testified that a fire caused by a wind turbine is an "extremely rare event" and she was "only aware of one occurring in the Northwest," despite hundreds of turbines operating in the region.[48] Scout acknowledges that combustible materials, the temporary use of diesel generators, and the BESS facility present some risk, but precautionary measures and appropriate conditions mitigate those risks. As to the BESS facility, Scout's resident project manager Dave Kobus testified that the National Fire Protection Association (NFPA) recently updated its safety standards because it found using water suppression during a BESS facility fire can actually make things worse. Mr. Kobus explained that the NFPA's current standard recognizes that modular BESS facilities, like those proposed for this Project, are designed to contain fires and allow them to burn out on their own, without the need for high volumes of water or dangerous personnel involvement.[49] Ms. McClain explained that emergency response plans and associated fire management plans, including one to address a BESS fire, are routinely required as pre-construction conditions and would also be expected conditions for this Project. Mr. Kobus indicated Scout would continue to update EFSEC on the evolution of NFPA standards for fighting and containing BESS facility fires and update its plans accordingly.

Scout also believes that conditions to be imposed in an SCA demonstrate that its Project meets the fourth CUP criterion. The parties' pre-filed testimony mainly focused on the potential impact to Benton County Fire District 1 and the question of whether it had sufficient training and equipment to take on the new risk and responsibility created by a large renewable energy project. Scout's ASC sought to mitigate any such burden on public agencies like Fire District 1 as detailed in its Draft Emergency Response Plan, Appendix P to the ASC. Scout pledged to coordinate with local agencies to finalize that plan before submitting it to EFSEC for approval and then work with local emergency services personnel to ensure they receive all necessary training. Scout was confident that significant new property tax revenue generated by the Project will greatly increase available financial support for essential services in Benton County, avoiding any negative impact and potentially increasing public service provider capacity in the area.

Benton County, again characterizing the Project as a large-scale industrial project, contended that the Horse Heaven Wind Farm will materially endanger the health, safety, and welfare of the area to a greater extent than permitted uses, precluding it from meeting the second CUP criterion. Benton County Director of Community Development Greg Wendt asserts that the area surrounding the site lacks fire and emergency response resources typically found in cities or urban areas. Instead, the Project is served only by Fire District 1, a rural fire district chiefly staffed by volunteers.[50] Mr. Wendt points to the Draft EIS as evidence that wind turbines create a new fire

[48] *See* Transcript, Adjudicative Hearing Day 1 (Leslie McClain) at 107:10-20; *see also* Exhibit 1040 at 2:20-25.
[49] *See* Transcript, Adjudicative Hearing Day 8 (Dave Kobus) at 1713:7 through 1715:8, 1718:5 through 1719:2, and 1720:23 through 1732:10 (this last portion encompasses questions posed to Mr. Kobus by Councilmembers); *see also* Transcript, Adjudicative Hearing Day 1 (Leslie McClain) at 97:7 through 103:17.
[50] Exhibit 2001 at 12:23 through 13:9.

risk, citing its example of a 2019 250-acre fire in Klickitat County. caused by a wind turbine's generator catching fire, melting, and falling to the ground to start a larger conflagration.[51] According to Mr. Wendt, adding the risk associated with this Project would overburden Fire District 1's limited resources and in turn reduce services to all others in the area. The County argued this zero-sum equation means the Project creates a greater impact on public health, safety and welfare than other outright permitted uses in the GMAAD.

Benton County relies on similar testimony from Mr. Wendt that the Project cannot meet the fourth CUP criterion because it will not be supported by adequate service facilities, and it will adversely affect fire and water services in the surrounding area.[52] Lonnie Click, Fire Chief of Benton County Fire District 1, pre-filed his testimony on behalf of TCC to express his concerns about the Project and, specifically, the potential impact wind turbines would have on aerial firefighting.[53] Although Fire District 1 has no aerial firefighting resources of its own, Chief Click questioned whether firefighting aircraft would be able to safely and effectively drop fire retardant if they could not operate and fly low along the Horse Heaven ridgetops due to the presence of the wind farm.

The Council finds the evidence offered by Scout sufficient to demonstrate that the Project will not materially endanger the health, safety and welfare of the surrounding area more than any other permitted use in the GMAAD. Mr. Wendt's assertions that the Project, solely due to its size, creates a greater fire risk than other uses allowed in the zone are overstated. Aside from the singular turbine-caused fire mentioned above, Mr. Wendt provided no further examples of renewable energy facilities causing fires.[54] The Applicant's Draft Emergency Response Plan, (with any modifications required by the SEPA process), will sufficiently mitigate the fire risks presented by the Project's wind, solar and BESS facilities. In order to protect the health and welfare of residents living or working in proximity to the BESS facilities, we will require Scout to comply with the most current NFPA guidance on combating and containing BESS fires and, to the extent feasible, any potentially hazardous emissions.

We also find the Applicant's evidence sufficient to find the Project will be supported by adequate service facilities and would not adversely affect public services in the GMAAD. Scout's plan to coordinate with local agencies to ensure response personnel receive adequate training regarding any new hazards presented by wind solar and BESS facilities is credible and will be a required condition in any SCA forwarded to the governor. Tax revenues generated by the Project will assist local government agencies to upgrade service facilities as needed.

After considering all evidence presented by Scout regarding health, safety and welfare and public services in the area as well as the concerns raised by Fire District 1, Benton County and TCC, we find the Project meets the second and the fourth CUP criteria set out in BCC 11.50.040(d).

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[51] *Id*. at 13:19 through 14:2.
[52] *See* Exhibit 2001 at 14:5-15 and 16:27 through 17:8.
[53] Exhibit 5631. Due to Mr. Click's firefighting obligations during the course of the adjudicative hearing, the fire chief was not able to personally appear before the Council.
[54] *See* Transcript, Adjudicative Hearing Day 1 (Greg Wendt) at 210:25 through 215:22; *see also* 227:13 through 228:6.

Benton County CUP Criterion 3 – Traffic Impacts

Turning to the third conditional use criterion, the Applicant must present sufficient evidence for us to be able to make findings of fact based on the evidence presented sufficient to conclude that its Project, as conditioned, would "not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district." These concerns bring our focus to construction-related traffic and the new service roads required to operate and maintain the wind turbines, solar arrays, and BESS.

Scout presented a Transportation Management Plan (TMP) in its SCA that included measures to avoid and reduce Project-related delays on local roadways and also ensure public safety. The County acknowledges that Project operations are unlikely to have much impact on local traffic. Understandably, their concern is mainly with regard to traffic impacts during buildout and construction. The number and size of wind turbine components associated with a Project the size of the Horse Heaven Wind Farm will require many slow-moving long flatbed trucks carrying oversize loads. These are likely to cause congestion on interstate highways and local roads. Scout's TMP addresses these impacts and seeks to allow safe and efficient traffic flow to the extent feasible during construction activities.

Scout's construction activities will also extend to creating new roadways within the Project's footprint. These will mainly be gravel roadways to allow access to Project facilities, but evidence in the record shows they may also benefit local participating landowners as well as emergency responders. There is also a possibility the additional roadways may serve as firebreaks in the case of a range fire spreading across dryland wheat farmland.

The Council will require Scout to update the TMP set out in its SCA with input from the Washington State Department of Transportation (WSDOT) and Benton County and submit the plan for Council review and approval before any construction begins. The plan must contain measures to protect public safety and reduce construction-related delays on local roadways in and around Benton County and the affected portions of the Horse Heaven Hills. After considering all evidence presented by Scout regarding vehicle and pedestrian traffic, the concerns raised by Benton County, and the measures to be required in the TMP, we find the Project meets the third criterion of BCC 11.50.040(d).

Benton County CUP Criterion 5 – Hindering of Permitted Use on Neighboring Property

Scout asserts the Project will not hinder permitted uses on surrounding lands. According to both Ms. McClain and Mr. Wiley, the Project would not discourage development of permitted uses on neighboring properties. Ms. McClain testified that renewable energy facilities "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."[55] Mr. Wiley opined that his neighbors who aren't participating in the Project would be minimally impacted, mainly by being able to see the wind turbines on his and other participating landowners' properties and perhaps by some increased traffic on local roads.[56]

The Applicant concedes that the solar arrays and optional BESS may preclude over 6,000 acres from agricultural practices, depending on final design. However, those facilities would not change land uses or preclude access to farm operations on surrounding properties, nor would they necessitate relocating existing farm access routes or farm infrastructure or result in changes to the practices for planting, irrigating, fertilizing, or harvesting on surrounding properties. Finally, Scout's evidence indicated shadow flicker and glare are not expected to be significant for surrounding properties, observation points and vehicle routes.

Aside from Ms. Cooke's speculative evidence regarding potential fragmentation of farmland in the GMAAD in the future, the Project's ability to meet this final CUP criterion was not seriously disputed during the adjudication. Therefore, based on the evidence in the record, the Council finds that the Project meets the fifth and final criterion for a CUP under the Benton County Code.

Council Conclusion regarding Eligibility for Conditional Use Permit

In accordance with the entirety of the above discussion, the Council concludes based on the adjudicative record that the Horse Heaven Wind Farm Project meets Benton County's conditional use permit criteria for siting in Benton County's Growth Management Act Agricultural District, subject to the conditions noted above and any additional mitigation measures to be set out in the Site Certification Agreement.

D. CULTURAL AND ARCHAEOLOGICAL RESOURCE IMPACTS

In accordance with WAC 463-60-362(5), Scout's ASC detailed environmental impacts of its Project and efforts to minimize those impacts on "all historical and archaeological sites within the area affected by construction and operation of the facility."[57] Scout provided this information to the Washington State Department of Archaeology and Historic Preservation (DAHP) and to interested tribes.[58] Scout believes that through avoidance strategies and other measures, it has minimized and mitigated the Project's impacts on historical, cultural and archaeological resources as much as possible.[59]

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[55] Transcript, Adjudicative Hearing Day 1 (Leslie McClain) at 62:12-17; *see also* 79:9-13 and 82:8-16.
[56] Transcript, Adjudicative Hearing Day 6 (Chris Wiley) at 1104:17 through 1105:25.
[57] *See* Application for Site Certification, Section 4.2.5 and Appendix R.
[58] Prior to filing its ASC with EFSEC, Scout communicated and consulted with the following Indian Tribes: the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Wanapum Tribe. *See* ASC Section 1.12.2.
[59] *See* Scout's Pre-Hearing Brief at 14:5-18 and Scout's Post-Hearing Brief at 20:11 through 29:20; *see also* Transcript, Adjudicative Hearing Day 4 (Emily Ragsdale), at 613:21 through 617:2.

The Yakama Nation intervened in this adjudication to protect interests in maintaining its People's way of life, customs and traditions, and economic well-being. The Yakama Nation also intervened to preserve its People's sacred cultural resources found in the Horse Heaven Hills, including archaeological resources and a complex and irreplaceable landscape of legendary and monumental traditional cultural properties (TCPs).[60] The Yakama Nation argued that without substantial modifications to the Project design, the impacts on tribal TCPs will be disastrous.[61]

The Council reviewed evidence regarding cultural resource studies and the varying methods each party relied upon to reach their positions. The parties presented the Council differing approaches to define what EFSEC can and cannot consider as a TCP. The Council also heard testimony regarding the deep cultural significance that numerous TCPs and various species of wildlife located and living within the Project's boundaries hold for the Yakama Nation. Finally, the Council heard each party's opinions on the Project's impacts to these cultural resources and engaged in questioning party witnesses regarding the ability to mitigate these impacts. We summarize and, in turn, discuss each of these points below.

The Applicant relied on the testimony of Emily Ragsdale, principal archaeologist with Historical Research Associates, Inc. (HRA). The Yakama Nation presented the testimony of several Yakama Nation Members in tribal government and leadership positions regarding their People's cultural heritage: Jerry Meninick, George Selam, Terry Heemsah, Sr., and Caseymac Wallahee.[62] The Yakama Nation also presented testimony from Jessica Lally, lead archaeologist for its Cultural Resources Program. Much of the evidence regarding cultural resources and TCPs consisted of sensitive information and, in accordance with a Protective Order issued by the Council's ALJ, is kept confidential.[63] This Order discusses the issues presented without disclosing evidence contained in the adjudicative record that includes confidential information.

Cultural Resource Study and Survey Methodologies – Defining TCPs

The Applicant hired HRA to consult and coordinate with DAHP, DNR, the Confederated Tribes of the Umatilla Indian Reservation (Umatilla Tribe or CTUIR), and the Yakama Nation regarding the proposed Project's potential impacts on cultural resources. Over the course of more than 5 years, HRA conducted research, engaged in outreach, and performed archaeological surveys and inventories along the Project's micrositing corridor. HRA documented multiple archaeological resources within the lease boundary, including several newly identified by its work. Scout worked with DAHP to receive required determinations and with CTUIR to mitigate any impacts to their identified cultural resources. HRA's Cultural Resource Reports were included in Scout's ASC as

[60] *See* Petition for Intervention by the Confederated Tribes and Bands of the Yakama Nation (February 3, 2022). The Yakama Nation's Petition also alleged its interests regarding the Project's potential effects on wildlife, wildlife and plant habitat, visual impacts, recreation, and transportation.
[61] *See* Yakama Nation Post Hearing Brief at 4:19-22.
[62] Mr. Wallahee submitted pre-filed testimony but was unable to attend the hearings.
[63] *See* Protective Order with Provisions Governing Confidential Information and Information Exempt from Public Disclosure Under RCW 42.56 (May 24, 2022).

Appendix R. Scout plans to entirely avoid all identified archaeological resources during construction, with no ground disturbance, and monitor construction for any unanticipated finds.

The Yakama Nation argued that Scout's cultural resource studies did not include crucial information about Project impacts on Yakama Nation TCPs. During the adjudication, Jessica Lally presented the Yakama Nation's own internal studies based on both western academic archaeological training and inherent tribal knowledge. Ms. Lally characterized different types of TCPs based on their cultural significance to the tribe and explained the concept of a Project's "zone of influence."[64] Ms. Lally explained that due to interconnectivity among cultural resources, individual TCPs might fall into more than one of those categories, and the zone of influence concept was developed by the Yakama Nation Cultural Resources Program as a means to capture the traditional tribal way of viewing the interrelated nature of these resources.[65] Through use of a demonstrative exhibit during a confidential closed session of the adjudicative hearing, Ms. Lally described the general locations of Yakama Nation TCPs within the Project's zone of influence, and identified the cultural significance of the TCPs according to the tribal classification system.[66] This information had not been presented to the Applicant prior to the adjudication.[67]

Scout contended the Yakama Nation's methodology was not based on federal or state guidelines and instead identified TCPs based on "idiosyncratic definitions" inconsistent with EFSEC's legal framework and DAHP administrative guidance.[68]

Scout argued that Yakama Nation's TCP claims must be considered in context and under applicable regulatory criteria.[69] Scout asserts there is no legal basis to support Ms. Lally's description of the Project having a "zone of influence" that extends well beyond the Project's lease boundary, when much of that land area is privately owned and already significantly developed with agricultural, industrial or residential uses.[70] Scout argued it cannot be required to mitigate impacts that have already occurred.[71] Scout also contended that the high-level generalized descriptions of TCPs provided by Yakama Nation with no specific geographic locations and vague references to transitory or intangible resources do not fall within EFSEC's rule (WAC 463-60-362(5)) requiring consideration of historical and archaeological sites.[72] In essence, Scout's position

[64] Transcript, Adjudicative Hearing Day 4 (Jessica Lally) at 638:18-639:13 and 643:17-25 (confidential).
[65] *Id*.
[66] *See* Exhibit 4003 (confidential) and Transcript, Adjudicative Hearing Day 4 (Jessica Lally) at 644:1-649:13 (confidential).
[67] Due to the sensitivity of the geographical information contained in Ms. Lally's demonstrative exhibit, the Yakama Nation did not submit a copy of this map to the adjudicative record. *See also* Applicant's Post-Hearing Brief at 25:10-11 and 15-16 regarding Yakama Nation's decision not to share TCP information with Scout.
[68] *See* Applicant's Post-Hearing Brief at 26:6 through 29:9.
[69] *Id*, at 27:1.
[70] Scout acknowledged Yakama Nation's treaty rights to "open and unclaimed land" under the Yakama Treaty of Camp Stevens (June 9, 1855) but relied on Washington court decisions holding that such rights do not extend to private property. *See* id, at 27:17-21 and 29:1-5.
[71] *Id*.
[72] *Id*., at 28:2-11.

boils down to questioning how, under EFSEC rules, it can be held responsible for avoiding impacts to TCPs that can't be described in terms of a specific location or tangible property.

At the hearing, Scout's consulting archeologist Emily Ragsdale explained the difference between archaeological resources and TCPs.[73] Archeological resources are essentially physical remnants of people being on the landscape. That can be artifacts, features, midden deposits, faunal remains, or other historic remnants. TCPs, on the other hand, are a place or property that's associated with cultural practices and ideas, rooted in the history of a group of people, integral to their cultural identity today. An individual TCP can include a wide array of features and aspects, which may or may not include archaeological resources.[74]

Ms. Ragsdale explained that HRA's report focused on specific resources within the Project site as required by statute and regulation, meaning that TCPs necessarily fell outside the scope of HRA's studies.[75] She agreed that Jessica Lally's experience and access to the Yakama Nation "makes her the most qualified archaeologist to provide a professional opinion regarding the Project's impacts on Yakama Nation's TCPs."[76] Ms. Ragsdale readily acknowledged that "only Yakama Nation can say what is important and eligible to Yakama Nation. That's not something that I can do."[77]

The Council's charge includes considering the broad interests of the public and promoting environmental justice for overburdened communities.[78] The Council also is specifically directed to engage in government-to-government consultation with federally recognized tribes that possess resources, rights, or interests reserved or protected by federal treaty, statute, or executive order in the area where an energy facility is proposed to be located. The purpose of this consultation is to identify tribal resources or rights potentially affected by the proposed energy facility and to seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights. As part of the EFSEC siting process, DAHP is directed to coordinate with the affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites. All of the foregoing makes it critical for us to consider the Project's impacts on tribal TCPs.[79] For some purposes, DAHP defines a TCP as "a property or 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

[73] Transcript, Adjudicative Hearing Day 4 (Emily Ragsdale) at 604:16-606:6.
[74] *Id*.
[75] Transcript, Adjudicative Hearing Day 4 (Emily Ragsdale) at 591:19-23.
[76] Transcript, Adjudicative Hearing Day 4 (Emily Ragsdale) at 581:6-12.
[77] *Id*. at 592:12-15.
[78] *See* RCW 80.50.010, premise (2). This Council is very mindful of the legislative directive to pay particular attention to the interests of overburdened communities in our application review and siting process.
[79] Effective June 2022, EFSEC is required to consult with all federally recognized tribes whose interests are protected by federal treaty in the location of a proposed energy facility with the goal of (1) identifying tribal resources that would potentially be affected by the proposed facility and (2) seeking ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights. RCW 80.50.060(8). DAHP is required to coordinate with the affected tribes and the applicant in order to assess potential effects to tribal cultural resources, archeological sites, and sacred sites. RCW 80.50.060(9).

practices and beliefs that are (1) rooted in the community's history and (2) important to maintaining the continuing cultural identity of the community's traditional beliefs and practices.[80] However, DAHP has also more broadly defined a TCP as "a distinctive natural site, such as a mountaintop, or a historic environment, such as an ethnic neighborhood, or it may simply be a place with significant historic value to a specific ethnic or cultural group ... based on historic cultural beliefs, customs, or practices which may or may not continue to be present."

The Council recognizes that the cultural resources section of Scout's ASC met all EFSEC informational requirements set out in WAC 463-60. But the information that is required to be included in an application does not limit what the Council may determine to be relevant to fulfilling its statutory charge to consider and attempt to address impacts to the interests of affected tribes. We find it is not up to the Applicant to define what qualifies as a TCP for the Yakama Nation. The Council finds it wholly appropriate to defer to the Yakama Nation's traditional knowledge and classification system in determining what is or is not of culturally significant value to its People.

Cultural Significance of the Horse Heaven Hills to the Yakama Nation

The People of the Yakama Nation hold the Horse Heaven Hills and surrounding geographic features, together with their wildlife and other environmental elements, as immensely precious and culturally significant. The Yakama Nation emphasized that its TCPs cannot be reduced to artifacts of past cultural practices. Although tribal practices prohibit sharing certain information outside their own people, several Yakama Nation Members personally appeared before EFSEC to demonstrate the gravity of the threat they see the Project poses to their TCPs.

George Selam, Yakama Nation Tribal Employment Rights Ordinance Compliance Officer, former General Council Officer, and former Tribal Council Member, explained in a closed hearing session how Yakama Nation culture, traditions, and history have been linked to the sacred land of the Horse Heaven Hills since time immemorial and are still today passed down through generations to keep the culture alive for future generations yet unborn.

The Horse Heaven Hills are tied to Yakama Nation legends and stories that relay the order and rules of the natural and cultural world, including the natural resources necessary to sustain human life on Earth that are of continuing critical importance to Yakama Nation Members' way of life and connection with the Creator.[81]. Jerry Meninick, former Chairman and elected leader of the Yakama Nation, current Yakama Elder serving as Deputy Director of Culture, testified to the critical cultural importance of passing down stories from elders to new generations. He explained how those stories and legends depend upon the preservation of sacred landscapes and viewsheds. Mr. Meninick testified that because specific events in Yakama Nation history occurred on this site, this is where ceremonies honoring these events must be held. This location is also an integral aspect of tribal beliefs. Terry Heemsah, Sr., current Member of the Yakama Nation Tribal Council, serving

[80] DAHP Policy Number 12.1.2017, Traditional Cultural Properties at 1 (December 1, 2017); *see also* Transcript, Adjudicative Hearing Day 4 (Emily Ragsdale) at 604:16 through 606:06.
[81] Yakama Nation Post-Hearing Brief, 30-31.

as Law and Order Secretary, Fish and Wildlife Secretary, and Member of the Cultural Committee, testified as to the Project's impact on areas of deep spiritual meaning, and potential disruption to the ability of Tribal Members to show reverence and respect at these sacred sites.

The Yakama Nation argued that without significant changes to scope and scale, construction of this Project will do irreparable harm to TCPs of critical importance to its People's way of life and spiritual beliefs. The Yakama Nation questions whether conditions or mitigation measures can sufficiently protect their interests.[82] The Yakama Nation views these TCPs as spiritual resources, part of a living culture that will be forever modified by mile after mile of wind turbines disrupting critical viewsheds.

In addition to the Project impacts on tribal TCPs, the Yakama Nation also provided testimony regarding the cultural and religious significance of local wildlife species. Jerry Meninick explained tribal beliefs on how everything in the natural world has an interconnected purpose and how each contributes to the health and welfare of the land. The key species most relevant to tribal concerns at this site are the Ferruginous Hawk and the Pronghorn Antelope (both are discussed in much more detail elsewhere in this order). In the Yakama Nation's culture, these animals are intrinsically tied to the land. The Yakama Nation has been reintroducing the pronghorn to the Columbia Plateau and the wider region, and working with WDFW to protect, manage, and monitor the species.

The Council found the testimony of the Yakama Nation elders compelling. The Council takes seriously EFSEC's need to respect the tribe's spiritual and religious beliefs and to acknowledge the significance the Yakama People place on all aspects of the natural world, particularly the Horse Heaven Hills and its key species. Therefore, the Council finds the Project cannot be approved without seeking ways to avoid, minimize, or mitigate impacts to Yakama Nation TCPs. Further, approval and construction of the Project must not infringe on any existing access rights currently enjoyed by the Yakama Nation.

Mitigation of Cultural Resource Impacts

Scout modified its Project design as it developed its ASC to accommodate concerns raised by the Umatilla Tribe. Further, Scout explains in its Post-Hearing Brief that DAHP reviewed HRA's findings and concurred with Scout's plans to avoid disturbing all archaeological sites within the Project boundary, to retain an archaeologist to further develop its Survey and Avoidance Plan, and to train workers on cultural resource protection and what to do in case of new and unexpected discoveries during construction. Updates to the ASC reduced the Project's footprint, including less fenced area, removal of infrastructure from priority habitats, and elimination of several turbines.[83]

[82] Id, at 31:15-20.

[83] The Applicant removed several wind turbines from the Project in its Final ASC submitted September 25, 2023 (Turbines 5, 6, 7, 8, 116, 121, 122, 123, 124, 125, 162, and 243). The reduction in turbines was originally captured in Scout's September 9, 2023, response to Data Request No. 9 (as explained in footnote 92, this document was occasionally referred to as the "Moon Memo" when discussed during the adjudicative hearing).

Scout believes that further modifications and conditions can successfully mitigate the Yakama Nation's concerns regarding viewsheds, disruption to wildlife, noise levels, and access restrictions.

The Yakama Nation viewed the original Project proposal as disastrous for its current and future interests. The tribe views the modifications made by Scout during EFSEC's application review process as inadequate. Only complete and total avoidance can prevent direct harm to many of the Yakama Nation's TCPs. Nevertheless, the Yakama Nation concedes that certain impacts could be minimized through a more thorough redesign of the Project.

After considering all of the evidence presented regarding archaeological and cultural resources, the Council more fully understands how and why the Yakama Nation considers the Horse Heaven Hills to be a homeland. Their people cared for and, in turn, relied on these lands to care for them. The Yakama Nation seeks to limit the Project and allow its people to carry on traditions its ancestors practiced freely for thousands of years. The elders of the Yakama Nation know where their people came from. The elders want to pass down traditions to future generations who will be able to experience and know where they came from, too, to know who they were, who they are, and who they always will be.

The Council finds that constructing the Horse Heaven Wind Farm would result in some unavoidable negative impacts to Yakama Nation TCPs. The Council further finds that Scout's Project design does not sufficiently avoid or minimize impacts to Yakama Nation TCPs that could be mitigated by altering Project design. Therefore, we find it necessary to further reduce impacts to Yakama Nation's TCPs beyond what has been proposed by the Applicant.

E. VISUAL IMPACT

The scope and scale of the visual impact of the Horse Heaven Wind Farm raised a high level of attention from the local public, from Tri-Cities CARES and, as noted above, the Yakama Nation. No party disputes that the proposed project will have unavoidable significant visual impacts. The Council received evidence from expert witnesses who offered varying approaches to analyzing visual impacts and recommended strikingly different mitigation measures.

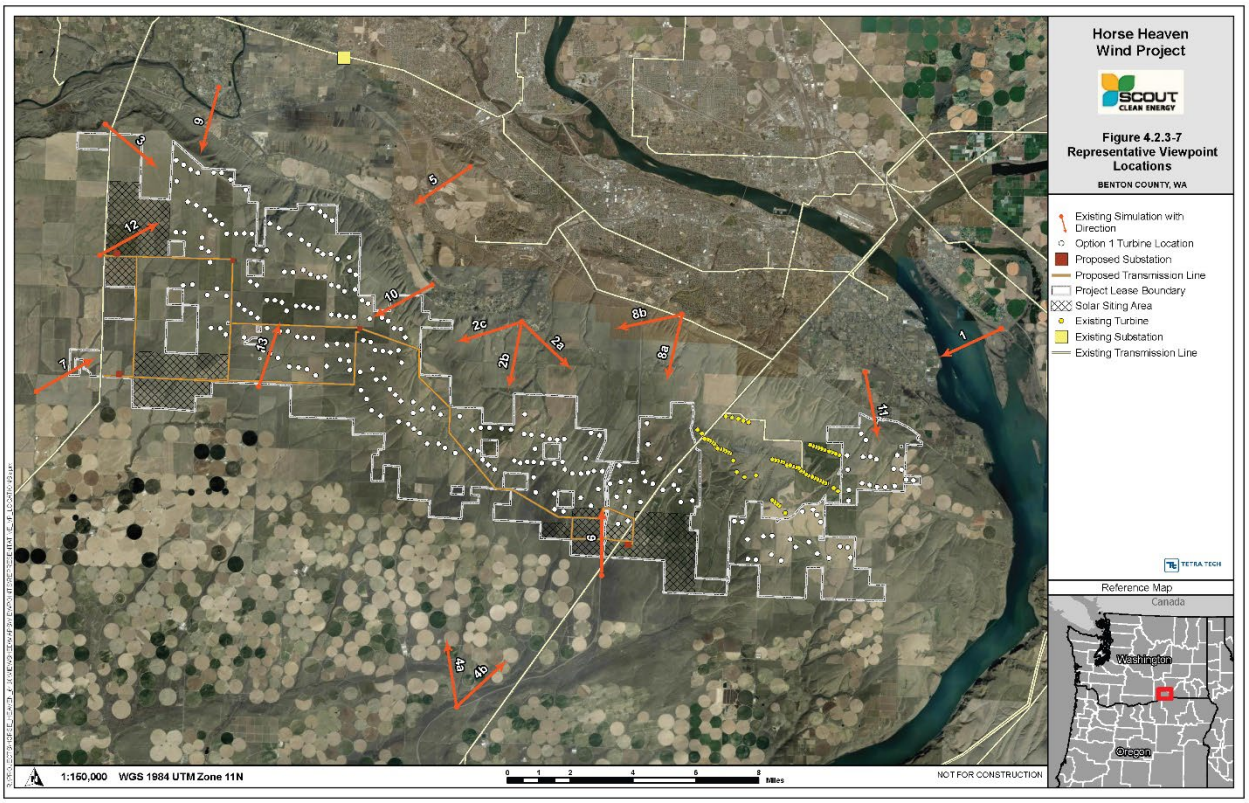
In accordance with WAC 463-60-362(2) and (3), Scout's ASC described the Project's aesthetic impact and any alteration of the surrounding terrain.[84] The Applicant presented Brynn Guthrie, a visual resources specialist, to answer questions about Scout's visual impact analyses. Scout relied on the Bureau of Land Management's Visual Resource Manual Methodology System and other industry standard approaches to evaluate the Project's aesthetic impacts, including a "worst case scenario" accounting for varying meteorological conditions (*e.g.*, haze).

Scout, after consulting with the Benton County Planning Department, Benton City and the Yakama Nation, selected 13 representative viewpoints (RVs (also referred to by the parties as Key Observation Points or KOPs)) around the Project to evaluate and illustrate views from different directions, elevations and distances. Scout chose observation points with views from residential

[84] *See* ASC Section 4.2.3 and Appendix Q.

areas, recreational sites, vehicle travel routes, a commercial zone, and from a local school.[85] This map from the Revised Application (Figure 4.2.3-7) orients the reader to the Project's (Option 1) layout, the chosen viewpoints, and identifies the existing Nine Canyon wind turbines on the northeastern reaches of the Proposed Project:

4.2.3-7 – Representative Viewpoint Locations



Brynn Guthrie explained Scout's viewshed analysis and confirmed that for the Option 1 layout, using only topography (i.e., not accounting for existing structures), approximately 86 percent of the turbines would possibly be visible from land within 5 miles of the Project and, expanding that radius to 10 miles results in approximately 81 percent of the turbines possibly visible.[86] The ASC's visual impact assessments acknowledge that the Project will have moderate to high impacts from some viewpoints but will have only low to moderate impacts from other areas.[87] In accordance with BLM guidance, Scout's visual analyses indicate the degree of change from existing conditions. They do not attempt to assess whether any impact is positive or negative or the subjective reaction or opinion of any individual viewer.

Tri-Cities CARES contended that the Horse Heaven Wind Farm will impact over 300,000 residents in the region. TCC repeatedly emphasized the size of the Project: multiple overlapping rows of wind turbines strung out over 25 miles along Interstate 82. TCC questions how EFSEC's

[85] *See* Revised Application, Table 4.2.3-1, Selected Representative Viewpoints.
[86] Transcript, Adjudicative Hearing Day 7 (Brynn Guthrie) at 1356:24 through 1358:17, discussing portions of Section 4.2.3.2 of the Application.
[87] *See* Application, Table 4.2.3-2, Summary of Existing Scenic Quality and Proposed Project Visual Impacts. Appendix Q provides Scout's supporting visual simulations compared with existing views.

legislative direction in RCW 80.50.010(2) to "enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources" can possibly be followed if the Council recommends approval of this Project. Dean Apostol, TCC's expert, has more than four decades of experience assessing visual impacts, including those caused by renewable energy projects. He questioned Scout's methodology and results.[88] TCC not only questions whether Scout's outreach to local stakeholders was sufficient but also critiques the Applicant's failure to take into account how and why the degree of change acknowledged in their visual analyses might impact local residents.[89] Public comment indicates the importance of these existing views to local residents, even from suburban communities located several miles away. TCC presented more than sufficient evidence to make the Council aware that many people not only oppose but also do not like this Project.

Mr. Apostol worked with Tri-Cities CARES member Paul Krupin to develop a "turbine proximity map" illustrating TCC's own visual impact analysis.[90] Mr. Apostol told the Council that "[g]enerally speaking, the closer the turbines are, the higher the impact."[91] In his opinion, the Applicant's pre-hearing removal of another 13 turbines did little to mitigate the Project's impact.[92] Mr. Apostol used the turbine proximity map to divide the rows of wind turbines into layers based on distance away from representative viewpoints (RVs). He explained that eliminating turbines within 2 miles of those RVs (zone 1) resulted in taking out 57 of the proposed 231 turbines, reducing visual impacts by almost 25 percent. Eliminating remaining turbines up to 3 miles from the RVs (zone 2) took out another 56 turbines, reducing visual impact by another 24 percent. Even then the visual impact did not achieve Mr. Apostol's goal of only a moderate impact because visual impacts remained high from two of the viewpoints.[93]

TCC also presented testimony from Paul Krupin regarding visual impacts. Mr. Krupin provided census-based information confirming the number of people in the region able to see the Horse Heaven Wind Farm.[94] Mr. Krupin also provided evidence of community opinion regarding

[88] Exhibit 5102 at 4:20 through 5:7 and 6:13 through 21:19. Despite the criticisms contained in Mr. Apostol's pre-filed testimony, at hearing he described the Applicant's consultant's visual analysis as "reasonably robust" in assessing impacts. *See* Transcript, Adjudicative Hearing Day 7 (Dean Apostol) at 1425:24 through 1426:7.
[89] *See* Exhibit 5102 11:8 through 12:14. The subjective visual impacts of the Project cross over into our discussion of socioeconomic impacts are discussed more fully below in a subsequent section of this order.
[90] Exhibit 5906. *See* Transcript, Adjudicative Hearing Day 7 at 1400:11 through 1402:21 for Mr. Apostol's full description of how and why TCC's turbine proximity map was created.
[91] Transcript, Adjudicative Hearing Day 7 (Dean Apostol) at 1403:10-11. Mr. Apostol focused TCC's visual impact analysis only on the Project's wind turbines because he found the solar panels had little if any such impact (Transcript at 1423:3-15).
[92] *Id*. at 1407 8:16 and 1409:12 through 1410:6. The parties referred to the "Moon memo" to show Scout proposed removing 13 more turbines than indicated in its updated application. The referenced document is the Applicant's response to EFSEC's Data Request No. 9, part of the SEPA process that was ongoing through release of the Final EIS on October 31, 2023. TCC's attorney attached the moniker "Moon memo" to the document because it was addressed to Amy Moon, an EFSEC staff member managing development of EFSEC's EIS.
[93] *See* Transcript, Adjudicative Hearing Day 7 (Dean Apostol) at 1412:3 through 1415:21.
[94] *See* Exhibit 5305, pp. 2-8. The remainder of this exhibit was stricken and not admitted to the record.

the potential visual impact of Scout's proposed development and photographs showing the existing scenic qualities of the area.[95]

The majority of the Yakama Nation's concerns regarding the Project's visual impact on the TCP landscape are summarized and discussed above. We consider that evidence again here because in many instances the tribe's concerns over visual impacts overlap with TCC's issues.

The Council's authority and obligation to consider aesthetic impacts is well established and was thoroughly explained in the Whistling Ridge Energy Project adjudication.[96] Although the Horse Heaven Hills are not designated as a National Scenic Area like the Columbia Gorge, the Council recognizes the way in which they provide a characteristic visual backdrop for the Tri-Cities area. The established science for evaluating visual impacts presents us with multiple confounders of objective measurements versus subjective reactions to change. That said, we find it easy to conclude that this proposed Project would be visually transformative for the region, particularly for the communities of Benton City and Kennewick. We find the siting of wind turbines on or along ridgelines only magnifies their visual impact, creating an undesirable "skylining" effect. This can be objectively observed in several of Scout's visual simulations, including from RV 3 at Chandler Butte and RV 5 at Badger Mountain.[97] We acknowledge the subjective impact of these altered views will vary amongst observers and is a deeply personal concern.

The Council recognizes and finds the Applicant followed industry standards for quantitative analysis of visual impacts. Scout also followed EFSEC's established standard to prevent a "looming" effect by ensuring its turbines are set back at least four times the tip height of the turbine blade from residential structures on non-participating properties.[98] However, the Council finds the Applicant's visual impact analysis was not adequately robust given the scale of the Project, particularly with regard to outreach efforts to local communities regarding selection of key observation points and the representative viewpoints illustrated in the ASC. Scout also failed to consistently and effectively engage with underrepresented communities.

The Applicant's voluntary removal of several of the most visually impactful turbines was well received but is only a start toward addressing our concerns regarding the size and scale of this Project. We conclude that further mitigation measures are necessary in order to prevent miles-long strings of turbines from becoming the most prominent features in view from multiple points of observation in the area. A larger buffer between the turbines and the ridgeline could minimize encroachment of large project fixtures and features on views from local communities.

[95] *See* Exhibit 5302 at 33:18 through 37:20 and Exhibit 5303 (census data).
[96] *See* Council Order No. 868 (Whistling Ridge Energy Project), *Adjudicative Order Resolving Contested Issues*, at 17-19.
[97] *See* Appendix Q (Figures 5 and 8) to ASC and updated ASC (Figures 5-1a/b and 8-1a/b).
[98] Kittitas Valley Wind Power Project, Council Order No. 826 (March 2007) at pp. 30-32. *See also* Applicant's Post-Hearing Brief at 34:6-11.

F. WILDLIFE

In accordance with WAC 463-60-332, Scout's ASC described existing wildlife that might be affected by construction, operation, decommissioning, or abandonment of its Project.[99] Scout then developed mitigation measures to minimize the environmental impacts on wildlife and its habitat. Although the majority of the Project's footprint is on agricultural lands, many species live, migrate through, or otherwise depend on habitat within the lease boundary. The adjudicative hearing focused on three key species: the ferruginous hawk, pronghorn antelope, and bats. We discuss them in turn and also considered the Townsend's ground squirrel. Finally, we evaluate Project impacts on migratory corridors and habitat connectivity.

The Applicant presented testimony from Troy Rahmig and Erik Jansen. The Yakama Nation relied on Mark Nuetzmann and Leon Ganuelas. Counsel for the Environment presented Don McIvor. The Council also considered information provided via deposition transcripts from three WDFW biologists: Michael Ritter (contracted to EFSEC to support the agency's SEPA environmental review process) and James Watson, and Jason Fidorra (collaborated with Michael Ritter on his consultations with EFSEC). As was the situation with cultural resources, a good portion of the evidence regarding wildlife consisted of sensitive information and, in accordance with the Protective Order governing the adjudication, is kept confidential. We discuss the issues presented without disclosing evidence contained in the adjudicative record that includes confidential information as identified by law or by the parties offering that evidence.

Ferruginous Hawk

The ferruginous hawk (*Buteo regalis*) is a protected species with a declining population in Washington. As of August 27, 2021, it is listed as a state endangered species.[100] The Project's lease boundary encompasses a portion of this raptor's northwesternmost breeding area in the United States. A migratory species in the region, it arrives in the area each year in February or March, and departs for wintering areas in late summer/fall.[101]

The Applicant acknowledges that wind and solar farms in eastern Washington could have adverse impacts on ferruginous hawks. However, Scout contended that other man-made threats, unrelated to its Project, present far greater risks to the species' ability to persist in the region. These range from electrocution on power lines and poisoning to loss of shrub-steppe and native grassland habitat affecting both the hawk and its prey.[102] The Applicant also questions whether land within or nearby to the Project boundary is still used by nesting ferruginous hawks. The Applicant's surveys' most recent confirmation of a ferruginous hawk using a nest within 2 miles of the Project was in 2019.[103] Scout's biologists believe that historic nests, many unused for decades, are not

[99] *See* Application for Site Certification, Section 3.4 and Appendices K, L, and M.
[100] Exhibit 3001 at 7:14-23; *see also* Exhibit 3016 at 2:24-26.
[101] Exhibit 3012.
[102] *See* Applicant's Post-Hearing Brief at 37.9 through 38:13.
[103] Transcript, Adjudicative Hearing Day 5 (Erik Jansen) at 955:14-21. Counsel for the Environment's expert witness confirmed that there are no documented active ferruginous hawk nests within the Project area. Transcript, Adjudicative Hearing Day 8 (Don McIvor) at 1600:24-25.

likely to be reoccupied. Further, Scout is siting its Project on disturbed habitat that is now agricultural land, a habitat of minimal importance to ferruginous hawks.[104] The Applicant contended that scientific data show the ferruginous hawk is not routinely using the Project site for nesting and that current land uses and future disturbance from other uses preclude any realistic possibility of restoring ferruginous hawk habitat or species recovery in the area.[105]

The Applicant proposes a series of mitigation measures based on WDFW ferruginous hawk management recommendations published in 2004, WDFW guidance for wind projects published in 2009, as well as the best available science, including Scout's own studies of the site undertaken since 2017.[106] Scout pledges to protect up to 802 acres of habitat north of the Project, build artificial nest platforms, and plant native grasses under the solar arrays. Scout also committed to perform post-construction mortality studies, to continue surveying the Project area for nesting raptors, and to create "no activity" buffers around ferruginous hawk nest sites. The size of these buffer zones is disputed, as is the timing (during nesting season or year-round). The Applicant, relying on the scientific opinions of Mr. Jansen and Mr. Rahmig as well as published WDFW recommendations and guidance, argued that half-mile buffers are appropriate during nesting season.

Yakama Nation wildlife biologist Mark Nuetzmann expects the Project will deprive ferruginous hawks of important foraging habitat and likely permanently exclude these birds from land under and immediately surrounding solar arrays.[107] The Yakama Nation believes the best available science on potential impacts comes from WDFW biologists currently studying the ferruginous hawk and updating the 2004 WDFW recommendations. Although EFSEC contractual provisions prohibited formally calling Mr. Ritter, Mr. Watson or Mr. Fidorra as witnesses in the adjudicative hearing, the parties stipulated to the Yakama Nation's motion to admit transcripts from their discovery depositions.[108] Mr. Watson recommended a cautious approach to siting wind power projects in territory occupied and used by ferruginous hawks due to the species' sensitivity to disturbance by human activity.[109] In his opinion, to best allow species recovery and revitalization and preserve habitat, the ideal buffer could be as large as 10-kilometer (6.2 mile) core areas around active and historic nest sites. Mr. Watson's compromise recommendation was a 2-mile buffer around active and historic nest sites.[110]

Counsel for the Environment's expert Don McIvor, a consulting wildlife ecologist, believes Scout's application "accurately quantified the potential impacts on the ferruginous hawk."[111] Mr.

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[104] Exhibit 1022 at 5:6 through 4:17 (*distinguishing the low value habitat of dryland wheat farming terrain used by the Project from higher value foraging habitat found in irrigated agriculture lands elsewhere in the region*).
[105] *See* Applicant's Post-Hearing Brief at 39:1-4.
[106] The Applicant's proposed mitigation measures are fully explained in its Post-Hearing Brief at 40:1 through 45:20.
[107] Exhibit 4011 at 3 and 7.
[108] The Yakama Nation presented its Motion to Supplement the Record on July 31, 2023. At a pre-hearing conference held on August 4, 2023, the parties stipulated to admission of the discovery deposition transcripts. *See Order Granting Motions to Supplement the Record with Discovery Depositions of Ritter, Watson, Fidorra and Kobus* (August 15, 2023).
[109] Exhibit 4019 at 20:4 through 22:15.
[110] Confidential Exhibit 4018 at 88:20-94:2.
[111] Exhibit 3001 at 7:11-13.

McIvor agreed in principle with Mr. Nuetzmann's concerns but not his position on the importance of agricultural land as a preferred foraging territory for this hawk.[112] Mr. McIvor recommended the additional mitigation measure of "curtailment," the practice of stopping or pausing operation of individual turbines shown to have increased impact in particular seasons or other specific times. He also initially testified that 2-mile buffer zones appeared arbitrary when "more nuanced and biologically informed" buffers could be individually tailored by relying on specific knowledge of ferruginous hawk activity on the site.[113] However, after reviewing Mr. Watson's testimony and accompanying exhibits, Mr. McIvor came to agree with recommending a larger buffer around active and historic nest site core areas, rather than the quarter-mile buffer indicated by older WDFW guidelines and relied upon by the Applicant.[114]

The Council finds that endangered ferruginous hawks currently use and have historically made use of the Project site for nesting and foraging. The Applicant is obliged to minimize adverse effects on the land and its wildlife. Scout presented field studies supporting its efforts to do so, but we are persuaded that more can be done to avoid and mitigate Project impacts on the ferruginous hawk. If approved as proposed, we find that Project would threaten the persistence of the ferruginous hawk not only in the Project area but also in Washington State.

The Council acknowledges it is not the Applicant's responsibility to recover the ferruginous hawk from its perilous existence in Washington. We also recognize that even if the Project is not approved, the ferruginous hawk may succumb to the pressures of habitat loss and fragmentation as well as competition and predation from other species. Neither EFSEC nor the Applicant have any control over these types of natural and anthropogenic threats to the species. However, we find the evidence in the record supports more avoidance and mitigation measures than those proposed by the Applicant.

The Council has considered and weighed all of the expert testimony on how to avoid and minimize adverse impacts to the ferruginous hawk. The Council concludes that WDFW guidance from 2004 and 2009 should not be the final word on what is or is not the best available science today. Scout's own studies provide more current information regarding ferruginous hawk use of the Project site, as do the studies available to the Council through the discovery depositions of Mr. Ritter and his colleagues. We conclude that additional mitigation measures to minimize impacts on the ferruginous hawk are needed. We will craft them, including an appropriate buffer zone, based on the adjudicative record and our final EIS. We understand Scout's apprehension about requiring 2-mile buffers around all nest sites as recommended by Mr. Watson and largely endorsed by Mr. McIvor, but if the final EIS validates that size buffer as the best approach to minimizing adverse impacts on an endangered species, the Council will accordingly incorporate that advice in our recommendation to the governor.

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[112] *Id*. at 8:18 through 9:13.
[113] *Id*. at 11:1-12; *see also* Transcript, Adjudicative Hearing Day 8 (Don McIvor) at 1587:9 through 1590:4.
[114] Exhibit 3016 at 3:9-18 as modified and corrected at hearing; *see* Transcript, Adjudicative Hearing Day 8 (Don McIvor) at 1562:14-25 (clarifying USFWS Region 6 recommended buffer zone is 1 mile, not 2 miles) and 1590:5 through 1593:3 (remainder of answer stricken as non-responsive).

Pronghorn Antelope

The Yakama Nation traditionally relied on the pronghorn antelope as a game species and holds the animal as culturally significant. In the early twentieth century, pronghorn populations declined in Washington to a point where reintroduction attempts became necessary. All of these ultimately failed. In recent years, Yakama Nation tried again. Leon Ganuelas, Yakama Nation's Wildlife Resources Program Manager, described the tribe's efforts.[115] In 2011, 99 pronghorn were translocated from central Nevada to the Yakama's reservation. 25 of the females were fitted with radio tracking collars, allowing biologists to study their movements on the land. In 2017 and 2019, the Yakama Nation brought in two additional groups of 50 more pronghorn each, fitting more individuals with tracking collars. Those animals have helped establish a tentatively stable population of approximately 250 animals.

Telemetry data, most of which is confidential, confirms that pronghorn antelope now roam the Yakama's reservation and beyond. Pronghorn antelope surveys have documented animals using and traversing the Project site, including portions of areas proposed for solar arrays.[116] WDFW jointly manages pronghorn outside the reservation with the Yakama Nation. Together, they are working to monitor, protect, and recover the species to achieve a self-sustaining population. WDFW classifies pronghorn antelope as a game species. However, hunting is not currently permitted in Washington due to the species' low abundance.[117]

The Applicant contended the Project's potential effects on the off-reservation pronghorn population are likely to be minimal. Scout emphasized the limited existing research on pronghorn movement, use of habitat, and interactions with wind facilities. Scout acknowledges that fenced solar arrays will exclude pronghorn, but Scout's data indicated the animals only rarely use those areas of the Project, most of which is on agricultural land of low habitat value to the species.[118] Scout did not have access to telemetry data from the Yakama Nation at the time it evaluated potential pronghorn impacts. But according to the Applicant, measures set out in the ASC, along with those from the Applicant's response to Data Request 9[119], will more than sufficiently mitigate impacts to pronghorn that might come to or through the Project site.

The Yakama Nation disagrees. In its view, the Project will not only exclude the pronghorn from over 6,000 acres to be fenced for solar arrays but also exacerbate ongoing habitat destruction and fragmentation.[120] Don McIvor, testifying for CFE, agreed that Scout's conclusions should be reevaluated with Yakama Nation telemetry data.[121] The Yakama Nation believes further study is

[115] *See* Exhibit 4008 at 2-3 and Exhibit 4009 (PowerPoint presentation).
[116] Exhibit 4008 at 3-4; Confidential Exhibit 4009 at slides 15-17; Confidential Exhibit 4010 at 8, 23; *see also* Transcript, Adjudicative Hearing Day 2 (Leon Ganuelas) at 384:1-386:6, 390:8-16, 391:10-17.
[117] Exhibit 4020 (Fidorra Deposition) at 124:16 through 125:14; *see also* Transcript, Adjudicative Hearing Day 6 (Troy Rahmig) at 1232:19-20.
[118] *See* Applicant's Post-Hearing Brief at 46:5-18 and Exhibit 1033 at 6:1 through 7:17.
[119] Data Request No. 9 was issued as part of the SEPA process, in which Scout responded to EFSEC Site Specialist Amy Moon with a memorandum. This was referred to as the "Moon Memo" during the adjudicative hearing.
[120] Yakama Nation's Post-Hearing Brief at 41:1 through 44:14.
[121] Exhibit 3001 at 14:2-24.

needed for a fuller understanding of impacts on the pronghorn. In Mr. Ganuelas' opinion, Scout's Habitat Mitigation Plan doesn't do enough to address these impacts. He recommends redesigned fences, increased habitat mitigation ratios, and restoration of disturbed shrub-steppe habitat.[122] Mr. McIvor also recommended evaluating fencing designs and additional measures aimed at maintaining the integrity of existing native habitat and minimizing habitat fragmentation.[123]

The Council finds that pronghorn antelope are culturally significant to the Yakama Nation. We find that the Yakama Nation's pronghorn reintroduction program has established a stable population on reservation land and beyond. We further find that telemetry data confirm pronghorn antelope now traverse and forage within the Project boundary, including proposed solar array sites. As noted above, the Applicant is obliged to minimize adverse effects on the land and its wildlife. If approved as proposed, we find the Project will diminish pronghorn grazing habitat. We also find that Project-induced habitat fragmentation could jeopardize the pronghorn's ability to use an important north-south migration corridor.

The Council has reviewed all applicable data admitted to the adjudicative record regarding pronghorn use of the Project area. We find this data insufficient to support Scout's characterization of how pronghorn use the site or how important these lands might be to the species. Further, research to date on the influence of wind turbines on pronghorn use of habitat is limited and has produced mixed results. We do recognize that solar arrays and the surrounding fencing will present obstacles to movement and exclude habitat from use by the pronghorn. Therefore, we conclude that, if the Project is approved, the Applicant must coordinate with WDFW and Yakama Nation to modify its final designs for siting and fencing its solar arrays to minimize impacts to pronghorn. We will also require the Applicant to conduct post-construction monitoring to study whether the addition of wind turbines affects pronghorn use of land in and around the Project.

Bats

Several species of bats use the Project area and no party disputes that operation of wind turbines results in some level of mortality for bats. Scout and Don McIvor agree that it is difficult to quantify impacts on bats, particularly without specific regional studies and data available.[124] The Applicant concedes it cannot predict with any certainty how many bats might be killed until the Project begins generating energy. In order to craft the best post-construction data-driven mitigation measures, Scout recommends relying on a Technical Advisory Committee (TAC) that can regularly review mortality numbers and sort out an appropriate seasonal curtailment schedule.[125] Mr. McIvor recommended additional pre-construction studies to analyze whether regional bat populations could sustain projected mortality figures.[126]

The Council is concerned about the lack of data about migrating bat species use of the site. Bat mortality resulting from wind energy projects is reasonably well known and has been observed

[122] Exhibit 4008 at 10-11; *see also* Yakama Nation's Post-Hearing Brief at 41:1 through 44:14.
[123] Exhibit 3001 at 14:25 through 15:19.
[124] Exhibit 3001 at 3:15 through 4:19. Mr. McIvor noted that Scout "exceeded the usual effort" to quantify these impacts (at 3:19-20) but recommended more study and analysis at a regional population level.
[125] Applicant's Post-Hearing Brief at 47:2 through 48:6.
[126] Exhibit 3001.

at the nearby Nine Canyon Wind project. Nevertheless, due to widely varying bat population estimates, the adjudicative record is not clear on whether regional bat populations can sustain the possible levels of mortality caused by this Project.

The Council finds the Applicant should be required to conduct additional studies of bat activity at the site to better inform pre-construction micrositing decisions as well as operational concerns regarding migration activity. We also find that post-construction mortality monitoring should be required and utilized by a TAC to recommend adaptive management strategies, including seasonal curtailment, to minimize adverse impacts to bats.

Townsend's ground squirrels

The revised ASC identified a Townsend's ground squirrel colony that lies partially within the footprint of a temporary disturbance area. Mr. McIvor recommended the proposed construction site should be carefully evaluated before construction and, if possible, relocated if the squirrels are present. The Council concurs. The SCA would require the Applicant to conduct additional surveys and take measures to avoid disturbing the colony.

Habitat Mitigation Plan

Appendix L of Scout's ASC sets out a draft Habitat Mitigation Plan (HMP) to address permanently and temporarily disturbed habitat within the Project boundaries. In addition to the species-specific measures already discussed in this section of the order, Scout's HMP includes compensatory mitigation to account for unavoidable impacts to habitat. Scout calculated the number of compensatory acres necessary to offset those impacts relying on WDFW policies and proposed several implementation options, to include a conservation easement on habitat within or adjacent to the Project boundary or various payments (a fee to WDFW or a contribution to a local land trust or conservation organization).[127] The Yakama Nation questioned the way Scout classified land to be disturbed by solar arrays as modified habitat as opposed to treating it as habitat permanently unavailable to the ferruginous hawk. Mr. Nuetzmann contended this would be a more realistic way to evaluate how the Project actually impacts available habitat. He also recommended the HMP emphasize restoration of disturbed shrub-steppe habitat over preservation of existing native habitat.[128] Erik Jansen countered Mr. Nuetzmann's criticism by reiterating the Applicant's consultations with WDFW to ensure the proposed in-kind habitat mitigation measures for land disturbed by the solar arrays were appropriate.[129]

The Council concurs with the Applicant's approach and adherence to WDFW policy. We find that restoration of shrub-steppe habitat has merit, but requiring permanent land conservation of existing functioning shrub-steppe habitat is preferred over attempting to convert agricultural land and restore it to functioning shrub-steppe habitat. Protecting what currently exists reduces the uncertainty of attempting to create new habitat, a practice that has resulted in mixed success.

[127] Application for Site Certification, Appendix L, Section 7.3 (pp. 13-16).
[128] Exhibit 4011 at 6 to 8.
[129] Exhibit 1022 at 15:17 through 16:13.

Cumulative Impacts on Wildlife – Scope and Scale of Project

The parties disagree on how the Council should weigh the cumulative and overall wildlife impacts in light of the project's scope and scale. The Applicant argued that the scale of its Project supports State policy to rapidly replace carbon-emitting generating resource with clean energy resources in Washington.[130] Erik Jansen explained that issuing a series of permits for smaller wind farms co-adjacent results in piecemeal and less effective analysis of their overall impacts.[131] The Yakama Nation labels a Project of this size "devastating" to the natural environment.[132] Similarly, TCC strongly objects to the "vast size" of the Project for many reasons, including concerns for wildlife.[133]

The Council understands the Applicant's logic in designing a project of this size, but we agree with TCC and Yakama Nation that the scale and scope of the Horse Heaven Wind Farm should and does amplify our concerns regarding wildlife impacts. As proposed, the scope and scale of the Project will reduce the function and value of important landscape-level habitat features needed by wildlife. The sheer number of turbines proposed would contribute to bird and bat mortalities of an unknown but likely substantial magnitude. The length and width of the Project area would impede important wildlife habitat connectivity for shrub-steppe species. The proposed number and placement of turbines would pose significant threats to breeding and wintering raptors in the area.

G. SOCIOECONOMICS

In accordance with WAC 463-60-535, Scout's ASC detailed the socioeconomic impacts of its Project, to include its expected effect on population, work force, property values, housing, health facilities and services, education facilities, governmental services (*i.e.*, fire, police, utilities, etc.), and the overall local economy.[134] Scout believes the Project will have beneficial impacts on the region by creating additional jobs, increased economic activity, and increased tax revenue.[135]

The Applicant describes its project as outside any urban growth area and no closer to a city (Kennewick) than 4 miles away at its closest point. TCC, focusing its opposition on the size and scope of the "massive" proposed development, called into question the proximity of the Project to suburban areas because its size is "hard to grasp," "overwhelming," and substantially "overbuilt." TCC argued there are no structures in the Tri-Cities area that approach the height of any of the wind turbines expected to be deployed in the nearby hills. At the adjudicative hearing, the parties focused on socioeconomic impacts to real estate values, local agricultural values, roads, firefighting services, recreational resources, and economic impacts. We briefly explore each subtopic in turn.

Real Estate Values

[130] Applicant's Post-Hearing Brief at 6:8 through 7:19.
[131] Exhibit 1022 at 5:8 through 8:25.
[132] Yakama Nation Post-Hearing Brief at 4.
[133] TCC Post-Hearing Brief at 22.
[134] *See* Application for Site Certification, Section 4.4 and Appendix S.
[135] ASC Section 1.10.1 and 4.4.2; *see also* Scout's Post-Hearing Brief (generally) at 11:11 through 20:10.

The Applicant contended property values are proven to be unaffected by nearby development of wind or solar projects. Scout's experts included economist Morgan Shook and real estate appraiser Andrew Lines. Mr. Shook specializes in real estate analyses and presented industry standard hedonic pricing model studies, including those of Ben Hoen.[136] These studies demonstrate there is no statistical evidence that homes sell for less when they are in close proximity to wind turbines or solar arrays.[137] Mr. Lines confirmed that the closest residential homes to the Project are more than 2 miles away. His site-specific research into impacts on valuation of properties adjacent to wind farms,[138] including interviews with numerous county assessors, found no measurable negative impact on home prices following construction of renewable energy projects.[139] Scout argued that EFSEC should rely on its objective evidence rather than the personal feelings and unsupported fears expressed by local homeowners.

TCC characterized Scout's evidence as unreliable due to its failures to appraise local homes that would be in view of the Project. Kurt Kielisch, a forensic property appraiser, criticized the Hoen studies and provided a study he conducted in Colorado predicting negative property impacts from a proposed wind farm.[140] Richard Hagar, another property appraiser, also questioned the Applicant's methodology and conclusions.[141] TCC also presented a number of local residents to voice negative opinions about the Project and concerns over how changed views from their homes would diminish the value of their property[142] as well as letters from the local Chamber of Commerce, Visitors' Bureau, and Board of Realtors in opposition to the Project.[143]

The Council recognizes the vocal community concern regarding the Project's possible impact on real estate values. The real estate studies presented by both the Applicant and TCC were very high-level and general in nature and failed to specifically address wind energy development in close proximity to urban or developed areas. While we do not doubt the Hoen studies are correct in the abstract, Mr. Shook's assurances are of little comfort to homeowners whose views might change.[144] We find that the record contains no persuasive individualized data demonstrating a discernible impact on property values in Benton City and the region's suburban areas. Any conclusion regarding local real estate markets would be speculative. The Council finds that the

[136] *See* Exhibits 1010, 1011, 1012, 1013, 1017 and 1020.
[137] Exhibit 1008 at 6:15 through 7:19.
[138] *See* Exhibits 1038 and 1039.
[139] Exhibit 1037 at 3:9 through 4:2. Mr. Lines made minor corrections to his testimony and supporting exhibits, but neither the parties nor the Council posed any cross-examination questions to him. *See* Transcript, Adjudicative Hearing Day 5 (Andrew Lines) at 793:22 through 800:5.
[140] Exhibits 5810, 5811, and 5812. Neither the parties nor the Council posed any questions in cross-examination to Mr. Kielisch. *See* Transcript, Adjudicative Hearing Day 5 (Kurt Kielisch) at 800:9 through 802:16.
[141] Exhibits 5900, 5901 and 5902. *See also* Transcript, Adjudicative Hearing Day 5 (Richard Hagar) at 821:5 through 824:19.
[142] A sampling of these statements can be found above in Section I-E, Public Comment.
[143] *See* Exhibit 5303, pages 17, 19, and 22; *see also* Exhibit 5633. None of these letters specifically address any basis for TCC's stated concerns with potential reduction to property values.
[144] The Council recognizes that objective measures on property values may not be available until and unless the Project is approved and built. In other words, until an actual market listing finds a willing buyer, we won't know the answer to this question.

evidence provided by the parties did not reliably demonstrate impacts on individual real estate values in the Tri-Cities area.

Local Agricultural Practices

The Applicant contended established farming practices in the region will continue unaffected. Chris Wiley, a participating property owner, testified that his family's dryland wheat farming operations will be able to stay the same on 99% of their land and will benefit financially and from any new road infrastructure. Benton County is concerned that allowing a renewable energy project to be placed on important agricultural lands will lead to loss of more farmland in the region.

Our review of the record convinces us that the Project would promote and benefit farming within the Project boundaries for participating landowners. Although solar arrays will exclude other agricultural activities within their fenced areas, wind turbines do not preclude ongoing dryland wheat farming practices. Participating landowners benefit financially, likely allowing existing agricultural practices to persist on Project lands into the foreseeable future. As noted above, we acknowledge that even after decommissioning, the Project will result in a certain amount of ALLTCS being permanently lost, but we are not convinced this will disrupt the future of agricultural practices in Benton County.

Roadways / Firefighting

Wildland fires are a regular occurrence in the Horse Heaven Hills. As previously discussed in the land use context regarding criteria for granting a conditional use permit, the Applicant takes the position that its project will not meaningfully increase fire risk for the Horse Heaven Hills region. We have already agreed with this position and found no evidence in the adjudicative record that public services will be negatively impacted. Based on the record, we find the Project's roadways would improve access within the Project boundaries for firefighting activities. The Project's roadways could also be utilized as anchor points for firefighters to conduct backburns and other tactics in creating firebreaks. Given these potential impacts, the Applicant must coordinate with local fire districts to ensure they can access newly built roadways within the Project boundary for firefighting purposes. This may be addressed in the required emergency response and fire protection plans to be required as part of an SCA.

Although the Project will not increase fire risk in the Horse Heaven Hills, it will likely impact how fires are fought in the area. Members of the public and TCC raised concerns regarding the ability of planes to effectively drop retardants if wind turbines prevent them from flying low or in areas of limited visibility due to smoke. These concerns were not adequately addressed by evidence presented during the adjudication. Therefore, the Council also finds that aerial firefighting concerns, particularly on the northern facing slopes of the Horse Heaven Hills, must also be addressed in the required emergency response and fire protection plans to be required as part of an SCA.

The Project's battery energy storage system (BESS) may present new challenges to first responders. Fire suppression standards for BESS technology are evolving. The Applicant identified the best currently available approaches for handling and extinguishing a fire at its BESS facilities. If the Project is approved, the Applicant must implement those best practices in its fire control plan and regularly update the Council on advances or any changes in approach to fire suppression at its BESS sites. The Applicant must also develop a disposal plan for any hazardous or toxic material resulting from a fire at a BESS site.

Recreation

TCC believes the visual and aesthetic impacts of this large-scale wind farm will discourage local tourism, and recreational opportunities (hiking, paragliding, birding, and general sightseeing). We do agree that the Project as proposed would negatively impact local hang gliders and paragliders. We find the Project will not directly impact access to established trails, all of which are outside the Project boundary on BLM land, but turbines placed as proposed on and along ridgelines would substantially alter views currently enjoyed by hikers and bikers. Residents and tourists who come to this part of Eastern Washington would see wind turbines in areas that today have unobstructed views.

Economic Development

The Applicant presented testimony from Jessica Wadsworth, a local union representative, about the Project creating additional employment opportunities for local citizens.[145] We agree that the Project will likely generate economic benefits for the region. We find the Project will result in increased employment in Benton County during its construction and, to a lesser extent, during its operation. There is no conclusive evidence in the record of negative impact on the region's wine tourism industry. The project will provide substantial tax benefits to local taxing districts that can be used to improve services to the community.

H. ENVIRONMENTAL JUSTICE / OUTREACH TO TRIBES & OVERBURDENED COMMUNITIES

EFSEC requires applicants to communicate and coordinate with tribes regarding potential archaeological and cultural resource impacts. EFSEC is also required to promote environmental justice for overburdened communities and, if recommending approval of a project, must include conditions to protect overburdened communities in its report to the Governor.[146].

Scout initiated tribal outreach many years before submitting its application to EFSEC. As noted above in the Cultural Resources section, Scout met their statutory and regulatory burden as to archaeological resources as evidenced by DAHP's endorsement of their site inventory and proposed avoidance plan but did not adequately consider or mitigate impacts to TCPs. In this

[145] Exhibit 1034. Ms. Wadsworth serves on the city council for Benton City but provided her testimony only as a private citizen, not as a government official or spokesperson.
[146] RCW 80.50.010(2) and RCW 80.50.100(2). *See also* RCW 70A.02.010(11) for the definition of "overburdened community" which includes "highly impacted communities" as defined in RCW 19.405.020(23) (includes communities located fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151).

section of our order, we focus our attention on Scout's overall outreach efforts to traditionally underrepresented and overburdened communities.

Scout emphasized its successful cooperation with the Umatilla tribe on Project design modifications intended to mitigate impacts. Representatives of the Umatilla actively engaged with Scout since early 2020, participating in HRA's field surveys and sharing concerns identified in the tribe's own studies. Scout affirmed that Umatilla tribal members would continue to enjoy the same existing access to the site and made additional promises to respect the traditions, legends, and stories of the Umatilla tribe. These two parties executed a mutual agreement to facilitate resolution of any potential issues regarding cultural resources discovered if the Project was built.

Scout contrasted its coordination with the Umatilla tribe with a perceived lack of engagement from the Yakama Nation. Scout stated it attempted outreach to the Yakama Nation for over 5 years, including coordination with DAHP but received only "limited responses and information." Scout stated the Yakama Nation declined Scout's invitations to conduct a traditional cultural properties study. Scout stated Yakama Nation provided some limited comments to HRA, but withheld information about most Yakama Nation TCPs in the Project area and did not provide specific geographic description or boundaries. At hearing, the Yakama Nation presented a TCP study that Scout and HRA saw for the first time.

Scout contended its project does not disproportionately affect overburdened communities and in fact promotes environmental justice. Scout highlights its outreach to Hispanic communities in the area. Scout asserts it pursued media strategies to ensure information about the Project was available to local minority communities, including people with Spanish as their primary language and people of color and that this included using bilingual radio networks and newspapers. Scout concluded the Project does not appear to pose a risk of disproportionate impact to overburdened communities based on Scout's research using the Washington Environmental Health Disparities Map and the U.S. Environmental Protection Agency's online EJScreen tool, looking at factors like high unemployment, poverty and unaffordable housing rates in the area. Scout argued the Project will bring a net benefit to the local communities by providing well-paying jobs. Additionally, the Project will combat climate change, the effects of which often fall disproportionately on overburdened communities, and therefore represents an important component of the state's environmental justice goals.

The Yakama Nation stated they attempted to engage with Scout both prior to and after submission of the application to EFSEC, but their concern about impacts to TCPs were not taken into account. The Yakama Nation believed Scout was working to redesign the Project layout after Yakama Nation provided feedback on the TCPs, but Yakama Nation's archeologist Jessica Lally was then informed in 2022 that Scout was not considering further redesign of the Project, disregarding Yakama Nation's concerns. Jessica Lally testified at hearing that Yakama Nation did not accept Scout's offer to fund their TCP study because of issues regarding confidentiality and disclosure of sensitive information. The TCP study Yakama Nation did then conduct was not funded by Scout, and therefore Scout did not previously see the TCP Study before the adjudication.

Yakama Nation also argued that under Washington law EFSEC is required to promote environmental justice for overburdened communities, and tribal communities are by statute considered an "overburdened community."[147] Yakama Nation claims Scout has disregarded their concerns about cultural impacts and remained focused on its goal of building the Project as large as possible to satisfy market need and promote their own commercial success.[148] Yakama Nation argued the Project will create new environmental injustices on top of those already endured by the tribe by permanently damaging lands that are sacred to the tribe.

The Council finds Scout did not consistently and effectively engage with underrepresented communities in the Tri-Cities region. The Council considers the Yakama Nation to be an overburdened community as defined by state law. We understand the Yakima Nation is not obligated to talk or exchange information with private entities such as Scout. Although Scout corresponded with local tribes and attempted to communicate with the Yakama Nation, we are not convinced Scout made sufficient efforts in terms of tribal outreach and engagement. We also find it apparent Scout did not engage with the Hispanic or other minority communities in the local area and failed to offer them meaningful opportunities to provide input on the proposed project.

Project Benefits

The environmental benefits of the Project include generation of a substantial amount of clean and renewable energy from sources that do not produce carbon dioxide emissions.[149] Economic benefits also result, as the Project would provide construction jobs and employment during its operation. The Project would generate additional tax revenues to support local government taxing districts, including fire districts, school districts, and ports. The Project would also provide lease payments to local landowners.

IV. FINDINGS OF FACT and CONCLUSIONS OF LAW

Note: The Council intersperses conclusions of law with its findings of fact to enhance the readability of this Order. Any finding in the nature of a conclusion of law should be interpreted as such, and any conclusion in the nature of a finding should be interpreted as intended.

The Council has evaluated the evidence and arguments contained in the adjudicative record. The Council has also considered concerns expressed through the public comment portion of the adjudicative hearing. Our below findings and conclusions are based only on the adjudicative record. Our Recommendation to the Governor will also take into account not only these findings and conclusions but also the Final EIS, public comment received outside of the adjudication, and government-to-government consultation with the Confederated Tribes and Bands of the Yakama Nation in compliance with RCW 80.50.060(8).

[147] RCW 70A.02.010(11) and RCW 19.405.020(23).
[148] Yakama Nation Post-Hearing Brief, at 32-33.
[149] *See* RCW 19.285.

Nature of the Proceeding

1. This proceeding involves an application before the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Horse Heaven Wind Farm (Project). The Project is a renewable energy generation facility including wind and solar energy generation with battery energy storage systems (BESS) and supporting facilities. The Project includes up to 231 wind turbines and two solar arrays that would generate up to 1,150 megawatts (MW). The Project is situated in the Horse Heaven Hills area of unincorporated Benton County, Washington.

The Applicant and the Application

2. The Applicant is Horse Heaven Wind Farm, LLC, and its indirect owner Scout Clean Energy, LLC (Scout). Scout is a renewable energy development company headquartered in Boulder, Colorado. Scout Clean Energy would be defined as a Site Certificate Holder as defined in the Site Certificate Agreement.

3. On February 8, 2021, Scout submitted to EFSEC an Application for a Site Certification Agreement seeking authority to construct and operate the Project. Scout submitted a Revised Application on December 29, 2022.

Compliance with the State Environmental Policy Act (SEPA)

4. EFSEC is the lead agency for environmental review of project proposals within its jurisdiction under terms of the State Environmental Policy Act, RCW 43.21C. The Council Director is the SEPA Responsible Official. WAC 463-47-051.

5. EFSEC published and circulated a draft environmental impact statement (EIS) for public review on December 19, 2022. The Council received and reviewed numerous comments, all of which were made publicly available on February 13, 2023. The Responsible Official issued the Final EIS on October 31, 2023. This order does not consider the results of the Final EIS. The SEPA results are considered in conjunction with this order to inform the Council's Recommendation to the Governor and any proposed Site Certification Agreement.

Compliance with Procedural Requirements

6. The Council published and, where required by law or rule, served notices of events in the application process, including receipt of the Application, public meetings, commencement of the Adjudicative Proceeding and opportunity to file petitions for intervention, land use consistency hearing, prehearing conferences, and the adjudicative hearing sessions.

7. EFSEC's SEPA process need not be complete before the Council commences its adjudication. WAC 463-47-060. The Council's adjudication of disputed issues does not limit the Council's options in making its ultimate Recommendation to the Governor. The

Council will incorporate information from the Final EIS in determining whether to recommend approval of the application and if so, what appropriate conditions or mitigation measures should be included in its proposed Site Certification Agreement.

8. The Council afforded the parties to the adjudication the opportunity to present written and oral evidence, object to evidence, and fully brief disputed issues. The Council resolved procedural issues prior to hearing through orders based on prehearing conferences and motion practice wherein all parties had the opportunity to participate and present objections.

9. *The Council concludes* that it complied with all applicable procedural law and regulation, including RCW 80.50, RCW 34.05, WAC 463-26, and WAC 463-30, in conducting the Adjudication.

Land Use Consistency

10. In Order No. 883, the Council previously determined the Project to be consistent and in compliance with Benton County's land use plans and zoning ordinances in effect at the time the Application was filed with EFSEC. RCW 80.50.090.

11. Scout Clean Energy presented sufficient evidence to demonstrate the Project, with conditions that can be included in a proposed Site Certification Agreement if the Council recommends approval of the application, meets all five conditional use criteria contained in Benton County Code Section 11.50.040(d).

    a. *The Council concludes* the Project is compatible with other uses in the surrounding area and is no more incompatible than are any other outright permitted uses in Benton County's Growth Management Act Agricultural District (GMAAD).

    b. *The Council concludes* that with a condition requiring an Emergency Response Plan and a Fire Management Plan, the Project will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in Benton County's GMAAD.

    c. *The Council concludes* that with a condition requiring a Transportation Management Plan coordinated with WSDOT and local authorities, the Project will not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the area to an extent greater than that associated with any other permitted uses in Benton County's GMAAD.

    d. *The Council concludes* that with a condition requiring the Applicant to ensure local fire and first responders receive appropriate training, the Project will be supported

by adequate service facilities and will not adversely affect public services, including fire protection services, to the surrounding area.

e. *The Council concludes* that the Project will not hinder or discourage the development of permitted uses on neighboring properties in the Growth Management Act Agricultural District as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in Benton County's GMAAD.

The Adjudicative Proceeding – Process

12. The Council duly noticed and conducted prehearing conferences and the administrative law judge, or Council as appropriate, entered Prehearing Orders. Statutory parties appeared and participated. The Council received petitions for intervention which were granted as indicated in the body of this order.

13. The Council served and published notice of the hearing on the merits. Hearings were held virtually on August 14-16 and August 21-25, 2023. The Council conducted a virtual public comment hearing on August 23, 2023.

14. The Applicant and a majority of other parties submitted post-hearing briefs.

15. *The Council concludes* that its adjudication of disputed issues in this matter complied with applicable provisions of law, including RCW 80.50 and RCW 34.05.

Archaeological and Cultural Resource Impacts

16. The Council finds the Applicant's cultural resources studies complied with the requirements set forth in WAC 463-60-362(5), including coordination with and concurrence from the Department of Archaeological and Historical Preservation.

17. *The Council concludes* that a Survey and Avoidance Plan should be required as part of a Site Certification Agreement.

18. The Council finds that the Applicant should be required to maintain access to all areas where tribal members currently enjoy and exercise their traditional practices.

19. The Council finds that constructing the Horse Heaven Wind Farm would result in some unavoidable negative impacts to Yakama Nation Traditional Cultural Properties (TCPs).

20. The Council finds Scout's Project design does not sufficiently avoid or minimize impacts to Yakama Nation TCPs that could be mitigated by altering Project design.

21. *The Council concludes* that it is necessary to further reduce impacts to Yakama Nation's TCPs beyond what has been proposed by the Applicant.

Visual Impacts

22. The Council finds that the Project, as proposed, would visually transform the region and, due to the location of wind turbines along ridgelines, be especially impactful on the communities of Benton City and the City of Kennewick due to an undesirable "skylining" effect.

23. The Council finds the Applicant followed industry standards for quantitatively analyzing the Project's visual impacts. The Council further finds that the Applicant complied with EFSEC's established standard to prevent wind turbines from looming over residential structures neighboring the Project. However, the Council also finds the Applicant failed to conduct sufficient outreach to local communities in selecting key observation points for visual analysis and determining the more qualitative impacts on local residents.

24. *The Council concludes* that further mitigation measures, to include elimination and removal of multiple turbines, must be required in order to minimize the visual impact of the Project on the Tri-Cities region and on Yakama Nation TCPs.

Wildlife Impacts

25. The Council finds that ferruginous hawks, a state endangered species, have historically used the Project site and continue to do so.

26. The Council recognizes that numerous environmental stressors, including loss of shrub-steppe habitat, are negatively influencing the ability of ferruginous hawks to persist in Washington State. The Council finds that the Project, as proposed and presented on this adjudicative record, would pose a new and significant threat to the ferruginous hawk.

27. The Council finds the Applicant has not offered sufficient assurance or identified sufficient mitigation measures to demonstrate the Project would produce only minimal adverse effects on the ferruginous hawk.

28. *The Council concludes* that additional avoidance and mitigation measures must be imposed on the Project to protect existing ferruginous hawk nests and habitat and also to minimize impacts on the ability of ferruginous hawks to return to certain areas of historic usage.

29. The Council finds that pronghorn antelope travel through and forage within the Project boundary and that the Project's solar arrays will diminish and fragment pronghorn grazing habitat.

30. The Council finds there is insufficient research or data available to fully understand the potential impact of wind turbines on pronghorn antelope and their ability to make use of habitat in and around wind farms.

31. *The Council concludes* the Applicant must consult and coordinate with WDFW and Yakama Nation to modify its final designs for siting and fencing its solar arrays to minimize impacts to pronghorn. T*he Council further concludes* the Applicant must conduct post-construction monitoring to study whether the addition of wind turbines affects pronghorn use of land in and around the Project.

32. The Council finds the adjudicative record is not clear whether regional bat populations can sustain the possible levels of mortality caused by this Project. Therefore, t*he Council concludes* additional pre-construction surveys and post-construction mortality monitoring should be required in order to best inform micrositing considerations and adaptive management strategies for bats.

33. *The Council concludes* that pre-construction surveys to develop an estimate of seasonal and regional bat populations should be required as a condition of certification.

Socioeconomic Impacts

34. The Council finds that constructing the Horse Heaven Wind Farm as proposed would transform the Tri-Cities region by altering the landscape from Benton City all the way to Finley. The Council further finds that twenty-five miles of turbines, particularly those skylined atop the ridgelines, would irreversibly alter the visual landscape of the region.

35. *The Council concludes* that tourists who come to Benton County to enjoy Eastern Washington's wide-open spaces and unobstructed views would no longer be able to do so within sight of wind turbines or solar arrays.

36. The Council finds the Project has no measurable impacts on individual real estate values in the Tri-Cities area. *The Council concludes* that personal reactions to and opinions about the Project are highly subjective.

37. The Council finds the Project's wind turbines would promote and benefit farming within the Project boundaries for participating landowners. The Council further finds the Project will generate additional taxes to support all local government taxing districts, including fire districts, school districts, and ports.

38. The Council finds the Project's roadways would improve access within the Project boundaries for ground firefighting activities. The Council also finds that wind turbines located along the northern Project boundary would present challenges to aerial firefighting techniques historically used in the area.

39. The Council finds that fire suppression standards for BESS technology is evolving. Therefore, *the Council concludes* that it is the Applicant's responsibility to ensure industry standard fire safety controls are implemented at all of the Project's BESS installations.

40. The Council finds the Project, as proposed, would negatively impact recreational opportunities currently enjoyed by local hang gliders and paragliders. The Council further finds the Project would alter views previously enjoyed by hikers, bikers, and tourists visiting the region.

41. *The Council concludes* the Project would generate economic benefits for the region, including increased employment during construction and operation, as well as additional tax revenues that will support local government taxing districts.

Environmental Justice

42. The Council finds the Yakama Nation to be an overburdened community as defined by state law. RCW 70A.02.010(11) and RCW 19.405.020(23).

43. The Council finds the Applicant failed to demonstrate effective outreach and engagement to all underrepresented communities in the Tri-Cities region.

Project Benefits

44. The Council finds the Project's environmental benefits include generation of clean energy from renewable sources with no new emissions of carbon dioxide or other greenhouse gases.

45. The Council finds the Project would provide economic benefits to Benton County and Washington State in the form of jobs during both its construction and operation, tax revenues, and the clean energy produced and stored.

V. ORDER

The Council hereby resolves the contested assertions raised by the parties in support of and opposition to the Project. The Council's findings of fact and conclusions of law on the adjudicative record will be considered by the Council, along with the Final Environmental Impact Statement, public comments, and government-to-government consultations, in developing a recommendation to the governor.

DATED and effective at Olympia, Washington, on the 17th day of April 2024

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL

Kathleen Drew
Chair

Elizabeth Osborne
Department of Commerce

Eli Levitt
Department of Ecology

Mike Livingston
Department of Fish and Wildlife

Lenny Young
Department of Natural Resources

Stacey Brewster
Utilities and Transportation Commission

Ed Brost
Benton County

NOTICE TO PARTIES: In accordance with WAC 463-30-335, administrative relief may be available through a petition for reconsideration of the Recommendation Package to the Governor. The Council requires requests for reconsideration to address all of the filing party's concerns raised by the Recommendation Package in a single petition. Petitions for reconsideration must be filed within 20 days of the service of this Order and the Recommendation Package to the Governor. If any such petition for reconsideration is timely filed, the deadline for answers is fourteen days after the date of service of each such petition. The formatting of petitions for reconsideration shall be governed by WAC 463-30-120 and shall be limited to 50 pages.

Attachment 2: Index of Supporting Documentation

Index of Documents for the Recommendation to the Governor
Horse Heaven Wind Project
April 29, 2024

Process	Category	Description	Document link	Confidential?
Report to the Governor	Letter	Cover Letter	EFSEC Website	
Report to the Governor	Report	Report to the Governor	EFSEC Website	
Report to the Governor	Attachment	File Name Abbreviations and Acronyms	EFSEC Website	
SCA	SCA	Draft Site Certification Agreement for the Horse Heaven Wind Farm	EFSEC Website	
Adjudication	Order	Order No. 892 Final Adjudicative Order	EFSEC Website	
Adjudication	Order	Order 883 Land Use Consistency Order	EFSEC Website	
Adjudication	Order	Order - Order Commencing Agency Adjudication; Setting Deadline for Petitions to Intervene; Notice of Telephonic Pre-Hearing Conference	EFSEC Website	
Adjudication	Order	Order - Pre-Hearing Conference Order No. 1 (3/17/2023)	EFSEC Website	
Adjudication	Order	Order - Pre-Hearing Conference Order No. 1 Attachment (3/17/2023)	EFSEC Website	
Adjudication	Order	Order - Pre-Hearing Conference Order No. 2 (5/19/2023)	EFSEC Website	
Adjudication	Order	Objection - Tr Tri-Cities C.A.R.E.S. Objection to Pre-Hearing Conference Order No. 2 (5/30/2023)	EFSEC Website	
Adjudication	Order	Preliminary Order on Intervention (3/9/2023)	EFSEC Website	
Adjudication	Order	Order - Protective Order (5/24/2023)	EFSEC Website	
Adjudication	Order	Order - Pre-Hearing Order Regarding Naming Conventions for All Evidentiary Filings (5/26/2023)	EFSEC Website	
Adjudication	Order	Order - Pre-Hearing Order Regarding Naming Conventions for All Evidentiary Filings Appendix 1 (5/26/2023)	EFSEC Website	
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Adjudication	Exhibits	EXH-1010 - Shook, Morgan - Ben Hoen et al., *A Spatial Hedonic Analysis of the Effects of US Wind Energy Facilities on Surrounding Property Values*, 51 Journal of Real Estate Finance and Economics 1, 22-51 (2015)	EFSEC Website	
Adjudication	Exhibits	EXH-1011 - Shook, Morgan - Ben Hoen et al., *Wind Energy Facilities and Residential Properties: The Effect of Proximity and View on Sales Prices*, 33 Journal of Real Estate Research 3, 279-316 (2011)	EFSEC Website	
Adjudication	Exhibits	EXH-1012 – Shook, Morgan - Ben Hoen et al., *The Impact of Wind Power Projects on Residential Property Values in the United States: A Multi-Site Hedonic Analysis*, Lawrence Berkeley National Laboratory (2009)	EFSEC Website	
Adjudication	Exhibits	EXH-1013 - Shook, Morgan - Steven Laposa & Andrew Mueller, *Wind Farm Announcements and Rural Home Prices: Maxwell Ranch and Rural Northern Colorado*, 2 Journal of Sustainable Real Estate 1, 383-402 (2010)	EFSEC Website	
Adjudication	Exhibits	EXH-1014 - Shook, Morgan - Vasundhara Gaur & Corey Lang, *Property Value Impacts of Commercial-Scale Solar Energy in Massachusetts and Rhode Island*, University of Rhode Island (2020)	EFSEC Website	
Adjudication	Exhibits	EXH-1015 - Shook, Morgan - Leila Al-Hamoodah et al., *An Exploration of Property-Value Impacts Near Utility-Scale Solar Installations*, University of Texas at Austin (2018)	EFSEC Website	
Adjudication	Exhibits	EXH – 1016 - Shook, Morgan - Corey Lang et al., *The Windy City: Property Value Impacts of Wind Turbines in an Urban Setting*, 44 Energy Economics, 413-421 (2014)	EFSEC Website	
Adjudication	Exhibits	EXH – 1017 - Shook, Morgan - Ben Hoen & Carol Atkinson-Palombo, *Wind Turbines, Amenities and Disamenitites: A study of Home Value Impacts in Densely Populated Massachusetts*, 38 Journal Of Real Estate Research 4, 473-504 (2016)	EFSEC Website	
Adjudication	Exhibits	EXH – 1018 - Shook, Morgan - Patrick Devine-Wright, *Beyond Nimbyism: Towards an Integrated Framework for Understanding Public Perceptions of Wind Energy,* 8 Wind Energy 2, 125-139 (2005)	EFSEC Website	
Adjudication	Exhibits	EXH – 1019 - Shook, Morgan - Maarten Wolsink, *Attitudes and Expectancies About Wind Turbines and Wind Farms*, 13 Wind Engineering 4, 196-206 (1989)	EFSEC Website	
Adjudication	Exhibits	EXH – 1020 - Shook, Morgan - Salma Elmallah, Ben Hoen, K. Sydny Fujita, Dana Robson, Eric Brunner, *Shedding light on large-scale solar impacts: An analysis of property values and proximity to photovoltaics across six U.S. states,* 175 Journal of Energy Policy (April 2023)	EFSEC Website	
Adjudication	Exhibits	EXH-1021_R - Guthrie, Brynn - Rebuttal Testimony	EFSEC Website	
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Adjudication	Exhibits	EXH-3002_R - McIvor, Donald - Jansen, E. W. 2023. Cumulative Effects to Birds, Bats, and Land Cover from Renewable Energy Development in the Columbia Plateau Ecoregion of Eastern Oregon and Washington. Western EcoSystems Technology, Inc. Corvallis, OR. 141 pp	EFSEC Website	

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Adjudication	Exhibits	EXH-3004_R - McIvor, Donald - BCI (Bat Conservation International). 2023. Hoary Bat	EFSEC Website	
Adjudication	Exhibits	EXH-3005_R - McIvor, Donald - Frick, W. F., E. F. Baerwald, J. F. Pollock, R. M. R. Barclay, J. A. Szymanski, T. J. Weller, A. L. Russell, S.C. Loeb, R.A. Medellin, and L. P. McGuire. 2017. Fatalities at wind turbines may threaten population viability of a migratory bat. Biological Conservation 209:172–177	EFSEC Website	
Adjudication	Exhibits	EXH-3006_R - McIvor, Donald - HHWF (Horse Heaven Wind Farm, LLC). 2020. Horse Heaven Wind Farm, Washington Energy Facility Site Evaluation Council, Application for Site Certification. Appendix M: Bird and Bat Conservation Strategy. December. (Updated).	EFSEC Website	
Adjudication	Exhibits	EXH-3007_R - McIvor, Donald - Rydell, J., L. Bach, M. Dubourg-Savage, M. Green, L. Rodrigues, and A. Hedenström. 2010. Bat mortality at wind turbines in northwestern Europe. Acta Chiropterologica 12(2): 261–274	EFSEC Website	
Adjudication	Exhibits	EXH-3008_R - McIvor, Donald - AWWI (American Wind Wildlife Institute). 2018. Bats and Wind Energy: Impacts, Mitigation, and Tradeoffs. American Wind Wildlife Institute White Paper. www.awwi.org/resources/bat-white-paper/	EFSEC Website	
Adjudication	Exhibits	EXH-3009_R - McIvor, Donald - AWWI (American Wind Wildlife Institute). 2019. Wind Turbine Interactions with Wildlife and Their Habitats: A Summary of Research Results and Priority Questions. Washington, DC. www.awwi.org	EFSEC Website	
Adjudication	Exhibits	EXH-3010_R - McIvor, Donald - Hayes M. A., Hooton L. A., Gilland K. L., Grandgent C., Smith R. L., Lindsay S. R., Collins J. D., Schumacher S. M., Rabie P. A., Gruver J. C., and J. Goodrich-Mahoney. 2019. A smart curtailment approach for reducing bat fatalities and curtailment time at wind energy facilities. Ecological Applications 29(4):e01881	EFSEC Website	
Adjudication	Exhibits	EXH-3011_R - McIvor, Donald - Hayes, G. E. and J. W. Watson. 2021. Periodic Status Review for the Ferruginous Hawk. Washington Department of Fish and Wildlife, Olympia, Washington	EFSEC Website	
Adjudication	Exhibits	EXH-3012_R - McIvor, Donald - Jansen, E. K., K. T. Smith, and F. Kuzler. 2022. Multi-scale Resource Selection of Ferruginous Hawk (*Buteo regalis*) Nesting in Eastern Washington and at the Horse Heaven Clean Energy Center, Benton County, Washington. Western EcoSystems Technology, Inc., Corvallis, OR.	EFSEC Website	

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Adjudication	Exhibits	EXH-3014_R - McIvor, Donald - Appendix L: Draft Wildlife And Habitat Mitigation Plan (New), Section 7.5.1 Ferruginous Hawk Voluntary Artificial Hawk Nesting Platforms.	EFSEC Website	
Adjudication	Exhibits	EXH-3015_R - McIvor, Donald - Harmata, A. R., M. Restani, G. J. Montopoli, J. R. Zelenak, J. T. Ensign, and P. J. Harmata. 2001. Movements and mortality of Ferruginous Hawks banded in Montana. Journal of Field Ornithology 72:389-398. [Cited in Hayes and Watson (2021)]	EFSEC Website	
Adjudication	Exhibits	EXH-3016_R - McIvor, Donald - Responsive Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-3017_X_CONFIDENTIAL - Jansen, Erik - Horse Heaven Windfarm, LLC, Updated EFSEC Application for Site Certification, Appendix L: Draft Wildlife and habitat mitigation Plan (New). Submitted February 2021, Revised, February 2022 & December 2022.		Confidential
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Adjudication	Exhibits	EXH-3019_X CONFIDENTIAL - Jansen, Erik - Jansen, Erik, Western EcoSystems Technology, Inc., *2023 Raptor Nest Surveys for the Horse Heaven Clean Energy Center, Benton County, Washington*, August 3, 2023.		Confidential
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Adjudication	Exhibits	EXH-4014_X_ CONFIDENTIAL - Lally, Jessica - Memo from Dave Kobus to Amy Moon, re Anticipated Project Modifications		Confidential
Adjudication	Exhibits	EXH-4015_X - Jansen, Erik - Draft Management Recommendations for Washington's Priority Species	EFSEC Website	
Adjudication	Exhibits	EXH-4016_X - Jansen, Erik - Washington's Connected Landscapes Project	EFSEC Website	
Adjudication	Exhibits	EXH-4017_X - Jansen, Erik - WDFW's Wind Power Guidelines (2009)	EFSEC Website	
Adjudication	Exhibits	EXH-4018_Dep_CONFIDENTIAL- Ritter Deposition (Attachment A)		Confidential
Adjudication	Exhibits	EXH-4019_Dep - Watson Deposition (Attachment B)	EFSEC Website	
Adjudication	Exhibits	EXH-4020_Dep - Fiddora Deposition (Attachment C)	EFSEC Website	
Adjudication	Exhibits	EXH-5000 - Aramburu, J. Richard - Aramburu Statement	EFSEC Website	
Adjudication	Exhibits	EXH-5001_T_REVISED - Aramburu, J. Richard - Preliminary Witness and Exhibit List	EFSEC Website	
Adjudication	Exhibits	EXH-5002 - Aramburu, J. Richard - TCC Counsel Confidentiality Agreement	EFSEC Website	
Adjudication	Exhibits	EXH-5100 - Apostol, Dean - Witness Statement and exhibit list	EFSEC Website	
Adjudication	Exhibits	EXH-5101 - Apostol, Dean - Qualifications	EFSEC Website	
Adjudication	Exhibits	EXH-5102_T – Apostol, Dean - Aesthetic Analysis for proposed Horse Heaven energy project	EFSEC Website	
Adjudication	Exhibits	EXH-5103_R - Apostol, Dean - Apostol Response to EXH-1000-T	EFSEC Website	
Adjudication	Exhibits	EXH-5104_R - Apostol, Dean - Rebuttal Testimony	EFSEC Website	

Process	Category	Description	Document link	Confidential?
Adjudication	Exhibits	EXH-5301 - Krupin, Paul - Qualifications	EFSEC Website	
Adjudication	Exhibits	EXH-5302_T - Krupin, Paul - Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5303 - Krupin, Paul - Letters	EFSEC Website	
Adjudication	Exhibits	EXH-5305_R - Krupin, Paul - Response / Rebuttal testimony (3)	EFSEC Website	
Adjudication	Exhibits	EXH-5307_R - Krupin, Paul - CalTopo Fire History Maps	EFSEC Website	
Adjudication	Exhibits	EXH-5402_T_REVISED2 - Sharp, Dave - Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5404_R – Sharp, Dave - Rebuttal: Poulos	EFSEC Website	
Adjudication	Exhibits	EXH-5410_R – Sharp, Dave – Horse Heaven Hills Map	EFSEC Website	
Adjudication	Exhibits	EXH-5411_R – Sharp, Dave – Horse Heaven Hills Map	EFSEC Website	
Adjudication	Exhibits	EXH-5500 - Simon, Richard - Witness statement and exhibit list	EFSEC Website	
Adjudication	Exhibits	EXH-5501_T_REVISED - Simon, Richard - Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5502 - Simon, Richard - Curriculum Vitae	EFSEC Website	
Adjudication	Exhibits	EXH-5503_R - Simon, Richard - Rebuttal	EFSEC Website	
Adjudication	Exhibits	EXH-5602_T – Pam Minelli - Resident PFT	EFSEC Website	
Adjudication	Exhibits	EXH-5623_T - Fletcher, Ronnie - Resident PFT	EFSEC Website	
Adjudication	Exhibits	EXH-5631_R - Click, Lonnie, Fire Chief, Benton County – Rebuttal Testimony: Witness Statement of Benton County Fire Chief Lonnie E. Click	EFSEC Website	
Adjudication	Exhibits	EXH-5632_R - Lehman, Linda, Mayor, Benton City - Rebuttal of Wadsworth testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5633_R - Dye, Karl, President, TRiDEC - Support of Tri-Cities C.A.R.E.S Intervention	EFSEC Website	
Adjudication	Exhibits	EXH-5800_R - Campbell, Kahryn - Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5801_R - Campbell, Kahryn - Photos	EFSEC Website	
Adjudication	Exhibits	EXH-5810_R - Kielisch, Kurt - Witness Statement	EFSEC Website	
Adjudication	Exhibits	EXH-5811_R - Kielisch, Kurt - Resume	EFSEC Website	
Adjudication	Exhibits	EXH-5812_R - Kielisch, Kurt - Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5820_R - Lehman, Linda - Witness Statement	EFSEC Website	
Adjudication	Exhibits	EXH-5821_R - Lehman, Linda - Resume	EFSEC Website	
Adjudication	Exhibits	EXH-5822_R - Lehman, Linda - Pre-filed Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5900_R - Hagar, Richard - Pre-Filed Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5901_R - Hagar, Richard - Resume & Qualifications	EFSEC Website	

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Adjudication	Exhibits	EXH-5902_R - Hagar, Richard - Pre-Filed Testimony	EFSEC Website	
Adjudication	Exhibits	EXH-5903_X - Shook, Morgan - Cross Examination Exhibit: Excerpt from Thirty years of North American wind energy acceptance research	EFSEC Website	
Adjudication	Exhibits	EXH-5904_X - Poulos, Gregory - Cross Examination Exhibit: Analysis-Horse Heaven Wind Project	EFSEC Website	
Adjudication	Exhibits	EXH-5905_X - Poulos, Gregory - Cross Examination Exhibit: Analysis-Horse Heaven Wind Project	EFSEC Website	
Adjudication	Exhibits	EXH-5906_R – TCC Visual Area – Turbine Proximity Map	EFSEC Website	
Adjudication	Exhibits	EXH-5911_S – TCC Supplemental Testimony – Bates, Dennis	EFSEC Website	
Adjudication	Exhibits	EXH-5912 _S– TCC Supplemental Testimony – Click, Lonnie	EFSEC Website	
Adjudication	Exhibit	Admitted to Record by Order – Kobus Deposition (Condensed)	EFSEC Website	
Adjudication	Exhibit	Admitted to Record by Order – Kobus Deposition (Full)	EFSEC Website	
Adjudication	Transcript	Transcript of Prehearing Conference	EFSEC Website or Video	
Adjudication	Transcript	Transcript of Prehearing Conference No. 2	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Prehearing Conference No. 3	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Prehearing Conference No. 4	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Prehearing Conference No. 5	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Hearing Day No.1	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Hearing Day No. 2		Confidential
Adjudication	Transcript	Transcript of Hearing Day No. 3	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Hearing Day No. 4		Confidential
Adjudication	Transcript	Transcript of Hearing Day No. 5		Confidential
Adjudication	Transcript	Transcript of Hearing Day No. 6		Confidential
Adjudication	Transcript	Transcript of Hearing Day No. 7	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Hearing Day No. 8		Confidential
Adjudication	Transcript	Transcript of Discovery Conference	EFSEC Website Or Video	
Adjudication	Transcript	Transcript of Public Comment Hearing	EFSEC Website Or Video	
Adjudication	Comment	Public Comments	EFSEC Website	

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Original ASC	ASC	Cover letter	EFSEC Website	
Original ASC	ASC	Original Application	EFSEC Website	
Original ASC	ASC	Appendix A Decommissioning Plan	EFSEC Website	
Original ASC	ASC	Appendix B Preliminary Geotechnical Investigation Report	EFSEC Website	
Original ASC	ASC	Appendix C SEPA Checklist	EFSEC Website	
Original ASC	ASC	Appendix D County Zoning Determination	EFSEC Website	
Original ASC	ASC	Appendix E Turbine and Access Road Displacement Area	EFSEC Website	
Original ASC	ASC	Appendix F Landowner Legal Description	EFSEC Website	
Original ASC	ASC	Appendix G Shadow Flicker Analysis Memo	EFSEC Website	
Original ASC	ASC	Appendix H Glare Analysis Report	EFSEC Website	
Original ASC	ASC	Appendix I Wetland Delineation Report	EFSEC Website	
Original ASC	ASC	Appendix J Water Source Documentation	EFSEC Website	
Original ASC	ASC	Appendix K Biological Reports		Confidential
Original ASC	ASC	Appendix L Habitat Mitigation Plan		Confidential
Original ASC	ASC	Appendix M Bird and Bat Conservation Strategy		Confidential
Original ASC	ASC	Appendix N Revegetation & Noxious Weed Control Plan	EFSEC Website	
Original ASC	ASC	Appendix O Acoustic Modeling Results	EFSEC Website	
Original ASC	ASC	Appendix P Emergency Response Plan	EFSEC Website	
Original ASC	ASC	Appendix Q Visual Simulation	EFSEC Website	
Original ASC	ASC	Appendix R Cultural Resources Report		Confidential
Original ASC	ASC	Appendix S Economic Impact Study	EFSEC Website	
Original ASC	ASC	Appendix T Notice of Intent for NPDES Permit	EFSEC Website	
Original ASC	ASC	Appendix U Consultation Materials	EFSEC Website	
Original ASC	ASC	Appendix V TLG Transportation Study	EFSEC Website	
Final ASC	ASC	Cover Letter	EFSEC Website	
Final ASC	ASC	Final Application	EFSEC Website	
Final ASC	ASC	Final Application (Redline)	EFSEC Website	
Final ASC	ASC	Change log	EFSEC Website	
Final ASC	ASC	Appendix A Decommissioning Plan	EFSEC Website	
Final ASC	ASC	Appendix B Preliminary Geotechnical Investigation Report	EFSEC Website	
Final ASC	ASC	Appendix C SEPA Checklist	EFSEC Website	

Process	Category	Description	Document link	Confidential?
Final ASC	ASC	Appendix D County Zoning Determination	EFSEC Website	
Final ASC	ASC	Appendix E Turbine and Access Road Displacement Area	EFSEC Website	
Final ASC	ASC	Appendix F Landowner Legal Description	EFSEC Website	
Final ASC	ASC	Appendix G Shadow Flicker Analysis Memo (Revised)	EFSEC Website	
Final ASC	ASC	Appendix H Glare Analysis Report	EFSEC Website	
Final ASC	ASC	Appendix I Wetland Delineation Report	EFSEC Website	
Final ASC	ASC	Appendix J Water Source Documentation	EFSEC Website	
Final ASC	ASC	Appendix K Biological Reports		Confidential
Final ASC	ASC	Appendix L Habitat Mitigation Plan		Confidential
Final ASC	ASC	Appendix M Bird and Bat Conservation Strategy		Confidential
Final ASC	ASC	Appendix N Revegetation & Noxious Weed Control Plan	EFSEC Website	
Final ASC	ASC	Appendix O Acoustic Modeling Results	EFSEC Website	
Final ASC	ASC	Appendix P Emergency Response Plan (Revised)	EFSEC Website	
Final ASC	ASC	Appendix P Emergency Response Plan (Revised) (Redline)	EFSEC Website	
Final ASC	ASC	Appendix Q Visual Simulation	EFSEC Website	
Final ASC	ASC	Appendix Q Visual Simulation (Redline)	EFSEC Website	
Final ASC	ASC	Appendix R Cultural Resources Report		Confidential
Final ASC	ASC	Appendix S Economic Impact Study	EFSEC Website	
Final ASC	ASC	Appendix T Notice of Intent for NPDES Permit	EFSEC Website	
Final ASC	ASC	Appendix U Consultation Materials	EFSEC Website	
Final ASC	ASC	Appendix V TLG Transportation Study	EFSEC Website	
Final ASC	ASC	Appendix W Air Quality Dispersion Modeling Evaluation	EFSEC Website	
Final ASC	ASC	Appendix W Air Quality Dispersion Modeling Evaluation (Redline)	EFSEC Website	
Final ASC	ASC	Appendix X Traffic Impact Analysis	EFSEC Website	
Final ASC	ASC	Appendix X Traffic Impact Analysis (Redline)	EFSEC Website	
Final EIS	SEPA	Cover letter	EFSEC Website	
Final EIS	SEPA	Executive Summary	EFSEC Website	
Final EIS	SEPA	Fact Sheet	EFSEC Website	
Final EIS	SEPA	Title Page	EFSEC Website	
Final EIS	SEPA	Table of Contents	EFSEC Website	
Final EIS	SEPA	Chapter 1 – Project Background and Purpose	EFSEC Website	

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Final EIS	SEPA	Chapter 2 – Proposed Action and Alternatives	EFSEC Website	
Final EIS	SEPA	Chapter 3 – Affected Environment	EFSEC Website	
Final EIS	SEPA	Chapter 4 – Analysis of Potential Impacts	EFSEC Website	
Final EIS	SEPA	Chapter 5 – Cumulative Impacts	EFSEC Website	
Final EIS	SEPA	Chapter 6 – References	EFSEC Website	
Final EIS	SEPA	Chapter 7 – List of Preparers	EFSEC Website	
Final EIS	SEPA	Chapter 8 – Glossary	EFSEC Website	
Final EIS	SEPA	Chapter 9 – Distribution	EFSEC Website	
Final EIS	SEPA	Chapter 10 – Comments & Responses on Draft EIS	EFSEC Website	
Final EIS	SEPA	Appendix 3.5- Habitat Photos	EFSEC Website	
Final EIS	SEPA	Appendix 3.8-1 LSU Consistency Analysis	EFSEC Website	
Final EIS	SEPA	Appendix 3.10-1 Sky Glow Comparisons	EFSEC Website	
Final EIS	SEPA	Appendix 3.10-2 Updated SWCA Visual Study	EFSEC Website	
Final EIS	SEPA	Appendix 3.16-1 Proximity to Environmental Stressors	EFSEC Website	
Final EIS	SEPA	Appendix 4.3-1 Air Quality Emissions Calculations	EFSEC Website	
Final EIS	SEPA	Appendix 4.3-2 Tetra Tech 2023 Air Quality Dispersion Modeling Evaluation	EFSEC Website	
Final EIS	SEPA	Appendix 4.6-1 Wildlife Collision Study	EFSEC Website	
Final EIS	SEPA	Appendix 4.10-1 Glare Analysis Report	EFSEC Website	
Final EIS	SEPA	Appendix 4.11-1 Noise Modeling Assessment	EFSEC Website	
Final EIS	SEPA	Appendix 4.16-1 Economic Impact Analysis Methodology	EFSEC Website	
Final EIS	SEPA	Appendix 10-1 Comments and Responses on Draft EIS	EFSEC Website	
Final EIS	Transcript	November 29, 2023 Horse Heaven FEIS Special Meeting	EFSEC Website or Video	
Draft EIS	Transcript	February 1, 2023 Horse Heaven Draft EIS Public Comment Meeting	EFSEC Website or Video part 1 Video part 2 Video part 3	
Informational Meeting	Transcript	March 30, 2021 Horse Heaven Informational Meeting Transcript	EFSEC Website or Video	
Land Use Hearing	Transcript	March 30, 2021 Horse Heaven Land Use Hearing	EFSEC Website or Video	
Comments	Action Items	December 20, 2023 Mitigation Measures	EFSEC Website	
Comments	Action Items	January 31, 2024 Mitigation Measures	EFSEC Website	
Comments	Action items	January 31, 2024 Extension Request	EFSEC Website	
Comments	Draft SCA	April 1-10, 2021 Draft SCA comment period	EFSEC Website	

Attachment 3: File Name Abbreviations and Acronyms

Recommendation to the Governor - Horse Heaven Wind Farm

File Name Abbreviations and Acronyms

APP	Appendix
ASC	Application for Site Certification
ATTACH	Attachment
BEN	Benton County
CFE	Counsel for the Environment
_ CONFIDENTIAL	Unredacted (non-public) version that contains confidential information or other information exempt from public disclosure under RCW 42.56
DecServ	Declaration of Service
DEP	Deposition
EIS	Environmental Impact Statement
EXH	Exhibit
FEIS	Final Environmental Impact Statement
HH	Horse Heaven
HHWF	Horse Heaven Wind Farm
MOT	Motion
OBJ	Objection
OCAA	Order Commencing Agency Adjudication
PHC	Pre-hearing Conference
PHO	Pre-hearing Order
_R	Rebuttal
_REDACTED	These versions were redacted by the applicant. Unless the file name or first page are marked “Redacted by EFSEC,” they have not been redacted in accordance with the Washington State Public Records Act.
REV	Revised Version
_S	Supplemental Exhibit/Testimony
SCA	Site Certification Agreement
SCE	Scout Clean Energy (Applicant)
_T	Testimony
TCC	Tri-Cities C.A.R.E.S.
TYN	Confederated Tribes and Bands of the Yakama Nation
_X	Cross-exhibit

Attachment 4: Certificate of Service

CERTIFICATE OF SERVICE

I, Joan Owens, am a Executive Assistant employed by the Energy Facility Site Evaluation Council, hereby certify on Monday, April 29, 2024, I served the following documents on each of the parties listed below.

- Cover letter
- Report to the Governor
- Final Adjudicative Order 892
- Draft Site Certification Agreement for the Horse Heaven Wind Farm
- Index of supporting Documentation
- File Name Abbreviations and Acronyms

Party	Method of Service
Assistant Attorney General Sarah Reyneveld Attorney General's Office 800 Fifth Avenue, Suite 2000 (TB/14) Seattle, WA 98104-3188 sarah.reyneveld@atg.wa.gov julie.dolloff@atg.wa.gov CEPSeaEF@atg.wa.gov *Attorneys for Counsel for the Environment*	email
Party	Method of Service
Kenneth W. Harper Aziza L. Foster Menke Jackson Beyer, LLP 807 North 39th Avenue Yakima, WA 98902 kharper@mjbe.com zfoster@mjbe.com Julie@mjbe.com *Attorneys for Benton County*	email
Party	Method of Service
J. Richard Aramburu Law Offices of J. Richard Aramburu, PLLC 705 2nd Ave, Suite 1300 Seattle, WA 98104-1797 rick@aramburulaw.com aramburulaw@gmail.com *Attorneys for Tri-Cities C.A.R.E.S.*	email

Party	Method of Service
Ethan Jones Shona Voelckers Jessica Houston Yakama Nation Office of Legal Counsel P.O. Box 151 Toppenish, WA 98948 ethan@yakamanation-olc.org shona@yakamanation-olc.org jessica@yakamanation-olc.org *Attorneys for Confederated Tribes and Bands of the Yakama Nation*	email
Party	Method of Service
Timothy L. McMahan Ariel Stavitsky Emily Schimelpfenig Willa B. Perlmutter Stoel Rives 760 SW Ninth Ave, Suite 3000 Portland, OR 97205 willa.perlmutter@stoel.com tim.mcmahan@stoel.com ariel.stavitsky@stoel.com emily.schimelpfenig@stoel.com *Attorneys for Scout Clean Energy, LLC (Applicant)*	email
Party	Method of Service
Dave Kobus Horse Heaven Wind Farm, LLC 5775 Flatiron Parkway, Suite 120 Boulder, CO 80301 dave@scoutcleanenergy.com *Scout clean Energy, LLC (Applicant)*	email

I certify under penalty of perjury under the law of the State of Washington that the foregoing is true and correct.

DATED this 29th day of April 2024, at Lacey, Washington.

Joan Owens, Executive Assistant