



**Bob Ferguson**

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October 14, 2022

Sonia Bumpus, Director  
Energy Facility Site Evaluation Council  
PO Box 43172  
Olympia, WA 98504-3172

**RE: High Top Solar and Ostrea Solar Projects EFSEC Docket No. EF-220212**

Dear Director Bumpus:

As Counsel for the Environment (CfE), I appreciate the opportunity to comment on the Energy Facility Site Evaluation Council (EFSEC)'s Mitigated Determination of Nonsignificance (MDNS) for the High Top Solar, LLC and Ostrea Solar, LLC projects (Projects).<sup>1</sup> On September 30, 2022, EFSEC issued a MDNS based on the determination that the mitigation conditions identified by EFSEC and Cypress Creek Renewables (applicant) will mitigate any significant adverse impacts on the environment. WAC 197-11-350(3).<sup>2</sup> CfE supports the required mitigation measures identified in the MDNS and the application that will help to mitigate the impacts of these Projects on wildlife and habitat. Because the Projects are proposed to be constructed in an essential wildlife and habitat connectivity corridor connecting the Yakima Ridge and Rattlesnake Ridge, it is critically important that all appropriate mitigation measures are implemented to address these impacts and the cumulative effects of the Projects combined with future projects. CfE recommends these additional mitigation measures to minimize adverse impacts to wildlife movement and habitat connectivity and ensure that essential connectivity corridors are protected for the life of the Projects.

CfE supports the mitigation measures specified in EFSEC's plan and the application, including, but not limited to:

- **Preservation of wildlife friendly corridors and restriction of fencing**, including ensuring wildlife corridors of approximately 1.2 miles and 0.3 miles occur through the Projects, leaving corridors along ephemeral streams open on both sides of the Projects,

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<sup>1</sup> See Energy Facility Site Evaluation Council (EFSEC), Mitigated Determination of Nonsignificance for the High Top and Ostrea Solar Projects ("MDNS") (October 1, 2022),

[https://www.efsec.wa.gov/sites/default/files/220212/20220930\\_HTO\\_MDNS\\_Final.pdf](https://www.efsec.wa.gov/sites/default/files/220212/20220930_HTO_MDNS_Final.pdf).

<sup>2</sup> See EFSEC, Memorandum Re: Environmental Review and Staff Recommendation for State Environmental Policy Act (SEPA) Review and SEPA Determination for *High Top Solar and Ostrea Solar* (September 30, 2022),

[https://www.efsec.wa.gov/sites/default/files/220212/20220930\\_HTO\\_StaffMemoFinal.pdf](https://www.efsec.wa.gov/sites/default/files/220212/20220930_HTO_StaffMemoFinal.pdf).

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mitigation ratios, and restricting fencing to surround consolidated arrays which will help to preserve and support wildlife movement.<sup>3</sup>

- **Compensatory fees to mitigate additional impacts to wildlife mobility and habitat connectivity.** Because of the Projects' immediate and long-term impacts on wildlife mobility and habitat connectivity it is appropriate that mitigation conditions include a monetary fee from the applicant to compensate for the remaining impacts of the Projects.<sup>4</sup> CfE encourages the purchase of lands and/or other enhancement mitigation that compensates for the remaining or altered impacts of the Projects, protects wildlife corridors, and minimizes the long-time cumulative impact of the Projects with future projects.
- **Consideration of the cumulative impacts of the Projects and creation of additional protected corridors as necessary to mitigate impacts to wildlife.** The Projects, combined with other potential foreseeable projects such as the Wautoma project, could adversely impact habitat and wildlife movement if the cumulative impacts are not appropriately considered and mitigated.<sup>5</sup> CfE appreciates that EFSEC has committed to fully considering the cumulative impacts of the Projects with future development and coordinating with WDFW to create additional protected corridors as necessary to maintain wildlife movement.<sup>6</sup>

In addition to these required mitigation measures, CfE recommends EFSEC and the applicant implement these additional measures to mitigate impacts on wildlife and habitat for the life of the Projects:

- **Protect wildlife corridors for the life of the Projects and beyond.** It is critical the required wildlife corridors are protected and remain accessible to wildlife through the life of the Projects and beyond. CfE recommends that these corridors be protected in perpetuity in conservation status through the use of compensatory fees to purchase conservation easements or other instruments as recommended by WDFW.<sup>7</sup> Additionally, compensatory fees should be used to retain a conservation project steward to conduct post-hoc monitoring of wildlife to gather data on impacts, the effectiveness of compensatory fees in mitigating these impacts, and to help establish best practices for future solar developments.<sup>8</sup>

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<sup>3</sup> See *id.* at 7, 13.

<sup>4</sup> See *id.* at 8-9.

<sup>5</sup> See *id.* at Attachment 2, Map of foreseeable solar facilities in the Black Rock Valley, <https://www.efsec.wa.gov/sites/default/files/220212/Map%20of%20foreseeable%20solar%20facilities%20in%20the%20Black%20Rock%20Valley.pdf> (last accessed October 14, 2022).

<sup>6</sup> See *id.* at 13-14.

<sup>7</sup> See Washington Dep't of Fish & Wildlife (WDFW), Letter to EFSEC (September 16, 2022), [https://www.efsec.wa.gov/sites/default/files/220212/A003\\_SEPA\\_WDFW.pdf](https://www.efsec.wa.gov/sites/default/files/220212/A003_SEPA_WDFW.pdf) at 2-3.

<sup>8</sup> See Cypress Creek Renewables EFSEC Application: High Top Solar, LLC and Ostrea Solar, LLC (April 7, 2022), [https://www.efsec.wa.gov/sites/default/files/220212/00001/High%20Top-Ostrea\\_EFSEC%20ASC%2004072022\\_Redacted.pdf](https://www.efsec.wa.gov/sites/default/files/220212/00001/High%20Top-Ostrea_EFSEC%20ASC%2004072022_Redacted.pdf) at 15.

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- **Restrict fencing and use wildlife-friendly fence design.** Fencing can restrict the movement of birds, such as the sagebrush sparrows, smaller mammals, and ungulates such as the rocky mountain elk who rely on this critical habitat connectivity corridor.<sup>9</sup> The Projects should be fenced only when critically necessary and, when necessary, the applicant should use a wildlife-friendly fence design. To reduce wildlife injury, the applicant should use fence enhancements that will increase visibility to wildlife, such as colored flags, vinyl siding strips with reflective tape, and/or other enhancements.<sup>10</sup> The applicant should also consider turning off the lights of the proposed security lighting at night when possible in addition to shielding lights to minimize visual impacts and limit the attraction of migratory birds.<sup>11</sup> Finally, CfE recommends raising the bottom of the proposed fencing to 4 inches above the ground and/or providing periodic small openings at intervals along the fencing to allow birds and smaller mammals such as squirrels, jackrabbits, and badgers to pass under the fence and access the habitat within the solar arrays.<sup>12</sup>
- **Revegetate and restore corridors and disturbed areas around solar arrays with native plants.** As EFSEC recognizes, vegetation removal and fencing will both temporarily and permanently displace nesting, denning, and foraging habitat which could adversely impact wildlife.<sup>13</sup> CfE appreciates that the applicant has committed to avoiding high native biodiversity communities and siting facilities predominately on previously plowed and disturbed or degraded areas.<sup>14</sup> In addition, CfE recommends the applicant minimize the adverse land use impacts of the Projects by revegetating corridors and disturbed areas in and around solar installments that are not occupied by project components with native species to restore wildlife habitat.<sup>15</sup> Revegetation with native species even within solar installments has been shown to be effective in supporting the habitat of birds and smaller mammals who can pass under the perimeter fence.<sup>16</sup>
- **Restrict the use of pesticides and herbicides to protect wildlife and their food sources.** Pesticides and herbicides can kill wildlife as well as plants and insects on which

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<sup>9</sup> See EFSEC, Memorandum Re: Environmental Review *supra* n. 2, at 7.

<sup>10</sup> See Hanophy, W., *Fencing with Wildlife in Mind*, Colorado Parks and Wildlife, Denver, CO. (2009), <https://cpw.state.co.us/Documents/LandWater/PrivateLandPrograms/FencingWithWildlifeInMind.pdf>, (last accessed October 10, 2022) at 6-7.

<sup>11</sup> See Cypress Creek Renewables EFSEC Application *supra* n 8, at 24.

<sup>12</sup> See The Nature Conservancy, *Making Solar Wildlife Friendly: Creating solutions to maximize conservation benefit from solar production* (October 4, 2019), <https://www.nature.org/en-us/about-us/where-we-work/usa/north-carolina/stories-in-north-carolina/making-solar-wildlife-friendly/>; See also Application for Site Certification, Badger Mountain Solar Energy Project (Oct. 5, 2021), [https://www.efsec.wa.gov/sites/default/files/210747/00001/01\\_Badger%20Mtn\\_ASC\\_Main.pdf](https://www.efsec.wa.gov/sites/default/files/210747/00001/01_Badger%20Mtn_ASC_Main.pdf), at 166.

<sup>13</sup> See EFSEC, Memorandum Re: Environmental Review *supra* n. 2, at 8.

<sup>14</sup> *Id.*

<sup>15</sup> See Beatty, B.J., *Native Vegetation Performance under a Solar PV Array at the National Wind Technology Center*, NREL/TP-1900-66218, National Renewable Energy Laboratory, <https://www.nrel.gov/docs/fy17osti/66218.pdf> at 27-28.

<sup>16</sup> *Id.* See also Macknick, J. et. al., *Overview of Opportunities for Co-Location of Solar Energy Techniques and Vegetation*. NREL/TO-6A20-60240, National Renewable Energy Laboratory, <https://www.nrel.gov/docs/fy14osti/60240.pdf>; see also Application for Site Certification, Badger Mountain Solar Energy Project *supra* n. 12.


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they rely as their food source. CfE appreciates the applicant's commitment to limit the use of herbicides within 200 feet of the mapped populations of the Columbia milkvetch and to consider the impacts of herbicide application in sensitive areas such as those containing suitable habitat for special status species.<sup>17</sup> CfE recommends the applicant use nonchemical techniques to control vegetation particularly in habitat suitable for migratory birds and special status species.<sup>18</sup> If herbicides are applied the applicant should use only herbicides that are non-toxic to wildlife and organic, bio-degradable solutions to minimize adverse impacts to wildlife and their food sources.<sup>19</sup>

Thank you for your consideration of this comment.

Sincerely,



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<sup>17</sup> See Cypress Creek Renewables EFSEC Application, *supra* n. 8 at Attachment L at 9-10.

<sup>18</sup> See, e.g., Northwest Center for Alternatives to Pesticides, <https://www.pesticide.org/resources> (last visited October 13, 2022).

<sup>19</sup> See generally WDFW, *Management Recommendations for Priority Species – Volume IV: Birds*, (May 2004), <https://wdfw.wa.gov/publications/00026>.