



**DEPARTMENT OF
NATURAL RESOURCES**

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May 15, 2025

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Energy Facility Site Evaluation Council
PO Box 43172
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Subject: EFSEC Docket No. 181034, Transmission Programmatic Environmental Impact Statement (EIS)

Dear Mr. Greene

Thank you for the opportunity to comment on the Programmatic EIS for electrical transmission facilities. The Washington State Department of Natural Resources (DNR) wishes to formally comment with regards to the following issues:

DNR-Managed Uplands Considerations

1. (Avoidance Criteria): 3.1.3.2 Avoidance Criteria Avoid 7 and 8, as well as 3.6 (Habitat, Wildlife, and Fish) appears to have failed to identify Washington State Department of Natural Resources Natural Area Preserves (NAP) and Natural Resources Conservation Areas (NRCA) and locations of rare species and rare and high-quality ecosystems specifically called out to be avoided and recognize the importance of RCW 79.70 and 79.71.

RCW 79.70.010: Purpose.

"The purpose of this chapter is to establish a state system of natural area preserves and a means whereby the preservation of these aquatic and land areas can be accomplished.

All areas within the state, except those which are expressly dedicated by law for preservation and protection in their natural condition, are subject to alteration by human activity. Natural lands, together with the plants and animals living thereon in natural ecological systems, are valuable for the purposes of scientific research, teaching, as habitats of rare and vanishing species, as places of natural historic and natural interest and scenic beauty, and as living museums of the original heritage of the state.

It is, therefore, the public policy of the state of Washington to secure for the people of present and future generations the benefit of an enduring resource of natural areas by establishing a system of natural area preserves, and to provide for the protection of these natural areas."

RCW 79.71.020: Characteristics of lands considered for conservation purposes.

"Lands possessing the following characteristics are considered by the legislature to be worthy of consideration for conservation purposes:

(1) Lands identified as having high priority for conservation, natural systems, wildlife, and low-impact public use values;

(2) An area of land or water, or land and water, that has flora, fauna, geological, archaeological, scenic, or similar features of critical importance to the people of Washington and that has retained to some degree or has reestablished its natural character;

(3) Examples of native ecological communities; and

(4) Environmentally significant sites threatened with conversion to incompatible or ecologically irreversible uses.”

- a. The State of Washington Natural Heritage Program, which is housed at DNR, identifies the highest quality, most ecologically important sites for protection as natural area preserves. The resulting network of preserves represents a legacy for future generations and helps ensure that blueprints of the state's natural ecosystems are protected forever. Western Washington preserves include several large coastal preserves supporting high quality wetlands, salt marshes and forested buffers. Other westside habitats include mounded prairies, sphagnum bogs, natural late-successional forests and grassland balds. NAP's and NRCA's have been identified as locations that contain mature coastal forests, streams, and feeder bluffs, which have been set aside for preservation. Eastern Washington sites include rare plant locations, state endangered species sites, and prime habitat for threatened wildlife. Additional sites protected by NAP's and NRCA's in eastern Washington include Shrub steppe landscape habitats which are being set aside for perpetual protection.
- b. Natural Area Preserves protect Washington's highest-quality remaining examples of native ecosystems and habitat for rare plant or animal species.
- c. Locations identified in the Natural Heritage Data Explorer are rare plants of rare and/or high-quality ecosystem occurrences that the Natural Heritage Program has concluded as having significant conservation. That data can be located here:
<https://experience.arcgis.com/experience/174566100f2a47bebe56db3f0f78b5d9/>
- d. Natural Resources Conservation Areas protect outstanding examples of native ecosystems, habitat for endangered, threatened and sensitive plants and animals, and scenic landscapes. Critical habitat is conserved in NRCAs for many plant and animal species, including rare species. Conservation areas also protect geologic, cultural, historical, and archeological sites.
- e. Most, if not all, of these NAP's and NRCA's, are encumbered with conservation easements to protect them. As part of those easements, future activities which are inconsistent with the purposes of NAP's and NRCA's – the preservation of the property in its natural condition and the protection of their ecological features – or inconsistent with any adopted site-specific management plan, is prohibited.
- f. These conservation easements often have rigid components, which would require mitigation, remediation, and/or purchase of replacement land to account for the conversion of these lands out of their protected status. These should factor in the extreme complexity and expense of any consideration of these parcels for conversion into utility corridors.
 - i. Any parcel identified with a conservation easement (or Deed of Right) will require in addition to the requirement of RCW 79.36.355, that, prior to any grant of easement or conversion, that an equal area of land, that is adjacent or contiguous to the NAP or NRCA, and that is deemed to be “reasonably equivalent in habitat and location” be purchased, for the sole purpose to be exchanged for the acres needed for the easement. The Washington State Recreation and Conservation Office will be the authority to determine qualifying “reasonably equivalent in habitat and location”, and the proponent utility will be required to pay for DNR work related to any conversion process, which may or may not be granted.

- g. All of these expenses should be the responsibility of the proponent utility and any grant of easement under the authority of this EIS.
 - h. All these NAP and NRCA parcels should be identified as high conflict-avoidance areas for future transmission line siting.
2. (Avoidance Criteria): 3.1.3.2 Avoidance Criteria Avoid 7 and 8, as well as 3.6 (Habitat, Wildlife and Fish) fails to impart the legal requirements of compliance with a habitat conservation plan and legal consequences of non-compliance. Further, the DEIS does not mention the financial costs that are required to consult with the Federal Services and potential identification and provision of additional mitigation for specific projects.

Certain State Trust Lands managed by the DNR have been included within the Trust Lands HCP and associated Incidental Take Permits #TE81251-1 and #1168, with the United States Fish and Wildlife Service and National Marine Fisheries Service (the Services). DNR's HCP is a multi-species, long-term land management plan to conserve threatened and endangered species under the Endangered Species Act. Compliance with the HCP affords incidental take, while carrying out forest management and other activities on DNR's Trust Lands. This long-term plan outlines how DNR will provide habitat in specific locations for species such as the northern spotted owl, and marbled murrelet, as well as many others.

Figure 3-5.5 identifies DNR-managed lands covered by the Trust Lands Habitat Conservation Plan (HCP). Avoidance Criteria 3.1.3.2 (Avoid 6, 7 & 8) describes the rationale to avoid these criteria to reduce habitat loss and fragmentation that can be caused by specific projects approved by EFSEC. General Condition 3 also recognizes the importance of specific projects to evaluate impacts to the compliance with Policies and Ordinances including habitat conservation plans.

- a. Specific proposals on DNR-managed parcels identified through this EIS should account for the commitments of the HCP, and be responsible for any incidental take and mitigation, and not be a responsibility burdened on DNR.
 - b. Any required mitigation, as identified per the specific project environmental review and proposal, should be a requirement of the proponent utility to account for and take responsibility for.
 - c. The HCP has rigid components, which would require mitigation, remediation, and/or purchase of replacement land to account for the conversion of these lands out of their conservation status. These should factor in the extreme complexity and expense of any consideration of these parcels for conversion into utility corridors.
 - d. All these expenses should be the responsibility of the proponent utility and any grant of easement under the authority of this EIS.
 - e. All of the parcels identified as having HCP coverage should be considered as high conflict-avoidance areas for future transmission siting and consultation with DNR and potentially the Services should be required.
3. (Socioeconomics and Environmental Justice) 4.3.4.15 failed to capture the complexity of RCW 79.13.420 and its impact to transmission line projects, and to project goals:

RCW 79.13.420: “Nondefault or early termination provision.

(1) For the purposes of this section, "nondefault or early termination provision" means a provision that authorizes the department to terminate a lease in the event the department includes the leased land in a plan for higher and better use, land exchange, or sale.

(2) Any nondefault or early termination provision included in a state land lease for agricultural or grazing purposes must:

(a) Require advance written notice of at least one hundred eighty days by the department to the lessee prior to termination of the lease; and

(b) Require the department to provide to the lessee, along with the notice under (a) of this subsection, written documentation demonstrating that the department has included the leased land in a plan for higher and better use, land exchange, or sale.

(3) This section does not require the department to include a nondefault or early termination provision in any state land lease for agricultural or grazing purposes.

(4) This section does not prohibit the department from allowing the lessee to surrender the leasehold subject to terms provided in the lease.

(5) This section does not prohibit the department from executing other lease provisions designed to protect the interests of the lessee in the event that the lease is terminated under a nondefault or early termination provision.

(6) In the event that the department exercises a nondefault or early termination provision in a state land lease for agricultural or grazing purposes, the department shall compensate the lessee according to the following schedule:

(a) For grazing leases, the department shall pay to the lessee the annual rent for the land subject to the lease, multiplied by a factor of six, except that the department need not compensate the lessee for any years that are specifically designated in the lease as nongrazing years.

(b) For agricultural leases, the department shall pay to the lessee the expected net return the lessee would have realized from crops raised on the leased land, which shall be calculated according to the following formula: The annual net revenue per acre for the class of crop produced by the lessee, less the rental rate per acre for the land leased by the lessee; multiplied by the number of acres leased by the lessee. For purposes of this subsection, the annual net revenue per acre for a class of crop must be calculated according to the most recent rolling average annual net rental return per acre for that class of crop as established by the county assessor of the county in which the leased land is located or, if the county assessor of the county in which the land is located has not established an annual net rental return per acre, as established by the county assessor of the nearest county in which the county assessor has established such an annual net rental return per acre. The annual net rental return per acre, as established by the county assessor, must be adjusted to reflect the total annual net revenue per acre.

(c) For both grazing leases and agricultural leases, the department shall make payments to the lessee on an annual basis for the remaining term of the terminated lease, unless the department and the lessee agree to an alternate schedule of payments. In the event that payments are made on any schedule other than on an annual basis, any advance payments must be subjected to an appropriate discount rate in order to reflect the net present value of the compensation owed by the department.

(d) For both grazing leases and agricultural leases, in the event that the lessee has placed any improvements, as authorized under RCW 79.13.050, on the land that is subject to the lease, the department is responsible for compensating the lessee for the fair market value of the improvements. In the event that an agreement cannot be reached between the state and the lessee on the fair market value of the improvements, the valuation must be determined as prescribed under RCW 79.13.160.

(7) In the event that the department's exercise of a nondefault or early termination provision in a state land lease for agricultural or grazing purposes results in the removal of fencing from the land subject to the lease, the department is responsible for ensuring the replacement of any removed fencing.

(8) In the event that the department's exercise of a nondefault or early termination provision in a state land lease for agricultural or grazing purposes causes the lessee to incur a financial penalty as a result of an early withdrawal from a natural resources conservation service program, the department is responsible for reimbursing the lessee for payment of the financial penalty.

(9) The compensation and reimbursement available to a lessee under subsections (6) and (8) of this section, respectively, is the sole financial remedy available to the lessee based on the department's exercise of a nondefault or early termination provision in an agriculture or grazing lease. Appeal rights under RCW 79.02.030 are unaffected by the relief provided in this section.”

- a. RCW 79.13.420 clearly identifies the steps, responsibilities, and expenditures that must be met prior to any grant of an easement, which removes these parcels from active lease on DNR trust lands. As a component of this statute, the leaseholders are compensated on an

- increasing scale, based on the term, and remained of term of the lease. These costs can become extreme, impacting the timeline for granting of easement, and costs to the utility proponent. Leaseholders are entitled to these re-imbursements for both the investment of capital improvements, as well as future planned revenue from those investments of both capital and crops.
- b. DNR's stand is that utility lines should be planned and placed at the edges of any leased property, and to have minimum to no impact to the parcels currently leased, or with intent to lease.
 - c. All these expenses should be the responsibility of the proponent utility and any grant of easement under the authority of this EIS.
 - d. All these leased parcels should be identified as high conflict-avoidance areas for future transmission line siting.
4. (Socioeconomics and Environmental Justice) 4.3.4.15 fails to address the cumulative impacts on DNR when granting transmission line corridors across DNR trust lands.

RCW 79.36.355: Grant of easements and rights in public land.

"The department may grant to any person such easements and rights in public lands, not otherwise provided in law, as the applicant applying therefor may acquire in privately owned lands. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state."

- a. While WA RCW 79.36.355 is specific in its requirements prior to granting easement across DNR lands applies, it does not account for the cumulative impacts these transmission lines impose. DNR generates revenue for the trusts which it is managing the lands for. It has a fiduciary responsibility to manage these state trust lands, including schools, counties, and other state institutions. Included in this responsibility is to generate revenue, protecting the corpus of the trust, manage the lands for the future, maintain undivided loyalty to the trusts, exercising reasonable skill and care, and acting prudently in managing the assets of the trust. When transmission lines are installed across DNR lands, often these linear strips become unproductive areas, where future revenue production is lost, often permanently. While the land has been paid for, the loss of long term, on-going revenue is not. DNR asks that these projects consider the ongoing financial impacts the loss of these productive lands have on the underlying landowners. DNR asks that these projects consider the ongoing financial impacts the loss of these productive lands have on the underlying landowners. Be it, ongoing financial payments, or increased consideration, which can be used to re-invest for future revenue production, some means of capturing, accounting for, and mitigating for this financial loss should be addressed
- b. Utility lines should be planned and placed at the edges of any DNR property, and to reduce the overall impact on the parcels. Utilities (and this EIS) should focus on locating such utilities to run adjacent to the DNR trust parcels, even if it is not the shortest route, and avoid crossing parcels and leaving severed parcel remnants, which severely impact DNR land management options.
- c. All these expenses should be the responsibility of the proponent utility and any grant of easement under the authority of this EIS.

State Owned Aquatic Land Considerations

5. (Method of Analysis) 3.4.3.1 Will there be any weighting of these impacts when analyzing a proposal? How exactly are the impacts of a proposal ranked? What level of impact still allows a proposal to move forward? (If this is addressed in another section, it might be helpful to link that section within this one)
6. (Potential Mitigation Measures) 3.4.4
 - a. What are the pathways for the public to weigh in on siting of facilities that cannot avoid all of the potential impacts within this section? It seems one likely exists, and maybe it is worth a small explanation here.
 - b. If there are impacts to water resources, will they have to abide by construction fish windows?
7. (Fish) 3.6.2.2
 - c. Priority Habitat:
 - i. It seems there should be more citations for the description of priority habitats, unless they are all from the WDFW 2008 citation from above.
 - ii. Is there a better way to describe fresh deepwater? Is there a depth requirement to be considered “deepwater”? (this may relate to management considerations).

For specific questions regarding these comments please contact Scott Nelson, DNR Rights-of-Way, 360-902-2143, or Brittany Poirson, Aquatics Resources Division, 360-791-9814,

DNR looks forward to the ongoing conversations and discussions to resolve these issues.

Sincerely Yours,

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