

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITING EVALUATION COUNCIL

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In the Matter of the Application of:  
  
Scout Clean Energy, LLC, for Horse Heaven  
Wind Farm, LLC,  
  
Applicant.

DOCKET NO. EF-210011  
  
SCOUT CLEAN ENERGY, LLC’S  
OPPOSITION TO THE  
CONFEDERATED TRIBES AND  
BANDS OF THE YAKAMA NATION’S  
MOTION TO ENFORCE PROTECTIVE  
ORDER

**I. INTRODUCTION**

Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC (“Applicant” or “Scout”), respectfully requests that the Energy Facility Site Evaluation Council (“EFSEC” or “Council”) deny the Confederated Tribes and Bands of the Yakama Nation’s (“Yakama Nation”) Motion to Enforce Protective Order (“Motion”). For several reasons, and under the current circumstances, enforcement of the Protective Order with Provisions Governing Confidential Information and Information Exempt from Public Disclosure Under RCW 42.56 (the “Protective Order”)<sup>1</sup> is inappropriate and unwarranted.

*First*, the Protective Order does not apply because the small-scale, low-resolution map of historical ferruginous hawk nests across the Columbia Plateau Ecoregion (“Ecoregion Map”) that Scout provided to the Seattle Times<sup>2</sup> was not presented during the adjudication. *Second*, and most important, Scout did not disclose any confidential information. Per Washington Department of Fish and Wildlife’s (“WDFW”) habitat information release standards, the Ecoregion Map is not confidential because its scale is about seven times smaller than the applicable confidential resolution threshold detailed on pages 2-3 of this Response. *Third*, it is questionable whether even the more detailed figure posted in the

<sup>1</sup> A copy of the protective order is provided as Attachment A to this response.  
<sup>2</sup> A copy of this map is provided as part of Exhibit A to the Declaration of Dave Kobus (“Kobus Decl.”), provided as Attachment B to this response. The map is non-confidential, as explained below, but nevertheless has been submitted in redacted form until the Motion is adjudicated.

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1 Seattle Times on February 21, 2023, “Horse Heaven Hills wind and solar project likely faces  
2 cuts” (“Times Figure”) itself contains confidential data because it is replete with errors and  
3 inaccuracies, and its scale is unspecified. Regardless, however the Seattle Times developed  
4 its misleading figure, it was not based on confidential information from Scout.

5 **II. BACKGROUND**

6 **A. The Seattle Times Interviewed Scout for an Article Describing the Impact of the**  
7 **Council’s Proposed Unprecedented 2-Mile Buffer Around Historic Ferruginous**  
8 **Hawk Nests on Renewable Development in Washington.**

9 Keyed into the EFSEC proceedings for Washington’s largest proposed renewable  
10 development project, the Seattle Times reached out to Scout for an interview after the  
11 Council proposed to gut the Horse Heaven Project by imposing an unprecedented 2-mile  
12 buffer around unoccupied historic ferruginous hawk nests. *See* Kobus Decl. ¶ 2. After an  
13 interview with Mr. Kobus and Scout CEO Michael Rucker that discussed the potential  
14 impacts of the buffer on the viability of the Project, Conrad Swanson followed up, requesting  
15 maps or photos related to ferruginous hawk nests. Kobus Decl. ¶¶ 3-5, Exhibit A. Scout  
16 sought advice from Scout’s wildlife expert to confirm what information about nest locations  
17 and status could be provided. *Id.* ¶ 14.

18 **B. Per WDFW Authority, Sensitive Wildlife Data Is Confidential and Protected**  
19 **Only When Displayed at Large Scale.**

20 Certain sensitive information about fish and wildlife, including “[t]he nesting sites or  
21 specific locations of endangered species” (“Sensitive Data”) is protected from public  
22 disclosure. RCW 42.56.430(2)(a). WDFW is the agency responsible for maintaining and  
23 protecting that Sensitive Data and thus defining the scope of its protection. RCW 42.56.070;  
24 WAC 44-14-04004. Sensitive Data presented at large scale *are* confidential. WDFW,  
25 Ordering Priority Habitats and Species Information from the Washington Department of Fish  
26 and Wildlife (last updated Apr. 2018), <https://wdfw.wa.gov/sites/default/files/2019-02/orderinformationform.pdf> (providing Priority Habitats and Species (“PHS”) maps that are

1 confidential because they are produced at 1:24,000 scale); *see* Thompson Decl. ¶¶ 7-8,  
2 provided as Attachment C to this response.

3 But important here, WDFW has determined that **Sensitive Data are *not* confidential**  
4 **or protected from disclosure when they are provided at a small scale.** WDFW guidance  
5 makes clear that Sensitive Data presented at a sufficiently small scale is “masked” such that  
6 the information is no longer confidential or protected from disclosure. *See* WDFW, Using  
7 PHS Data: Frequently Asked Questions (“FAQs”) at 3 (last updated Feb. 2020),  
8 [https://www2.clark.wa.gov/files/dept/community-planning/shoreline-master-](https://www2.clark.wa.gov/files/dept/community-planning/shoreline-master-program/proposal-comments-received/futurewise-data-cd/phs-on-the-web-faqs.pdf)  
9 [program/proposal-comments-received/futurewise-data-cd/phs-on-the-web-faqs.pdf](https://www2.clark.wa.gov/files/dept/community-planning/shoreline-master-program/proposal-comments-received/futurewise-data-cd/phs-on-the-web-faqs.pdf)  
10 (explaining that location information that is sufficiently “‘masked’ to a certain level of  
11 resolution” so that people cannot “see the exact location of the data on the web”); *see also*  
12 WDFW, Priority Habitats and Species: Maps, Maps and digital information,  
13 <https://wdfw.wa.gov/species-habitats/at-risk/phs/maps> (last accessed Feb. 27, 2024); *see also*  
14 Thompson Decl. ¶¶ 7-8.

15 WDFW has specified that Sensitive Data are “masked” when produced at a scale of  
16 1:250,000 or smaller. Thompson Decl., ¶¶ 9-11, Exh. B, at 1 (the WDFW, Sensitive Fish  
17 and Wildlife Information Release Agreement (last updated June 2011)); *see also* Thompson  
18 Decl. ¶ 9. At this low resolution and small scale, 1 centimeter on the map represents 2.5  
19 kilometers (“km”) of distance; thus the information is so generalized it cannot actually be  
20 used to identify site locations and thus can be disseminated publicly. *Id.* ¶ 10.

21 **C. Scout Provided Three Non-Confidential Maps to the Seattle Times.**

22 Scout gave Mr. Swanson three maps: first, a map of publicly available Geographic  
23 Information System (“GIS”) data developed by a multi-agency working group showing  
24 wildlife movement corridors,<sup>3</sup> second, Figure 2-5 from the Project’s Final Environmental  
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26 <sup>3</sup> *See* Washington Wildlife Habitat Connectivity Working Group, Columbia Plateau  
Ecoregion: Addendum Analyses, Data layers from analyses,  
[https://waconnected.org/cp\\_addendumanalyses/](https://waconnected.org/cp_addendumanalyses/) (last accessed Feb. 29, 2024).

1 Impact Statement (“FEIS”).<sup>4</sup> See Kobus Decl. ¶¶ 4, 6, Exh. A at 5-7. Clearly, these are  
2 certainly not confidential maps containing sensitive wildlife information and data because  
3 they are publicly available.

4 Third, Scout also provided the Ecoregion Map, a non-confidential map prepared by  
5 its biologist consultant, WEST. Kobus Decl. ¶¶ 6-7. The Ecoregion Map is extremely  
6 zoomed out, presenting any Sensitive Data at a scale of 1:1,600,000, Thompson Decl. ¶ 14,  
7 and describes the potential effect of the Council’s proposed 2-mile buffer around historical  
8 ferruginous hawk nest locations throughout the Washington Columbia Plateau Ecoregion, see  
9 Kobus Decl. ¶ 6, Ex. A at 8. The Ecoregion Map displays the entire Washington Columbia  
10 Plateau Ecoregion, extending from south of the Washington-Oregon border to the U.S.-  
11 Canada border, bounded to the east by the Washington-Idaho border, and in the west by the  
12 Cascades. Thompson Decl. ¶¶ 12-13, Kobus Decl. Exh. A at 8. The map depicts bolded dots  
13 for each PHS-documented historical nest location, with a 3.2 km (2 mile) nest buffer and a 10  
14 km (6.2 mile) nest buffer. Kobus Decl. Exh. A at 8. As the map’s small scale shows, if  
15 applied as precedent to other Washington wind energy facilities, the Council’s proposed 2-  
16 mile buffer will prohibit wind siting over about *a fifth* of the Washington Columbia Plateau  
17 Ecoregion.

18 In providing these maps, Mr. Kobus explained he could not provide a more detailed  
19 map of the historical nest locations because that information was protected. Kobus Decl.  
20 Exh. A at 1. To further ensure the Seattle Times recipients understood the sensitivity of the  
21 data, the Ecoregion Map was labeled “Contains Confidential PHS Data Displayed at an  
22 Unrestricted Scale (<1:250,000).” Kobus Decl. at ¶ 15; Thompson Decl. ¶ 16.

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<sup>4</sup> Mr. Kobus provided two versions of this map, the original from the FEIS, and a version that contained an annotation discussed at EFSEC’s January 31, 2024 meeting. Kobus Decl. ¶ 8.

1 **D. The Seattle Times Appears to Have Used Publicly Available GIS Information**  
2 **and the Non-Confidential Ecoregion Map to Create the Figure in the Article.**

3 On February 21, 2024, Mr. Swanson published the Seattle Times article cited in  
4 Yakama Nation’s Motion, including the Times Figure. The Times Figure cites Esri (which  
5 Scout believes to be a GIS software company)<sup>5</sup> and Scout Clean Energy as its sources.  
6 Motion, Ex. A at 3; Kobus Decl. ¶ 16.

7 Scout lacks information about how the Seattle Times developed the Times Figure.  
8 Kobus Decl. ¶ 16. In early correspondence with Mr. Kobus, Mr. Swanson suggested he  
9 would “see if the [Seattle Times] graphic team can do their own type of overlay with the  
10 maps that are available.” Kobus Decl., Ex. A at 1. Again, the only ferruginous hawk-related  
11 map Scout gave to the Seattle Times was the non-confidential Ecoregion Map, which did not  
12 disclose the locations of the PHS-documented ferruginous hawk nests at the scale presented  
13 by the Times Figure. Based on the sources cited in the article, it is possible the Seattle Times  
14 may have utilized the low-resolution Ecoregion Map and compared it to publicly available  
15 GIS data from Esri. Kobus Decl. ¶ 16.

16 Several significant discrepancies and inaccuracies are present in the Times Figure,  
17 including missing documented nest locations, other locations suggesting nests are present  
18 where no documented nest exists, and others suggesting nest locations that are at least a half-  
19 mile from the actual PHS-documented site. *Id.* ¶¶ 17-18. These inaccuracies strongly  
20 suggest that the Times Figure was created using non-confidential, low-resolution  
21 information. *Id.* In any event, given the still-low level of resolution in the Times Figure, and  
22 certainly given its significant inaccuracies, the Times Figure could in no way actually be  
23 used to locate the PHS-documented historical nest locations. *See* Thompson Decl. ¶¶ 8, 10.

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<sup>5</sup> *See* Esri, Helping people and nature coexist in harmony, <https://www.esri.com/en-us/home>  
(last accessed Mar. 1, 2024).

1 **III. ARGUMENT**

2 Yakama Nation’s Motion fails for at least three independent reasons. First, the  
3 Protective Order—which governs only information submitted and designated as confidential  
4 during the adjudicative process—does not apply here because the Ecoregion Map was not  
5 presented at the adjudication. Second, Scout did not disclose any confidential information.  
6 Lastly, it is unclear if even the Times Figure itself contains any confidential information.

7 **A. The Protective Order Does Not Apply to the Ecoregion Map Because That Map**  
8 **Was Not Part of the Adjudication.**

9 As a threshold matter, the Motion should be denied because the Protective Order does  
10 not apply to confidential materials outside of the adjudication. The Protective Order by its  
11 own terms “govern[s] discovery and the use of information designated as confidential or  
12 exempt from public disclosure *in this adjudication*.” See Att. A, Protective Order at 1  
13 (emphasis added). To come under the order’s protection, defined “Confidential Information”  
14 must be designated as such “at the time of submission to the Council” during the  
15 adjudication. *Id.* at 2.<sup>6</sup>

16 The Ecoregion Map that was given to the Seattle Times was never submitted or  
17 designated as confidential during the adjudication. Kobus Decl. ¶ 12. Nor does the  
18 Ecoregion Map include any component of confidential information that was designated  
19 during the adjudication because, as explained below, the information presented is at a  
20 resolution and scale that is not confidential.

21 Thus, regardless of whether the Ecoregion Map contained any confidential  
22 information—which it did not—this map is not “Confidential Information” that would be  
23 encompassed under the Protective Order.

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24 <sup>6</sup> The evidentiary record for the adjudicative proceeding closed on September 5, 2023, the  
25 last day to file post-adjudicative hearing supplemental testimony. Adjudication Transcript,  
26 Day 8, Aug. 25, 2023 at 1741:18 to 1741:22; *see also* EFSEC, Council Order No. 890, Order  
Denying “Petition for Reconsideration” of Order on Post-Hearing Motions to Supplement the  
Record 1 (Nov. 11, 2023).

1 **B. Scout Did Not Disclose Confidential Information to the Seattle Times.**

2 Even if the Protective Order did somehow apply to the Ecoregion Map, that map did  
3 not contain any confidential information. Sensitive wildlife data is not confidential when  
4 displayed at a scale larger than 1:250,000. *See* WDFW, Using PHS Data: FAQs; WDFW,  
5 Priority Habitats and Species: Maps, Maps and digital information; WDFW, Sensitive Fish  
6 and Wildlife Information Release Agreement.

7 The Ecoregion Map does not contain any confidential data. According to established  
8 WDFW policy and the WDFW Data Sharing Agreement, the Ecoregion Map was at too  
9 small a scale and too low a resolution to be confidential. Kobus Decl. ¶ 14; Thompson Decl.  
10 ¶ 14. In fact, at a resolution of 1:1.6 million, it was nearly *7 times* above WDFW’s  
11 confidential resolution threshold of 1:250,000. *See* WDFW, Using PHS Data: FAQs at 3;  
12 Thompson Decl., Ex. B. At a scale this small (i.e., so zoomed out), it is typical for a map like  
13 the Ecoregion Map to be distributed freely, without any stamping related to confidentiality at  
14 all. Thompson Decl. ¶ 15.

15 The information presented in the Ecoregion Map is “masked” and highly generalized.  
16 At a scale of 1:1,600,000, one (1) centimeter of the map represents a distance of 1,600,000  
17 centimeters, or 16 km. *See* Thompson Decl. ¶ 10. Zoomed out, and covering such a broad  
18 area, there is simply no way the map could be used to discover or enable interference with  
19 sensitive sites. *See id.*

20 Moreover, Scout made sure the Seattle Times understood the sensitivity of the  
21 information. Scout clearly labeled the Ecoregion Map as confidential but exempt from  
22 protection based on its resolution. Kobus Decl., Ex. A at 8. Mr. Kobus made clear that any  
23 more detailed map was protected from disclosure. *Id.* at 1. And Mr. Kobus repeatedly  
24 explained to Mr. Swanson what was and was not disclosable under the data protection  
25 protocols. *See id.* (Mr. Kobus explained he had “permission to disseminate” the Ecoregion  
26 Map but was “not at liberty to show the locations of the FEHA nests,” and later confirmed

1 Mr. Swanson’s statement that “[m]ore granular mapping isn’t available to protect the specific  
2 location of the nests”). Further, Mr. Kobus was careful also to ensure all qualitative  
3 information provided to Mr. Swanson was likewise either too generalized to support actual  
4 location identification or was publicly available. *See, e.g., id.* (statement that “[t]he red wind  
5 turbines [in FEIS Figure 2-5] are all w/i 2 miles of historic FEHA nests,” which echoed  
6 previous public announcements from EFSEC staff); *see* Monthly EFSEC Meeting transcript,  
7 Jan. 31, 2024 at 74:21-75:9 (statement by Sean Greene) (“all red turbines on [FEIS Figure 2-  
8 5] are within a ... two-mile radius ... of a nest”).

9 In its Motion, Yakama Nation points to PHS-documented ferruginous hawk nest  
10 location information that was presented during the adjudication. *See* Motion at 2 (EXH-  
11 3017\_X\_Erik Jansen Cross Examination (Redacted); EXH-3019\_X\_Erik Jansen Cross  
12 Examination (Redacted); Updated Application for Site Certification (“ASC”), Appendix K-  
13 Biological Reports (Redacted); ASC, Appendix M-Bird and Bat Conservation Strategy  
14 (Redacted)). But, importantly, none of those materials included locational data at a scale  
15 remotely similar to the Ecoregion Map. *See* EXH-3017\_X\_CONFIDENTIAL at Att. A, p. 6,  
16 Fig. 1 (showing nesting locations at precisely 1:140,000 scale, which is more zoomed in than  
17 1:250,000 and thus confidential and redacted); EXH-3019\_X\_CONFIDENTIAL at p. 10,  
18 Fig. 3 (showing nesting locations at a scale observably larger, i.e., more zoomed in, than  
19 1:140,000 (and 1:250,000) and thus confidential and redacted); Updated Application for Site  
20 Certification (“Updated ASC”), Appendix K, Confidential, Report 23: 2022 Patterns of  
21 Ferruginous Hawk (*Buteo regalis*) Nesting in the Horse Heaven Hills, Benton County, p. 12,  
22 Fig. 3 (same); Updated ASC, Appendix M, Confidential, p. 22, Fig. 5, p. 24, Fig. 6 (showing  
23 nesting locations at scale likely between around 1:140,000 to 1:500,000, thus without having  
24 confirmed specific scale, Scout treated as confidential).<sup>7</sup> Thus, Scout’s treatment of the

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26 <sup>7</sup> A map resembling the Ecoregion Map was submitted to the Council as Attachment E to  
Scout’s January 19, 2024 Public Comment on EFSEC Proposed Final Action, January 24,  
2024. Kobus Decl. ¶ 13. That map had not been confirmed as being at non-confidential  
scale. *Id.* Thus, out of an abundance of caution, Scout labeled that map as confidential (but

1 confidential wildlife data presented during the adjudication, and its disclosure of the  
 2 Ecoregion Map here, are entirely consistent and in accordance with WDFW disclosure  
 3 policy.

4 Scout is not responsible for the Times Figure. The Times' cited reference sources  
 5 suggest reporting staff may have utilized the low-resolution Ecoregion Map and compared it  
 6 to publicly available GIS data from Esri. Kobus Decl. ¶ 14. But the reference to a Scout  
 7 source could also apply instead to any of the public documents Scout submitted as part of the  
 8 ASC process (for example, to define the Project footprint outline). Or a savvy reporter could  
 9 have extrapolated the information from publicly available information in the FEIS or from  
 10 discussion during public EFSEC meetings.

11 The several significant discrepancies and inaccuracies present in the Times Figure  
 12 strongly support that it was created using only non-confidential, low-resolution information.

13 The Times Figure includes both omitted and imagined nest locations and depicts [REDACTED]  
 14 [REDACTED] Kobus Decl. ¶¶  
 15 17-18. If Seattle Times staff had in fact obtained high-resolution, confidential data, the  
 16 Times Figure would presumably have been more accurate.

17 Finally, given those errors and inaccuracies, it is questionable whether the Times  
 18 Figure itself could even be construed as containing confidential information. Nor has it been  
 19 confirmed that the Times Figure, which does not contain a scale bar, *see* Thompson Decl. ¶  
 20 18, itself depicts *any* information at confidential scale.

#### 21 IV. CONCLUSION

22 Scout recognizes the critical importance of protecting sensitive wildlife data from  
 23 disclosure. To that end, throughout the EFSEC process Scout has diligently redacted

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 25 not subject to the Protective Order, because it was not involved in the adjudication) and  
 26 redacted it. *Id.* That such map was treated as confidential during its submission has no  
 bearing on whether the *Ecoregion Map* is in fact confidential per WDFW policy. Locational  
 information produced at 1:1.6 million scale is simply not confidential under any  
 interpretation.

1 confidential wildlife data as required by law. To the extent there is any ambiguity as to this  
2 question, exemptions under RCW chapter 42.56 must be construed narrowly. *Associated*  
3 *Press v. Wash. State Legis.*, 194 Wn.2d 915, 933, 454 P.3d 93 (2019) (Stephens, J,  
4 concurring in part); *see also Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 731, 174 P.3d 60  
5 (2007).

6 Yakama Nation's Motion aims to enforce a Protective Order that does not apply  
7 because the information in question was not involved in the adjudication. And however the  
8 Seattle Times developed their (inaccurate) figure, it was not based on any confidential  
9 information disclosed by Scout. For the foregoing reasons, the Applicant respectfully  
10 requests that the Council deny the Yakama Nation's Motion to Enforce the Protective Order.

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12 DATED: March 4, 2024.

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1 **CERTIFICATE OF FILING AND SERVICE**

2 I hereby certify that on March 4, 2024, I filed the foregoing SCOUT CLEAN  
3 ENERGY, LLC’S OPPOSITION TO THE CONFEDERATED TRIBES AND BANDS OF  
4 THE YAKAMA NATION’S MOTION TO ENFORCE PROTECTIVE ORDER, with the  
5 Washington Energy Facility Site Evaluation Council through electronic filing via email to  
6 adjudication@efsec.wa.gov.

7 I hereby certify that I have this day served the foregoing document upon all parties  
8 of record in this proceeding by electronic mail at the email addresses listed on the attached  
9 Service List.

10  
11 DATED: March 4, 2024.

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**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

PROTECTIVE ORDER WITH  
PROVISIONS GOVERNING  
CONFIDENTIAL INFORMATION AND  
INFORMATION EXEMPT FROM PUBLIC  
DISCLOSURE UNDER RCW 42.56

**Procedural Setting.** On May 2, 2023, ALJ Torem conducted a Third Pre-Hearing Conference in this matter. On that date, the parties were given permission to initiate discovery and were also provided a schedule for submitting pre-filed testimony. The Council finds that the parties reasonably anticipate that discovery or evidentiary filings will likely require information to be designated by its owner as “confidential” and/or exempt from public disclosure pursuant to the Public Records Act, Chapter 42.56 RCW.<sup>1</sup> The Council further finds that disclosure of such information to other parties in the absence of a protective Order should not be authorized. Therefore, a protective Order governing disclosure of information designated as confidential and/or exempt from disclosure is necessary to protect all such information while promoting the free exchange of information and development of the evidentiary record. Finally, the Council finds that in accordance with RCW 35.05.449(5), some portions of the adjudicative hearing may be closed to public observation in accordance with applicable law protecting confidential and/or exempt information.

Accordingly, the Council enters this protective Order pursuant to RCW 34.05.446(1) and WAC 463-30-190 to govern discovery and the use of information designated as confidential or exempt from public disclosure in this adjudication.

**Confidential Information.** “Confidential Information” means information protected from inspection or copying under an exemption from disclosure under Chapter 42.56 RCW or any other provisions of law providing an exemption from public disclosure. All access, review, use and disclosure of any material designated by a party to this adjudication as confidential or exempt from disclosure under the Public Records Act is governed by this Order. Only information that meets the definitions of “Confidential Information” as set out herein may be so designated.

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<sup>1</sup> For example, records, maps, or other information identifying the location of archaeological sites are exempt from public disclosure in order to avoid possible looting or depredation (RCW 42.56.300(1)) and information received by a government agency that discusses or references traditional cultural places is also exempt from disclosure (RCW 42.56.300(3)(c)). Additionally, sensitive fish and wildlife data cannot typically be released without a confidentiality agreement (RCW 42.56.430(2)). Similarly, RCW 42.56.645 contemplates protection of information being released as part of a quasi-judicial proceeding, allowing that information to be used solely in that proceeding.

**Designating Confidential Information.** Parties must designate Confidential Information in all evidentiary filings in writing at the time of submission to the Council. The providing party must also simultaneously state the basis for the claim of confidentiality. Any such documents must be submitted to the Council in both a redacted and unredacted version, using the marking conventions set out in WAC 480-07-160 (4)(c) and WAC 480-07-160(5)(c) <sup>2</sup> and in harmony with the filing and naming conventions to be adopted by the Council for this adjudication. The Council may reject any filing that fails to properly designate or mark Confidential Information or that erroneously designates clearly public information as Confidential Information.

**Limitation on Use.** A party or a party's counsel or expert may review, use, or disclose information designated as Confidential Information by another party only for purposes of this adjudication. The Council may refer to Confidential Information in its Orders or its Recommendation to the Governor in accordance with the terms of this Order.

**Persons Permitted Access to Confidential Information.** No person bound by this Order may disclose information designated by another party as Confidential Information to anyone other than the Council, Council Staff, the presiding administrative law judge (ALJ), and, subject to the requirements set out below, counsel for each of the parties to the adjudication, each such counsel's administrative staff, and persons designated by the parties as their experts in this adjudication. Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding ALJ for resolution.

**Confidential Information Non-Disclosure Agreement.** Before being allowed access to any Confidential Information disclosed in this adjudication, each counsel or expert must agree to comply with and be bound by this Order by executing, filing, and serving Exhibit A (for counsel) or Exhibit B (for experts) attached to this Order. A counsel's administrative staff need not execute a separate Non-Disclosure Agreement if counsel agrees to be responsible for any violation of this Order that results from their staff's conduct.

**Access to Confidential Information.** Parties must comply with the requirements of this Order when providing documents containing Confidential Information to the Council or to persons who have executed a Non-Disclosure Agreement. Persons who have executed a Non-Disclosure Agreement agree that they will exercise all reasonable diligence to protect Confidential Information from disclosure to unauthorized persons.

**Reference to Confidential Information.** Any public reference to Confidential Information during any part of this adjudication including, but not limited to, in motions, briefs, arguments, direct testimony, cross-examination, rebuttal, and proposed offers of proof, must not disclose the content or substance of that information, directly or indirectly. To the extent not addressed in this Order, the parties must negotiate how best to prevent unauthorized disclosure of Confidential Information with the goal of protecting each party's rights with respect to that information while allowing all parties the latitude to present the evidence necessary to support their respective cases

---

<sup>2</sup> EFSEC has not yet adopted its own procedural rules regarding protection of confidential information. Therefore, this protective order is modeled on those used by the Washington Utilities and Transportation Commission and its adopted rules contained in Chapter 480-07 WAC (e.g., WAC 480-07-160).

and to maximize the information available to the public. If the parties cannot reach agreement about how to use or refer to Confidential Information without disclosing it in violation of this Order, they must notify the presiding ALJ, who will determine the arrangements to protect the subject Confidential Information to ensure that all parties are afforded the opportunity to cross-examine witnesses.

Counsel or other representative(s) of any party that intends to disclose Confidential Information during oral testimony, cross-examination, or argument must give such prior notice as is feasible to the provider of that information and to the presiding ALJ. That notice, at a minimum, must permit the presiding ALJ an opportunity to schedule a closed session of the adjudicative hearing in accordance with RCW 34.05.449(5) and/or to clear the virtual hearing room of persons not bound by the non-applicable Non-Disclosure Agreement or to take other action as is appropriate under the circumstances. Transcripts from any hearing session closed per RCW 34.05.449(5) shall be redacted in accordance with this Protective Order.

**Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential Information on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.

**Right to Challenge Confidential Designation.** Any party by motion or the Council or presiding ALJ on their own initiative may challenge a party's designation of information as Confidential under this Order. The presiding ALJ will conduct an *in-camera* hearing to determine the propriety of the designation. The burden of proof to show that such information is properly designated as confidential is on the party that made that designation. Pending a determination, the challenged Confidential Information shall be treated in all aspects as protected under the terms of this Order. The presiding ALJ will make their determination orally on the record or in a written Order.

If the presiding ALJ determines the challenged information is not entitled to any protection under this Order or the Public Records Act, Chapter 42.56 RCW, or any other applicable statute, the information will continue to be protected under this Order for ten days from the date of the presiding ALJ's determination in order to allow the providing party an opportunity to seek judicial review to protect the information. If no reviewing court enters an Order protecting the challenged information from disclosure within ten days, the Council and presiding ALJ will require the challenged information to be refiled without any confidential designation or otherwise treated as public information.

**Admission of Confidential Information Under Seal.** The portions of the record of this adjudication containing Confidential Information will be sealed for all purposes, including judicial review, unless such Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful Order of the Council or of a court having jurisdiction to do so.

**Return of Confidential Information.** Within 30 days following the conclusion of this adjudication, including any judicial review of the Governor's ultimate action, every person who has executed a Non-Disclosure Agreement and possesses or controls any Confidential

Information disclosed by another party (including personal notes that make substantive reference to that Confidential Information), either must return all such protected information to the party that provided it or must certify in writing that all copies and substantive references to that information in notes have been destroyed, including electronic copies; PROVIDED, that counsel may retain exhibits that contain Confidential Information as counsel records subject to the terms and conditions of this Order.

**Modification.** The Council may modify this Order on motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.

**Enforcement and Violation of this Order.** This Order shall be enforced by EFSEC pursuant to RCW 34.05.578. Other parties to this adjudication or others with sufficient standing to obtain judicial review may seek to enforce this Order pursuant to RCW 34.05.582. Violation of this Order by any party to this adjudication or by any other person bound by this Order via unauthorized use or unauthorized disclosure of Confidential Information may subject such party or person to liability for damages and shall subject such party to penalties as generally provided by law.

DATED and effective at Olympia, Washington, on the 24th day of May, 2023.

WASHINGTON ENERGY FACILITY  
SITE EVALUATION COUNCIL

A handwritten signature in black ink, appearing to read 'Adam E. Torem', is written over a horizontal line.

Adam E. Torem, Administrative Law Judge

**ATTORNEY AGREEMENT**

**AGREEMENT CONCERNING CONFIDENTIAL INFORMATION  
IN DOCKET EF-210011 – HORSE HEAVEN WIND FARM  
BEFORE THE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

I, \_\_\_\_\_, as attorney in this adjudication for \_\_\_\_\_ (a party to this adjudication) agree to comply with and be bound by the Protective Order entered by the Washington Energy Facility Site Evaluation Council in Docket EF-210011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions. I further agree to be responsible for any violations of the Protective Order that result from the conduct of administrative staff whom I allow to have access to Confidential Information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

**EXPERT AGREEMENT**

**AGREEMENT CONCERNING CONFIDENTIAL INFORMATION  
IN DOCKET EF-210011 – HORSE HEAVEN WIND FARM  
BEFORE THE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

I, \_\_\_\_\_, as an expert witness in this adjudication for \_\_\_\_\_ (a party to this adjudication) agree to comply with and be bound by the Protective Order entered by the Washington Energy Facility Site Evaluation Council in Docket EF-210011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Position and Responsibilities

\* \* \*

The following portion is to be completed by the responding party and filed with the Council within 10 days of receipt; failure to do so will constitute a waiver and the above-named person will be deemed an expert having access to Confidential Information under the terms and conditions of the Protective Order.

\_\_\_\_\_ No objection

\_\_\_\_\_ Objection. The responding party objects to the above-named expert having access to Confidential Information. The objecting party shall file a motion setting forth the basis for objection and asking for exclusion of the expert from access to the Confidential Information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

DECLARATION OF DAVE KOBUS IN  
OPPOSITION TO YAKAMA NATION  
MOTION TO ENFORCE PROTECTIVE  
ORDER

I, Dave Kobus, declare as follows:

I am over the age of 18, am competent to testify to the matters in this declaration, and make this declaration based on personal knowledge.

1. I am a Senior Project Manager for Scout Clean Energy and the project manager leading the Horse Heaven Clean Energy Center Project (Project).
2. In February 2024, I was approached by a Seattle Times reporter, Conrad Swanson. Mr. Swanson was investigating EFSEC's recent discussions on required Project mitigation measures, including the Council's recent drastic reduction of the number of wind turbines. Mr. Swanson was also asking about the Council's justification for action related to ferruginous hawk and wildlife movement corridor mitigation that formed the basis for these drastic reductions. Specifically, Mr. Swanson expressed an interest in how EFSEC's proposed mitigation could reduce the amount of clean energy provided by a project of this magnitude and how this decision could negatively impact future projects in Washington.
3. Attached as Exhibit A is a true and correct copy of my relevant email correspondence with Mr. Swanson about ferruginous hawk nest locations and maps.
4. Scout's community relations representative gave Mr. Swanson a redacted copy of Scout's public comment filing prior to the January 31, 2024 EFSEC meeting. On February 1, 2024, I provided Mr. Swanson with a true and correct copy of FEIS Fig. 2.5,

which is attached on page 4 of Exhibit A. Mr. Swanson then requested an interview with me and Michael Rucker, Scout's CEO.

5. After the interview, Mr. Swanson followed up, requesting maps and photos of nest locations on the Project site.

6. In response, on February 9, 2024 at 2:29 p.m., I provided two maps. Page 7 of Exhibit A shows a true and correct copy of a map I gave to Mr. Swanson (the ecoregion map). This map is very high level and shows the potential impact that the Council's currently proposed blanket 2-mile "no-build" buffer for historical unoccupied ferruginous hawk nests would have on the region as a whole. This is the only ferruginous hawk-related map that I provided to Mr. Swanson. No other Scout employee or representative gave Mr. Swanson any map. Nor did I send Mr. Swanson any photos of ferruginous hawk nesting locations.

7. Page 6 of Exhibit A shows a true and correct copy of the second map given to Mr. Swanson. Scout's Geographic Information System (GIS) team created this map using publicly available data from the Washington Wildlife Habitat Connectivity Working Group (<https://wacconnected.org/habitat-connectivity-mapping-tools/>) that EFSEC distributed. This map is very high level and shows the movement corridors in the region to support regional wildlife habitat connectivity analyses for regional transportation projects.

8. On February 13, 2024 at 10:45 a.m., I also provided to Mr. Swanson a slightly altered version of FEIS Figure 2.5, a true and correct copy of which is attached on page 8 of Exhibit A. This version of FEIS Figure 2.5 contains an annotation discussed during the January 31 EFSEC meeting.

9. When I provided FEIS Fig. 2.5, I also told Mr. Swanson that "the red wind turbines are all w/i 2 miles of historic FEHA nests," which had been confirmed and stated publicly by EFSEC staff member Sean Greene during EFSEC's January 31, 2024 meeting. But I explained I could not show the nest locations, per confidentiality concerns.

10. Mr. Swanson also noted in his correspondence that the Seattle Times' own graphics team may try to create their own overlay based on "maps that are available."

11. In my position as a wind and solar energy project developer I regularly deal with sensitive wildlife locational data and how to be a responsible custodian of that information. I am fully aware of the sensitivity of ferruginous hawk nest locations and took careful precautions to ensure no confidential data were disclosed.

12. The ecoregion map was never referenced or submitted during the adjudication.

13. Outside of the adjudication, in its January 19, 2024 public comment, Scout redacted and submitted a map resembling the ecoregion map. *See* Scout's January 19, 2024 Public Comment on EFSEC Proposed Final Action, January 24, 2024, Attachment E. At the time, Scout had not confirmed whether the map was at a non-confidential scale. Still, out of an abundance of caution, Scout redacted the map as confidential.

14. Specifically, before distributing the ecoregion map in an unredacted form, I ensured that the map was scaled to a non-confidential resolution by confirming with Joel Thompson, Senior Biologist with Western EcoSystems Technology, Inc. (WEST), that based on the low resolution and small scale of the map provided to the Seattle Times, the map was not confidential in accordance with WDFW guidelines.

15. Still, and also out of an abundance of caution, and also to ensure that Mr. Swanson and any other Seattle Times staff fully understood and respected the sensitivity of this information, the map was stamped with "Contains Confidential PHS Data Displayed at an Unrestricted Scale (<1:250,000)."

16. I am unaware of how the Seattle Times developed the ferruginous hawk nest location figure in Mr. Swanson's article, provided in Motion to Enforce, Exhibit A, at 3 (Times Figure). Based on the cited references (Esri; Scout Clean Energy), I wonder whether perhaps the Seattle Times used our non-confidential, low-resolution map and

possibly compared it to publicly available GIS data from the GIS software company, Esri, or created their own version using other publicly available Project materials.

17. Several significant discrepancies and inaccuracies in the Times Figure prove it was not created based on a high-resolution image or map of nest locations provided by Scout. First, there are nests missing from the figure that were on the map provided by Scout. Second, there are wind turbines shown as being removed that are not within the indicated 2-mile nest setback area. That is, the nests depicted do not match those documented in the Project materials submitted during the adjudication and to EFSEC staff, nor do they accurately depict the map we provided to the reporter.

18. For example, compare the historical nests depicted in the far northwestern portion of the Project area in the Times Figure with the similar map provided in Scout's (confidential) 2023 Raptor Nest Surveys, neither of which was publicly distributed because they were informed by the high-resolution PHS data. *See* EXH-3019\_X\_CONFIDENTIAL, Fig. 4 at 13. The Times Figure suggests [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

These

discrepancies and the level of specificity used in the Times Figure prevent it from ever being used to actually identify a nest location. These are just the types of discrepancies one would expect when a drafter relies on a low-resolution image.

19. Scout recognizes the critical importance of protecting sensitive wildlife data like nest locations. That is why we solicited the opinion of WEST and focused so carefully on ensuring any mapping disclosed to a third party was confirmed as non-confidential.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: March 4, 2024.

A handwritten signature in blue ink, appearing to read "D. Kobus", written over a horizontal line.

Dave Kobus

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on March 4, 2024, I filed the foregoing DECLARATION OF DAVE KOBUS IN OPPOSITION TO YAKAMA NATION MOTION TO ENFORCE PROTECTIVE ORDER, dated March 4, 2024, with the Washington Energy Facility Site Evaluation Council through electronic filing via email to [adjudication@efsec.wa.gov](mailto:adjudication@efsec.wa.gov).

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail at the email addresses listed on the attached Service List.

DATED: March 4, 2024.

STOEL RIVES LLP



---

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*Attorney for Confederated Tribes  
and Bands of the Yakama Nation*

**From:** [Conrad Swanson](#)  
**To:** [Dave Kobus](#)  
**Subject:** Re: Map  
**Date:** Tuesday, February 13, 2024 10:51:26 AM  
**Attachments:** [image001.png](#)

---

Cool, thanks very much for checking me on that. I'll see if the graphics team can do their own type of overlay with the maps that are available.

---

**From:** Dave Kobus <Dave@scoutcleanenergy.com>  
**Sent:** Tuesday, February 13, 2024 10:50 AM  
**To:** Conrad Swanson <cswanson@seattletimes.com>  
**Subject:** RE: Map

Yes, that is correct.

**Dave Kobus**  
Senior Project Manager  
**Mobile:** 509-947-3258  
**Email** [dave@scoutcleanenergy.com](mailto:dave@scoutcleanenergy.com)

---

**From:** Conrad Swanson <cswanson@seattletimes.com>  
**Sent:** Tuesday, February 13, 2024 10:48 AM  
**To:** Dave Kobus <Dave@scoutcleanenergy.com>  
**Subject:** Re: Map

Makes sense. Okay so just to clarify, the FEHA buffer map you showed me has the general layouts of the known nests for the hawks in the region and then the map you just shared has the location of the turbines EFSEC wants to cut out. More granular mapping isn't available to protect the specific location of the nests but safe to say each of the turbines EFSEC is proposing to cut was within the 2-mile buffer of historic nests?

Just trying to make sure I'm understanding it all correctly

---

**From:** Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>  
**Sent:** Tuesday, February 13, 2024 10:45 AM  
**To:** Conrad Swanson <[cswanson@seattletimes.com](mailto:cswanson@seattletimes.com)>  
**Subject:** RE: Map

I am not at liberty to show the locations of the FEHA nests, which is standard protocol to protect the species. Suffice it to say that our "allowable" remaining wind turbine layout must avoid all historic FEHA nests, such that no wind turbines can be built w/i 2 miles. The red wind turbines are all w/i 2 miles of historic FEHA nests.

This figure is for the smaller wind turbine option layout.

**Dave Kobus**

Senior Project Manager

**Mobile:** 509-947-3258

**Email** [dave@scoutcleanenergy.com](mailto:dave@scoutcleanenergy.com)

---

**From:** Conrad Swanson <[cswanson@seattletimes.com](mailto:cswanson@seattletimes.com)>

**Sent:** Tuesday, February 13, 2024 10:33 AM

**To:** Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>

**Subject:** Re: Map

Hey Dave, just following up on this as our graphics team works on a few maps for the latest story. Do you happen to have any sort of overlay map showing proposed turbines with the FEHA buffers?

---

**From:** Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>

**Sent:** Friday, February 9, 2024 2:29 PM

**To:** Conrad Swanson <[cswanson@seattletimes.com](mailto:cswanson@seattletimes.com)>

**Cc:** Chad Thompson <[chad@scoutcleanenergy.com](mailto:chad@scoutcleanenergy.com)>; Kurt Beckett <[kurtb@strategies360.com](mailto:kurtb@strategies360.com)>; Austin Hicks <[austinh@strategies360.com](mailto:austinh@strategies360.com)>; Taylor Bickford <[taylorb@strategies360.com](mailto:taylorb@strategies360.com)>

**Subject:** RE: Map

Conrad; the first Attachment is the wildlife movement corridor map with existing wind turbines (red dots) in proximity. Only the Washington state corridors are depicted. This is publicly available.

The second is the FEHA (ferruginous hawk) Buffer map with existing wind turbines (red dots) in proximity. Only the Washington state nest areas are depicted. Note the legend is in km and is based on published WDFW designations. We do have West's permission to disseminate.

We hope to have representative examples of FEHA nets coming your way Monday as well.

**Dave Kobus**

Senior Project Manager

**Mobile:** 509-947-3258

**Email** [dave@scoutcleanenergy.com](mailto:dave@scoutcleanenergy.com)

---

**From:** Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>

**Sent:** Friday, February 9, 2024 11:23 AM

**To:** Conrad Swanson <[cswanson@seattletimes.com](mailto:cswanson@seattletimes.com)>

**Cc:** Chad Thompson <[chad@scoutcleanenergy.com](mailto:chad@scoutcleanenergy.com)>; Kurt Beckett <[kurtb@strategies360.com](mailto:kurtb@strategies360.com)>; Austin Hicks <[austinh@strategies360.com](mailto:austinh@strategies360.com)>; Taylor Bickford <[taylorb@strategies360.com](mailto:taylorb@strategies360.com)>

**Subject:** RE: Map

Thanks Conrad; I do have materials to share, hopefully before days-end.

**Dave Kobus**

Senior Project Manager

**Mobile:** 509-947-3258

**Email** [dave@scoutcleanenergy.com](mailto:dave@scoutcleanenergy.com)

---

**From:** Conrad Swanson <[cswanson@seattletimes.com](mailto:cswanson@seattletimes.com)>

**Sent:** Friday, February 9, 2024 11:01 AM

**To:** Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>

**Subject:** Re: Map

Following up here, Dave, thanks again for the conversation with Mike earlier this week. I was curious if you had any access to a map of the nesting sites at all? Or, maybe a long shot, any photos of the nests in question? Curious what they look like and if they're even recognizable as nests anymore?

Thanks again!

Conrad

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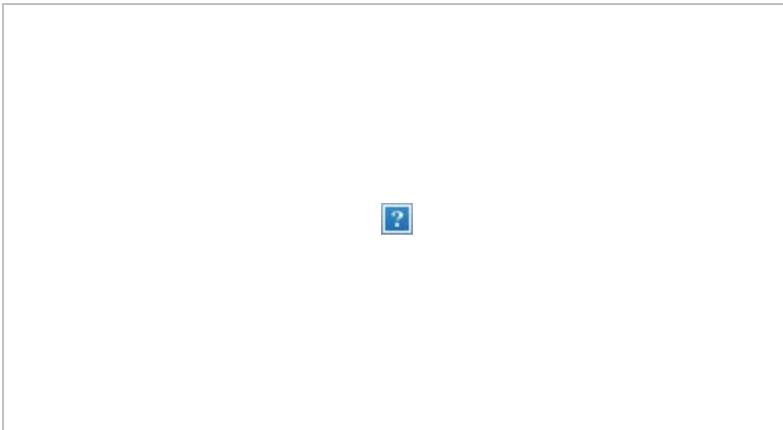
**From:** Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>

**Sent:** Thursday, February 1, 2024 4:06 PM

**To:** Conrad Swanson <[cswanson@seattletimes.com](mailto:cswanson@seattletimes.com)>

**Subject:** FW: Map

The wind turbines in red are eliminated in the current Council to staff direction.



**Dave Kobus**

Senior Project Manager

**Mobile** (509) 947-3258

**Email** [dave@scoutcleanenergy.com](mailto:dave@scoutcleanenergy.com)

**Web** [www.scoutcleanenergy.com](http://www.scoutcleanenergy.com)

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PO Box 1201

Richland WA 99352

[facebook.com/horseheavencleanenergycenter](https://www.facebook.com/horseheavencleanenergycenter)

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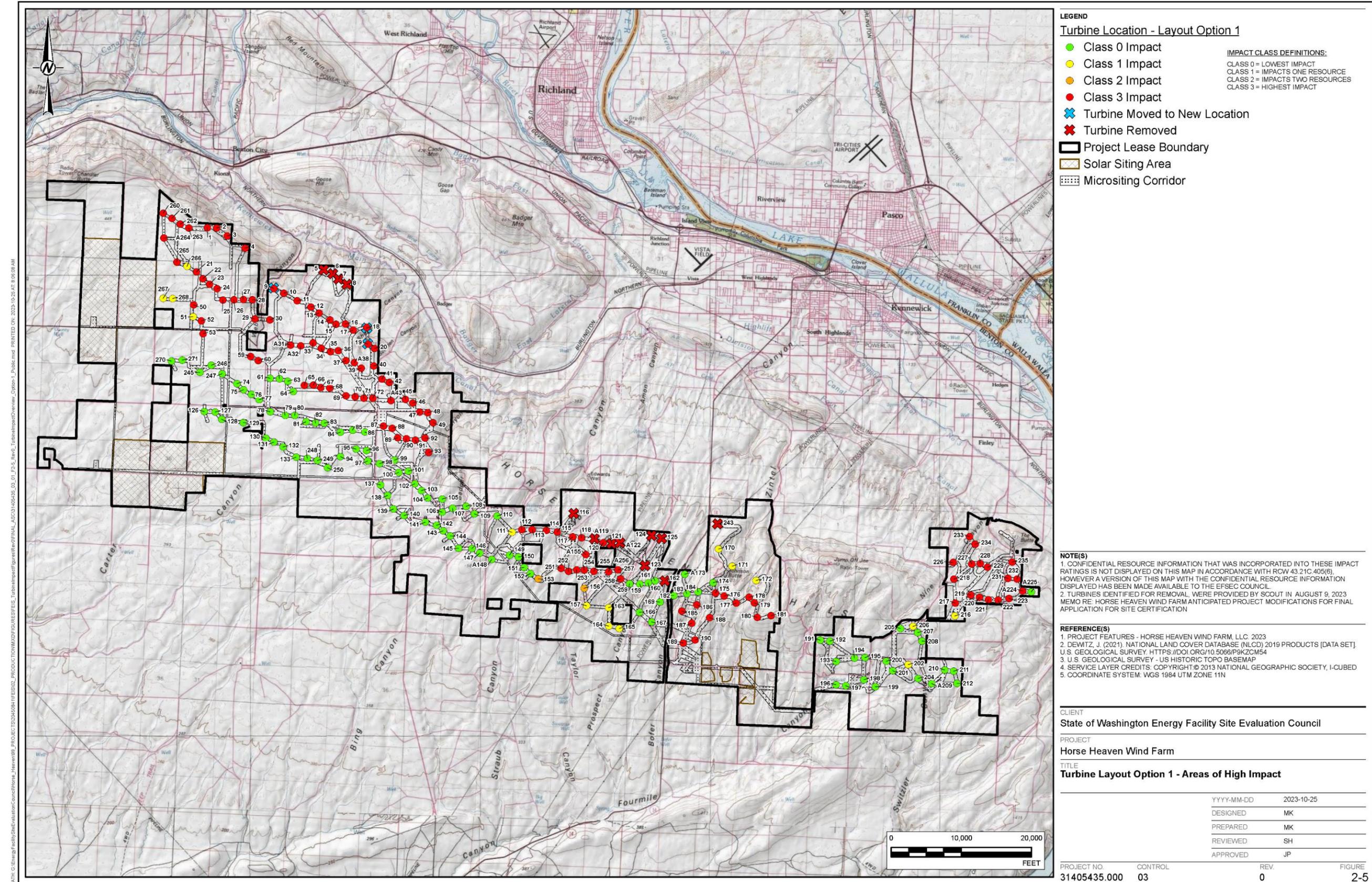
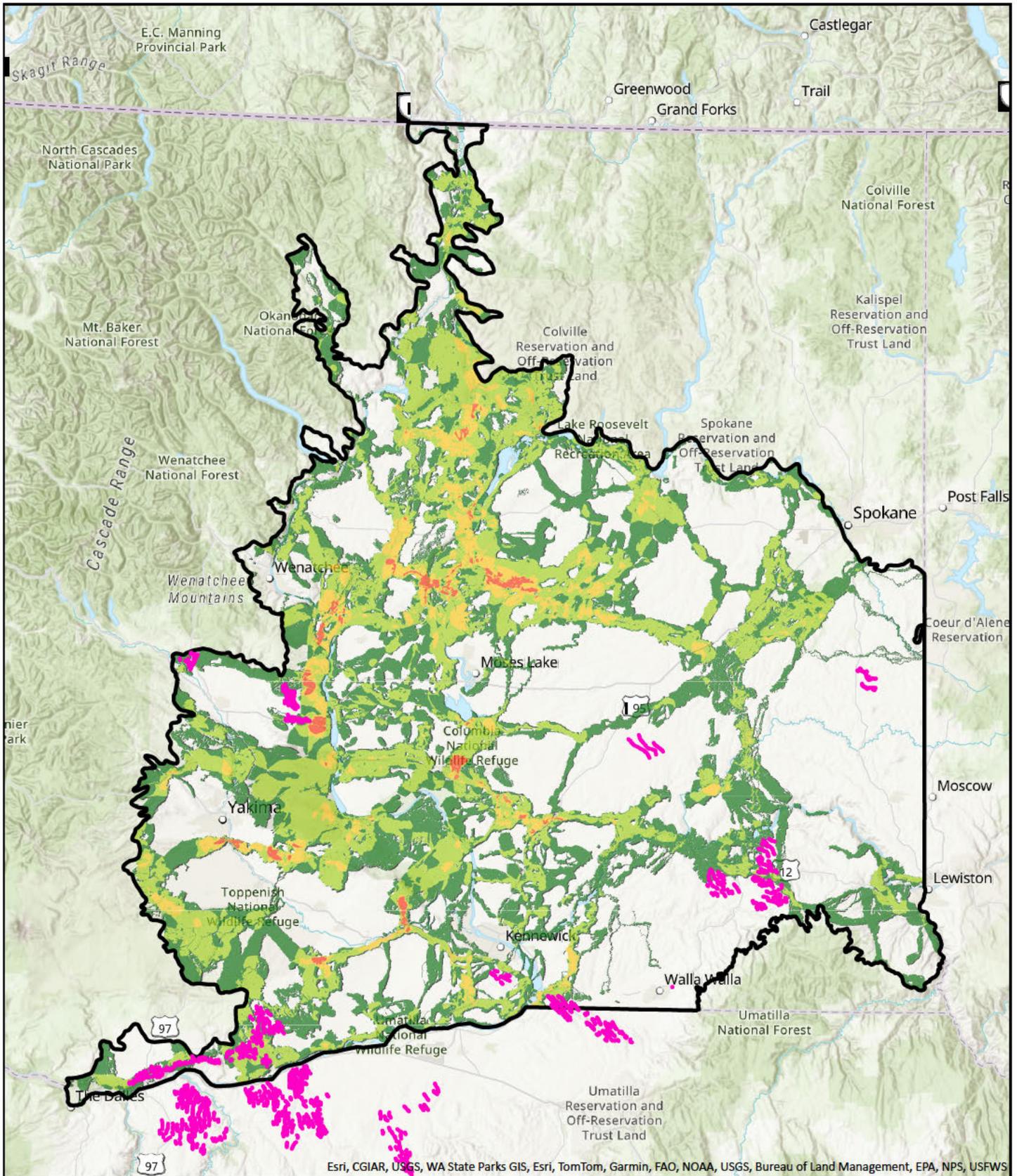
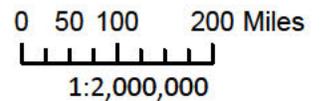
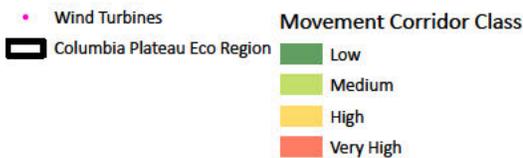


Figure 2-5: Turbine Layout Option 1 - Areas of High Impact

APPENDIX C - WILDLIFE MOVEMENT CORRIDORS IN  
COLUMBIA PLATEUA ECO REGION



## Wildlife Movement Corridors in the Columbia Plateau Eco Region





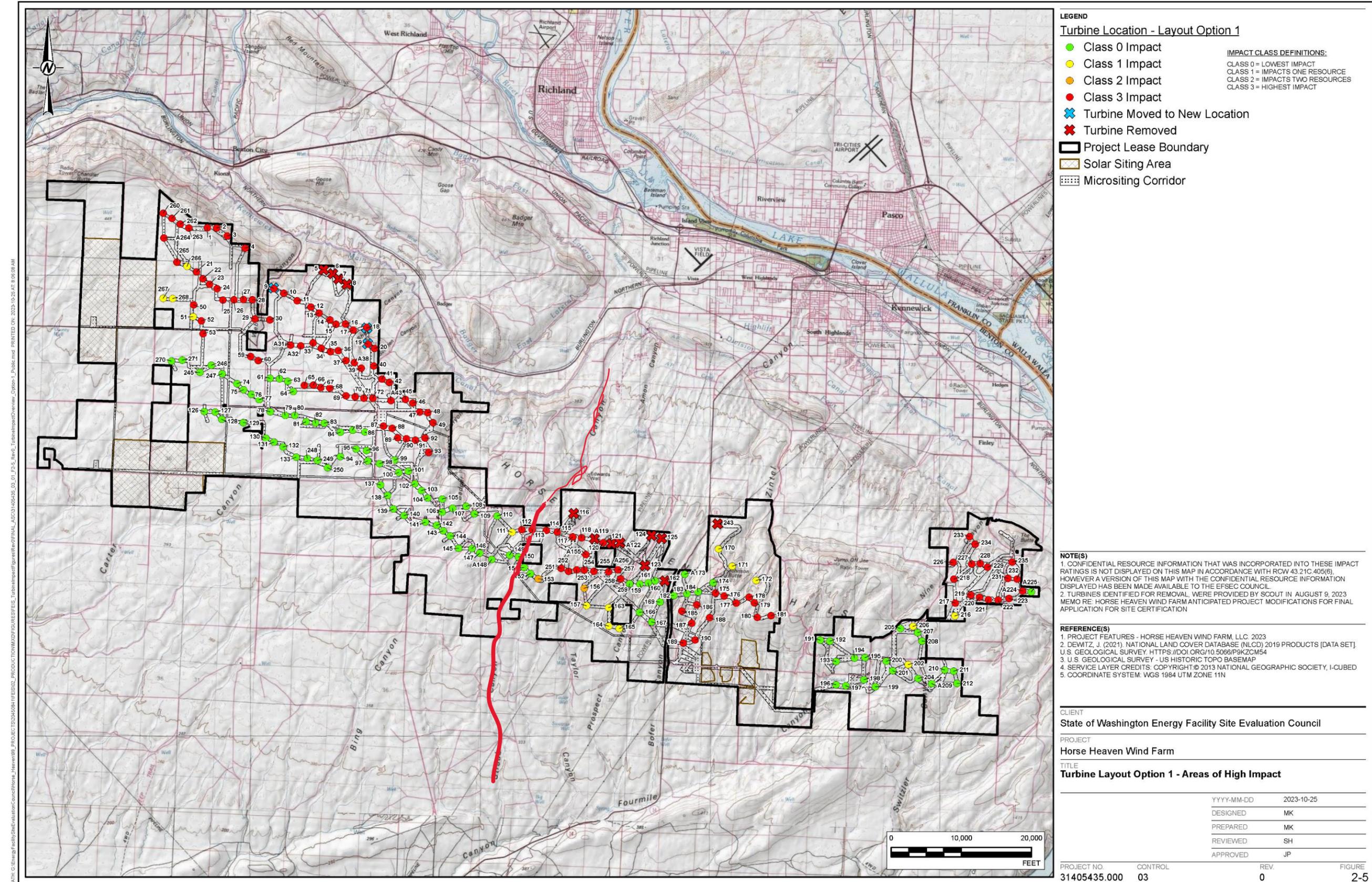


Figure 2-5: Turbine Layout Option 1 - Areas of High Impact



1 those years as an employee of WEST. Attached is a summary of my education and  
2 professional experience as Exhibit A.

3 5. The primary point of contact for the Project was Mr. Erik Jansen, a former  
4 employee of WEST. Mr. Jansen was the project manager of record for the majority of  
5 WEST's time supporting the Project (through January 2023), and the main point of contact  
6 and subject matter expert for the Project until his departure from WEST in December 2023. I  
7 have been peripherally engaged in the Project since early 2022. Initially providing as-needed  
8 administrative support and conducting occasional review of the Project deliverables. In  
9 January 2023, I assumed the role of project manager with direct oversight of project  
10 administration. I have continued in this capacity to date; however, Mr. Jansen continued to  
11 provide most subject matter expertise and support until his departure from WEST in  
12 December 2023.

13 **Sensitive Fish, Wildlife, and Habitat Data Confidentiality Requirements:**

14 6. WDFW maintains and oversees the disclosure of sensitive information. This  
15 includes data about "nesting sites or specific locations of endangered . . . or threatened or  
16 sensitive species" ("Sensitive Data"), which are generally protected from public disclosure.  
17 RCW 42.56.430(2). Much of this Sensitive Data is housed within WDFW's PHS Database.

18 7. Not all Sensitive Data are confidential. Sensitive Data are non-confidential  
19 and may be provided to the public when "masked," that is, when presented at the "township  
20 or section level." See WDFW, "Using PHS Data: Frequently Asked Questions" at 3 (last  
21 updated Feb. 2020), [https://www2.clark.wa.gov/files/dept/community-planning/shoreline-](https://www2.clark.wa.gov/files/dept/community-planning/shoreline-master-program/proposal-comments-received/futurewise-data-cd/phs-on-the-web-faqs.pdf)  
22 [master-program/proposal-comments-received/futurewise-data-cd/phs-on-the-web-faqs.pdf](https://www2.clark.wa.gov/files/dept/community-planning/shoreline-master-program/proposal-comments-received/futurewise-data-cd/phs-on-the-web-faqs.pdf)  
23 (explaining that "location information for this sensitive data is 'masked' to a certain level of  
24 resolution (e.g., a township or section) so that not everyone can see the exact location of the  
25 data on the web.").

26

1           8.       “Township or section” level refers to levels of measurement within the Public  
2 Land Survey System, with a section defined as one square mile of land and a township as a  
3 square block of land of thirty-six square miles (or 36 sections). While a scale bar is needed  
4 to determine the exact scale of a map, a viewer can roughly estimate the scale of a map based  
5 on known measurements of features illustrated on a map. For example, if a map depicts  
6 sections of land that measure approximately one (1) inch on the map, then the scale of the  
7 map would be one inch to one mile, or 1:63,360 as one mile equates to 63,360 inches.

8           9.       WDFW’s specific resolution standard is confirmed in WDFW’s Sensitive Fish  
9 and Wildlife Information Release Agreement (“Agreement”), which describes the  
10 requirements for redistributing Sensitive Data and specifies when and in what form Sensitive  
11 Data can be released to the public. According to the provisions of the Agreement,  
12 individuals and organizations may release Sensitive Data in certain circumstances, including  
13 that “very small-scale maps” that are 1:250,000 or smaller “that display Sensitive Fish and  
14 Wildlife Information may be reproduced and distributed to the public.” This exception  
15 allows for the distribution of Sensitive Data that is generalized based on the scale of the map.

16           10.       For example, at a scale of 1:250,000 or smaller, one (1) centimeter on the map  
17 represents a distance of 250,000 centimeters, or 2.5 kilometers (“km”). Thus, depictions of  
18 sensitive data at this or smaller scales are assumed sufficient to mask the specific location of  
19 the potentially Sensitive Data because they do not provide the specificity sufficient for  
20 someone to identify a specific site with any meaningful certainty.

21           11.       Attached as Exhibit B is a copy of WEST’s signed Sensitive Fish and Wildlife  
22 Information Release Agreement. WEST and I approach these restrictions with the utmost  
23 seriousness, recognizing that non-compliance would impact our ability to access Sensitive  
24 Data in the future.

25  
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1 **The Ecoregion Map:**

2 12. In accordance with the Agreement, and at Applicant’s request, in August  
3 2023, WEST created a map describing the impact of a two-mile and 6.2-mile buffer around  
4 PHS-documented historical ferruginous hawk nests in the Columbia Plateau Ecoregion  
5 within the state of Washington (the “Ecoregion Map”). The Ecoregion Map also shows  
6 existing operational wind turbines in the region.

7 13. The Columbia Plateau Ecoregion encompasses approximately 32,100 square  
8 miles (83,139 km<sup>2</sup>). The Ecoregion is bounded in the east by the Washington-Idaho border  
9 and in the north by the U.S.-Canada Border. The Ecoregion extends into northern Oregon.  
10 Its western boundary is the Cascade Range.

11 14. In January 2024, Scout asked me about the Ecoregion Map, to confirm  
12 whether it contained confidential information pursuant to the WDFW policy and WDFW’s  
13 data sharing agreement. After additional review, I confirmed that the Ecoregion Map met the  
14 resolution scale that was appropriate for public distribution because its scale was smaller than  
15 1:250,000. Specifically, I evaluated the scale of the Ecoregion Map based on the scale bar  
16 included on the map and concluded that the map scale was at a scale of approximately  
17 1:1,600,000.

18 15. Ordinarily, based on my experience, it would not be uncommon for a map of  
19 this scale to be distributed freely, without any stamping related to confidentiality, because the  
20 scale is so small (in other words, it is so zoomed out) that it is unquestionably beyond  
21 WDFW’s non-confidential map-scale resolution threshold of less than 1:250,000.

22 16. Still, erring on the side of caution and to confirm the non-confidential  
23 resolution, WEST provided Scout with a copy of the Ecoregion Map that included a stamp  
24 making clear that it “Contains Confidential PHS Data Displayed at an Unrestricted Scale  
25 (<1:250,000).”

26

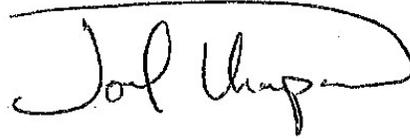
1           **The Times Figure:**

2           17.     WEST did not provide any documents or data to the Seattle Times and had no  
3 knowledge of the release of any data or maps to the Seattle Times.

4           18.     I did see the Seattle Times article, How an Endangered Hawk could Topple  
5 Plans for WA’s Largest Wind Farm, and the Times Figure once published and have had a  
6 chance to review it. I am unsure of the scale of the map as the Times Figure does not provide  
7 a scale bar for me to definitively evaluate its resolution. I can, however, conclude that the  
8 Times Figure is at a scale much larger than that of the Ecoregion Map.

9  
10 I declare under penalty of perjury under the laws of the State of Washington that the  
11 foregoing is true and correct.

12  
13 DATED: March 3, 2024.



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18 Joel Thompson  
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1 **CERTIFICATE OF FILING AND SERVICE**

2 I hereby certify that on March 4, 2024, I filed the foregoing DECLARATION OF  
3 DAVE KOBUS IN OPPOSITION TO YAKAMA NATION MOTION TO ENFORCE  
4 PROTECTIVE ORDER, dated March 4, 2024, with the Washington Energy Facility Site  
5 Evaluation Council through electronic filing via email to [adjudication@efsec.wa.gov](mailto:adjudication@efsec.wa.gov).

6 I hereby certify that I have this day served the foregoing document upon all parties  
7 of record in this proceeding by electronic mail at the email addresses listed on the attached  
8 Service List.

9  
10 DATED: March 4, 2024.

STOEL RIVES LLP



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*Attorney for Confederated Tribes  
and Bands of the Yakama Nation*

# JOEL L. THOMPSON

Senior Biologist and Senior Manager

32 years of experience

Joel Thompson is a Senior Biologist and Senior Manager based in WEST's Corvallis, Oregon, office. Joel primarily manages pre- and post-construction monitoring studies at proposed and operational wind facilities throughout the western US and assists clients with Eagle Conservation Plans and obtaining Incidental Eagle Take Permits. Joel also provides support in the National Environmental Policy Act review associated with processing eagle take permit applications, and aids in the design and implementation of monitoring plans to ensure permit compliance, post-issuance. Joel is also responsible for oversight of the Corvallis office and staff in the Pacific Northwest and Desert Southwest, providing senior review and advice on a variety of projects related to renewable energy, forestry, and more general threatened and endangered species surveys. Beyond renewable energy, Joel has managed projects associated with highways (wildlife passages) and oil and gas development, as well as general research projects on distribution and occupancy of sensitive species (e.g., white-tailed prairie dog, Preble's meadow jumping mouse, Hawaiian hoary bat).

## PROFESSIONAL EXPERIENCE

### Project Management

Joel has experience managing projects of various size and complexity, and takes pride in providing quality deliverables within anticipated scopes. Key projects managed for clients include an aerial survey of golden eagles across the Mojave Desert region of southern California for the California Energy Commission, a two-year project investigating the impacts of operational curtailment of wind turbines on Mexican free-tailed bats (private wind developer), and a five-year study on the distribution and seasonal occupancy of Hawaiian hoary bats on the island of Oahu.

### Wildlife Research

Joel has experience with various aspects of wildlife research, including project planning, study design, data collection and management, supervision of field staff, and report/manuscript preparation. He has completed extensive work with special status species in managed forest landscapes and in association with wind energy development.

### Wind and Solar Projects

Joel has conducted pre-construction baseline and post-construction monitoring studies for wind and solar power projects throughout the western U.S., including design and implementation of survey protocols, agency correspondence, and development of final reports. His experience also includes the preparation of Eagle Conservation Plans in the US Fish and Wildlife Service's Regions 1, 2, and 8.

## SELECTED PROFESSIONAL PUBLICATIONS

George, T. L., **J. Thompson**, and R. Nielson. (Humboldt State University and WEST, Inc.). 2014. Golden Eagle Abundance in the Desert Renewable Energy Conservation Plan Area. California Energy Commission. Publication number: CEC-500-2015-077.

**Thompson, J.**, N. Cudworth, and M. Grenier. 2011. Population inventories of jumping mice (*Zapus* spp.) in southeastern Wyoming. Pages 148-153 in Threatened, endangered, and nongame bird and mammal investigations (M.B. Grenier, Editor). Wyoming Game and Fish Department Nongame Program, Lander, USA.

**Thompson** et al. April 2002. Northwestern Naturalist. Relative abundance, nest site characteristics, and nest dynamics of Sonoma tree voles in managed forests of north coastal California.

## SPECIALTY AREAS

Eagles	Owls
Wind and Solar	
Sensitive Forest Species	
Eagle Conservation Planning	

## EDUCATION

MS, Natural Resources  
Humboldt State University

BS, Wildlife Management  
Humboldt State University

## PROFESSIONAL ROLES

*Senior Biologist/Senior Manager,*  
WEST  
2017–Present

*Wildlife Biologist/Pacific Northwest  
Branch Manager,*  
WEST  
2012–2017

*Wildlife Biologist/Project Manager,*  
WEST  
2008–2012

*Consulting Wildlife Biologist,*  
Green Diamond Resource Co.  
2008

*Wildlife Field Specialist/  
Survey Coordinator,*  
Green Diamond Resource Co.  
1998–2006

*Wildlife Assistant,*  
Arizona Game and Fish Department  
1997

## PROFESSIONAL AFFILIATIONS

The Wildlife Society

## CERTIFICATION

Animal Restraint and Handling  
ATV, chainsaw use, Hunters Safety



Environmental & Statistical Consultants  
www.west-inc.com



## Sensitive Fish and Wildlife Information Release Agreement

Informed land use decisions often require information about specific fish, wildlife, and habitat locations. The Washington Department of Fish and Wildlife (WDFW) can provide you with such information while meeting our responsibility to protect fish and wildlife from inadvertent or malicious harm. The signing of this agreement indicates that the signatory (person or organization) recognizes the appropriate guidelines for disseminating Sensitive Fish and Wildlife Information and has agreed to the provisions in the WDFW Releasing Sensitive Fish and Wildlife Information Policy - 5210.

Fish and wildlife information is deemed sensitive by the WDFW Director when the viability of a fish or wildlife population may be compromised by displaying the locations of a species or its habitat and at least one of the following apply: (A) The species has a known commercial or black-market value; (B) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable; (C) There is a known demand to visit, take, or disturb the species; or (D) The species has an extremely limited distribution and concentration. See WDFW Policy - 5210 for a list of the species and habitats considered sensitive. Careful and reasonable use and distribution of sensitive information will meet your needs while protecting our state's most vulnerable fish and wildlife resources.

### General Requirements

1. The locations of species may change over time. WDFW updates fish and wildlife information as additional data become available. WDFW does not recommend using maps or digital data more than six months old; please obtain updates rather than use outdated information.
2. Washington State law (RCW 42.56.430) exempts Sensitive Fish and Wildlife Information from public inspection and copying.

### Redistributing or Displaying Sensitive Fish and Wildlife Information

1. Parties holding Sensitive Fish and Wildlife Information, obtained from WDFW, may release it for areas **less than** the resolution specified in WDFW Policy – 5210 (one Township, Quarter – Township or Section) only to the following parties when such a release accompanies an agreement to abide by the provisions of WDFW Policy – 5210. All materials provided must be marked confidential.
  - Government agencies; Tribes; Accredited colleges or universities; The owner, lessee, or right-of-way or easement holder of private land to which the data pertain or who initially provided the data; Public utilities; or Agents of the above parties (e.g., consultants, realtors, etc.).
2. Parties holding Sensitive Fish and Wildlife Information shall not disclose or release it for areas **greater than** the resolution specified in WDFW Policy – 5210 (one Township, Quarter – Township or Section). Refer requesters to WDFW for these information requests.
3. Individuals and organizations may release Sensitive Fish and Wildlife Information during certain governmental activities. The following activities constitute circumstances appropriate for the release of maps or other items that display Sensitive Fish and Wildlife Information. Any Sensitive Fish and Wildlife Information released in these circumstances shall abide by the other provisions in WDFW Policy – 5210. All material provided must be marked confidential.
  - Working with citizen advisory committees.
  - In public meetings and hearings, Sensitive Fish and Wildlife Information can only be displayed at map scales equal to or smaller than 1:100,000. Maps or other media that display Sensitive Fish and Wildlife Information may not be reproduced or distributed.
  - Very small scale maps (1:250,000 or smaller) that display Sensitive Fish and Wildlife Information may be reproduced and distributed to the public.
4. Providing sensitive information to the public (persons not included in the above):
  - Inquires from the public about the existence of sensitive species on a specific site should be answered with a direct "yes" or "no" without referring to the species' name. However, some situations may necessitate providing site-specific locations of sensitive species. Please consult with WDFW when you wish to balance the public's need to know against our shared responsibility to protect fish and wildlife.

### Hold Harmless Agreement

To the fullest extent permitted by law, the Signatory expressly agrees to indemnify, defend and hold harmless WDFW, its officials, agents and employees, from and against all claims arising out of the unauthorized disclosure or dissemination, by the Signatory, of Sensitive Fish and Wildlife Information being provided under this agreement.

"Claim" as used in this agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible or real property, or sensitive habitat, including loss of use resulting there from. The Signatory's obligation to indemnify, defend, and hold harmless includes any claim by the Signatory's agents, employees.

Please return the signed Sensitive Fish and Wildlife Information Release Agreement form to Washington Department of Fish and Wildlife, Priority Habitats and Species, 600 Capitol Way North, Olympia WA 98501-1091. For questions about the form or to address special needs for information distribution not covered in the agreement call (360) 902-2543 or e-mail [phsproducts@dfw.wa.gov](mailto:phsproducts@dfw.wa.gov).



**Sensitive Fish and Wildlife Information Release Agreement**

Organization Name: Western EcoSystems Technology, Inc. (West)  
Authorized Representative: Erik Jansen Phone Number 806 445-2863  
Technical Contact(s): same Todd Mabee, Mysti Martin, Joel Thompson

Mailing Address: 2725 NW Walnut Blvd.  
Corvallis OR 97330  
ejansen

Description of information that you are requesting: Recent ferruginous hawk nest locations  
in Adams, Grant, Franklin & Benton Counties. Recent =  
> 2015 for renewable energy projects for the lessee of lands  
to which the data pertain.  
Corresponded w/ Jason Fidova & Mike Ritter

*I, The Authorized Representative of the said organization, agree to the terms and conditions on the reverse side. I am one of the following parties that are eligible to receive Sensitive Fish and Wildlife Information: Government agency; Tribe; I'm affiliated with an accredited college or university; The owner, lessee, or right-of-way or easement holder of private land to which the data pertain or who initially provided the data; Public utilities; Agent of the above parties (e.g., consultants, realtors, etc).*

Authorized Representative  
Title Wildlife Biologist  
Name Erik Jansen  
Signature Erik Jansen  
Date 3/22/08

Washington Department of Fish and Wildlife  
Title PHS Data Release Manager  
Name Lori Guggenmos  
Signature Lori L Guggenmos  
Date 12/1/2023

Please return the signed Sensitive Fish and Wildlife Information Release Agreement form to Washington Department of Fish and Wildlife, Priority Habitats and Species, 600 Capitol Way North, Olympia WA 98501-1091. For questions about the form or to address special needs for information distribution not covered in the agreement call (360) 902-2543 or e-mail [phsproducts@dfw.wa.gov](mailto:phsproducts@dfw.wa.gov).