



January 19, 2024

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

**Re: Horse Heaven Wind Project – Applicant Comments and Concerns on EFSEC  
Proposed Final Action, January 24, 2024**

Dear Chair Drew and Councilmembers:

On behalf of Scout Clean Energy (Scout) and the Horse Heaven Clean Energy Center (the Project), I write to express serious concerns about the Energy Facility Site Evaluation Council's (Council or EFSEC) recent proposals to alter Final Environmental Impact Statement (FEIS) mitigation measures and other aspects of the Project during the Council's December 20, 2023 meeting (the December Meeting).

Those ad hoc changes proposed, if pursued by the Council, are an arbitrary, drastic departure from established council precedent. Further, they are unsupported by scientific or any other evidence in the record and would render the Project both technically and economically non-viable without substantial amendment to the application. The Horse Heaven Clean Energy Center Project is a multi-technology, hybrid facility designed from the outset as an integrated renewable project. Yet in the December Meeting, the Council effectively carved up the Project without regard for the practical or precedential ramifications. In total, the Council's proposed changes would gut the Project's renewable energy generation capacity, reducing it from 1,150 MW to around a mere 236 MW of wind generation<sup>1</sup> and at most 500MWac solar generation from the western solar array. The proposals also run counter to state energy policy and the Council's own standards, have never been applied to any type of development in Washington, are more stringent than analogous standards imposed in other western states, and violate both the State Environmental Policy Act (SEPA) and Washington Administrative Procedures Act (APA). Also concerning, many detailed recommendations for mitigation measure improvements that were requested by EFSEC staff from Scout and had been previously provided to staff were not included in the presentation ultimately made to the Council.

We understand these proposed changes may be put before the Council for final approval at its upcoming meeting January 24, 2024. These changes suffer material deficiencies, as described below. Scout therefore respectfully requests that the Council reconsider and reject these changes, and instead consider the recommended revisions previously provided by Scout to EFSEC staff and noted below.

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<sup>1</sup> Based on preferred model.

As detailed in the following sections, the changes proposed at the December Meeting are problematic in numerous ways:

- They likely render the Project non-viable in its current form by eliminating key pieces of connection and other supporting infrastructure, effectively stranding generation components;
- Eliminating the science-based exception to the 2-mile setback around historically documented ferruginous hawk nests is inconsistent with past Council practice, other jurisdictions, and the on-site biological data; would upend the existing mitigation framework; and poses grave ramifications for other new and existing renewable energy projects in the region;
- Relying on a decade-old wildlife movement model developed without any field review, which was intended to inform *transportation* planning, is unprecedented in a regulatory context, ignores current biological data and the porosity of the affected Project features, and would also impact an immense number of other projects across the State;
- Removing any Project infrastructure east of Straub Canyon, which has *never before been referenced as culturally significant*, violates the Council's coordination framework, is unsupported in the public or confidential Project record, and sets concerning precedent for other developers looking to site projects in the State;
- The proposal to eliminate the entire east solar field is based on a misunderstanding of the Project configuration, outdated information about site conditions, and ignores the lack of biological significance of the area affected;
- Finally, ongoing feasibility problems persist with various aspects of the FEIS-recommended mitigation measures, as enumerated below.

**I. The Council's proposals render the Project technically and economically non-viable without substantial application amendment.**

The current Project configuration is the result of years of careful research and planning, including engagement with key stakeholders and agency experts, to ensure minimization of impacts while maintaining the Project's commercial feasibility. The Council's recent discussion was made without consideration of key underpinnings of the Project configuration that facilitate its overall viability. Importantly, the Council's proposed changes would potentially render the Project infeasible by:

- **Eliminating a critical point of interconnection on the eastern portion of the site.** The unjustifiable elimination of the eastern grid interconnection isolates—and thus strands—wind turbines, solar panels and battery storage that would otherwise be buildable. Exceptions must be made for critical infrastructure, such as the interconnection with the existing power grid, to enable utilization of available Project components.

- **Eliminating infrastructure interconnecting otherwise viable wind turbines.** Zero tolerance for siting infrastructure between viable wind turbines in effect isolates those wind turbines from being constructed and operated absent internal connection. The electrical collection system is primarily buried underground which has no long-term impact on wildlife species movement. Exceptions must be made for this critical infrastructure to enable utilization of available Project components.
- **Reducing a key federal funding source associated with the retirement of the Boardman coal plant.** The unjustifiable elimination of the eastern half of the Project will limit availability of the federal Inflation Reduction Act incentive available for the remaining Project components, thus severely compromising Project economics and the climate goal associated with coal power retirement.
- **Likely forcing procurement of a taller wind turbine model.** The elimination of the eastern half of the Project, which would have been constructed first, and new longer permitting timeframe forced by that change, will mean Scout likely can no longer procure sub-500 foot blade-tip height wind turbine models (which are slated to be discontinued due to announced product manufacturing retooling for larger model production). The industry-standard wind turbine model available under the likely new permitting timeline will be a taller hub-height (576 feet, with a larger rotor) and require dual nacelle FAA lighting of every wind turbine and overall greater environmental impact.

If feasible at all, these changes will necessitate a major redesign of the remaining project components and include the acquisition of additional land holdings to facilitate the movement of facilities and equipment. These modifications will necessitate a significant amendment to the site certificate, which will set back the Project, and EFSEC's review process, by many months. This amendment and further delay will add substantial, unanticipated costs and risks, rendering Scout's substantial investments to date to develop the eliminated infrastructure unrecoverable. These additional delays and costs not only represent undue burden on Scout but also an increase in cost of the power for the eventual ratepayers of the State.

**II. The Council's proposed revocation of a critical exception to the 2-mile buffer around historically documented ferruginous hawk nests contravenes the best available science, ignores and upends the existing mitigation framework, and sets dangerous precedent that will hobble Washington's renewable energy future.**

In its December Meeting, the Council proposed revising FEIS mitigation measure Spec-5 to omit critical language that would have allowed for the siting of Project features within 2-miles of PHS-documented<sup>2</sup> ferruginous hawk nests when biological science shows that a particular nest site and foraging habitat is no longer "available" to this migratory species.

This proposal is unsound for numerous reasons. *First*, this important exception was included in the FEIS because current field data shows that 84% of the historically documented nests in or around the Project area are no longer available for ferruginous hawk use, with almost half (47%)

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<sup>2</sup> The PHS data includes all nests documented since 1976.

of documented nests currently listed as remnant or “gone” in the database.<sup>3</sup> The decline of ferruginous hawk in Washington has been primarily the result of foraging habitat loss due to agricultural conversion. This factor is apparent in the Horse Heaven Hills, where nearly all previously documented nests have less than 30% available foraging habitat within 2 miles. Even before the Project was proposed, ferruginous hawks have been essentially eliminated from the Horse Heaven Hills through this landscape-level conversion of habitat and encroachment of residential uses. The last active ferruginous hawk nests recorded within 2 miles of the Project was nearly five years ago, in 2019. No active nests have been documented since then, despite ongoing annual surveys by qualified biologists.<sup>4</sup>

But with the Council’s revision, the 2-mile buffer would apply to any nest that *has ever been* documented as associated with a ferruginous hawk, going back to the 1970s, regardless of whether that nest exists today. There would be no opportunity to update the buffer based on current science. This, despite that many of the historically documented nests in Project area have since been destroyed (e.g., by wildfire) or are located adjacent to residential or commercial development and thus have zero likelihood of ever being used by the hawks again.<sup>5</sup>

***Second***, the Council’s proffered justification for eliminating the exception is invalid. The sole evident reason given by one Councilmember to justify elimination of the science-based exception was a subjective concern that allowing exception requests could require WDFW officials to engage with other biologists in a process to demonstrate and defend, based on scientific data, that specific hawk nest locations were or were not viable. Rather than attempt to craft the exception to avoid a perceived contentious process, the Council simply did away with the entire exception process, thereby imposing a categorical 2-mile buffer from Project infrastructure, with no evidence to support this drastic change.

The Council need not have done so. To the extent the Council is concerned about the biologist-to-biologist exception consideration process, Scout already proposed—and provided to Council staff—an objective, scientific criteria-based process to apply for exception requests.<sup>6</sup> Scout is unaware if the Council has seen these materials yet and is therefore providing them again as attachments to this comment letter. As these materials make clear, consideration of an exception from the 2-mile buffer would not be contentious or a subjectively adversarial endeavor, but rather a process of objectively applying accepted scientific criteria, a task well-familiar to WDFW officials.

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<sup>3</sup> See WDFW Priority Habitats and Species Database.

<sup>4</sup> See ASC, App K, including Report 23.

<sup>6</sup> See, e.g., Attachment A, showing three nests “documented in PHS data,” yet one is now located directly adjacent to a residence, the others have been taken over by ravens or other resident raptor species for over a decade; see also Attachment B, showing total area of Project impacted by absolute two-mile buffer.

<sup>6</sup> See Attachment C, Scout-proposed changes to Spec-5 mitigation measure, provided via Kobus email to Moon, Greene (Dec. 14, 2023); see also Attachment D, Ferruginous Hawk Nest Viability Flowchart, outlining factors and specific criteria informing when nest is no longer considered viable.

***Third***, no other state or federal wildlife agency in the country imposes a 2-mile buffer on development around ferruginous hawk nests, let alone one for non-viable (or non-existing) nests. For context, U.S. Fish and Wildlife Service’s (voluntary) guidance on the subject recommends a buffer of 1,600 meters, approximately one mile, from ferruginous hawk “nests *documented as occupied through recent pre-construction surveys.*”<sup>7</sup> In Oregon, in considering a recent wind project, the Oregon Department of Fish & Wildlife recently recommended, and the Oregon Energy Facility Siting Council approved, a 0.25-mi setback around “active” ferruginous hawk nests.<sup>8</sup> USFWS’s Utah Field Office recommends only a 0.5-mile buffer.<sup>9</sup> That buffer applies to both occupied and “unoccupied” nests, but a nest that remains unoccupied through even one breeding season is not subject to the buffer, as determined by a qualified wildlife biologist.<sup>10</sup>

To impose a 2-mile buffer around *every* historically documented nest, with no science-based exception available, when such a requirement appears in *no* other state or federal regulatory program, all while the County continues to allow large-scale residential development within the buffer areas, is the very definition of arbitrary and capricious.

***Fourth***, the Council’s proposal gave no consideration to the substantial existing ferruginous hawk mitigation already in place and upends the viability of the mitigation measures already negotiated with WDFW. For one thing, the Council ignored the present option to employ proven adaptive management capability addressed in the WDFW July 2023 ferruginous hawk draft guidance document to curtail wind turbines. This measure is an effective, scientifically accepted, commonly utilized mitigation measure for federally endangered species and far more appropriate here than complete elimination of infrastructure, based on the current data. Further, under the current negotiated mitigation ratios, with the elimination of much of the Project infrastructure, the compensatory acreage under the Council’s recent proposal is so small, it would be impracticable to obtain and develop an on-site conservation easement at this scale. Moreover, the elimination of this extent of infrastructure challenges the viability of Scout’s voluntary artificial nesting platform campaign, which is no longer warranted or supported under the Council’s proposed cuts. In short, the Council’s proposal forces the complete reconsideration and revision of the suite of mitigation measures recommended and fully understood in the FEIS.

<sup>7</sup> U.S. Fish and Wildlife Service (USFWS), Region 6, Wildlife Buffer Recommendations for Wind Energy Projects (March 31, 2021), <https://www.fws.gov/sites/default/files/documents/usfws-r6-wildlife-buffer-recommendations-wind-energy-projects-v3-2021.pdf> (emphases added). USFWS Region 1, which includes Washington, has not issued ferruginous hawk-specific guidance.

<sup>8</sup> See Memorandum from Greg Rimbach, Umatilla Dist. Wildlife Biologist, Oregon Department of Fish & Wildlife to Kathleen Sloan, Oregon Department of Energy re Oregon Department of Fish & Wildlife’s Report on the Application for Site Certificate for the Nolin Hills Wind Energy Facility (Feb. 18, 2022), available as Attachment B to Final Order on Application for Site Certificate, In the Matter of Nolin Hills Wind Power Project (approved July 19, 2023) <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-NHW-APP-Final-Order-Attachments-B-U.pdf>; see also Final Order, Attachment P-4, Wildlife Monitoring and Adaptive Management Plan, Secs. 1-2 (incorporating ODFW-recommended setback), <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-NHW-APP-Final-Order-Attachments-B-U.pdf>.

<sup>9</sup> USFWS, Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances (Jan. 2002), Table 2, [https://www.fws.gov/sites/default/files/documents/Utah\\_Field\\_Office\\_Raptor\\_Guidance.pdf](https://www.fws.gov/sites/default/files/documents/Utah_Field_Office_Raptor_Guidance.pdf).

<sup>10</sup> Id. at 21 (“The exact point in time when a nest becomes unoccupied should be determined by a qualified wildlife biologist *based upon a knowledge that the breeding season has advanced such that nesting is not expected.*” (emphasis added)).

*Fifth*, with no scientific or data-based backstop, this requirement is ripe for inaccurate or mistaken reporting or abuse. WDFW would need to provide transparent information to show ground-truthing of reports by qualified biologists. Absent such a mechanism, even false or mistaken reports of ferruginous hawk nesting to the PHS program would be enough to effect development in a specific area. Under the Council’s proposal, any documented nest, even erroneous ones, would trigger a 2-mile buffer.

*Finally*, imposition of an absolute 2-mile buffer sets dangerous precedent and invites litigation upon other clean energy project approvals. General application of the 2-mile buffer will (1) prohibit renewable energy development in a significant portion of the state and (2) prohibit repowering of *existing* projects *currently located* within the buffer area, that is, essentially any project located in Washington’s Columbia Plateau.<sup>11</sup> Roughly 16% of the Columbia Plateau falls within 2 miles of documented ferruginous hawk nest locations. See, e.g., Attachment B (showing implications of 2-mile buffer from historical ferruginous hawk nests throughout the Columbia Plateau Ecoregion.) In particular, the Bonneville Power Administration’s (BPA) Tri-Cities Reinforcement project is also affected by the proposed changes.<sup>12</sup> BPA is planning a 115 kV line crossing the escarpment to interconnect the 500 kV grid at the new Webber Canyon substation (the planned grid interconnection for the Horse Heaven Clean Energy Center) to the Tri-cities area infrastructure at Badger substation, which also would be prohibited under the 2-mile setback. Thus, if the Council elects to impose this requirement on this and other future proposed projects, it will not only compromise EFSEC’s ability to approve repower requests for existing projects in the state but also drastically reduce the areas capable of supporting future renewable projects in the future.

### **III. The Council’s reliance on a decade-old wildlife movement model developed without any field review principally to inform transportation planning ignores current biological data and the vast porosity of Project configuration.**

The Council also proposed to revise FEIS mitigation measure Hab-1 to omit any exception or mitigation option based on actual site conditions and Project configuration, and instead simply to prohibit any Project components (including even roads and overhead powerlines) within certain modeled wildlife movement corridors. That decision was based not on current science but *on a single map* created based on desktop review in the early 2010s, by a WDFW-Washington Department of Transportation working group.

The Council’s reliance on this map to inform and justify no-go siting areas is inappropriate for several reasons. When the working group created the modeled map, it expressly warned that “field review” would be needed to “ensure the linkages are viable.”<sup>13</sup> That map, produced for planning purposes, was adopted and incorporated—*without update or field review*—into the FEIS. In its decade of existence, to Scout’s knowledge the map has never before been used in

<sup>11</sup> See Attachment E, showing overall impact of two-mile buffer applied to Columbia Plateau generally, impact on other existing projects.

<sup>12</sup> This project would also be affected, blocked, by the wildlife movement setback imposed by Hab-1.

<sup>13</sup> See Washington Wildlife Habitat Connectivity Working Group, Washington Connected Landscapes Project: Analyses of the Columbia Plateau Ecoregion, Columbia Plateau Ecoregion Addendum: Habitat Connectivity Centrality (2013), Ch. 13, Figure 13.7, [https://waconnected.org/wp-content/uploads/2013/07/ColumbiaPlateauAddendum\\_Chapter\\_13\\_CompositeMaps.pdf](https://waconnected.org/wp-content/uploads/2013/07/ColumbiaPlateauAddendum_Chapter_13_CompositeMaps.pdf).

energy siting decisions. Importantly, a focal species analysis like that presented in the map is not unusual. But what *is* unusual is its application as a zero-tolerance tool in a specific siting decision, which goes far beyond the original or accepted use of such a model.

The council's reliance on that map is particularly egregious given that on-the-ground field review *has* been conducted in the area. Scout and its biologist experts conducted extensive multi-year site-specific surveys as documented in the application materials. Those data verified that the mapped linkage areas in question are majority disturbed developed and agricultural lands that no longer present viable linkages or habitat qualities as suggested in the 2013 map.

The Council's proposed revisions to Hab-1 are based only on the outdated map and do not consider the field review findings reflecting on the ground conditions. Thus, the proposed changes are unsupported by evidence in the record and certainly do not reflect the best available science on the subject.

Moreover, neither the Council's revisions nor its discussion during the December Meeting took into account the fact that the Project features prohibited in this area (e.g., wind turbine locations, underground or overhead utilities) are extremely porous.<sup>14</sup> These facilities would be present in discreet, isolated locations that would allow for continued movement amongst and in between the developed features. And at EFSEC staff's request, Scout has proposed to remove the portion of the East Solar Array located within the modeled wildlife corridor, so consideration of the potential for wildlife to move through that area has already been taken into account.

This revision, too, is unprecedented and would have grave consequences for the State's renewable energy future. Imposing this measure generally (i.e., prohibiting project features on all land designated as medium to very high linkage according to the map) would be precedent to prohibit any project siting on over 13,000 sq km or over 5,200 sq mi of the State.<sup>15</sup> And here too, based on the novel application of the map at issue, Scout and its biologists are unaware of any similar corridor modeling effort being applied in other jurisdictions in a direct regulatory context like the Council is proposing here.

#### **IV. The Council's prohibition on any Project infrastructure east of Straub Canyon is unsupported in the public or confidential Project record.**

Finally, in a particularly egregious instance of ad hoc decision-making during the December Meeting, minutes before its conclusion, one Councilmember proposed a "variant" for Council consideration that would "eliminate" all Project "work...east of Straub canyon," which is "roughly in the middle" of the Project area. This elimination, he claimed, was due to undisclosed traditional cultural properties (TCP), but no discussion or additional detail was provided. Nor was there any consideration of the commercial or generation-related implications of eliminating half the Project.

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<sup>14</sup> See Attachment G, depicting Project area impacted by wildlife movement corridor classifications medium to very high linkage.

<sup>15</sup> See Attachment F, showing areas of State affected by movement corridor classifications.

Notably, this was the first time Scout had ever heard of the geographic landmark Straub Canyon, let alone its significance to any TCP. There has been no mention of it in Scout's more than five years of Tribal coordination and four plus years of coordination with the Department of Archaeology and Historic Preservation (DAHP). Indeed, DAHP concurred with *all* of Scout's cultural resource findings and recommendations, all of which proposed Project features east of Straub Canyon. Moreover, the area east of this Canyon rests on lands ceded and traditionally held by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), with whom Scout has closely coordinated and cooperated, including through execution of a mitigation agreement to address any cultural resource impacts in this area.<sup>16</sup>

The staff-recommended FEIS mitigation measure CR-1 appropriately proposed that ongoing engagement with affected Tribes could facilitate mitigation of any potential impacts on TCPs. To the extent any additional mitigation was needed, it identified numerous possible mitigation options modeled on those developed by the CTUIR. Importantly, *nothing* in CR-1 and nothing in either the public or confidential record<sup>17</sup> for this Project suggests there exist qualifying TCPs under Washington law or otherwise supports eliminating half of the Project area under the guise of protecting purported Yakama Nation (not CTUIR) resources. As noted during the adjudication, these areas comprise privately owned farmlands, to which Tribal members lack access or treaty rights. For the Council to consider such a measure—without any evidentiary support in the record and without any explanation for its decision to do so—not only violates the coordination standards in the Energy Facility Site Locations Act, but also SEPA and the APA.

More broadly, the implications of this decision for future energy facility siting in Washington State are dire. It suggests that the Council could redesign the Project and prohibit any portion of a project based on TCPs that are undisclosed to an applicant, even TCPs of Tribes with no treaty rights to the area. This leaves applicants with no possible way to determine which areas are or are not available for siting, even if they conduct all required Tribal and DAHP coordination and review. Energy siting in Washington would become a guessing game, one few developers will be willing to play given the substantial at-risk costs involved. If the Council proceeds with the recommended changes discussed at the December meeting, it is very likely developers of other projects will seek to avoid the EFSEC process for other now available permitting venues that assure greater predictability and adherence to important state climate policy, within a known legal and understood framework.<sup>18</sup>

**V. The Council's proposed removal of the remaining portion of the east solar field is based on outdated information and ignores the biological significance of the area affected.**

In the December Meeting, following the discussion of ferruginous hawk mitigation and wildlife movement corridors, the Council focused the discussion on the eastern solar array. Referencing

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<sup>16</sup> Accordingly, Scout presumes that any unmitigated cultural resource impacts referenced by the Council at this juncture are those claimed by The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation).

<sup>17</sup> Subject to a Protective Order executed and in place in this matter, the Council and staff are able and obligated to disclose even sensitive and confidential information relevant to Scout's application and proposal in order to facilitate responsiveness.

<sup>18</sup> See Engrossed Second Substitute House Bill 1216, 68<sup>th</sup> Leg., Reg. Sess. (2023).

Figure 3.4-1 from the application, Chair Drew noted that the habitat types associated with the east solar field area are depicted as unidentified shrubland and various grasslands, and not agricultural land. She then voiced concern about siting Project features in this area based on purported foraging by unspecified “animals,” siting on undeveloped land, and unspecified TCP or cultural impacts, and proposed the elimination of the entire east solar field from consideration. Underlying that proposal, Chair Drew explained, was her belief that Scout is currently studying multiple solar array sites, one on the east side and two on the west side, and that the determination of which one of these sites would be used had not yet been made.

Elimination of the east solar field on these grounds is unsound for at least three key reasons. **First**, any impacts to habitat in this area have already been accounted for and addressed per established siting precedent and WDFW guidelines. As shown in Table 4.6-3 of the FEIS, the WDFW Wind Power Guidelines provide offsets in mitigation ratios for temporary and permanent disturbance for all infrastructure. These Guidelines, though originally applied only to wind energy, have recently been applied to solar projects and approved by EFSEC.<sup>19</sup> To eliminate the east solar field based on impacts that have already been mitigated per current standards is duplicative, unprecedented, and inappropriate. **Second**, that the application includes the potential to site two solar arrays on the westside does not support eliminating the entire eastern array because, as described in Part I, major application amendment would be required to make that configuration possible. **Third**, the proposal is based on outdated information. Though at present, the areas depicted as shrubland and grassland in this area are technically classified as such, this area is recently expired USDA Conservation Reserve Program (CRP) land that was required to be planted with a specifically approved grass mixture for the duration of the contract.<sup>20</sup> Now no longer under CRP management, the landowner is free to redevelop the land to be once again tilled and used as active cropland—with no obligation to maintain it as available foraging habitat. There is neither any EFSEC precedent nor evidence in the record to support restricting siting on CRP land and certainly not on post-CRP land poised for renewed agricultural use.

## **VI. Other feasibility problems persist with aspects of the FEIS mitigation measures.**

Several other fundamental problems persist with respect to various elements of the FEIS-recommended mitigation measures, including but not limited to creation and composition of the preoperational technical advisory group, and unprecedented and unduly burdensome Project component recycling and wash water recapture and recycling provisions. Scout has previously provided suggestions to EFSEC staff to address and provide practical solutions to these problems.

Chief among the ongoing mitigation issues is the incorporation of a zone of influence concept in measure Hab-5. Hab-5 introduces the concept of a Zone of Influence around the Project site

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<sup>19</sup> See, e.g., Revised Mitigated Determination of Non-Significance for EFSEC No. 2021-01, Goose Prairie Solar Project, Secs. 8, 9, [https://www.efsec.wa.gov/sites/default/files/210012/00037/20210730\\_GP\\_SEPA\\_RevisedMDNS.pdf](https://www.efsec.wa.gov/sites/default/files/210012/00037/20210730_GP_SEPA_RevisedMDNS.pdf); Mitigated Determination of Non-Significance for EFSEC No. EF-220212, High Top Solar and Ostrea Solar Projects, Secs. 8, 9, [https://www.efsec.wa.gov/sites/default/files/220212/20220930\\_HTO\\_MDNS\\_Final.pdf](https://www.efsec.wa.gov/sites/default/files/220212/20220930_HTO_MDNS_Final.pdf).

<sup>20</sup> Application for Site Certificate, Sec. 3.4.1.1.

boundary described in the ASC and requires additional future analysis of this area to determine whether and to what the extent indirect effect are likely to occur. The mitigation measure is arbitrarily included to mitigate for an effect that is not stated definitively and is not backed by any evidence of indirect effects from studies on other similar projects.

The WDFW 2009 Wind Power Guidelines make clear that the mitigation ratios utilized in the ASC and agreed to by Scout are intended to *fully* mitigate for both direct and indirect effects. Therefore, Hab-5 is cumulative and unnecessarily additive. Further, EFSEC has never addressed indirect effects on habitat or wildlife in this fashion in previously approved projects, instead typically relying on the established mitigation standards in the WDFW Wind Power Guidelines.

Finally, as written, Hab-5 is infeasible because it requires survey work and management on private lands that are outside of the Site Boundary and not under site control. Following completion of the FEIS, EFSEC Staff assured Scout that no such requirement to complete additional work on private lands not under lease agreement would be imposed, but those assurances were not presented to the Council for consideration during the December Meeting. Scout encourages the Council to remove this aspect of Hab-5 in the Final Order, as mitigation for indirect effects is already accounted for in the mitigation ratios agreed to and included in the ASC, or at the very least, to clarify and make the measure feasible by removing the requirement to complete field studies as described, e.g., that any analysis would be desktop only.

### CONCLUSION

In sum, approving the Council's recent proposals would not only represent a drastic departure from the Council's own established precedent, it would mean that energy facilities are held to a far more stringent standard than *any other type of development* in the State. This is the exact opposite of the goal of EFSEC—to provide a one-stop, streamlined, process to approve projects objectively and uniformly. Accordingly, we respectfully request that the Council consider the revisions previously submitted by Scout to EFSEC staff, and reject the Council's proposed changes outlined above, including revision to Spec-5, Hab-1, and Hab-5 mitigation measures, and the proposals to eliminate the east solar field and Project features east of Straub Canyon.

Sincerely,



Michael Rucker, President and Chief Executive Officer  
Scout Clean Energy

Attachments

Cc:

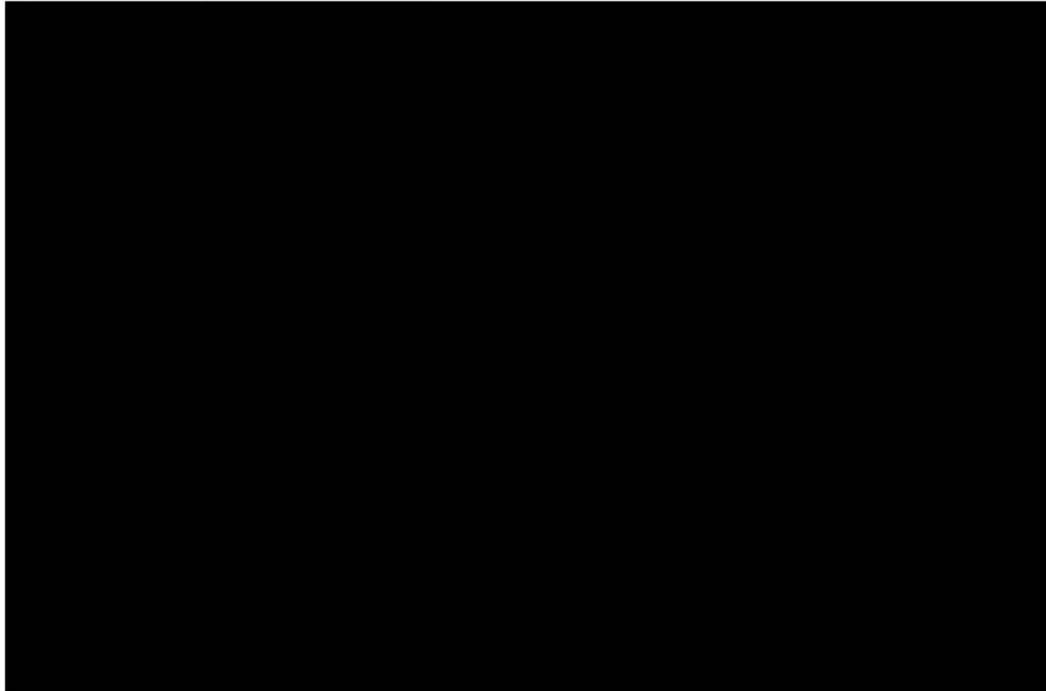
Dave Kobus, Scout Clean Energy  
Linnea Fossum, Tetra Tech  
Tim Thompson, Thompson Consulting Group

Tim McMahan, Stoel Rives  
Ariel Stavitsky, Stoel Rives

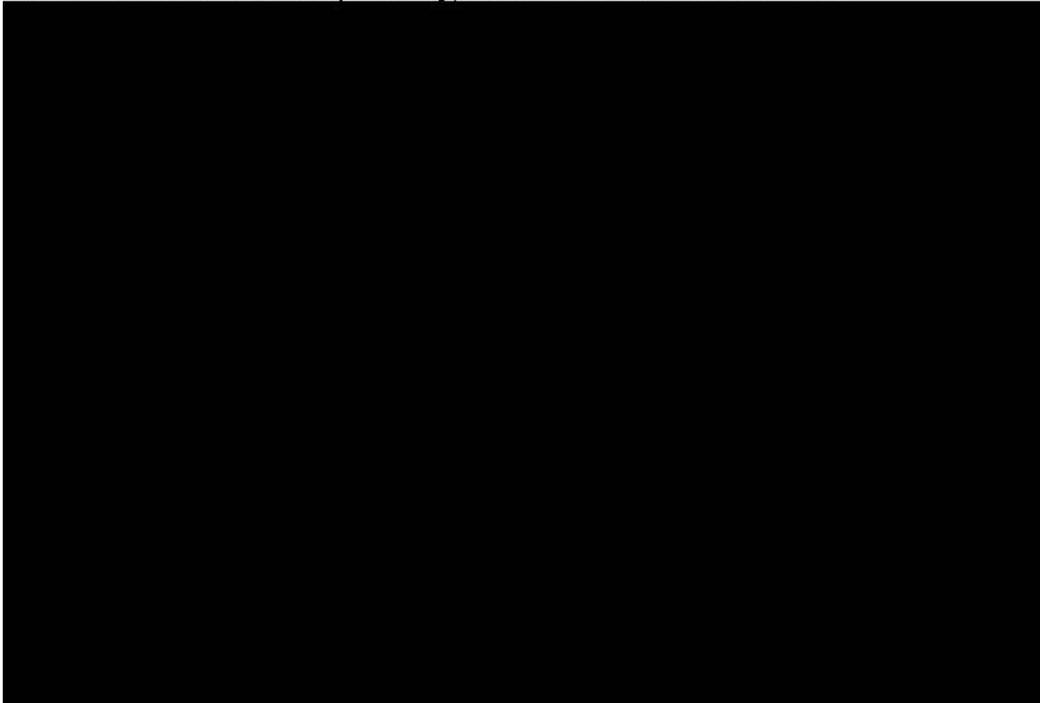
# Attachment A

<b>WDFW Territory Name:</b> [REDACTED]	<b># Nests Obs/WDFW Territory:</b> 1/2
<b>Description:</b> Scrappy locust stand. Current threats: Residential development and loss of nesting substrate.	

Approximate location of Nest [REDACTED] in trees adjacent to home that was last observed around 2008.



Nest [REDACTED] and Nest [REDACTED], contained a common raven and Swainson's hawk respectively, in 2019. Both Inactive in 2022.



# Attachment B

Confidential information redacted; For public disclosure

# Horse Heaven Wind Project



## Ferruginous Hawk Nest Buffers with Option 1 Infrastructure

BENTON COUNTY, WA

- Option 1 Turbine Layout
- ▭ Project Lease Boundary
- Radar Tower Collection Line
- Radar Tower Access Road
- ⬡ Radar Tower
- ⊕ Met Tower
- ⋯ Met Tower Access Road
- ▭ O & M Facility
- 230-kV Intertie Transmission Line
- County Well Road 500-kV Transmission Line
- Collection Line
- Junction Box
- CraneCL
- CraneCL\_Alt
- CraneCL\_OnRoad
- CraneCL\_OnRoad\_Alt
- RoadCL
- RoadCL\_Alt
- ▭ Intersection Improvement Area
- ▭ Battery Storage
- ▭ Laydown Yard
- ▭ BPA Substation
- ▭ Solar Siting Area
- ▭ Solar Array
- Solar Array Fencing
- Solar Array Road
- ▭ Wind Energy Micrositing Corridor
- ▭ Unsurveyed Micrositing Corridor



### Reference Map

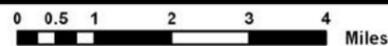


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1:150,000 WGS 1984 UTM Zone 11N

PROPRIETARY AND CONFIDENTIAL



1/12/2024

NOT FOR CONSTRUCTION

# Attachment C

## Spec-5

The Applicant will, in coordination with EFSEC, WDFW, and the PTAG, **complete a Ferruginous Hawk Core Area Viability Assessment** of all previously documented ferruginous hawk nest sites in the WDFW PHS database and nest sites that were discovered during Project-specific surveys, that are within two miles of planned Project infrastructure. The goal of the viability assessment is to determine which core areas remain viable for current and future use by ferruginous hawks. Ferruginous hawk core areas consist of a nest location and a two-mile buffer around the nest.

The nest site and Core Area Viability Assessment and determination will consider the following parameters when determining nest site and core area viability:

1. The **history of nest occupancy** by ferruginous hawks and other large bird species, as documented in the WDFW PHS database and through Project-specific surveys. Routine annual re-occupancy of a PHS nest by a competitive species such as common raven should be considered as a factor that may reduce the likelihood of future viability of the core area.
2. **The current condition of the nest structure and nesting substrate.** Nests classified in a remnant or gone condition that display characteristics of no recent use based on historical and contemporary survey data should be considered as a factor that may reduce the likelihood of future viability of the core area. Nesting substrates (e.g., trees, rock outcrops, or ground) removed or disturbed by past anthropogenic impacts (e.g., cropland conversion, residential development, quarry development, or road construction) should be considered non-viable.
3. **Availability of suitable breeding habitat** for ferruginous hawk as defined by WDFW. Habitat considered unavailable or unsuitable would include habitat that has been altered by landscape-scale development (cropland conversion, residential development, industrial development).
4. The **proximity of nest sites to human development**, particularly recently built and planned or reasonably foreseeable residential development that has occurred since the nest was last documented as occupied by ferruginous hawk.
5. The **proximity of the core area to previously documented occupied or active nests** in the region according to WDFW draft management recommendations.

If a core area is determined to be non-viable, there will be no further restrictions nor management expectations on the placement of Project components in the core area. Siting of Project components in viable core use areas will only occur with EFSEC approval of a Ferruginous Hawk Nest Management Plan. **The Applicant would, in consultation with the PTAG for approval by EFSEC, complete a Ferruginous Hawk Nest Management Plan** that considers all viable core use areas where Project infrastructure is proposed, which would include the following:

1. A description of the current available nesting habitat in the core area
2. A description of ferruginous hawk use of the core area based on historical background information or Project-specific surveys.
3. A description of the type and location of infrastructure proposed within the core area, and the degree of hazard created by its placement and appropriate measures taken to minimize infrastructure in the core area if practical.
4. The proximity of Project infrastructure to any known nest and the amount of breeding habitat (e.g., shrub-steppe, grassland) to be impacted by Project components within the core area.

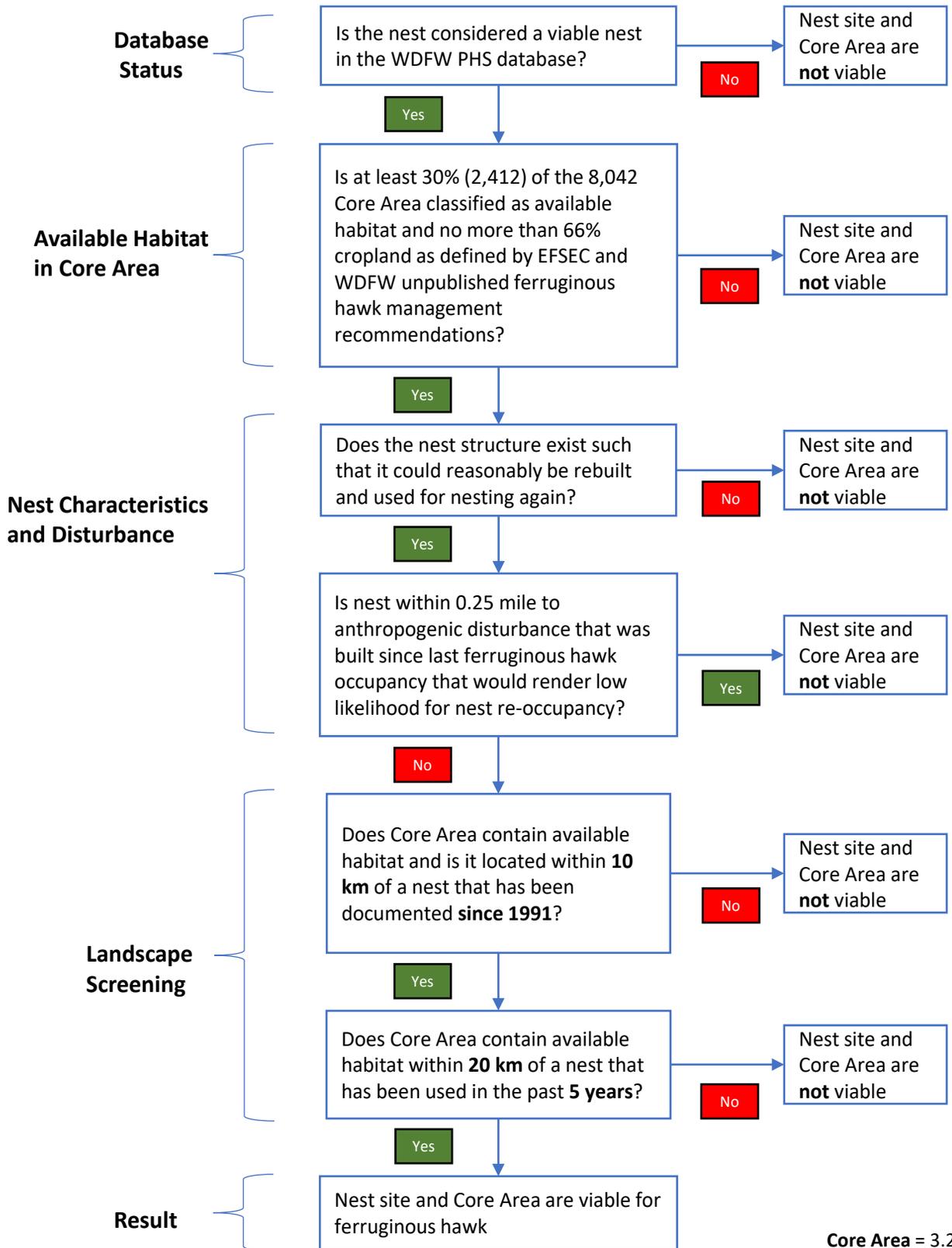
5. Additional mitigation, if deemed necessary by EFSEC, for loss of nesting habitat as described in the Applicants Habitat Mitigation Plan.
6. A process for monitoring nesting activity in the core area during Project construction or operation, as needed.
7. A process to employ further previously proven avoidance and minimization measures should ferruginous hawk nesting be detected in the future, either during construction or operation. This could include more intensive biological site monitoring at nest locations, manual or automated curtailment of turbines during key activity periods if it is determined that ferruginous hawks are at risk from turbine operation, or additional habitat-based mitigation that may be required to offset effects that become known later in time.

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

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

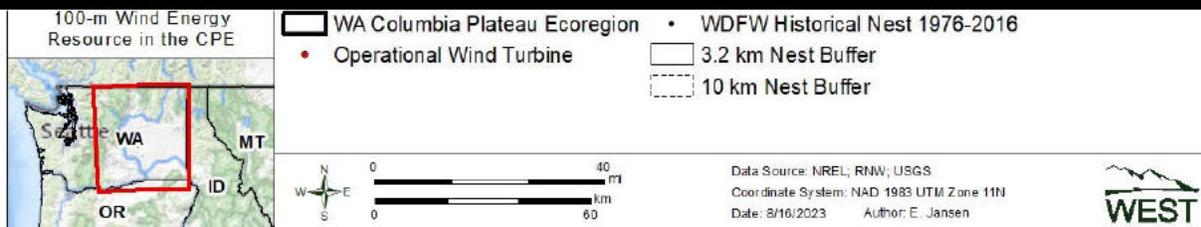
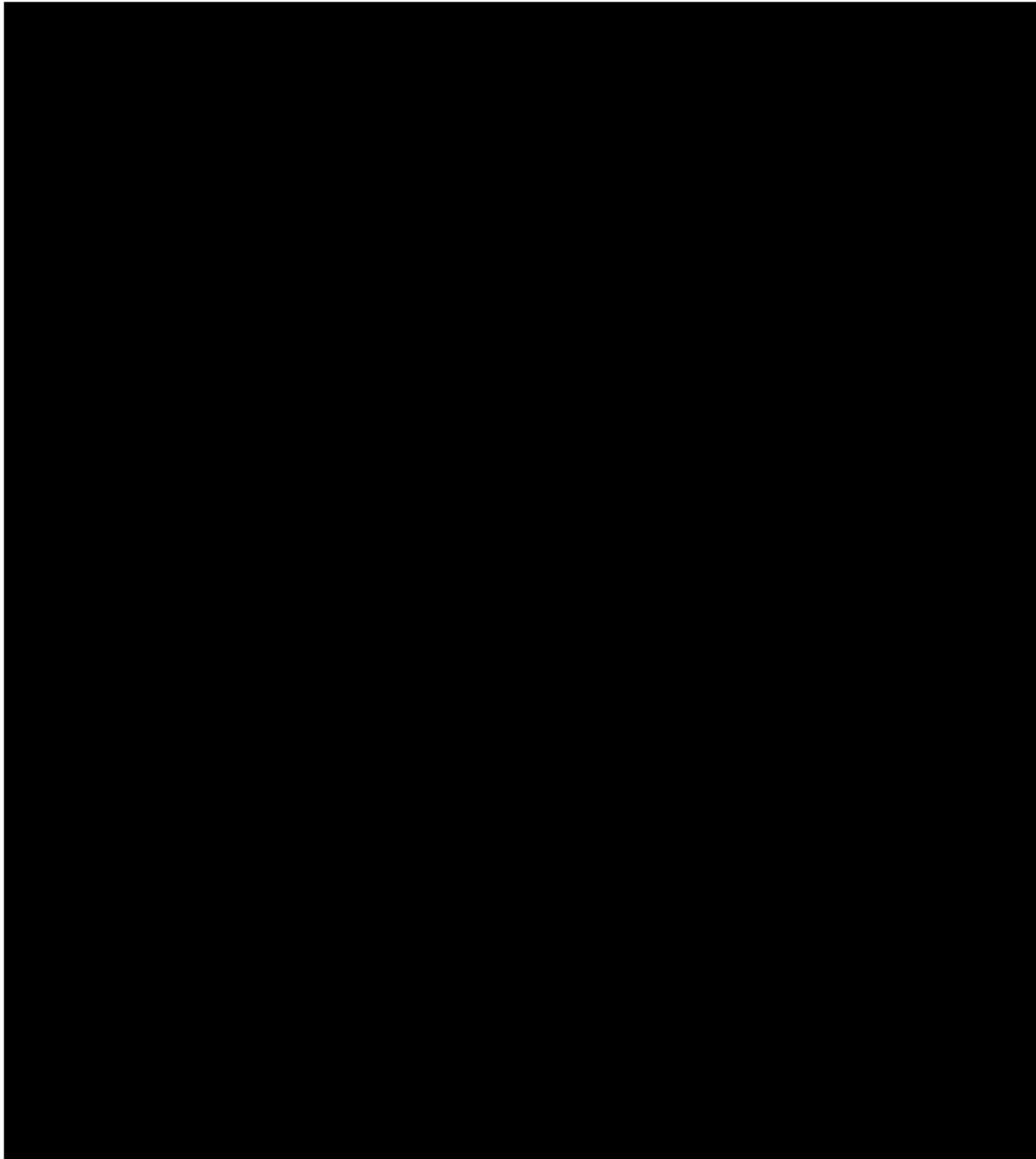
# Attachment D

# Ferruginous Hawk Nest Viability Flowchart



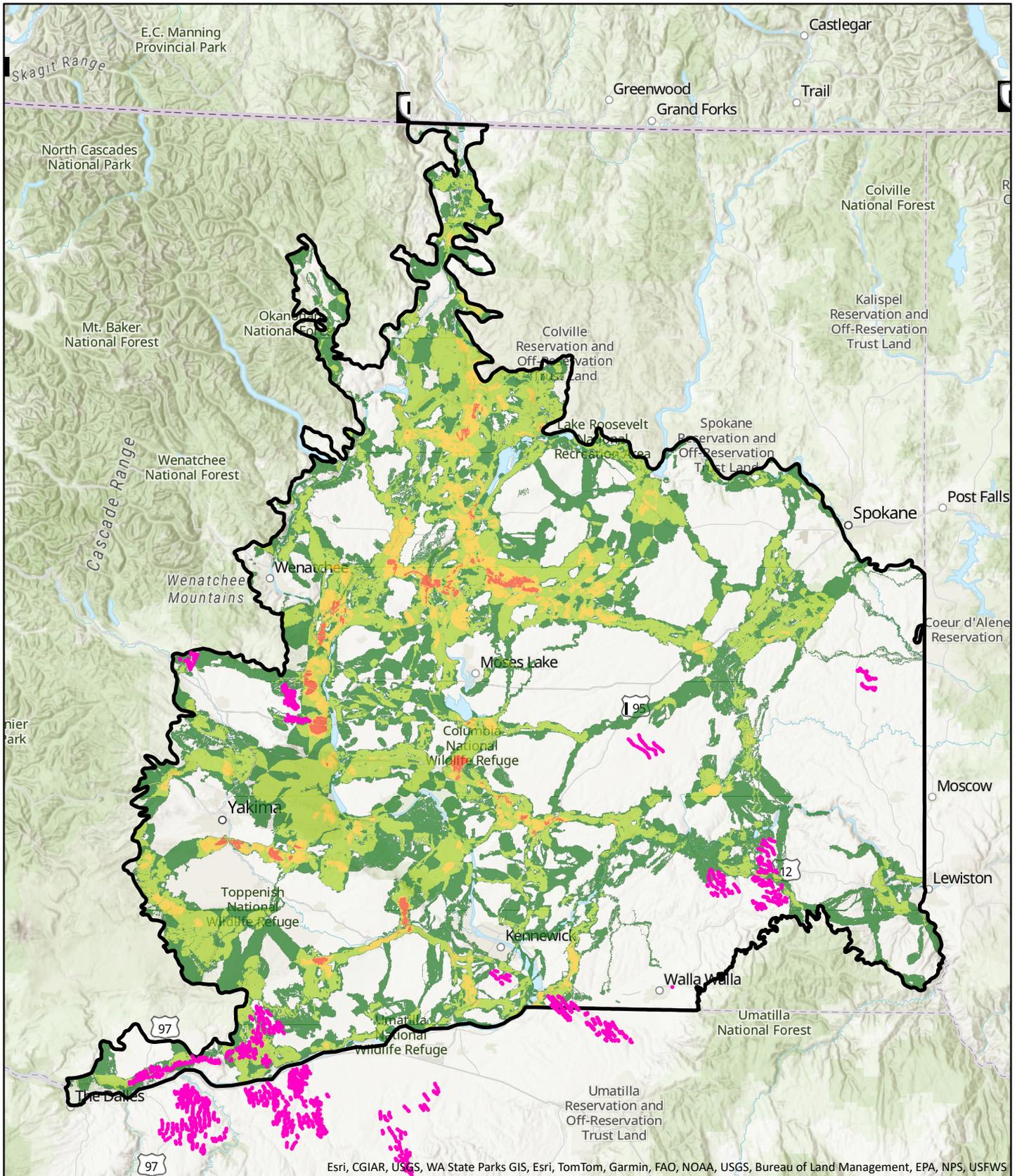
**Core Area** = 3.2 km (2-mi) radius surrounding a ferruginous hawk nest

# Attachment E

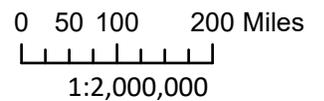
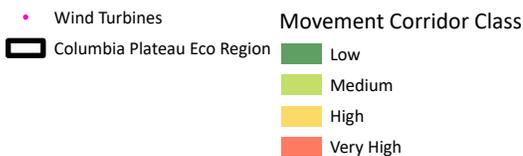


Area within 2-mi Buffer (ac)	7,949.0
Area within 2-mi Buffer (mi <sup>2</sup> )	12.4
Total Area in CPE Encumbered by Buffer (ac)	1,487,342.0
Total Area in CPE Encumbered by Buffer (mi <sup>2</sup> )	2,324.0
Total WA Private (mi <sup>2</sup> )	17,029.8
<b>Total Core Area in WA (mi<sup>2</sup>)</b>	<b>13.6%</b>
<b>Total Area Encumbered by Project Nest Buffers (ac)</b>	
	90,908.8
<b>Total Area Encumbered by Project Nest Buffers (mi<sup>2</sup>)</b>	
	142.0
<b>Project ASC Lease Area (ac)</b>	
	72,428.0
<b>Percent of Core Area compared to Lease Area</b>	
	126%
<b>Total Option 1 Turbines</b>	
	244
<b>Total Option 1 Turbines in 3.2 Core Area</b>	
	131
<b>Percent of Turbines in Core Area</b>	
	54%
<b>Micrositing Temporary</b>	
	2,881.0
<b>Micrositing Permanent</b>	
	299.0
<b>Solar Temporary</b>	
	76.0
<b>Solar Permanent</b>	
	294.0
<b>Solar Modified</b>	
	6,276.0
<b>Total Impacted</b>	<b>9,826.0</b>

# Attachment F



## Wildlife Movement Corridors in the Columbia Plateau Eco Region



# Attachment G

# Horse Heaven Wind Project



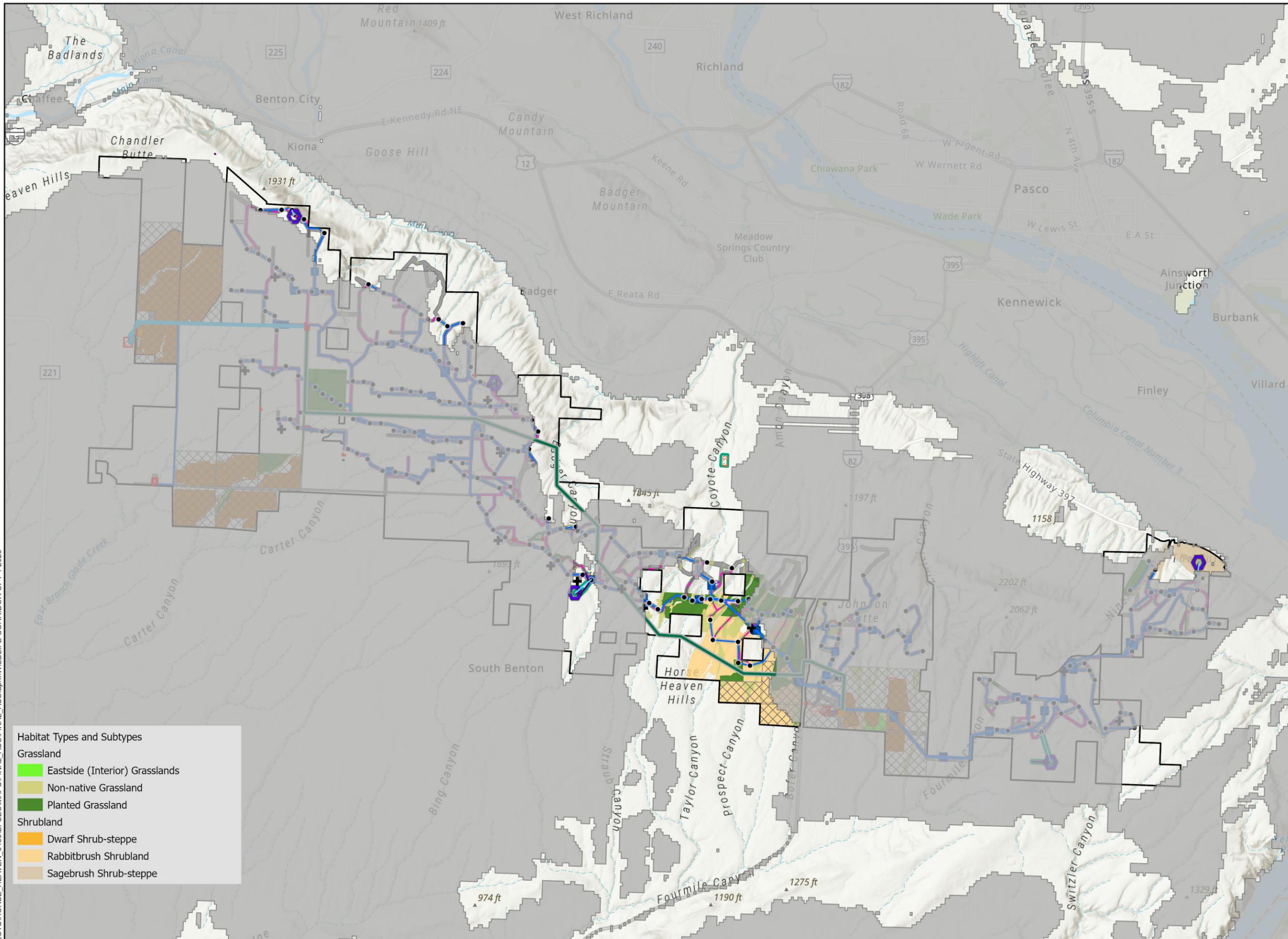
## Wildlife Movement Corridors (Very High, High & Medium) with Option 1 Infrastructure

BENTON COUNTY, WA

- Option 1 Turbine Layout
- ▭ Project Lease Boundary
- Radar Tower Collection Line
- Radar Tower Access Road
- ⊕ Radar Tower
- ⊕ Met Tower
- Met Tower Access Road
- ▭ O & M Facility
- 230-kV Intertie Transmission Line
- County Well Road 500-kV Transmission Line
- Collection Line
- Junction Box
- CraneCL
- CraneCL\_Alt
- CraneCL\_OnRoad
- CraneCL\_OnRoad\_Alt
- RoadCL
- RoadCL\_Alt
- ▭ Intersection Improvement Area
- ▭ Battery Storage
- ▭ Laydown Yard
- ▭ BPA Substation
- ▭ Solar Siting Area
- ▭ Solar Array
- Solar Array Fencing
- Solar Array Road
- ▭ Wind Energy Micrositing Corridor
- ▭ Unsurveyed Micrositing Corridor



### Reference Map



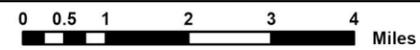
- Habitat Types and Subtypes**
- Grassland**
- Eastside (Interior) Grasslands
  - Non-native Grassland
  - Planted Grassland
- Shrubland**
- Dwarf Shrub-steppe
  - Rabbitbrush Shrubland
  - Sagebrush Shrub-steppe

R:\PROJECTS\HORSE\_HEAVEN\_6430\EFSECMAPS\FINAL\_ASC\PRJ\WILDLIFE CORRIDOR OPT 1 2023



1:140,000 WGS 1984 UTM Zone 11N

PROPRIETARY AND CONFIDENTIAL



1/12/2024

NOT FOR CONSTRUCTION