

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
RESOLUTION NO. 343
AMENDMENT NO. 1 TO THE
DESERT CLAIM WIND POWER PROJECT SITE CERTIFICATION AGREEMENT
RECONFIGURATION OF FACILITY

Nature of Action

On February 26, 2018, the Certificate Holder, Desert Claim Wind Power LLC (Desert Claim), requested that the Energy Facility Site Evaluation Council (EFSEC or the Council) amend its Site Certification Agreement (SCA) to allow for the reconfiguration of its site boundary and the installation of fewer, but larger turbines than originally authorized in the February 2010 SCA.¹ The revised Desert Claim Wind Power proposal (Revised Project) would consist of 25-31 turbines not to exceed 492 feet in height and a total capacity of no more than 100 Megawatts (MW). The current SCA for the original project (Original Project) authorizes Desert Claim to construct and operate up to 95 turbines, with a maximum capacity of 190 MW. The Revised Project remains at the same site as the Original Project, with acreage reduced to 4,400 acres including approximately 370 acres that have been added to the west and south; 1,271 acres have been removed east of Reecer Creek. Primary site access during construction and operation has been changed from Reecer Creek Road to Smithson Road (accessed from Hwy 97). All turbines will be located at least 2,500 feet from all residences in the Revised Project.² A total of 0.347 acres of new permanent wetland impacts and 0.026 acres of permanent stream impacts are identified in the Revised Project. An additional 1.949 acres (0.126 acres stream and 1.823 acres wetland) temporary impacts are proposed to streams and wetlands.³ The Original Project did not contemplate wetland or stream impacts. As a result of reducing the number of turbines and changing the types of turbines to be installed, there is an expected 66% decrease in turbine delivery trips and 10% increase in concrete trucks per hour during construction.⁴

Background

¹ Desert Claim Wind Power LLC, Desert Claim Wind Power Project Site Certification Agreement Amendment Request, (Amend. Req.) Cover Letter, February 26, 2018 at 1.

² Id. at 3

³ EFSEC's Revised State Environmental Policy Act (SEPA) Staff Memorandum to the EFSEC Stephen Posner (Rev. SEPA Staff Memo), EFSEC staff compiled environmental review notes and rationale for proposed mitigation measures to support the SEPA Addendum to the Final Supplemental Environmental Impact Statement (FSEIS), November 1, 2018 at 7.

⁴ Rev. SEPA Staff Memo at 15-16

The Original Project was first reviewed by Kittitas County (the County) in 2005, prior to Desert Claim's application to EFSEC. At that time, the County conducted an environmental review that resulted in preparation of a Final Environmental Impact Statement (FEIS). In April 2005, the County denied the Original Project as it had been proposed. In January 2009, the Original Project was reconfigured and Desert Claim submitted an Application for Site Certification to EFSEC. Under the State Environmental Policy Act (SEPA), EFSEC prepared a Draft Supplemental EIS (DSEIS) and a Final Supplemental EIS (FSEIS) to the County's FEIS. On December 4, 2009 EFSEC transmitted its recommendation of approval for the Original Project to Governor Christine Gregoire. EFSEC's recommendation to the Governor was based on various sources of information including adjudicative proceedings, public comment, and environmental analysis contained in the FSEIS. On February 1, 2010, Governor Christine Gregoire executed on behalf of the State of Washington an SCA authorizing the construction and operation of the Original Project.

The February 2010 SCA for the Original Project authorized Desert Claim to construct and operate a wind power facility consisting of a maximum of 95 wind turbines on tubular steel towers. The 2010 SCA permits an output capacity of 190 total MW and a tower height not to exceed a maximum of 410 feet, within an approximately 5,200 acre project site. The Original Project was located north and west of Ellensburg near the intersection of U.S. Route 97 and Smithson Road. Site access during construction was primarily from Reecer Creek Road. Seven non-participating residences were located between 1,687 and 2,241 feet of one or more turbines. No temporary or permanent stream or wetland impacts were identified during the environmental analysis initially conducted by EFSEC for the Original Project. As a result, measures to address these kinds of impact were not contemplated in the original SCA.

Procedural Status

EFSEC's SCA amendment procedure is governed by chapter 80.50 RCW⁵ and chapter 463-66 WAC⁶.

Desert Claim and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, the request for amendment of the SCA was submitted in writing on February 26, 2018.
- At its monthly meeting of March 20, 2018 the Council determined a schedule for action on the request as follows: April 11, 2018 to conduct a public hearing on the Desert Claim SCA amendment request in Ellensburg, WA.⁷

⁵ RCW (Revised Code of Washington) 80.50

⁶ Title 463 WAC (Washington Administrative Code) Chapter 66

⁷Verbatim Transcript of EFSEC Monthly Council Meeting, March 20, 2018.

- Pursuant to WAC 463-66-030, notice of a public hearing was distributed to approximately 1,031 people. The public notice issued by EFSEC advised that Desert Claim had requested an amendment to their SCA, and that an informational hearing to consider the matter would be conducted on April 11, 2018. The notice stated that public comments could be made at the April public hearing.
- EFSEC conducted a public hearing session in which the public commented on this matter in Ellensburg, WA on April 11, 2018.⁸
- At the Council's August 21, 2018, monthly meeting EFSEC Siting and Compliance Manager, Sonia Bumpus discussed the status of EFSEC's SEPA review and development of new analysis, such as a visual effects assessment to be completed prior to EFSEC making a determination relative to SEPA.⁹
- At the September 18, 2018 monthly council meeting Sonia Bumpus, on behalf of Stephen Posner, EFSEC's SEPA Responsible Official, proposed that a draft SEPA Addendum to the FSEIS be prepared for the Revised Project. After discussion by the Council and its staff, the Council determined that a 15 day public comment period on the draft SEPA Addendum to the FSEIS would be conducted.¹⁰
- The draft SEPA Addendum, dated September 25, 2018, was prepared and issued for public comment on September 26, 2018 with a deadline for comments on October 10, 2018.
- Three public comment submissions were submitted on the draft SEPA Addendum, EFSEC staff provided a summary of proposed updates to the SEPA addendum and public comments to the Council at the October 16, 2018 monthly Council meeting.¹¹
- The Council considered information in Desert Claim's SCA amendment request, the proposed amendments to the Original Project SCA, input from the public, the Final SEPA Addendum, Revised SEPA Staff Memo, and draft Resolution No. 343 at its November 13, 2018 Council meeting.

⁸ Verbatim Transcript of EFSEC Special Council Meeting, April 11, 2018.

⁹ Verbatim Transcript of EFSEC Monthly Council Meeting, August 21, 2018.

¹⁰ Verbatim Transcript of EFSEC Monthly Council Meeting, September 18, 2018.

¹¹ Verbatim Transcript of EFSEC Monthly Council Meeting, October 16, 2018.

Public Comment

On April 11, 2018, during the public hearing in Ellensburg, WA EFSEC received 10 handwritten comments and 12 oral comments from public speakers. This hearing provided an opportunity for the public to comment on the SCA amendment request submittals and the presentation about the Revised Project provided by Desert Claim.

September 26, 2018 through October 10, 2018 EFSEC conducted a 15-day public comment period on the draft SEPA Addendum to the FSEIS, dated September 25, 2018. EFSEC proposed mitigation measures for potential impacts from the Revised Project. Key environmental review notes and supportive rationale for the proposed mitigation measures were discussed in the SEPA staff memorandum, dated September 25, 2018. The SEPA staff memo was prepared and sent to the EFSEC Manager and SEPA Responsible Official, Stephen Posner. After review, the SEPA Responsible Official made the SEPA Addendum and staff memo available to the Council. The public comment period served as an opportunity for members of the public to comment on the draft SEPA Addendum, SEPA staff memo, and additional and updated studies related to the Revised Project. Concerns raised during the SEPA public comment period included the following:

- Potential water quality impacts to Dry Creek, Green Canyon Creek, Reecer Creek, and Jones Creek for stream heating and bacterial contamination.
- Potential impacts to wetlands and streams.
- Potential impacts from turbine noise- require highest noise standards and monitoring.
- Potential visual impacts from taller turbines, spacing between turbines- visual confusion and disunity.
- Potential impacts from turbine lighting-encourage use of Aircraft Detection Lighting System.
- Cultural Resource- concern from Desert Claim on the proposed mitigation measure and SCA requirement, to adhere to their Memorandum of Understanding (MOU) with the Yakama Nation.
- Potential impacts to transportation during construction associated with concrete truck delivery trips.

The discreet comments listed above are based on EFSEC's technical review of three public comment submissions EFSEC received during the 15-day comment period. Consequently, one of the proposed mitigation measures related to cultural resources was revised in response to comment. Mitigation measures have been finalized and are documented in the Final SEPA Addendum, dated November 1, 2018 (*See attachment 1 to this Resolution*). Final mitigation along with the responses to comments are documented in the Revised SEPA staff memo, dated November 7, 2018 (*See attachment 2 to this Resolution*).

A summary of the comments and EFSEC's responses to comments are also discussed in this resolution below. Each comment is organized under its respective environmental resource area. It is indicated if there are any further revisions suggested for the proposed mitigation measures.

Responses to SEPA Public Comment

Water Quality, Wetlands, and Streams:

Comment: The Washington Department of Ecology (Ecology) commented regarding the protection of impaired waterbodies. In summary, Ecology commented that Dry Creek, Green Canyon Creek, Reecer Creek, and Jones Creek flow through the Revised Project area and are included in the Upper Yakima River Tributaries Temperature Total Maximum Daily Load (TMDL) water quality improvement project. Therefore, these streams must be protected from additional stream heating. The TMDL also recommends that supplementary shade, via installation of new riparian plants, should be added where possible. In addition, the Reecer Creek reach located immediately upstream of the Kittitas Reclamation District canal is included in Washington State's list of 303(d) impaired waterbodies due to high levels of fecal coliform bacteria. Ecology emphasized the importance that planning and construction, and all future use of the site, include water quality protection to avoid further bacterial contamination in Reecer Creek. Ecology noted that a Construction Stormwater General Permit (CSWGP) and the development of a Stormwater Pollution Prevention Plan (SWPPP) will be required for off-site construction stormwater discharges.

Response: The proposed mitigation in the SCA Amendment includes a requirement for coordination with Washington Department of Fish and Wildlife (WDFW) and Ecology regarding finalizing construction and operating plans to avoid or minimize temporary and permanent impacts on streams and wetlands. Prior to construction, a final set of wetland buffers, setbacks, and mitigation standards for permanent and temporary impacts must be determined by EFSEC in consultation with Ecology. The SCA Amendment includes development of a SWPPP, Wetland Compensatory Mitigation Plan, Habitat Mitigation Plan, and Construction Soil Management and Vegetation Plan. These plans will address protection of impaired waterbodies as will the required CSWGP that is required for discharging construction stormwater off-site.¹²

No revision to the mitigation measure in the SCA amendment is proposed.

Noise:

Comment: A member of the public commented regarding the noise monitoring plan. In summary, the comment requested that Desert Claim be held to the strictest standards in its noise monitoring plan.

¹² Rev. SEPA Staff Memo at 6-8

Response: The proposed mitigation in the draft SEPA Addendum includes Complaint-Based Noise Monitoring and Response Plan submittal to EFSEC for review and approval prior to operation to address low frequency noise and aeroacoustic noise.¹³

No revision to the mitigation measure in the SCA amendment is proposed.

Visual:

Comment: A public comment regarding visual impacts of the turbines during operation was received. In summary, the commenter expressed concerns about the “tallest land turbines on earth” being sited next to many homes without EFSEC finding any significant impacts. There were specific concerns regarding visual impacts to residences on Smithson Road, about the variation in size of the turbines, various distances apart from one another, and the use of different turbine models, “causing visual confusion and disunity”.

Response: During EFSEC’s SEPA review of the Revised Project, EFSEC’s consultant determined that from this viewing location, features of the Revised Project would be distinct and would attract viewer attention; however, fewer turbines will be visible than in the previous project configuration in the Original Project.¹⁴

The independent Visual Effects Assessment conducted by EFSEC’s consultant indicated that construction and decommissioning activities and components of the Revised Project would likely be visible to those viewers adjacent to the work sites (e.g. viewers along Smithson Rd. and at nearby residences) with a localized effect that would be experienced for a relatively short duration (weeks to months). The previous visual effects assessment in the FEIS and FSEIS also indicated a moderate level of visual impact related to this general location from the operating turbines.

The technical approach used in the EFSEC’s Visual Effects Assessment (and in previous visual assessments in the FEIS and FSEIS) included dimensions of vividness, intactness, and unity, as well as the degree of visual dominance of the Revised Project, to determine the changes to visual quality. The established Federal Highway Administration definition of ‘unity’ refers to the visual coherence and compositional harmony of the viewshed where effects are evaluated based on the degree to which they disrupt the harmony of the landscape setting. The Visual Effects Assessment (Section 4.1.1) as well as the photos and simulation provided by Truescape (SCA Amendment request, Appendix A – Sheet 8 and Sheet 9) illustrate that the views of the valley from this area are dominated by agricultural development and currently include evident wind projects in the northwest portion of the study area. Based on the existing visual quality and character visible from this area, while distinct, the Revised Project features would not substantially affect the visual unity of the views or be incoherent within the context of the surrounding landscape.

¹³ Rev. SEPA Staff Memo at 10-11

¹⁴ Rev. SEPA Staff Memo at 12-13

No new or increased adverse environmental impacts to visual and aesthetics are expected from the Revised Project.

No mitigation measures in the SCA Amendment is proposed.

Light and Glare: Turbine Lighting:

Comment: A member of the public commented regarding turbine lighting. In summary, the commenter encouraged the use of Aircraft Detection Lighting System (ADLS).

Response: EFSEC's draft SEPA Addendum proposes mitigation for the Revised Project that requires Desert Claim to investigate the application of ADLS (a more recently available technology) prior to construction and report its finding to EFSEC. The report will include the benefits and feasibility of ADLS for the Revised Project proposal.

No new or increased adverse environmental impacts from light and glare due to turbine lighting are expected from the Revised Project.¹⁵

No revision to the mitigation measure in the SCA amendment is proposed.

Historic and Cultural Preservation: Cultural Resources-MOU with Yakama Nation

Comment: EFSEC received a comment from Desert Claim regarding the proposed mitigation measure that requires they adhere to their MOU with the Yakama Nation. In their comment letter Desert Claim clarified that the MOU document is a "Scope of Work" between Desert Claim and the Yakama Nation, the contents of which EFSEC does not know; and that the MOU is not a binding agreement between the two parties. Desert Claim's letter further explained that some of the activities identified in the "Scope of Work" document have already been completed. Desert Claim also expressed concerns about the appropriateness of EFSEC including a requirement that relates to a private document between Desert Claim and the Yakama Nation.

Response: The proposed requirement in the draft SEPA Addendum to adhere to the MOU was developed based on EFSEC's initial SEPA review of the FSEIS and the SCA amendment request materials provided by Desert Claim. For example, the FSEIS discussed additional surveys to be conducted by Desert Claim; it states, "*the Applicant has also agreed to conduct additional surveys of Traditional Cultural Properties (TCP's) of importance to the Yakama Nation and to work with the Yakama Nation to prepare a Traditional Cultural Resources Mitigation Plan.*"

Mitigation measures in the FSEIS included the development of a cultural resource mitigation plan in consultation with the Yakama Nation and the Washington Department of Archaeology and Historic Preservation (DAHP). According to the FSEIS, the plan "*would include mitigation*

¹⁵ Rev. SEPA Staff Memo at 13

*measures tailored to the specific circumstances of each resource and would be consistent with applicable federal, state, and local regulations”.*¹⁶

The Original Project FSEIS also acknowledged the MOU and characterized its intended purpose, that the *“MOU addresses concerns expressed by the Yakama Nation’s comments on the Draft SEIS¹⁷, and provides a framework for developing a Traditional Cultural Resources Mitigation Plan with the Yakama Nation”.*¹⁸

In DAHP’s comments to EFSEC, they concurred with the condition regarding Tribal involvement in developing mitigation for the Revised Project. In its correspondence to EFSEC, DAHP stated, *“We agree with the recommendation for Tribal consultation regarding mitigation for impacts to traditional subsistence and medicinal plant resource areas.”*¹⁹

In addition, DAHP provided the following recommendations to EFSEC:

- Requested additional photos of Historic-period field clearing pile archaeological sites and evidence of tribal consultation, otherwise these resources must be avoided or obtain a DAHP permit prior to any impacts.
- Stated all Revised Project impacts should be avoided to all pre-contact archaeological sites and one historic-period archaeological site and if they can’t be avoided, a permit from DAHP is required for formal archaeological testing with recommendations for further mitigation.
- Requested a robust Inadvertent Discovery Plan be developed for the Revised Project and training of construction and operations crews.
- Requested additional archaeological survey for micrositeing of turbines and for alterations in roadway plans.

In light of the references to the MOU in the FSEIS, and its apparent importance for addressing potential adverse impacts to tribal resources of concern to the Yakama Nation, on September 20, 2018, EFSEC requested a copy of the MOU from Desert Claim. Desert Claim did not provide a copy to EFSEC.

¹⁶ EFSEC prepared FSEIS, Section 3.3.5, Mitigation Measures.

¹⁷ EFSEC prepared DSEIS, Public Comment Letter #12 from the Yakama Nation in EFSEC prepared FSEIS, Section 4 Draft SEIS Comments and Responses.

¹⁸ EFSEC prepared FSEIS, Section 3.3.2.4, Site Significance Evaluations.

¹⁹ Rev. SEPA Staff Memo at 15

Because the Yakama Nation had not provided public comment to EFSEC relative to the draft SEPA Addendum, in a letter dated October 17, 2018, EFSEC's Siting and Compliance Manager, Sonia E. Bumpus, contacted the Yakama Nation to request that it notify EFSEC of any concerns related to the MOU and/or Desert Claim's SCA amendment request. The Yakama Nation responded to EFSEC and on November 7, 2018 EFSEC staff and the Yakama Nation held a call. The discussion covered four aspects of the Yakama Nation's previous agreements with the Certificate Holder and other concerns related to the Revised Project.

The four aspects discussed included: 1.) Development of a traditional cultural resources mitigation plan prior to construction; 2.) Access for Yakama Tribal members to the root grounds within the Project area; 3.) Yakama Nation participation on the Technical Advisory Committee (TAC); and 4.) Restoration of lands to pre-Project conditions following decommissioning.

This conversation helped to improve EFSEC's understanding of the agreement between Desert Claim and the Yakama Nation and it is expected that Desert Claim's commitments in the FSEIS in conjunction with the new and supplemented mitigation measures in the SCA Amendment, are sufficiently expansive to address the four considerations outlined above.²⁰

Recommendations from the Yakama Nation from a 2010 survey of the project area were also discussed during the call. EFSEC staff had previously identified the recommendations during its review of the updated cultural resource assessment prepared by the Certificate Holder's consultant, Archaeological Investigations Northwest, Inc. (AINW), titled, "*Cultural Resource Assessment of Updated Project Design for the Desert Claim Wind Power Project*". Based on input related to EFSEC during the call, it is EFSEC's understanding that the Yakama Nation's recommendations in the AINW report continue to be topics of concern related to the Revised Project. In consideration of the SCA Amendment request, input from DAHP and Desert Claim, and more recently, input from the Yakama Nation, EFSEC staff proposes further revision and clarification to the mitigation initially proposed to improve the mitigation measure to address cultural resource impacts:

Revised mitigation in the SCA amendment is proposed:²¹

The development of the Cultural Resources Monitoring and Mitigation Plan must be done in coordination with DAHP and the Yakama Nation and approved by EFSEC. The following must be considered during the plan development:

- Avoidance of the concentrated-resource areas.
- Habitat rehabilitation of impacted-resource area as a means of mitigation for impacts to the diffuse-resource areas.

²⁰ Rev. SEPA Staff Memo at 16

²¹ Rev. SEPA Staff Memo at 14-16

- Archaeological sites be provided a minimum 30 meter/100 foot buffer.
- Archaeological isolates should be further studied and be provided a minimum 15 meter/50 foot buffer.
- 51 rock features should be re-evaluated and recorded as archaeological sites.
- Archaeological monitoring during construction when ground-disturbing activity is involved.

Transportation: Traffic Impacts during Construction

Comment: A public comment was submitted regarding concerns about concrete truck delivery traffic. In summary, the commenter expressed concerns that, *“approximately 22 concrete delivery trips will be made each hour during a daily 12-hour delivery period which represents a 10% increase in concrete trucks per hour during construction from the transportation numbers presented in the FEIS. Of course the 10% increase is not considered substantial”*. While the commenter seems to acknowledge that the expected 10% increase is not substantial, the commenter asks, *“how long is this daily 12-hour period going to last”* and *“why is the applicant not making its concrete onsite like most other wind farms?”*

Response: Based on the Revised Project description provided by Desert Claim, construction is expected to last approximately 9 months. Concrete trucks would travel to the site during a small portion of the construction period. Desert Claim estimates an average of 22 concrete truck deliveries per hour (see 09/18/2018 email, Desert Claim response to Data Request 3). This is based on:

- 2,067 one-way concrete truck trips for all concrete deliveries;
- Approximately two foundations could be poured in one day; and
- Two foundations would require 134 truck trips- At the rate of 134 delivery truck trips in a day, there would be approximately 15 days of concrete delivery trips.

The draft SEPA Addendum proposed mitigation requiring the submittal of a Construction Traffic Management Plan that would address increased construction traffic on Smithson Road, which is a new access road for the Revised Project. The Construction Traffic Management Plan would address issues such as limiting construction delivery vehicles during peak travel times and accommodating agricultural road use on Smithson Road. The Construction Traffic Management Plan would contain detailed traffic information which would address concerns raised by the commenter. Details about project delivery trips, timeframe, duration and the concrete source would be among the project elements required in the plan (including an option for on-site concrete batch plant).

No revision to the mitigation measure in the SCA amendment is proposed.

Discussion

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend a SCA:

In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare; and
4. The provisions of chapter 463-72 WAC.

1. Consistency with intention of the original SCA

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the original SCA.²² In general, the intention of every SCA is to grant state authorization to a certificate holder to construct and operate an energy facility that has been determined to be in the interest of the State of Washington because the facility will produce a net benefit after balancing need for the facility against impacts on the broad public interest, including human welfare and environmental stewardship.²³ During its initial siting decision of the Original Project, the Council relied upon its overarching policy and intent in RCW 80.50.010. EFSEC Council Order No. 843, Order Recommending Approval of Site Certification Agreement, states *"The Council has carefully considered the state's need for energy at reasonable cost and the need to minimize environmental impacts."*²⁴ The Council determined that the Original Project would, *"provide the region with significant energy benefits while not resulting in unmitigated, significant adverse environmental impacts. Thus, the proposed Project meets the requirements of applicable law and is consistent with the policy and intent of RCW 80.50."*

In reviewing the SCA amendment request, the Council focused on understanding the proposed changes to the Original Project and any associated impacts identified through its SEPA review. The Council assessed the modified project in conjunction with whether or not the terms and conditions in the SCA Amendment would sufficiently protect *"the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life"* in light of those

²² WAC 463-66-040

²³ Tesoro Savage Vancouver Energy Distribution Terminal, Report to the Governor on Application No. 2013-01, Executive Summary, at 4.

²⁴ EFSEC Council Order No. 843, Order Recommending Approval of Site Certification Agreement for Desert Claim Original Project.

changes.²⁵ The result of EFSEC's SEPA review indicates the Revised Project will primarily reduce adverse environmental impacts, in comparison to the Original Project. Consistency and compliance with SEPA is discussed in subsection (2) (A) below. The SEPA environmental review also indicates that the Revised Project will meet applicable construction and operation standards for energy facilities, as outlined in WAC 463-62.²⁶ Consistency with WAC 463-62 is discussed in Subsection (2) (C) below.

As detailed in the Final SEPA Addendum and Revised staff memo, the Revised Project reconfiguration will not result in potential significant adverse impacts to the natural environment of the site and all adverse impacts that have been identified will be avoided or mitigated, see also subsection (3) below. Mitigation measures included in the SCA Amendment address adverse impacts to Water Resources-Water quality, Environmental health, Noise, Light and Glare, Historic and Cultural Preservation, Transportation, and Environmental monitoring.

The majority of environmental impacts addressed within the FSEIS and in the Final SEPA Addendum are similar and by comparison, most resource impacts identified for the Original and Revised Project have not substantively changed. However, impacts to wetlands and streams were not contemplated as part of the Original Project. In light of these new impacts, Desert Claim is required to comply with the mitigation standards for impacted wetlands, as outlined in WAC 463-62-050.²⁷ The Final SEPA Addendum and Revised SEPA staff memo (Attachments 1 and 2) identify specific mitigation which requires Desert Claim to coordinate, *"with WDFW and Ecology regarding finalizing construction and operating plans to avoid or minimize temporary and permanent impacts on streams and wetlands. Prior to construction a final set of wetland buffers, setbacks, and mitigation standards for permanent and temporary impacts must be determined by EFSEC in consultation with Ecology."* Additionally, Desert Claim is required to develop a Temporary Erosion and Sediment Control Plan (TESC), Stormwater Pollution Prevention Plan (SWPPP), Wetland Compensatory Mitigation Plan, Habitat Mitigation Plan, and Construction Soil Management and Vegetation Plan. These plans are expected to address protection of impaired waterbodies as will the Construction Stormwater General Permit (CSWGP), which is required for discharging construction stormwater off-site.²⁸

The Council carefully considered the results of the new and updated analyses conducted under SEPA, the proposed mitigation measures in the Final SEPA Addendum and Revised SEPA staff

²⁵ RCW 80.50.010

²⁶ Chapter 463-62 WAC outlines EFSEC's Construction and Operation Standards for Energy Facilities under EFSEC's jurisdiction. Performance standards and mitigation requirements are included for: Seismicity, Noise standards, Fish and wildlife, Impact and mitigation standards for wetlands, Water quality, and Air quality.

²⁷ Chapter 463-62-050 WAC outlines EFSEC's construction and operation standards for impacts and mitigation standards for wetlands.

²⁸ Rev. SEPA Staff Memo at 6-8

memo, and construction and operational aspects of the Revised Project. The Council determines that the Revised Project meets the requirements of applicable law and is consistent with the policy and intent of RCW 80.50. The Council finds that within the terms of the SCA amendment, which includes the mitigation measures discussed above and below, the Revised Project will not result in unmitigated significant adverse impacts to the environment, the ecology of the land and its wildlife, and the ecology of the state waters and their aquatic life. None of the proposed facility modifications for the Revised Project or the respective SCA amendment terms and conditions effect the Council's previous determination of approval, with respect to "significant energy benefits" the facility is expected to provide to the region, or to the "state's need for energy at reasonable cost."²⁹

2. Consistency with applicable laws and rules

Under WAC 463-66-040(2), the Council must consider applicable laws and rules, including chapter 80.50 RCW, chapter 43.21C RCW and chapter 197-11 WAC (the State Environmental Policy Act and SEPA rules)³⁰, WAC 463-66-070 through -080, and the construction and operation standards for energy facilities in WAC 463-62³¹.

A. Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC).

The Council is charged with the responsibility to review proposed projects under SEPA, RCW 43.21C and chapter 197-11 WAC. That law provides for the consideration of probable adverse environmental impacts and possible mitigation measures. Pursuant to WAC 463-47-140, EFSEC is the lead agency for environmental review of projects under the jurisdiction of RCW 80.50; the Council Manager is the SEPA responsible official, per WAC 463-47-051.

Desert Claim submitted a SEPA Checklist which EFSEC staff reviewed along with the other materials submitted to EFSEC. The Council invited public comment on the SCA amendment request at a public hearing conducted in April 2018³² in Ellensburg, WA. While the hearing is not required under SEPA rules, the preliminary concerns expressed by the public at the hearing were taken into account by EFSEC staff during the environmental review of the SCA amendment. Concurrently, EFSEC gathered input from other coordinating agencies. Key notes about the environmental resources analyzed and their respective mitigation are documented in

²⁹ EFSEC Council Order No. 843, Order Recommending Approval of Site Certification Agreement for Desert Claim Original Project.

³⁰ Title 197 WAC (Washington Administrative Code) Chapter 11

³¹ Chapter 463-62 WAC EFSEC's Construction and Operation Standards for Energy Facilities under EFSEC's jurisdiction.

³² Chapter 463-66-030 WAC requires the Council to hold one or more public hearing sessions upon the request for Amendment to an SCA. The Council conducted a public hearing for Desert Claim's SCA Amendment request on April 11, 2018.

the Revised SEPA staff memo, dated November 7, 2018 (See attachment 1 to this Resolution). While no new significant adverse impacts for the Revised Project were identified, EFSEC developed supplemental mitigation measures to address adverse impacts concerning water resources-water quality, wetlands and streams, riparian areas, noise, light and glare, and historic and cultural resources, transportation, and environmental monitoring.

Though not required by SEPA, the Council conducted a 15-day public comment period on the draft SEPA Addendum that included the supporting draft SEPA staff memo. This provided the public with an opportunity to comment on the Revised Project, proposed mitigation measures, and associated reports for the SCA Amendment request. Three public comment submissions were received and considered by EFSEC to finalize mitigation measures. Summarized public comments and responses to comments are discussed in detail in the Revised SEPA staff memo and final mitigation measures are documented in the Final SEPA Addendum. In response to comments, EFSEC further revised the mitigation measure requirement concerning historic and cultural resources, which now requires Desert Claim to develop their Cultural Resource and Mitigation Plan in consultation with the Yakama Nation and DAHP.³³ Based on input EFSEC received from the Yakama Nation, EFSEC revised the mitigation measure to improve and clarify which tribal concerns must be considered during Desert Claim's plan development.

In general, SEPA requires an agency to perform a threshold determination to determine whether a proposed action will have a significant adverse effect on the environment (See WAC 197-11-310). For Desert Claim's SCA amendment request for the Revised Project, EFSEC has conducted an environmental analysis of the changes to the proposal following WAC 197-11-600(3)(b) which states:

For Determinations of Nonsignificance (DNSs) and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

- (i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or
- (ii) New information indicating a proposal's probable significant adverse environmental impacts (this includes discovery of misrepresentation or lack of material disclosure). A new threshold determination or SEIS is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analysis in the existing environmental documents.

If EFSEC's SEPA Responsible Official determines that the new information and analysis does not substantially change the analysis of significant impacts and alternatives in the existing environmental document (WAC 197-11-600 (4)(c)), an addendum is appropriate for documenting this review under SEPA.

³³ Rev. SEPA Staff Memo 14-16

The Council's SEPA Responsible Official, Stephen Posner, reviewed and considered the Revised Project and the SCA Amendment request from Desert Claim, submitted on February 26, 2018. The SEPA Responsible Official published the draft SEPA Addendum to the FSEIS for a 15-day public comment period on September 26, 2018. The SEPA Responsible Official considered several sources of information to make a determination with respect to SEPA. Public comments, new information and updated analyses provided by Desert Claim and EFSEC's consultant, EFSEC staff recommendations for proposed mitigation in the draft and revised SEPA staff memo, were all considered by EFSEC's SEPA Responsible Official in order to develop the Final SEPA Addendum, dated November 1, 2018. The SEPA Responsible Official determined that the Revised Project will not result in significant adverse impacts to the natural environment. The Council hereby accepts the determination and acknowledges the measures to be implemented by Desert Claim to modify the Project proposal to further avoid, minimize and mitigate environmental impacts. As described in the preceding SEPA section, the Council took several steps to finalize the SEPA Addendum and comply with SEPA requirements. The Council finds that the Revised Project is consistent and in compliance with chapter 43.21C RCW and chapter 197-11 WAC.

B. Consistency with WAC 463-66-070: Approval by Council Action and -080: Approval by governor.

WAC 463-66-070 and -080 discuss the two options available to the Council for approval of a request for amendment to an EFSEC site certification agreement.

WAC 463-66-080 provides:

"An [SCA] amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor."

On the other hand, WAC 463-66-070 provides:

"An amendment request which does not substantially alter the substance of any provisions of the SCA, or which is determined not to have a significant detrimental effect upon the environment, shall be effective upon approval by the council. Such approval may be in the form of a council resolution."

The Council examined the Revised Project and the revisions to the SCA Amendment request in consideration of whether provisions in the Original Project SCA would be substantially altered. The Original Project is discussed in more detail in the Background discussion above. The Project Description in Article I, Part C of the SCA Amendment has been updated to reflect the changes to the project description and describes modifications such as the installation of taller but fewer turbines. The remaining revisions are primarily associated with the updates and revisions to mitigation formed through SEPA.

The Council considered whether the SCA Amendment request would result in, "*significant detrimental effects*" on the environment. EFSEC relied upon its SEPA review to identify potential significant adverse impacts. If potential significant unavoidable adverse impacts were identified, these would be categorically characterized as "*significant detrimental effects*". The

SEPA Addendum and SEPA staff memo indicate that no significant unavoidable adverse impacts have been identified. New or revised mitigation in the SCA Amendment will adequately addresses impacts for Water resources-water quality, Environmental health, Noise, Light and Glare, Historic and Cultural Preservation, Transportation, and Environmental monitoring. The Council acknowledges that impacts to wetlands and streams were not contemplated or analyzed for the Original Project; however, new mitigation measures have been developed and added to the SCA amendment to address those impacts. Additionally, the requirement for a full-time, onsite environmental monitor is also retained as a condition in the SCA amendment, which will provide further protection for any unanticipated impacts to wetland and streams should any arise during construction.

EFSEC's SEPA review supports the conclusion that the Revised Project will not result in significant detrimental effects as no significant unavoidable adverse impacts to the environment have been identified. Final mitigation measures have been incorporated into the SCA Amendment as terms and conditions appropriate for the Revised Project. Owing to the modifications of the Revised Project combined with the fact that none of the modifications result in significant unavoidable adverse environmental effects, the Council determines that the SCA Amendment does not substantially alter the substance of any provisions of the SCA. The Council finds that the majority of provisions in the SCA for the Original Project remain substantively unchanged, recognizing that some conditions have been supplemented with additional or more refined measures (See Revised SEPA Staff Memo). The Council therefore concludes that this amendment may be approved by Council resolution pursuant to WAC 463-66-070.

C. Consistency with WAC 463-62 Construction and Operation Stands for Energy Facilities.

The purpose of chapter 463-62 WAC implements EFSEC's policy and intent outlined in RCW 80.50.010. Performance standards and mitigation requirements which address seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality are identified in the rule. Within the terms and conditions of the SCA amendment, the Revised Project demonstrates compliance with the construction and operation conditions outlined in WAC 463-62. The Revised Project changes relative to these requirements are detailed in the revised SEPA staff memo and Final SEPA Addendum.

Seismicity:

While seismicity issues are not anticipated for the Revised Project, final facility design plans are required for the Revised Project prior to start of construction.

Noise:

Noise modeling for the Revised Project indicated no exceedances of noise standards.

Fish and wildlife habitat and function:

Fish and wildlife habitat and function are addressed through mitigation measures in the SCA amendment. The SCA amendment will require Desert Claim to coordinate with Ecology and WDFW regarding the finalization of construction and operation plans to avoid and minimize temporary and permanent impacts to streams and wetlands. A Wetland Compensatory Mitigation Plan and Habitat Management Plan are also required.

Wetland Impacts and mitigation:

Ecology and EFSEC reviewed the May 2018 Wetland Delineation and Analysis Report submitted by Desert Claim. As discussed in the Revised SEPA staff memo, permanent impacts to approximately 0.026 acres associated with 13 streams and 0.347 acres associated with 8 wetlands are anticipated from the Revised Project. Desert Claim proposes to conduct required mitigation by enhancing three onsite wetlands and final mitigation would be developed to fully mitigate for any permanent impacts identified, and for the size of buffers based on Best Available Science (BAS). Wetland enhancement may include removing existing cattle grazing uses, installing exclusion fencing, and planting bare areas with plug sized herbaceous vegetation. EFSEC and Ecology also reviewed the credit/debit analysis proposed by Desert Claim and concluded there would be “no net loss” of wetland function within the project area with proposed mitigation.

Water Quality:

Desert Claim is required to obtain a Construction Stormwater General Permit. This permit is a regulatory requirement as part of the SCA. Desert Claim is required to comply with the permit to protect water quality during construction activities. In addition to the permit, Desert Claim is required to prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) which is required for off-site construction stormwater discharges.

Air Quality:

No air emissions are anticipated nor are any air permits required to construct and operate the Revised Project.

Based on the results of the SEPA environmental review conducted by EFSEC and within the terms of the SCA amendment, the Council hereby concludes that the standards for construction and operation in chapter 463-62 WAC are satisfied. Therefore, the Council determines that the ore the Revised Project is consistent with WAC 463-62.

3. Consistency with the public health, safety, and welfare

Under WAC 463-66-040(3) and -050, the Council must consider whether the SCA Amendment request would be consistent with public health, safety, and welfare. In considering whether a proposed amendment is consistent with the public health, safety and welfare, WAC 463-66-050 requires the Council to consider the long-term environmental impacts of the proposal, and further requires a consideration of “*reasonable alternative means by which the purpose of the proposal might be achieved*” along with the “*availability of funding to implement the proposal.*”

A. Public health, safety and welfare:

The majority of activities associated with the installation and operation of the Revised Project will be conducted in the area approved for the Original Project. The Original Project area previously analyzed in EFSEC’s FSEIS has been reduced for the Revised Project with the removal of the 1,271 acres east of Reecer Creek, with wind turbines no longer to be installed in this area. To the West and South of the site of the Original Project, the Revised Project adds 370

acres to the total Project area. Consequently, the overall permanent footprint for the Revised Project has been reduced in comparison to the footprint of the Original Project.³⁴ The Revised Project also reduces the number of turbines originally permitted from 95 to no more than 31. For the 31 turbines to be installed, the maximum height of the turbines increased from 410 feet (ft.) to a max height of 492 ft. The distance between the turbines and residences originally permitted for the Original Project has been increased and turbines in the Revised Project will no longer be located within 2,500 feet of any residence.

Due to the reconfiguration of the turbines and increased turbine height, EFSEC's consultant conducted an independent Visual Effects Assessment to determine impacts to visual and aesthetics. The assessment considered factors such as the reconfiguration design, the reduced number of turbines to be installed, and the increased height of the turbines. The results of the assessment indicated no significant impacts to visual and aesthetics.

Noise modeling for the Revised Project was conducted which does not show any exceedances of noise standards; however, the SCA conditions have been supplemented to include a new requirement for a complaint-based noise monitoring and response plan, the intent is to address noise complaints should any arise during facility operations.³⁵

Mitigation measures to address shadow flicker were retained for the Revised Project. While additional mitigation measures have been developed to address certain aspects of the Revised Project, none of these changes substantially alter the substance of the SCA or result in any significant or new detrimental effects on the public health, safety or welfare. The Revised Project continues to implement the purpose of the Original Project, though with a smaller energy output, to address the pressing need for energy facilities, and will provide additional abundant affordable renewable power. The Revised Project will not have potential significant adverse impacts on public health and safety. Consequently, as supported by the documentation in the Final SEPA Addendum and the Amended SCA, the Revised Project is consistent with the public health, safety and welfare.

B. Environmental impacts:

Environmental impacts related to public health, safety and welfare have been addressed either in the FSEIS or in the Final SEPA Addendum. For the reasons set forth above and below related to SEPA compliance and EFSEC's environmental review, the Revised Project will not result in significant unavoidable adverse environmental impacts. Desert Claim will continue to abide by all the terms and conditions of the Amended SCA.

EFSEC's SEPA review relied on the FSEIS analysis combined with information gathered for the Final SEPA Addendum. The FSEIS analyzed impacts to water resources and water quality, plants and animals, historic and cultural resources, visual and aesthetics, environmental health,

³⁴ Amend. Req. at 6.

³⁵ Rev. SEPA Staff Memo at 10-11.

and transportation. For water resources, Desert Claim is required to obtain a Construction Stormwater General Permit (CSWGP). This permit is a regulatory requirement and is part of the SCA approval. Desert Claim is required to comply with the permit to protect water quality during construction activities.

For new impacts to wetlands and streams, which were not previously analyzed for the Original Project, the SCA amendment requires Desert Claim to coordinate with Ecology and WDFW agencies regarding the finalization of construction and operation plans to further avoid and minimize temporary and permanent impacts to streams and wetlands. A Wetland Compensatory Mitigation Plan and Habitat Management Plan are also required.³⁶ Ecology and EFSEC reviewed the May 2018 Wetland Delineation and Analysis Report submitted by Desert Claim. As discussed in the Revised SEPA staff memo, permanent impacts to approximately 0.026 acres associated with 13 streams and 0.347 acres associated with 8 wetlands are anticipated from the Revised Project. Desert Claim proposes to conduct required mitigation by enhancing three onsite wetlands and final mitigation would be developed to fully mitigate for any permanent impacts identified, and for the size of buffers based on Best Available Science (BAS). Wetland enhancement may include removing existing cattle grazing uses, installing exclusion fencing, and planting bare areas with plug sized herbaceous vegetation. EFSEC and Ecology also reviewed the credit/debit analysis proposed by Desert Claim and concluded there would be “no net loss” of wetland function within the project area with proposed mitigation.³⁷

To determine impacts to visual and aesthetics due to installation of fewer but taller turbines, EFSEC conducted an independent effects assessment.³⁸ That assessment determined that no new or increased adverse environmental impacts to visual and aesthetics are expected. Furthermore, mitigation for shadow flicker from the wind turbines remains in the SCA amendment to address potential issues should any arise during operation. The Revised Project is not expected to have short-term or long-term significant adverse impacts to the environment, consequently, as documented in the SEPA Addendum and the Amended SCA, the proposed amendment is consistent with the public health, safety and welfare.

C. Reasonable alternatives means to achieve the purpose of the proposal; Funding to implement the proposal:

Alternatives to the Original Project as it was presented to the County were considered in the FEIS. The Revised Project does not change those considerations and related findings and conclusions. Desert Claim has conducted environmental surveys over the course of reconfiguring its proposal; consequently it is uniquely familiar with the terrain and habitat of the site where the Revised Project is to be located. Desert Claim intends to lease 2,625.8 acres from

³⁶ Amend. SCA, Article IV.E.

³⁷ Ecology letter to EFSEC, dated September 07, 2018.

³⁸ Golder Associates, Inc. Visual Effects Assessment for Desert Claim Wind Power Project, dated September 7, 2018.

four private land owners, with 636.7 acres leased from the Washington Department of Natural Resources, and 1,130.5 acres owned by an affiliate of Desert Claim.³⁹ Five Bonneville Power Administration (BPA) owned transmission lines and Puget Sound Energy's Rocky Reach-Cascade 230 Kilovolt (kV) line are located in the Revised Project area. According to Desert Claim, these regional transmission lines have been identified as options for interconnecting the Revised Project to the regional transmission network.⁴⁰ Due to the unique ability of Desert Claim to develop the Revised Project area and its location that provides access for transmission interconnection, the Council finds there is no reasonable alternative means to efficiently achieve the objectives of the amended proposal—the production of renewable energy available to Desert Claim on the Revised Project site. Based on Desert Claim's written request that EFSEC amend its SCA, the Council concludes that Desert Claim has the capability to fund and complete the construction of the amended Project reconfiguration.

4. Consistency with WAC 463-72

WAC 463-72-020 provides:

Site restoration or preservation plans shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues, to include provisions for funding or bonding and monitoring. Specific plans shall:

(1) Describe the process and/or assumptions used to evaluate the options considered and the measures selected to restore or preserve the site to protect the environment and all segments of the public against risks and dangers resulting from the site operations and activities.

(2) Address provisions for funding or bonding to meet restoration or preservation costs. Financial assurance shall be provided to ensure that funding is available and sufficient for site restoration or preservation. Such financial assurances shall include evidence of pollution liability insurance coverage in an amount justified for the project, and a site closure bond, sinking fund, or other financial instrument or security in an amount justified in the initial site restoration plan.

(3) Address the scope of monitoring to be conducted during site restoration or preservation and possible continued monitoring to ensure site restoration is achieved.

Compliance with WAC 463-72 is addressed in the SCA amendment under site restoration, which requires Desert Claim to develop and prepare an Initial Site Restoration Plan (ISRP) in consultation with WDFW, and to submit the plan for EFSEC approval.⁴¹ The objective of the

³⁹ Amend. Req., Revised Project description, Section 2.3 Land Ownership at 36.

⁴⁰ Amend. Req., Revised Project description, Section 3.2.3 Transmission Interconnections at 10.

⁴¹ Amended SCA, Article III. H Site Restoration at 10.

ISRP is to conduct restoration of the site to “approximate pre-Project condition or better”.⁴² Based on its previous findings that the proposed amendment has no significant adverse environmental impacts and no significant adverse impacts on public health, safety, and welfare; and second, that it does not substantially alter the substance of Desert Claim’s legal responsibilities under the SCA, the Council concludes that this amendment is consistent pursuant to WAC 463-72.

Conclusion

The Council concludes as follows: (1) the proposed SCA Amendment is consistent with the intent of the Original Project SCA; (2) the proposed SCA Amendment of Desert Claim’s SCA to allow reconfiguration of the Project as-proposed is consistent with the public health, safety, and welfare; (3) the proposed SCA Amendment is consistent with all applicable laws (including SEPA); and (4) the proposed amendment is consistent with the purpose pursuant to WAC 463-72. The Council hereby determines that it is appropriate to approve Amendment 1 to the Desert Claim Wind Power Project SCA, necessary to reflect the proposed changes to the Project; *Provided*, Desert Claim Wind Power LLC, shall continue to implement mitigation measures identified in the SCA, as amended by this decision.

⁴² Amended SCA, Article IV.D Initial Site Restoration Plan at 14.

RESOLUTION

For the foregoing reasons, the Council grants Desert Claim's request to amend its SCA to allow Desert Claim to construct and operate the Revised Project. The Council's approval is memorialized in the attached SCA Amendment.

- The proposed amendment to the SCA for the reconfiguration of the Project and its boundaries, reducing the Project area to approximately 4,400 acres, by removal of 1,271 acres located east of Reecer Creek and the addition of approximately 370 acres to the west and south of the Project area.
- Primary site access during construction and operation will be changed to Smithson Road, for internal access roads.
- The Project will include approximately twenty (20) miles of internal roads for access to the wind turbine generators and other Project facilities.
- Installation of wind turbine generators for a maximum of thirty-one (31), 3-bladed wind turbines on tubular steel towers, not to exceed a maximum height (hub height plus blade tip height) of 150 meters (492 feet), with a capacity ranging from 2.0 to 4.2 megawatts (MW). The total capacity for the reconfigured Project will not exceed 100 MW. Wind turbines will be equipped with turbine control, safety and braking systems, and will be interconnected to a central Supervisory Control and Data Acquisition (SCADA) system.
- Turbine setbacks shall meet the following setback requirements:
 - Setback from occupied residences = 2,500 feet
 - Setback from external Project Area boundaries = 1.25 x tip height
 - Setback from road and transmission line rights of way = 1.25 x tip height
 - Setback from barns and buildings = tip height
- All applicable SCA conditions and mitigation measures apply to the construction and operation of the Facility. Desert Claim Wind Power LLC, shall comply with all additional mitigation measures as set forth in the SCA, as amended.
- The SCA changes are shown in the Amended SCA.
- The mitigation measures and supporting SEPA review notes are set out in attachment 1 and attachment 2 to this resolution.

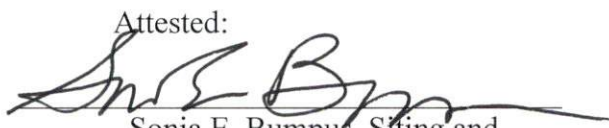
Appeals:

A request for judicial review of the SCA amendment for the Revised Project is subject to the requirements of the Administrative Procedures Act, Chapter 34.05 RCW.

DATED at Olympia, Washington and effective on November ___, 2018

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: 
Kathleen Drew, EFSEC Chair

Attested: 
Sonia E. Bumpus, Siting and
Compliance Manager

Attachments: 1. EFSEC SEPA Addendum to the FSEIS
2. EFSEC SEPA revised staff memorandum to Stephen Posner