

# LAW OFFICES OF J. RICHARD ARAMBURU PLLC

705 Second Avenue, Suite 1300  
Seattle, WA 98104-1797  
Telephone 206.625.9515  
Facsimile 206.682.1376

[www.aramburulaw.com](http://www.aramburulaw.com)  
[www.aramburu-eustis.com](http://www.aramburu-eustis.com)

July 14, 2025

Energy Facility Site Evaluation Council  
PO Box 43172

Olympia, WA 98503-3172

By Delivery to Email: [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov); [stacey.brewster@utc.wa.gov](mailto:stacey.brewster@utc.wa.gov);  
[elev461@ECY.WA.GOV](mailto:elev461@ECY.WA.GOV); [Michael.Livingston@dfw.wa.gov](mailto:Michael.Livingston@dfw.wa.gov);  
[Nathan.Pamplin@dfw.wa.gov](mailto:Nathan.Pamplin@dfw.wa.gov); [elizabeth.osborne@commerce.wa.gov](mailto:elizabeth.osborne@commerce.wa.gov);  
[LEONARD.YOUNG@dnr.wa.gov](mailto:LEONARD.YOUNG@dnr.wa.gov); [eddyboy4511@gmail.com](mailto:eddyboy4511@gmail.com)

Dear Councilmembers:

This office represents Tri-Cities C.A.R.E.S. ("TCC"), a public interest organization representing community and business interests in the Tri-Cities community. TCC has been actively involved in the proposal to construct the Horse Heaven Wind Project, a project proposing 222 wind turbines stretching over 25 miles of the ridgelines of the Horse Heaven Hills in southern Benton County. TCC was an active participant in the adjudication for the project and has challenged the decision of the Governor to approve the proposal following judicial review provisions of EFSEC's governing statute, RCW chap. 80.50. TCC continues its active involvement in project review, including the filing of an Objection and Addendum to that Objection concerning procedures and organization of the PTAG for the Horse Heaven project.

In addition, TCC also has provided comments in response to the notice for amendment of EFSEC Policy #16-01. These comments are found in the Council record.

I write today in response to a notice of opportunity for further comments on Policy #16-01 filed late in the afternoon of July 10, 2025, which set a deadline for comment of 11:59 pm on July 14, 2025. Three documents were included in that notice, a staff memo, a redline/strikeout version of the proposed policy revision and a clean copy of the revision. These will be referenced herein as the July 10 Materials. TCC incorporates its prior comments on Policy #16-01 filed on June 20, 2025.

TCC opposes the Proposed Policy, as revised, and urges the Council to reject it. The Proposed Policy unlawfully delegates to the Council Director decision-making statutorily reserved to the Council. The Policy removes final decisions on the siting of controversial projects from the appointed Council Members and it conflicts with the long

established SEPA and adjudication processes. It also continues the unfortunate recent policy of council staff to keep decision-making secret, eliminating public comment and preventing the creation of an administrative record for further review by either this Council or the Courts.

At the outset, TCC objects to the extremely short notice for comment on this important and controversial Policy. Only four days are allowed for comment, two of which are over a mid-summer weekend. Several commenters objected to the six-day comment period previously allowed, but here EFSEC's staff response was to provide an even shorter time period in the most recent notice. No reason is provided by staff as to why these comment periods are so truncated nor any reason why there is such a hurry to update a nine year old policy.

Our particular objections to the revised material, in addition to our prior comments, are as follows.

First, the July 10 Materials indicate they were prepared by "Staff" but are entirely anonymous. Given the lack of any direction from the EFSEC Councilmembers themselves, it appears the perceived need to amend Policy #16-01 comes from Staff. Given Ms. Bumpus, as the EFSEC Director, is responsible for "staff," we will assume she is the moving force behind the request to amend the Policy. Essentially, Ms. Bumpus is attempting to elevate herself to decision maker by proposing this amendment.

Second, in the particular structure of the EFSEC statute, making Ms. Bumpus the decision-maker is particularly problematic. Under RCW 80.50.085(1): " After the council has received a site application, council staff shall assist applicants in identifying issues presented by the application." Thus Staff provides assistance to applicants, but would now become a decision maker. Not only would there be ex parte communications, there would be no record made as to materials or communication provided to staff and the Director. Separation of the staff function and decision making is critical to appropriate and public decision making.

Third, for the first time in this process, Director Bumpus attempts to provide legal authority for her proposal to revise the proposed Policy. This is apparently in response to materials provided in TCC's objection to her actions regarding the Horse Heaven PTAG. TCC attaches its Objection, which at page 8 provided applicable Washington authority, taken from a petition for reconsideration filed by Scout, the Horse Heaven applicant, concerning delegation.

See *Application of Puget Sound Pilots Ass'n*, 63 Wn.2d 142, 145, 385 P.2d 711(1963) ("It is a general principle of law ... that a delegated power may not be further delegated by the person to whom such power is delegated" (quoting 42

Am. Jur. Public Administrative Law § 73 (year)); *Wash. Fed'n of State Emps. v. State Dep't of Gen. Admin.*, 152 Wn. App. 368, 385, 216 P.3d 1061 (2009) (General Administration Department engaged in improper delegation by delegating to other agencies its task to regulate governmental bidding process).

In response, Ms. Bumpus cites completely inapplicable case law as follows:

Agency heads are presumed to have the authority to delegate decision making to subordinates unless the agency's enabling statute indicates it is forbidden. See *Jackstadt v. Washington State Patrol*, 96 Wash.App. 501, 512-13 (1999); *Kobach v. U.S. Election Assistance Com'n*, 772 F.3d 1183, 1190-91 (10th Cir. 2014).

(Emphasis supplied). She says that the cases address "delegation" but in fact both cases deal with "subdelegation" of authority, in particular as applied to limited circumstances in which there are individuals acting as decision makers. Thus in *Jackstadt*, Washington statutes gave the Chief of the WSP authority to make final decisions on employment of officers. In that case, the Chief had a conflict of interest and assigned the responsibility to make the decision to the assistant chief. The court affirmed her decision under the particular facts of that case, finding the subdelegation in that case was appropriate. The same is true of the *Kobach* case, which involved subdelegation from a federal official. However, the EFSEC statute has a very different structure requiring the EFSEC Council to make decisions while the role of Director Bumpus is to manage staff. It is hoped that the Council's legal advisors will correct this miscited case law.

Fourth, Ms. Bumpus now claims she should be given authority to decide whether the full council should make decisions on matters delegated to her. In a revision to the prior version of Policy #16-01, she states:

For plans subject to EFSEC Director approval, the Director shall consider whether any individual plan should be forwarded to the Council for review and, at the Council's discretion, Council approval. Review and approval by the Council may be appropriate where resolution of the plan details involves a high degree of policy discretion and may substantially affect the interests of third parties.

(Emphasis in original). The added language is underlined and vests substantial authority in Ms. Bumpus to be the gatekeeper for the Council. These decisions would be made in secret and without notice or opportunity to comment for the public. However, because of Ms. Bumpus' obligation to "assist applicants" there will be full opportunity for applicants to have access to and influence her decision making on all issues, again without a record of what was received or reviewed.

As described in the Objection and First Addendum to Objection attached hereto, Ms. Bumpus preemptively acted on PTAG issues without seeking amendments to Policy #16-01 in the Horse Heaven matter; the results of this preemptive "delegation" were manifestly improper, particularly biased toward the applicant. Indeed, we note that, to date, there have been no comments by EFSEC applicants on the proposed amendment to Policy #16-01, indicating access to Council Staff and Ms. Bumpus provides their influence in the process.

Far from being a housekeeping or ministerial matter, in the Horse Heaven case, the PTAG is to determine the existence and/or location of more than 100 turbines.

Fifth, and related to the foregoing, the revised proposed Policy states:

Approval of plans by the EFSEC Director may only occur after EFSEC staff and contractors or subject matter experts, which may include state and local agencies and tribal governments, have identified and the certificate holder has addressed areas of concern

Ms. Bumpus has carefully excluded any members of the public from participation in her "approval process" contrary to the recent legislative mandate to EFSEC that:

6) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay while also encouraging meaningful public comment and participation in energy facility decisions.

(Emphasis supplied). Far from "encouraging meaningful public comment and participation," the proposed policy excludes the public from these important decisions, leaving to the Director's discretion whether the "certificate holder has addressed areas of concern."

In summary, for the reasons stated herein, and in our prior submissions, the Council should reject the proposed amendment to Policy #16-01.

Sincerely,

/s/ J. Richard Aramburu

J. Richard Aramburu

JRA:cc  
cc: Clients

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITING EVALUATION COUNCIL

In the Matter of the Application of:

Scout Clean Energy, LLC, for  
Horse Heaven Wind Farm, LLC,  
Applicant.

DOCKET NO. EF-210011

OBJECTION BY INTERVENOR  
TRI-CITIES C.A.R.E.S. TO PTAG  
ESTABLISHMENT,  
OPERATIONS, MEMBERSHIP  
AND MEETINGS

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OBJECTION BY INTERVENOR TRI-CITIES C.A.R.E.S.  
TO PTAG ESTABLISHMENT, OPERATIONS,  
MEMBERSHIP AND MEETINGS - i

LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com

1 **I. NATURE OF OBJECTION.**

2 Intervenor Tri-Cities C.A.R.E.S. ("TCC") files this Objection to the establishment,  
3 membership and continued operation of the Pre-Operational Technical Advisory Group  
4 ("PTAG") established by EFSEC and the applicant Scout Clean Energy ("Scout").

5 In this Objection, TCC requests that EFSEC immediately dissolve the PTAG and  
6 assume all responsibilities delegated to it. The specific bases for this Objection and  
7 request are specified herein.

8 **II. DOCUMENTATION RELIED UPON.**

9 In making this Objection, TCC relies on the administrative record prepared to  
10 date in this matter and specifically on the following documents:

- 11 A. Applicant Scout Clean Energy's Petition for Reconsideration of the  
12 Council's Revised Recommendation to the Governor Filed on October 7,  
13 2024 (Attachment A);
- 14 B. Pre-Operational Technical Advisory Group Rules of Procedure  
15 (ROP) posted on the EFSEC website February 19, 2025 (Attachment B);
- 16 C. "Horse Heaven PTAG Participants" posted on the EFSEC Website on  
17 March 3, 2025 (Attachment C);
- 18 D. Email string between TCC and EFSEC Staff (November 12, 2024 to  
19 March 5, 2025) (Attachment D);
- 20 E. PTAG Agendas posted on EFSEC website on March 21, 2025  
21 (Attachment E).

22 **III. BACKGROUND AND INTRODUCTION.**

23 This matter concerns an application by Scout to construct a large wind turbine  
24 project in Washington. It is proposed to have as many as 222 turbines, each 500 feet  
25 tall,<sup>1</sup> installed over a 25-mile long path that would be 4 to 6 miles wide with an overall  
26 \_\_\_\_\_

27 <sup>1</sup> An alternative proposal would have 149 turbines, 671 feet high over the same route and path.

1 area of more than 112 square miles. The proposal would also include 100 miles of dirt  
2 roads, 8-1/2 square miles of solar arrays, and 3 large lithium ion battery storage  
3 facilities, and would be placed along the ridgelines of the Horse Heaven Hills in Benton  
4 County, in close proximity to numerous residential communities in Tri-Cities.

5 Tri-Cities C.A.R.E.S. (TCC), a local citizens group, was particularly concerned  
6 with the visual and esthetic impacts of the proposed project on the 300,000 residents of  
7 the adjacent Tri-Cities area. After multiple comments on the project, TCC moved to  
8 intervene in the adjudication convened by EFSEC and was approved as an intervenor  
9 on March 9, 2023.

10 Following a lengthy adjudication, the Council issued a Draft Site Certification  
11 Agreement (SCA) on April 1, 2024.<sup>2</sup> This draft included provisions for creation of what  
12 was called a "Pre-Operational Technical Advisory Group" ("PTAG") to resolve the  
13 impacts of the project on wildlife and decide whether turbines should be relocated or  
14 eliminated because of these impacts. Shortly after, Order 892, "Adjudicative Order  
15 Resolving Disputed Issues," was issued on April 17, 2024,

16 On May 20, 2024, Scout filed "Applicant Scout Clean Energy's Petition for  
17 Reconsideration of the Council's Recommendation To the Governor" (PFR#1). At page  
18 39, Scout argued:

19 the Council is shirking its primary duty to actually site the Project, instead  
20 impermissibly delegating that key decision to the PTAG and to WDFW by blindly  
21 adopting inaccurate PHS data. The current iteration of Spec-5, with its reliance  
22 on WDFW-administered PHS data and absence of any nest viability standards  
23 for solar, BESS, and secondary component siting, precludes any reliable  
24 conclusions about where those components are in fact allowed. Scout's  
25 preliminary assessments suggest the recommendation eliminates about half the  
26 generating infrastructure, but the exact effect is unclear until after the PTAG is  
27 convened and actually implements Spec-5.

28 Scout complained that the mitigation measures would reduce generation capacity

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29 <sup>2</sup> This and other references to filings at EFSEC are found in the "Documents" section of the EFSEC  
30 website under Horse Heaven Wind Farm.

1 “by more than half.” PFR#1, page 13. Without waiting for responses to Scout’s  
2 Reconsideration arguments, the Governor issued his decision on the project on May 23,  
3 2024.

4 On August 19, 2024, EFSEC issued a second draft SCA. On August 25, 2025,  
5 Scout objected by letter to certain portions of the revised draft SCA, including legal  
6 challenges and concluding that: “The Council must remove the PTAG’s authority to  
7 make substantive conclusions impacting viability determinations and thus final project  
8 design.” Page 4 (underline and italics in original).

9 On September 17, 2024, the Council issued a letter with “Subject: Horse Heaven  
10 Wind Farm Project – Summary of Proposed SCA Changes and Council  
11 Reconsideration,” together with the revised SCA on the same date. The Revised SCA  
12 incorporated the identical provisions for the PTAG found in the original draft SCA. At no  
13 time did the Council reconsider or rescind Order #892.

14 On October 7, 2025, Scout filed its “Applicant Scout Clean Energy’s Petition for  
15 Reconsideration of the Council’s Revised Recommendation to the Governor”  
16 (hereinafter “Scout PFR#2”). See Attachment A. This was the second specific objection  
17 to the use of the PTAG process in decision making.

18 On October 9, 2024, Scout filed a Notice of Withdrawal of its just-filed second  
19 Petition for Reconsideration because: “Scout wishes to avoid any further delay its  
20 petition would cause . . .”. Page 1. However, Scout continued its objection to the PTAG  
21 process: “Scout maintains that several key aspects of the Council’s revised  
22 recommended Site Certificate Agreement (“SCA”) are problematic.” Page 1.

23 In a footnote to this sentence, Scout’s lawyers said:

24 <sup>1</sup> Scout has provided extensive comment on the record about these problematic  
25 aspects of the SCA and revised SCA. Withdrawal of this petition does not waive  
26 those arguments in any subsequent judicial review of the revised SCA. See  
RCW 34.05.470(5).

27 Following the approval of the revised SCA by the then-Governor, on November



1 25, 2024, TCC filed a Petition for Review of the Governor's decision in Thurston County  
2 Superior Court under Cause Number 24-2-04077-34. TCC challenged the creation of  
3 the PTAG in its petition. Separate petitions were filed by the other intervenors in the  
4 case, the Yakama Nation and Benton County, also objecting to the PTAG process.<sup>3</sup>  
5 These separate actions have been consolidated for hearing under this cause number  
6 by the Superior Court, but EFSEC has not yet submitted its administrative record and  
7 no trial date has been set.

8 Following the Governor's decision, TCC began to request information concerning  
9 the operation of the PTAG, its membership, rules, meetings and other matters from  
10 EFSEC staff. The email string of these communications is found at Attachment D  
11 hereto. As shown, EFSEC staff have ceased communications with TCC and have not  
12 responded to emails since February 28, 2025.

13 From information available to TCC as of the writing of this Objection, this much is  
14 currently known about developing the PTAG process:

15 •February 19, 2025: PTAG Rules of Procedure were posted on the EFSEC  
16 website. The identity of the parties responsible for their preparation was not disclosed,  
17 though it is assumed that both EFSEC staff and Scout were the authors.

18 •February 28, 2025. Apparently the first meeting of PTAG was held. The  
19 agenda for that meeting was only posted on the EFSEC website three weeks later, on  
20 March 21, 2025. See Attachment E. The agenda shows the "lead" for PTAG meetings  
21 and discussions was either Scout or its principal consultant Tetra Tech. There is no  
22 reference in the Agenda to a second meeting.

23 • March 3, 2025. The Horse Heaven PTAG Participants list is posted. How they  
24 were selected and by whom is not disclosed. Again it is assumed that Scout and  
25 EFSEC had some (undisclosed) role in the selection process. Though we understand  
26

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27 <sup>3</sup> No Petition for Review of the then-Governor's decision was filed by Scout.

1 that there may be additional or different participants in PTAG proceedings since the  
2 March 3<sup>rd</sup> disclosure, they have not been identified.

3       • March 13, 2025. Apparently the second meeting of PTAG was held. The  
4 agenda for that meeting was only posted on the EFSEC website on March 21, 2025.  
5 That agenda did not include review or approval of any minutes or meetings. The “Lead”  
6 for all discussions was Troy Rahmig, from Scout’s consultant Tetra Tech. A 4-hour “site  
7 tour” was scheduled for the afternoon, lead by Scout’s long-time project manager, Dave  
8 Kobus, a witness for his employer during the adjudicative hearing. No map of the  
9 route, the agenda for the site visit, or listing of participants is disclosed, including  
10 whether handouts, maps or other written materials were handed out.

11       • March 21, 2025. Apparently a third meeting was held. The agenda for that  
12 meeting was posted on the EFSEC website on the same day of the meeting. Again, no  
13 roster or list of participants was provided.<sup>4</sup>

14       The “Agenda” for each of the meetings includes references at the bottom of the  
15 first page to Scout’s two project websites, <https://scoutcleanenergy.com> and  
16 <https://horseheavencleanenergy.com>. These websites contain promotional materials  
17 for Scout’s project and are apparently placed on the agenda so they will be read by the  
18 PTAG participants.

19 //

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25       <sup>4</sup> The ROP provides that agendas: “will be provided to PTAG members at least 14 days prior to the  
26 meeting where the information will be discussed, along with any meeting material need to conduct  
27 business.” It appears that the agendas were not provided 14 days before the scheduled meeting. In  
addition, the agendas posted on the EFSEC website do not include “any meeting material needed to  
conduct the meeting.”

1 **IV. GROUNDS FOR OBJECTION TO PTAG ESTABLISHMENT, MEMBERSHIP**  
2 **AND CONTINUED OPERATION.**

3 The basis and grounds for this Objection are set forth below. TCC submits that  
4 each objection is sufficient grounds for disbanding the PTAG, with the Council  
5 undertaking its responsibilities.

6 A. UNLAWFUL DELEGATION OF AUTHORITY.

7 EFSEC is an agency of the state of Washington and operates under the  
8 Washington Administrative Procedures Act, Chapter 35.04 RCW.<sup>5</sup> *Residents Opposed*  
9 *to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 304-05, 197 P.3d 1153 (2008) (the  
10 “ROKT” case); RCW 34.05.570. EFSEC’s operating regulations are found in Title 463  
11 Washington Administrative Code (WAC).

12 WAC 463-06-050, concerning EFSEC operations, states:

13 (1) In general, the council reaches major policy and operational decisions  
14 through formal council action at meetings held pursuant to the Open Public  
15 Meetings Act, the state Administrative Procedure Act, or other applicable laws.

16 WAC 463-20-020 states: “Administrative hearings shall be governed by chapter 34.05  
17 RCW and this chapter.” Under WAC 463-30-020:

18 The council is the presiding officer at adjudicative proceedings pursuant to  
19 chapters 34.05 and 80.50 RCW. The council may utilize an administrative law  
20 judge provided by the office of administrative hearings to facilitate conduct of  
21 administrative hearings and all matters related thereto.

22 The rules of evidence apply to all EFSEC adjudicative proceedings. WAC 463-30-310  
23 and RCW 34.05.452. These rules include the requirement that: “(3) All testimony of  
24 parties and witnesses shall be made under oath or affirmation.”

25 Ex parte communications are also not permitted under RCW 34.05.455. WAC  
26 463-18-050(1) provides that: “(1) Other than executive sessions, the council's meetings  
27 are open to the public...”

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28 <sup>5</sup> The Council is also an agency under the terms of the State Environmental Policy Act (“SEPA”), RCW  
ch. 43.21C; see WAC ch. 463-47.

1 As Scout argued at page 8 of its PFR#2 filed on October 7, 2024:

2 When administering its siting process, the Council must “review and consider  
3 comments received.” RCW 80.50.100(1)(b). The Council’s recommendation to  
the Governor must “dispos[e] of all contested issues.” WAC 463-30-320(6).

4 Because the PTAG recommendation is intended to decide the location or existence of  
5 more than half the proposed turbines, the Governor’s recommendation did not dispose  
6 of all contested issues, but left them for later determination.

7 As stated in Scout’s PFR#2, “Washington law prohibits an agency from  
8 delegating its discretionary, or quasi-judicial authority, like the authority to make  
9 substantive decisions over Project components and exclusion zone locations.” See  
10 Scout PFR#2, page 15, lines 3-5. Attachment A. Footnotes 49-51 on page 15 provide  
11 caselaw authority for Scout’s legal position, including this from Footnote 49:

12 See Application of *Puget Sound Pilots Ass’n*, 63 Wn.2d 142, 145, 385 P.2d 711  
13 (1963) (“It is a general principle of law ... that a delegated power may not be  
14 further delegated by the person to whom such power is delegated”) (quoting 42  
15 Am. Jur. Public Administrative Law § 73 (year)); *Wash. Fed’n of State Emps. v.*  
*State Dep’t of Gen. Admin.*, 152 Wn. App. 368, 385, 216 P.3d 1061 (2009)  
(General Administration Department engaged in improper delegation by  
delegating to other agencies its task to regulate governmental bidding process).

16 The PTAG Rules of Procedure provide that a “Facilitator”. . . “will then work to  
17 develop a report on the PTAG’s deliberations for consideration (the “Facilitator Report”).  
18 See page 4.<sup>6</sup> This report will be provided to EFSEC for review.” *Id.*

19 TCC agrees with and adopts Scout’s legal position in Scout PFR#2 and  
20 assertion that EFSEC’s decision to delegate project decisions violates settled caselaw.  
21 Apparently EFSEC contends that the authority given the PTAG does not violate  
22 delegation requirements because it is making “recommendations.” TCC agrees with  
23 applicant Scout that as a practical matter, given its authority and operation, the PTAG  
24 will be making the decisions on existence and location of individual wind turbines:

25 Far more likely is that the Council will summarily accept the technical findings of

26  
27 <sup>6</sup> The ROP provides that the “facilitator” will be selected by Scout.

1 the PTAG without meaningful review or an understanding of the gravity of that  
2 review, thus shirking its substantive siting duties under the EFSLA.<sup>7</sup>

3 Scout PFR#2 at 15, lines 12-15. TCC also agrees that the PTAG process will effectively  
4 displace EFSEC decision-making:

5 EFSEC will then have to consider and approve *each* nest determination before  
6 the applicant can even start developing the final project design. That final  
7 design, too, must be reviewed by the PTAG before it goes to EFSEC for  
8 approval. Practically speaking, this approach renders the entire revised SCA  
9 meaningless because Scout cannot determine where or how much of the Project  
10 can be built.

11 *Id.* at 14 (emphasis in original).

12 Moreover, the ROP creates a second level of improper delegation. At pages 2-3,  
13 the ROP discusses the role of EFSEC Staff in decision-making:

14 As detailed below, once a Facilitator Report is finalized, the Certificate Holder will  
15 consider the PTAG recommendations and prepare a final proposal for EFSEC  
16 staff consideration. EFSEC staff will consider the proposal and (1) approve or  
17 reject the proposal for revision, or (2) recommend that the proposal or an aspect  
18 of the proposal be considered and approved by the standing Councilmembers.

19 This portion of the ROP gives staff the authority to “approve or reject” revisions made  
20 by the PTAG, with just an *option* that the proposal be considered by the full Council.  
21 Significantly, the “proposal for revision” may well change the location or existence of  
22 more than half the turbines requested by Scout. Such delegation to staff is entirely  
23 inconsistent with the Administrative Procedures Act and displaces the statutory  
24 obligation of the Council to act.

25 Though reserving the right to raise the delegation issues during judicial review, to  
26 date Scout has not challenged PTAG’s operation or proceedings. Why? As will be  
27 explained below, Scout has effectively commandeered the PTAG process by dictating  
28 (with unknown assistance from EFSEC) Rules of Procedure favorable to them and  
29 installing PTAG members who, though wholly lacking in wildlife background, are wholly  
30 supportive of Scout’s project.

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31 <sup>7</sup> EFSLA is the Energy Facility Site Locations Act.

1 On its face, PTAG's process, as it is currently formulated, violates long  
2 established rules against delegation of authority. To compound the error, EFSEC  
3 delegates its authority to a "group" under the control of the applicant.

4 EFSEC is requested to immediately disband the PTAG and assume all  
5 responsibilities delegated to it.

6 B. INAPPROPRIATE ADOPTION OF PTAG RULES OF PROCEDURE.

7 As noted above, EFSEC is an agency of the state of Washington and as such is  
8 authorized to adopt rules, which are defined as follows:

9 (16) "Rule" means any agency order, directive, or regulation of general  
10 applicability (a) the violation of which subjects a person to a penalty or  
11 administrative sanction; (b) which establishes, alters, or revokes any procedure,  
12 practice, or requirement relating to agency hearings; (c) which establishes,  
13 alters, or revokes any qualification or requirement relating to the enjoyment of  
14 benefits or privileges conferred by law; (d) which establishes, alters, or revokes  
15 any qualifications or standards for the issuance, suspension, or revocation of  
16 licenses to pursue any commercial activity, trade, or profession; or (e) which  
17 establishes, alters, or revokes any mandatory standards for any product or  
18 material which must be met before distribution or sale.

19 RCW 34.05.010 (emphasis added). An SCA issued by EFSEC is a "license" under the  
20 APA: "(a) "License" means a franchise, permit, certification, approval, registration,  
21 charter, or similar form of authorization required by law, . . . . RCW 34.05.010(9).

22 The Rules of Procedure adopted by EFSEC and PTAG are "rules" within the  
23 meaning of the APA, relating to the standards for issuance of a license. PTAG  
24 decisions are not vague policy or administrative matters: PTAG will reach decisions on  
25 whether dozens of specific wind turbines will be allowed, and where they might be.

26 However, the PTAG Rules of Procedure have not been adopted consistent with  
27 rule-making requirements of the APA as specified in RCW 34.05.310-.395. Indeed,  
28 EFSEC did not even get to first base. RCW 34.05.310, "Prenotice inquiry—Negotiated  
and pilot rules," requires:

(1)(a) To meet the intent of providing greater public access to administrative rule  
making and to promote consensus among interested parties, agencies must  
solicit comments from the public on a subject of possible rule making before

1 filing with the code reviser a notice of proposed rule making under RCW  
2 34.05.320.

3 (Emphasis supplied). No public notice or opportunity to comment on the Rules of  
4 Procedure for PTAG was included in the first draft SCA a year ago (April 1, 2024), nor  
5 was there opportunity with publication of the second draft SCA. There was no  
6 opportunity to comment on the ROP as they were presented as a *fait accompli* on  
7 EFSEC's webpage on February 19, 2025. There has been full opportunity to conduct  
8 rule making under the APA, but EFSEC has simply refused.

9 The Rules of Procedure for the PTAG have not been adopted under the rule-  
10 making requirement of the APA. No further action by PTAG is appropriate until rule  
11 making for any rules of procedure to be used during PTAG review has been completed.

12 C. PTAG RULES OF PROCEDURE VIOLATE MULTIPLE APA  
13 STANDARDS.

14 As described above, the PTAG Rules of Procedure have not been legally  
15 adopted and are of no force and effect. As discussed below, these Rules of Procedure  
16 adopted by EFSEC, which control Horse Heaven Wind PTAG proceedings, also violate  
17 long-established administrative law standards.

18 1. SECRET MEETINGS.

19 The penultimate sentence of the Rules of Procedure states:

20 As a strictly advisory body, meetings are not subject to the Open Public  
21 Meetings Act rules and will not be open to the public.

22 In a word: all PTAG meetings will be secret. Holding secret meetings is completely  
23 contrary to the Washington APA governing EFSEC proceedings; RCW 34.05.449,  
24 "Procedure at hearing" which provides:

25 3) *Each party in the hearing must have an opportunity to participate*  
26 *effectively in, to hear, and, if technically and economically feasible, to see the*  
27 *entire proceeding while it is taking place.*

28 (4) *The presiding officer shall cause the hearing to be recorded by a*  
*method chosen by the agency.*

(5) *The hearing is open to public observation, except for the parts that the*  
*presiding officer states to be closed under a provision of law expressly*

1 *authorizing closure or under a protective order entered by the presiding officer*  
2 *pursuant to applicable rules.*

3 (Emphasis supplied). Secret hearings are simply not allowed by the APA and no legal  
4 authority is provided by EFSEC for shutting the public and interested parties out of  
5 PTAG proceedings.

6 Secrecy of proceedings and deliberations is also contrary to RCW 80.50.010(6),  
7 which provides that EFSEC decisions should be timely made “while also encouraging  
8 meaningful public comment and participation in energy facility decisions.” The cited  
9 language was just added to the statute by the legislature during the 2022 Session (2022  
10 c 183 s 1), effective June 30, 2022. Contrary to the plain language of the statute, no  
11 “public comment and participation” is allowed during PTAG proceedings.

12 What is not disclosed is why the meetings need to be secret. This is especially  
13 concerning given that “an EFSEC Staff designee will attend PTAG meeting.”

## 14 2. NO RECORDINGS OF MEETINGS.

15 Not only will PTAG meetings be secret, but there will be no recording of them,  
16 again contrary to RCW 34.05.449(4). In the place of a recording the rule provides: “A  
17 staff member from the Facilitator’s team will take minutes during PTAG meetings.”  
18 Page 3. No provision in the Washington APA allows minutes to substitute for a  
19 recording. Again, no reason is suggested as to why a recording cannot be made. As  
20 PTAG meetings are apparently virtual (via Zoom), recording can be done with the flip of  
21 a switch.

## 22 3. FAILURE TO HAVE A QUALIFIED ADMINISTRATIVE LAW 23 JUDGE CONDUCT PTAG MEETINGS.

24 APA and EFSEC rules make clear that the presiding officer at EFSEC hearings  
25 will be an Administrative Law Judge (ALJ). WAC 463-30-020. The Washington APA, at  
26 RCW 34.12.040 requires:

27 Except pursuant to RCW 43.70.740, whenever a state agency conducts a  
28 hearing which is not presided over by officials of the agency who are to render



1 the final decision, the hearing shall be conducted by an administrative law judge  
2 assigned under this chapter.

3 (Emphasis supplied). Administrative law judges (ALJ) “shall be independent of state  
4 administrative agencies and shall be responsible for impartial administration of  
5 administrative hearings in accordance with the legislative intent expressed by this  
6 chapter.” RCW 34.12.010. Further, RCW 34.12.050 allows a “motion of prejudice” to  
7 be filed against an assigned ALJ and “[t]he first such motion filed by any party shall be  
8 automatically granted.”

9 In the present case, EFSEC has not appointed an ALJ to preside over PTAG  
10 hearings. Instead, in the ROP at page 3, EFSEC has approved the appointment of a  
11 “Third-Party PTAG Facilitator” whose role is a kind of ersatz ALJ:

12 The Certificate Holder will retain an independent, professional facilitator  
13 (Facilitator) to oversee and coordinate the PTAG discussion and review process.  
14 This neutral intermediary will oversee the meetings, assist in explaining the  
15 charge and matters on which advice is to be solicited from PTAG members,  
16 solve unexpected problems, and act as the point of contact between PTAG  
17 members, the Certificate Holder, and EFSEC staff. The Facilitator will be  
18 responsible for drafting and keeping meeting minutes and developing and  
19 maintaining timelines for recommendations to EFSEC. A staff member from the  
20 Facilitator’s team will take minutes during PTAG meetings. The Facilitator will  
21 ensure the accuracy of draft minutes prior to distribution to the PTAG for  
22 approval. The Facilitator is expected to maintain independence from the  
23 Certificate Holder and PTAG members, consistent with alternative dispute  
24 resolution professional standards. The Facilitator will ensure meetings remain  
25 productive, efficient, and within the scope of the agenda and the items for  
26 consideration under the SCA.

27 While, the “Facilitator” will act as a *de facto* ALJ, there are none of the usual restrictions  
28 applicable to the conduct of ALJs. For example, there is no prohibition against ex parte  
communication mentioned in the ROP. Further, no set of administrative statutes  
permits an interested party to select the ALJ (here, “facilitator” as the ROP provides.  
No reason is provided as to why an independent ALJ from the office of administrative  
hearings cannot, and should not, be appointed over the PTAG process. TCC objects to  
the appointment of this “facilitator” and requests he recuse himself pursuant to RCW  
34.12.050 or, if he refuses, that EFSEC order him to be removed from participation in

1 the process.

2 4. NO PARTICIPATION BY THE COUNSEL FOR THE  
3 ENVIRONMENT.

4 RCW 80.50.080 requires that a “Counsel for the Environment” (CFE) be  
5 appointed by the Attorney General to participate in EFSEC proceedings for siting  
6 renewable energy facilities such as wind turbines. The duties of the CFE are stated in  
7 the statute:

8 The counsel for the environment shall represent the public and its interest in  
protecting the quality of the environment.

9 Clearly questions before the PTAG regarding the protection of wildlife and its habitat  
10 from project features concern “protecting the quality of the environment.” A CFE was  
11 appointed for the Horse Heaven matter and she has participated in the hearings. On  
12 February 1, 2023, she wrote a comment letter on the DEIS for the project found in the  
13 record that specifically addressed wildlife impacts, including bird and bat mortality,  
14 cumulative impacts, and impacts on Townsend Ground Squirrels. See Counsel for the  
15 Environment DEIS Comment posted February 1, 2023 (“A005 CFE”). Notwithstanding  
16 the statutory mandate, and without citing a reason, EFSEC has excluded the CFE from  
17 the PTAG process. Such action is contrary to the statute and PTAG proceedings  
18 without her should be determined to be null and void.

19 5. LACK OF TRANSCRIPT OF PROCEEDINGS.

20 Washington law is clear that upon judicial review of administrative hearings,  
21 review “must be confined to the agency record for judicial review as defined by this  
22 chapter, supplemented by additional evidence taken pursuant to this chapter.” RCW  
23 34.05.558. The “agency record” must contain:

24 h) The recording prepared for the presiding officer at the hearing, together with  
25 any transcript of all or part of the hearing considered before final disposition of  
the proceeding;

26 RCW 34.05.476(1). The agency record “constitutes the exclusive basis for agency  
27

1 action in adjudicative proceedings under this chapter and for judicial review of  
2 adjudicative proceedings." *Id.* Under the ROP there will be no transcript of proceedings  
3 available to a reviewing court. Since no transcript will be made, EFSEC members will  
4 also not have access to the evidence presented to the PTAG or its deliberations.

5 The failure to have a full administrative record is grounds for reversal and  
6 remand to the agency. RCW 34.05.570. Judicial review provides the review of agency  
7 orders in adjudicative proceedings; the Court may provide relief because

8 (e) The order is not supported by evidence that is substantial when viewed in  
9 light of the whole record before the court, which includes the agency record for  
10 judicial review, supplemented by any additional evidence received by the court  
11 under this chapter;

12 Our courts have routinely concluded that a verbatim record of administrative hearings is  
13 required for judicial review. See *Beach v. Board of Adjustment*, 73 Wn.2d 343, 438 P.2d  
14 617 (1968), *Weyerhaeuser v. Pierce County*, 95 Wn App 883, 892 (1999), *Barrie v.*  
15 *Kitsap County*, 84 Wn.2d 579, 527 P.2d 1377 (1974), *Parkridge v. Seattle*, 89 Wn 2d  
16 454, 463 (1978).

## 17 6. CONCLUSION ON APA ISSUES.

18 As noted, the PTAG process will result in decisions regarding whether a large  
19 number of turbines (more than half) will be allowed, and where they will be located. As  
20 such, the PTAG is a continuation of the administrative process of EFSEC and must be  
21 consistent with APA standards for the conduct of administrative hearings.

22 EFSEC should immediately revoke any authority of PTAG to act due to violations  
23 of the administrative procedures act, and vacate any actions taken without APA  
24 compliance.

### 25 D. PTAG MEMBERSHIP VIOLATES APPEARANCE OF FAIRNESS AND 26 DUE PROCESS REQUIREMENTS.

27 On February 19, 2025, EFSEC posted its PTAG Rules of Procedure. These  
28 rules established the qualifications required for PTAG membership:

Appointees to the PTAG must have relevant expertise or firsthand knowledge of facts relevant and necessary to the matters on which the PTAG is established to advise. PTAG members should limit their input to those topics on which they have relevant expertise or knowledge that qualifies them to provide input.

Page 2. Further, “comments” from the members during PTAG meetings were required to meet technical standards:

PTAG members may provide comments on the materials at the following meeting. Comments are to be rooted in technical expertise and supported by data or other evidence constituting the best available science. PTAG member input on facts relevant to the matters to be reviewed by the PTAG must meet standards of reliability applicable to agency SEPA analysis (e.g., attribution of photographs, reference to surveys, citation of pertinent records).

On March 3, 2025, EFSEC posted a list of “PTAG Participants” which included Chris Wiley and Jessica Wadsworth. The list of “Participants” did not include a statement of their qualifications or resumes, how they were selected for PTAG membership, or who selected them.

These two “members” were witnesses for Scout in the adjudication. Both witnesses have been ardent supporters of Scout’s Horse Heaven project, both for economic reasons.

● CHRIS WILEY. During his cross examination, Mr. Wiley confirmed he was “working with Scout and receiving lease payments.” Tr. At 1104, lines 12-15. He has been on local television supporting the Horse Heaven project (Tr. 1114) and even wrote an editorial in support of the project. Tr. 1114. A link to his editorial is found on the Horse Heaven Wind Farm website:

<https://www.tri-cityherald.com/opinion/opn-columns-blogs/article250133724.html>.

More importantly, during his written and verbal testimony testimony, Mr. Wiley was never identified as having “relevant expertise or firsthand knowledge of facts relevant and necessary to the matters on which the PTAG is established to advise on,” i.e., expertise on wildlife impacts and mitigation. In his testimony, he did not even mention wildlife concerns.

1           ●JESSICA WADSWORTH. Ms. Wadsworth was also a witness for Scout during  
2 the adjudication. She appeared as a representative of local labor unions interested in  
3 employment resulting from project construction. Exhibit 1034-R. Scout issued a press  
4 release on June 8, 2022 entitled "Tri-Cities Union Trades Sign Agreement with Scout  
5 Clean Energy for Constructing the Horse Heaven Clean Energy Center" which  
6 references a Memorandum of Agreement:

7           which ensures the general contractor awarded the construction of the  
8 1150-megawatt wind, solar and battery facility will sign a project labor  
9 agreement, is executed between Scout Clean Energy and the local affiliates of  
10 United Brotherhood of Carpenters and Joiners of America "UBC", International  
11 Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers "Iron  
Workers", Laborers' International Union of North America "LIUNA", International  
Union of Operating Engineers "IUOE", and International Brotherhood of Electrical  
Workers "IBEW."

12           <https://horseheavencleanenergy.com/hhcec-mou-announcement/>.

13           Like Mr. Wiley, during her testimony she did not discuss wildlife impacts and  
14 never expressed any concerns regard wildlife. She provided no background or  
15 experience in wildlife matters. Her interests were, and are, related to employment of  
16 members of her associated unions on the Scout project. Obviously, the more turbines,  
17 the more jobs.

18           While both Mr. Wiley and Ms. Wadsworth will be voting members of the PTAG,  
19 they plainly do not meet the "commitments" required of participants by the ROP at  
20 page 2:

21           Appointees to the PTAG must have relevant expertise or firsthand knowledge of  
22 facts relevant and necessary to the matters on which the PTAG is established to  
advise. PTAG members should limit their input to those topics on which they  
have relevant expertise or knowledge that qualifies them to provide input.

23           How Mr. Wiley or Ms. Wadsworth can provide comments on the wildlife issues before  
24 the PTAG is not explained. To make matters worse, whatever these two PTAG  
25 members will say about wildlife will not be made public. Thus intervenors, the public,  
26 and EFSEC council members, will not be able to listen to their testimony, and no  
27

28   OBJECTION BY INTERVENOR TRI-CITIES C.A.R.E.S.  
TO PTAG ESTABLISHMENT, OPERATIONS,  
MEMBERSHIP AND MEETINGS - 17

LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com

1 verbatim transcript will be prepared - essentially hiding any comments they make. Even  
2 with their clear bias and lack of expertise, both Mr. Wiley and Ms. Wadsworth are given  
3 votes for decision making during PTAG deliberations.

4 In addition, the Meeting 2 Draft Agenda indicates that the PTAG members went  
5 on a "site tour" on a bus arranged by Scout and led by Dave Kobus, who is Scout's  
6 project manager. During the hearing, Mr. Kobus, when asked about the number of  
7 turbines he thought would be necessary for his client to have for the project, said:

8 So I've got to have all 244 sites permitted so I have that flexibility to build the  
9 optimal, most suitable project for whoever the ultimate offtake entity is, or  
entities. It could be more.

10 Kobus Deposition at page 34, line 13-17.

11 Again, Scout in its second Petition for Reconsideration was presciently objecting  
12 to unqualified persons making PTAG decisions:

13 Under revised Spec-5's ambiguous and incomplete guidance, members of the  
14 PTAG, many of which will not even be biologists, likely will disagree about  
whether specific nests or habitat are available or viable, and Councilmembers  
will not have any standards to guide their decision on final Project layout.

15 Scout PFR#2 at 12. Attachment A. Now that the shoe is on the other foot, it is Scout  
16 (with the apparent support of EFSEC) that has installed its own non-biologists Wiley  
17 and Wadsworth on the PTAG, carefully giving them a vote on turbine locations.  
18 Moreover, the site tour referenced on the Meeting 2 Draft Agenda, apparently to look at  
19 nest sites, is led by another non-biologist, applicant's own project manager, Mr. Kobus,  
20 who had a predetermined view as to the number of turbines that should be allowed: all  
21 244 of them.

22 Given the circumstances, it is difficult to imagine how potential lay comments by  
23 Wiley or Wadsworth could be considered "rooted in technical expertise and supported  
24 by data or other evidence constituting the best available science." Rules of Procedure  
25 at page 3. Given the lack of identified background, it is unlikely any comments they  
26 might make would meet the standard for admissibility established by the Rules of  
27

28 OBJECTION BY INTERVENOR TRI-CITIES C.A.R.E.S.  
TO PTAG ESTABLISHMENT, OPERATIONS,  
MEMBERSHIP AND MEETINGS - 18

LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com

1 Procedure, much less the standards for admissibility for expert opinions in the  
2 Washington State Court Rules of Evidence. See ER 702-703. However, because  
3 PTAG proceedings are secret, and there will be no verbatim transcript available, it will  
4 be impossible to determine whether their comments meet any standard of admissibility.

5 Further, the participation of Wiley and Wadsworth is an egregious violation of the  
6 appearance of fairness doctrine.

7 Our Supreme Court has established that the appearance of fairness doctrine  
8 applies to EFSEC proceedings, outlining the application of the rule as follows:

9 The appearance of fairness doctrine provides that "[m]embers of commissions  
10 with the role of conducting fair and impartial fact-finding hearings must, as far as  
11 practical, be open-minded, objective, impartial, free of entangling influences,  
12 capable of hearing the weak voices as well as the strong and must also give the  
13 appearance of impartiality." *Narrowview Pres. Ass'n v. City of Tacoma*, 84  
Wn.2d 416, 420, 526 P.2d 897 (1974). The doctrine applies only "as far as  
practical" to ensure fair and objective decision making by administrative bodies.  
Id. The practicality of the appearance of fairness will largely be determined by  
the procedures being applied.

14 *Residents v Site Evaluation Council*, 165 Wn 2d 275, 313, 197 P.3d 1153 (2008).

15 While the Court did not apply the appearance of fairness doctrine to statutorily  
16 designated parties, it did confirm the application to individuals:

17 Of course, the appearance of fairness doctrine certainly can be used to  
18 challenge an individual's participation as an administrative decision maker.  
19 EFSLA does not mandate the appointment of a particular person by DNR or  
CTED.

20 165 Wn.2d at 315 (2008) (emphasis supplied).

21 The bias and predisposition of Mr. Wiley and Ms. Wadsworth is evident from the  
22 foregoing. Moreover, appointment by EFSEC of these individuals, essentially chained  
23 to Scout, was plainly improper and creates appearance of fairness issues of its own.

24 It is urged that the appearance of fairness doctrine does not apply because the  
25 PTAG only makes recommendations and acts in an advisory capacity.<sup>8</sup> But in

---

26 <sup>8</sup> In the email from EFSEC staff written on Fri 2/21/2025 1:54 P.M. (Attachment D) a vigorous defense  
27 of the secrecy of the PTAG process is provided, obviously written by EFSEC staff counsel. EFSEC staff

1 *Narrowsview*, cited in the *Residents* case, the Court applied appearance of fairness  
2 doctrine to members of the Tacoma planning commission, an advisory body: “[t]he  
3 doctrine is applicable to show an interest which might have substantially influenced a  
4 member of the commission even if that interest did not actually affect him.”  
5 *Narrowsview Ass’n v Tacoma*, 84 Wn 2d 416, 420 (1974). Indeed, EFSEC itself only  
6 “prepare(s) a report for the governor recommending the disposition of the application  
7 within one year of receiving it. RCW 80.50.100(1).” *Residents*, 165 Wn.2d at 286 (2008)  
8 (emphasis supplied). The final decision maker under the EFSEC process is the  
9 Governor, not the EFSEC Council. The ruling of the Supreme Court is consistent with  
10 settled law:

11 “In our view, that doctrine requires that we reverse the trial court and find that the  
12 city council and planning commission actions were invalid. It is beyond dispute  
13 that in considering a rezoning application the planning commission and city  
14 council are acting in a quasi-judicial capacity.”

15 *Hayden v Port Townsend*, 28 Wn App 192, 195 (1981).

16 The appearance of fairness doctrine requires that the PTAG be dissolved and its  
17 duties and responsibilities transferred to EFSEC for decision, applying the standard  
18 EFSEC procedures.

19 E. PTAG RULES OF PROCEDURE AND OPERATIONS VIOLATE  
20 REQUIREMENTS FOR CONFIDENTIALITY OF INFORMATION.

21 At the beginning of the adjudication on May 24, 2023, the presiding ALJ entered  
22 a “Protective Order with Provisions Governing Confidential Information and Information  
23 Exempt from Public Disclosure under RCW 42.56.” It included an “Attorney  
24 Agreement” and an “Expert Agreement” that were necessary to examine confidential  
25 information. During the adjudication, the ALJ rigorously enforced the protective order,  
26 with the cooperation of the parties and their counsel.

27 \_\_\_\_\_  
28 fully supports the clear violations of administrative procedures and is likely the drafter of the Rules of  
29 Procedures.

30 OBJECTION BY INTERVENOR TRI-CITIES C.A.R.E.S.  
31 TO PTAG ESTABLISHMENT, OPERATIONS,  
32 MEMBERSHIP AND MEETINGS - 20

LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com



1 The PTAG process is a continuation of adjudication during which there will be  
2 consideration of the impacts of turbines on wildlife habitat, including ferruginous hawk  
3 nests. Indeed, Scout said in its PFR#2 (October 7, 2024) at page 14:

4 EFSEC will then have to consider and approve *each* nest determination before  
5 the applicant can even start developing the final project design. That final  
6 design, too, must be reviewed by the PTAG before it goes to EFSEC for  
7 approval.

8 (Emphasis in original).

9 Despite these circumstances, the PTAG Rules of Procedure do not require  
10 PTAG members, participants, facilitators or others to sign confidentiality agreements.  
11 Notwithstanding the text of the ROP, TCC understands that none of the PTAG  
12 participants have signed confidentiality agreements related to their participation in that  
13 process. This is of particular concern because two PTAG members, Mr. Wiley and Ms.  
14 Wadsworth, are strong supporters of Scout's projects, but not employees or agents of  
15 the company. See the discussion in Section D of this Objection above. Moreover, it  
16 appears that they were on the "bus trip" lead by Dave Kobus, the Scout project  
17 manager, which might have located nest sites as a part of the "tour."<sup>9</sup> Of course, there  
18 is no record of what was said because the meetings are secret and there has been no  
19 recording of them.<sup>10</sup>

20 The PTAG ROP and the actual conduct of PTAG activities appear to violate the  
21 rules for confidentiality of information established for EFSEC review of this matter. This  
22 is not a ministerial matter. Wildlife and wildlife habitat locations are kept confidential  
23 because of the real concern that knowledge of these critical resources could result in

---

24 <sup>9</sup> TCC does not know if Mr. Kobus signed a confidentiality agreement.

25 <sup>10</sup> Apparently the "facilitator" chosen by the applicant was unconcerned about the confidentiality of the  
26 location of wildlife and wildlife habitat. A qualified and experienced Administrative Law Judge would have  
27 enforced important confidentiality requirements, as Judge Torem did during the adjudication.

1 loss or damage to them.<sup>11</sup>

2 EFSEC should dissolve the PTAG and take all necessary steps to assure that  
3 confidential information is not disclosed. Because of the severity of this situation, TCC  
4 expressly reserves the rights under the May 24, 2024 Protective Order to seek  
5 enforcement, sanctions and damages from the persons or parties responsible for the  
6 apparent violation of these confidentiality obligations.

7 F. THE RULES OF PROCEDURE OF THE PTAG IMPROPERLY ALLOW  
8 ECONOMIC CONSIDERATIONS.

9 PTAG is to address wildlife considerations, and, as described above, the ROP  
10 approved by EFSEC, and placed on its website, provide that:

11 Appointees to the PTAG must have relevant expertise or firsthand knowledge of  
12 facts relevant and necessary to the matters on which the PTAG is established to  
advise.

13 Page 2. As stated on pages 1-2 of the ROP:

14 The SCA defines which SCA Conditions the PTAG will advise the Certificate  
15 Holder and EFSEC on during the pre-operations period. The following SCA  
Measures in the SCA invoke the PTAG:

16 At page 7 of the Rules of Procedure, the tasks of the PTAG are defined:

17 The PTAG shall be established at least one year prior to construction and will be  
18 responsible for reviewing and providing technical advice on documents produced  
by the Certificate Holder related to wildlife and wildlife habitat. The PTAG will  
also provide advice on adaptive management.

19 None of the “measures” related to impacts of the project on wildlife and potential  
20 mitigation measures discussed economic feasibility.

21 Indeed, the Washington Supreme Court has determined that “economic  
22 analysis” is not appropriate for EFSEC review:

23 However, EFSEC determined that it would not require Horizon to disclose such  
24 information because economic analysis was beyond its expertise. EFSLA  
requires EFSEC to develop environmental and ecological guidelines regarding

---

25  
26 <sup>11</sup> Under RCW 42.56.430(2), sensitive fish and wildlife data is exempt from disclosure under  
27 the the Public Records Act, RCW 42.56, except to specific categories of entities, and then only  
where that release is governed by a confidentiality agreement.

1 energy facility siting. RCW 80.50.040(2). As economic analysis does not relate to  
2 environmental or ecological concerns, we believe EFSEC was within its authority  
3 to refuse to review the economic viability of the KVVPP. Furthermore, we  
4 believe that Horizon presented a sufficient explanation that reducing the Project  
5 by over one-half of its original size would substantially decrease its chances to  
6 sell electricity.

7 *Residents 165 Wn at 321.*

8 However, the ROP expressly allows the following in the PTAG recommendation  
9 to EFSEC:

10 The Certificate Holder's final proposal may explain the economic and  
11 technological feasibility implications of the advice presented in the Facilitator  
12 Report, when applicable.

13 Page 4 (emphasis supplied). This clause was apparently inserted by EFSEC and Scout  
14 to allow the applicant to challenge the PTAG report on the grounds that the protections  
15 afforded wildlife in the Horse Heaven Hills should not be implemented because they  
16 might make the project economically infeasible.

17 Moreover, TCC specifically submitted discovery requests concerning the  
18 economic viability of the project during the adjudication, which included wind resource  
19 data and energy production for individual turbines. However, those requests were  
20 denied in an oral ruling by the Presiding ALJ Adam Torem:

21 My prehearing orders in this case have already indicated that certain  
22 economic viability information is not germane or helpful to Council  
23 members or their work to develop a recommendation to the governor. The  
24 discovery of BPA interconnection issues, wind resource potential data,  
25 and energy production and cost or rate analysis data is not authorized in  
26 this matter. So, therefore, Mr. Aramburu, the TCC motion to compel  
27 those documents is denied.

28 ALJ Oral Ruling on TCC Motion to Compel, August 15, 2023, page 8. The unfairness  
of allowing the applicant to present "the economic and technological feasibility  
implications" when not allowing a party to the proceedings to do the same is patent.  
Scout cannot use the PTAG proceedings to introduce information not allowed in the  
adjudication, especially where comment and contrary information is not permitted from  
TCC or any other party. The Council should prohibit the introduction of such

1 information.

2 It is evident that EFSEC and Scout are preparing to bring “economic  
3 feasibility” issues into the proceedings, contrary to the clear language of the EFSLA and  
4 the Supreme Court decisions, within secret proceedings without opportunity for either  
5 public observation or comment. Given the lack of a transcript of proceedings, it will be  
6 impossible to know whether decisions made by the PTAG were based on wildlife  
7 science or economic feasibility.

8 PTAG should be disbanded because its permitted subject matter is well beyond  
9 that permitted by either EFSLA or the terms of the SCA.

10 G. THE PTAG ROP IMPROPERLY EXCLUDE ANY CONSIDERATION OF  
11 ESTHETIC IMPACTS.

12 At page 7 of Scout PFR#2, the Applicant cites what it references as the “primary  
13 directives” of the EFSLA, which include a directive to “mitigate the significant near term  
14 and long-term impacts for climate change.” RCW 80.50.010. Included in these primary  
15 directives: “while conducting public process that is transparent and inclusive to all . . . .”

16 Next, Scout points out that EFSEC must keep within its statutory criteria:

17 To accomplish that goal, EFSEC must base its recommendations on six criteria,  
18 *one* of which focuses, among other things, on protection of the environment and  
“esthetic and recreational benefits of the air, water and land resources.”

19 *Id.* (Italics in original).

20 Despite this directive, the ROP make clear that esthetic considerations and  
21 review will not be included in PTAG’s work. However, as described above, “economic  
22 feasibility” is fair game in the ROP, though that consideration is nowhere found in the  
23 EFSLA and was ruled out of bounds by the Supreme Court and by the ALJ in these  
24 proceedings.

25 Indeed, in Order 892 at page 28, the Council confirmed its responsibility to  
26 consider esthetic issues:

27 The Council’s authority and obligation to consider aesthetic impacts is well

1 established and was thoroughly explained in the Whistling Ridge Energy Project  
2 adjudication.

3 (Emphasis supplied). As a result of the application of this authority and its obligations,  
4 the Council concluded as follows:

5 We conclude that further mitigation measures are necessary in order to prevent  
6 miles-long strings of turbines from becoming the most prominent features in view  
7 from multiple points of observation in the area. A larger buffer between the  
8 turbines and the ridgeline could minimize encroachment of large project fixtures  
9 and features on views from local communities.

10 *Id.* Despite the “authority and obligation” to consider esthetic impacts, including in  
11 RCW 80.50.010, the PTAG ROP rules them out of order.

12 The Rules adopted by EFSEC and the Applicant are directly contrary to  
13 established precedent and caselaw. PTAG should be disbanded and review by EFSEC  
14 must consider esthetic impacts alongside wildlife impacts.

## 15 **V. CONCLUSION.**

16 Based on the foregoing, the membership and procedures of PTAG are clearly  
17 contrary to law, applicable rules and caselaw. As described in this objection, ceding  
18 authority to PTAG to make fundamental decisions on the Horse Heaven project is  
19 unlawful delegation of authority. Moreover, the Rules of Procedure and members  
20 appointed to the PTAG literally stand administrative law on its head. Rules of  
21 Procedure were adopted without opportunity for public comment or review, with an  
22 unknown author. Instead of use of an unbiased ALJ, a “facilitator” is put in charge,  
23 hand-selected by the Applicant. These “Rules” require secret proceedings, without  
24 preparation of a transcript, without controls of the kinds and types of evidence received.  
25 The membership in the PTAG includes two long-time Scout loyalists, both lacking the  
26 wildlife background required for the job, blatantly violating the appearance of fairness  
27 doctrine applicable to EFSEC proceedings. Regrettably, it appears the PTAG  
28 participants have not even been required to keep sensitive wildlife information  
confidential, a basic principle of these proceedings. The Rules of Procedure violate


1 basic tenets of EFSEC review by allowing, without limitation, Scout to bring in the issue  
2 of economic vitality repeatedly ruled out of order in EFSEC proceedings, and by  
3 forbidding esthetic considerations and other mandatory elements of EFSEC review.

4 The "rubber meets the ground" during PTAG considerations; it has been given  
5 the responsibility under the ROP to decide the existence and possible location of a  
6 large number of turbines, the essential element of EFSEC review. It does not act in  
7 some policy or advisory role. The PTAG should be not allowed to make these decisions  
8 in clear violation of statutory and regulatory law under the organic EFSEC and APA  
9 standards.

10 TCC concurs in the request for relief as stated by Scout in its second  
11 Reconsideration Petition to EFSEC at page 17. The Council should remove PTAG  
12 authority, disband the PTAG and restore the responsibility of EFSEC to make the final  
13 decisions on the Horse Heaven project design.

14 Action by the Council is required immediately before additional errors are made  
15 by PTAG which could result in substantial delay and additional cost to all parties.

16 DATED this 28<sup>th</sup> day of March, 2025.

17   
18 J. Richard Aramburu, WSBA #466  
19 Attorney for Tri-Cities C.A.R.E.S.

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28 OBJECTION BY INTERVENOR TRI-CITIES C.A.R.E.S.  
TO PTAG ESTABLISHMENT, OPERATIONS,  
MEMBERSHIP AND MEETINGS - 26

LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com

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DECLARATION OF SERVICE

I hereby certify that I have this day served the foregoing upon the parties of record in this proceeding (listed below my signature block) by authorized method of service pursuant to WAC 463-30-120(3) to the email addresses for parties as provided.

Dated at Seattle, Washington 28<sup>th</sup> day of March, 2025

  
Carol Cohoe, Legal Assistant  
Law Offices of J. Richard Aramburu, PLLC

PARTIES OF RECORD

Kenneth Harper, Aziza Foster  
Menke Jackson Beyer, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima WA 98902  
By Email: kharper@mjbe.com;  
zfoster@mjbe.com; Julie@mjbe.com

EFSEC Staff  
alex.shiley@efsec.wa.gov;  
andrea.grantham@efsec.wa.gov;  
sonia.bumpus@efsec.wa.gov;  
catherine.taliaferro@efsec.wa.gov

Sarah Reyneveld  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
Counsel for the Environment  
By Email:  
Sarah.Reyneveld@atg.wa.gov  
CEPSeaEF@atg.wa.gov;  
julie.dolloff@atg.wa.gov

Tim McMahan  
Stoel Rives LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
Counsel for Scout Clean Energy, LLC  
By Email: tim.mcmahan@stoel.com  
emily.schimelpfenig@stoel.com;  
ariel.stavitsky@stoel.com

Shona Voelckers  
Yakama Nation  
shona@yakamanation-olc.org  
jessica@yakamanation-olc.org

OBJECTION BY INTERVENOR TRI-CITIES C.A.R.E.S.  
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LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Application of:

Scout Clean Energy, LLC, for Horse Heaven  
Wind Farm, LLC,  
Applicant.

DOCKET NO. EF-210011

**APPLICANT SCOUT CLEAN  
ENERGY'S PETITION FOR  
RECONSIDERATION OF THE  
COUNCIL'S REVISED  
RECOMMENDATION TO THE  
GOVERNOR**



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## I. INTRODUCTION

To quote Governor Inslee:

Washington state faces the stark reality that without a rapid buildout of new clean energy generation and transmission, the dependability of our electricity grid is at risk. We must come to grips with the fact that we will need to adapt and accept relatively moderate changes to our physical landscape, in order to ensure continued, reliable electricity service.<sup>[1]</sup>

The Horse Heaven Clean Energy Center (“Project”) as originally proposed would have represented a significant step toward accomplishing these goals. That is, until the Energy Facility Site Evaluation Council’s (“Council” or “EFSEC”) initial recommended Site Certificate Agreement (“SCA”) imposed unprecedented and overbroad mitigation that would have greatly reduced the Project’s proposed generation capacity.

Facing that recommendation, the Governor and his team of legal and policy advisors<sup>2</sup> rightly remanded the matter back to the Council with express directions to more narrowly tailor mitigation to particular impacts, with reasonability and feasibility in mind. As to ferruginous hawk mitigation, he told the Council to revise its overbroad siting restrictions, eliminate its approach using hawk mitigation as a proxy to address other “compounding” impacts, and instead consider specific alternative approaches to ensure mitigation is limited to “times and places where hawks are present” and does “not reduce the generation capacity of the Project.”<sup>3</sup>

The Council made some progress. But now, 44 months after the initial application was filed, Scout still lacks any certainty about the Project’s feasibility. And the Council’s revised SCA still suffers some of the same significant flaws as the initial recommendation. Indeed, the revised SCA has little value because it does not certify where or how much of the Project can even be built and imposes no timeline for *when* that determination will be made.

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<sup>1</sup> Letter of Governor Jay Inslee to EFSEC Chair Kathleen Drew re Horse Heaven Wind Farm Project – EFSEC Recommendation, April 29, 2024 (“Governor’s Letter”) at 1.

<sup>2</sup> *See Id.* at 3.

<sup>3</sup> *Id.* at 4, 5 & App. A, 4-14.

1 The Council’s revised recommendation is functionally unworkable and deficient in two  
2 key ways. *First*, ambiguity in the revised SCA’s ferruginous hawk mitigation measure Spec-  
3 5 (“revised Spec-5”) violates the Governor’s directives and existentially threatens the Project’s  
4 viability because it creates ongoing uncertainty about where primary Project components can  
5 be sited. *Second*, the Council’s delegation of substantive project design determinations to an  
6 unprecedented interim discretionary approval body—a pre-construction, Pre-Operational  
7 Technical Advisory Group (“PTAG”)—without any timelines is improper, will delay Project  
8 construction *indefinitely*, and will doom future Council meetings to devolve into technical  
9 minutia with the Council as mediator of biological disputes whenever consensus eludes PTAG  
10 members.

11 The compounding nature of these two deficiencies severely challenges the Project’s  
12 viability. Without clear criteria in Spec-5 to inform which historical ferruginous hawk nest  
13 sites trigger exclusion setbacks, and with the ambiguous Spec-5 standards being applied by  
14 PTAG members *before* final Project design can occur, there is scant possibility that  
15 mitigation will be narrowly tailored and no certainty about where the Project components  
16 will be sited or *when* the answer to that question will be resolved. This approach will delay  
17 final Project design for many months, will add unnecessary expense, waste both Scout’s and  
18 the Council’s resources, and threatens Washington’s clean energy future by introducing  
19 significant uncertainty for developers looking to bring renewable energy to the state.

20 For the reasons that follow, the Council should reconsider its revised SCA.

21 **II. BACKGROUND**

22  
23 For a detailed discussion of the Project and process leading up to the Council’s initial  
24 recommendation to the Governor, please see Scout’s Petition for Reconsideration of the  
25 Council’s (initial) Recommendation to the Governor (May 20, 2024) at pp. 6-12.

26

1 A. Recognizing that ferruginous hawk no longer uses the Project area, the  
2 Governor directed EFSEC to ensure its mitigation is “narrowly tailor[ed],”  
3 reasonable, feasible, and focused on times when hawks may be present.

4 All data show that, sadly, ferruginous hawks no longer use the Horse Heaven Hills,  
5 which have an average ferruginous hawk nesting territory occupancy rate nearly *ten times*  
6 *below* the statewide average.<sup>4</sup> Nor will this area support ferruginous hawk recovery due to the  
7 historical conversion of habitat to farmland and the ongoing rampant residential development  
8 from the Tri-Cities with no end in sight.<sup>5</sup> Nevertheless, the initial SCA imposed two-mile  
9 buffers around all hawk nests, with no exceptions, and tasked an unprecedented PTAG with  
10 determining which nests are subject to the final setbacks. Scout submitted extensive comments  
11 on these issues, detailing the lack of any supporting evidence and the many problems these  
12 SCA provisions create.<sup>6</sup>

13 The Governor recognized the many problems with the initial SCA and directed the  
14 Council to revise several of its most problematic mitigation measures.<sup>7</sup> The Governor noted  
15 that the SCA should be limited to conditions that “are reasonably and feasibly consistent with  
16 achieving the full or near-full clean energy generation capacity of the Project.”<sup>8</sup> He directed  
17 the Council to revise Spec-5’s “overbroad” restrictions and limit mitigation to “those times and

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18 <sup>4</sup> Adjudication Exhibit EXH-3019\_X\_REDACTED, 2023 Raptor Nest Surveys for the Horse  
19 Heaven Clean Energy Center, Benton County, Washington, Erik W. Jansen (Aug. 3, 2023)  
20 (“2023 Raptor Survey”) at 19-20 (compare Horse Heaven Hills nesting territory occupancy  
21 during five-year survey period, 5.6%, with most recent statewide occupancy of 41.0%); *see also*  
22 at 19 (“During the 5-year survey period, the number of occupied ferruginous hawk territories and  
23 nests declined, even as the number of surveyed territories and nests increased”); *see also* Letter  
24 from Scout Clean Energy, Horse Heaven Wind Project, to EFSEC – Applicant Comments on  
25 Practical and Policy Problems with EFSEC Proposed Recommendation to the Governor (“Apr.  
26 Comment Letter”) at 4-7, 10-12 (Apr. 10, 2024); Comment Letter, Att. A, Scout Clean Energy,  
Horse Heaven Wind Project – Applicant Comments and Concerns on EFSEC Proposed Final  
Action (Jan. 19, 2024) (“Jan. Comment Letter”).

24 <sup>5</sup> *See* Governor’s Letter at 4 (“The sad reality is that the ferruginous hawk population has  
25 declined to minimal levels at the site over many years due to various factors including  
26 agricultural and residential land use decisions that pre-date this project.”).

26 <sup>6</sup> *See* Apr. Comment Letter at 4-17; Jan. Comment Letter at 3-6 (Spec-5), 9 (PTAG).

<sup>7</sup> Governor’s Letter at 4, Appx. A.

<sup>8</sup> *Id.* at 3, Appx. A.

1 places where hawks are present.”<sup>9</sup> He also told the Council “to consider, at a minimum,”  
2 specific “alternative mitigation approaches,” including conservation easements, replacing  
3 siting restrictions with operational curtailment and suspension of construction activity,  
4 requiring additional monitoring to mitigate ferruginous hawk impacts, and other mitigation  
5 measures identified in Appendix A to his letter.<sup>10</sup>

6 **B. The Council did not limit mitigation to times when hawks are present, instead**  
7 **adopting a vague and incomplete viability standard.**

8 In July and August 2024 meetings, the Council deliberated on revised mitigation  
9 measures for the Project. During the deliberations, the Council acknowledged the Governor’s  
10 letter but did not consider most of the alternative mitigation options directed therein to limit  
11 the severe wind turbine reductions caused by the revised proposed SCA’s ferruginous hawk  
12 mitigation.<sup>11</sup>

13 The Council ultimately approved a revised SCA at a special council meeting on  
14 September 13, 2024.<sup>12</sup> The revised SCA contains minor changes to measure Spec-5 and no  
15 changes to the provisions relating to the fraught PTAG, leaving the final design of the Project  
16 in limbo.

17 Revised Spec-5 continues to impose permanent exclusion zones regardless of whether  
18 ferruginous hawks are likely to be present. Revised Spec-5 prohibits siting of turbines within  
19 0.6 miles of any ferruginous hawk nest “[d]ocumented in [WDFW’s] PHS data on the effective  
20 date of the SCA, [i]dentified in the Certificate Holder’s nest surveys, and/or [t]hat may be  
21 newly established by the species between the SCA effective date and the time of  
22 construction.”<sup>13</sup> Revised Spec-5 allows turbines, solar arrays, and BESS siting between 0.6

23 \_\_\_\_\_  
24 <sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.*

<sup>11</sup> EFSEC, Meeting Minutes (Aug. 29, 2024); EFSEC, Meeting Minutes (July 17, 2024).

<sup>12</sup> The Council sent the revised SCA to the Governor on September 17, 2024.

<sup>13</sup> Revised Draft Site Certification Agreement Between the State of Washington and Horse Heaven  
26 Wind Farm, LLC for the Horse Heaven Wind Farm Benton County, Washington (“Revised SCA”),  
Appx. 2, at 12-13 (Spec-5) (sent to Governor on Sept. 17, 2024).

1 and two miles<sup>14</sup> of a previously documented ferruginous hawk nest only if “the nesting site is  
2 no longer available” or “the foraging habitat within the 2-mile radius is no longer viable.” That  
3 is, revised Spec-5 *prohibits* turbines, solar arrays, and BESS based on nesting site viability  
4 *regardless* of whether any ferruginous hawk is using or likely to use the nest or habitat.<sup>15</sup>

5 Even more problematic, revised Spec-5 does not identify which nests would trigger the  
6 measure’s exclusion zones or even define when “the nesting site is no longer available” or “the  
7 foraging habitat ... is no longer viable,” which the Council has confirmed.<sup>16</sup> The Council  
8 expressly deferred those decisions to the PTAG.<sup>17</sup> Importantly, because the measure still does  
9 not fully define nest availability or habitat viability and because particular exclusion areas are  
10 not yet identified, revised Spec-5 could reduce the Project scope by nearly the same extent as  
11 the initial SCA and does not implement the Governor’s directive to restore the Project’s  
12 generation capacity.<sup>18</sup>

13 **C. The revised SCA continues to defer Project siting decisions statutorily required**  
14 **to be resolved by EFSEC in the SCA to a PTAG, without any timelines.**

15 Under the revised SCA, the PTAG has substantial involvement: It will review and  
16 consult on the development of plans and surveys, as well as on site design related to at least 12  
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19 <sup>14</sup> By employing a two-mile setback, revised Spec-5 continues to rely on WDFW policy guidance  
20 for the species that, while recently posted on WDFW’s website as no longer in draft form, was  
21 never peer reviewed or subject to public comment. As detailed in Scout’s prior comment letters,  
22 no other state or federal wildlife agency regulating the species imposes a setback this stringent.  
23 Apr. Comment Letter at 7-9; Jan. Comment Letter at 5.

24 <sup>15</sup> *Id.*

25 <sup>16</sup> EFSEC, Meeting Minutes at 13:7-20 (Aug. 29, 2024).

26 <sup>17</sup> *Id.*

<sup>18</sup> EFSEC, Meeting Packet at 168 (July 17, 2024) (indicating that Spec-5 as proposed could result  
in the elimination of 5.5% to 48% of turbines); *id.* at 41:2-8 (Aug. 29, 2024) (Young) (“[W]hat I  
also heard is that number, 36, could go up, depending upon the status that was determined for the  
total array of ferruginous hawk nests that are out there on the land. That number could go up  
significantly, depending upon how the status of each of those nests was determined to be.”); *id.* at  
41:12-14 (Greene) (“[I]t’s almost certainly going to go up. Just the extent of how [ ] much it goes  
up is [ ] still to be determined.”); Governor’s Letter at 4, 5.

1 separate SCA conditions, including for several different species and habitat types.<sup>19</sup> The scope  
2 of the PTAG’s subject matter is so broad that EFSEC is considering having “rotating members”  
3 to track the varied topics.<sup>20</sup> When the PTAG is acting in an advisory or consulting role  
4 (including defining and conducting nest availability and habitat viability assessments), EFSEC  
5 will *also* review this information before making the final decision.<sup>21</sup> But practically speaking,  
6 the PTAG members—not EFSEC staff or the Council—will be the ones reviewing the data  
7 and biological viability assessments and engaging in the substantive analysis to determine  
8 revised Spec-5’s exclusion zones. To be sure, those determinations will ultimately go to the  
9 Council as “recommendations” for approval. But without engaging in the formational analysis,  
10 Councilmembers will not be equipped or familiar with the substantial evidence supporting  
11 those recommendations. This approach will be highly disruptive to every monthly Council  
12 meeting and will necessitate micro-managing of this Project by the Council and re-litigation  
13 of previously decided issues on advocacy-, as opposed to science-, based decisions.

14 The Council’s approval of this approach was based on inaccurate statements on the  
15 record during its August 29, 2024 public meeting. EFSEC staff incorrectly explained to the  
16 Council that “EFSEC has used what is functionally a . . . technical advisory committee, or  
17 TAC, . . . and multiple projects have had these groups convene prior to the start of  
18 construction.”<sup>22</sup>

19 But a review of EFSEC’s existing site certificate agreements shows that no project has  
20 *ever* utilized a TAC that *advised on actual siting determinations*, must less *before construction*.  
21 For those projects that utilized a TAC, that committee never advised prior to final design  
22 approval and did not have authority to identify siting criteria or to make siting design

23 \_\_\_\_\_  
24 <sup>19</sup> Revised SCA, Appx. 2, p. 26. The PTAG was formed for the sole purpose of advising on  
25 biological (habitat and wildlife) issues, as confirmed in the revised SCA. Under the revised SCA,  
26 additional delegation to the PTAG may occur.

<sup>20</sup> *Id.* at 15:4-14.

<sup>21</sup> *See, e.g.*, Revised SCA, Appx. 2, pp. 12-13 (Spec-5).

<sup>22</sup> Washington State Energy Facility Site Evaluation Council, Meeting Minutes at 14:11-24 (Aug.  
29, 2024).

1 evaluations and recommendations.<sup>23</sup> This is not the same thing as a TAC. The PTAG's  
2 mission significantly differs from the well-understood role of TACs throughout the Northwest.

3 Operating under this incorrect information, the Council finalized its proposed changes  
4 and, on September 17, 2024, sent the revised recommendation to the Governor.<sup>24</sup> The Council  
5 never addressed Scout's comments or specific concerns raised, including not in any revised  
6 report or other accompanying document to the Governor.

### 7 III. LEGAL FRAMEWORK

8 A party to the adjudication may petition the Council to reconsider its recommendation  
9 to the Governor. WAC 463-30-335.

10 The Energy Facility Site Locations Act's ("EFSLA") *primary* directives are to:

11 reduce dependence on fossil fuels by recognizing the need for clean energy  
12 in order to strengthen the state's economy, meet the state's greenhouse gas  
13 reduction obligations, and mitigate the significant near-term and long-term  
14 impacts from climate change while conducting a public process that is  
transparent and inclusive to all with particular attention to overburdened  
communities.<sup>25]</sup>

15 To accomplish that goal, EFSEC must base its recommendations on six criteria, *one* of which  
16 focuses, among other things, on protection of the environment and "esthetic and recreational  
17 benefits of the air, water and land resources."<sup>26</sup> Site certification decisions are subject to the  
18 Washington Administrative Procedures Act<sup>27</sup> and the State Environmental Policy Act.<sup>28</sup>

19

20

21 \_\_\_\_\_  
22 <sup>23</sup> Regardless of when they are convened, a review of EFSEC's current projects with TACs shows  
23 that while several TACs have been required to have their first meeting 60 days before the start of  
operations, *none* has a start date prior to construction. *See, e.g.,* Kittitas Valley Wind SCA at 23  
(effective Sept. 25, 2007); Whistling Ridge SCA at 24 (effective Nov. 18, 2013).

24 <sup>24</sup> This submission was nearly a month after the Governor's 60-day deadline (Aug. 21, 2024) to  
submit a revised recommendation.

25 <sup>25</sup> RCW 80.50.010.

26 <sup>26</sup> RCW 80.50.010(2).

<sup>27</sup> *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 304-05, 197 P.3d 1153  
(2008); RCW 34.05.570.

<sup>28</sup> RCW ch. 43.21C; *see* WAC ch. 463-47.



1 When administering its siting process, the Council must “review and consider  
2 comments received.” RCW 80.50.100(1)(b). The Council’s recommendation to the Governor  
3 must “dispos[e] of all contested issues.” WAC 463-30-320(6).

4 If the Governor “direct[s] the council to reconsider certain aspects of the draft  
5 certification agreement,” the Council must “reconsider” those aspects and “resubmit the draft  
6 certification to the governor incorporating any amendments deemed necessary upon  
7 reconsideration.” RCW 80.50.100(3)(a)(iii), (b). The Governor then has 60 days to  
8 “approve the application and execute the certification agreement”<sup>29</sup> or reject the application.  
9 RCW 80.50.100(3)(b).

#### 10 IV. ARGUMENT

11 **A. Revised Spec-5 violates the Governor’s directives because it is ambiguous and**  
12 **will likely trigger setbacks around non-viable and historical ferruginous hawk**  
13 **nest sites, and those occupied by competing avian species.**

14 The revised SCA’s version of mitigation measure Spec-5 does not meet the Governor’s  
15 directive and still poses significant practical obstacles that jeopardize the feasibility of the  
16 entire Project. The Governor expressly directed the Council to limit mitigation to “times and  
17  
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19 <sup>29</sup> The Governor has broad approval authority under both (1) the EFSLA, *cf. Friends of Columbia*  
20 *Gorge, Inc. v. State Energy Facility Site Evaluation Council*, 178 Wn.2d 320, 333, 334, 310 P.3d  
21 780 (2013) (under EFSLA, Governor is not “subject to any restrictions” or “rules governing how  
22 the governor may exercise his or her discretion in approving or rejecting [a] project”); *see also*  
23 *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 80, 101, 392 P.3d 1025 (2017)  
24 (Council “or the governor” can “grant approval contingent on changes to the lease” if the project  
25 would not meet goals); and (2) the Washington Constitution, art. III, §§ 2, 5; *cf. Colvin v. Inslee*,  
26 195 Wn.2d 879, 892, 893, 467 P.3d 953 (2020) (respecting Governor’s exercise of Art. III, § 5  
authority); *Reiter v. Wallgren*, 28 Wn.2d 872, 881, 184 P.2d 571 (1947) (It is executive  
department’s “right and duty . . . to see that the laws as thus interpreted are properly enforced”;  
“final determination as to their enforcement and execution [is] lodged in the Governor.”); *State v.*  
*Clausen*, 146 Wash. 588, 592-93, 264 P. 403 (1928) (Governor is “highest executive authority,”  
thus, it would be “anomalous” if he could not execute law based on subordinate agency’s failure  
to implement his direction); *see also* RCW 80.50.030(2) (Governor appoints Council chair); RCW  
80.50.320 (Governor must evaluate Council operations).

places *where hawks are present*,” “based on the best available science *and ongoing site surveys*.”<sup>30</sup> Revised mitigation measure Spec-5 does neither.<sup>31</sup>

**1. Revised Spec-5 is not limited to times when ferruginous hawks could frequent the Project site and continues to ignore current science.**

Ferruginous hawks are migratory species that are only potentially present near the Project area during the spring and summer nesting season.<sup>32</sup> Therefore, as the Governor rightly recognized, ferruginous hawk-based restrictions have no potential benefit and need not apply outside of the nesting season. Further, surveys for ferruginous hawk nests in the Project area have been ongoing from 2017 to 2024 and, despite those many years of survey, show only one nesting attempt (documented five years ago in 2019).<sup>33</sup> So current data demonstrate that the species is absent from the Project area, even during the nesting season.

Yet Spec-5 does not limit siting restrictions to only those areas where ferruginous hawks are—or even likely to be—present. Instead, it imposes permanent, year-round exclusion zones that do not take into account nesting or other biologically significant seasonal considerations.

Revised Spec-5 also does not tailor its exclusion zones based on best-available current science in ongoing site surveys. Based on imprecise drafting, it could be interpreted to trigger an absolute 0.6-mile setback around any ferruginous hawk nest ever documented in WDFW’s PHS data, regardless of whether current science shows that a viable nest still exists or not. Revised Spec-5 is worded such that a 0.6-mile exclusion zone is triggered around any nest (1)

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<sup>30</sup> Governor’s Letter at 5 (emphasis added).

<sup>31</sup> The Governor also directed the Council to “consider, at minimum,” three specific mitigation alternatives *instead of* absolute nest setbacks: (1) exclusion of most-valuable habitat types; (2) temporal options like operational curtailment and construction suspension during nesting and fledgling periods; and (3) monitoring-informed “adjustments to operating and construction activities as needed.” Governor’s Letter at 5. The Council did not expressly consider or even acknowledge these three alternatives in its deliberations or revised recommendation.

<sup>32</sup> Final Application for Site Certification: Horse Heaven Wind Farm at 1-8 (Sept. 2023) (describing ferruginous hawk sensitive nesting period); 2023 Raptor Survey at 4.

<sup>33</sup> 2023 Raptor Survey at 19-20; *see also* Jan. Comment Letter at 4; Apr. Comment Letter at 4, 11-12.

1 that is documented in PHS data, (2) that may be established before construction, “and/or” (3)  
2 that is identified in nest surveys.<sup>34</sup> But the use of “and/or” here makes it unclear if those three  
3 criteria are conjunctive (“and”) or disjunctive (“or”); thus, it is unclear whether all three criteria  
4 must be met or instead whether a setback is triggered when even just one criterion applies.<sup>35</sup>  
5 That is, the setback could apply even if the nest is not “available” to the species or is surrounded  
6 by only non-“viable” habitat. If a reader interprets the three criteria as disjunctive, then revised  
7 Spec-5 requires that a 0.6-mile setback is triggered by documentation *at any point* in the PHS  
8 database, even if the current survey data shows the nest site is non-existent, is now located in  
9 someone’s backyard, or is occupied by a competing avian species. That is the exact opposite  
10 of what the Governor directed.<sup>36</sup>

11 **2. Revised Spec-5’s ambiguity threatens to exclude just as much generation**  
12 **capacity as the initial recommendation.**

13 Revised Spec-5 allows some siting of Project infrastructure between 0.6 and two miles  
14 of certain ferruginous hawk nesting sites. But it does not include any clear criteria delineating  
15 *which* nesting sites, that is, when a nest is “available” or when habitat is “viable.” Absent such  
16 criteria, revised Spec-5 will likely preclude siting between 0.6 and two miles around even non-  
17 available nests surrounded by non-viable habitat—historical nest sites where ferruginous  
18 hawks have not been present for decades and will not be present in the future. Thus, it still  
19 risks excluding large siting areas due to outdated documentation of historical and other non-  
20 viable nests.

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22 <sup>34</sup> Revised SCA, Appx. 2, p. 26 (emphasis added).

23 <sup>35</sup> See Exhibit A to Petition, Letter from Scout Clean Energy, Horse Heaven Wind Project to  
24 EFSEC – Applicant Comments on Council’s Reconsidered SCA (Aug. 25, 2024) (“Aug. Comment  
25 Letter”) at 7-9, for a redlined version of Spec-5 fixing this drafting ambiguity.

26 <sup>36</sup> The Council’s deliberations also suggest it continues, capriciously, to use Spec-5 to address  
mitigation for *other* resources. Chair Drew stated she approved of revised Spec-5 because the way  
it “is structured will eliminate some of the most visible turbines. . . . That’s my opinion – I’ll leave  
it at that – and certainly what I was striving to accomplish.” Transcript of Proceedings, EFSEC  
Special Meeting (Aug. 29, 2024) at 21:9-14. The Governor expressly rejected this approach. See  
Governor’s Letter at 4.

1 Spec-5 is ambiguous in two important ways:

2 **i. Spec-5 contains no criteria for when “a nesting site is no longer**  
3 **available.”**

4 As detailed in Scout’s prior comments,<sup>37</sup> without specific criteria for when a nest site  
5 is “available,” Spec-5 provides no clear bounds for a future decisionmaker (be it PTAG  
6 members, EFSEC staff, or the Council) to determine when siting is permitted within two miles  
7 of a documented nest site. Without such criteria, any forthcoming decision on which nests are  
8 available will necessarily be contentious and, ultimately, arbitrary.

9 The Council can easily remedy this problem by adding the necessary criteria. As  
10 suggested in prior Scout comment letters, it could utilize WDFW’s existing classification for  
11 nesting structures<sup>38</sup> or more specific criteria provided by Scout and its qualified biologist.<sup>39</sup>  
12 Doing so will ensure that mitigation is narrowly tailored to where ferruginous hawk are present  
13 or likely to occur and avoid arbitrary and haphazard application of Spec-5.

14 **ii. Revised Spec-5’s habitat viability standard is too vague to inform**  
15 **final Project layout.**

16 In the revised SCA, EFSEC attempted to clarify the “habitat viability” component of  
17 Spec-5 by revising it to state that habitat is “no longer viable” when it “has been altered by  
18 landscape-scale development . . . rendering the territory non-viable. This could include  
19 habitats that have been altered such that insufficient native or foraging habitat remains.” That  
20 revision only further confuses the analysis, however. Its definition is circular because it states  
21 that habitat is “no longer viable” when the territory (i.e., habitat) is so altered that it is “non-  
22 viable.” It also uses vague terms that are not rooted in biology or objective standards. For  
23 example, it is unclear when alterations are “landscape-scale” and when “insufficient native or  
24 foraging habitat remain[s].” That is, Spec-5 provides no threshold for when habitat is so altered

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26 <sup>37</sup> Apr. Comment Letter at 13-14; Jan. Comment Letter at 3-4.

<sup>38</sup> E.g., “gone,” “remnant,” or “poor.”

<sup>39</sup> Apr. Comment Letter at 15; Aug. Comment Letter at 2, 7-9.

1 by landscape-scale development that it is non-viable or the amount or quality of “native or  
2 foraging” habitat is “sufficient” to trigger a setback.

3 Scout’s comment letters provided several methods to clarify this ambiguity. One  
4 option would be including the viability flowchart in Scout’s April Comment Letter.<sup>40</sup>  
5 Alternatively, the Council could incorporate WDFW’s 2024 guidance for the species. Per that  
6 guidance, EFSEC could define viable habitat as the “natural vegetation and agricultural types”  
7 identified in Table 2 of that guidance, which recognizes that ferruginous hawk do not nest in  
8 areas where more than 30% of the core area is cropland.<sup>41</sup> Scout also provided a third clarifying  
9 option utilizing aspects of each of these strategies as a redline of the revised Spec-5 with its  
10 August comment letter.<sup>42</sup>

11 The uncertainty caused by revised Spec-5’s ambiguous language poses serious  
12 problems for the Project’s technical and practical viability.<sup>43</sup> Under revised Spec-5’s  
13 ambiguous and incomplete guidance, members of the PTAG, many of which will not even be  
14 biologists, likely will disagree about whether specific nests or habitat are available or viable,  
15 and Councilmembers will not have any standards to guide their decision on final Project layout.  
16 If applied incorrectly and without scientific foundation, the viability determination will force  
17 elimination of key Project infrastructure, substantially decreasing generation capacity. Again,  
18 this is out of step with the Governor’s directives.

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22 <sup>40</sup> Apr. Comment Letter at 14-15; *see also* Scout Clean Energy’s Motion for Reconsideration, 24  
(May 20, 2024).

23 <sup>41</sup> *See* Apr. Comment Letter at 14; WDFW, Management Recommendations for Washington’s  
24 Priority Species: Ferruginous Hawk 7 (January 2024); *see also* Adjudication Exhibit EXH-  
25 4015\_X, Draft Management Recommendations for Washington’s Priority Species: Ferruginous  
Hawk, James W. Watson & Jeffrey M. Azerrad (July 5, 2023) (WDFW Draft Management  
Recommendations) at 6-7 tbl. 2.

26 <sup>42</sup> Aug. Comment Letter at 7-9.

<sup>43</sup> Apr. Comment Letter at 16; Scout Clean Energy, Petition for Reconsideration of *Initial  
Recommendation*, Exhibit K (Letter from PGE to EFSEC (Apr. 10, 2024)).

1 Finally, Scout also notes that proposed measure Spec-5’s reliance on the date of start  
2 of construction, rather than date of SCA execution, poses significant feasibility problems and  
3 should be revised, as proposed in Scout’s August 2024 comment letter.<sup>44</sup>

4 In sum, adding objective criteria to Spec-5 is critical to prevent precisely what the  
5 Governor prohibited: large areas of the Project being excluded “based on the radii of historic  
6 hawk nests.”<sup>45</sup> The Council must clarify when a “nesting site is no longer available” and use  
7 an unambiguous definition of non-viable habitat that reflects the current reality that ferruginous  
8 hawks are not nesting in the Horse Heaven Hills. Scout comments included revisions to Spec-  
9 5 that more clearly outline the process for determining when a nest is viable and better explain  
10 what is required in a project-specific ferruginous hawk management plan, should infrastructure  
11 need to be sited within 2 miles of a viable nest location. But to date, the Council has not  
12 considered or responded to that comment or the suggested criteria. *See* RCW 80.50.100(1)(b).  
13 Nor did the Council dispose of this issue in its recommendation to the Governor, as required  
14 by WAC 463-30-320(6). The Council must grapple with this critical clarification in order to  
15 implement the Governor’s directive and avoid an arbitrary result.

16 **B. By delegating Spec-5 viability assessments to the PTAG, the revised SCA is**  
17 **neither reasonable nor feasible and will indefinitely delay final Project design**  
**and construction.**

18 Revised Spec-5 continues to delegate the nest viability determinations to the PTAG.  
19 Under revised Spec-5, the PTAG would review and make substantive recommendations  
20 *impacting final Project design even before* the Project is built.<sup>46</sup> Contrary to the Council and  
21 staff’s inaccurate statements during Council deliberations, this PTAG proposal is wholly  
22 unprecedented and distinct from the well-understood role of a TAC, which advises on *post-*  
23 *construction* monitoring and adaptive mitigation issues and does not make recommendations

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26 <sup>44</sup> Aug. Comment Letter at 7-9.

<sup>45</sup> Governor’s Letter at 5.

<sup>46</sup> *See* Scout Clean Energy, Petition for Reconsideration of Initial Recommendation at 12.

1 on *siting* considerations.<sup>47</sup> The Council has never acknowledged these distinctions, and they  
2 matter.

3         Delegating substantive setback recommendations to this novel entity is problematic for  
4 many reasons. ***First***, by deferring nest site viability determinations until *after* SCA issuance,  
5 revised Spec-5 will likely delay final Project design for many months. Under EFSEC’s typical  
6 approach, at this stage in the certification process, the applicant would use the objective  
7 standards set forth in the SCA to finalize the project design and submit it to EFSEC staff for  
8 Council approval. But under revised Spec-5, EFSEC now still needs to convene and educate  
9 the PTAG, and the PTAG must learn the Project, review the data, and analyze nest availability  
10 and habitat viability (without clear criteria); and make recommendations based on those  
11 analyses. EFSEC will then have to consider and approve *each* nest determination before the  
12 applicant can even start developing the final project design. That final design, too, must be  
13 reviewed by the PTAG before it goes to EFSEC for approval. Practically speaking, this  
14 approach renders the entire revised SCA meaningless because Scout cannot determine where  
15 or how much of the Project can be built. Accordingly, Scout cannot secure financing or begin  
16 the extensive construction planning processes and procurement necessary to get a project built.  
17 If you do not know what you are building, you cannot determine how much it will cost or order  
18 the parts.

19         EFSEC has never acknowledged or grappled with the delay revised Spec-5 will cause.  
20 This delay is completely unworkable because it leaves Scout with no certainty to develop final  
21 engineering or finalize the critical agreements and financing needed to actually construct the  
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26 <sup>47</sup> See Transcript of Proceedings, EFSEC Special Meeting (Aug. 29, 2024) at 14:7-15:2; *see also*  
Letter from Dave Kobus, Scout to Sonia Bumpus, EFSEC re Correction of Record Misstatement  
about Pre-Operational Technical Advisory Group (Sept. 11, 2024).

1 Project. The delay poses substantial administrative obstacles, as noted below. And it is  
2 contrary to the EFSLA.<sup>48</sup>

3 **Second**, giving the PTAG this authority violates Washington law prohibiting an agency  
4 from delegating its discretionary or quasi-judicial authority, like the authority to make  
5 substantive decisions over Project components and exclusion zone locations.<sup>49</sup> The Council  
6 seems to interpret that it can delegate these decisions to the PTAG so long as the Council calls  
7 them “recommendations” and retains final approval authority over them.<sup>50</sup> But the revised  
8 SCA’s novel PTAG delegation scheme cannot be saved by simply penciling in final approval  
9 authority for the Council.<sup>51</sup> In order to adequately perform the duties tasked by the EFSLA,  
10 the Council itself must meaningfully review and assess each nest viability determination  
11 recommended by the PTAG. Doing so will pose immense administrative challenges and  
12 consume substantial Council resources (as detailed below). Far more likely is that the Council  
13 will summarily accept the technical findings of the PTAG without meaningful review or an  
14 understanding of the gravity of that review, thus shirking its substantive siting duties under the  
15 EFSLA.

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18 <sup>48</sup> RCW 80.50.010 (goal of EFSLA to address “pressing need for increased energy facilities” and  
19 to “streamline application review for energy facilities to meet the state’s energy goals”); RCW  
20 80.50.320 (emphasizing “efficiency of the siting process”).

21 <sup>49</sup> See *Application of Puget Sound Pilots Ass’n*, 63 Wn.2d 142, 145, 385 P.2d 711 (1963) (“It is a  
22 general principle of law ... that a delegated power may not be further delegated by the person to  
23 whom such power is delegated”) (quoting 42 Am. Jur. *Public Administrative Law* § 73 (year));  
24 *Wash. Fed’n of State Emps. v. State Dep’t of Gen. Admin.*, 152 Wn. App. 368, 385, 216 P.3d  
25 1061 (2009) (General Administration Department engaged in improper delegation by delegating  
26 to other agencies its task to regulate governmental bidding process).

27 <sup>50</sup> See Transcript of Proceedings, EFSEC Special Meeting (Aug. 29, 2024) at 13:21-14:6.

28 <sup>51</sup> Cf. *Assiniboine & Sioux Tribes of Fort Peck Indian Rsrv. v. Bd. of Oil & Gas Conservation of*  
29 *State of Mont.*, 792 F.2d 782, 794-95 (9th Cir. 1986) (reversing trial court’s holding that Secretary  
30 of Interior could delegate his authority to outside board, “an entity that has no independent  
jurisdiction” or “independent authority over the subject matter,” absent “clear proof of legislative  
intent to relieve the Secretary of ... his duties” under relevant enabling statute because Secretary,  
though Bureau of Land Management, could simply have “approv[ed] Board orders without  
meaningful independent review”).



1           **Third**, the delay and uncertainty posed by this condition in all likelihood could severely  
2 chill the State’s future clean energy development. These practical obstacles will make it  
3 impossible for Scout, and future project developers, to determine project viability, negotiate  
4 energy off-take or sale agreements, secure necessary project financing, develop any realistic  
5 construction timeline, or even determine whether any SCA amendments are necessary.<sup>52</sup> An  
6 SCA is of little use when it does not make clear where a project can be built or when that  
7 determination will be made because the certificate holder cannot move forward with final  
8 engineering or construction planning or even secure financing without that information.

9           **Fourth**, the recommendation will present an administrative nightmare for the Council  
10 itself. The Council’s PTAG measures—which place not just minor details but final Project  
11 design in the hands of non-Councilmembers and require Council approval of highly technical  
12 biological findings—go beyond any past TAC practice. In so doing, this approach risks  
13 derailing the Council’s monthly meetings for several years to come. Administering the PTAG  
14 and prolonging the decision-making that should be finalized in the SCA will bog down  
15 approval of other much-needed proposed renewable energy projects by taking up valuable  
16 EFSEC staff and Council time. By omitting the complicating interim discretionary approval  
17 process of the PTAG and issuing clearer criteria, the Applicant, with Council staff’s help, could  
18 develop viability determination applications, and EFSEC could review and approve or deny  
19 them, without risking hundreds of interim decisions requiring Council approval.

20           With the PTAG structure adopted in the revised SCA, the Council is generating a  
21 significant amount of associated approval workload for both Council and staff for the  
22 foreseeable future. This workload will be compounded by the precedent set by the revised

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24 <sup>52</sup> See, e.g., Apr. Comment Letter at 16; Scout Clean Energy, Petition for Reconsideration of Initial  
25 Recommendation, Ex. E, Letter from Renewable Northwest, Horse Heaven Project – Stakeholder  
26 Comments and Concerns on EFSEC Proposed Final Action at 1 (Apr. 10, 2024); Ex. B, Letter  
from American Clean Power Association & Energy and Wildlife Coalition to EFSEC, Horse  
Heaven Project – Stakeholder Comments and Concerns on EFSEC Proposed Final Action at 1, 2  
(Apr. 8, 2024); Ex. F, Letter from GE Vernova to EFSEC, Horse Heaven Project – Stakeholder  
Comments and Concerns on EFSEC Proposed Final Action at 1 (Apr. 9, 2024).

1 SCA. If EFSEC must review and approve not just the pre-construction Project design  
2 recommendations for the Horse Heaven Clean Energy Center but also other projects in the  
3 EFSEC permitting pipeline, that burden will fall on an already resource-stretched agency  
4 facing both a surging demand of complex projects to review and a mission to support action  
5 on Washington's climate requirements with greater surety and speed. Simply put, *the PTAG*  
6 *would unnecessarily delay and incapacitate the Applicant's cost-conscious, value-based*  
7 *engineering efforts in favor of singularly focused and overly restrictive conservation*  
8 *initiatives*. The Council must remove the PTAG's authority to make substantive conclusions  
9 impacting viability determinations and thus final Project design and restore those decisions to  
10 where they belong—with informed, objective Council staff who will formulate streamlined  
11 recommendations for the Council in a timeline and manner that will facilitate certainty in  
12 Project development.

## 13 V. CONCLUSION

14 In his remand letter, the Governor correctly identified the problems with the  
15 mitigation measures contained in the Council's initial recommended SCA. He remanded that  
16 recommendation for the Council to fix it, with specific directions on how to do so.

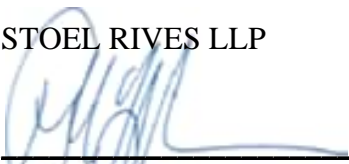
17 The Council tried, but after ignoring Scout's detailed comments and several key  
18 aspects of the Governor's directives, it fixed only some of the problems in the initial SCA.  
19 The Council must reconsider the critical aspects of its revised SCA recommendation  
20 discussed above and take seriously the Governor's clear directives to correct the SCA in  
21 specific ways. Spec-5 must be revised to take current science into account and provide clear  
22 standards for nesting site viability. And recommendations affecting final Project siting and  
23 design must be returned to the Applicant and EFSEC staff, where they belong consistent with  
24 EFSEC's typical practice.

25 Scout therefore respectfully requests that the Council reconsider the revised SCA to  
26 solve the problems discussed above.

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DATED: October 7, 2024.

STOEL RIVES LLP



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TIMOTHY L. MCMAHAN  
tim.mcmahan@stoel.com  
WILLA B. PERLMUTTER  
willb.perlmutter@stoel.com  
ARIEL STAVITSKY  
ariel.stavitsky@stoel.com  
EMILY K. SCHIMELPFENIG  
emily.schimelpfenig@stoel.com  
Telephone: (503) 294-9517  
*Attorneys for Applicant*

1 **CERTIFICATE OF FILING AND SERVICE**

2 I hereby certify that on October 7, 2024, I filed the foregoing **APPLICANT SCOUT**  
3 **CLEAN ENERGY'S PETITION FOR RECONSIDERATION OF THE COUNCIL'S**  
4 **REVISED RECOMMENDATION TO THE GOVERNOR** with the Washington Energy  
5 Facility Site Evaluation Council through an authorized method of service pursuant to WAC  
6 463-30-120(3).

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

10  
11 DATED: October 7, 2024.

STOEL RIVES LLP

  
TIMOTHY L. MCMAHAN

tim.mcmahan@stoel.com

WILLA B. PERLMUTTER

willa.perlmutter@stoel.com

ARIEL STAVITSKY

ariel.stavitsky@stoel.com

EMILY K. SCHIMELPFENIG

emily.schimelpfenig@stoel.com

Telephone: (503) 294-9517

*Attorneys for Applicant*

**Adjudication Parties and EFSEC Service List**

AAG Sarah Reyneveld  
Attorney General's Office  
800 Fifth Avenue, Suite 2000 (TB/14)  
Seattle, WA 98104-3188  
sarah.reyneveld@atg.wa.gov  
CEPSeaEF@atg.wa.gov  
Julie.dolloff@atg.wa.gov  
*Attorney for Counsel for the Environment*

Kenneth W. Harper  
Aziza L. Foster  
Menke Jackson Beyer, LLP  
807 North 39th Avenue  
Yakima, WA 98902  
kharper@mjbe.com  
zfoster@mjbe.com  
julie@mjbe.com  
*Attorneys for Benton County*

J. Richard Aramburu  
Law Offices of J. Richard Aramburu, PLLC  
705 2nd Ave, Suite 1300  
Seattle, WA 98104-1797  
rick@aramburulaw.com  
aramburulaw@gmail.com  
*Attorney for Tri-Cities C.A.R.E.S.*

Ethan Jones  
Shona Voelckers  
Jessica Houston  
Yakama Nation Office of Legal Counsel  
P.O. Box 151  
Toppenish, WA 98948  
ethan@yakamanation-olc.org  
shona@yakamanation-olc.org  
jessica@yakamanation-olc.org  
*Attorneys for Confederated Tribes  
and Bands of the Yakama Nation*

**EFSEC Contacts**  
adjudication@efsec.wa.gov  
adamtoem@writeme.com  
jennaslocum@atg.wa.gov  
jonathan.thompson@atg.wa.gov

1 sonia.bumpus@efsec.wa.gov  
andrea.grantham@efsec.wa.gov  
2 alexshiley@efsec.wa.gov  
3 catherine.taliaferro@efsec.wa.gov

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# Exhibit A

August 25, 2024

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

**Re: Horse Heaven Wind Project – Applicant Comments on Council’s Reconsidered Site Certification Agreement and Conditions, for Consideration, August 29, 2024**

Dear Chair Drew and Councilmembers:

Scout Clean Energy (“Scout” or “Applicant”), on behalf of the Horse Heaven Clean Energy Center (the “Project”), continues to appreciate the Energy Facility Site Evaluation Council’s (“Council” or “EFSEC”) consideration of the Project. On May 25, 2024, the Governor remanded the Council’s recommendation to approve the Project, as mitigated by Site Certification Agreement (“SCA”) conditions, and specifically directed the Council to “reconsider the conditions and mitigation in its recommendation in favor of an approach to mitigation that is more narrowly tailored to the specific impacts identified,” and that is limited “to those measures that are reasonably and feasibly consistent with achieving the full or near-full clean energy generation capacity of the proposed Project.”<sup>1</sup>

Scout appreciates EFSEC staff’s efforts to develop mitigation measures that are narrowly tailored to mitigate impacts while achieving the proposed generation capacity. Scout sees progress in the draft provided on August 19, 2024 (“proposed SCA”). Specifically, Scout agrees with the eastern battery energy storage system’s exemption from Spec-5 in the proposed SCA.<sup>2</sup>

However, the proposed SCA’s version of mitigation measure Spec-5 still does not meet the Governor’s objectives and poses significant practical obstacles that jeopardize the Project’s feasibility. As stated in the Applicant’s Petition for Reconsideration, the Council is shirking its primary duty *to site the Project*, instead impermissibly deferring that key decision until after the SCA is issued. Moreover, the Council proposes to relegate that decision to a Pre-operational Technical Advisory Group (“PTAG”) and to Washington Department of Fish and Wildlife (“WDFW”) staff through the measure’s blind adoption of inaccurate and poorly controlled Priority Habitat and Species (“PHS”) data unintended for regulatory purposes. In addition to the discussion below, in Exhibit A to this letter Scout has prepared recommended revisions to the proposed measure Spec-5 to cure the current issues.

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<sup>1</sup> Letter from Jay Inslee to Kathleen Drew (the “Governor’s Letter”), at 3 (dated May 23, 2024).

<sup>2</sup> See Proposed SCA, Appendix 2.



**I. Spec-5 remains too broad and ambiguous, and likely would arbitrarily exclude large areas that will gut the Project’s generating capacity.**

Proposed Spec-5 still threatens to exclude large areas of the Project because there are no clear objective criteria delineating when a nest is “available” or when habitat is “viable.” As a result, the measure still risks gutting large siting areas due to outdated documentation of historical and other non-viable nests. Nor does it follow the Governor’s specific guidance on Spec-5.

As currently proposed, Spec-5 allows turbines, solar arrays, and BESS siting between 0.6-2 miles of a known ferruginous hawk nest only if “the nesting site is no longer available” or “the foraging habitat within the 2-mile radius is no longer viable for the species.”<sup>3</sup> But Spec-5’s current wording does not comply with the Governor’s directive to limit mitigation to “times and places where hawks are present”<sup>4</sup> because as written, the measure’s ambiguous criteria for which nests are “available” and what surrounding habitat is “viable” could trigger avoidance zones around any nest, even historical nest sites where ferruginous hawks have not been present for decades. We believe this is not the Council’s intended outcome, but absent clarifying revisions to Spec-5, it is the likely outcome. Adding objective criteria is critical to prevent precisely what the Governor prohibited; large areas of the Project being excluded “based on the radii of historic hawk nests.”<sup>5</sup> To remedy this we have offered revisions to Spec-5 that more clearly outline the process for determining when a nest is viable and to better explain what is required in a project-specific ferruginous hawk management plan, should infrastructure need to be sited within 2 miles of a viable nest location. *See Exhibit A.*

**A. EFSEC must clarify when a “nesting site is no longer available” to uphold the Governor’s directive that Project exclusions are narrowly tailored to “times and places where hawks are present.”**

Spec-5 does not describe when “a nesting site is no longer available.” As explained in Scout’s prior submissions, more objectivity and specificity are needed to prevent a future situation in which scientists (or Councilmembers) must debate over a nest location’s availability and viability.<sup>6</sup> The Council has several options to remedy this issue. The Council could utilize WDFW’s existing classification for nesting structures<sup>7</sup> and/or the more specific criteria provided by Scout in its April Comment Letter.<sup>8</sup> Defining these key terms will ensure that mitigation is narrowly tailored to where ferruginous hawk are present or likely to occur. In our revised version

<sup>3</sup> Proposed SCA, Appx. 2, at 12 (August 19, 2024).

<sup>4</sup> Governor’s Letter at 5.

<sup>5</sup> Governor’s Letter at 5.

<sup>6</sup> Letter from Scout Clean Energy, Horse Heaven Wind Project, to EFSEC - Applicant Comments on Practical and Policy Problems with EFSEC Proposed Recommendation to the Governor 13-14 (“Apr. Comment Letter”) (Apr. 10, 2024); Letter from Scout Clean Energy, Horse Heaven Wind Project - Applicant Comments and Concerns on EFSEC Proposed Final Action (Jan. 19, 2024) (“Jan. Comment Letter”);

<sup>7</sup> E.g., “gone,” “remnant,” “poor”.

<sup>8</sup> Apr. Comment Letter at 15; Jan. Comment Letter at 4.

of Spec-5, attached, we provided clear definitions of what should be considered a viable or non-viable ferruginous hawk nest location. *See* Exhibit A.

Rather than leaving these determinations to a volunteer Pre-operational Technical Advisory Group (PTAG), we recommend that WDFW, the state’s natural resource agency with jurisdiction over state-listed species, agree to adopt the nest viability parameters presented in the attached revised Spec-5, in order to create a Project-specific ferruginous hawk nest database that will be relied upon to regulate ferruginous hawk nests as described in Spec-5. This database would incorporate existing PHS nest location information, as well as field-verified data from Scout’s biologists’ site surveys, to create a list of all documented ferruginous hawk nests in the Project area and surrounding areas, with their current condition compiled, all in one place. This list would serve as an up-to-date, field-verified inventory to inform the viability assessment contemplated in Spec-5.

**B. EFSEC’s proposed habitat viability clarification is not narrowly tailored to mitigate impacts without decreasing the Project’s generation capacity.**

EFSEC has attempted to clarify Spec-5 by stating that habitat is “no longer viable” when it “has been *altered by landscape-scale development* (conversion to cropland, residential development, industrial development) rendering the territory non-viable. This could include habitats that have been altered such that *insufficient native or foraging habitat remains*,” (“non-viable habitat”).<sup>9</sup> This language does not provide sufficient bounds to clearly formulate the Project’s final layout. For example, it is unclear from this definition when alterations are “landscape-scale development” or “insufficient native or foraging habitat remain[s].” That is, Spec-5 provides no threshold for when habitat is so altered by landscape-scale development that it is non-viable or the amount or quality “native or foraging” habitat “sufficient” to warrant an exclusion zone.

Scout’s comment letters provide several methods to clarify this ambiguity. One option would be including the viability flowchart in Scout’s April Comment Letter.<sup>10</sup> Alternatively, incorporating WDFW’s guidance for the species (2024) would be the most straightforward way to do so. EFSEC could define viable habitat as the “natural vegetation and agricultural types” identified in Table 2 of WDFW 2024 and recognize that ferruginous hawk do not nest in areas where more than 30% of the core area is cropland.<sup>11</sup>

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<sup>9</sup> Proposed SCA, Appx. 2, at12 (August 19, 2024).

<sup>10</sup> Apr. Comment Letter at 14-15; *see also*, Scout Clean Energy’s Motion for Reconsideration, 24 (May 20, 2024);

<sup>11</sup> *See* Apr. Comment Letter at 14; WDFW, Management Recommendations for Washington’s Priority Species: Ferruginous Hawk 7 (January 2024); *see also* Adjudication Exhibit EXH-4015\_X, Draft Management Recommendations for Washington’s Priority Species: Ferruginous Hawk, James W. Watson & Jeffrey M. Azerrad (July 5, 2023) (WDFW Draft Management Recommendations) at 6-7 tbl. 2.

As outlined in previous submissions, the uncertainty caused by Spec-5’s ambiguous language poses serious problems for technical and practical viability.<sup>12</sup> Under the current iteration, biologists likely will disagree whether specific FEHA nests or habitat is not viable. If applied incorrectly and without scientific foundation, the viability determination could force elimination of key components, including turbines, solar facilities, and BESS, substantially decreasing generation capacity.

The Council must clarify when a “nesting site is no longer available” and use an unambiguous, narrowly tailored definition of non-viable habitat. See Exhibit A.

**II. By impermissibly deferring and relegating viability determinations to the PTAG after site certification, Spec-5 will prevent final Project design, incapacitating and further delaying construction.**

Continuing its unprecedented approach, proposed Spec-5 delegates the nest viability determination to the PTAG.<sup>13</sup> Unlike the well understood role of a Technical Advisory Committee, which has a largely *advisory* role, the PTAG, would review and make conclusions dictating final Project design even before the Project is built.<sup>14</sup> This delegation to this novel entity is problematic for several reasons. **First**, by deferring the technical nest site viability determination until *after* SCA issuance, proposed Spec-5 will delay final Project design for many months (or even longer). This delay is completely unworkable, as it leaves Scout with no certainty to develop final engineering or finalize the critical agreements and financing needed to actually construct the Project. **Second**, giving the PTAG this authority violates Washington law prohibiting an agency from delegating its discretionary or quasi-judicial authority, like the authority to make substantive decisions over Project components and exclusion zone locations.<sup>15</sup> **Third**, it is not “reasonably and feasibly consistent with” achieving “full or near-full clean energy generation capacity” because the viability determination affecting final Project build-out will not be conducted by EFSEC staff or Councilmembers, but rather PTAG members several months later who are far too attenuated to implement the Governor’s directive.<sup>16</sup> **Fourth**, the delay and uncertainty posed by this condition will chill future clean energy development by making it impossible for Scout, and future project developers, to determine project viability, negotiate energy off-take or sale agreements, secure necessary project financing, develop any

<sup>12</sup> Apr. Comment Letter at 16; Scout Clean Energy, Petition for Reconsideration, Exhibit K: Letter from PGE to EFSEC (Apr. 10, 2024);

<sup>13</sup> Proposed SCA, Appx. 2, 12-13.

<sup>14</sup> Scout Clean Energy, Petition for Reconsideration at 12.

<sup>15</sup> See *Application of Puget Sound Pilots Ass’n*, 63 Wn.2d 142, 145 (1963) (It is a general principle of law ... that a delegated power may not be further delegated by the person to whom such power is delegated. (quoting 42 Am. Jur. Public Administrative Law § 73)); *Wash. Fed’n of State Emps. v. State Dep’t of Gen. Admin.*, 152 Wn. App. 368, 385 (2009) (General Administration Department engaged in improper delegation by delegating to other agencies its task to regulate governmental bidding process).

<sup>16</sup> See Apr. Comment Letter at 1.

realistic construction timeline, or even determine whether any SCA amendments are necessary.<sup>17</sup> The proposal here—which would place not just minor construction details but *final Project design in the hands of non-Councilmembers and would require consideration and approval of detailed, biological information during Council meetings—goes much further, risking derailing the Council’s monthly meetings for several years to come*. By omitting the complicating middle-process of the PTAG and issuing clearer criteria, the Applicant could develop viability determination applications, and EFSEC could review and approve or deny them, without risking hundreds of interim decisions requiring Council approval.

Simply put, the PTAG would unnecessarily delay and incapacitate the Applicant’s cost-conscious value-based engineering efforts in favor of singularly focused and overly restrictive conservation initiatives. *The Council must remove the PTAG’s authority to make substantive conclusions impacting viability determinations and thus final project design.*

In addition to the Spec-5 problems discussed above, Scout also notes that proposed measure Spec-5’s reliance on the date of start of construction, rather than date of SCA execution, poses significant feasibility problems and should be revised, as proposed in Exhibit A.<sup>18</sup>

## CONCLUSION

In sum, as proposed, Spec-5 does not comply with the Governor’s letter and ignores the Governor’s most specific critique of the Council’s many mitigation measures. It is critical that these remaining problems be addressed to accomplish the Governor’s directive, uphold the Council’s duties, and ensure the full or near-full generation capacity of the approved Project without further delay.

If the Council finalizes this Proposed SCA with the current deficiencies, the Governor can—and must—use his plenary authority to override EFSEC’s decision, and to ensure the mandates of the Energy Facility Site Location Act and the state’s climate goals are met. We urge the Council to uphold its duties and ensure a meaningful clean energy future for Washington.

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<sup>17</sup> See e.g. Apr. Comment Letter at 16; Scout Clean Energy, Petition for Reconsideration, Ex. E, Letter from Renewable Northwest, Horse Heaven Project - Stakeholder Comments and Concerns on EFSEC Proposed Final Action, at 1 (Apr. 10, 2024); Scout Clean Energy, Petition for Reconsideration, Ex. B, Letter from American Clean Power Association & Energy and Wildlife Coalition to EFSEC, Horse Heaven Project -Stakeholder Comments and Concerns on EFSEC Proposed Final Action, at 1, 2 (Apr. 8, 2024) ; Scout Clean Energy, Petition for Reconsideration, Ex. F, Letter from GE Vernova to EFSEC, Horse Heaven Project - Stakeholder Comments and Concerns on EFSEC Proposed Final Action, at 1 (Apr. 9, 2024)

<sup>18</sup> In addition, to the extent that any of Scout’s concerns as asserted in previous submissions, including our January Comment Letter, April Comment Letter, and its Petition for Reconsideration have still not been addressed, we reassert them here. See Jan. Comment Letter; Apr. Comment Letter, Scout Clean Energy, Petition for Reconsideration.



Scout Clean Energy LLC  
1805 29<sup>th</sup> Street, Suite 2050  
Boulder, CO 80301  
(303) 284-7566

Sincerely,

Michael Rucker, President and Chief Executive Officer  
Scout Clean Energy

**Horse Heaven Wind Farm LLC  
Site Certification Agreement  
EXCERPTS - Appendix 2. Mitigation  
Measures**

**Spec-5 Ferruginous Hawk:** The Certificate Holder shall not site any wind turbines, solar arrays, or BESS within a 0.6-mile (1 km) radius surrounding ferruginous hawk nests listed in a WDFW-established, project-specific regulatory version of the PHS database. The project-specific database will differentiate between viable and non-viable ferruginous hawk nests.

Ferruginous hawk nests are considered viable if:

- The nest is documented as "Good" or "Fair" in the PHS regulatory database project-specific database and Certificate Holder's nest surveys on the effective date of the SCA, and
- The nest has breeding habitat, as listed in Table 2 of WDFW (2024), that represents more than 30% of the total area within the 2-mile radius of the nest location for the species identified in the Certificate Holder's nest surveys, and/or

Ferruginous hawk nests are considered no longer viable if:

- The nest is no longer available (i.e., is listed as Gone, Remnant, or Poor condition in the project-specific database PHS or the Certificate Holder's nest survey data), or
- Breeding habitat, as listed in Table 2 of WDFW (2024), does not represent more than 30% of the total area within the 2-mile radius of a viable nest location for the species.

Appropriate mitigation to address any ferruginous hawk nest sites that may be newly established by the species and confirmed by future nest surveys between the SCA effective date and the time of construction will be evaluated addressed via the adaptive management strategy specified in measure Wild-1.

The Certificate Holder shall avoid siting wind turbines, solar arrays, and BESS within a 0.6-2-mile radius surrounding viable, documented, a ferruginous hawk nest as described above, unless the Certificate Holder is able to demonstrate that:

—unless a ferruginous hawk management plan is completed, as described below compensation habitat, as described below, will provide a net gain in ferruginous hawk habitat.

and either:

- the nesting site is no longer available (i.e., is listed as Gone, Remnant, or Poor condition in PHS or the Certificate Holder's nest survey data), or
- the foraging breeding habitat, as defined by listed in Table 2 of WDFW (2024), does not represent more than 30% of the total area within the 2-mile radius of a is no longer viable nest location for the species.

Habitat considered no longer available viable for ferruginous hawk would include habitat that does not meet the definition of breeding habitat in WDFW 2024. If a 2-mi core area around a nest location contains less than 30% viable habitat, has been altered by landscape-scale development (conversion to cropland, residential development, industrial development) rendering the territory nest location will be considered non-viable. This could include habitats that have been altered such that insufficient native or foraging habitat remains. Project turbines, solar arrays, or BESS shall not be sited within 2 miles of a viable ferruginous hawk nest without prior approval by EFSEC based on the process described below.

The extent of component encroachment into the core area of a viable nest, -described above habitat in ferruginous hawk territories, defined as the area within a 2-mile radius surrounding documented that nests,

**Commented [A1]:** Revision recommended to add clarity and incorporate current science into development of avoidance areas.

**Commented [A2]:** Proposed revisions provide clarity drawn from PHS existing nest classification system and WDFW 2024, the species' management recommendation guidance. First, any land cover or vegetation types not on that list would be considered non-viable (See WDFW 2024, Table 2 on Page 9). Second, incorporating the guidance's science with respect to a 30% habitat metric. See WDFW 2024 guidance at p.7 ("Effects of cultivation on ferruginous hawk nesting have been studied extensively in grassland habitats in Alberta where ground squirrels were the primary prey ...In that study, hawk densities were greatest on random survey plots where ≤10% of the land was in cultivation. Hawk densities declined in areas where cultivated lands exceeded 30% (Schmutz 1999).")

**Commented [A3]:** Proposed revisions provide clarity drawn from PHS existing nest classification system and WDFW 2024, the species' management recommendation guidance. First, any land cover or vegetation types not on that list would be considered non-viable (See WDFW 2024, Table 2 on Page 9). Second, incorporating the guidance's science with respect to a 30% habitat metric. See WDFW 2024 guidance at p.7 ("Effects of cultivation on ferruginous hawk nesting have been studied extensively in grassland habitats in Alberta where ground squirrels were the primary prey ...In that study, hawk densities were greatest on random survey plots where ≤10% of the land was in cultivation. Hawk densities declined in areas where cultivated lands exceeded 30% (Schmutz 1999).")

**Commented [A4]:** Per comment below regarding Measure PHS-2, by relying on the date of "time of construction," these two measures defer any certainty on final project design until the day construction begins. This is not feasible and will bar project development. Moreover, by staggering EFSEC's review of the final project design, this timeline unnecessarily wastes the Council's resources by requiring a piecemeal review process.

Any new nests are best addressed through adaptive management. The revisions proposed incorporate the approach employed in Spec-1 and Spec-2, for example.

**Commented [A5]:** Clarifying to avoid interpretation that only PHS-documented nests are included.

**Commented [A6]:** Proposing for internal consistency with use of "viable" below.

**Commented [A7]:** "Territory" typically refers to a group of nests, which is not the intended meaning here. Propose changing for clarity.

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may vary depending on the type of infrastructure proposed (i.e., turbine, solar array, BESS). If siting of these components within 2 miles of a nest is considered by the Certificate Holder, the Certificate Holder shall ~~develop, develop a Project-specific ferruginous hawk mitigation and management plan in consultation with the PTAG~~ for approval by EFSEC, which includes:

1. ~~A description of a~~ A set of habitat parameters to document whether habitat in a core ~~range-area~~ is considered non-viable. ~~T~~ the results of habitat surveys and their relation to these habitat parameters ~~shall be reviewed by the PTAG and approved by EFSEC.~~
2. A description of the current ~~nearest~~ viable nesting habitat, ~~and~~ available nesting sites, and a description of documented use of ~~nesting locations and associated~~ the core habitat by ferruginous hawk available through historic background information or field-based surveys.
3. A description of the type and location of infrastructure proposed within the core ~~habitat area~~.
- ~~1.~~ The proximity of infrastructure to any known nest ~~site or location and associated~~ suitable foraging habitat.
- ~~2.~~
4. ~~In the event that a Project component is proposed for siting within the 2-mile buffer, the Certificate Holder shall, in consultation with the PTAG, develop a Project-specific ferruginous hawk mitigation and management plan for approval by EFSEC.~~
5. A description of efforts to site Project infrastructure to avoid ~~core~~ breeding and foraging habitat in the core area, identified as the area within 2 miles of nests documented in PHS data and the Certificate Holder's nest surveys:
  - a. If Project turbines, solar arrays, or BESS are sited within 2 miles of a viable ferruginous hawk nest, the infrastructure shall be ~~reviewed by the PTAG and approved by EFSEC.~~
  - b. Additional mitigation measures shall be developed to reduce potential ferruginous hawk strikes with turbines, including curtailing turbine operation within the 2-mile core habitat of any ~~actively occupied~~ active nests diurnally during the breeding and rearing periods when ferruginous hawks are present in Benton County.
  - ~~c.~~ The plan shall explain how and where the Certificate Holder will create new offset habitat to mitigate for direct and indirect habitat loss within the 2-mile core area of viable ferruginous hawk nests documented in PHS data and the Certificate Holder's nest surveys.
- ~~A~~
6. ~~A~~ description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.
7. A description of pre- and post-monitoring programs that will be conducted to establish:
  - a. Habitat use within the Lease Boundary.
  - b. Mapping of ground squirrel colonies and other prey within the Lease Boundary and any accessible areas (i.e., publicly accessible or access granted by a private land owner/landowner) outside of the Lease Boundary.
  - ~~c.~~ Identification of potential flyways between nest sites and foraging habitat and monitoring of ~~d-c.~~ potential flyways to inform final turbine siting and orientation.
  - ~~e-d.~~ Ongoing monitoring of nest use and ~~territory~~ success.
8. A description of restoration activities that will be undertaken during Project decommissioning to enhance ferruginous hawk habitat in disturbed areas.

Results of ferruginous hawk monitoring programs and adaptive management will continue through Project operation and decommissioning, as set forth in Wild-1, with review by the TAC and approval by EFSEC.

*Exemption from Spec-5 for East BESS:* The Certificate Holder intends to locate the East BESS within the footprint of the East Substation, which is itself located within 0.6-miles of a documented ferruginous hawk nest. The East BESS is exempted from the 0.6-mile and 2-mile buffers described in this measure so long as it remains co-located with the East Substation and remains subject to the other requirements of this measure.

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**Commented [A8]:** As detailed in the comment letter, EFSEC's delegation of these aspects of the avoidance areas and mitigation measures impacting final project design to the PTAG is improper, inefficient, and unwarranted.

All substantive aspects of Spec-5 can and should be implemented by the Applicant based on existing WDFW authorities and approved directly by EFSEC staff and the Council.

**Commented [A9]:** Revisions intended to clarify meaning of this requirement. As worded, it is unclear what this description is intending.

**Commented [A10]:** Again, revising to clarify intent of this description.

**Commented [A11]:** Revision proposed to ensure internal consistency with established monitoring program.

While the substation is not subject to buffer requirements of this mitigation measure, absent this exemption, relocation of the BESS would be required. ~~The rationale for this exemption is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.~~

**Rationale:** The 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. ~~The rationale for the exemption of the East BESS is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.~~

\* \* \*

**PHS-2 Firefighting Aircraft Standoff Buffers:** No wind turbines shall be sited within 0.25 miles of the maximum perimeter of one or more historic wildfires that have been recorded between January 1, 2000 and the ~~start of construction~~time of SCA ~~execution~~.

**Rationale:** The Washington Department of Natural Resources (DNR) has stated that any firefighting aircraft in service with their agency would observe a minimum of a 0.25-mile standoff buffer from wind turbines during aircraft operation. This mitigation measure ensures that DNR firefighting aircraft can safely and effectively be deployed to areas of higher wildfire likelihood within and adjacent to the Project Lease Boundary to assist in firefighting when needed.

**Commented [A12]:** Revision proposed to ensure internal consistency of structure of conditions in Appendix 2 of the SCA.

**Commented [A13]:** Revision proposed to ensure necessary certainty in final project design before beginning of construction, and to facilitate more efficient, consolidated EFSEC review. As written, this would practically delay the final layout indefinitely based on a moving target and unnecessarily stagger EFSEC's final review.

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- The nest is documented as “Good” or “Fair” in the project-specific database and Certificate Holder’s nest surveys on the effective date of the SCA and
- The nest has breeding habitat, as listed in Table 2 of WDFW (2024), that represents more than 30% of the total area within the 2-mile radius of the nest location for the species.

Ferruginous hawk nests are considered no longer viable if:

- The nest is no longer available (i.e., is listed as Gone, Remnant, or Poor condition in the project-specific database or the Certificate Holder’s nest survey data), or
- Breeding habitat, as listed in Table 2 of WDFW (2024), does not represent more than 30% of the total area within the 2-mile radius of a viable nest location for the species.

Appropriate mitigation to address any ferruginous hawk nest sites that may be newly established by the species and confirmed by future nest surveys between the SCA effective date and the time of construction will be addressed via the adaptive management strategy specified in measure Wild-1.

The Certificate Holder shall avoid siting wind turbines, solar arrays, and BESS within a 0.6-2-mile radius surrounding viable ferruginous hawk nest as described above, unless a ferruginous hawk management plan is completed, as described below.

Project turbines, solar arrays, or BESS shall not be sited within 2 miles of a viable ferruginous hawk nest without prior approval by EFSEC based on the process described below.

The extent of component encroachment into the core area of a viable nest, described above, defined as the area within a 2-mile radius surrounding that nest, may vary depending on the type of infrastructure proposed (i.e., turbine, solar array, BESS). If siting of these components within 2 miles of a nest is considered by the Certificate Holder, the Certificate Holder shall develop a Project-specific ferruginous hawk mitigation and management plan for approval by EFSEC, which includes:

1. A description of a set of habitat parameters to document whether habitat in a core area is considered non-viable, the results of habitat surveys and their relation to these habitat parameters.
2. A description of the current nearest viable nesting habitat and available nesting sites, and a description of documented use of nesting locations and associated core habitat by ferruginous hawk available through historic background information or field-based surveys.
3. A description of the type and location of infrastructure proposed within the core area.
4. The proximity of infrastructure to any known nest location and associated suitable foraging habitat.
5. A description of efforts to site Project infrastructure to avoid breeding and foraging habitat in the core area, identified as the area within 2 miles of nests documented in PHS data and the Certificate Holder’s nest surveys:
  - a. If Project turbines, solar arrays, or BESS are sited within 2 miles of a viable ferruginous hawk nest, the infrastructure shall be approved by EFSEC.

- b. Additional mitigation measures shall be developed to reduce potential ferruginous hawk strikes with turbines, including curtailing turbine operation within the 2-mile core habitat of any active nests diurnally during the breeding and rearing periods when ferruginous hawks are present in Benton County.
  - c. The plan shall explain how and where the Certificate Holder will create new offset habitat to mitigate for direct and indirect habitat loss within the 2-mile core area of viable ferruginous hawk nests documented in PHS data and the Certificate Holder's nest surveys.
- 6. A description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.
- 7. A description of pre- and post-monitoring programs that will be conducted to establish:
  - a. Habitat use within the Lease Boundary.
  - b. Mapping of ground squirrel colonies and other prey within the Lease Boundary and any accessible areas (i.e., publicly accessible or access granted by a private landowner) outside of the Lease Boundary.
  - c. Identification of potential flyways between nest sites and foraging habitat and monitoring of potential flyways to inform final turbine siting and orientation.
- d. Ongoing monitoring of nest use and success.
- 8. A description of restoration activities that will be undertaken during Project decommissioning to enhance ferruginous hawk habitat in disturbed areas.

Results of ferruginous hawk monitoring programs and adaptive management will continue through Project operation and decommissioning, as set forth in Wild-1, with review by the TAC and approval by EFSEC.

*Exemption from Spec-5 for East BESS:* The Certificate Holder intends to locate the East BESS within the footprint of the East Substation, which is itself located within 0.6-miles of a documented ferruginous hawk nest. The East BESS is exempted from the 0.6-mile and 2-mile buffers described in this measure so long as it remains co-located with the East Substation and remains subject to the other requirements of this measure. While the substation is not subject to buffer requirements of this mitigation measure, absent this exemption, relocation of the BESS would be required.

**Rationale:** The 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. The rationale for the exemption of the East BESS is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.

\* \* \*

**PHS-2 Firefighting Aircraft Standoff Buffers:** No wind turbines shall be sited within 0.25 miles of the maximum perimeter of one or more historic wildfires that have been recorded between January 1, 2000 and the time of SCA execution.

**Rationale:** The Washington Department of Natural Resources (DNR) has stated that any firefighting aircraft in service with their agency would observe a minimum of a 0.25-mile standoff buffer from wind turbines during aircraft operation. This mitigation measure ensures that DNR firefighting aircraft can safely and effectively be deployed to areas of higher wildfire likelihood within and adjacent to the Project Lease Boundary to assist in firefighting when needed.

## Pre-Operational Technical Advisory Group Rules of Procedure

The Site Certification Agreement (SCA) for the Horse Heaven Wind Farm (the “Project”) includes mitigation measures referred to in this Charter as “Conditions.” Site Certificate Agreement (SCA) Condition Hab-4 requires the Certificate Holder to establish a Pre-Operational Technical Advisory Group (PTAG) to advise on the development and implementation of pre-construction compliance activities. The PTAG is responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and habitat, which will then be submitted to the Energy Facility Site Evaluation Council (EFSEC) for approval. After construction and before Project operation, the PTAG will cease to exist and be replaced by the Technical Advisory Committee (TAC), with its respective Charter.

The SCA requires the Certificate Holder to “submit to EFSEC for approval proposed Rules of Procedure describing how the PTAG shall operate, including but not limited to a schedule for meetings, a meeting procedure, a process for recording meeting discussions, a process for making and presenting timely PTAG recommendations to the Council, and other procedures that will assist the PTAG to function properly and efficiently.” SCA Art. IV.G. This document serves that purpose.

### Establishing Language

SCA Condition IV.G creates the foundation of the PTAG:

#### ***Pre-Operational Technical Advisory Group***

*The Certificate Holder, in consultation with EFSEC, shall establish a Pre-operational Technical Advisory Group (PTAG) as defined by mitigation measure Hab-4 in Appendix 2. The PTAG shall be established at least one year prior to construction and is responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and wildlife habitat. The PTAG shall also provide advice on adaptive management. The PTAG shall be responsible for, at a minimum:*

- 1. Reviewing and providing technical advice on Project wildlife and habitat management plans (e.g. ferruginous hawk management plans).*
- 2. Reviewing and providing advice to EFSEC on pre-design and pre-construction data collection requirements to address Project mitigation measures and conditions or management plans.*
- 3. Reviewing and providing advice to EFSEC on the final Project design.*
- 4. Advising on thresholds to be applied to the Project that would trigger the requirement for additional mitigation measures.*

### SCA Conditions Under Consideration by the PTAG

The SCA defines which SCA Conditions the PTAG will advise the Certificate Holder and EFSEC on during the pre-operations period. The following SCA Measures in the SCA invoke the PTAG:

- Hab-1 Wildlife Movement Corridors

- Hab-4 Establish PTAG and TAC
- Hab-5 Indirect Habitat Loss Management Plan
- Hab-6 Project Layout and Design
- Hab-8 Indirect Habitat Loss Compensation
- Wild-1 Post-construction Bird and Bat Fatality Monitoring Program
- Wild-8 Turbine Buffer Zones
- Wild-10 Pre-construction Bat Monitoring
- Spec-1 Striped Whipsnake & Sagebrush Lizard
- Spec-4 Burrowing Owl
- Spec-5 Ferruginous Hawk
- Spec-7 Loggerhead Shrike, Sagebrush Sparrow, Sage Thrasher, & Vaux's Swift
- Spec-8 Prairie Falcon
- Spec-10 Black-tailed Jackrabbit & White-tailed Jackrabbit
- Spec-12 Townsend's Ground Squirrel
- Spec-13 Pronghorn Antelope

See Attachment A for full text of these Conditions.

## **Membership Expectations**

### ***Commitment and Structure***

Representative organizations are encouraged to designate PTAG members who can serve through the completion of the PTAG's work when the facility completes construction. The PTAG will be managed to provide timely recommendations as directed in the SCA, Article IV(G) and directed by the Facilitator, to support the Certificate Holder's and EFSEC's review.

Attachment B describes the entities represented on the PTAG. Members can identify an alternate to attend meetings in their absence. Entities will notify the Certificate Holder in writing of the person designated as the alternate representative.

Appointees to the PTAG must have relevant expertise or firsthand knowledge of facts relevant and necessary to the matters on which the PTAG is established to advise. PTAG members should limit their input to those topics on which they have relevant expertise or knowledge that qualifies them to provide input.

## **Authority**

As provided in the SCA, the role of the PTAG is advisory only. PTAG roles are defined by the responsibilities outlined in SCA Condition Hab-4 to serve in a strictly advisory role to EFSEC and the Certificate Holder.

As detailed below, once a Facilitator Report is finalized, the Certificate Holder will consider the PTAG recommendations and prepare a final proposal for EFSEC staff consideration. EFSEC staff will consider

the proposal and (1) approve or reject the proposal for revision, or (2) recommend that the proposal or an aspect of the proposal be considered and approved by the standing Councilmembers. EFSEC maintains full decision-making authority as to the approval of all material items required under the SCA, as provided in chapter 80.50 RCW.

### **Governance and Decision-Making**

**EFSEC Staff Role:** An EFSEC Staff designee will attend PTAG meetings to observe and to be available to answer questions from PTAG members, the Certificate Holder representative, and the Facilitator about EFSEC Staff's interpretation of the PTAG process, the SCA, and mitigation measures included in the SCA.

**Certificate Holder Role:** The Certificate Holder will designate a representative to present to the PTAG the Certificate Holder's draft proposals on matters for which the SCA requires advice from the PTAG. The Certificate Holder representative, in consultation with EFSEC staff and the Third-Party PTAG Facilitator, will be responsible for developing and distributing agendas, meeting schedules/locations, and may provide administrative assistance including material development.

**Third-Party PTAG Facilitator Role:** The Certificate Holder will retain an independent, professional facilitator (Facilitator) to oversee and coordinate the PTAG discussion and review process. This neutral intermediary will oversee the meetings, assist in explaining the charge and matters on which advice is to be solicited from PTAG members, solve unexpected problems, and act as the point of contact between PTAG members, the Certificate Holder, and EFSEC staff. The Facilitator will be responsible for drafting and keeping meeting minutes and developing and maintaining timelines for recommendations to EFSEC. A staff member from the Facilitator's team will take minutes during PTAG meetings. The Facilitator will ensure the accuracy of draft minutes prior to distribution to the PTAG for approval. The Facilitator is expected to maintain independence from the Certificate Holder and PTAG members, consistent with alternative dispute resolution professional standards. The Facilitator will ensure meetings remain productive, efficient, and within the scope of the agenda and the items for consideration under the SCA.

**Meetings, Review and Recommendations:** At each PTAG meeting, the Certificate Holder will present to the group draft plans, methodologies, or other documents prepared for PTAG review and comment. The Certificate Holder will provide such materials for PTAG review at least 14 days prior to the meeting at which they will be discussed. PTAG members may provide comments on the materials at the following meeting. Comments are to be rooted in technical expertise and supported by data or other evidence constituting the best available science. PTAG member input on facts relevant to the matters to be reviewed by the PTAG must meet standards of reliability applicable to agency SEPA analysis (e.g., attribution of photographs, reference to surveys, citation of pertinent records). At PTAG meetings, the Facilitator will facilitate discussion as to each comment and provide opportunities for all PTAG members to respond. The Facilitator will keep all written comments and document all verbal comments in the meeting minutes. Topics or issues that are not resolved at the successive meeting may be continued to the next meeting.

**Facilitator Report:** The Certificate Holder will present to the PTAG the Certificate Holder's draft proposals on matters for which the SCA requires advice from the PTAG. The PTAG need not reach consensus on each draft proposal or topic before it, but should endeavor to do so where possible. When the Facilitator determines that all comments and perspectives have been heard and all relevant evidence has been considered as to a particular document or topic, the Facilitator must direct that the group's advice on that subject be finalized. The Facilitator will then work to develop a report of the PTAG's deliberations for consideration (the "Facilitator Report"). The Facilitator must identify areas of agreement and any areas of disagreement amongst the group members' advice so that EFSEC's decision is informed by all relevant input from PTAG members. The Facilitator will distribute the meeting minutes as well as the draft report for group members to review and approve or revise at the following meeting, to ensure it accurately reflects each group member's advice.

**PTAG Recommendation:** Once the Facilitator's Report is finalized for a document or topic, the Certificate Holder will consider the advice therein to develop a final proposal to EFSEC. The Facilitator's Report and the Certificate Holder's final proposal shall be provided to EFSEC for review. The Certificate Holder's final proposal may explain the economic and technological feasibility implications of the advice presented in the Facilitator Report, when applicable.

**Materials for EFSEC Consideration:** Once these materials are finalized, the Facilitator will present to the Certificate Holder all meeting minutes, draft documents, written comments, the Facilitator's Report and the Certificate Holder's final proposal pertinent to a topic for EFSEC review and decision. The Certificate Holder will then provide these materials to EFSEC as contemplated in SCA Art. IV.G.

### **Quorum and Agendas**

To reach a quorum, two-thirds of PTAG members (or member representative designated in writing), respectively, must be in attendance at a meeting, as well as the Facilitator, Certificate Holder representative, and the EFSEC Staff observer. PTAG meetings may proceed without a quorum of members, but a Facilitator Report may not be finalized until group members have been given a reasonable opportunity to approve that it accurately reflects each member's comments.

Agendas will be generated by the Facilitator, in consultation with EFSEC staff and the Certificate Holder representative when appropriate, and will be provided to PTAG members at least 14 days prior to the meeting where the information will be discussed, along with any meeting material needed to conduct business.

### **Meeting Frequency and Transparency**

The PTAG will meet at least monthly for the duration of their tenure, with the understanding that additional meetings may be needed to meet goals and Project timelines. It is anticipated that meetings during the first few months will be more frequent, at times weekly, including to establish the PTAG and

develop a recommendation on SCA Conditions that influence final Project design, prioritizing Spec-5. Once the Spec-5 PTAG report is finalized, the remaining items that will influence Project design or that are longer lead items, such as longer-term studies, will be addressed. During the initial meeting the timing, frequency, duration, material preparation and review schedule and if necessary, location, will be determined by the Facilitator.

As a strictly advisory body, meetings are not subject to Open Public Meeting Act rules and will not be open to the public. As described above, the Facilitator will keep the meeting minutes, subject to review and approval by PTAG members, for the record and ultimately provide those minutes to EFSEC.

# Attachment A

## SCA Conditions Requiring PTAG Involvement



- Hab-1 Wildlife Movement Corridors:** The Certificate Holder shall provide rationale to EFSEC for siting any Project components within movement corridors modeled in Washington Wildlife Habitat Connectivity Working Group (2013) as medium to very high linkage, and a Corridor Mitigation Plan shall be required that describes:
- Extent of direct and indirect habitat impact within the movement corridor
  - Proposed measures to be implemented to reduce potential impacts on movement corridors (e.g., habitat enhancements to promote continued use of corridors)
  - Proposed features (e.g., open-bottom culverts) to accommodate wildlife movement for linear Project components (e.g., roads, powerlines)
  - Proposed restoration in movement corridors following Project decommissioning
  - Performance standards to assess the effectiveness of mitigation measures and restoration
  - Methods to monitor and measure performance standards

The Corridor Mitigation Plan shall be developed in consultation with the PTAG and reviewed and approved by EFSEC prior to implementation. Results of corridor monitoring shall be reviewed annually with the TAC to evaluate the effectiveness and apply additional measures if necessary. Data shall be provided to EFSEC with additional mitigation measures for review and approval prior to implementation.

- Hab-4 Establish PTAG and TAC:** The Certificate Holder, in consultation with EFSEC, shall establish a PTAG and TAC. The PTAG shall be established at least one year prior to construction and will be responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and wildlife habitat. The PTAG will also provide advice on adaptive management. The PTAG will be responsible for, at a minimum:
- Reviewing and providing technical advice on Project wildlife and habitat management plans (e.g., ferruginous hawk management plan)
  - Reviewing and providing advice to EFSEC on pre-design and pre-construction data collection requirements to address Project mitigation measures and conditions of management plans
  - Reviewing and providing advice to EFSEC on the final Project design
  - Advising on thresholds to be applied to the Project that will trigger the requirement for additional mitigation measures

The Certificate Holder, in consultation with EFSEC, shall establish a TAC prior to Project operation. The PTAG will cease to exist once the Certificate Holder has completed all planned construction and will be replaced by the TAC, which will exist for the life of the Project. The TAC will be responsible for, at a minimum:

- Advising on the monitoring of mitigation effectiveness and reviewing monitoring reports
- Advising on additional or new mitigation measures that will be implemented by the Certificate Holder to address exceedances of thresholds
- Reviewing the results of annual data generated from surveys and incidental observations and providing recommendations for alternative mitigation and adaptive

management strategies, as well as advising on aspects of existing mitigation that are no longer needed.

The PTAG and TAC may include representation by WDFW, the Washington Department of Natural Resources, interested tribes, Benton County, and the USFWS. The PTAG and TAC may also include local interest groups, not-for-profit groups, and landowners. The exact composition of the PTAG and TAC will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.

**Hab-5 Indirect Habitat Loss Management Plan:** As noted by the Certificate Holder, the Project is expected to result in indirect habitat loss through loss of habitat function and changes in wildlife behavior in response to the Project. Further, as noted by the Certificate Holder, WDFW guidelines require that compensatory habitat mitigation must fully offset the loss of habitat function and value. To address indirect habitat loss associated with the Project, the Certificate Holder shall develop an Indirect Habitat Loss Management Plan that addresses potential indirect habitat loss resulting from the Project. The Certificate Holder shall work with the PTAG during the development of the Indirect Habitat Loss Management Plan (IHLMP) for review and approval by EFSEC. EFSEC and the PTAG will review the IHLMP prior to its implementation. The IHLMP shall be provided to the PTAG for review 90 days prior to construction.

The objectives of the IHLMP will be to identify a Project-specific ZOI and required mitigation based on the Project-specific ZOI. The Project-specific ZOI will be developed based on Project conditions and may differ from the ZOI presented in the EIS. The IHLMP shall include:

- A description of the study's purpose and objectives
- A description of methods to define Project-specific ZOIs (e.g., gradient analysis, nest density)
- A description of data requirements to establish Project-specific ZOIs and field programs that will be implemented (pre-construction and post-operation)
- A description of the duration of studies required to establish Project-specific ZOIs
- A description of criteria to be used to compensate for loss of habitat function and value
- An environmental effectiveness monitoring strategy of compensatory habitat to ensure that the habitat meets success criteria

The IHLMP shall also include a series of compensatory site-selection criteria, developed in consultation with the PTAG. The selection criteria will be used to evaluate candidate habitat compensation habitats. Habitats that achieve more of the criteria will be identified as the preferential sites. Selection criteria shall include, at a minimum:

- Proximity to the Lease Boundary (e.g., hierarchy of preferences with respect to location— within the Lease Boundary being the highest priority, adjacent to the Lease Boundary being the second highest priority, and off site being the third priority)

- Protection of existing native shrub-steppe or grassland habitats
- Encompassing sensitive or important wildlife habitat (e.g., mapped movement corridors, ferruginous hawk core habitat, HCAs, areas of high prey abundance)
- Proximity to Project infrastructure

**Hab-6 Project Layout & Design:** The Certificate Holder shall work with EFSEC, with advice from the PTAG, on the development of the final Project layout and design, including the application of Certificate Holder commitments and recommended mitigation measures.

**Hab-8 Indirect Habitat Loss Compensation:** The Certificate Holder shall be required to provide compensation habitat loss and alteration (indirect habitat loss) (See Hab-5, Veg-4) through one or more actions of land acquisition, onsite easement and restoration (excluding areas impacted by the project such as temporary laydowns), and/or fee-based mitigation. The Certificate Holder shall prioritize development of conservation easements (Option 11 in the Certificate Holder's Draft Wildlife and Habitat Mitigation Plan) and shall compensate for the remaining permanent and altered (indirect) impacts by providing money to WDFW, or a third party identified by WDFW, and agreed to by EFSEC, to purchase other lands suitable as in-kind and/or enhancement mitigation. The Certificate Holder shall provide EFSEC, for review and approval, with rationale for fee-based mitigation (Options 2 and 3 in the Certificate Holder's Draft Wildlife and Habitat Mitigation Plan) including a description of how much compensatory habitat will be addressed through Option 1 (conservation easement) and rationale for why fee-based mitigation is required. The fee-based mitigation includes a per acre fee that shall be determined by market rates and land sales within the general vicinity of the Lease Boundary for lands containing comparable habitat types and quality present within the Lease Boundary. The per acre fee shall be developed by the Certificate Holder in consultation with WDFW and approved by EFSEC. The Total Financial Obligation (TFO) shall be determined by multiplying the cost per acre by the total Compensatory Mitigation Acres (CMA) remaining after the application of Option 1 mitigation strategy and shall include a one-time 15% premium to cover administration and management costs for the purchased lands. The TFO for compensatory mitigation shall be determined and agreed to by EFSEC 90 days before construction. If construction has not begun within 12 months of the approval of the TFO, the TFO identified shall expire and be recalculated prior to beginning construction. The TFO shall be calculated based on the following:  $\text{Average Comparable Land Sale Cost (per acre)} \times (\text{CMA} - \text{Option 1 Acres}) \times 1.15 = \text{TFO}$  In addition to the wildlife and habitat mitigation measures, the following measures developed for the Vegetation chapter are applicable to wildlife and habitat.

**Wild-1 Post-construction Bird and Bat Fatality Monitoring Program:** Prior to initiation of operation, the Certificate Holder shall develop, in coordination with the Pre-operational Technical Advisory Group (PTAG) and approval by EFSEC, a post-construction bird and bat fatality monitoring program. Monitoring shall be conducted for a minimum of three years. While the three years of monitoring need not be consecutive, all post-construction monitoring shall be conducted within the initial five years of operation to document variation in annual fatality rates. The program shall describe survey methods, timing, and effort as described in the Certificate Holder's Bird and Bat Conservation Strategy (Appendix M of the Final ASC). Surveys

shall include carcass surveys to document the longevity of carcass persistence and detectability of carcasses. Surveys shall be conducted year-round to account for variation in bird and bat abundance and diversity. Additional surveys (e.g., survey frequency) shall be conducted during sensitive periods for birds and bats (e.g., migration periods). Surveyed area shall include turbines, solar arrays, and transmission lines at a minimum.

#### **Bird and bat fatality adaptive management strategy development**

Prior to initiation of operation, the Certificate Holder shall develop, in coordination with the PTAG and approval by EFSEC, an adaptive management strategy. The adaptive management strategy shall include additional mitigation measures to be applied during sensitive periods (e.g. migration) or if mortality thresholds are exceeded.

Migratory bat species are at risk of population level impacts due to wind power facilities and these species are most at risk of collisions with turbines during spring and fall migration. As such, adaptive management strategies will be applied during these sensitive periods, which are generally April to June (spring migration) and August to October (fall migration) (Hayes and Wiles 2013). Acoustic surveys during operation may be used to define a project-specific migratory period. Acoustic detectors may be deployed across the Lease Boundary prior to spring and fall migration to detect increased bat activity suggesting the onset of bat migration. These data will be used to adjust the generalized bat sensitive periods listed above. Similarly, acoustic data will be used to document the end of bat migration and when adaptive management strategies may no longer be required. Bat data shall be downloaded and analyzed on a weekly basis to document the start and end of migration.

Adaptive management mitigation strategies that will be considered include altering the operation of the turbines by increasing the cut-in speed to above 18 feet (5.5 meters) per second (Alberta Government 2013) and curtailing turbines during known bird and bat migration period. As noted in in Section 4.6.2.2, projected impacts of wind power projects estimate that wind power could result in mortality levels of 3 to 46 percent of the hoary bat population by 2050. Friedenbergs and Frick (2021) conclude that a 5 m/s curtailment could avoid hoary bat extinction in several of the modeled scenarios. Acoustic monitors and smart curtailment may also be included in adaptive management to refine data on bat presence near turbines and when curtailment mitigation should be implemented. Mitigation strategies may be limited to groups of turbines based on the results of post-construction monitoring.

#### **Bird and bat fatality adaptive management review**

The Certificate Holder, the TAC, EFSEC, and WDFW will review the results of the bird and bat post-construction fatality monitoring program after each monitoring period to determine whether the mitigation measures outlined in the adaptive management strategy should be revised or adjusted. The data will also be used to determine whether monitoring efforts are sufficient to verify predicted impacts on birds and bats. EFSEC may require the Certificate Holder to conduct more intensive surveys (e.g., additional spatial extent or frequency) or extend the duration of post-construction monitoring beyond the minimum three years. The Adaptive management mitigation strategies shall be periodically reviewed (minimum of every five years) with the TAC during operation to consider inclusion of new science and technologies that may more efficiently reduce bird and bat fatalities.

**Wild-8 Turbine Buffer Zones:** Wind turbine buffer zones shall be established around all known raptor nests and be a minimum of 0.25 miles. The Certificate Holder shall prepare a Raptor Nest Monitoring and Management Plan for review by EFSEC and the PTAG if buffer zones cannot be maintained.

**Wild-10 Pre-construction Bat Monitoring:** The Certificate Holder shall conduct pre-construction surveys to develop an estimate of regional bat populations and identify to what degree seasonality affects the bat population in the area. The PTAG shall be contacted prior to undertaking these surveys and shall be involved in the development of the methodology and review of the results.

**Spec-1 Striped Whipsnake & Sagebrush Lizard:** The Certificate Holder shall conduct pre-construction surveys for sensitive reptile species prior to alteration or destruction of suitable habitat such as areas within the Lease Boundary identified as core habitat in GAP mapping, as well as shrubland (e.g., shrub-steppe, rabbitbrush). WDFW shall be contacted prior to undertaking these surveys. If these species are identified through pre-construction surveys, the Certificate Holder shall prepare a Reptile Management Plan to reduce potential impacts on habitat, mortality, and barriers to movement. The Reptile Management Plan shall describe:

- How the Certificate Holder will avoid suitable habitat, including where the species were observed
- How the Certificate Holder will implement management recommendations in Larsen (1997)
- How the Certificate Holder will maintain rodent burrows in suitable reptile habitat (e.g., shrubsteppe)
- Additional mitigation measures to reduce potential mortality of these species during the construction and operation stages of the Project

The Reptile Management Plan shall be reviewed by the PTAG and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management shall be reviewed by the PTAG and approved by EFSEC prior to implementation (see Hab-4).

**Spec-4 Burrowing Owl:** The Certificate Holder shall conduct burrowing owl surveys within areas of direct loss (permanent, temporary, and modified) and associated ZOIs. The results of these surveys shall be provided to the PTAG and EFSEC and used to inform the final Project layout. Active burrows shall be retained and satellite burrows with characteristics used by burrowing owls shall be avoided where feasible to maintain habitat capacity. WDFW-recommended seasonal buffers (0.5 miles) shall be applied around burrowing owl nests to avoid disturbing nesting burrowing owls, if present (Larsen et al. 2004). Seasonal buffers (February 15 to September 25) shall be applied during construction and for temporary disturbances, such as periodic maintenance, during operation. If active burrowing owls are identified within the Lease Boundary, the Certificate Holder shall develop a species-specific management plan that describes:

- The location of active burrows.

- How active burrows will be avoided through re-alignment or reconfiguration of Project features.
- Additional mitigation measures that will be applied where disturbance to active burrows is expected (e.g., construction of artificial burrows).
- Additional mitigation measures that will be applied during operation if burrowing owl mortalities are recorded.
- How ongoing monitoring of active burrows will be undertaken.

The Burrowing Owl Management Plan shall be reviewed by the PTAG and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management shall be reviewed by the PTAG and approved by EFSEC prior to implementation (see Hab-4).

The Certificate Holder shall monitor access roads for burrowing owl use and mortalities. Mortalities shall be reported to the PTAG or TAC (depending on the Project phase) and EFSEC within 5 days of the observation. Incidental observations of burrowing owl use shall be provided to the PTAG (construction) or TAC (operation) on an annual basis.

**Spec-5 Ferruginous Hawk:** The Certificate Holder shall not site any wind turbines, solar arrays, or BESS within a 0.6-mile (1km) radius surrounding ferruginous hawk nests:

- documented in PHS data on the effective date of the SCA,
- identified in the Certificate Holder's nest surveys, and/or
- that may be newly established by the species between the SCA effective date and the time of construction.

The Certificate Holder shall avoid siting wind turbines, solar arrays, and BESS within a 0.6-2-mile radius surrounding documented ferruginous hawk nests, unless the Certificate Holder is able to demonstrate that:

- compensation habitat, as described below, will provide a net gain in ferruginous hawk habitat and either:
  - the nesting site is no longer available, or
  - the foraging habitat within the 2-mile radius is no longer viable for the species.

Habitat considered no longer available for ferruginous hawk would include habitat that has been altered by landscape-scale development (conversion to cropland, residential development, industrial development) rendering the territory non-viable. This could include habitats that have been altered such that insufficient native or foraging habitat remains. Project turbines, solar arrays, or BESS shall not be sited within 2 miles of a ferruginous hawk nest without prior approval by EFSEC based on the process described below.

The extent of component encroachment into core habitat in ferruginous hawk territories, defined as the area within a 2-mile radius surrounding documented nests, may vary depending on the type of infrastructure proposed (i.e., turbine, solar array, BESS). If siting of these components within 2 miles of a nest is considered by the Certificate Holder, the Certificate Holder shall develop, in consultation with the PTAG for approval by EFSEC:



1. A set of habitat parameters to document whether habitat in a core range is considered non-viable. The results of habitat surveys and their relation to these habitat parameters shall be reviewed by the PTAG and approved by EFSEC.
2. A description of the current viable nesting habitat, available nesting sites, and a description of documented use of the core habitat by ferruginous hawk available through historic background information or field-based surveys.
3. A description of the type and location of infrastructure proposed within the core habitat.
4. The proximity of infrastructure to any known nest site or suitable foraging habitat.

In the event that a Project component is proposed for siting within the 2-mile buffer, the Certificate Holder shall, in consultation with the PTAG, develop a Project-specific ferruginous hawk mitigation and management plan for approval by EFSEC:

1. A description of efforts to site Project infrastructure to avoid core habitat, identified as the area within 2 miles of nests documented in PHS data and the Certificate Holder's nest surveys:
  - a. If Project turbines, solar arrays, or BESS are sited within 2 miles of a ferruginous hawk nest, the infrastructure shall be reviewed by the PTAG and approved by EFSEC.
  - b. Additional mitigation measures shall be developed to reduce potential ferruginous hawk strikes with turbines, including curtailing turbine operation within the 2-mile core habitat of any actively occupied nests diurnally during the breeding and rearing periods when ferruginous hawks are present in Benton County.
  - c. The plan shall explain how and where the Certificate Holder will create new offset habitat to mitigate for direct and indirect habitat loss within the 2-mile core area of ferruginous hawk nests documented in PHS data and the Certificate Holder's nest surveys.
2. A description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.
3. A description of pre- and post-monitoring programs that will be conducted to establish:
  - a. Habitat use within the Lease Boundary.
  - b. Mapping of ground squirrel colonies and other prey.
  - c. Identification of potential flyways between nest sites and foraging habitat and monitoring of potential flyways to inform final turbine siting and orientation.
  - d. Ongoing monitoring of nest use and territory success.
4. A description of restoration activities that will be undertaken during Project decommissioning to enhance ferruginous hawk habitat in disturbed areas.

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

*Exemption from Spec-5 for East BESS:* The Certificate Holder intends to locate the East BESS within the footprint of the East Substation, which is itself located within 0.6-miles of a documented ferruginous hawk nest. The East BESS is exempted from the 0.6-mile and 2-mile buffers described in this measure so long as it remains co-located with the East Substation and remains subject to the other requirements of this measure. While the substation is not subject

to buffer requirements of this mitigation measure, absent this exemption, relocation of the BESS would be required. The rationale for this exemption is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.

- Spec-7 Loggerhead Shrike, Sagebrush Sparrow, Sage Thrasher, & Vaux's Swift:** The Certificate Holder shall maintain connectivity between natural habitat patches to reduce potential habitat loss and fragmentation. The Certificate Holder shall restore areas with shrubs, where feasible, to reduce potential habitat loss. The Certificate Holder shall avoid the use of insecticides and herbicides to reduce potential mortality and loss of prey items.
- Spec-8 Prairie Falcon:** The Certificate Holder shall conduct pre-construction surveys for prairie falcon nests for construction work proposed during the prairie falcon nesting season and the winter season preceding the start of construction and maintain a seasonal buffer of 2,640 feet from active nest sites (Larsen et al. 2004) to reduce potential destruction or disturbance of active nests. Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).
- Spec-10 Black-tailed Jackrabbit & White-tailed Jackrabbit:** The Certificate Holder shall conduct surveys for jackrabbit in suitable habitat identified through GAP predictive mapping. If jackrabbits are identified, the Certificate Holder shall develop and implement a management plan with additional mitigation measures to reduce potential loss of habitat supporting jackrabbits. Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).
- Spec-12 Townsend's Ground Squirrel:** The Certificate Holder shall conduct surveys for Townsend's ground squirrel colonies within the Lease Boundary in areas of the Project disturbance footprint to inform final design.

The Certificate Holder shall avoid habitat loss within Townsend's ground squirrel habitat concentration areas, as well as known colonies, in final design. Additional Townsend's ground squirrel colonies identified through surveys shall be shown on Project mapping. If Project components are required in habitat concentration areas (rated as medium or greater) or near known colonies, the Certificate Holder shall prepare a species-specific management plan for areas where avoidance is not feasible. This plan shall provide rationale for why colonies cannot be avoided and shall detail additional mitigation measures to reduce impacts to Townsend's ground squirrel. Additional mitigation measures may include identification of setbacks, colony monitoring, habitat restoration, colony relocation, and reconstruction of habitat features. The plan shall also describe monitoring and adaptive management measures to be implemented during Project operation. The plans shall be provided and discussed with the PTAG, and approved by EFSEC, if avoidance of identified ground squirrel colonies is not



feasible. Observational data and adaptive management strategies will be reviewed with the TAC annually.

**Spec-13: Pronghorn Antelope:** The Certificate Holder shall limit fencing where feasible (e.g., around solar arrays). Final fencing layouts and design, including use of non-barbed-wire security fencing, shall be provided to the PTAG and EFSEC with rationale for fencing requirements. The Certificate Holder shall design and implement a study of seasonal pronghorn antelope occurrence and use of the Lease Boundary before construction and during operation to document the change, if any, of pronghorn antelope presence, abundance, and habitat use within the Lease Boundary. The PTAG will review and provide input to the study design. The results of the study will be used to develop adaptive management measures to respond to changes in pronghorn antelope habitat use. Survey results and proposed adaptive management will be reviewed by the PTAG and TAC prior to implementation (see Hab-4). The Certificate Holder shall maintain a potentially confidential database of pronghorn antelope observations, including details such as numbers, location, age, and sex, and shall make this database available to WDFW, EFSEC, and the Yakama Nation.

# Attachment B

## PTAG Participants

Entity Represented	Role	Name
n/a	Facilitator, meeting minute notetaker	Kearns & West
Horse Heaven Wind Farm LLC	PTAG Member and Certificate Holder representative	Andrew Pinger
EFSEC Staff	Observer/Administrative	Sean Greene
Horse Heaven Wind Farm LLC	PTAG member	Troy Rahmig
Washington Department of Fish and Wildlife	PTAG member	Mike Ritter
U.S. Fish and Wildlife Service	PTAG member	Colleen Moulton Mary Williams, Alt.
Department of Natural Resources	PTAG member	Jim Woodward
Independent Ecologist	PTAG member	Don McIvor
Independent Ecologist	PTAG member	Tim Hayes
Participating Landowners	PTAG member	Chris Wiley
Local Labor Representative	PTAG Member	Jessica Wadsworth
Confederated Tribes and Bands of the Yakama Nation	PTAG member	Mark Nuetzman Jeff Kozma, Alt.
Confederated Tribes of the Umatilla Indian Reservation	PTAG member	Andrew Wildbill Lindsay Chiono, Alt.
Benton County, WA	PTAG member	Adam Fyall
Lower Columbia Basin Audubon Society	PTAG member	Dana Ward Dr. Edward Rykiel, Alt.

**RE: Horse Heaven PTAG: First Meeting**

TCC Attachment D to  
Objection to PTAG

**From** Rick Aramburu <Rick@aramburulaw.com>

**Date** Wed 3/5/2025 11:16 AM

**To** Hafkemeyer, Ami (EFSEC) <ami.hafkemeyer@efsec.wa.gov>; Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>

**Cc** Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Packer, Zachary (ATG) <zachary.packer@atg.wa.gov>; Thuet, Talia O. (ATG) <talia.thuet@atg.wa.gov>

Ms. Hafkemeyer and EFSEC Staff:

Please provide a response to questions below. My review of the EFSEC website this morning show no entries for "PTAG Documents" since February 19, 2025.

Was there a PTAG Meeting on February 28, 2025?

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

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**From:** Rick Aramburu

**Sent:** Friday, February 28, 2025 9:18 AM

**To:** Hafkemeyer, Ami (EFSEC) <ami.hafkemeyer@efsec.wa.gov>; Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>

**Cc:** Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Packer, Zachary (ATG) <zachary.packer@atg.wa.gov>; Thuet, Talia O. (ATG) <talia.thuet@atg.wa.gov>

**Subject:** Horse Heaven PTAG: First Meeting

EFSEC Staff:

Though this is the morning of the scheduled first meeting of the Horse Heaven PTAG, we have not received, or found on website, an agenda for the meeting or a roster of PTAG members. Please provide these materials as soon as possible.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

TCC Attachment D to  
Objection to PTAG

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

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**From:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>  
**Sent:** Tuesday, February 25, 2025 4:02 PM  
**To:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>; Packer, Zachary (ATG) <[zachary.packer@atg.wa.gov](mailto:zachary.packer@atg.wa.gov)>; Thuet, Talia O. (ATG) <[talia.thuet@atg.wa.gov](mailto:talia.thuet@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project: PTAG

Rick,

Please see the responses below in red. Reach out if there's anything further.

Best wishes,  
Ami Hafkemeyer  
Director of Siting and Compliance  
[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)  
Office 360.664.1305  
Cell 360.972.5833

---

**From:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Sent:** Tuesday, February 25, 2025 3:48 PM  
**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>; Packer, Zachary (ATG) <[zachary.packer@atg.wa.gov](mailto:zachary.packer@atg.wa.gov)>; Thuet, Talia O. (ATG) <[talia.thuet@atg.wa.gov](mailto:talia.thuet@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project: PTAG

External Email

Ami:

Thank you for your response.

You mentioned that agendas for the PTAG meetings will be posted the EFSEC website. How far in advance of meetings will the agendas be posted? We are still ironing out logistics of posting materials with the certificate holder and our staff that manage website content. I don't have a solid answer for you on this one yet. Stay tuned for more updates on this as we establish a regular process.

When is the first PTAG meeting? The PTAG is scheduled to meet on Friday, February 28.

Has EFSEC approved of any additional PTAG members in addition to those identified in the February 19, 2025 PTAG Rules of Procedure? No. If so, please let us know who they are. N/A

Rick Aramburu  
Law Offices of J. Richard Aramburu

705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

---

**From:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>  
**Sent:** Friday, February 21, 2025 1:54 PM  
**To:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>; Packer, Zachary (ATG) <[zachary.packer@atg.wa.gov](mailto:zachary.packer@atg.wa.gov)>; Thuet, Talia O. (ATG) <[talia.thuet@atg.wa.gov](mailto:talia.thuet@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project: PTAG

Rick,

I'll respond to your latest to try and capture responses to all the inquiries in one email.

Please see the link here for the PTAG Rules of Procedure (which is what the charter is referred to as within the SCA). <https://www.efsec.wa.gov/energy-facilities/horse-heaven-wind-project>

No agendas are available at this point, but similar to other PTAG materials, they will be posted to the PTAG section of the project page. There will not be an opportunity to observe the PTAG's meetings. However, minutes of the PTAG meetings will be prepared as provided in the procedural rules, and when finalized, will also be posted on the project website at the link provided above.

The PTAG is not subject to the requirements of the Open Public Meetings Act (OPMA), such as publication of notice or meetings, opportunity for public attendance at a physical location, and in some instances an opportunity for public comment. The OPMA applies to "governing bodies" and to any "committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." RCW 42.30.020(2). In 2015, the State Supreme Court concluded that a committee "acts on behalf of the governing body" only "when it exercises actual or de facto decision-making authority for the governing body." Citizens Alliance for Prop. Rights Legal Fund v. San Juan County, 184 Wn.2d 428, ( 2015). A committee is not exercising such authority when it is simply conducting internal discussions or providing advice or information to the governing body, as is the role of the PTAG set forth in Article IV.G of the site certification agreement. See 1986 Op. Att's Gen. No. 16 (Dec. 31, 1986) citing the analysis of the court in Sanders v. Benton, 579 P.2d 815 (Okla. 1978) as illustrative of "the line between exercising actual or de facto decisionmaking powers and simply giving advice." That court ruled that a citizens advisory committee impaneled by the state Board of Corrections to provide information to assist in determining the site for a community treatment center for the housing of certain classes of criminal offenders was not subject to the open meeting law. That committee's advisory role, and its lack of actual or de facto decisionmaking authority is closely analogous to that of the PTAG.

I think this captures the responses to your questions, but as always, please reach out if there's anything further.

Best wishes,  
Ami Hafkemeyer  
Director of Siting and Compliance  
[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)  
Office 360.664.1305  
Cell 360.972.5833

---

**From:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Sent:** Wednesday, February 19, 2025 3:01 PM  
**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project: PTAG

External Email

Ami:

Two additional questions. I understand from today's monthly meeting that the PTAG has adopted a charter for its operations, which may include identification of members of the group. Please provide this information together with any agendas for upcoming meetings.

Please also respond to the questions in our previous emails.

Thank you for your assistance.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

---

**From:** Rick Aramburu  
**Sent:** Saturday, February 15, 2025 10:59 AM  
**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project: PTAG

Ami:

In addition to the foregoing, please advise how my clients can observe meeting of the PTAG. If meetings are accessible remotely, please send along the Zoom, Teams or other link for the meetings.

Thank you for your continued assistance.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515

Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

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**From:** Rick Aramburu  
**Sent:** Friday, February 14, 2025 3:55 PM  
**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project: PTAG

Ami:

Thank you for your January 23, 2025 response. May we have an update on the current status of the PTAG process by supplemental answers to our questions?

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

---

**From:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>  
**Sent:** Thursday, January 23, 2025 1:17 PM  
**To:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project: PTAG

Mr. Aramburu,

Happy New Year to you as well, thank you. Please see my responses below **in red**.

Best wishes,  
Ami Hafkemeyer  
Director of Siting and Compliance  
[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)  
Office 360.664.1305  
Cell 360.972.5833

---

**From:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Sent:** Thursday, January 16, 2025 9:26 AM  
**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC)



<[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>

Cc: Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG)

<[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>

Subject: RE: Horse Heaven Wind Project: PTAG

External Email

Ami:

Please advise when we may expect a response to my email below. In particular, my client requests that we be copied on all correspondence related to the PTAG proceedings.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

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---

**From:** Rick Aramburu

**Sent:** Thursday, January 9, 2025 4:13 PM

**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>

**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>

**Subject:** RE: Horse Heaven Wind Project: PTAG

Ami:

Happy New Year to you and other staff at EFSEC.

I write today to request an update to your November 26, 2024 email below.

Have there been additional discussions with Scout concerning next steps, including PTAG membership and operating procedures? **EFSEC staff continue to meet with Scout to discuss pre-application activities, including the PTAG.**

Have the members of PTAG been selected? Have operating procedures been submitted by the certificate holder or adopted by the PTAG itself? **We have not yet approved PTAG membership or procedures.** Have any meetings been held or scheduled? **No.**

Will there be audio or video recordings of the PTAG meetings? **I don't believe this has been discussed.**

Will minutes of the PTAG meeting be taken and available to interested parties? **If they are not posted to the project website, they would be available through public records requests.**

Has a date been selected for anticipated completion of PTAG's work? **No.**

Have procedures for EFSEC review of the PTAG recommendations been adopted? **No.**

On behalf of my clients, I request that I be copied on emails or other correspondence related to the further PTAG proceedings. **Communications may be requested through a public records request, but requests must be for existing identifiable records (they cannot be requested for future potential records). I understand you have submitted a public records request for PTAG information, and I encourage you to**



continue to use this available tool for ongoing information that may not be readily available on the website.

We appreciate your prompt response to this email.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

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---

**From:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>  
**Sent:** Tuesday, November 26, 2024 4:22 PM  
**To:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project

Mr. Aramburu,

The PTAG membership has not yet been established and has not yet convened. EFSEC staff have had initial discussions with Scout regarding next steps, including PTAG membership and operating procedures, but we have not approved any documents for either. We expect the PTAG membership and operating procedures to be coordinated and approved at the staff level, following which, the information will be posted to the project website.

As the PTAG's role is strictly advisory (non-decision making), the OPMA requirements would not apply to its meetings or recommendations. If your client has comments to be made about the PTAG composition, they can be submitted to EFSEC at any point.

Best wishes,  
Ami Hafkemeyer  
Director of Siting and Compliance  
[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)  
Office 360.664.1305  
Cell 360.972.5833



Entering Holiday mode, expect festiveness and holiday shenanigans into 2025



---

**From:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Sent:** Thursday, November 14, 2024 9:40 AM  
**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>  
**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Project

External Email

Ms. Hafkemeyer:

Thank you for your prompt response. We will continue to check back concerning the signature of the potential Certificate Holder on the SCA.

The Governor's approval letter dated October 18, 2024 is now on the EFSEC website. On page 1, the letter states:

With the goal of moving this project forward on a timeline commensurate with the state's pressing clean energy needs, I urge the Council to establish the following timelines related to the work of the Pre-construction Technical Advisory Group (PTAG):

- Within 14 days after the date of this letter, convene the PTAG; and
- Within 120 days after the date of this letter, complete the PTAG process.

The Governor requested that the PTAG be "convened" within 14 days of his letter or, November 1, 2024. Please advise whether the PTAG has been convened pursuant the Governor's letter. If not, when is it expected to be convened?

Page 20 of the proposed SCA, provides that:

The exact composition of the PTAG will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.

Has there been "discussions" between the proposed Certificate Holder and EFSEC concerning membership of the PTAG. If not, when is it expected that such discussion will occur? The proposed SCA provides that: "*The PTAG may also include local interest groups, not-for-profit groups, and landowners.*" Given long involvement of my client as a local interest group, they would like the opportunity to make suggestions to the Council concerning the makeup of the PTAG. Please advise when such suggestions may be made.

Page 20 of the proposed SCA, also provides for the adoption of "Rules of Procedure" describing how the PTAG will operate, addressing several procedural matters. Please advise whether the proposed Certificate Holder has submitted any suggested Rules of Procedure. If not, can you advise when such Rules might be adopted and whether interested persons, including my client, can review and comment on them? In addition, we request that the Rules of Procedure include a requirement that the meetings of the PTAG be open to the public consistent with the Open Public Meeting Act, RCW chapter 42.30.

Thank you in advance for responses to these inquiries. Please let me know if you have any questions.

Rick Aramburu

Law Offices of J. Richard Aramburu

705 2<sup>nd</sup> Ave #1300

Seattle, Washington 98104

Telephone: (206) 625-9515

Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

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---

**From:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>

**Sent:** Tuesday, November 12, 2024 4:18 PM

**To:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>

**Cc:** Moon, Amy (EFSEC) <[amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov)>

**Subject:** RE: Horse Heaven Wind Project

Mr. Aramburu,

Thank you for reaching out. We have not received a signature from the applicant at this time. We understand that they are reviewing, and we anticipate knowing more in the coming weeks.

Best wishes,  
Ami Hafkemeyer  
Director of Siting and Compliance  
[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)  
Office 360.664.1305  
Cell 360.972.5833



Entering Holiday mode, expect festiveness and holiday shenanigans into 2025



---

**From:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Sent:** Tuesday, November 12, 2024 3:51 PM  
**To:** Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>; Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>; Drew, Kathleen (EFSEC) <[kathleen.drew@efsec.wa.gov](mailto:kathleen.drew@efsec.wa.gov)>  
**Subject:** Horse Heaven Wind Project

External Email

Ms. Hafkemeyer:

I have been reviewing documents relating to the Governor's decision in the Horse Heaven matter. We understand that the Governor's decision was dated October 18, 2024.

The SCA on the Council's website shows that it was signed by the Governor on October 18, 2024, but does not show the signature of the applicant Horse Heaven Wind Farm, LLC. Has the applicant signed the SCA? If so, when was it signed? If the SCA has not been signed, please advise if the applicant has indicated it will sign the document, and if so when.

Thank you for this update on the project and the Site Certification Agreement.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

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# State of Washington Energy Facility Site Evaluation Council

## TCC Attachment E to Objection to PTAG

[Home](#)[Energy Facilities](#)[Council Information](#)[About EFSEC](#)[Document Search](#)[Home](#) » [Energy Facilities](#) » [Horse Heaven Wind Project](#)

### ENERGY FACILITIES

[Badger Mountain](#)[Carriger Solar](#)[Cascade Renewable Transmission  
Project](#)[Chehalis Generation Facility](#)[Columbia Generating Station](#)[Columbia Solar](#)[Desert Claim Wind Power Project](#)[Goldeneye BESS](#)[Goose Prairie Solar](#)[Grays Harbor Energy Center](#)[High Top and Ostrea Solar Project](#)[Hop Hill Solar](#)[Horse Heaven Wind Project](#)[Horse Heaven Application](#)[Horse Heaven Adjudication](#)[Horse Heaven Land Use](#)[Horse Heaven Recommendation and  
Governor's Decision](#)[Horse Heaven SCA](#)[Horse Heaven SEPA](#)[Kittitas Valley Wind Power Project](#)[Transmission Programmatic EIS](#)[Transmission Corridors Work Group](#)[Wallula Gap](#)[Wautoma Solar Project](#)[Whistling Ridge Energy Project](#)[Wild Horse Wind Power Project](#)[WNP 1 and 4](#)

## Horse Heaven Wind Project

To view the application visit the [Horse Heaven Application webpage](#)

To view SEPA documents (like the EIS) visit the [Horse Heaven SEPA page](#)

### Project background:

On February 8, 2021 EFSEC received an Application for a Site Certification (ASC) from Horse Heaven Wind Farm, LLC proposing the construction and operation of the Horse Heaven Wind Farm project. The ASC proposes the construction of a renewable energy generation facility that would have a nameplate energy generating capacity of up to 1,150 megawatts (MWs) for a combination of wind and solar facilities as well as battery energy storage systems (BESS). The proposed project is located in Benton County, Washington. According to the ASC, if approved, the Applicant is anticipating commercial operation of the first Phase to be built by the end of calendar year (CY) 2023.

The Applicant is seeking permitting authorization for up to 244 turbine locations and two solar arrays with their capacity dependent on the approved location, technology, and power market interest.

The Facility will utilize wind turbines and solar photovoltaic (PV) panels to convert energy from the wind and sun into electric power which is then delivered to the electric power grid. Two battery energy storage systems are proposed that would have a storage capacity of up to 300 MWac (megawatt capacity) using lithium-ion batteries.

### Horse Heaven Pre-Operational Technical Advisory Group (PTAG)

The Site Certification Agreement (SCA) Article IV.G requires that the Horse Heaven Wind Power Project requires the Certificate Holder to establish a Pre-Operational Technical Advisory Group (PTAG) to advise on the development and implementation of pre-construction compliance activities. The PTAG is responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and habitat, which will then be submitted to the Energy Facility Site Evaluation Council (EFSEC) for approval. After construction and before Project operation, the PTAG will cease to exist and be replaced by the Technical Advisory Committee (TAC).

The PTAG will be managed to provide timely recommendations as directed in the SCA, Article IV(G) and directed by the Facilitator, to support the Certificate Holder's and EFSEC's review. Appointees to the PTAG must have relevant expertise or firsthand knowledge of facts relevant and necessary to the matters on which the PTAG is established to advise. Documents related to the PTAG can be found below.

[PTAG Agendas](#)[PTAG Documents](#)

#### Assigned Site Specialist

Amy Moon

#### Assigned CFE

Sarah Reyneveld

[sarah.reyneveld@atg.wa.gov](mailto:sarah.reyneveld@atg.wa.gov)

#### Applicant:

Horse Heaven Wind Farm, LLC.  
5775 Flatiron Parkway, Suite 120  
Boulder, CO 80301

#### Location:

Benton County

#### Recent Activity

[03/21/2025 - PTAG Meeting One Feb 28, 2025](#)

[03/21/2025 - PTAG Meeting Two Mar 13, 2025](#)

[03/21/2025 - PTAG Meeting Three Mar 21, 2025](#)

[03/03/2025 - Horse Heaven PTAG Participants](#)

[02/19/2025 - Horse Heaven PTAG Rules of Procedure](#)

[11/01/2024 - Notice of Governor's Decision](#)

[10/18/2024 - Site Certification Agreement \(SCA\) - Final](#)

[10/18/2024 - Governor's final Decision Letter](#)

[10/18/2024 - Final Revised SCA](#)

[10/09/2024 - Applicant Notice of Withdrawal of Petition for Reconsideration of the Council's Revised Recommendation to the Governor](#)

### Horse Heaven Special Council Meeting

At the July 17, 2024 Council meeting, the Council deliberated on mitigation measures for the Horse Heaven Wind Project in consideration of the May 25, 2024 Governor response to the Council's April 29, 2024 recommendation. Staff have prepared draft language, which is subject to Council consideration at the August 29, 2024 Special Council meeting.

Public comments were accepted from August 19, 2024 through August 25, 2024 11:59pm.

[August 29, 2024 Horse Heaven Special Meeting Recording](#)

The Horse Heaven Special Council Meeting held a vote on Friday, September 13, 2024 at 3:30pm.

[September 13, 2024 Horse Heaven Special Meeting Recording](#)

[Horse Heaven Special Council Meeting](#)[Horse Heaven Special Council Meeting Comments](#)[Public Informational Meeting and Land Use Consistency Hearing](#)

### Comments Received

Comments received for the Horse Heaven Wind Project are categorized below and updated as soon as can become available.

Comments outside of a comment period can be sent to the EFSEC comment mailbox at any time: [comments@efsec.wa.gov](mailto:comments@efsec.wa.gov).

## TCC Attachment E to Objection to PTAG



## Horse Heaven PTAG

### Meeting 1

Friday, February 28, 2025

9:00 am to 12:00 pm PST

Location: Virtual, click to join:

<https://kearnswest.zoom.us/j/87680045224?pwd=y9XhHyyzcJbXoOeibO1p983VQwjHOS.1>

### Meeting Objectives

- Meet the project team and each other
- Understand the background and status of the project
- Understand the purpose and role of the PTAG

### Meeting Agenda

Time (PT)	Item	Lead
9:00 to 9:30 am	<b>Welcome, Introductions and Opening Remarks</b>	Kearns & West (Facilitator) All
9:30 to 10:30 am	<b>Project Introduction and Overview</b> <ul style="list-style-type: none"> <li>• WA Energy Facility Site Evaluation Council (EFSEC) Site Certification process and current status update</li> <li>• Site Certification Agreement (SCA) approval and appeal</li> <li>• Mitigation measure activities</li> <li>• Q &amp; A</li> </ul>	Dave Kobus and Pat Landess, Scout Clean Energy Troy Rahmig, Tetra Tech
10:30 to 11:15 am	<b>PTAG Overview</b> <ul style="list-style-type: none"> <li>• PTAG Rules of Procedure</li> <li>• PTAG logistics (meeting cadence, file sharing, etc.)</li> <li>• Q &amp; A</li> </ul>	Jamie Damon, Kearns and West Troy Rahmig, Tetra Tech

Time (PT)	Item	Lead
<b>11:15 to 11:50 am</b>	<b>Technical Work Overview</b> <ul style="list-style-type: none"> <li>• Spec-5 mitigation measure review</li> <li>• Near-term wildlife surveys</li> <li>• Q &amp; A</li> </ul>	Pat Landess, Scout Clean Energy  Troy Rahmig, Tetra Tech
<b>11:50 am to 12:00 pm</b>	<b>Closing and Next Steps</b>	Jamie Damon, Kearns & West

## Horse Heaven PTAG Meeting 2 DRAFT Agenda

Thursday, March 13, 2025

9:00 am to 12:00 pm PST - Presentation and Discussion

1:00 to 5:00 pm PST - Field Tour

Location: La Quinta Inn and Suites (2600 South Quillan Place, Kennewick, WA 99338)

### Meeting Objectives

- Develop baseline understanding of the ferruginous hawk habitat, terminology and Spec-5
- Tour the proposed development site to gain landscape-level perspective

### Meeting Agenda

Time (PT)	Item	Lead
8:30 to 9:00 am	<b>Light breakfast and coffee</b>	All
9:00 to 9:30 am	<b>Welcome, Opening Remarks and Housekeeping</b> <ul style="list-style-type: none"> <li>• Reflections on Meeting 1</li> <li>• Themes from one-on-one conversations</li> <li>• Proposed meeting schedule and cadence</li> </ul>	Jamie Damon, Kearns & West
9:30 to 10:00 am	<b>Ferruginous Hawk Life History in WA/Project Area</b> <ul style="list-style-type: none"> <li>• Discussion/Q &amp; A</li> </ul>	Troy Rahmig, Tetra Tech
10:00 to 11:15 am	<b>Establishing Common Nesting Terminology and Reconciling with Spec-5</b> <ul style="list-style-type: none"> <li>• Discussion/Q &amp; A</li> <li>• Break (exact time TBD)</li> </ul>	Troy Rahmig, Tetra Tech
11:15 am to 12:00 pm	<b>Establishing Parameters that Influence Nest Viability</b> <ul style="list-style-type: none"> <li>• Discussion about information needs</li> <li>• Discussion/Q &amp; A</li> </ul>	Troy Rahmig, Tetra Tech
12:00 to 12:45 pm	<b>Lunch and Overview of Site Tour</b>	Dave Kobus, Scout Troy Rahmig, Tetra Tech
12:45 to 1:00 pm	<b>Board the bus</b>	All
1:00 to 5:00 pm	<b>Site Tour</b> <ul style="list-style-type: none"> <li>• Begin and end at La Quinta Inn and Suites</li> </ul>	Dave Kobus, Scout All

## Horse Heaven PTAG

### Meeting 3 Draft Agenda

Friday, March 21, 2025

9:00 am to 12:00 pm PST

Location: Virtual, click to join:

<https://kearnswest.zoom.us/j/82648943688?pwd=76GOcLZR0MMcsoYouGt0MF7hczWEah.1>

### Meeting Objectives

- Develop greater understanding of ferruginous hawk nest viability parameters
- Begin to conduct ferruginous hawk nest-by-nest viability assessment

### Meeting Agenda

Time (PT)	Item	Lead
9:00 to 9:15 am	Welcome, Housekeeping and Opening Remarks	Jamie Damon, Kearns & West All
9:15 to 9:30 am	Reflections on Meeting 2 and Site Tour	Jamie Damon, Kearns & West All
9:30 to 10:30 am	Discussion of Ferruginous Hawk Nest Viability Parameters <ul style="list-style-type: none"> <li>• Q &amp; A</li> </ul>	Troy Rahmig, Tetra Tech
10:30 to 10:40 am	Break	All
10:40 to 11:50 am	Ferruginous Hawk Nest-by-Nest Viability Assessment <ul style="list-style-type: none"> <li>• Q &amp; A</li> </ul>	Troy Rahmig, Tetra Tech
11:50 am to 12:00 pm	Closing and Next Steps <ul style="list-style-type: none"> <li>• Agenda for April 4 meeting</li> </ul>	Jamie Damon, Kearns & West



1  
2  
3 BEFORE THE STATE OF WASHINGTON  
4 ENERGY FACILITY SITING EVALUATION COUNCIL

5 In the Matter of the Application of:

6 Scout Clean Energy, LLC, for  
7 Horse Heaven Wind Farm, LLC,  
8 Applicant.

DOCKET NO. EF-210011

**FIRST ADDENDUM TO  
OBJECTION BY INTERVENOR  
TRI-CITIES C.A.R.E.S. TO PTAG  
ESTABLISHMENT,  
OPERATIONS, MEMBERSHIP  
AND MEETINGS**

11  
12 **I. NATURE OF FIRST ADDENDUM TO PRIOR OBJECTION.**

13 On March 28, 2025, Intervenor Tri-Cities C.A.R.E.S. ("TCC") filed and served an  
14 "Objection to the Establishment, Membership and Continued Operation of the  
15 Pre-Operational Technical Advisory Group" ("PTAG") established by EFSEC and the  
16 applicant Scout Clean Energy ("Scout"). This Objection was posted to the EFSEC  
17 website as entry "0947" on April 3, 2025.

18 Since that time, additional grounds for objection have been identified and thus  
19 TCC files this First Addendum to the prior Objection.

20 **II. ADDENDUM TO PRIOR OBJECTION.**

21 As described in its original Objection, a Final Site Certification Agreement (SCA)  
22 for the Horse Heaven project was signed by EFSEC and the applicant Scout Clean  
23 Energy on November 21, 2024.

24 Regarding site certification agreement implementation, the Final SCA contains,  
25 at page 20, Section IV.G, the following provision:

26  
27  
28 **FIRST ADDENDUM TO OBJECTION BY INTERVENOR  
TRI-CITIES C.A.R.E.S. TO PTAG ESTABLISHMENT,  
OPERATIONS, MEMBERSHIP AND MEETINGS - 1**

LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com

1 The Certificate Holder shall submit to EFSEC for approval proposed Rules  
2 of Procedure describing how the PTAG shall operate, including but not  
3 limited to a schedule for meetings, a meeting procedure, a process for  
4 recording meeting discussions, a process for making and presenting  
5 timely PTAG recommendations to the Council, and other procedures that  
6 will assist the PTAG to function properly and efficiently. The Certificate  
7 Holder will provide a copy of the proposed Rules of Procedure at the first  
8 PTAG meeting for review and comment. Any modifications to the Rules of  
9 Procedure suggested by the PTAG must be approved by EFSEC prior to  
10 adoption.

11 (Emphasis supplied). This provision requires that EFSEC approve the Rules of  
12 Procedure (ROP) that will govern PTAG procedures and operations.

13 On November 27, 2024, TCC filled a Petition for Judicial Review (“PFR”) in  
14 Thurston County Superior Court challenging the approval of the Final Site Certification  
15 Agreement, naming EFSEC and Governor Jay Inslee as respondents. Applicant Scout  
16 Clean Energy thereafter intervened. In its PFR, TCC challenged the formation and  
17 operation of the PTAG at Section 7.12, page 21. No responsive pleading was received  
18 from EFSEC or the Governor to the PFR.

19 At the Council meeting on December 18, 2025, EFSEC staff reported to the  
20 Council on progress of the formation of the PTAG:

21 The PTAG is the first committee to be established. And that is an integral  
22 part of the final project design and is responsible for reviewing and  
23 providing technical advice on wildlife and wildlife habitat documents  
24 produced by the certificate holder, as well as reviewing and providing  
25 advice to EFSEC on the final project design.

26 December 18, 2024 Council minutes at page 18, lines 17-23 (emphasis supplied).

27 See Attachment F to this Addendum.<sup>1</sup>

28 Though an agenda and council packet for the January 15, 2025 EFSEC monthly  
meeting were issued, the meeting was later cancelled “due to the change in the

---

<sup>1</sup> The Objection filed April 3, 2025, included Attachments A through E. To lessen possible confusion, TCC will continue with consecutive labeling of objection attachments.

1 appointment of the new Chair.” Kurt Beckett’s term as EFSEC Chair started on January  
2 15, 2025.

3 The packet for that meeting included a page for the Horse Heaven project which  
4 listed certain “Milestone Dates,” but there was no mention of the PTAG or Rules of  
5 Procedure. The packet was posted at  
6 [https://www.efsec.wa.gov/sites/default/files/181034/00200/20250115\\_CompletePacket.](https://www.efsec.wa.gov/sites/default/files/181034/00200/20250115_CompletePacket.pdf)  
7 pdf; see the excerpt at Attachment G.

8 On or about February 14, 2024, the Council issued its Agenda and Packet for  
9 the February monthly meeting, to be held on February 19, 2025. As regards the Horse  
10 Heaven project, the February page was identical to the January submission, including  
11 “Milestone Dates,” the latest of which was: “*November 21, 2024, Applicant Signed the*  
12 *SCA.*” The entry indicated that the project “Status” was “SCA Signed” and it was not yet  
13 in “Pre-Construction” phase. The agenda indicated that there would be “Project  
14 Updates” for the Horse Heaven Wind Farm. See Attachment H. Neither the Agenda nor  
15 Council Packet for the February 19, 2025, meeting mentioned discussion or  
16 consideration of the PTAG Rules of Procedure or membership, and no draft or copy of  
17 the Rules of Procedure was included in the Council packet for that meeting.<sup>2</sup>

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18  
19 <sup>2</sup> The Council’s rules as set forth in WAC 463-18-020, EFSEC “Governing procedures” specify that  
20 Council business “shall be conducted as prescribed by the agenda” and that the agenda shall be prepared  
21 “in consultation with the chair.” The text of the regulation is set forth below.

22 The following procedures shall apply to proceedings under the Open Public Meetings Act, chapter  
23 42.30 RCW and rule-making proceedings under the Administrative Procedure Act, chapter 34.05  
24 RCW:

25 (1) A majority of the voting council members constitutes a quorum for the conduct of council business.

26 (2) All council decisions shall be transacted by motion. Motions may be made by any council member  
27 and shall require a second.

28 (3) Voting on all motions shall be by voice vote unless a division is called for, in which case the chair  
shall call the roll by agency and record the votes of each voting member present, “yea” or “nay.”

(4) The order of business shall be conducted as prescribed by the agenda.

(a) The council manager shall prepare each meeting’s agenda in consultation with the chair.

(b) The council may modify a meeting’s agenda.

(Emphasis supplied.)

1 The February 19, 2025 EFSEC monthly meeting was presided over by Kurt  
2 Beckett, who was appointed EFSEC chair by Governor Ferguson effective January 15,  
3 2025. At the beginning of the February 19 meeting, Chair Beckett stated:

4 I will also recuse myself from Council decision-making related to mitigation  
5 measures and remaining project design, construction, and  
micro-siting for the Horse Heaven Clean Energy Center project.

6 Minutes at page 15, lines 7-11; see Attachment I. Chair Beckett was a former lobbyist  
7 for the Applicant Scout on the Horse Heaven project.<sup>3</sup> However, just minutes after  
8 making that announcement, Chair Beckett did preside over the discussion of the Horse  
9 Heaven agenda entry, as noted at page 26, lines 8-11. Attachment I.

10 During the portion of the agenda dealing with Horse Heaven, EFSEC staffer  
11 Amy Moon brought up the PTAG Rules of Procedure, though there was no motion to  
12 amend the agenda for that discussion. See the transcript for the meeting at pages 26-  
13 27 in Attachment I. As noted, EFSEC staffer Amy Moon reported that:

14 In accordance with the site certificate agreement, Article IV.G -- Article IV is  
15 "Plans, Approvals and Actions Required Prior to Construction" -- EFSEC staff  
and the certificate holder developed the rules of procedure for the  
16 Pre-operational Technical Advisory Group, which is abbreviated to the acronym  
P-T-A-G, or PTAG. These rules of procedure include the list of  
PTAG participants.

17 Page 26, lines 16-23 (emphasis supplied). As described above, Article IV.G requires  
18 EFSEC approval of the Rules of Procedure and any amendments. The record shows  
19 Ms. Moon did not provide copies of the Rules of Procedure that had been "developed"  
20

21 \_\_\_\_\_  
22 <sup>3</sup> Indeed, the record indicates Mr. Beckett was involved in providing data to the Seattle Times on  
23 locations of ferruginous hawk nests, which was the subject of a motion to enforce the confidentiality order  
24 issued by Presiding ALJ in the adjudication. See "SCOUT CLEAN ENERGY, LLC'S OPPOSITION TO  
25 THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION'S MOTION TO ENFORCE  
26 PROTECTIVE ORDER" dated March 4, 2024 at PDF pages 27-28. As Mr. Kobus confirms: "Scout's  
community relations representative gave Mr. Swanson (the Seattle Times reporter) a redacted copy of  
27 Scout's public comment filing prior to the January 31, 2024 EFSEC meeting." The "community relations  
representative" was either Mr. Beckett or one of the employees of his firm, Strategies 360. This  
demonstrates that he was familiar with the Horse Heaven project and issues regarding confidentiality of  
wildlife information.

1 to the Councilmembers. There is no record that EFSEC Councilmembers, or Chair  
2 Beckett, ever saw a draft or final version of the PTAG ROP or the “list of PTAG  
3 participants.” There was no disclosure that the Rules of Procedure had in fact been  
4 adopted, as will be discussed below.

5 On the same day of the EFSEC monthly meeting at which Ms. Moon spoke,  
6 (February 19, 2025), the “Horse Heaven PTAG Rules of Procedure” were posted on the  
7 EFSEC website. They were presented as approved, and final, with no opportunity for  
8 review or comment. No information was provided as to who approved them or when.

9 On April 5, 2025, TCC’s undersigned counsel emailed to EFSEC’s Assistant  
10 Attorney General Jon Thompson inquiring as to who did approve the Rules of  
11 Procedure and when the approval occurred. See Attachment J. On April 15, 2025,  
12 Mr. Thompson replied and provided a copy of a letter dated February 6, 2025, from  
13 EFSEC Council Manager Sonia Bumpus to Scout’s project manager Dave Kobus,  
14 which summarily approved the Rules of Procedure.<sup>4</sup> Attachment K. As shown in the  
15 “cc” entry in the letter, it was distributed only to staff at EFSEC, not to the Council, not  
16 to the public and not to Kurt Beckett, who took over as EFSEC Chair on January 15,  
17 2025. Mr. Thompson’s reply did not explain why the February 6, 2025 approval letter  
18 was not promptly posted to the EFSEC website.

19 As described above, the final SCA required the following:

20 The Certificate Holder will provide a copy of the proposed Rules of Procedure at  
21 the first PTAG meeting for review and comment.

22 Emphasis supplied. The first meeting of the PTAG was held on February 28, 2025.

23 See agenda for that meeting posted on the EFSEC website. Attachment L. Though  
24 meeting minutes for that meeting are not available, the available agenda for that

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25 <sup>4</sup> Ms. Bumpus described herself in the February 6, 2025 letter as: “EFSEC Executive Director” a  
26 position that does not exist under EFSEC statutes or rules. As described below, Ms. Bumpus is the  
27 “Council Manager,” the administrator for the council with no decision making authority.

meeting did not provide for “review and comment” of the “proposed Rules of Procedure” by PTAG members. The record shows that the Rules of Procedure were put on the EFSEC website several days *before* that initial PTAG meeting.

Similarly, the SCA states the EFSEC must approve membership of the PTAG:

The exact composition of the PTAG will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.

Article IV.G of the SCA at page 20.

The February 19, 2025 Council minutes at pages 26-27 (Attachment I) also indicate that: “These rules of procedure include the list of PTAG participants.” However, the Rules of Procedure posted on February 19, 2025 did not include a list of participants and the list of PTAG members was not posted on the EFSEC website until March 3, 2025. Again, there was no disclosure of when the PTAG participants were approved, or by whom and there is no record that the EFSEC Councilmembers approved them, or even knew who they were. There were no EFSEC meetings held between February 19 and March 3, 2025.

*In short, the Council did not approve PTAG’s Rules of Procedure nor its Membership and were never provided these materials during their meetings.*

Councilmembers were left to read the EFSEC website after their February meeting to learn what happened.

The EFSLA statute makes clear that it is the EFSEC council, not some staff persons, that make decisions under the statute:

**RCW 80.50.040**

**Energy facility site evaluation council—Powers enumerated.**

The council shall have the following powers:

- (1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;
- (2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, initial operational conditions of

1 certification, and ongoing regulatory oversight under the regulatory authority  
2 established in this chapter of energy facilities subject to this chapter;

3 (3) To establish rules of practice for the conduct of public hearings pursuant to  
4 the provisions of the Administrative Procedure Act, as found in chapter 34.05  
5 RCW;

6 (4) To prescribe the form, content, and necessary supporting documentation for  
7 site certification;

8 Emphasis supplied. The responsibility of the Council is also set forth in its rules:

9 **WAC 463-18-020 Governing procedure.**

10 The following procedures shall apply to proceedings under the Open Public  
11 Meetings Act, chapter 42.30 RCW and rule-making proceedings under the  
12 Administrative Procedure Act, chapter 34.05 RCW:

13 (1) A majority of the voting council members constitutes a quorum for the  
14 conduct of council business.

15 (2) All council decisions shall be transacted by motion. Motions may be made by  
16 any council member and shall require a second.

17 (3) Voting on all motions shall be by voice vote unless a division is called for, in  
18 which case the chair shall call the roll by agency and record the votes of each  
19 voting member present, "yea" or "nay."

20 (4) The order of business shall be conducted as prescribed by the agenda.

21 (a) The council manager shall prepare each meeting's agenda in  
22 consultation with the chair.

23 (b) The council may modify a meeting's agenda.

24 (Emphasis supplied).

25 The Open Public Meeting Act at RCW 42.30.060(1) provides:

26 (1) No governing body of a public agency shall adopt any ordinance, resolution,  
27 rule, regulation, order, or directive, except in a meeting open to the public and  
28 then only at a meeting, the date of which is fixed by law or rule, or at a meeting  
of which notice has been given according to the provisions of this chapter.

19 In addition, RCW 42.30.240 provides that "the governing body of a public agency shall  
20 provide an opportunity at or before every regular meeting at which final action is taken  
21 for public comment." There was no opportunity to provide comment on the content of  
22 the Rules of Procedure prior to Ms. Bumpus's "approval" of them on February 6, 2025.

23 For whatever reason, Ms. Bumpus did not provide notice of her intent to make a  
24 decision, did not adopt the Rules of Procedure in a meeting open to the public and did  
25 not provide any opportunity for public comments. These deliberate omissions clearly

1 violate the Open Public Meeting act.<sup>5</sup>

2 For reasons that remain unknown, not only did the EFSEC Councilmembers not  
3 vote on the PTAG Rules of Procedure, they were not even provided draft copies of  
4 them by Council staff or the applicant.<sup>6</sup> The Council was not told during its meeting who  
5 was making the decision on the procedural rules or PTAG membership.

6 WAC 463-10-010(6) describes the duties of the "Council manager:"

7 (6) "Council manager" means the individual who handles day-to-day  
8 administration for the council, administers the decisions of the council, and  
9 directs the staff that supports the council.

9 As seen, neither the EFSLA nor Council regulations give Council Manager Bumpus  
10 authority to make decisions for the Council. The record does not disclose whether the  
11 EFSEC Chair Beckett delegated authority to her to make decisions on the text of the  
12 Rules of Procedure or the membership of PTAG. In any event, Ms. Bumpus cannot be  
13 a presiding officer or decision maker under RCW 34.05.458 "Separation of Function,"  
14 which provides:

15 (1) A person who has served as investigator, prosecutor, or advocate in an  
16 adjudicative proceeding or in its preadjudicative stage, or one who is subject to  
17 the authority, direction, or discretion of such a person, may not serve as a  
18 presiding officer in the same proceeding.

18 Ms. Bumpus was an investigator and SEPA "responsible official" in proceedings leading  
19 up to decisions on the PTAG, which includes comments in the January 31, 2024  
20 meeting at pages 66-68. She accordingly cannot preside over decisions on the content  
21 of the Rules of Procedure or the membership of the PTAG.

22 The blatant violation of EFSEC laws and procedures means the important Rules  
23 of Procedure for the PTAG, that violate a host of rules themselves, were never legally

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24 <sup>5</sup> TCC reserves all rights and remedies concerning potential violations of the Open Public Meeting Act  
25 under RCW 42.30.120 and 42.30.130.

26 <sup>6</sup> Significantly, the EFSEC for the Horse Heaven project also included a representative (and EFSEC  
27 voting member) from Benton County, so the local representative was kept in the dark as well.



1 adopted or approved and as such have no force and effect. Under the EFSLA, "Council  
2 staff may make recommendations to the council on conditions that would allow site  
3 approval" (RCW 80.50.085(3)) but neither the statute nor rules vest decision-making  
4 power in staff. Given the multiple violations of law and rules identified in TCC's  
5 Objection, it is no wonder that the authors of the Rules of Procedure did not want them  
6 to be subject to public comment.

7 Because the Rules of Procedure dealt with important questions of impact on  
8 wildlife, they were also required to meet the following criteria:

9 **WAC 463-62-040 Fish and wildlife.**

10 The council's intent is to achieve no net loss of habitat functions and values by  
11 maintaining the functions and values of fish and wildlife habitat in the areas  
12 impacted by energy development.

13 (1) The council encourages applicants to select sites that avoid impacts to any  
14 species on federal or state lists of endangered or threatened species or to  
15 priority species and habitats.

16 (2) Standards.

17 (a) An applicant must demonstrate no net loss of fish and wildlife habitat function  
18 and value.

19 (Emphasis supplied). The ROP placed on the EFSEC website did not require Scout to  
20 "demonstrate no net loss of fish and wildlife habitat." As noted in our original Objection,  
21 the Rules of Procedure approved by Ms. Bumpus allow Scout to influence PTAG  
22 decision-making with potential economic impacts which might override the "no net loss"  
23 requirement.<sup>7</sup>

24 Moreover, that abdication of responsibility by the Council on the Horse Heaven  
25 project at the February 19 meeting was presided over by Chair Beckett, who had  
26 obvious, and admitted, conflicts of interest as the former lobbyist for the applicant on  
27 this very project. He was uniquely familiar with issues of the confidentiality of wildlife  
28 information from his involvement with Scout's project manager, Mr. Kobus, and his

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<sup>7</sup> As discussed in TCC's Objection at IV.F, economic considerations were disallowed during  
adjudication and cannot be interjected now.

1 lobbying of the Seattle Times. As set forth in TCC's Objection, the Rules of Procedure  
2 approved by Ms. Bumpus contained no provision to protect the dissemination of  
3 confidential wildlife information and neither the Chair nor the Council Manager  
4 disclosed this fact to the EFSEC Councilmembers at the February 19, 2025 Council  
5 meeting.

6 TCC strenuously objects to the manner in which the PTAG Rules of Procedure  
7 were adopted and particularly the failure of the EFSEC Council to allow public comment  
8 and take a public vote on them.

9 These omissions described here, and in TCC's original Objection, cannot be  
10 considered insignificant or non-prejudicial. EFSEC staff advised the Council in  
11 December, 2024 that the PTAG process was "an integral part of the final project  
12 design." See page 2 above. Scout itself contended as far back as October, 2024 that  
13 the Council was "shirking its primary duty to actually site the Project, instead  
14 impermissibly delegating that key decision to the PTAG and to WDFW. . . ." See page  
15 3 of TCC's original Objection. Scout estimated that the PTAG would be addressing  
16 "about half the generating infrastructure." *Id.* Half the generating infrastructure would  
17 be more than 100 turbines.

18 The abdication of authority over this "integral part of the final project design" and  
19 the subsequent takeover by staff (with the apparent assistance from the applicant)  
20 violates not only the explicit terms of the SCA, but the Council's responsibility under  
21 EFSLA. It further violates long established standards for administration of land use  
22 codes as set forth in *Eastlake Cmty. Council v. Roanoke Assocs.*, 82 Wn.2d 475, 482,  
23 513 P.2d 36, 41-42 (1973):

24 We have held that:

25 The acts of administering a zoning ordinance do not go back to the  
26 questions of policy and discretion which were settled at the time of the  
27 adoption of the ordinance. *Administrative authorities are properly*

1           *concerned with questions of compliance with the ordinance, not with its wisdom.*  
2           *(Italics ours.) State ex rel. Ogden v. Bellevue, 45 Wn.2d 492, 495, 275 P.2d 899*  
3           *(1954). This rule is of equal force in the administration of a building code. To*  
4           *permit another course of administrative behavior, thereby inviting discretion, may*  
5           *well result in violations of the equal protection of the laws. The code is positive in*  
6           *its requirements and contains no exceptional procedures like those employed*  
7           *here; hence, no city officer was authorized to permit its violation. The duty of*  
8           *those empowered to enforce the codes and ordinances of the city is to insure*  
9           *compliance therewith and not to devise anonymous procedures available to the*  
10           *citizenry in an arbitrary and uncertain fashion.*

11           Emphasis supplied.

12           TCC files this First Addendum to its original Objection and requests that EFSEC  
13           immediately cancel all past and current reviews by the PTAG and disband the PTAG  
14           entirely until all laws and regulations, as set forth herein and in TCC's original  
15           Objection, are fully executed and compliance therewith is demonstrated.

16           DATED this 18<sup>th</sup> day of April, 2025.

17           

18           J. Richard Aramburu, WSBA #466  
19           Attorney for Tri-Cities C.A.R.E.S.

DECLARATION OF SERVICE

I hereby certify that I have this day served the foregoing upon the parties of record in this proceeding (listed below my signature block) by authorized method of service pursuant to WAC 463-30-120(3) to the email addresses for parties as provided.

Dated at Seattle, Washington this 18<sup>th</sup> day of April, 2025.



Carol Cohoe, Legal Assistant  
Law Offices of J. Richard Aramburu, PLLC

PARTIES OF RECORD

Kenneth Harper, Aziza Foster  
Menke Jackson Beyer, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima WA 98902  
*By Email:* kharper@mjbe.com;  
zfoster@mjbe.com; Julie@mjbe.com

EFSEC Staff  
alex.shiley@efsec.wa.gov;  
andrea.grantham@efsec.wa.gov;  
sonia.bumpus@efsec.wa.gov;  
catherine.taliaferro@efsec.wa.gov

Sarah Reyneveld  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
Counsel for the Environment  
*By Email:*  
Sarah.Reyneveld@atg.wa.gov  
CEPSeaEF@atg.wa.gov;  
julie.dolloff@atg.wa.gov

Tim McMahan  
Stoel Rives LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
Counsel for Scout Clean Energy, LLC  
*By Email:* tim.mcmahan@stoel.com  
emily.schimelpfenig@stoel.com;  
ariel.stavitsky@stoel.com

Shona Voelckers  
Yakama Nation  
shona@yakamanation-olc.org  
jessica@yakamanation-olc.org

**FIRST ADDENDUM TO OBJECTION BY INTERVENOR  
TRI-CITIES C.A.R.E.S. TO PTAG ESTABLISHMENT,  
OPERATIONS, MEMBERSHIP AND MEETINGS - 12**

LAW OFFICES OF  
J. RICHARD ARAMBURU, PLLC  
705 2<sup>ND</sup> AVE., SUITE 1300  
SEATTLE 98104  
Telephone (206) 625-9515  
FAX (206) 682-1376  
aramburulaw.com

	<b>Objection Attachments</b>
A	20241007_SCE_PetForReconsideration_RevisedSCA
B	20250204_PTAG_RulesOfProcedure_Clean_0
C	20250303 PTAG Participants
D	Email string with EFSEC staff
E	EFSEC PTAG Agendas post 3-21-25
	<b>Objection Addendum Attachments</b>
F	December 18, 2024 Council minutes excerpt
G	January 15, 2025 Agenda and Horse Heaven project excerpt (pages 1, 2, 25)
H	February 19, 2025 Agenda and Horse Heaven project excerpt (pages 1, 2, 35)
I	February 19, 2025 EFSEC monthly meeting minutes (transcript) excerpt (pages 1, 2, 15, 26, 27)
J	Email string with EFSEC AG
K	EFSEC AAG Thompson email producing Bumpus 2/6/25 ROP letter
L	Agenda for first PTAG meeting held 2/28/25

# Attachment F



## ONE-WEEK TRANSCRIPT TURNAROUND

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### DECEMBER MONTHLY MEETING

*December 18, 2024*

### EFSEC 2024 Monthly Council Meetings

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**Sarah Fitzgibbon, CCR**  
Vice President



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accessed via *paperclip* icon

---

WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL  
MONTHLY MEETING

---

December 18, 2024  
Taken Remotely via Teams

PREPARED BY: Michelle D. Elam, RPR, CCR 3335



1 Notice of Decision by the governor, notifying the public  
2 that Governor Inslee signed the Site Certification  
3 Agreement, or SCA. That was done on October 18th, the  
4 signing was done October 18th, 2024.

5 The project proponent, Horse Heaven Wind Farm,  
6 LLC, also signed the SCA, and implementation of the SCA  
7 has been initiated.

8 The certificate holder and EFSEC staff are  
9 collaborating currently on establishing the  
10 preoperational technical advisory group, which is denoted  
11 as the PTAG, P-T-A-G, including development of the PTAG  
12 charter and outreach to prospective PTAG members, per the  
13 Mitigation Measure Habitat 4. And in the Site  
14 Certification Agreement, that's denoted as ~~half~~ <sup>HAB-4</sup> dash 4,  
15 which is to establish a PTAG and a technical advisory  
16 committee.

17 The PTAG is the first committee to be  
18 established. And that is an integral part of the final  
19 project design and is responsible for reviewing and  
20 providing technical advice on wildlife and wildlife  
21 habitat documents produced by the certificate holder, as  
22 well as reviewing and providing advice to EFSEC on the  
23 final project design.

24 The PTAG must be established at least one year  
25 prior to construction.

# Attachment G



# Washington State Energy Facility Site Evaluation Council AGENDA

## MONTHLY MEETING

Wednesday January 15, 2025  
1:30 PM

## **VIRTUAL ONLY MEETING**

[Click here to join the meeting](#)

Conference number: 564-999-2000 ID: 141231937#

1. Call to Order ..... Kathleen Drew, EFSEC Chair
2. Roll Call ..... Andrea Grantham, EFSEC Staff
3. Proposed Agenda ..... Kathleen Drew, EFSEC Chair
4. Minutes      **Meeting Minutes** ..... Kathleen Drew, EFSEC Chair
  - December 18, 2024 Monthly Meeting Minutes
5. Projects
  - a. Kittitas Valley Wind Project
    - Operational Updates ..... Jarred Caseday, EDP Renewables
  - b. Wild Horse Wind Power Project
    - Operational Updates ..... Jennifer Galbraith, Puget Sound Energy
  - c. Chehalis Generation Facility
    - Operational Updates ..... Jeremy Smith, Chehalis Generation
  - d. Grays Harbor Energy Center
    - Operational Updates ..... Chris Sherin, Grays Harbor Energy
  - e. Columbia Solar
    - Operational Updates ..... Thomas Cushing, Greenbacker Capital
  - f. Columbia Generating Station
    - Operational Updates ..... Denis Mehinagic, Energy Northwest
  - g. WNP – 1/4
    - Non-Operational Updates ..... Denis Mehinagic, Energy Northwest
  - h. Goose Prairie Solar
    - Project Updates ..... Nelson Jia, Brookfield Renewable
  - i. High Top Solar
    - Project Updates ..... Sara Randolph, EFSEC Staff
  - j. Ostrea Solar
    - Project Updates ..... Sara Randolph, EFSEC Staff
  - k. Horse Heaven Wind Farm
    - Project Updates ..... Amy Moon, EFSEC Staff
  - l. Wautoma Solar
    - Project Updates ..... Joanne Snarski, EFSEC Staff
  - m. Hop Hill Solar
    - Project Updates ..... John Barnes, EFSEC Staff
  - n. Carriger Solar
    - Project Updates ..... Joanne Snarski, EFSEC Staff
  - o. Wallula Gap
    - Project Updates ..... John Barnes, EFSEC Staff
  - p. Goldeneye BESS
    - Project Updates ..... Joanne Snarski, EFSEC Staff
    - Land Use Consistency Order ..... Joanne Snarski, EFSEC Staff

*The Council may consider FINAL ACTION on the Land Use Order for the Goldeneye BESS project.*

6. Other

- Cost Allocation.....Sonia Bumpus, EFSEC Staff

7. Adjourn.....Kathleen Drew, EFSEC Chair

# Horse Heaven Wind Project

## General Description:

Proposed construction of a renewable energy facility that would have a nameplate energy generating capacity of up to 1,150 megawatts (MWs) for a combination of wind and solar facilities as well as battery energy storage systems (BESS). Meteorological Towers (MET), overhead transmission lines, and Operations and Maintenance (O&M) Facilities are also proposed.

Project area: 72,428 acres, privately owned land in which five DNR parcels are located within.

## Location:

Unincorporated Central Benton County south of the Tri-Cities.

## Applicant:

Horse Heaven Wind Farm, LLC.

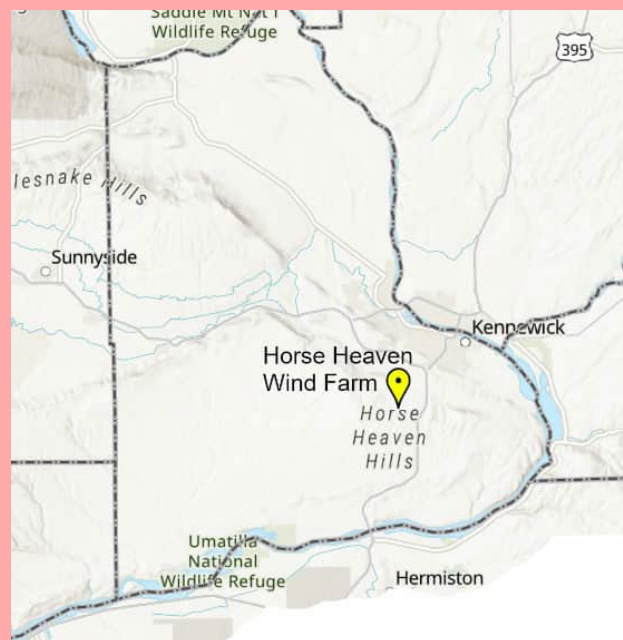
## Milestone Dates:

- February 8, 2021, Original ASC Submitted
- May 17, 2022, Council issues Order No. 883 of Land Use Consistency – Finding Proposed Site Consistent with Land Use Regulations.
- October 31, 2023, Final Environmental Impact Statement Issued.
- April 17, 2024, Adjudicative Order Resolving Contested Issues.
- April 29, 2024, Recommendation to the Governor Submitted.
- May 25, 2024, Governor Remanded the Council's Recommendation.
- September 17, 2024, Final Recommendation to the Governor Submitted.
- October 18, 2024, Received Signed SCA and Final Decision from the Governor.
- November 21, 2024, Applicant Signed the SCA.

## Status:

Application Approved
SCA Signed
Pre-Construction
Construction
Prior to Commercial Operations
Operations
Termination, Decommissioning, and Site Restoration

## Location Map:



# Attachment H



# Washington State Energy Facility Site Evaluation Council AGENDA

POTENTIAL ACTION ITEM

## MONTHLY MEETING

Wednesday February 19, 2025  
1:30 PM

## HYBRID MEETING

[Click here to join the meeting](#)

Conference number: 564-999-2000 ID: 141231937#

1. Call to Order .....Kurt Beckett, EFSEC Chair
2. Roll Call .....Andrea Grantham, EFSEC Staff
3. Proposed Agenda .....Kurt Beckett, EFSEC Chair
4. Minutes      **Meeting Minutes**.....Kurt Beckett, EFSEC Chair
  - December 18, 2024 Monthly Meeting Minutes
5. Projects
  - a. Kittitas Valley Wind Project
    - Operational Updates.....Jarred Caseday, EDP Renewables
  - b. Wild Horse Wind Power Project
    - Operational Updates.....Jennifer Galbraith, Puget Sound Energy
  - c. Chehalis Generation Facility
    - Operational Updates.....Jeremy Smith, Chehalis Generation
  - d. Grays Harbor Energy Center
    - Operational Updates.....Chris Sherin, Grays Harbor Energy
  - e. Columbia Solar
    - Operational Updates.....Thomas Cushing, Greenbacker Capital
  - f. Columbia Generating Station
    - Operational Updates.....Josh LaPorte, Energy Northwest
  - g. WNP – 1/4
    - Non-Operational Updates.....Josh LaPorte, Energy Northwest
  - h. Goose Prairie Solar
    - Project Updates.....Nelson Jia, Brookfield Renewable
  - i. High Top Solar
    - Project Updates.....Sara Randolph, EFSEC Staff
  - j. Ostrea Solar
    - Project Updates.....Sara Randolph, EFSEC Staff
  - k. Wautoma Solar
    - Project Updates.....Lance Caputo, EFSEC Staff
  - l. Carriger Solar
    - Project Updates.....Joanne Snarski, EFSEC Staff
  - m. Horse Heaven Wind Farm
    - Project Updates.....Amy Moon, EFSEC Staff
  - n. Hop Hill Solar
    - Project Updates.....Trevin Taylor, EFSEC Staff
  - o. Wallula Gap
    - Project Updates.....Trevin Taylor, EFSEC Staff.
  - p. Goldeneye BESS
    - Project Updates.....Joanne Snarski, EFSEC Staff
    - Land Use Consistency Order.....Joanne Snarski, EFSEC Staff

*The Council may consider FINAL ACTION on the Land Use Order for the Goldeneye BESS project.*

**Note: "FINAL ACTION"** means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance. RCW 42.30.020

6. Other

- Dave Walker Staff Re-Introduction.....Sonia Bumpus, EFSEC Staff
- Cost Allocation.....Sonia Bumpus, EFSEC Staff

7. Adjourn.....Kurt Beckett, EFSEC Chair



## **Horse Heaven Wind Project**

### **General Description:**

Proposed construction of a renewable energy facility that would have a nameplate energy generating capacity of up to 1,150 megawatts (MWs) for a combination of wind and solar facilities as well as battery energy storage systems (BESS). Meteorological Towers (MET), overhead transmission lines, and Operations and Maintenance (O&M) Facilities are also proposed.

Project area: 72,428 acres, privately owned land in which five DNR parcels are located within.

### **Location:**

Unincorporated Central Benton County south of the Tri-Cities.

### **Applicant:**

Horse Heaven Wind Farm, LLC.

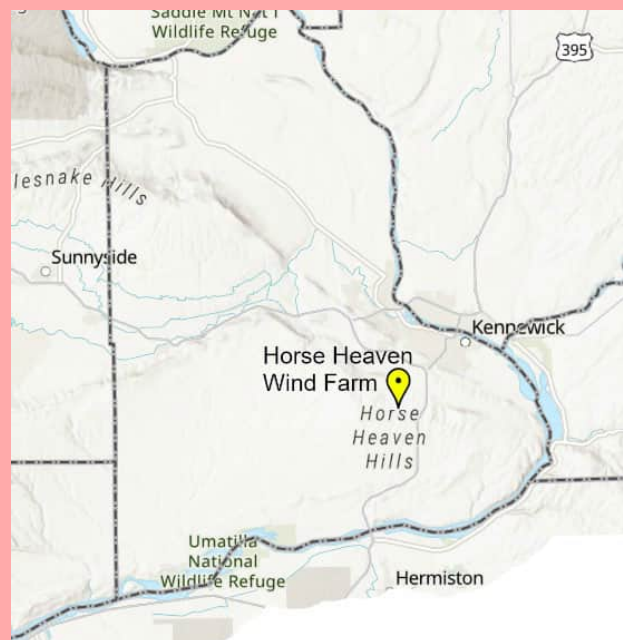
### **Milestone Dates:**

- February 8, 2021, Original ASC Submitted
- May 17, 2022, Council issues Order No. 883 of Land Use Consistency – Finding Proposed Site Consistent with Land Use Regulations.
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- May 25, 2024, Governor Remanded the Council's Recommendation.
- September 17, 2024, Final Recommendation to the Governor Submitted.
- October 18, 2024, Received Signed SCA and Final Decision from the Governor.
- November 21, 2024, Applicant Signed the SCA.

### **Status:**

Application Approved
SCA Signed
Pre-Construction
Construction
Prior to Commercial Operations
Operations
Termination, Decommissioning, and Site Restoration

### **Location Map:**



# Attachment I



## ONE-WEEK TRANSCRIPT TURNAROUND

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*February 19, 2025*

### EFSEC 2025 Monthly Council Meetings

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Vice President



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accessed via *paperclip* icon

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WASHINGTON STATE

ENERGY FACILITY SITE EVALUATION COUNCIL

MONTHLY MEETING

---

February 19, 2025

Lacey, Washington

Reporter: John M. S. Botelho, CCR, RPR

1 transparency of this Council's work. I will therefore  
2 be recusing myself from participating in any  
3 decision-making related to the Council's  
4 recommendations to the governor on the Goldeneye  
5 battery storage, Hop Hill Solar, or Wallula Gap  
6 projects, solar projects.

7 I will also recuse myself from Council  
8 decision-making related to mitigation measures and  
9 remaining project design, construction, and  
10 micro-siting for the Horse Heaven Clean Energy Center  
11 project.

12 This means that I will not actively participate in  
13 the adjudicative hearings or the Council's development  
14 of adjudicative orders on these project matters. When  
15 an open meeting action item comes up on one of those  
16 projects, as the Council's vote on the draft land-use  
17 consistency order is slated to do today, I will  
18 exercise my authority to appoint a fellow Council  
19 member to serve as chair in my absence for that part of  
20 the agenda.

21 Today I will pass the gavel to the longest-serving  
22 Council member, Stacey Brewster, the appointee for the  
23 Utilities and Transportation Commission. She may then  
24 guide the Council's deliberations on that topic,  
25 including calling for motions and votes as she deems

1 the potential development of the Carriger Solar  
2 facility. EFSEC is working in coordination with the  
3 Yakama Nation Cultural Resources Program staff and the  
4 developer, which is Cypress Creek Renewables, to  
5 identify potential mitigation and inform our SEPA  
6 threshold determination.

7 May I answer any questions?

8 CHAIR BECKETT: Any questions?

9 Hearing none. Thank you.

10 Moving on to the Horse Heaven Wind Farm. Amy  
11 Moon.

12 MS. MOON: Good afternoon, Council  
13 Chair Beckett and EFSEC Council members. For the  
14 record, this is Amy Moon reporting on the Horse Heaven  
15 wind project.

16 In accordance with the site certificate agreement,  
17 Article IV.G -- Article IV is "Plans, Approvals and  
18 Actions Required Prior to Construction" -- EFSEC staff  
19 and the certificate holder developed the rules of  
20 procedure for the Pre-operational Technical Advisory  
21 Group, which is abbreviated to the acronym P-T-A-G, or  
22 PTAG. These rules of procedure include the list of  
23 PTAG participants. The certificate holder is actively  
24 working to confirm member representatives and to  
25 convene as a group in early to mid March.

1 Does the Council have any questions?

2 CHAIR BECKETT: Questions from the  
3 Council? Hearing none. Thank you.

4 Moving on to Hop Hill Solar. Trevin Taylor.

5 MR. TAYLOR: Hello. This Trevin  
6 Taylor for John Barnes, the assigned site specialist  
7 for Hop Hill application.

8 We continue to coordinate and review the  
9 application with our contractor, contracted agencies,  
10 and tribal governments.

11 There are no further updates at this time.

12 Are there any questions?

13 CHAIR BECKETT: Hearing none.

14 Okay. Moving on, also Trevin, to Wallula Gap,  
15 please.

16 MR. TAYLOR: For the record, this is  
17 Trevin Taylor for John Barnes, the siting specialist  
18 for the Wallula Gap application.

19 We continue to coordinate and review the  
20 application with our contractors, contracted agencies,  
21 and tribal governments.

22 There are no further updates at this time. Are  
23 there any questions?

24 CHAIR BECKETT: Any questions?  
25 Hearing none.

# Attachment J



## **Rick Aramburu**

---

**From:** Rick Aramburu  
**Sent:** Saturday, April 5, 2025 10:01 AM  
**To:** 'Thompson, Jonathan C (ATG)'  
**Cc:** Bumpus, Sonia (EFSEC); Taliaferro, Catherine (EFSEC); Hafkemeyer, Ami (EFSEC)  
**Subject:** RE: Horse Heaven Wind Farm: Objection by Intervenor Tri-Cities C.A.R.E.S. To PTAG Establishment, Operations, Membership and Meetings, with five attachments.

Mr. Thompson:

Thank you for your prompt response to our inquiry.

In your email you state that:

We anticipate that EFSEC staff, and/or the Council will take up decisions on those site certification agreement implementation matters that the PTAG is intended to inform, as explained in the PTAG Rules of Procedure.

Regarding “site certification agreement implementation matters,” we note that the following, found on page 20 of the Final SCA:

“The Certificate Holder shall submit to EFSEC for approval proposed Rules of Procedure describing how the PTAG shall operate, including but not limited to a schedule for meetings, a meeting procedure, a process for recording meeting discussions, a process for making and presenting timely PTAG recommendations to the Council, and other procedures that will assist the PTAG to function properly and efficiently.”

(Emphasis supplied). Please advise when EFSEC approved the Rules of Procedure that were posted on the EFSEC website on February 19, 2025. Also please advise who approved them and provide documentation of that approval. While the February 19, 2025 Council meeting minutes at page 26-27, indicate “development” of the Rules of Procedure by staff, I find no action by the Council to approve them. The Council packet for the February 19, 2025 meeting which referenced the Horse Heaven project does not include Rules of Procedure and does not mention PTAG at all under “Milestone Dates.”

Similarly, EFSEC must approve membership of PTAG:

The exact composition of the PTAG will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.

The February 19, 2025 Council minutes at page 26-27 also indicate that: “These rules of procedure include the list of PTAG participants.” However, the Rules of Procedure posted on February 19, 2025 does not include a list of participants and the list of members was not posted until March 3, 2025. Please advise who approved the list of participants and provide any documentation of that approval.

Thank you in advance for your clarification of these important provisions of the SCA.

Rick Aramburu  
Law Offices of J. Richard Aramburu

705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

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---

**From:** Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>  
**Sent:** Friday, April 4, 2025 1:59 PM  
**To:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Cc:** Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>; Taliaferro, Catherine (EFSEC) <[catherine.taliaferro@efsec.wa.gov](mailto:catherine.taliaferro@efsec.wa.gov)>; Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Farm: Objection by Intervenor Tri-Cities C.A.R.E.S. To PTAG Establishment, Operations, Membership and Meetings, with five attachments.

Mr. Aramburu,

The documents you submitted have been posted under general facility comments because there is no open proceeding or open public comment campaign to which they pertain.

The adjudication in which you represented Tri-Cities C.A.R.E.S. as an intervenor has concluded. That proceeding was held in compliance with RCW 80.50.090(4), which says: "Prior to the issuance of a council recommendation to the governor under RCW [80.50.100](#) a public hearing, conducted as an adjudicative proceeding under chapter [34.05](#) RCW, the administrative procedure act, shall be held."

We anticipate that EFSEC staff, and/or the Council will take up decisions on those site certification agreement implementation matters that the PTAG is intended to inform, as explained in the PTAG Rules of Procedure. However, no such decision is currently before EFSEC.

Director Bumpus's staff is considering your objection, and may provide a response. We take your submission as being submitted under RCW 80.50.140(2), which neither allows for nor requires a response, nor does it require the publication of such objection on a website or in any other manner.

I hope this explanation is helpful to you.

Jon Thompson  
Senior Counsel  
Ecology Division  
Office of the Attorney General of Washington  
(360) 586-6740

---

**From:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Sent:** Thursday, April 3, 2025 4:18 PM  
**To:** Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>; Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>; Taliaferro, Catherine (EFSEC) <[catherine.taliaferro@efsec.wa.gov](mailto:catherine.taliaferro@efsec.wa.gov)>  
**Subject:** RE: Horse Heaven Wind Farm: Objection by Intervenor Tri-Cities C.A.R.E.S. To PTAG Establishment, Operations, Membership and Meetings, with five attachments.

[EXTERNAL]

EFSEC Staff:

In response to our email below, we see that EFSEC has posted TCC's Objection as "0947" on its website today (April 3, 2025), without further description. We are not sure what the number refers to, but this entry is the only one we can find, in the 44 pages of Horse Heaven documents on the website, without a title or descriptor for the document. We ask that our submittal be accurately identified as were the more than 800 documents filed in the Horse Heaven matter.

Thank you for your assistance.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

---

**From:** Rick Aramburu

**Sent:** Wednesday, April 2, 2025 12:52 PM

**To:** Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>; [jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov); [catherine.taliaferro@efsec.wa.gov](mailto:catherine.taliaferro@efsec.wa.gov)

**Subject:** Horse Heaven Wind Farm: Objection by Intervenor Tri-Cities C.A.R.E.S. To PTAG Establishment, Operations, Membership and Meetings, with five attachments.

On Friday, March 28, 2025, our office filed and served "Objection by Intervenor Tri-Cities C.A.R.E.S. To PTAG Establishment, Operations, Membership and Meetings," with five attachments. In looking at the EFSEC website today, I don't see our Objection listed as a document for the Horse Heaven project. Please advise whether there is a problem with our filing or otherwise inform us as why our filing is not on website.

Thank you for your assistance.

Rick Aramburu  
Law Offices of J. Richard Aramburu  
705 2<sup>nd</sup> Ave #1300  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Email: [rick@aramburu-eustis.com](mailto:rick@aramburu-eustis.com)

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

# Attachment K

---

**RE: Horse Heaven Wind Farm: Objection by Intervenor Tri-Cities C.A.R.E.S. To PTAG Establishment, Operations, Membership and Meetings, with five attachments.**

---

**From** Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>  
**Date** Tue 4/15/2025 4:15 PM  
**To** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>  
**Cc** Bumpus, Sonia (EFSEC) <[sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov)>; Taliaferro, Catherine (EFSEC) <[catherine.taliaferro@efsec.wa.gov](mailto:catherine.taliaferro@efsec.wa.gov)>; Hafkemeyer, Ami (EFSEC) <[ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)>

 1 attachment (513 KB)

RE: Letter from Sonia Bumpus regarding PTAG Rules of Procedure Approval - CORRECTED;

Mr. Aramburu,

In response to your questions which I have highlighted in the email below, I'm providing documentation of EFSEC Director Sonia Bumpus' approval of the PTAG Rules of Procedure by letter of February 6, 2025, to Dave Kobus of Scout Clean Energy. That communication attached a copy of the PTAG Rules of Procedure including Attachment B, PTAG Participants. (Attachment B has since been updated to include the individuals that were designated by various agencies included on the initial list, as reflected in the version of Attachment B that is posted on the website.)

I hope this is helpful to you.

Jon Thompson  
Senior Counsel  
Ecology Division  
Office of the Attorney General of Washington  
(360) 586-6740

---

**From:** Rick Aramburu [Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)  
**Sent:** Saturday, April 5, 2025 10:01 AM  
**To:** Thompson, Jonathan C (ATG) [jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)  
**Cc:** Bumpus, Sonia (EFSEC) [sonia.bumpus@efsec.wa.gov](mailto:sonia.bumpus@efsec.wa.gov); Taliaferro, Catherine (EFSEC) [catherine.taliaferro@efsec.wa.gov](mailto:catherine.taliaferro@efsec.wa.gov); Hafkemeyer, Ami (EFSEC) [ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov)  
**Subject:** RE: Horse Heaven Wind Farm: Objection by Intervenor Tri-Cities C.A.R.E.S. To PTAG Establishment, Operations, Membership and Meetings, with five attachments.

[EXTERNAL]
------------

Mr. Thompson:

Thank you for your prompt response to our inquiry.

In your email you state that:

**From:** [Owens, Joan \(EFSEC\)](#)  
**Sent on:** Thursday, February 06, 2025 4:46:07 PM  
**To:** [Dave Kobus](#)  
**CC:** [Bumpus, Sonia \(EFSEC\)](#); [Andrew Pinger](#); [Hafkemeyer, Ami \(EFSEC\)](#); [Moon, Amy \(EFSEC\)](#); [Grantham, Andrea \(EFSEC\)](#)  
**Subject:** RE: Letter from Sonia Bumpus regarding PTAG Rules of Procedure Approval - CORRECTED  
**Attachments:** 20250206\_PTAG Rules of Procedure Approval\_Ltr\_Corrected.pdf (168.68 KB),  
20250204\_PTAG\_RulesOfProcedure\_Clean.pdf (310.62 KB)

Good afternoon,  
Please see the attached corrected letter from Sonia Bumpus, EFSEC Director.  
Thanks,  
~Joan Owens  
Energy Facility Site Evaluation Council  
Executive Assistant  
Email: [joan.owens@efsec.wa.gov](mailto:joan.owens@efsec.wa.gov)  
Phone number: (360) 664-1920  
EFSEC Email: [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov)  
EFSEC phone number: (360) 664-1345  
Address: 621 Woodland Square Loop SE, Lacey WA 98503-3172  
Mailstop/P.O. Box: 43172  
[www.efsec.wa.gov](http://www.efsec.wa.gov)

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**From:** Grantham, Andrea (EFSEC)  
**Sent:** Thursday, February 6, 2025 12:31 PM  
**To:** Dave Kobus  
**Cc:** Bumpus, Sonia (EFSEC) ; Hafkemeyer, Ami (EFSEC) ; Moon, Amy (EFSEC) ; Andrew Pinger  
**Subject:** Letter from Sonia Bumpus regarding PTAG Rules of Procedure Approval  
Good afternoon,  
Please see the attached letter and document from Sonia Bumpus, EFSEC Director.  
Thanks,  
Andrea Grantham  
(she/her)  
Energy Facility Site Evaluation Council  
Administrative Assistant 4  
Email: [andrea.grantham@efsec.wa.gov](mailto:andrea.grantham@efsec.wa.gov)  
EFSEC Email: [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov)  
EFSEC phone number: (360) 664-1345  
Address: 621 Woodland Square Loop SE, Lacey WA 98503-3172  
Mailstop/P.O. Box: 43172  
[www.efsec.wa.gov](http://www.efsec.wa.gov)



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98503-3172

February 6, 2025

Dave Kobus  
Scout Clean Energy  
5775 Flatiron Parkway, Suite 120  
Boulder, CO 80301

Re: PTAG Rules of Procedure

Dear Mr. Kobus,

This letter is regarding the Energy Facility Site Evaluation Council's (EFSEC) review of the draft Pre-Construction Technical Advisory Group (PTAG) Rules of Procedure (attached), as required by the Horse Heaven Site Certification Agreement (SCA), Article IV.G.

EFSEC reviewed the proposed draft document and found it to be consistent with the requirements outlined for the Rules of Procedure as described in the SCA.

Pursuant to the SCA, the PTAG shall be provided "a copy of these Rules of Procedure at the first meeting for review and comment. Any modifications to the Rules of Procedure suggested by the PTAG must be approved by EFSEC prior to adoption."

EFSEC looks forward to our continued coordination, and we appreciate your ongoing effort and meaningful engagement. If you have any questions, please reach out to Amy Moon at 360-664-1362 or [amy.moon@efsec.wa.gov](mailto:amy.moon@efsec.wa.gov).

Sincerely,

Sonia E. Bumpus  
EFSEC Executive Director

Enclosures: Horse Heaven PTAG Rules of Procedure

CC: Amí Hafkemeyer, EFSEC Director of Siting and Compliance  
Amy Moon, EFSEC Siting and Compliance Lead  
Andrew Pinger, Scout Clean Energy

## Pre-Operational Technical Advisory Group Rules of Procedure

The Site Certification Agreement (SCA) for the Horse Heaven Wind Farm (the “Project”) includes mitigation measures referred to in this Charter as “Conditions.” Site Certificate Agreement (SCA) Condition Hab-4 requires the Certificate Holder to establish a Pre-Operational Technical Advisory Group (PTAG) to advise on the development and implementation of pre-construction compliance activities. The PTAG is responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and habitat, which will then be submitted to the Energy Facility Site Evaluation Council (EFSEC) for approval. After construction and before Project operation, the PTAG will cease to exist and be replaced by the Technical Advisory Committee (TAC), with its respective Charter.

The SCA requires the Certificate Holder to “submit to EFSEC for approval proposed Rules of Procedure describing how the PTAG shall operate, including but not limited to a schedule for meetings, a meeting procedure, a process for recording meeting discussions, a process for making and presenting timely PTAG recommendations to the Council, and other procedures that will assist the PTAG to function properly and efficiently.” SCA Art. IV.G. This document serves that purpose.

### Establishing Language

SCA Condition IV.G creates the foundation of the PTAG:

#### ***Pre-Operational Technical Advisory Group***

*The Certificate Holder, in consultation with EFSEC, shall establish a Pre-operational Technical Advisory Group (PTAG) as defined by mitigation measure Hab-4 in Appendix 2. The PTAG shall be established at least one year prior to construction and is responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and wildlife habitat. The PTAG shall also provide advice on adaptive management. The PTAG shall be responsible for, at a minimum:*

- 1. Reviewing and providing technical advice on Project wildlife and habitat management plans (e.g. ferruginous hawk management plans).*
- 2. Reviewing and providing advice to EFSEC on pre-design and pre-construction data collection requirements to address Project mitigation measures and conditions or management plans.*
- 3. Reviewing and providing advice to EFSEC on the final Project design.*
- 4. Advising on thresholds to be applied to the Project that would trigger the requirement for additional mitigation measures.*

### SCA Conditions Under Consideration by the PTAG

The SCA defines which SCA Conditions the PTAG will advise the Certificate Holder and EFSEC on during the pre-operations period. The following SCA Measures in the SCA invoke the PTAG:

- Hab-1 Wildlife Movement Corridors



- Hab-4 Establish PTAG and TAC
- Hab-5 Indirect Habitat Loss Management Plan
- Hab-6 Project Layout and Design
- Hab-8 Indirect Habitat Loss Compensation
- Wild-1 Post-construction Bird and Bat Fatality Monitoring Program
- Wild-8 Turbine Buffer Zones
- Wild-10 Pre-construction Bat Monitoring
- Spec-1 Striped Whipsnake & Sagebrush Lizard
- Spec-4 Burrowing Owl
- Spec-5 Ferruginous Hawk
- Spec-7 Loggerhead Shrike, Sagebrush Sparrow, Sage Thrasher, & Vaux's Swift
- Spec-8 Prairie Falcon
- Spec-10 Black-tailed Jackrabbit & White-tailed Jackrabbit
- Spec-12 Townsend's Ground Squirrel
- Spec-13 Pronghorn Antelope

See Attachment A for full text of these Conditions.

## **Membership Expectations**

### ***Commitment and Structure***

Representative organizations are encouraged to designate PTAG members who can serve through the completion of the PTAG's work when the facility completes construction. The PTAG will be managed to provide timely recommendations as directed in the SCA, Article IV(G) and directed by the Facilitator, to support the Certificate Holder's and EFSEC's review.

Attachment B describes the entities represented on the PTAG. Members can identify an alternate to attend meetings in their absence. Entities will notify the Certificate Holder in writing of the person designated as the alternate representative.

Appointees to the PTAG must have relevant expertise or firsthand knowledge of facts relevant and necessary to the matters on which the PTAG is established to advise. PTAG members should limit their input to those topics on which they have relevant expertise or knowledge that qualifies them to provide input.

## **Authority**

As provided in the SCA, the role of the PTAG is advisory only. PTAG roles are defined by the responsibilities outlined in SCA Condition Hab-4 to serve in a strictly advisory role to EFSEC and the Certificate Holder.

As detailed below, once a Facilitator Report is finalized, the Certificate Holder will consider the PTAG recommendations and prepare a final proposal for EFSEC staff consideration. EFSEC staff will consider

the proposal and (1) approve or reject the proposal for revision, or (2) recommend that the proposal or an aspect of the proposal be considered and approved by the standing Councilmembers. EFSEC maintains full decision-making authority as to the approval of all material items required under the SCA, as provided in chapter 80.50 RCW.

### **Governance and Decision-Making**

**EFSEC Staff Role:** An EFSEC Staff designee will attend PTAG meetings to observe and to be available to answer questions from PTAG members, the Certificate Holder representative, and the Facilitator about EFSEC Staff's interpretation of the PTAG process, the SCA, and mitigation measures included in the SCA.

**Certificate Holder Role:** The Certificate Holder will designate a representative to present to the PTAG the Certificate Holder's draft proposals on matters for which the SCA requires advice from the PTAG. The Certificate Holder representative, in consultation with EFSEC staff and the Third-Party PTAG Facilitator, will be responsible for developing and distributing agendas, meeting schedules/locations, and may provide administrative assistance including material development.

**Third-Party PTAG Facilitator Role:** The Certificate Holder will retain an independent, professional facilitator (Facilitator) to oversee and coordinate the PTAG discussion and review process. This neutral intermediary will oversee the meetings, assist in explaining the charge and matters on which advice is to be solicited from PTAG members, solve unexpected problems, and act as the point of contact between PTAG members, the Certificate Holder, and EFSEC staff. The Facilitator will be responsible for drafting and keeping meeting minutes and developing and maintaining timelines for recommendations to EFSEC. A staff member from the Facilitator's team will take minutes during PTAG meetings. The Facilitator will ensure the accuracy of draft minutes prior to distribution to the PTAG for approval. The Facilitator is expected to maintain independence from the Certificate Holder and PTAG members, consistent with alternative dispute resolution professional standards. The Facilitator will ensure meetings remain productive, efficient, and within the scope of the agenda and the items for consideration under the SCA.

**Meetings, Review and Recommendations:** At each PTAG meeting, the Certificate Holder will present to the group draft plans, methodologies, or other documents prepared for PTAG review and comment. The Certificate Holder will provide such materials for PTAG review at least 14 days prior to the meeting at which they will be discussed. PTAG members may provide comments on the materials at the following meeting. Comments are to be rooted in technical expertise and supported by data or other evidence constituting the best available science. PTAG member input on facts relevant to the matters to be reviewed by the PTAG must meet standards of reliability applicable to agency SEPA analysis (e.g., attribution of photographs, reference to surveys, citation of pertinent records). At PTAG meetings, the Facilitator will facilitate discussion as to each comment and provide opportunities for all PTAG members to respond. The Facilitator will keep all written comments and document all verbal comments in the meeting minutes. Topics or issues that are not resolved at the successive meeting may be continued to the next meeting.

**Facilitator Report:** The Certificate Holder will present to the PTAG the Certificate Holder's draft proposals on matters for which the SCA requires advice from the PTAG. The PTAG need not reach consensus on each draft proposal or topic before it, but should endeavor to do so where possible. When the Facilitator determines that all comments and perspectives have been heard and all relevant evidence has been considered as to a particular document or topic, the Facilitator must direct that the group's advice on that subject be finalized. The Facilitator will then work to develop a report of the PTAG's deliberations for consideration (the "Facilitator Report"). The Facilitator must identify areas of agreement and any areas of disagreement amongst the group members' advice so that EFSEC's decision is informed by all relevant input from PTAG members. The Facilitator will distribute the meeting minutes as well as the draft report for group members to review and approve or revise at the following meeting, to ensure it accurately reflects each group member's advice.

**PTAG Recommendation:** Once the Facilitator's Report is finalized for a document or topic, the Certificate Holder will consider the advice therein to develop a final proposal to EFSEC. The Facilitator's Report and the Certificate Holder's final proposal shall be provided to EFSEC for review. The Certificate Holder's final proposal may explain the economic and technological feasibility implications of the advice presented in the Facilitator Report, when applicable.

**Materials for EFSEC Consideration:** Once these materials are finalized, the Facilitator will present to the Certificate Holder all meeting minutes, draft documents, written comments, the Facilitator's Report and the Certificate Holder's final proposal pertinent to a topic for EFSEC review and decision. The Certificate Holder will then provide these materials to EFSEC as contemplated in SCA Art. IV.G.

### **Quorum and Agendas**

To reach a quorum, two-thirds of PTAG members (or member representative designated in writing), respectively, must be in attendance at a meeting, as well as the Facilitator, Certificate Holder representative, and the EFSEC Staff observer. PTAG meetings may proceed without a quorum of members, but a Facilitator Report may not be finalized until group members have been given a reasonable opportunity to approve that it accurately reflects each member's comments.

Agendas will be generated by the Facilitator, in consultation with EFSEC staff and the Certificate Holder representative when appropriate, and will be provided to PTAG members at least 14 days prior to the meeting where the information will be discussed, along with any meeting material needed to conduct business.

### **Meeting Frequency and Transparency**

The PTAG will meet at least monthly for the duration of their tenure, with the understanding that additional meetings may be needed to meet goals and Project timelines. It is anticipated that meetings during the first few months will be more frequent, at times weekly, including to establish the PTAG and

develop a recommendation on SCA Conditions that influence final Project design, prioritizing Spec-5. Once the Spec-5 PTAG report is finalized, the remaining items that will influence Project design or that are longer lead items, such as longer-term studies, will be addressed. During the initial meeting the timing, frequency, duration, material preparation and review schedule and if necessary, location, will be determined by the Facilitator.

As a strictly advisory body, meetings are not subject to Open Public Meeting Act rules and will not be open to the public. As described above, the Facilitator will keep the meeting minutes, subject to review and approval by PTAG members, for the record and ultimately provide those minutes to EFSEC.

# Attachment A

## SCA Conditions Requiring PTAG Involvement

**Hab-1 Wildlife Movement Corridors:** The Certificate Holder shall provide rationale to EFSEC for siting any Project components within movement corridors modeled in Washington Wildlife Habitat Connectivity Working Group (2013) as medium to very high linkage, and a Corridor Mitigation Plan shall be required that describes:

- Extent of direct and indirect habitat impact within the movement corridor
- Proposed measures to be implemented to reduce potential impacts on movement corridors (e.g., habitat enhancements to promote continued use of corridors)
- Proposed features (e.g., open-bottom culverts) to accommodate wildlife movement for linear Project components (e.g., roads, powerlines)
- Proposed restoration in movement corridors following Project decommissioning
- Performance standards to assess the effectiveness of mitigation measures and restoration
- Methods to monitor and measure performance standards

The Corridor Mitigation Plan shall be developed in consultation with the PTAG and reviewed and approved by EFSEC prior to implementation. Results of corridor monitoring shall be reviewed annually with the TAC to evaluate the effectiveness and apply additional measures if necessary. Data shall be provided to EFSEC with additional mitigation measures for review and approval prior to implementation.

**Hab-4 Establish PTAG and TAC:** The Certificate Holder, in consultation with EFSEC, shall establish a PTAG and TAC. The PTAG shall be established at least one year prior to construction and will be responsible for reviewing and providing technical advice on documents produced by the Certificate Holder related to wildlife and wildlife habitat. The PTAG will also provide advice on adaptive management. The PTAG will be responsible for, at a minimum:

- Reviewing and providing technical advice on Project wildlife and habitat management plans (e.g., ferruginous hawk management plan)
- Reviewing and providing advice to EFSEC on pre-design and pre-construction data collection requirements to address Project mitigation measures and conditions of management plans
- Reviewing and providing advice to EFSEC on the final Project design
- Advising on thresholds to be applied to the Project that will trigger the requirement for additional mitigation measures

The Certificate Holder, in consultation with EFSEC, shall establish a TAC prior to Project operation. The PTAG will cease to exist once the Certificate Holder has completed all planned construction and will be replaced by the TAC, which will exist for the life of the Project. The TAC will be responsible for, at a minimum:

- Advising on the monitoring of mitigation effectiveness and reviewing monitoring reports
- Advising on additional or new mitigation measures that will be implemented by the Certificate Holder to address exceedances of thresholds
- Reviewing the results of annual data generated from surveys and incidental observations and providing recommendations for alternative mitigation and adaptive

management strategies, as well as advising on aspects of existing mitigation that are no longer needed.

The PTAG and TAC may include representation by WDFW, the Washington Department of Natural Resources, interested tribes, Benton County, and the USFWS. The PTAG and TAC may also include local interest groups, not-for-profit groups, and landowners. The exact composition of the PTAG and TAC will be determined through discussions between the Certificate Holder and EFSEC and will depend on the relevance and/or availability of proposed members.

**Hab-5 Indirect Habitat Loss Management Plan:** As noted by the Certificate Holder, the Project is expected to result in indirect habitat loss through loss of habitat function and changes in wildlife behavior in response to the Project. Further, as noted by the Certificate Holder, WDFW guidelines require that compensatory habitat mitigation must fully offset the loss of habitat function and value. To address indirect habitat loss associated with the Project, the Certificate Holder shall develop an Indirect Habitat Loss Management Plan that addresses potential indirect habitat loss resulting from the Project. The Certificate Holder shall work with the PTAG during the development of the Indirect Habitat Loss Management Plan (IHLMP) for review and approval by EFSEC. EFSEC and the PTAG will review the IHLMP prior to its implementation. The IHLMP shall be provided to the PTAG for review 90 days prior to construction.

The objectives of the IHLMP will be to identify a Project-specific ZOI and required mitigation based on the Project-specific ZOI. The Project-specific ZOI will be developed based on Project conditions and may differ from the ZOI presented in the EIS. The IHLMP shall include:

- A description of the study's purpose and objectives
- A description of methods to define Project-specific ZOIs (e.g., gradient analysis, nest density)
- A description of data requirements to establish Project-specific ZOIs and field programs that will be implemented (pre-construction and post-operation)
- A description of the duration of studies required to establish Project-specific ZOIs
- A description of criteria to be used to compensate for loss of habitat function and value
- An environmental effectiveness monitoring strategy of compensatory habitat to ensure that the habitat meets success criteria

The IHLMP shall also include a series of compensatory site-selection criteria, developed in consultation with the PTAG. The selection criteria will be used to evaluate candidate habitat compensation habitats. Habitats that achieve more of the criteria will be identified as the preferential sites. Selection criteria shall include, at a minimum:

- Proximity to the Lease Boundary (e.g., hierarchy of preferences with respect to location— within the Lease Boundary being the highest priority, adjacent to the Lease Boundary being the second highest priority, and off site being the third priority)

- Protection of existing native shrub-steppe or grassland habitats
- Encompassing sensitive or important wildlife habitat (e.g., mapped movement corridors, ferruginous hawk core habitat, HCAs, areas of high prey abundance)
- Proximity to Project infrastructure

**Hab-6 Project Layout & Design:** The Certificate Holder shall work with EFSEC, with advice from the PTAG, on the development of the final Project layout and design, including the application of Certificate Holder commitments and recommended mitigation measures.

**Hab-8 Indirect Habitat Loss Compensation:** The Certificate Holder shall be required to provide compensation habitat loss and alteration (indirect habitat loss) (See Hab-5, Veg-4) through one or more actions of land acquisition, onsite easement and restoration (excluding areas impacted by the project such as temporary laydowns), and/or fee-based mitigation. The Certificate Holder shall prioritize development of conservation easements (Option 11 in the Certificate Holder's Draft Wildlife and Habitat Mitigation Plan) and shall compensate for the remaining permanent and altered (indirect) impacts by providing money to WDFW, or a third party identified by WDFW, and agreed to by EFSEC, to purchase other lands suitable as in-kind and/or enhancement mitigation. The Certificate Holder shall provide EFSEC, for review and approval, with rationale for fee-based mitigation (Options 2 and 3 in the Certificate Holder's Draft Wildlife and Habitat Mitigation Plan) including a description of how much compensatory habitat will be addressed through Option 1 (conservation easement) and rationale for why fee-based mitigation is required. The fee-based mitigation includes a per acre fee that shall be determined by market rates and land sales within the general vicinity of the Lease Boundary for lands containing comparable habitat types and quality present within the Lease Boundary. The per acre fee shall be developed by the Certificate Holder in consultation with WDFW and approved by EFSEC. The Total Financial Obligation (TFO) shall be determined by multiplying the cost per acre by the total Compensatory Mitigation Acres (CMA) remaining after the application of Option 1 mitigation strategy and shall include a one-time 15% premium to cover administration and management costs for the purchased lands. The TFO for compensatory mitigation shall be determined and agreed to by EFSEC 90 days before construction. If construction has not begun within 12 months of the approval of the TFO, the TFO identified shall expire and be recalculated prior to beginning construction. The TFO shall be calculated based on the following:  $\text{Average Comparable Land Sale Cost (per acre)} \times (\text{CMA} - \text{Option 1 Acres}) \times 1.15 = \text{TFO}$  In addition to the wildlife and habitat mitigation measures, the following measures developed for the Vegetation chapter are applicable to wildlife and habitat.

**Wild-1 Post-construction Bird and Bat Fatality Monitoring Program:** Prior to initiation of operation, the Certificate Holder shall develop, in coordination with the Pre-operational Technical Advisory Group (PTAG) and approval by EFSEC, a post-construction bird and bat fatality monitoring program. Monitoring shall be conducted for a minimum of three years. While the three years of monitoring need not be consecutive, all post-construction monitoring shall be conducted within the initial five years of operation to document variation in annual fatality rates. The program shall describe survey methods, timing, and effort as described in the Certificate Holder's Bird and Bat Conservation Strategy (Appendix M of the Final ASC). Surveys



shall include carcass surveys to document the longevity of carcass persistence and detectability of carcasses. Surveys shall be conducted year-round to account for variation in bird and bat abundance and diversity. Additional surveys (e.g., survey frequency) shall be conducted during sensitive periods for birds and bats (e.g., migration periods). Surveyed area shall include turbines, solar arrays, and transmission lines at a minimum.

#### **Bird and bat fatality adaptive management strategy development**

Prior to initiation of operation, the Certificate Holder shall develop, in coordination with the PTAG and approval by EFSEC, an adaptive management strategy. The adaptive management strategy shall include additional mitigation measures to be applied during sensitive periods (e.g. migration) or if mortality thresholds are exceeded.

Migratory bat species are at risk of population level impacts due to wind power facilities and these species are most at risk of collisions with turbines during spring and fall migration. As such, adaptive management strategies will be applied during these sensitive periods, which are generally April to June (spring migration) and August to October (fall migration) (Hayes and Wiles 2013). Acoustic surveys during operation may be used to define a project-specific migratory period. Acoustic detectors may be deployed across the Lease Boundary prior to spring and fall migration to detect increased bat activity suggesting the onset of bat migration. These data will be used to adjust the generalized bat sensitive periods listed above. Similarly, acoustic data will be used to document the end of bat migration and when adaptive management strategies may no longer be required. Bat data shall be downloaded and analyzed on a weekly basis to document the start and end of migration.

Adaptive management mitigation strategies that will be considered include altering the operation of the turbines by increasing the cut-in speed to above 18 feet (5.5 meters) per second (Alberta Government 2013) and curtailing turbines during known bird and bat migration period. As noted in in Section 4.6.2.2, projected impacts of wind power projects estimate that wind power could result in mortality levels of 3 to 46 percent of the hoary bat population by 2050. Friedenbergs and Frick (2021) conclude that a 5 m/s curtailment could avoid hoary bat extinction in several of the modeled scenarios. Acoustic monitors and smart curtailment may also be included in adaptive management to refine data on bat presence near turbines and when curtailment mitigation should be implemented. Mitigation strategies may be limited to groups of turbines based on the results of post-construction monitoring.

#### **Bird and bat fatality adaptive management review**

The Certificate Holder, the TAC, EFSEC, and WDFW will review the results of the bird and bat post-construction fatality monitoring program after each monitoring period to determine whether the mitigation measures outlined in the adaptive management strategy should be revised or adjusted. The data will also be used to determine whether monitoring efforts are sufficient to verify predicted impacts on birds and bats. EFSEC may require the Certificate Holder to conduct more intensive surveys (e.g., additional spatial extent or frequency) or extend the duration of post-construction monitoring beyond the minimum three years. The Adaptive management mitigation strategies shall be periodically reviewed (minimum of every five years) with the TAC during operation to consider inclusion of new science and technologies that may more efficiently reduce bird and bat fatalities.

**Wild-8 Turbine Buffer Zones:** Wind turbine buffer zones shall be established around all known raptor nests and be a minimum of 0.25 miles. The Certificate Holder shall prepare a Raptor Nest Monitoring and Management Plan for review by EFSEC and the PTAG if buffer zones cannot be maintained.

**Wild-10 Pre-construction Bat Monitoring:** The Certificate Holder shall conduct pre-construction surveys to develop an estimate of regional bat populations and identify to what degree seasonality affects the bat population in the area. The PTAG shall be contacted prior to undertaking these surveys and shall be involved in the development of the methodology and review of the results.

**Spec-1 Striped Whipsnake & Sagebrush Lizard:** The Certificate Holder shall conduct pre-construction surveys for sensitive reptile species prior to alteration or destruction of suitable habitat such as areas within the Lease Boundary identified as core habitat in GAP mapping, as well as shrubland (e.g., shrub-steppe, rabbitbrush). WDFW shall be contacted prior to undertaking these surveys. If these species are identified through pre-construction surveys, the Certificate Holder shall prepare a Reptile Management Plan to reduce potential impacts on habitat, mortality, and barriers to movement. The Reptile Management Plan shall describe:

- How the Certificate Holder will avoid suitable habitat, including where the species were observed
- How the Certificate Holder will implement management recommendations in Larsen (1997)
- How the Certificate Holder will maintain rodent burrows in suitable reptile habitat (e.g., shrubsteppe)
- Additional mitigation measures to reduce potential mortality of these species during the construction and operation stages of the Project

The Reptile Management Plan shall be reviewed by the PTAG and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management shall be reviewed by the PTAG and approved by EFSEC prior to implementation (see Hab-4).

**Spec-4 Burrowing Owl:** The Certificate Holder shall conduct burrowing owl surveys within areas of direct loss (permanent, temporary, and modified) and associated ZOIs. The results of these surveys shall be provided to the PTAG and EFSEC and used to inform the final Project layout. Active burrows shall be retained and satellite burrows with characteristics used by burrowing owls shall be avoided where feasible to maintain habitat capacity. WDFW-recommended seasonal buffers (0.5 miles) shall be applied around burrowing owl nests to avoid disturbing nesting burrowing owls, if present (Larsen et al. 2004). Seasonal buffers (February 15 to September 25) shall be applied during construction and for temporary disturbances, such as periodic maintenance, during operation. If active burrowing owls are identified within the Lease Boundary, the Certificate Holder shall develop a species-specific management plan that describes:

- The location of active burrows.

- How active burrows will be avoided through re-alignment or reconfiguration of Project features.
- Additional mitigation measures that will be applied where disturbance to active burrows is expected (e.g., construction of artificial burrows).
- Additional mitigation measures that will be applied during operation if burrowing owl mortalities are recorded.
- How ongoing monitoring of active burrows will be undertaken.

The Burrowing Owl Management Plan shall be reviewed by the PTAG and approved by EFSEC prior to initiation of construction. Survey results and proposed adaptive management shall be reviewed by the PTAG and approved by EFSEC prior to implementation (see Hab-4).

The Certificate Holder shall monitor access roads for burrowing owl use and mortalities. Mortalities shall be reported to the PTAG or TAC (depending on the Project phase) and EFSEC within 5 days of the observation. Incidental observations of burrowing owl use shall be provided to the PTAG (construction) or TAC (operation) on an annual basis.

**Spec-5 Ferruginous Hawk:** The Certificate Holder shall not site any wind turbines, solar arrays, or BESS within a 0.6-mile (1km) radius surrounding ferruginous hawk nests:

- documented in PHS data on the effective date of the SCA,
- identified in the Certificate Holder's nest surveys, and/or
- that may be newly established by the species between the SCA effective date and the time of construction.

The Certificate Holder shall avoid siting wind turbines, solar arrays, and BESS within a 0.6-2-mile radius surrounding documented ferruginous hawk nests, unless the Certificate Holder is able to demonstrate that:

- compensation habitat, as described below, will provide a net gain in ferruginous hawk habitat and either:
  - the nesting site is no longer available, or
  - the foraging habitat within the 2-mile radius is no longer viable for the species.

Habitat considered no longer available for ferruginous hawk would include habitat that has been altered by landscape-scale development (conversion to cropland, residential development, industrial development) rendering the territory non-viable. This could include habitats that have been altered such that insufficient native or foraging habitat remains. Project turbines, solar arrays, or BESS shall not be sited within 2 miles of a ferruginous hawk nest without prior approval by EFSEC based on the process described below.

The extent of component encroachment into core habitat in ferruginous hawk territories, defined as the area within a 2-mile radius surrounding documented nests, may vary depending on the type of infrastructure proposed (i.e., turbine, solar array, BESS). If siting of these components within 2 miles of a nest is considered by the Certificate Holder, the Certificate Holder shall develop, in consultation with the PTAG for approval by EFSEC:

1. A set of habitat parameters to document whether habitat in a core range is considered non-viable. The results of habitat surveys and their relation to these habitat parameters shall be reviewed by the PTAG and approved by EFSEC.
2. A description of the current viable nesting habitat, available nesting sites, and a description of documented use of the core habitat by ferruginous hawk available through historic background information or field-based surveys.
3. A description of the type and location of infrastructure proposed within the core habitat.
4. The proximity of infrastructure to any known nest site or suitable foraging habitat.

In the event that a Project component is proposed for siting within the 2-mile buffer, the Certificate Holder shall, in consultation with the PTAG, develop a Project-specific ferruginous hawk mitigation and management plan for approval by EFSEC:

1. A description of efforts to site Project infrastructure to avoid core habitat, identified as the area within 2 miles of nests documented in PHS data and the Certificate Holder's nest surveys:
  - a. If Project turbines, solar arrays, or BESS are sited within 2 miles of a ferruginous hawk nest, the infrastructure shall be reviewed by the PTAG and approved by EFSEC.
  - b. Additional mitigation measures shall be developed to reduce potential ferruginous hawk strikes with turbines, including curtailing turbine operation within the 2-mile core habitat of any actively occupied nests diurnally during the breeding and rearing periods when ferruginous hawks are present in Benton County.
  - c. The plan shall explain how and where the Certificate Holder will create new offset habitat to mitigate for direct and indirect habitat loss within the 2-mile core area of ferruginous hawk nests documented in PHS data and the Certificate Holder's nest surveys.
2. A description of when construction activities will be undertaken to avoid sensitive timing periods for ferruginous hawk.
3. A description of pre- and post-monitoring programs that will be conducted to establish:
  - a. Habitat use within the Lease Boundary.
  - b. Mapping of ground squirrel colonies and other prey.
  - c. Identification of potential flyways between nest sites and foraging habitat and monitoring of potential flyways to inform final turbine siting and orientation.
  - d. Ongoing monitoring of nest use and territory success.
4. A description of restoration activities that will be undertaken during Project decommissioning to enhance ferruginous hawk habitat in disturbed areas.

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

*Exemption from Spec-5 for East BESS:* The Certificate Holder intends to locate the East BESS within the footprint of the East Substation, which is itself located within 0.6-miles of a documented ferruginous hawk nest. The East BESS is exempted from the 0.6-mile and 2-mile buffers described in this measure so long as it remains co-located with the East Substation and remains subject to the other requirements of this measure. While the substation is not subject

to buffer requirements of this mitigation measure, absent this exemption, relocation of the BESS would be required. The rationale for this exemption is that the footprint of the East Substation represents an area of permanent disturbance. Relocating the East BESS elsewhere would necessarily result in an increase in permanent habitat disturbance without any accompanying mitigative effect. Applying this 0.6-mile and 2-mile nest buffers to the East BESS would be contrary to the mitigative intent of this measure.

- Spec-7 Loggerhead Shrike, Sagebrush Sparrow, Sage Thrasher, & Vaux's Swift:** The Certificate Holder shall maintain connectivity between natural habitat patches to reduce potential habitat loss and fragmentation. The Certificate Holder shall restore areas with shrubs, where feasible, to reduce potential habitat loss. The Certificate Holder shall avoid the use of insecticides and herbicides to reduce potential mortality and loss of prey items.
- Spec-8 Prairie Falcon:** The Certificate Holder shall conduct pre-construction surveys for prairie falcon nests for construction work proposed during the prairie falcon nesting season and the winter season preceding the start of construction and maintain a seasonal buffer of 2,640 feet from active nest sites (Larsen et al. 2004) to reduce potential destruction or disturbance of active nests. Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).
- Spec-10 Black-tailed Jackrabbit & White-tailed Jackrabbit:** The Certificate Holder shall conduct surveys for jackrabbit in suitable habitat identified through GAP predictive mapping. If jackrabbits are identified, the Certificate Holder shall develop and implement a management plan with additional mitigation measures to reduce potential loss of habitat supporting jackrabbits. Observational data and proposed adaptive management strategies will be reviewed with the TAC annually (see Hab-4).
- Spec-12 Townsend's Ground Squirrel:** The Certificate Holder shall conduct surveys for Townsend's ground squirrel colonies within the Lease Boundary in areas of the Project disturbance footprint to inform final design.

The Certificate Holder shall avoid habitat loss within Townsend's ground squirrel habitat concentration areas, as well as known colonies, in final design. Additional Townsend's ground squirrel colonies identified through surveys shall be shown on Project mapping. If Project components are required in habitat concentration areas (rated as medium or greater) or near known colonies, the Certificate Holder shall prepare a species-specific management plan for areas where avoidance is not feasible. This plan shall provide rationale for why colonies cannot be avoided and shall detail additional mitigation measures to reduce impacts to Townsend's ground squirrel. Additional mitigation measures may include identification of setbacks, colony monitoring, habitat restoration, colony relocation, and reconstruction of habitat features. The plan shall also describe monitoring and adaptive management measures to be implemented during Project operation. The plans shall be provided and discussed with the PTAG, and approved by EFSEC, if avoidance of identified ground squirrel colonies is not

feasible. Observational data and adaptive management strategies will be reviewed with the TAC annually.

**Spec-13: Pronghorn Antelope:** The Certificate Holder shall limit fencing where feasible (e.g., around solar arrays). Final fencing layouts and design, including use of non-barbed-wire security fencing, shall be provided to the PTAG and EFSEC with rationale for fencing requirements. The Certificate Holder shall design and implement a study of seasonal pronghorn antelope occurrence and use of the Lease Boundary before construction and during operation to document the change, if any, of pronghorn antelope presence, abundance, and habitat use within the Lease Boundary. The PTAG will review and provide input to the study design. The results of the study will be used to develop adaptive management measures to respond to changes in pronghorn antelope habitat use. Survey results and proposed adaptive management will be reviewed by the PTAG and TAC prior to implementation (see Hab-4). The Certificate Holder shall maintain a potentially confidential database of pronghorn antelope observations, including details such as numbers, location, age, and sex, and shall make this database available to WDFW, EFSEC, and the Yakama Nation.

# Attachment B

## PTAG Participants

Entity Represented	Role	Name
n/a	Facilitator, meeting minute notetaker	Kearns & West
Horse Heaven Wind Farm LLC	PTAG Member and Certificate Holder representative	Andrew Pinger
EFSEC Staff	Observer/Administrative	
Horse Heaven Wind Farm LLC	PTAG member	Troy Rahmig
Washington Department of Fish and Wildlife	PTAG member	
U.S. Fish and Wildlife Service	PTAG member	
Department of Natural Resources	PTAG member	
Independent Ecologist	PTAG member	Don McIvor
Independent Ecologist	PTAG member	Tim Hayes
Participating Landowners	PTAG member	Chris Wiley
Local Labor Representative	PTAG Member	Jessica Wadsworth
Confederated Tribes and Bands of the Yakama Nation	PTAG member	
Confederated Tribes of the Umatilla Indian Reservation	PTAG member	
Benton County, WA	PTAG member	
Lower Columbia Basin Audubon Society	PTAG member	Dana Ward

# Attachment L



## Horse Heaven PTAG

### Meeting 1

Friday, February 28, 2025

9:00 am to 12:00 pm PST

Location: Virtual, click to join:

<https://kearnswest.zoom.us/j/87680045224?pwd=y9XhHyyzcJbXoOeibO1p983VQwjHOS.1>

### Meeting Objectives

- Meet the project team and each other
- Understand the background and status of the project
- Understand the purpose and role of the PTAG

### Meeting Agenda

Time (PT)	Item	Lead
9:00 to 9:30 am	Welcome, Introductions and Opening Remarks	Kearns & West (Facilitator) All
9:30 to 10:30 am	<b>Project Introduction and Overview</b> <ul style="list-style-type: none"> <li>• WA Energy Facility Site Evaluation Council (EFSEC) Site Certification process and current status update</li> <li>• Site Certification Agreement (SCA) approval and appeal</li> <li>• Mitigation measure activities</li> <li>• Q &amp; A</li> </ul>	Dave Kobus and Pat Landess, Scout Clean Energy  Troy Rahmig, Tetra Tech
10:30 to 11:15 am	<b>PTAG Overview</b> <ul style="list-style-type: none"> <li>• PTAG Rules of Procedure</li> <li>• PTAG logistics (meeting cadence, file sharing, etc.)</li> <li>• Q &amp; A</li> </ul>	Jamie Damon, Kearns and West  Troy Rahmig, Tetra Tech

Time (PT)	Item	Lead
11:15 to 11:50 am	<b>Technical Work Overview</b> <ul style="list-style-type: none"> <li>• Spec-5 mitigation measure review</li> <li>• Near-term wildlife surveys</li> <li>• Q &amp; A</li> </ul>	Pat Landess, Scout Clean Energy Troy Rahmig, Tetra Tech
11:50 am to 12:00 pm	<b>Closing and Next Steps</b>	Jamie Damon, Kearns & West