SUBMITTED VIA E-MAIL

November 18, 2025

Energy Facility Site Evaluation Council
Via email to comments@efsec.wa.gov

Re: Cascade Renewable Transmission Project (EFSEC Docket No. 230002)
Land Use Consistency Hearing – Skamania County

Dear Chair Beckett and Members of the Council:

Friends of the Columbia Gorge ("Friends") and Columbia Riverkeeper ("Riverkeeper") (collectively, "Commenters") submit the following comments regarding land use consistency for the portion of the Cascade Renewable Transmission Project ("Project") proposed in Skamania County.

Friends is a nonprofit organization with approximately 4,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge, and with strong interests in responsible energy generation and transmission and the proper implementation of state law governing the approval, construction, and modification of large energy facilities in Washington.

Riverkeeper is a nonprofit organization whose mission is to protect and restore the Columbia River and all life associated with it, from its headwaters to the Pacific Ocean. Riverkeeper is committed to clean water, strong salmon runs, and healthy communities. Riverkeeper represents roughly 20,000 members and supporters in Washington and Oregon, and regularly engages in decisions and policies impacting the water quality of the Columbia River Basin.

1. EFSEC must comply with the Columbia River Gorge National Scenic Area Act, the Columbia River Gorge Compact, and their implementing authorities.

EFSEC must comply with the Columbia River Gorge National Scenic Area Act ("National Scenic Area Act"), 16 U.S.C. §§ 544–544p, the Columbia River Gorge Compact (codified at RCW 43.97.015 and ORS § 196.150), and their implementing authorities:

> The governor, the Columbia River Gorge [C]ommission, and all state agencies and counties are hereby directed and provided authority to carry out their

respective functions and responsibilities in accordance with the compact executed pursuant to RCW 43.97.015, the Columbia River Gorge National Scenic Area Act, and the provisions of this chapter.

RCW 43.97.025.

2. In the federally designated Columbia River Gorge National Scenic Area, the Project is prohibited by the National Scenic Area rules within the portions of the site in the Columbia River.

Portions of this project are proposed to be sited within the Columbia River Gorge National Scenic Area ("National Scenic Area"), which was established by Congress in 1986 via the National Scenic Area Act, 16 U.S.C. § 544b(a). The National Scenic Area is both federal and interstate (bistate) in nature. Land use and development activities in the National Scenic Area are governed by the Management Plan for the Columbia River Gorge National Scenic Area ("Gorge Management Plan" or "Management Plan"),[1] which is prepared and adopted by the Columbia River Gorge Commission and U.S. Department of Agriculture (by and through its subsidiary agency the U.S. Forest Service), and in Skamania County also by the Skamania County National Scenic Area Ordinance, Skamania County Code ("SCC") Title 22. The Gorge Management Plan and Skamania County National Scenic Area Ordinance (collectively, "the National Scenic Area rules") are both adopted pursuant to the federal National Scenic Area Act. *See* 16 U.S.C. §§ 544d, 544e, 544f.

The Gorge Commission and Forest Service not only adopt the Gorge Management Plan, but also review county National Scenic Area land use ordinances for consistency with the Gorge Management Plan and National Scenic Area Act. *See* 16 U.S.C. §§ 544d, 544e, 544f. The Skamania County National Scenic Area ordinance must be consistent with the Gorge Management Plan. *Id.* § 544e(b). In addition, the Gorge Commission acts as an appellate body for the National Scenic Area, hearing and deciding appeals of final county land use decisions. *Id.* § 544m(a)(2).

The land use and development guidelines of the Gorge Management Plan do not apply within the designated urban areas of the National Scenic Area. 16 U.S.C. § 544d(c)(5)(B); *see also id.* § 544b(e)(1). The land use and development guidelines of the Gorge Management Plan *do* apply everywhere else in the National Scenic Area, including in the Columbia River.

The National Scenic Area Act contains savings provisions, including provisions specifying that "[n]othing in [the National Scenic Area Act] shall . . . affect the rights or jurisdictions of the United States, the States, Indian tribes or other entities over *waters of* any river or stream or over any ground water resource or affect or interfere with *transportation activities on* any such river or stream" or shall "alter, establish, or affect the respective rights of the United States, the States, Indian tribes, or any person with respect to any *water or water-related right.*" 16 U.S.C. §§ 544o(a)(4) (emphasis added). These savings provisions involve

[1] A copy of the current Gorge Management Plan is available at https://www.gorgecommission.org/images/uploads/pdfs/!_Management_Plan_Complete_and_Formatted.pdf.

water rights, water usage, transportation over water, and the like, but do not exempt from regulation under the National Scenic Area Act the rivers and streams themselves or their beds, nor any other land use and development activities (other than those specified in the savings provisions, such as transportation activities) that might take place in, on, or underneath these rivers and streams and their beds. *See also* SCC §§ 22.02.120.A.3, .A.4 (same savings language as in National Scenic Area Act).

In addition, the National Scenic Area Act contains a savings provision specifying that nothing in the Act "shall . . . affect or modify the ability of the Bonneville Power Administration to operate, maintain, and modify *existing* transmission facilities." 16 U.S.C. § 544o(a)(6) (emphasis added); *see also* SCC § 22.02.120.A.6 (same). New transmission facilities enjoy no such savings treatment under the Act.

From its original adoption in 1991 until 2020, the Gorge Management Plan designated the portions of the Columbia River outside the urban areas with a land use designation (*i.e.*, a zone) called "Lakes, Tributaries, and Columbia River." In 2020, this land use designation was removed from the Columbia River as part of a periodic review and revision of the Gorge Management Plan pursuant to 16 U.S.C. § 544d(g). The net result is that the Columbia River is located within the General Management Area ("GMA"),[2] but no longer has a specific zoning designation other than GMA. Finally, the islands in the Columbia River located outside the designated urban areas are designated as "Special Management Areas." 16 U.S.C. § 544b(b)(2)(B).

"The Management Plan shall be applied consistent with and in the spirit of the National Scenic Area Act." Gorge Management Plan at 257 (Uniform Application of Management Plan GMA/SMA Policy #1). "The Gorge Commission, Forest Service, and counties should strive to apply Management Plan provisions uniformly throughout the National Scenic Area, except when a county has adopted a more restrictive provision." *Id.* (Uniform Application of Management Plan GMA/SMA Policy #2). "In applying provisions of the Management Plan, the Gorge Commission and Forest Service may consider, but shall not be constrained by, county interpretations, state interpretation and application of state law and administrative regulations, or judicial decisions that do not directly involve the Management Plan." *Id.* (Uniform Application of Management Plan GMA/SMA Policy #3).

The land underneath the water of the Columbia River is land. It is the riverbed of the Columbia River and it is also submerged land. In both senses, it is land.

The Skamania County National Scenic Area Ordinance "applies to all lands in that portion of Skamania County lying within the Columbia River Gorge National Scenic Area, as generally depicted on the map entitled 'Boundary Map, Columbia River Gorge National Scenic Area,' numbered NSA-001 sheets 1 and 2, dated September 1986, and to no other lands within the county, and specifically excluding all urban areas shown on the same maps." SCC § 22.02.050.

[2] The General Management Area is the term used in the National Scenic Area rules for the portions of the National Scenic Area located outside the boundaries of the Special Management Areas and urban areas.

The Project constitutes a "utility facility" as that term is defined in the National Scenic Area rules: "any structure which provides for the transmission or distribution of water, sewer, stormwater, fuel, electricity, or communications." SCC § 22.04.010.211; *see also* Gorge Management Plan at 399 (same, minus stormwater).

Importantly, the Skamania County National Scenic Area Ordinance specifies that "[n]o building, structure or parcel of land shall be used, and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by local, state or federal agencies, in that portion of the county lying within the Columbia River Gorge National Scenic Area in any manner that is inconsistent with the provisions of this title." SCC § 22.06.010. For a land use or development activity to be allowed in the National Scenic Area, that type of land use or development activity must be listed in the Skamania County National Scenic Area Ordinance as potentially allowable (*e.g.*, as a conditional use, review use, expedited review use, or use allowed outright). If a land use or development activity is not so listed, it is prohibited. *See id.*; *Friends of the Columbia Gorge, Inc. v. Skamania County* ("*Nature Friends Northwest*"), CRGC No. COA-S-95-01 (Nov. 16, 1995)[3] (If the National Scenic Area rules do not allow a use outright or through review, it is not permitted.).

Throughout the GMA, including underneath the Columbia River, certain limited types of uses may be allowed outright (without any land use review). SCC § 22.10.040.A. For example, replacement or modification of existing underground, aboveground, and overhead utility facilities are allowed outright under certain circumstances. SCC §§ 22.10.040.A.9, .A.10. In addition, certain "[n]ew underground utility facilities" may be allowed throughout the GMA via the expedited review provisions, but only under certain circumstances, including that they must be "located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past." SCC § 22.10.050.K.

To provide another example of land use and development activities that are potentially allowable in the Columbia River if consistent with the applicable National Scenic Area rules, "[d]ocks and boathouses may be allowed when authorized by the land use designation of the appurtenant land served by the dock or boathouse." SCC § 22.12.050.A. Otherwise, docks and boathouses (including in the Columbia River) are prohibited. *See id.* "Boathouses may be allowed only when accessory to a dwelling or dwellings and associated with a navigable river or lake." *Id.*

To determine whether a particular land use or development activity is potentially allowed, the list of review uses specified for each land use designation must also be consulted. However, as discussed above, there is no longer a specific land use designation in the National Scenic Area rules applicable to the Columbia River.

At this evening's land use consistency hearing, counsel for the Applicant appeared to assert that the absence of specific zoning for the Columbia River means that any land use or development activity, including this Project, is allowed outright in or underneath the riverbed of

[3] *Available at* https://www.gorgecommission.org/images/uploads/appeals/Friends_v._SC_95-01_Nature_Friends_Final_Order.pdf.

the Columbia River. If that was the assertion, it is not correct. The assertion would have been correct if the Columbia River were designated as "Unmapped"—a Skamania County non-National Scenic Area designation (potentially applicable outside the National Scenic Area or within the National Scenic Area's urban areas) where "all uses which have not been declared a nuisance by statute, resolution, ordinance, or court of jurisdiction are allowable." SCC § 21.64.020. But the Columbia River is *not* designated as Unmapped. Rather, it is designated by Congress as part of the National Scenic Area, and it is designated as General Management Area. Moreover, the current absence of more specific GMA zoning within the Columbia River does not mean that any type of use is allowed therein. Rather, as confirmed by the guidance of *Nature Friends Northwest*, it means that uses not specifically listed in the National Scenic Area rules are *not* allowed in the Columbia River. *See Nature Friends Northwest* at 7 ("Based on the explicit language of the ordinance and the management plan, a clubhouse is not a use that is allowed outright or through review. Since the ordinance and the management plan do not provide for a clubhouse, it is not permitted.") (footnote omitted).

Here, because the proposed Project would be a new, large-scale utility facility, and because no provision of the National Scenic Area rules potentially allows that type of use in the Columbia River, the site is inconsistent with the National Scenic Area rules. Thus, the Project is prohibited by the National Scenic Area rules within the portions of the Columbia River located inside the National Scenic Area but outside the designated urban area boundaries.

3. In the federally designated Columbia River Gorge National Scenic Area, the Project may be prohibited by the National Scenic Area rules within the portions of the site in the Large Woodland land use designation.

In addition to being prohibited by the National Scenic Area rules within the portions of the Columbia River located inside the National Scenic Area but outside the designated urban area boundaries, the Project may be prohibited within portions of the proposed site within the Large Woodland land use designation. SCC § 22.14.040.C sets forth the uses allowed in this zoning designation.

According to the Draft Application for Site Certification ("Draft Application"), in the Large Woodland land use designation, the Applicant proposes "a trench for the underground HVDC transmission cables [that] would be approximately 2.5 feet wide by 4.5 feet deep." (Draft Application at 2-16.) However, the Applicant proposes to place "two 8-inch-diameter individual conduits spaced approximately 20 inches apart with a one [sic] 4-inch-diameter conduit containing a fiber optic cable for communication and encased with 6 inches of concrete." *Id*. Two 8-inch diameter conduits placed 20 inches apart would require a minimum of 36 inches (3 feet) of trench width.[4] The proposed trench would need to be even wider if the fiber optic cable is encased separately, if any margin is provided to ensure that the conduits would be spaced at least 20 inches apart, or even if a minor mistake is made by a contractor.

According to the Applicant's Presentation to EFSEC on Land Use Consistency on November 17, 2025 ("Applicant Land Use Presentation"), the Draft Application proposes a "Temporary Horizontal directional drilling (HDD) area" in "Unincorporated Skamania County."

[4] Two 8-inch conduits plus a 20-inch gap = (2 x 8') + 20' = 36'.

(Applicant Land Use Presentation at 8.) It is not clear from the maps provided with the Draft Application where the drilling area would be located, but the entirety of the Project in the Skamania County portion of the National Scenic Area but outside the Stevenson and North Bonneville Urban Areas appears to be within the Large Woodland land use designation.

The list of uses allowed in Large Woodland land use designations at SCC § 22.14.040.C includes, by reference, the "Uses Allowed Outright" listed at SCC § 22.10.040.A and the "Expedited Development Review Uses" listed at SCC § 22.10.050. Regarding uses allowed outright, while "[r]epair, maintenance and operation of existing structures, including, . . . utility facilities" is allowed, this would not authorize construction of *new* utility facilities.[5] SCC § 22.10.040.A.4. Co-location of new underground utility facilities with existing facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past is potentially allowed outright if either no excavation would extend beyond the depth and extent of the original excavation or no excavation would extend more than twelve inches beyond the depth and extent of the original excavation, no ditch for linear facilities would be more than twenty-four inches wide, and no recorded archaeological site is located within 500 feet of the development. SCC § 22.10.040.A.9. Setting aside whether co-location with existing facilities is even feasible here, the large excavators shown in Exhibit E of the Draft Application would not allow co-location within the same depth and extent of other excavations without damaging the existing facilities, and the ditch would need to be greater than twenty-four inches wide. Thus, the Project does not qualify as a use allowed outright. In addition, the proposed drilling areas would not fit within any of the uses allowed outright listed in the Skamania County National Scenic Area Ordinance.

Regarding expedited development review uses, SCC § 22.10.050.K.1 allows "[n]ew underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided [that n]o ditch for linear facilities would be more than thirty-six (36) inches wide." While, as discussed above, the Draft Application states that the trench would be "approximately 2.5 feet wide," the ditch would need to be at least 36 inches wide to accommodate the proposed utility facility even without any margin for error. Thus, it is unlikely that the Project would qualify for this expedited review use. As with the uses allowed outright, no expedited review use listed in the Skamania County National Scenic Area Ordinance would accommodate the proposed drilling areas.

Finally, SCC § 22.14.040.E contains the review uses that may be allowed in the Large Woodland land use designation. The "[c]onstruction … of . . . utility facilities . . . necessary for public service" is a review use, but only if the size is the minimum necessary to provide the service and there is no practicable alternative location with less adverse effect on agriculture, forest lands, and on scenic, cultural, natural, and recreation resources. *Id.*

SCC § 22.20.010 contains the Practicable Alternative Test:

[5] Under SCC § 22.04.010.211, "utility facility" is defined as "[a]ny structure that provides for the transmission or distribution of water, sewer, stormwater, fuel, electricity, or communications." Here, the applicant proposes an energy facility that is also a "utility facility" under this definition.

A. An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

1. The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife areas and sites, or plant areas and sites;

2. The basic purpose of the use cannot be accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife areas and sites, or plant areas and sites; and

3. Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

While Section 2.22.1 of the Draft Application does discuss site selection, that section does not discuss or analyze the portion of the Project proposed for the Large Woodland zoning designation in Skamania County. In fact, none of the criteria listed above for the Practicable Alternative Test are disclosed, discussed, or analyzed for this portion of the Project. There are also myriad other criteria in the National Scenic Area rules that are designed to protect the scenic, natural, cultural, and recreational resources of the National Scenic Area that are not addressed by the Draft Application. The Applicant has not met its burden of demonstrating consistency and compliance with the National Scenic Area rules. Finally, no review use in the Large Woodland designation could accommodate the proposed drilling areas.

4. Conclusion

As explained above, the Project is prohibited by the National Scenic Area rules within the portions of the Columbia River located inside the National Scenic Area but outside the designated urban area boundaries. In addition, the Applicant has not met its burden of demonstrating consistency and compliance with the National Scenic Area rules for the portions of the Project proposed within the Large Woodland land use designation.

Related issues, such as whether EFSEC and the Governor have legal authority to preempt the National Scenic Area rules, and how other provisions of the National Scenic Area rules (such as the resource protection and tribal treaty rights provisions) apply to this Project, are outside the

scope of the land use consistency hearing required by RCW 80.50.090(2), and will be addressed in EFSEC's subsequent processes.

Sincerely,

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