



SUBMITTED VIA E-MAIL

November 19, 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 – Klickitat 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 Klickitat 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 (“Gorge Commission”) and U.S. Department of Agriculture (by and through its subsidiary agency the U.S. Forest Service), and in Klickitat County also by the Gorge Commission’s National Scenic Area Land Use Ordinance, Commission Rules Chapter 350, Division 082.² The Gorge Management Plan, county National Scenic Area ordinances, and Gorge Commission National Scenic Area Land Use Ordinance (collectively, “the National Scenic Area rules”) are all 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 county National Scenic Area ordinances must be consistent with the Gorge Management Plan. *Id.* § 544e(b). The Gorge Commission’s National Scenic Area land use ordinance, which applies within the National Scenic Area in any county that declines or fails to adopt its own National Scenic Area ordinance, also must be consistent with the Gorge Management Plan. *Id.* § 544e(c)(1). 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 National Scenic Area is thus an instance of cooperative federalism. *See* Robert D. Comer, *Cooperative Federalism: The Federalism Underpinnings to Public Involvement in the Management of Public Lands*, 75 U. Colo. L. Rev. 1133, 1142–43 (2004).³ As acknowledged within the National Scenic Area rules themselves, the Gorge Commission’s National Scenic Area Ordinance and the county National Scenic Area ordinances are adopted pursuant to federal

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.

² A copy of the current version of the Gorge Commission’s National Scenic Area Land Use Ordinance is available at [https://www.gorgecommission.org/images/uploads/pages/350-082_\(rev._20241101\).pdf](https://www.gorgecommission.org/images/uploads/pages/350-082_(rev._20241101).pdf).

³ Available at <https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1646&context=lawreview>.

and interstate law—namely, the National Scenic Area Act, the Columbia River Gorge Compact, and the Gorge Management Plan. *See, e.g.*, Commission Rule 350-082-0010 (“The purpose of Commission Rule 350-082 is to implement the Revised Management Plan for the Columbia River Gorge National Scenic Area adopted on October 13, 2020, and concurred on February 19, 2021, and as subsequently amended.”); Clark County Code § 40.240.010 (“These regulations are intended to be consistent with and implement the Management Plan for the Columbia River Gorge National Scenic Area (CRGSNA) adopted and amended by the Columbia River Gorge Commission.”); Skamania County Code § 22.02.040 (“The policies, standards, and regulations set forth in this Title are adopted pursuant to the authority granted to the County under the Columbia River Gorge National Scenic Area Act and Revised Code of Washington (RCW) Chapter 43.97, and the Management Plan for the Columbia River Gorge National Scenic Area adopted by the Columbia River Gorge Commission, as it may be amended from time to time.”).

Klickitat County is the only county in the National Scenic Area that has not adopted a National Scenic Area ordinance. Thus, the Gorge Commission’s National Scenic Area Ordinance currently applies only within Klickitat County. *See* Commission Rules 350-082-0020(1) (“Commission Rule 350-082 applies to all lands within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act and described in Commission Rule 350-10, for which a county does not implement a land use ordinance consistent with the Management Plan.”), -0020(3) (“Those portions of Commission Rule 350-082 pertaining to the General Management Area (GMA) shall no longer be effective in a county that has adopted and put into effect a land use ordinance that the Gorge Commission has found to be consistent with the Management Plan.”); -0020(4) (“Those portions of Commission Rule 350-082 pertaining to the Special Management Areas (SMAs) shall no longer be effective in a county that has adopted and put into effect a land use ordinance that the Gorge Commission has tentatively found to be consistent with the Management Plan and the Secretary of Agriculture has concurred.”).

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*,” or shall “affect the laws, rules and regulations pertaining to . . . *fishing* under existing State and Federal laws and Indian treaties.” 16 U.S.C. §§ 544o(a)(3), (4), (8) (emphasis added). These savings provisions show an intent by Congress to require regulation of land use and development activities in, on, and underneath the Columbia River and other rivers and streams and their beds, except for specific carve-outs involving water rights, water usage, transportation over water, fishing, and the like.

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). 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”),⁴ 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); *see also* Commission Rule 350-082-0060(1) (“This land use ordinance shall be applied consistent with and in the spirit of the National Scenic Area Act.”).

“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.” Gorge Management Plan at 257 (Uniform Application of Management Plan GMA/SMA Policy #2); *see also* Commission Rule 350-082-0060(2) (“The Gorge Commission, Forest Service, and counties *shall* strive to apply Management Plan provisions uniformly throughout the National Scenic Area, except when a county has adopted a more restrictive provision.”) (emphasis added).

“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.” Gorge Management Plan at 257 (Uniform Application of Management Plan GMA/SMA Policy #3); *see also* Commission Rule 350-082-0060(3) (“In applying provisions of this land use ordinance, the Gorge Commission may consider, but shall not be constrained by, Forest Service interpretations, county interpretations, state interpretations and application of state law and administrative regulations, and judicial decisions that do not directly involve the Management Plan or this land use ordinance.”).

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 Project constitutes a “utility facility” as that term is defined in the National Scenic Area rules: “any structure that provides for the transmission or distribution of water, sewer, fuel,

⁴ 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.

electricity, or communications.” Commission Rule 350-082-0070(199); *see also* Gorge Management Plan at 399 (same).

Importantly, the Gorge Commission’s National Scenic Area Land Use Ordinance specifies that “[n]o building, structure or land shall be used and no development shall occur, including, but not limited to erecting, altering, or enlarging any building or structure, or changing land boundaries through division, alteration or otherwise, including those proposed by local, state or federal agencies, in the Columbia River Gorge National Scenic Area except for uses and development listed in this land use ordinance and approved under the applicable procedural and substantive guidelines in this land use ordinance.” Commission Rule 380-082-0040 (entitled “Review and Approval Required”). This Rule has two significant implications as applied to this Project.

First, this Project cannot proceed without a land use permit from the Gorge Commission approving the portions of the Project proposed in Klickitat County. This is an express requirement of Commission Rule 380-082-0040. Notably, the Draft Application fails to acknowledge the requirement to obtain a Gorge Commission permit.⁵

Second, in order for a land use or development activity to be allowed in the National Scenic Area in Klickitat County, that type of land use or development activity must be listed in the Gorge Commission’s National Scenic Area Land Use 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)⁶ (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). Commission Rule 350-082-0210(1). For example, replacement or modification of existing underground, aboveground, and overhead utility facilities are allowed outright under certain circumstances. Commission Rules 350-082-0210(1)(i), (1)(j). 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.” Commission Rule 350-082-0220(1)(q).

⁵ The Draft Application does acknowledge the need to obtain a National Scenic Area permit from the Forest Service. (Draft Application at Table 2-4.) Such permits, called federal consistency determinations, are required for any land use or development activities in the National Scenic Area involving federal agencies or federal lands, pursuant to section 14(d) of the National Scenic Area Act. 16 U.S.C. § 544l(d) (“Federal agencies having responsibilities within the scenic area shall exercise such responsibilities consistent with the provisions of [the National Scenic Area Act] as determined by the Secretary [of Agriculture].”). Here, a federal consistency determination from the Forest Service is required both because the Project is proposed on federal land managed by the U.S. Army Corps of Engineers (“Army Corps”), and because the Project requires multiple federal permits from the Army Corps.

⁶ Available at https://www.gorgecommission.org/images/uploads/appeals/Friends_v._SC_95-01_Nature_Friends_Final_Order.pdf.

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 the land use designation of the appurtenant land authorizes docks.” Commission Rule 350-082-0410(6). Otherwise, docks and boathouses (including in the Columbia River) are prohibited. *See id.* “Boathouses may be allowed . . . only when accessory to a dwelling and associated with a navigable river or lake.” Commission Rule 350-082-0410(5).

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.

The Columbia River is designated by Congress as part of the National Scenic Area, and it is designated in the National Scenic Area rules 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); *see also* Commission Rule 380-082-0040.

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 Project 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.

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3. Conclusion

As explained above, review and approval by the Columbia River Gorge Commission is required for the portions of the Project proposed in Klickitat County and located in the Columbia River Gorge National Scenic Area but outside the designated urban area boundaries. In addition, 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 urban area boundaries.

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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