From:	Paul Krupin
To:	EFSEC (EFSEC); EFSEC mi Comments
Subject:	EFSEC Should Not Approve the Hab 6 Layout Report Without Fixing Major Legal and Procedural Gaps
Date:	Tuesday, August 4, 2026 8:06:24 AM
Attachments:	Aug 4 Final Comment to EFSEC on Facilitators Report on HAB 6 Layout and Design.pdf

External Email

I am submitting comments addressing the proposed Energy Facility Site Evaluation Council (EFSEC) approval of the **Hab-6 Facilitator Report: Project Layout & Design** (posted on May 19, 2026 with two attachments) for the Horse Heaven Wind Farm.

After reviewing the report closely, I believe EFSEC cannot lawfully approve the report as it is presently written. The document is incomplete, unsupported, and fails to meet the requirements of the **Site Certification Agreement (SCA)**, the **Washington Administrative Procedure Act (APA)**, and the **State Environmental Policy Act (SEPA)**.

I submit this comment as a resident of Benton County and as one of the voting members of the EFSEC Council for Benton County on the Hop Hill Solar Energy Project. I offer these comments solely in my personal capacity and not on behalf of EFSEC or any other Council members.

These concerns echo many of the arguments already raised in lawsuits filed against EFSEC over this project. The Hab-6 report, as submitted, reinforces those claims rather than resolving them. The Supreme Court is reviewing whether EFSEC's environmental analysis complied with SEPA's procedural requirements and other statutory requirements.

The comment letter is attached with a link for your review:

Aug 4 Final Comment to EFSEC on Facilitators Report on HAB 6 Layout and Design.pdf

Appreciatively,

Paul Krupin
Kennewick Washington

August 4, 2026

Paul Krupin

Kennewick WA 99337

Chair Beckett, Executive Director Low, EFSEC Staff and Members of the Council:

EFSEC Should Not Approve the Hab-6 Layout Report Without Fixing Major Legal and Procedural Gaps

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1. PTAG Approval Is Not EFSEC Approval

The report leans heavily on comments from members of the Pre-Operational Technical Advisory Group (PTAG), who said things like:

"I have reviewed Hab-6 Project Layout and Design and believe it is accurate… I concur that Hab-6 conforms to and is consistent with setbacks and mitigation measures we agreed upon…" (p. 2)

But PTAG's role is advisory. Under **SCA Hab-4**, EFSEC — not PTAG — holds the "ultimate authority" to determine whether mitigation measures are properly applied. The report contains **no evidence** that EFSEC conducted its own independent review. There is no analysis, no verification, and no demonstration that EFSEC evaluated compliance with the SCA or Resolution 357.

Under the APA (**RCW 34.05.570(3)(e)** and **(f)**), EFSEC must base its decisions on substantial evidence and cannot act arbitrarily or capriciously. Relying on PTAG concurrence instead of EFSEC's own analysis would violate those standards.

This is exactly the kind of delegation problem raised in the lawsuits.

2. There is No Proof the Layout Complies with Resolution 357

The report claims:

"the primary requirement of the PTAG was to ensure the revised Project layout conformed with Resolution 357." (p. 2)

Resolution 357 requires specific, enforceable setbacks from historic ferruginous hawk nests. Yet the report provides **no maps**, **no setback distances**, **no turbine-by-turbine compliance tables**, and **no EFSEC verification**.

Under **RCW 34.05.570(3)(e)**, EFSEC must base its decisions on substantial evidence. The absence of any evidence here is a glaring omission.

Petitioners in the lawsuits argue EFSEC approved turbines inside mandatory exclusion zones. The Hab-6 report does nothing to rebut that claim.

We are requesting that EFSEC release the coordinates of the proposed turbines to the public along with the maps of the large and historic fires that are being used to identify the proper setback distances for the 671 foot high turbines.

3. The SEPA Addendum Still Missing

Attachment 2 acknowledges:

“Confirmed that an addendum will be prepared.” (p. 8)

This means:

- The SEPA addendum was **not** completed.
- EFSEC approved layout changes **before** environmental review.
- Public comment had **not** occurred.

SEPA requires environmental review **before** agency action (**RCW 43.21C.030(2)(c)**). SEPA addenda must be completed prior to decision-making (**WAC 197-11-600(3)**). Public comment is required (**WAC 197-11-408**).

The lawsuits argue EFSEC violated SEPA by approving major project changes without environmental review. The Hab-6 report confirms that sequence of events.

4. Key Facilities Are Omitted from the Report

Attachment 2 states:

“Not shown – ADLS radar towers, Permanent Meteorological Towers (4 permanent).” (p. 8)

These are major structures with visual, wildlife, aviation, and noise impacts. SEPA requires disclosure of **all** project components (**WAC 197-11-400**).

Petitioners argue EFSEC approved a project materially different from the one analyzed in the EIS. Omitting these facilities supports that claim.

Micrositing Authority is Undefined and Unbounded

The report notes:

“Caveat – optimization and Mitigation Response Team may result in changes but within micrositing.” (p. 8)

But it never defines:

- How far turbines may move
- How setbacks will be preserved
- What limits apply

- How EFSEC will oversee changes

Under the APA (**RCW 34.05.570(3)(f)**), approving a project without knowing where turbines will ultimately be placed is arbitrary and capricious.

The lawsuits argue EFSEC granted open-ended micrositing authority. The Hab-6 report confirms that micrositing is undefined and unreviewed.

5. Turbine Count Changed Without Environmental Review

Attachment 2 states:

> "Total wind turbine sites 115 (but still subject to FAA/DoW approval)." (p. 8)

The report does not explain:

- Why the number changed
- How impacts changed
- Whether SEPA review was updated
- Whether FAA/DoW constraints alter layout

Under **WAC 197-11-600(4)**, a supplemental EIS is required for major project changes.

Petitioners argue EFSEC approved a project materially different from the one analyzed. The report supports that argument.

6. Public Process Still Incomplete

Attachment 2 says:

"EFSEC will prepare addendum for distribution to intervening parties and public comment." (p. 8)

But the report does not show:

- That public comment occurred
- That EFSEC responded to comments
- That intervenors reviewed the materials

Under **RCW 34.05.325**, agencies must consider public comments. Under **WAC 197-11-408**, SEPA documents require public review.

The lawsuits argue EFSEC violated public participation requirements. The Hab-6 report confirms the process is still incomplete.

Conclusion: EFSEC Should Not Approve Hab-6 Yet

Based on the record presented in the Hab-6 Facilitator Report, EFSEC cannot lawfully approve the final project layout and design. The report fails to demonstrate compliance with the SCA, Resolution 357, SEPA, and the APA. It lacks substantial evidence, omits required environmental analysis, and confirms that EFSEC has not completed mandatory procedural steps.

What EFSEC Should Do

EFSEC should:

1. Reject the Hab-6 report as incomplete.
2. Require a full SEPA supplemental analysis.
3. Require turbine-by-turbine documentation of Resolution 357 setbacks.
4. Require disclosure and analysis of all omitted facilities.
5. Release the officially proposed coordinates of the proposed turbines to the public along with the maps of the large and historic fires that are being used to identify the proper setback distances for the 671-foot-high turbines
6. Establish clear limits on micrositing.
7. Reopen public comment after the SEPA addendum is completed.

These steps are necessary to ensure EFSEC's decision complies with Washington law and withstands judicial review.