

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

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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,¹ installed over a 25-mile long path that would be 4 to 6 miles wide with an overall
26

27 ¹ 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, 2024.² 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

26 ² This and other references to filings at EFSEC are found in the “Documents” section of the EFSEC
27 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 ¹ 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
27 RCW 34.05.470(5).

28 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.³
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

27 ³ 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 3rd 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.⁴

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 //

25 ⁴ 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
28 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.⁵ *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...”

28 _____
⁵ 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
4 the Governor must “dispos[e] of all contested issues.” WAC 463-30-320(6).

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

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

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

20 The PTAG Rules of Procedure provide that a “Facilitator”. . . “will then work to
21 develop a report on the PTAG’s deliberations for consideration (the “Facilitator Report”).
22 See page 4.⁶ This report will be provided to EFSEC for review.” *Id.*

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

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

⁶ 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.⁷

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.

31 ⁷ 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:

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

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

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

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

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

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

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

26 More importantly, during his written and verbal testimony testimony, Mr. Wiley
27 was never identified as having “relevant expertise or firsthand knowledge of facts
28 relevant and necessary to the matters on which the PTAG is established to advise on,”
29 i.e., expertise on wildlife impacts and mitigation. In his testimony, he did not even
30 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
12 Workers”, Laborers’ International Union of North America “LIUNA”, International
13 Union of Operating Engineers “IUOE”, and International Brotherhood of Electrical
14 Workers “IBEW.”

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

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

21 While both Mr. Wiley and Ms. Wadsworth will be voting members of the PTAG,
22 they plainly do not meet the “commitments” required of participants by the ROP at
23 page 2:

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

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

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

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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
14 Wn.2d 416, 420, 526 P.2d 897 (1974). The doctrine applies only "as far as
15 practical" to ensure fair and objective decision making by administrative bodies.
16 Id. The practicality of the appearance of fairness will largely be determined by
17 the procedures being applied.

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

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

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

25 165 Wn.2d at 315 (2008) (emphasis supplied).

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

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

⁸ In the email from EFSEC staff written on Fri 2/21/2025 1:54 P.M. (Attachment D) a vigorous defense
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,
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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."⁹ 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.¹⁰

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 ⁹ TCC does not know if Mr. Kobus signed a confidentiality agreement.

25 ¹⁰ 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. ¹¹

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
13 advise.

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

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

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

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

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

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

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

29 ¹¹ Under RCW 42.56.430(2), sensitive fish and wildlife data is exempt from disclosure under
30 the the Public Records Act, RCW 42.56, except to specific categories of entities, and then only
31 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
19 “esthetic and recreational benefits of the air, water and land resources.”

20 *Id.* (Italics in original).

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

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

28 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 28th 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,
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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 28th day of March, 2025


Carol Cohoe, Legal Assistant
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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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1 I. INTRODUCTION

2 To quote Governor Inslee:

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

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

13 Facing that recommendation, the Governor and his team of legal and policy advisors²
14 rightly remanded the matter back to the Council with express directions to more narrowly tailor
15 mitigation to particular impacts, with reasonability and feasibility in mind. As to ferruginous
16 hawk mitigation, he told the Council to revise its overbroad siting restrictions, eliminate its
17 approach using hawk mitigation as a proxy to address other “compounding” impacts, and
18 instead consider specific alternative approaches to ensure mitigation is limited to “times and
19 places where hawks are present” and does “not reduce the generation capacity of the Project.”³

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

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

² See *Id.* at 3.

³ *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**

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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.⁴ 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.⁵ 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.⁶

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.⁷ 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.”⁸ He directed
17 the Council to revise Spec-5’s “overbroad” restrictions and limit mitigation to “those times and

18 ⁴ 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,
27 Horse Heaven Wind Project – Applicant Comments and Concerns on EFSEC Proposed Final
28 Action (Jan. 19, 2024) (“Jan. Comment Letter”).

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

32 ⁶ *See* Apr. Comment Letter at 4-17; Jan. Comment Letter at 3-6 (Spec-5), 9 (PTAG).

33 ⁷ Governor’s Letter at 4, Appx. A.

34 ⁸ *Id.* at 3, Appx. A.

1 places where hawks are present.”⁹ 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.¹⁰

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.¹¹

13 The Council ultimately approved a revised SCA at a special council meeting on
14 September 13, 2024.¹² 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.”¹³ Revised Spec-5 allows turbines, solar arrays, and BESS siting between 0.6

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24 ⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ EFSEC, Meeting Minutes (Aug. 29, 2024); EFSEC, Meeting Minutes (July 17, 2024).

¹² The Council sent the revised SCA to the Governor on September 17, 2024.

¹³ 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 miles¹⁴ 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.¹⁵

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.¹⁶ The Council
8 expressly deferred those decisions to the PTAG.¹⁷ 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.¹⁸

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 ¹⁴ 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 ¹⁵ *Id.*

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

26 ¹⁷ *Id.*

¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ 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.”²²

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

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24 ¹⁹ 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.
²⁰ *Id.* at 15:4-14.
²¹ *See, e.g.,* Revised SCA, Appx. 2, pp. 12-13 (Spec-5).
²² Washington State Energy Facility Site Evaluation Council, Meeting Minutes at 14:11-24 (Aug.
29, 2024).

1 evaluations and recommendations.²³ 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.²⁴ 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.^{25]}

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.”²⁶ Site certification decisions are subject to the
18 Washington Administrative Procedures Act²⁷ and the State Environmental Policy Act.²⁸

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22 ²³ 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 ²⁴ This submission was nearly a month after the Governor’s 60-day deadline (Aug. 21, 2024) to
submit a revised recommendation.

25 ²⁵ RCW 80.50.010.

26 ²⁶ RCW 80.50.010(2).

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

28 ²⁸ 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”²⁹ 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
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19 ²⁹ 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).

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

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

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

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

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

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³⁰ Governor’s Letter at 5 (emphasis added).

22 ³¹ The Governor also directed the Council to “consider, at minimum,” three specific mitigation
23 alternatives *instead of* absolute nest setbacks: (1) exclusion of most-valuable habitat types; (2)
24 temporal options like operational curtailment and construction suspension during nesting and
25 fledgling periods; and (3) monitoring-informed “adjustments to operating and construction
26 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.

³² 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.

³³ 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.³⁴ 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.³⁵
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.³⁶

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 ³⁴ Revised SCA, Appx. 2, p. 26 (emphasis added).

23 ³⁵ 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 ³⁶ 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,³⁷ 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 structures³⁸ or more specific criteria provided by Scout and its qualified biologist.³⁹
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 ³⁷ Apr. Comment Letter at 13-14; Jan. Comment Letter at 3-4.

³⁸ E.g., “gone,” “remnant,” or “poor.”

³⁹ 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.⁴⁰
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.⁴¹ 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.⁴²

11 The uncertainty caused by revised Spec-5’s ambiguous language poses serious
12 problems for the Project’s technical and practical viability.⁴³ 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 ⁴⁰ Apr. Comment Letter at 14-15; *see also* Scout Clean Energy’s Motion for Reconsideration, 24
(May 20, 2024).

23 ⁴¹ *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
26 Hawk, James W. Watson & Jeffrey M. Azerrad (July 5, 2023) (WDFW Draft Management
Recommendations) at 6-7 tbl. 2.

⁴² Aug. Comment Letter at 7-9.

⁴³ 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.⁴⁴

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.”⁴⁵ 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**
18 **and construction.**

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

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26 ⁴⁴ Aug. Comment Letter at 7-9.
⁴⁵ Governor’s Letter at 5.
⁴⁶ *See* Scout Clean Energy, Petition for Reconsideration of Initial Recommendation at 12.

1 on *siting* considerations.⁴⁷ 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 ⁴⁷ 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.⁴⁸

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.⁴⁹ 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.⁵⁰ But the revised
8 SCA’s novel PTAG delegation scheme cannot be saved by simply penciling in final approval
9 authority for the Council.⁵¹ 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 ⁴⁸ 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 ⁴⁹ 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 ⁵⁰ See Transcript of Proceedings, EFSEC Special Meeting (Aug. 29, 2024) at 13:21-14:6.

28 ⁵¹ 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
31 jurisdiction” or “independent authority over the subject matter,” absent “clear proof of legislative
32 intent to relieve the Secretary of ... his duties” under relevant enabling statute because Secretary,
33 though Bureau of Land Management, could simply have “approv[ed] Board orders without
34 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.⁵² 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

23 _____
24 ⁵² 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.

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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.

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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.”¹

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.²

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.

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

² 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.”³ 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”⁴ 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.”⁵ 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.⁶ The Council has several options to remedy this issue. The Council could utilize WDFW’s existing classification for nesting structures⁷ and/or the more specific criteria provided by Scout in its April Comment Letter.⁸ 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

³ Proposed SCA, Appx. 2, at 12 (August 19, 2024).

⁴ Governor’s Letter at 5.

⁵ Governor’s Letter at 5.

⁶ 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”);

⁷ E.g., “gone,” “remnant,” “poor”.

⁸ 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”).⁹ 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.¹⁰ 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.¹¹

⁹ Proposed SCA, Appx. 2, at12 (August 19, 2024).

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

¹¹ *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.¹² 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.¹³ 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.¹⁴ 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.¹⁵ **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.¹⁶ **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

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

¹³ Proposed SCA, Appx. 2, 12-13.

¹⁴ Scout Clean Energy, Petition for Reconsideration at 12.

¹⁵ 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).

¹⁶ See Apr. Comment Letter at 1.

realistic construction timeline, or even determine whether any SCA amendments are necessary.¹⁷ 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.¹⁸

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.

¹⁷ 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)

¹⁸ 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 29th Street, Suite 2050
Boulder, CO 80301
(303) 284-7566

Sincerely,

A handwritten signature in black ink that reads "Michael Rucker".

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 ~~e-d.~~ 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.

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.

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.

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

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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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.

**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 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: Average Comparable Land Sale Cost (per acre)*(CMA-Option 1 Acres)*1.15 = 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. Friedenber 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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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: 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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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.

From: Hafkemeyer, Ami (EFSEC) <ami.hafkemeyer@efsec.wa.gov>
Sent: Tuesday, February 25, 2025 4:02 PM
To: Rick Aramburu <Rick@aramburulaw.com>; 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: 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
Office 360.664.1305
Cell 360.972.5833

From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Tuesday, February 25, 2025 3:48 PM
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: 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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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>
Sent: Friday, February 21, 2025 1:54 PM
To: Rick Aramburu <Rick@aramburulaw.com>; 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: 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
Office 360.664.1305
Cell 360.972.5833

From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Wednesday, February 19, 2025 3:01 PM
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>
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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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>; 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>
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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515

Email: 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: Friday, February 14, 2025 3:55 PM
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>
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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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>
Sent: Thursday, January 23, 2025 1:17 PM
To: Rick Aramburu <Rick@aramburulaw.com>; 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>
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
Office 360.664.1305
Cell 360.972.5833

From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Thursday, January 16, 2025 9:26 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>

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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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: Thursday, January 9, 2025 4:13 PM

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>

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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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>
Sent: Tuesday, November 26, 2024 4:22 PM
To: Rick Aramburu <Rick@aramburulaw.com>; 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>
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
Office 360.664.1305
Cell 360.972.5833



Entering Holiday mode, expect festiveness and holiday shenanigans into 2025



From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Thursday, November 14, 2024 9:40 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>
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 2nd Ave #1300

Seattle, Washington 98104

Telephone: (206) 625-9515

Email: 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>

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

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

Cc: Moon, Amy (EFSEC) <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
Office 360.664.1305
Cell 360.972.5833



Entering Holiday mode, expect festiveness and holiday shenanigans into 2025



From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Tuesday, November 12, 2024 3:51 PM
To: Hafkemeyer, Ami (EFSEC) <ami.hafkemeyer@efsec.wa.gov>; Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>; Drew, Kathleen (EFSEC) <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 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: 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.



TCC Attachment E to Objection to PTAG

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Home » Energy Facilities » Horse Heaven Wind Project

ENERGY FACILITIES

- Badger Mountain
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- Chehalis Generation Facility
- Columbia Generating Station
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- 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 (MW) 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 +

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.

Assigned Site Specialist
Amy Moon

Assigned CFE
Sarah Reyneveld
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

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



Scout Clean Energy LLC
1805 29th St. Suite 2050
Boulder, CO 80301
(303) 284-7566

Time (PT)	Item	Lead
11:15 to 11:50 am	Technical Work Overview <ul style="list-style-type: none">• Spec-5 mitigation measure review• Near-term wildlife surveys• Q & A	Pat Landess, Scout Clean Energy Troy Rahmig, Tetra Tech
11:50 am to 12:00 pm	Closing and Next Steps	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	Light breakfast and coffee	All
9:00 to 9:30 am	Welcome, Opening Remarks and Housekeeping <ul style="list-style-type: none"> • Reflections on Meeting 1 • Themes from one-on-one conversations • Proposed meeting schedule and cadence 	Jamie Damon, Kearns & West
9:30 to 10:00 am	Ferruginous Hawk Life History in WA/Project Area <ul style="list-style-type: none"> • Discussion/Q & A 	Troy Rahmig, Tetra Tech
10:00 to 11:15 am	Establishing Common Nesting Terminology and Reconciling with Spec-5 <ul style="list-style-type: none"> • Discussion/Q & A • Break (exact time TBD) 	Troy Rahmig, Tetra Tech
11:15 am to 12:00 pm	Establishing Parameters that Influence Nest Viability <ul style="list-style-type: none"> • Discussion about information needs • Discussion/Q & A 	Troy Rahmig, Tetra Tech
12:00 to 12:45 pm	Lunch and Overview of Site Tour	Dave Kobus, Scout Troy Rahmig, Tetra Tech
12:45 to 1:00 pm	Board the bus	All
1:00 to 5:00 pm	Site Tour <ul style="list-style-type: none"> • Begin and end at La Quinta Inn and Suites 	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=76GOcLZRoMMcsoYouGt0MF7hczWEah.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"> • Q & A 	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"> • Q & A 	Troy Rahmig, Tetra Tech
11:50 am to 12:00 pm	Closing and Next Steps <ul style="list-style-type: none"> • Agenda for April 4 meeting 	Jamie Damon, Kearns & West