



Respondent No: 56

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Responded At: Aug 25, 2024 08:17:39 am

Last Seen: Aug 25, 2024 08:17:39 am

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- Q1. **First & Last Name** Pam Minelli
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- Q2. **Email address** pam@tricityscares.org
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- Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Tri-Cities CARES (TCC)
-
- Q4. **Share any comment**
Please accept the attached letter on behalf of TCC regarding the Revised SCA for the HH Wind Project.
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- Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/22b5b893105d0376342255291960c6355ef6dbec/original/1724598874/8cc5dfd2d8a93649c939ec95e0eba9a7_TCC_Letter_to_EFSEC_8.25.24_.pdf?1724598874
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August 25, 2024

Submitted electronically
efsec@efsec.wa.gov

To: EFSEC Council

Re: Horse Heaven Wind and Solar Project Revised Site Certification Agreement

Dear EFSEC Council:

Tri-Cities CARES (TCC) is writing to express our opposition to the draft Revised Site Certification Agreement (revised SCA) for the Horse Heaven Wind Project.

TCC vehemently disagrees with the revised SCA and urges the EFSEC Council to vote NO on its approval because it dismisses hundreds of public comments, adjudication expert testimony and conclusions, and FEIS recommendations. Instead, it wholly caters to the developer's financial interests and the Governor's political agenda.

Approval of the revised SCA will eliminate mitigations the Council previously recommended to limit negative impacts on the endangered Ferruginous Hawk and other fragile wildlife, visual impacts on tourism and property values, aerial firefighting and some Yakama Nation cultural sites. All this for a massive, poorly sited project that will produce limited, unreliable energy and with no assurance it will help Washington state meet its energy goals.

The Council has an obligation to uphold its legal responsibilities described in RCW Chapters 80.50, 43.21C, and 34.05 and vote NO on the revised SCA for the Horse Heaven Wind Project.

Respectfully,

Karen Brun, Paul Krupin, Pam Minelli and Dave Sharp

Tri-Cities CARES



Respondent No: 69

Login: Anonymous

Email: n/a

Responded At: Aug 25, 2024 16:39:37 pm

Last Seen: Aug 25, 2024 16:39:37 pm

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Q1. **First & Last Name** Pam Minelli

Q2. **Email address** pam@tricityscares.org

Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Tri-Cities CARES (TCC)

Q4. **Share any comment**

The following comment regarding the Revised SCA for the Horse Heaven Wind and Solar Project is submitted on behalf of Tri-Cities CARES (TCC).

Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/6ed633d0e0ef8d5f3c947e09b95a811f9434978f/original/1724629170/fd94f8dbd1a89397b5c3cb4f465defff_Revised_SCA_Comments_from_TCC.pdf?1724629170

Tri-Cities CARES (TCC) submits the following comments using Order 892, which EFSEC has stated it will not revise, and comparing the Order to the 8/19/24 Draft SCA.

Note: Order 892 statements and references are italicized; Draft SCA statements and references are also noted.

B. NEED FOR THE PROJECT AND CONFORMITY WITH LAW Order 892, (Pages 9-10)

1. *It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of all energy facilities and certain clean energy product manufacturing facilities will produce **minimal adverse effects on the environment, ecology of the land and its wildlife**, and the ecology of state waters and their aquatic life.*

TCC COMMENTS:

- As Michael Ritter of WFWL stated in his 2021 letter to EFSEC, “...**the immense size of the HWSB along the Horse Hills ridgeline and the subsequent landscape-scale impact to an important habitat and ecological connectivity will be difficult if not impossible to mitigate.**”
- Permitting 222 Space Needle sized turbines made even higher by the elevation of the Horse Heaven Hills will present grave risk to Horse Heaven Hills (HHH) wildlife (including two endangered species and more on the Washington state watch list) and shrub steppe habitat.
- Annually, multiple of avian species use the Pacific Flyway to cross over the HHH.
- Project components in the migration corridors present challenges to wildlife’s access to limited shrub steppe habitat.
- In addition, increased dust from construction of 222 turbines and more than 100 miles of 16 foot wide grave roads and increased fire danger are human safety and environmental concerns.
- **The revised SCA fails to meet this legal obligation. (Draft SCA, Article I: Site Certification C. Project Description, Items 1 and 2, Page 9)**
- **Therefore, TCC urges the EFSEC Council to again offer their original recommendation of a reduced HH Project to the Governor. Removal of the turbines presenting 3 or more impacts as determined in the FEIS will lessen the adverse effects on the environment, ecology of the land and its wildlife.**

2. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, **operational safeguards are** at least as stringent as the criteria established by the federal government and are **technically sufficient for their welfare and protection**.

The revised SCA states: The Operations Fire Control Plan must consider and address potential wildfire risk minimization and response as well as provide alternatives **to aerial firefighting, which will be unavailable within the Lease Boundary** due to the hazards that turbines pose to aircraft. (Draft SCA, ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO THE BEGINNING OF COMMERCIAL OPERATION, I. Operations Fire Control Plan, Pages 36-37)

TCC COMMENT:

- Adding back turbines on the northern boundary of the Project restricts the ability to fight fires along the Horse Heaven Hills slopes with LATs and VLATs puts the welfare of the populace and wildlife in grave danger, a clear violation of (1) above.

(2) **To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits** of the air, water and land resources; to promote air cleanliness; to pursue beneficial changes in the environment; and to promote environmental justice for overburdened communities.

TCC COMMENT:

- Again, by returning the project to its original state, EFSEC has negated this promise.

(4) *To provide abundant clean energy at reasonable cost.*

TCC COMMENT:

- Given that Scout has not provided any data on how much actual energy the project can be expected to produce and at what cost, this objective cannot be met under the 8/19/24 Draft SCA.

3. *The Council's concern for minimizing impacts to Tribal Cultural Properties (TCP) and tribal heritage cannot be overstated. The Council also understands local concerns about visual impacts on aesthetics and recreational opportunities. The need to preserve the endangered ferruginous hawk and minimize impacts to other species found on the Site further complicated the Council's deliberations on the adjudicative record. **The findings and conclusions set out in this order resolve the contested issues raised by the adjudicative parties' testimony and evidence and inform our ultimate recommendation.***

TCC COMMENT:

- TCC urges the Council to review Order 892 and revise the draft SCA to reflect the order's conclusions along with public comments and the FEIS rather than the developers financial interests and the Governor's political agenda.

C. LAND USE DETERMINATIONS –CONDITIONAL USE PERMIT PROVISIONS Order 892,
(Page 10)

- (2) ***Will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;***

TCC COMMENTS:

- Eliminating the use of LATs and VLATs for aerial firefighting will endanger the health, safety, and welfare of the surrounding community. Using DNR's firefighting procedures to justify a .25-mile buffer given that historic fires occur outside of DNR land will impede effective aerial firefighting. Testimony during the adjudication by experienced aerial firefighters stated a 4-mile buffer is needed for the safety of planes and pilots.
- EFSEC should consider that limiting aerial firefighting, especially along the northern perimeter of the Project, presents real danger to public safety, human life and property and should take removal of related turbines into serious consideration. Fire represents the largest loss of shrub steppe in the state and is listed as a risk to endangered ferruginous hawk nests.
- Dust created during construction of up to 122 turbines on farm land will result in health concerns for humans, animals and wildlife. In addition, the construction of over 100 miles of new permanent gravel roads will mean constant dust over the life of the project. Multiple strategically placed air quality monitors along with a dust abatement plan for the life of the project must be required of the developer prior to beginning construction.

E. VISUAL IMPACT (Order 892, Page 25)

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

TCC COMMENTS:

- The 8/19/24 Draft SCA returns nearly all the previously removed turbines along the ridgeline and beyond to the project, resulting in the "skylining" effect meant to be avoided.

- The Project, if built to original size, will dominate the skyline from Benton City to Finley: over 25 miles. No where in the US is there such an impactful, close proximity project of this size to a major metropolitan area.

F. WILDLIFE – Ferruginous Hawk (Order 892, Pages 30-31)

The Yakama Nation believes the best available science on potential impacts comes from WDFW biologists currently studying the ferruginous hawk and updating the 2004 WDFW recommendations.

*Mr. Watson recommended a cautious approach to siting wind power projects in territory occupied and used by ferruginous hawks due to the species' sensitivity to disturbance by human activity. In his opinion, to best allow species recovery and revitalization and preserve habitat, the ideal buffer could be as large as 10-kilometer (6.2 mile) core areas around active and historic nest sites. **Mr. Watson's compromise recommendation was a 2-mile buffer around active and historic nest sites.***

TCC COMMENTS:

- TCC agrees with statements from the Yakama Nation and Mr. Watson that recommend a 2-mile compromise buffer around active and historic nests.
- Dr. Trina Bayard of Washington Audubon, in her letter submitted to EFSEC on January 31, 2023, stated support for DFWL's recommended 2-mile buffer from all ferruginous hawk nests.

*He [Don McIvor, Scout's expert witness] also initially testified that 2-mile buffer zones appeared arbitrary when "more nuanced and biologically informed" buffers could be individually tailored by relying on specific knowledge of ferruginous hawk activity on the site. However, after reviewing Mr. Watson's testimony and accompanying exhibits, **Mr. McIvor came to agree with recommending a larger buffer around active and historic nest site core areas, rather than the quarter-mile buffer indicated by older WDFW guidelines and relied upon by the Applicant.***

TCC COMMENT:

- Scout's own expert witness conceded that a larger buffer area is needed. TCC is opposed to the .6 mile buffer proposed in the 8/19/24 Draft SCA (Appendix 2 of revised SCA, Spec-5 Ferruginous Hawk).

*We conclude that additional mitigation measures to minimize impacts on the ferruginous hawk are needed. We will craft them, including an appropriate buffer zone, based on the adjudicative record and our final EIS. We understand Scout's apprehension about requiring 2-mile buffers around all nest sites as recommended by Mr. Watson and largely endorsed by Mr. McIvor, but **if the final EIS validates that size buffer as the best approach to minimizing adverse impacts on an endangered species, the Council will accordingly incorporate that advice in our recommendation to the governor.***

TCC COMMENTS:

- EFSEC appears to accommodate the Governor’s directives in the revised SCA. TCC urges the Council to make recommendations that are based on the results of their lengthy review and analysis.

F. WILDLIFE - Cumulative Impacts on Wildlife – Scope and Scale of Project (Order 892, Page 35)

*The parties disagree on how the Council should weigh the cumulative and overall wildlife impacts in light of the project’s scope and scale. **The Applicant argued that the scale of its Project supports State policy to rapidly replace carbon-emitting generating resource with clean energy resources in Washington.***

TCC COMMENTS:

- Scout continually raises this argument but refuses to commit to retaining the energy produced from this project within Washington State boundaries. Sending it out of state will do nothing to support State policy.

*The Council understands the Applicant’s logic in designing a project of this size, but we agree with TCC and Yakama Nation that the scale and scope of the Horse Heaven Wind Farm should and does amplify our concerns regarding wildlife impacts. As proposed, the scope and scale of **the Project will reduce the function and value of important landscape-level habitat features needed by wildlife.** The sheer number of turbines proposed would **contribute to bird and bat mortalities of an unknown but likely substantial magnitude.** The length and width of the Project area would **impede important wildlife habitat connectivity for shrub-steppe species.** The proposed number and placement of turbines would **pose significant threats to breeding and wintering raptors in the area.***

TCC COMMENTS:

- TCC stands by our original concerns that the size and scope of the HH Project will have grave impacts on wildlife. The revised SCA appears to downplay and understate these concerns
- TCC urges the Council to stand by their original recommendation to remove nearly half the turbines to limit negative impacts on the endangered Ferruginous Hawk and other fragile wildlife, wildlife habitat connectivity, bird and bat mortality and some Yakama Nation cultural sites.

G. SOCIOECONOMICS (Order 892, Page 35-36)

We find that **the record contains no persuasive individualized data demonstrating a discernible impact on property values in Benton City and the region’s suburban areas.** Any conclusion regarding local real estate markets would be speculative. The Council finds that the evidence provided by the parties did not reliably demonstrate impacts on individual real estate values in the Tri-Cities area.

TCC COMMENT:

- See Paul Krupin's comments for TCC regarding the impact of the Project on property values submitted in a separately to EFSEC.

G. SOCIOECONOMICS - Economic Development (Order 892, Page 38)

There is no conclusive evidence in the record of negative impact on the region's wine tourism industry

TCC COMMENT:

- Because the project has yet to be built there will be no conclusive evidence but public comment from the closest winery to the Project states there would be definite impact to their business.

IV. FINDINGS OF FACT and CONCLUSIONS OF LAW (Order 892, Page 40)

*The Council has evaluated the evidence and arguments contained in the adjudicative record. The Council has also considered concerns expressed through the public comment portion of the adjudicative hearing. **Our below findings and conclusions are based only on the adjudicative record. Our Recommendation to the Governor will also take into account not only these findings and conclusions but also the Final EIS, public comment received outside of the adjudication, and government-to***

government consultation with the Confederated Tribes and Bands of the Yakama Nation in compliance with RCW 80.50.060(8).

Visual Impacts (Order 892, Page 44)

TCC General comment: TCC visual expert testimony and that of SWCA, the firm that provided visual impact in the FEIS, both stated that there were significant visual impacts there that there nothing in the Governor in his letter is offering a non-expert opinion that should not override the FEIS. The Governor in his letter is offering a non-expert opinion that should not override the FEIS.

22. The Council finds that the Project, as proposed, would visually transform the region and, due to the location of wind turbines along ridgelines, be especially impactful on the communities of Benton City and the City of Kennewick due to an undesirable "skylining" effect.

TCC COMMENT:

- The Project, if built to original size, will dominate the skyline from Benton City to Finley: over 25 miles. No where in the US is there such an impactful, close proximity project of this size to a major metropolitan area.

23. The Council finds the Applicant followed industry standards for quantitatively analyzing the Project's visual impacts. *The Council further finds that the Applicant complied with EFSEC's established standard to prevent wind turbines from looming over residential structures neighboring the Project. However, the Council also finds the Applicant failed to conduct sufficient outreach to local communities in selecting key observation points for visual analysis and determining the more qualitative impacts on local residents.*

TCC COMMENT:

- *General and customary wind industry practice is to locate wind projects in rural or remote areas. The Applicant did neither, and did not cite any other wind projects located as close to a heavily populated area as this one is going to be. Reference testimony EXH-5404-Recon. Every other large-scale wind project in the U.S. is located far from populated areas.*
- TCC does not agree that the Applicant has complied with the EFSEC looming standard. On Kiona Ridge, turbine blade tips will tower 2000 feet vertical distance above residences on the valley floor. Residences are one mile or less from the tower. Using a 4:1 ratio, the tower should be ~8,000 feet distance from the residence. The towers would need to be moved horizontally away over ½ mile to meet the looming standard. Towers affected in this example are #'s 2, 3, 4, and possible 1. There may be other instances.

24. elimination and removal of multiple turbines, must be required in order to minimize the visual impact of the Project on the Tri-Cities region and on Yakama Nation TCPs.

TCC COMMENT:

- TCC agrees that many of the high impacted turbines that have been pointed out for visual impact are also of importance to the Yakama Nation. That compounds the impact of multiple turbines and they should be considered for removal. This issue has not been addressed in the 8/19/24 Draft SCA.

Wildlife Impacts (Order 892, Page 44)

26. The Council recognizes that numerous environmental stressors, including loss of shrubsteppe habitat, are negatively influencing the ability of ferruginous hawks to persist in Washington State. The Council finds that the Project, as proposed and presented on this adjudicative record, would pose a new and significant threat to the ferruginous hawk.

27. *The Council finds the Applicant has not offered sufficient assurance or identified sufficient mitigation measures to demonstrate the Project would produce only minimal adverse effects on the ferruginous hawk.*

28. *The Council concludes that additional avoidance and mitigation measures must be imposed on the Project to protect existing ferruginous hawk nests and habitat and also to minimize impacts on the ability of ferruginous hawks to return to certain areas of historic usage.*

TCC COMMENTS:

- Reducing the 2-mile buffer in the original recommendation to .6 miles will maximize the inability of state endangered ferruginous hawks to flourish in one of Washington state's most popular breeding ground. With obstructions blocking access to their foraging habitat, they will become extinct rather than just endangered.
- EFSEC Council, after reviewing hundreds of public comments, adjudication expert testimony and conclusions, and the FEIS, must exercise their legal duty of protecting the environment by recommending a minimum turbine-free radius of 2-miles from all historic and active ferruginous nests.
- **TCC strongly requests the removal of the exemption from Spec 5 of the revised SCA allowing the placement of the East substation and adjoining BESS facilities within the 0.6 buffer from ferruginous hawk nest. For the protection of this endangered species, this buffer is meant to apply to all components of the HH Project.**

Socioeconomic Impacts (Order 892, Page 45)

38. *The Council finds the Project's roadways would improve access within the Project boundaries for ground firefighting activities. **The Council also finds that wind turbines located along the northern Project boundary would present challenges to aerial firefighting techniques historically used in the area***

4. ***The revised SCA states: 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.... (Draft SCA, ARTICLE I: SITE CERTIFICATION, C. Project Description #4, Page 9)***

TCC COMMENTS:

- TCC holds firm that the Project will significantly limit and may even prohibit aerial firefighting and firefighting effectiveness within the project boundaries and around the perimeter of the project. According to expert testimony, Turbines along the northern Project boundary will prevent LATs and VLATs from being used effectively increasing fire and personal safety

risk to residents and businesses. EFSEC should consider that this presents real danger to public safety, human life and property and should take this into serious consideration. Fire represents the largest loss of shrub steppe in the state and is listed as a risk to endangered ferruginous hawk nest.

- The buffer is defined as a clear space for air craft to work. The buffer should be .55 miles to include the blade length protruding past the turbine tower.
- Fires resulting from the wind turbines were characterized as rare during testimony. Within the last week, there was a fire attributed to a wind turbine in the Bickleton, WA area. To our knowledge, that is the second fire within 4 years resulting from a wind turbine. Whether rare, or infrequent, they happen, and any fire is too many.

40. *The Council finds the Project, as proposed, would negatively impact recreational opportunities currently enjoyed by local hang gliders and paragliders. The Council further finds the Project would alter views previously enjoyed by hikers, bikers, and tourists visiting the region.*

TCC COMMENT:

- The siting of wind turbines along the Horse Heaven ridgeline and beyond will have an impact on the multi-million-dollar wine industry.
- For some reason hikers, horseback riding, and photography have not been considered. There are hiking trails just yards from the proposed ridgeline turbines.
- Even though the adjoining land is a public multi-use recreation area, it will likely be closed to the public after turbines are built for public safety.

TCC's Final Comment:

It is unfathomable how EFSEC can violate Order 892 again and again and again and still state that the new proposed mitigations comply with law. The new mitigations cannot be rationally and scientifically supported.

Respectfully submitted,

Karen Brun, Paul Krupin, Pam Minelli and Dave Sharp
Tri-Cities CARES (TCC)
August 25, 2024

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August 25, 2024

Energy Facility Site Evaluation Council
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Delivery by Email: efsec@efsec.wa.gov

RE: Horse Heaven Wind Project: Comments on Draft Decision language

Dear Council Members:

This office represents Tri-Cities C.A.R.E.S (TCC), a community non-profit, Section 501(c)(3) organization with a mission to protect the environment and interests of residents in the greater Tri-Cities region. In furtherance of its mission, TCC applied for, and was granted, permission to participate as an intervenor in the adjudication for the Horse Heaven project. TCC was active in the adjudication, presenting witnesses, exhibits and argument, and continues its role as a representative of the Tri-Cities community.¹ TCC presented a comprehensive post-hearing brief supporting its position. That brief is Attachment A hereto and is incorporated by reference.

Following the adjudication hearings, the Council issued its Final Environmental Impact Statement (FEIS) on October 31, 2023. The FEIS was 2,067 pages in length; the Executive Summary alone was 193 pages and responses to comments 150 pages. The FEIS included Appendix 3.10-1, the "Updated SWCA Visual Study." That report assessed the Applicant's visual analyses using standard visual resource management systems and methodologies.

On April 17, 2024, the Council issued Order 892, the "Adjudicative Order Resolving

¹Substantially all local governments, community civic and special purpose districts opposed the project, including Benton County, Franklin County, the Port of Pasco, the cities of Kennewick, Richland, Benton City and West Richland as well as community economic development groups such as the Tri-Cities and Pasco Chambers of Commerce, "Visit Tri-Cities" and the Tri-Cities Economic Development Council. The Pasco Chamber wrote: "the Horse Heaven Hills Wind Project could drastically disrupt the unique and scenic vistas in the Tri-Cities area thereby degrading the quality of life and tourism and economic development opportunities in our region. . . ."

Contested Issues,” which included Finding of Facts at pages 40-47. At Finding 24, page 44, the Council concluded that further mitigation, “including the removal of multiple turbines, must be required in order to minimize the visual impact of the Project on the Tri-Cities Region and on the Yakama Nation TCPs.” (Emphasis added.) This finding was fully supported by the SWCA Visual Impact Study described above.

Following the adjudication, this Council issued its recommendation to Governor Inslee on April 29, 2024. Based on the evidence and the mandates of the Energy Facilities Siting Act, RCW chapter 80.50, the Council determined that a number of the most impactful turbines would be removed. The Council’s decision was unanimous, except for two members who argued that more turbines should be removed based on adverse environmental impacts and impacts to traditional cultural properties (TCPs) of the Yakama Nation.

In light of the careful analysis given the project, and the reasonable and measured decision of the Council, TCC was surprised and shocked by a letter issued by Governor Inslee on May 23, 2024. In that letter, Governor Inslee completely rejected the Council’s recommendation,² which included multiple mitigation measures. The Governor’s letter ruled out even the concept of mitigation:

Based on my review of the record and the potential impacts, mitigation measures that substantially reduce the generation capacity of the proposed Project should not be required.

Page 4 (Emphasis supplied). He reiterates that proposition at page 6 regarding impacts to Yakama Nation TCPs, where he “directs the Council to develop mitigation based on the record to address this issue that will be substantially consistent with the full scope of the project.” (Emphasis supplied.) The elevation of generation capacity over all mitigation measures is foreign to 50+ years of EFSEC decision making and policies in the State Environmental Policy Act, including its directive that state agencies like EFSEC:

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

RCW 43.21C.030(b). In light of the unsupported and illegal decision of Governor Inslee,

²Our research indicates that in EFSEC’s 54 year history, this is the first time that a Washington Governor has fully rejected a Council decision, much less a unanimous one.

TCC promptly objected to the Governor's decision in a letter to the Governor and EFSEC dated July 12, 2024. A copy of that letter is Attachment B to this correspondence and is incorporated by reference herein.

We write today to request that the Council decline to adopt substantive changes to its prior recommendation and instead reconfirm its decision to mitigate impacts of the project as described in Order 892. The bases for our request to you are detailed in the following paragraphs.³

1. GOVERNOR INSLEE'S RELIANCE ON UNSUPPORTED CLAIM OF NEED FOR THE PROJECT IS CLEAR ERROR.

As TCC described in its July 12, 2024 letter, the Governor relies on unsupported hyperbole to support his decision. He claims "our energy grid is at risk," that there is a "critical need for rapid and large scale growth" and that Horse Heaven is a "vital project." There is no citation to any reports or documents supporting these claims. Significantly, the Governor does not cite a single sentence from what he calls the "extensive record" for the project nor from the 2000-page FEIS.

The Council is requested to reject the unsupported claims of need for the project from Governor Inslee's letter. This is necessary as this Council expressly and forcefully denied TCC and other parties the opportunity to present evidence on the subject during the adjudication. Ironically, it was the Applicant that objected during the hearing to consideration of need for the project as well as assessment of its output.⁴

In the alternative, the Council should reopen the adjudicative proceeding especially to address the question of need for the project.⁵

2. THE SUMMARY DISMISSAL OF VISUAL AND ESTHETIC IMPACTS IS WRONG AS A MATTER OF FACT AND LAW.

In its July 12, 2024 letter, TCC also described why the unwarranted and illegal dismissal of visual impacts violated the provisions of RCW 80.50.010(5), which requires the Council to "enhance the public's opportunity to enjoy the esthetic and recreational benefit of the air, water and land resources." The elevation of project generation over

³The comments herein are in addition to comments and positions taken by TCC during the adjudication and post adjudication proceedings.

⁴In its post hearing brief, the Applicant argued that: "EFSLA does not task EFSEC with weighing the need for clean energy against the potential impacts for a facility." See page 5, line 19-20. Now, the Applicant claims in its reconsideration petition that: "the need for new, utility scale energy projects is dire. . ." Page 15, line 14. In a peculiar brand of hyperbole, the Applicant claims "the entire renewable energy industry is on notice and wary to develop in Washington. . ." citing newspaper editorials and letters from its associates in the industry. Page 3, lines 12-15.

⁵Indeed, the Counsel for the Environment wrote in her DEIS comment letter that while the "purpose for the Project is identified," it "does not include a statement of need." FEIS at 2003.

visual and aesthetic impacts, such that protection of these resources is not allowed if there is any substantial reduction of project resources, is fully inconsistent with 50 years of careful analysis of these impacts. As noted by the Council in Order 892, these visual impacts equally concern the traditional cultural properties of the Yakama Nation.

The Council should reject the Governor's insistence that the project be allowed to run roughshod over environmental, community and tribal values.

3. CONDITIONS FOR RELOCATION OF TURBINES FROM ONE-HALF MILE FROM NON-PARTICIPATING RESIDENCES DOES NOT ADDRESS SIGNIFICANT VISUAL IMPACTS.

As described above, the Governor's Order places electric generation over visual impact. Not only does the Order violate the plain terms of EFSEC's organic legislation, it also is inconsistent with the Council's own record.

In its Report to the Governor dated April 29, 2024, at page 11, the Council stated as follows:

Based on public comments and testimony presented in the adjudication, the Council found that the Project, as proposed, would visually transform the region and, due to the location of wind turbines along ridgelines, be especially impactful on the communities of Benton City and the City of Kennewick due to an undesirable "skylining" effect. Tourists who come to Benton County to enjoy Eastern Washington's wide-open spaces and unobstructed views would no longer be able to do so within sight of wind turbines or solar arrays.

See page 11.⁶

In its Order 892's "Overview" section, the Council enumerated several "principal conclusions", including the following:

(4) The scope and scale of the Project as proposed would transform the Horse Heaven Hills.

...

(6) The Project would have a significant visual impact on the region that is impossible to fully mitigate. Wind turbines should be excluded at least from ridgeline portions of the site where they would be prominently visible.

See page 1. The Findings of the Council include the following:

...further mitigation measures, to include elimination and removal of multiple turbines, must be required in order to minimize the visual impact of the Project on the Tri-Cities region and on Yakama Nation TCPs.

Finding 24, page 44. These several findings are consistent with the Final Visual Impact Analysis prepared by SWCA Environmental Consultants and included in the FEIS for the project. As cited in TCC's July 21, 2024 letter at page 5, SWCA concluded the

⁶This is fully consistent with the concerns identified by the Pasco Chamber of Commerce, cited in Footnote 1, *supra*.

project “would result in high, long-term, unavoidable regional impacts of visual resources.”

EFSEC’s findings were made after careful review of the entire record by the Council, which included extensive and detailed expert reports from the applicant. As with any fact finder, the Council weighed the evidence and reached certain conclusions therefrom. It is no surprise the Applicant objected to the findings, especially in light of their desire to permit “the maximum extent we believe we can optimally site on that project.”⁷

Neither the Applicant nor the Governor assign error to any findings entered by EFSEC nor to Order 892. Indeed, the Governor states: “I find that the extensive record compiled by the Council provides robust detail as to the nature and complexity of the potential impacts of the proposed project.” Page 3 (emphasis supplied). Indeed, the Governor stated: “I hereby direct the Council to reconsider its recommendation in light of the foregoing and based on the existing record.” Page 7. The Governor cannot ignore findings resulting from a thorough adjudicative hearing where the Applicant had full and fair opportunity to make its case.

Given the visual and aesthetic impacts identified by SWCA, the mitigating conditions in the currently proposed draft SCA and Appendix 2 are inconsequential and not supported by the “extensive” “existing” record.

First, proposed Condition VIS-1 at page 21 of Appendix 2 states:

Relocate turbines located within the foreground distance zone (0 to 0.5 miles) of non-participating residences to avoid completely dominating views from these highly sensitive viewing locations.

This condition does not mitigate the “unavoidable regional impacts” of the proposal, only the local house by house impacts. In addition, there is no documentation of the number of residences, and thus turbine locations that might be affected by the condition. Given the map of the leased properties, it appears there are few residences that would be benefitted by this condition.

As to whether the nearby, non-participating residences are “highly sensitive view locations,” Order 892 addressed whether the project would have adverse impacts on adjacent properties. Conclusion 11(e) addresses impact on neighboring properties:

The Council concludes that the Project will not hinder or discourage the development of permitted uses on neighboring properties in the Growth Management Act Agricultural District

(Emphasis in original). The Council has already concluded that neighboring properties will not be seriously impacted, making the proposed condition of little practical substance.

Second, proposed Condition CR-3 provides that: “No turbines shall be sited within 1-mile of the topographic drop-off at the top of the Webber Canyon walls.” Appendix 2, page 21. To the extent this condition reduces encroachment on Yakama

⁷Deposition of Dave Kobus, the Applicant’s project manager for Horse Heaven, p.33.

Nation TCPs, the condition is beneficial. However, as SWCA said in their fully vetted Visual Impact Assessment, the impacts are not just local, they are regional. As described, the project stretches 25 miles along iconic ridge lines of the Horse Heaven Hills; the spot removal of a few turbines does not resolve regional impacts.

The Council should reject largely meaningless removal of a few turbines as consequential mitigation of scenic and aesthetic impacts. The Council should follow the direction of RCW 80.50.010(2), which is to “enhance the public’s opportunity to enjoy the esthetic and recreational benefits” of our land resources – not allow them to be destroyed.

4. THE GOVERNOR’S DECISION, AND THE COUNCIL’S DECISION DOCUMENTS IMPLEMENTING IT, FAIL TO DEMONSTRATE AND DOCUMENT A MEANINGFUL BALANCING OF BENEFITS WITH IMPACTS.

Since its beginnings more than 50 years ago, EFSEC has been charged to balance the benefits of a proposal with its impacts to determine if a proposal results in a net benefit. Pertinent caselaw, drawn from Council decisions and EFSEC caselaw is set forth on pages 6-8 of TCC’s July 12 letter.

Indeed, this Council’s Press Release on its Horse Heaven recommendation, dated April 18, 2024, emphasizes its legislative responsibilities:

EFSEC was created in 1970 to provide "one stop" siting and permitting for large energy projects. By establishing the council, the state legislature centralized the evaluation and oversight of large energy facilities within one state agency. The legislature cited the necessity of balancing the need for new energy facilities with the broad interests of the public. As part of the balancing process, the council must take into account protection of environmental quality, the safety of energy facilities, and concern for energy availability.

The Governor’s decision letter is the antithesis of balancing. He says: “mitigation measures that substantially reduce the generation capacity of the proposed Project should not be required.” In sum, the Governor says you can do all you want for mitigation, anywhere you want, but the Council cannot impact the sacrosanct output of the Project. Weighing the power produced with the impact of the project is not permitted. Critical to this analysis is that Council’s April 29 recommendation did not eliminate the project, but only removed a number of turbines that impacted important state environmental and cultural goals.

Though the Governor says we can’t reduce the “generation capacity” of the project, the applicant has not provided any data on what that “capacity” is. Though the turbines have nameplates that say what they would produce at full capacity with a strong wind blowing, what is the average production? What is anticipated production during periods of high electric demand? TCC requested this information repeatedly during the hearings, but the Applicant refused to provide it. Other than generalities and superlatives, the Governor does not produce any information about how the Project will help the state’s power production. The Governor and Council continue to operate

literally and figuratively in the dark on what the Project would actually produce.

Without information as to the power production there can be no balancing of benefits v. impacts. By ignoring their balancing mandate, the Governor and Council cannot comply with their legislative responsibilities. The Council should decline the Governor's request to change its carefully considered recommendation.

5. **THOUGH THE GOVERNOR'S DRASTIC REDUCTION OF PROTECTION FOR THE FERRUGINOUS HAWK IS UNJUSTIFIED, A MODIFIED PTAG IS NECESSARY.**

One of the major unjustified changes in conditions found in draft Appendix 2, "Mitigation Measures" is the drastic reduction in required setbacks between new turbines and Ferruginous Hawk nests. As set forth at page 12 of the redlined Appendix 2 under Spec-2, this setback is reduced from two miles to 0.6 miles. This condition is not the result of new information regarding the species⁸ but the arbitrary and unsupported demand of the Governor only that the only mitigating conditions allowed are those "that allow for the build-out of the vast majority of the proposed Project." Letter at page 4.

The insistence of the Governor that the Council permit a full build-out of the project is not supported by analysis of the amount of power that might be lost if the Ferruginous Hawk is protected as specified by the Council. It is evident that the no-balancing of power benefit with losses to endangered species has been undertaken by the Governor. As such the Council should not modify its carefully considered setbacks to project the Ferruginous Hawk.

Assuming *arguendo* that the Council modifies its prior setbacks for Ferruginous Hawk protection contrary to the record, it is important that a strong PTAG be established. As such modification to the current PTAG provisions found at pages 8-9 of the redlined Appendix should be made. First, the PTAG should be established by the Council, not by the Applicant. Second, members of the PTAG must include local interest groups, agencies and local interest groups, selected by the Council. As seen in its reconsideration petition, the Applicant has decided to politicize the process and would install members supporting its positions. If a PTAG is established, it must be oriented to scientific decision making, not a rubber stamp for the applicant.

6. **DEFERRAL OF THE DECISION ON THE RECONSIDERATION MOTION UNTIL AFTER THE DECISION ON THE GOVERNOR'S REMAND IS FULLY INAPPROPRIATE.**

On May 20, 2024, the Applicant filed its "Petition for Reconsideration of the

⁸In Order 892, the Council carefully analyzed the differing testimony on mitigation for the Ferruginous Hawk, but found "the evidence in the record supports more avoidance and mitigation measures than those provided by the Applicant." Page 31. The Council found the 2-mile buffers appropriate and that "the final EIS validates that size buffer as the best approach to minimizing adverse impacts on an endangered species." *Id.*

Council's Recommendation to the Governor issued April 29, 2024." That motion is as much lobbying as it is technical analysis.⁹ Indeed, the Applicant argued that, if EFSEC does not reconsider its recommendation, then, "Scout calls on Governor Inslee to stem the damage posed by the Council's decision." Page 2, lines 4-5

The Governor wasted little time in responding to Scout's call to "stem the damage," issuing his decision letter two days later, on May 23, 2024. The Governor's remand letter was consciously issued prior to the deadline for responses to the Applicant's reconsideration, making further responses largely meaningless. To our knowledge, the Applicant has not provided any submissions addressing whether the Governor's response resolved the concerns expressed in its Reconsideration Petition.

Originally, on June 18, 2024, the Council issued its "Notice of Intent to Defer Decision on Applicant's Petition for Reconsideration and Party Answers." That notice of intent stated that it would decide the disposition of the reconsideration "on or before August 22, 2024." That date met the Governor's "expectation that the Council will resubmit the draft certification agreement, with appropriate amendments, for my consideration within 90 calendar days of the date of this letter." August 22 is 91 days after May 23.

However on August 21, the day before the deadline set by the Governor, the Council provided "notice to all parties that it will further defer a decision on the Applicant's petition until after a final decision on the Governor's request for reconsideration." However, this notice is contrary to the authority cited for deferral of a motion, as stated in RCW 34.05.470(3)(b):

The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

(Emphasis supplied). As described above, the August 21 notice does not "specify a date" by which it will act and is months beyond the 20 days that the Council has to decide the reconsideration petition. Accordingly, the Applicant's reconsideration petition should be considered denied.

In addition, the Council says it will take up the reconsideration petition "after a final decision is made on the Governor's request for reconsideration." From a notice issued on August 19, which includes draft decision documents, it is evident that the Council intends to make substantial changes in its recommendation based on the Governor's demands. Accordingly, the recommendation documents that were the subject of the reconsideration petition on May 20 will be likely superceded, making the

⁹Scout supports its reconsideration motion with Appendix B, a letter from a "national trade association representing the reviewable energy industry." In that letter the trade association claims that project conditions for the Horse Heaven proposal result in a project that "cannot be financed and built" and "threaten the viability of a project." See page 2 of Appendix B.

reconsideration petition moot.¹⁰ Further review of the reconsideration petition is not appropriate or necessary.

As described above, the relief requested by the Applicant, that the Governor “stem the damage” supposedly inflicted by the Council has been granted.

7. CONCLUSION.

The Decision made by the Governor in his remand to the Council ignores, and indeed defies, standards for decision making established by this Council in continuous and careful service to Washington state and its laws for more than fifty years. As enumerated herein, the insistence that any mitigation be scrapped which keeps the Applicant from building its full project is contrary to the EFSLA and to SEPA and this Council’s record of insisting on substantial mitigation. The elimination of any mitigation for visual and esthetic impacts is contrary to this Council’s record and is contrary to the Legislative directive to “enhance the public’s opportunity to enjoy the esthetic and recreational benefits” of our land resources. Critically, the Governor refused to engage in the balancing analysis mandated by the statute, instead elevating unknown project generation over all policies and standards followed by the Council.

In summary, the Council should decline to adopted the arbitrary decision of the Governor and should not modify its prior recommendation.

Sincerely,

/s/ J. Richard Aramburu

J. Richard Aramburu

JRA:cc

cc: Clients

¹⁰ TCC has repeatedly asked Council staff whether a final decision issued on August 29 will be subject to reconsideration, but staff has refused to definitively answer that question.

Attachment B

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July 12, 2024

Honorable Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002
Delivery by e-message submission at
<https://governor.wa.gov/contacting-governor/contacting-governors-office/send-gov-insle-e-e-message>

Kathleen Drew, Chair
Energy Facility Site Evaluation Council
Delivery by Email to kathleen.drew@efsec.wa.gov

Re: Horse Heaven Wind Project
Remand Order to EFSEC, May 23, 2024

Dear Governor Inslee and Chair Drew:

As you are aware, my client Tri-Cities C.A.R.E.S. ("TCC") has been an active participant and intervenor in proceedings of the Energy Facility Site Evaluation Council (EFSEC or the Council) on the Horse Heaven project proposal. This is the largest wind turbine project ever proposed in Washington state, with 231 wind turbines stretching some 25 miles from Benton City past Kennewick, along the ridgelines of the iconic Horse Heaven Hills.

EFSEC determined that the project's impacts on visual and esthetic resources, traditional cultural properties of the Yakama Nation and bird and other wildlife resources, among other environmental impacts, required preparation of an environmental impact statement. The environmental and other resource issues were also the subject of a rigorous, months-long adjudication before the administrative law judge, which included dozens of witnesses, including many experts. The transcripts from the Adjudication, the exhibits admitted and other materials considered by the Council became the "Agency Record" as that term is used in the Administrative Procedures Act, RCW 34.05.476 (APA).

Guided by the agency record, and after lengthy deliberations during its review, the Council issued its Recommendation on April 29, 2024. The Council determined that a

number of the most impactful turbines would be removed, though the revised project would still be one of the largest in the state. The Council's decision was unanimous, except for two members who thought more turbines should be removed from the proposal.

On May 23, 2024, an order, in the form of a letter, remanding the Horse Heaven project back to the Council was issued (the "Remand Order"). The Remand Order contains strong references to the need for the project, as follows:

- "our electricity grid is at risk." (Page 1)
- "the critical need for rapid and large scale growth" (Page 3)
- "this vital project" (Page 4)
- consideration of mitigation measures "where physically and financially feasible" (Page 5)

The Remand Order does not cite to any sources or witnesses for these statements.

The Remand Order acknowledges that an "extensive record" has been compiled by the Council which is "robust and satisfactory from my perspective for the purposes of siting and permitting the project." Page 3. The Remand Order goes on to conclude, based on this record, that no additions to the record are necessary or appropriate.

As will be detailed below, the Remand Order contains obvious violations of the EFSEC authorizing legislation and the Administrative Procedures Act. As such, we request that the Council not consider the content of the Remand Order in any continuing review. Our specific reasons are as follows.

1. RELIANCE ON UNSUPPORTED CLAIMS OF NEED, WHEN THE COUNCIL UNEQUIVOCALLY DID NOT ALLOW SUCH EVIDENCE DURING ITS DELIBERATIONS.

Under the EFSEC statute, the process for considering an application is governed by the Washington Administrative Procedures Act, RCW chap 34.05. *Friends of the Columbia Gorge, Inc. v State Energy Facility Site Evaluation Council*, 178 Wash 2d 320, 333 (2013). In particular, EFSEC review must meet the requirements for the process of "licensing" under the APA. *Id.* In turn, "licensing" requires an "adjudicative proceeding." RCW 34.05.010(1). During an adjudication, EFSEC must maintain a full agency record, with the contents specified in RCW 34.05.476(2). The APA also makes clear:

the agency record constitutes the exclusive basis for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings.

As described above, the Council's Recommendation of April 29, 2024 (the Recommendation) recognizes: "The Council's mandate is to balance need for abundant energy at a reasonable cost with the broad interests of the public. RCW 80.50.010; see also Washington Administrative Code (WAC) 463-47-110." See page 4. At page 12, the Recommendation states:

Another aspect of the need for clean energy facilities, regarding the economic viability of an applicant's Project and aspects of market demand, was resolved in *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 197 P.3d 1153 (2008) (the ROKT decision). Need in this regard is an applicant's business decision and is outside the scope of Council review.

(Emphasis supplied). This statement is consistent with the conclusion in Horse Heaven Order 892, the "Adjudicative Order Resolving Contested Issues" (Order 892) that:

The statute does not address the economic viability of an applicant's proposal, nor does it address market demand for power. Those aspects of an application, including individual applicants' business decisions, are beyond EFSEC's scope of review.²⁵

Order 892's Footnote 25 in the above excerpt cites the *ROKT* Supreme Court decision.

During the Adjudication, TCC attempted to introduce testimony and evidence on the value and need for the project from highly qualified experts, described by EFSEC's presiding ALJ as follows:

TCC argues that RCW 80.50.010 obliges EFSEC to balance energy need with the broad public interest. On that basis, TCC contends its witnesses may offer testimony regarding the net benefit of any proposed project, to include cost, project performance, and the ultimate value of the project to the grid.

ORDER GRANTING APPLICANT'S MOTION TO STRIKE TCC TESTIMONY OF RICK DUNN, PAUL KRUPIN, DAVID SHARP, AND (IN PART) RICHARD SIMON, July 28, 2023, page 1. TCC's proposed testimony came from highly qualified professionals in the energy field, including Richard Simon, with more than 40 years experience in electrical planning, and the Managing Director of a major public utility district, Rick Dunn from Benton County PUD. However, in the July 28, 2023 Order, the EFSEC ALJ stated:

SCE's Motion to Strike Mr. Simon's testimony should be granted, but only in part. Those pages of EXH-5501_T_REVISED that address or reference wind resource potential, economic feasibility and grid availability topics should be stricken.

Id. at page 5 (emphasis supplied). Similarly, the testimony from Mr. Dunn was stricken

because he addressed the merits of wind generation:

He also argues that wind farms should be low on the list of alternatives for Washington to cost-effectively balance carbon dioxide reductions, grid reliability and land-use impacts.

The Council expressly and comprehensively denied testimony and evidence on the value and need for the project consistently during the adjudication, even from highly qualified, experienced witnesses.

As such, the Council has made clear both in rulings on evidence and in its Recommendation that the issue of the value of the project would be excluded from consideration. However, the Remand Order says the Horse Heaven proposal is a “vital Project,” is “critical” to the energy future of Washington state and that the project should be approved because it “appropriately prioritizes the state’s pressing energy needs.” See pages 3, 4 and 7. According to the Remand Order, the only modifications that can be considered are those which are “financially feasible” for the applicant. Page 5. None of these statements are supported by any reports or statements by persons with expert qualifications; indeed there are no supporting citations. It is fair to say the consistent overarching theme of the Remand Order is that the project is not only needed, but is “critical” and “vital” to meet energy needs.

The Council should reject the claims found in the Remand Order regarding the need for the project. The “robust record” before the Council expressly rejects any consideration of need; any attempts to present witnesses and documentary evidence on the subject were repeatedly rejected. Reliance in the Remand Order on various superlatives regarding the project, that needs are “pressing” and the project is “critical” and “vital,” interjects rejected material contrary to the statute and the record compiled during the review process.

Given its complete and unflinching deviation from the record, and from previous EFSEC rulings, the Remand Order cannot be considered. The only manner in which these statements of need can be considered is if the adjudication is reopened to allow full discussion and evidence on this subject. Absent that, the Council should not consider the Remand Order during its upcoming review.

2. WHOLESALE DISMISSAL OF VISUAL AND ESTHETIC IMPACTS IS NOT SUPPORTED BY THE RECORD

As described above, the EFSEC review process is to “balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. . .” RCW 80.50.010. One of the “premises” for council actions is “to enhance the public's opportunity to enjoy the esthetic and recreational benefits of

the air, water and land resources; . . .” (emphasis supplied).

The Remand Order addresses esthetic benefits under “Visual Impacts” at page 6. This discussion begins with a dismissive personal observation that some people “do not appreciate seeing turbines on the landscape,” but any concerns about visual impacts are trumped by the rhetorical statement that: “I also believe all sides would agree that continued and reliable electricity service is imperative.” (Emphasis supplied). The Remand Order goes on to say:

The record shows that there will be visual changes as a result of the Project from various vantage points, but that these changes are both limited and subjective in nature.

Page 6 (emphasis supplied). Again, there is no reference to the record for these conclusionary statements nor to any reports, data or expert testimony. In fact, the agency record shows the visual impacts are hardly “limited and subjective in nature.”

The Final Environmental Impact Statement for the Horse Heaven proposal contains a complete “Final Visual Impact Analysis” (FVIA) prepared by an experienced consulting firm engaged by the EFSEC, the SWCA Environmental Consultants. The FVIA is Appendix 3.10-2 to the FEIS. Pages 2 and 3 of the FVIA identify the several objective criteria and standards for analyzing visual impacts, adopted, and routinely employed, by a variety of local, state and federal agencies. There follows a robust analysis of esthetic and visual impacts of the Horse Heaven Project employing these standards, including the impacts from multiple key viewing points along the uninterrupted 25 mile string of 600 foot tall wind turbines.

After this careful review, in its conclusions the FVIA says: “the combined impacts of the different Project components would result in a landscape character dominated by large-scale energy infrastructure, including wind turbines, . . .” FVIA at 30 (emphasis supplied). This section of the FVIA continues:

The existing setting does include a smaller wind farm and two existing transmission lines, but the scale of the Project and prominence of the proposed turbines would result in high, long-term impacts to the existing landscape.

Id. (emphasis supplied). Moreover:

Since these impacts occur on viewpoints beyond the neighboring receptors, these effects would be regional in extent. In summary, activities during operation of all components of the Project would result in high, long-term, unavoidable regional impacts on visual resources.

Id. (emphasis supplied).

The Remand Order does not discuss, or even acknowledge, the statutory premise that Council actions will “enhance the public’s opportunity to enjoy the esthetic benefit of the land” found in RCW 80.50.010(2). Nor does it dispute the expert analysis in the FVIA.

The May 23, 2024 communication is an “order” under the terms of the APA. See RCW 34.05.461. As such, under Subsection 3: “Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, . . .” (Emphasis supplied). Moreover Subsection 4 states: “(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.” (Emphasis supplied). As noted above, RCW 34.05.476(3) reiterates this requirement:

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings.

(Emphasis supplied).

Personal observations and opinion cannot support a Remand Order; findings of fact, based exclusively on the agency record, are required. The summary dismissal of esthetic concerns without a basis in evidence is inconsistent with the purpose of EFSEC and the orderly procedures of the APA. As such the Remand Order fails to meet these criteria and accordingly should not be considered by the Council.

3. FAILURE TO ENGAGE IN A BALANCING ANALYSIS THAT ADDRESSES NET BENEFIT.

This Council is charged with a balancing test to protect the public interest. This test is articulated in Whistling Ridge Order 868:

The council must consider whether this project will produce a net benefit after balancing the legislative directive to provide abundant energy at reasonable cost with the impact to the environment and the broad interest of the public.

Page 15 (emphasis supplied). This standard was affirmed in the Supreme Court review of the Council’s decision:

“Accordingly, it [the Council] found the main issue to be determining if the project

would create a net benefit after considering the impacts.”

Friends of the Columbia Gorge, Inc. v State Energy Facility Site Evaluation Council, 178 Wn.2d 320, 330 (2013) (emphasis supplied).

Under the EFSEC organic statute, deliberations and decision-making on whether a “net benefit” is achieved are not a closed-door process. RCW 80.50.010 makes clear the Council must “conduct a public process that is transparent and inclusive to all with particular attention to overburdened communities” and must encourage “public comment and participation in energy facility decisions.” As described above, agency orders require findings of fact which are based exclusively on the agency record.

Though TCC does not agree fully with the Council recommendation, at least the Council engaged in a balancing analysis based on the record. The same is not true of the Remand Order.

The Remand Order references convening a “team” of advisors, and lawyers, who are not identified. Page 3. There is no citation or reference to any parts of the record that the Remand Order relies on, though there is a vague reference to “technical staff” that were consulted and assisted in “quickly locating information in the extensive record.” None of this “information” is cited or referenced, nor is a list of documents that were considered provided.

The Remand Order does not provide any evidence or analysis of balancing the need for power with the public interest. To the contrary, as described above, the Remand Order claims, without evidentiary support or analysis, that the Proposal is “vital” and “critical.” Based on these conclusions, the Remand Order essentially says there should no reduction at all in the electric production of the project. As stated on page 4, “mitigation measures that substantially reduce the generation capacity of the proposed project should not be required.” This directive is repeated at page 5 where the Remand Order “directs” the Council to focus on mitigation measures “that do not reduce the generation capacity of the Project.”

The Remand Order fails to demonstrate a careful analysis of whether “the project would create a net benefit after considering the impacts” as required by applicable authority. The Remand Order states an intractable position: nothing that reduces the generation capacity of the Project will be considered. Beginning with a zero-tolerance policy for any reduction of wind turbines is not balancing, it is dictating.

4. CONCLUSIONS.

The Remand Order claims the project is imperative/critical/vital to support

July 12, 2024
Page 8

reliable electric service, when the agency record indicates strict prohibition against any discussion regarding the need for the project. The dismissal of visual impacts because of the opinion that these impacts were “limited and subjective in nature” is also wholly at odds with the careful technical visual analysis sponsored by the Council itself. The Remand Order commands that reductions in the generation capacity of the project will not be tolerated, in defiance of the direction to ascertain whether any project will achieve a “net benefit.”

TCC respectfully requests that the Council disregard the Remand Order in its upcoming considerations, unless it reopens the adjudication on the issues mentioned above.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in blue ink that reads "J. Richard Aramburu". The signature is fluid and cursive, with the first name "J." being small and the last name "Aramburu" being larger and more prominent.

J. Richard Aramburu

JRA:cc

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Attachment A

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

TCC'S POSTHEARING BRIEF¹

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¹ This post hearing brief does not revisit rulings made by the PALJ during the course of the adjudication, including decisions on motions to strike exhibits and testimony, as well as prehearing orders. These rulings and decisions have inappropriately and substantially limited TCC's ability to present its case. TCC's opposition and objections to such rulings are continued and reaffirmed. TCC further confirms and continues its request that the PALJ recuse himself as raised several times in these proceedings.

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1 **LIST OF ABBREVIATIONS / ACRONYMSTCC**

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- BESS Battery Energy Storage Systems
- DEIS Draft Environmental Impact Statement (issued December 15, 2022)
- FEIS Final Environmental Impact Statement
- FVIA The Final Visual Impact Analysis, Appendix 3.10-2, to the DEIS (April 2022) prepared by SWCA Environmental Consultants.
- HHWF Horse Heaven Wind Farm (the subject of this adjudication)
- PALJ Presiding Administrative Law Judge (Adam E. Torem)
- PHO#2 Prehearing Order #2 (May 19, 2023)
- SCE Scout Clean Energy, Project Applicant
- SEPA State Environmental Policy Act
- TCC Tri-Cities C.A.R.E.S.
- UASC Updated Application for Site Certification (December 1, 2022)
- YN Tribes of the Yakama Nation

FORMAT FOR CITATIONS TO THE RECORD

- TRANSCRIPTS: Tr. [Page #]:[Line#]; Tr. [Page#:Line#-Page#:Line#]
- DEPOSITIONS: [Deponent] Dep at [Page #]:[Line#]
- EXHIBITS: Admitted exhibits by Exhibit number (EXH-####_[ref])
Comments in the record by assigned Comment #

1 **I. INTRODUCTION²**

2 The Horse Heaven Wind project promoted by Applicant Scout Clean Energy is,
3 by far, the largest renewable project ever proposed in Washington. The 231 wind
4 turbines alone stretch over 25 miles, in rows of 2-4 turbines each, from south of Benton
5 City to Finley, south of the Yakima River and Columbia Rivers and east of Kennewick.³
6 It is hard to grasp the size of the project; a drive of half hour or more is required to see
7 the whole proposal. As a helpful comparison, it is twenty-five miles between downtown
8 Tacoma and Capitol Way in Olympia along I-5, or from downtown Seattle to North Bend
9 along I-90.

10 Each wind turbine will be 496 feet from the ground to the top of the blade⁴, just
11 short of the height of the Space needle in Seattle (605 feet). The turbine blades
12 themselves are 459 feet in diameter, comprising fully 92% of the height. By way of
13 comparison, the Smith Tower in downtown Seattle is 462 feet to the light globe on the
14 top of the pyramid.⁵ The visual impact of wind turbines is unique because they will be
15 moving (rotating), presenting a sustained attraction to the eye. Spinning blades the
16 dimensions of the Smith Tower's height are hard to comprehend; there are no
17 simulations or video of moving blades in the application material to help the decision
18 maker.

19 There are *no single structures* approaching the overall height of the proposed
20 wind turbines in the Tri-Cities community, much less 231 structures located right next to
21

22 ² The formats for citations to the hearing transcript and exhibits are found following the Table of
23 Contents.

24 ³ On August 8, 2023, the Applicant filed the "Moon Memo" (addressed to Ms. Amy Moon; EXH-
25 4014_X) that advised EFSEC of the required modification of the proposal to 231 turbines. Though the
DEIS and UASC apply the 244 number, TCC will use the updated figure.

26 ⁴ UASC, page 4-16 (GE 3.03 MW Turbine).

27 ⁵ <https://www.historylink.org/File/4310>.

1 each other rotating at 5 to 20 revolutions per minute.⁶ To further exacerbate the
2 impact, the project is perched some 1000 to 2500 feet above the South Columbia
3 Basin,⁷ such that more than 300,000 residents within ten miles of the project will see
4 the turbines from their homes, businesses, parks and streets, including the two largest
5 cities in Benton County, Richland and Kennewick.

6 Tri-Cities C.A.R.E.S. (TCC) is a community non-profit, Section 501(c)(3)
7 organization with the mission to protect the environment and the residents and
8 business owners in the greater Tri-Cities region from the significant adverse impacts of
9 the proposal.⁸ As will be described herein, TCC has the documented support of many
10 local residents as well as local governments, civic and community organizations; a list
11 of these entities and organizations is found herein on pages 36-37. Indeed, the
12 newspaper of record in Benton County, the Tri-City Herald, has also published
13 numerous editorials supporting the work of TCC in opposing the project. *Id.* See EXH-
14 5303_T.

15 TCC requested and was granted intervenor status in PHO#1. In PHO#2 (page
16 4), the PALJ acknowledges TCC's "significant interest in wildlife and ecosystem
17 conservation as well as local decision-making to preserve the community's uniquely
18 picturesque natural landscapes."

19 PHO#2 also acknowledged the interests and concerns of other parties, including
20 the Yakama Nation (YN) and Benton County.⁹ To save Council time and resources,
21 TCC has deferred to the experience of the YN in the presentation of wildlife testimony,

22
23 ⁶ UASC at 2-46.

24 ⁷ See UASC topographic maps in Figure 2.3-3 (pages 2-19 to 2-44)

25 ⁸ TCC's petition to intervene was granted in the Preliminary Order on Intervention, March 9, 2023.

26 ⁹ TCC joins with Benton County and the YN in requesting that the Council schedule oral argument as
27 an opportunity for the Council to hear from the parties and, most importantly, to ask questions of the
28 parties concerning the content of briefing.

1 though TCC retains substantial concerns regarding these impacts, especially the
2 impacts on the Ferruginous Hawk. TCC also has continuing interest in maintaining
3 consistency with the Benton County land use code and Comprehensive Plan, including
4 the County's conditional use criteria. However, given Council direction to "limit its
5 participation and presentation of evidence on land use topics and coordinate its
6 concerns with the County," TCC has recognized that Benton County is the lead agency
7 for land use issues, again consistent with PHO#2.

8 This Council is charged by the Legislature: "to seek courses of action that will
9 balance the increasing demands for energy facility location and operation in
10 conjunction with the broad interest of the public." RCW 80.50.010. As will be discussed
11 in greater detail herein, the project has multiple locational, physical and regulatory
12 constraints and limitations that severely limit its benefits. On the other side of the
13 balancing equation are multiple and significant adverse impacts that have not been
14 avoided or mitigated. As such the Applicant's proposal *does not pass* this Council's
15 balancing test which requires a demonstration "net benefit."

16 **II. STANDARD OF REVIEW BY EFSEC OF APPLICATIONS: THE "NET**
17 **BENEFIT" TEST.**

18 This Council is charged with a balancing test to protect the public interest. This
19 test is articulated in *Whistling Ridge* Order 868:

20 The council must consider whether this project will produce a net benefit after
21 balancing the legislative directive to provide abundant energy at reasonable cost
with the impact to the environment and the broad interest of the public.

22 Page 15 (emphasis supplied). This standard was affirmed in the Supreme Court review
23 of the *Whistling Ridge* decision: "Accordingly, it [the Council] found the main issue to
24 be determining if the project would create a net benefit after considering the impacts."

25 *Friends of the Columbia Gorge, Inc. v State Energy Facility Site Evaluation Council*, 178
26 Wn.2d 320, 330 (2013) (emphasis supplied). The "net benefit" test does not include
27
28

1 whether a project would make a profit for the Applicant, as this Council ruled in its
2 Order on Reconsideration in the *Whistling Ridge* matter, Order 870 (December 27,
3 2011) at page 12: “The Council’s decision does not turn on questions of whether the
4 project would be economically feasible for the Applicant.” Conversely, EFSEC is
5 charged with reviewing clean energy proposals for financial impacts to electric
6 consumers, by the established premises that a proposal must also meet “the state’s
7 objectives in providing affordable energy” and “(4) To provide abundant clean energy at
8 reasonable cost,” both in RCW 80.50.010. The “affordable energy” and “reasonable
9 cost” criteria apply independent of, and contrary to, an applicant’s desire to maximize
10 economic return from a proposed project.

11 Informing the Council on the “net benefit” issues are the “premises” for action in
12 RCW 80.50.010, including:

13 (2) To preserve and protect the quality of the environment; to enhance the
14 public's opportunity to enjoy the esthetic and recreational benefits of the air,
15 water and land resources; to promote air cleanliness; to pursue beneficial
16 changes in the environment; and to promote environmental justice for
17 overburdened communities.

18 As seen, the Council has the obligation to “enhance the public’s opportunity to enjoy
19 the esthetic and recreational benefit of the air, water and land resources.” This is
20 confirmed in the Council’s *Whistling Ridge Order 868* at page 18, footnote 28:

21 In acting upon any application for certification, the council action will be based
22 on the policies and premises set forth in RCW 80.50.010, including, but not limited
23 to: (2) Enhancing the public’s opportunity to enjoy the esthetic and recreational
24 benefits of the air, water and land resource.

25 These standards are further quantified by the premise that new clean energy
26 facilities “will produce minimal adverse effects on the environment, ecology of the land
27 and its wildlife, and the ecology of state waters and their aquatic life.” RCW 80.50.010.
28 These “premises” also become action-forcing measures “consistent with its obligation
to take actions necessary to protect community interests without regard to preemption.”

1 RCW 80.50.010(1) (emphasis supplied). Whistling Ridge Order 868 at 18, as clarified
2 in Footnote 26, which includes the requirement that: “The Council shall include
3 conditions to implement the provisions of this chapter, including, but not limited to
4 conditions to protect state or local governmental or community interests affected by the
5 construction or operation of the energy facility,” citing RCW 80.50.010(1).

6 With regard to scenic and visual issues, this Council has rejected the contention
7 that it could not mitigate adverse visual impacts “because there are no performance
8 standards for aesthetics in WAC 463-62.” Order 868 at 17. Similarly, the Council
9 summarily rejected the Applicant’s claim: “that consideration of aesthetic issues should
10 be exclusively within the SEPA process.” Order 868 at 18. The Council further cited
11 decisions in the *Kittitas Valley* and *Desert Claim* cases in Order 868, where it “required
12 further alterations of turbine siting” in “response to view scape concerns.” *Id.* In
13 Whistling Ridge, the Council reduced the number of turbines allowed from 50 to 35,
14 recognizing the significant impacts on wildlife and ecosystem conservation, as well as
15 preservation of the community’s uniquely picturesque natural landscapes.

16 EFSEC’s deliberations and decision-making on whether a “net benefit” is
17 achieved are not a closed-door process between the Applicant and the Council and its
18 Staff. As RCW 80.50.010 makes clear, the Council must “conduct a public process that
19 is transparent and inclusive to all with particular attention to overburdened
20 communities” and must encourage “public comment and participation in energy facility
21 decisions.” The statute makes clear new energy facilities are a public concern
22 requiring public involvement.¹⁰

23 As seen in TCC’s presentations during the adjudication, the balancing analysis
24 clearly dictates against approval of the Applicant’s proposal because of the significant,

25
26 ¹⁰ This is consistent with the holding of this Council, that much like water, “Air and the force of wind
27 are identified as natural resources.” See, e.g., Wikipedia, the “Free Encyclopedia “ as cited in this
28 Council’s *Whistling Ridge* Order 868 at page 13, FN21.

1 irretrievable, unmitigated negative impacts on esthetic and visual resources, wildlife,
2 cultural resources, local economics and fire suppression, among others.

3 **III. IMPROPER ELIMINATION OF SEPA ANALYSIS.**

4 In the Whistling Ridge matter, the Council recognized that it “must comply with
5 the State Environmental Policy Act (SEPA), RCW 43.21C and WAC 463-47.” Order
6 868 at 6. It further recognized that before “making its recommendation to the Governor,
7 the Council must consider a Final Environmental Impact Statement.” *Id.* However,
8 Order 868 explained that: “In this matter however, production of the FEIS was delayed
9 and it was not received in the adjudicative record.” *Id.* However here, the FEIS was
10 withheld from the adjudication not because of delay, but as a matter of policy.

11 Early in the adjudication, in PHO#2 (May 19, 2023), the PALJ ordered that: “the
12 following issues will *not* be taken up during the adjudication unless specifically
13 authorized by a subsequent order issued following a party’s motion. . .” See page 3
14 (emphasis in original). One of the prohibited issues was: “Compliance with the State
15 Environment Policy Act.” On May 18, 2023, TCC, YN and Benton County each filed
16 objections to this interpretation of SEPA by motions to stay the adjudicative proceedings
17 until the FEIS was completed. However, on June 5, 2023, the PALJ issued his Order
18 Denying Parties Motion to Stay/Continue, denying all requests for a stay or continuance
19 pending issuance of the FEIS, confirming the position taken in PHO#2, and further that:

20 The parties have the DEIS. That document informs the parties of EFSEC’s SEPA
21 responsible official’s assessment of the potential impacts of the proposed project.

22 Order on Motions at page 6. The Order went on to say:

23 The parties have more than sufficient insight into the ongoing SEPA process to
24 inform the development of their positions during the adjudication.

25 *Id.*

26 As of the date of writing this brief, EFSEC staff has not issued the FEIS, despite
27 the passage of nearly seven months since the comment deadline (January 31, 2023).

1 However, in the agenda for its October 18, 2023 monthly meeting (issued on October
2 11), Council staff scheduled a “Final Environmental Impact Statement presentation” for
3 the Horse Heaven Wind Farm. A copy of that Agenda is attached as Appendix A.
4 Council staff sets the presentation of the FEIS just five days after the deadline set for
5 final briefing in the adjudication (October 13).

6 EFSEC’s “Horse Heaven SEPA” webpage states: “the Final EIS is the official
7 final document that analyzes the adverse environmental impacts. . .” (Emphasis
8 supplied). In the same paragraph, EFSEC staff explains:

9 The Final EIS provides a basis upon which the responsible agency and officials
10 can make the balancing judgment (e.g. environmental, welfare, social, economic)
11 mandated by SEPA because it provides information on the environmental costs
and impacts (WAC 197-11-448).

12 Contrary to the SEPA Rules requirement that: “the SEPA process shall be
13 integrated with agency activities at the *earliest* possible time,”¹¹ the parties proceed to
14 final briefing in this adjudication without the “official final document” which provides the
15 basis for the “balancing judgment” required from the Council. Moreover, the Horse
16 Heaven SEPA website itself makes clear:

17 Public review of the Draft EIS provides an opportunity to identify missing,
18 incomplete, or incorrect information to be addressed in support of the
completeness and accuracy of the Final EIS.

19 (Emphasis supplied). In sum, with the issuance of the FEIS, the DEIS is procedurally
20 superceded and irrelevant, and the parties (and the public) are deprived of their
21 opportunity to address the content of the FEIS in the adjudication.¹²

22 The Council makes a continuing significant error by forcing the parties to prepare
23 briefing on a DEIS, that will become ineffective with the issuance of the FEIS. The
24 parties to the adjudication proceed to the critical final phase of the adjudication with one

25 _____
26 ¹¹ WAC 197-11-055(1), emphasis added.

27 ¹² EFSEC’s “Horse Heaven SEPA” Website shows 2,497 comments were submitted on the DEIS.

1 hand tied behind their backs, while the FEIS will be issued just days after closure of the
2 adjudication.

3 The Council's continuing, severe and illogical reading of its obligation under
4 SEPA risks reversal by a reviewing court, resulting in delay and significant expense to
5 all involved.

6 **IV. APPLICATION IS INDEFINITE, INCOMPLETE AND INADEQUATE.**

7 Before the Council may consider a proposal, there must be adequate information
8 available regarding the project and its impacts. The Council rules, found in WAC 463-
9 60 specific the content: "The application shall provide the council with information
10 regarding the applicant, the proposed project design and features, the natural
11 environment, and the built environment." WAC 463-60-010. Apparently in the belief that
12 it can ignore major – and detrimental – shortcomings of its proposal, the Applicant has
13 refused to submit the minimum necessary information for this Council's review. A key
14 element, the failure of the Council to issue the FEIS, "the final document that analyzes
15 the adverse environmental Impacts of a proposal," is discussed above. But that is only
16 the beginning of the multiple mandatory elements regarding the project which are
17 missing from the current application.

18 Much of this deficiency comes from the vague nature of the proposal presented.
19 This vagueness is deliberate: the Applicant wants as flexible a project as possible to
20 appeal to the maximum number of buyers¹³. However, the Applicant's marketing plan
21 cannot trump its regulatory obligations, including the following.

22 **4.1 Wind turbines: Size.**

23 One key element is the number and size of turbines. Scout identifies two
24 "potential turbine specifications" at page 2-17 of the UASC; 244 turbines producing
25

26
27 ¹³ Mr. Kobus says the Applicant: "has been investing considerable time and capital in bringing the
28 largest project we can bring to market because that is what makes us successful." Dep at 104:16-19.

1 about 3 MW each, or 150 larger turbines with 5.5 or 6 MW nameplate production
2 rates.¹⁴ However, the Applicant’s project manager indicates the smaller turbine “still
3 remains the ideal turbine for the project, and that’s the 244, smaller platform equipment.”
4 Kobus Dep at 27:25 to 28:2. Given this testimony, the Council should disregard and
5 decline to consider the Option 2 proposal for the larger 150 turbines.

6 **4.2 Wind Turbines: Number.**

7 While the project is described as having 244 turbines, in fact, because of “an
8 agreement with the Department of Defense,” only 235 turbines can be built on the site.
9 Kobus Dep at 33:13-24.¹⁵ These 235 turbines are “precisely identified in the mitigation
10 agreement” with the DOD. Kobus Dep at 35:5-8.

11 **4.3 Project Phasing.**

12 The UASC states that:

13 The Project would likely be built using a “phased approach” with distinct, fully
14 functional portions of the Project potentially being built in a staggered manner.

15 UASC at 2-100. This comes about because: “It is possible that the Applicant may
16 transfer or sell all or portions of the Project to another development company or other
17 entity.” *Id.*

18 Though there are numerous maps showing potential turbine layouts (including in
19 the August 8, 2023 Moon Memo, (EXH-4014_X), there is no drawing or map that depicts
20 a phasing plan. Such information is critical for identifying and evaluating the efficacy of
21 phasing to address critical impacts, as well as the alternatives analysis.

22
23
24
25 ¹⁴ The Applicant has an “exclusive arrangement” to buy turbines for the project from General
26 Electric. Kobus Dep at 28:12-20.

27 ¹⁵ That 235 wind turbines are allowed is important in assessing the validity of the supposed
28 mitigation of visual impacts found in the “Moon memo” (See EXH-4014_X). See Section 7.2 of this brief.

1 **4.4 Battery Energy Storage Plans.**

2 The Applicant proposes the Council approve, in addition to wind and solar
3 elements, large battery storage facilities, known as Battery Energy Storage Systems or
4 “BESS.” The proposal says there will be two such facilities, each with a capacity of 150
5 MW, located on opposite sides of the project. UASC at 2-78. Other than a small
6 rectangle on the Applicant’s small-scale maps, and a generic description at page 2-78 of
7 the Updated Application for Site Certification (UASC), there are no plans, designs or
8 specifications for these large facilities; there is not even a photo or rendering showing
9 what they will look like.

10 During the adjudication, the Applicant submitted no additional information about
11 the BESS proposal, except to increase its size to 18 acres. EXH-4014_X, Section 11.
12 Though the BESS described “would be capable of storing and later deploying up to 300
13 MW of energy generated by the project,” no performance specifications are provided.
14 Though the BESS might “deploy” energy, how long will such “deployment” last? Once
15 the BESS is discharged, how long, under conditions prevalent in the Horse Heaven
16 Hills, will it take to fully recharge them? Are the solar and wind turbine facilities
17 proposed capable of such recharge during times of high demand on the system? An
18 applicant for project approval of a BESS system is required to provide such minimal
19 information.¹⁶

20 Before further consideration of the BESS proposal, the Applicant should be
21 required to provided information addressing the technical specifications of these
22 batteries at this specific location.

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26 ¹⁶ WAC 463-60-145 requires: “The applicant shall describe the characteristics of the construction to
27 occur at the proposed site including the type, size, and cost of the facility; description of major components
28 and such information as will acquaint the council with the significant features of the proposed project.”

1 **4.5 Water Supply.**

2 WAC 463-60-165 requires an applicant to “submit a water right authorization or
3 contractual right to use water supplied” by a water purveyor. Though identifying a
4 couple of false starts with the City of Kennewick and the Port of Walla Walla, the
5 Project Manager admits that it has no “contractual right for water,” though the project
6 would require 220,000 gallons per day just during construction (dust suppression).
7 Kobus Dep at 119:18 to 120:1. Though the project manager says the Applicant has a
8 “line of sight on water supply” (Kobus Dep at 167:3), and says the Applicant is “in
9 negotiations with other parties,” he concedes during cross-examination: “Do I have a
10 signed agreement? No.” Dep at 168:16-18. Mr. Kobus does clarify Scout does “not
11 intend to drill our own wells.” Dep 122:19-20.

12 Late in the hearing (August 8, 2034), the Moon Memo said the applicant was
13 “currently working with DNR to assess the potential for a lease agreement that would
14 allow for use of a portion of DNR’s existing water right associated with the Gould Well . .
15 . .” See EXH-4014_X at page 8. However, “assessing potential” for a water source is far
16 from the water right or contract required by the regulation.

17 The concern here is not just hand washing and toilet flushing. The lithium-ion
18 batteries are a well-known fire hazard that can burn for days. The Applicant proposes 12
19 acres of these batteries, and claims there are systems that control and contain fires.
20 When asked: “What will be the source of water to fight a fire at the batteries?” the
21 response was: Benton County Fire Districts 1 and 2. Dep at 126:24-25 to 127:1-5.
22 While the Moon Memo claimed there was “updated information” on lithium-ion fires
23 (EXH-4014 at 6), there is still no “emergency response plan” approved by the
24 jurisdictional fire districts. Dep at 127:22-25 to 128:1-4 and EXH-4014 at 6-7.¹⁷

25
26
27 ¹⁷ See, e.g., testimony from local fire districts and firefighters, which oppose the project as
28 configured, in EXH-5631_R, EXH-5911-RECON, EXH-5912_S.

1 The requirements to demonstrate water availability in WAC 463-60-165 are
2 straightforward and unequivocal: either a documented water right or a contract to
3 provide water are required. An intent, or hope, or “line of sight” are not sufficient. The
4 application should be denied for failure to meet minimum requirements for site
5 certification applications.

6 **4.6 Benton County Conditional Use Criteria.**

7 On May 17, 2022, this Council entered Order 883 for this proposal, entitled
8 “ORDER FINDING PROPOSED SITE CONSISTENT WITH LAND USE
9 REGULATIONS.” However, the project is a conditional use under applicable Benton
10 County Codes and Order 883 plainly states at page 7, Paragraph 23: “The Council’s
11 land use consistency determination does not prejudge whether the Facility has met or
12 can meet Benton County’s conditional use criteria.” Compliance with the conditional
13 use criteria was deemed a “question for later EFSEC proceedings, ...” *Id.* Because the
14 Applicant did not obtain a conditional use permit from Benton County (or even apply for
15 one), the Applicant “*retains the burden of proving the Site is indeed consistent and*
16 *compliant with the local jurisdiction’s land use provisions.*” Order 883, page 4, Paragraph
17 14.

18 Consistency (or not) with conditional use provisions of the Benton County code
19 are predicate issues that must be resolved before the Council engages in its balancing
20 analysis.¹⁸

21 **4.7 Analysis of Alternatives.**

22 WAC 463-60-296 requires that an applicant include in its Application: “analysis of
23 alternatives for site, route and other major elements of the proposal.” As noted on
24 pages 2-118 to 2-120 of the UASC, there is no consideration of any alternatives of the
25 major elements of the proposal, including a smaller or reconfigured site plan. This is
26

27 ¹⁸ TCC incorporates in full the Prehearing Brief of Benton County addressing these issues in detail.
28

1 because the applicant, through its Project Manager, remains firm that it wants to build
2 the biggest project possible, to “max out” use of the site.¹⁹ This issue is considered in
3 greater detail in Section VII of this brief, beginning at page 42.

4 The failure of the UASC to present and analyze alternatives to the project is a
5 fatal flaw, requiring denial of the application.

6 **4.8 Summary.**

7 The application, and additional applicant submissions, delete critical elements
8 required by adopted EFSEC regulations, making the application indefinite, incomplete
9 and inadequate. Given the time this proposal has been before the Council (since
10 February, 2021), there is no excuse not to have full and complete information before the
11 Council for use in making its important decision. The Council should deny the
12 application outright. If not simply denied, the proposal should be remanded with
13 direction to staff to gather and analyze information on required project elements.

14 **V. THE PROJECT IS SUBSTANTIALLY OVERBUILT.**

15 HHWP is a “merchant plant” with no end user, electric utility or commercial
16 customer identified. SCE is “actively marketing this project now” to “anybody that will
17 listen.” Kobus Dep 26:2-25.

18 Notwithstanding the speculative nature of the project, Mr. Kobus readily admits
19 Scout is a “big project” developer. Kobus Dep 108:6-8, lines 6-8. (“Yeah, there are small
20 projects, there are big projects. We’re a big project builder.”) Indeed, SCE wants to build
21 the “largest project we can bring to market because that’s what makes us successful.”

22 *Id.* at 104:16-19. Mr. Kobus bristles at proposals to reduce the size of the project:

23 So the commercial case for this site is to build absolutely as much as we can to
24 satisfy the market need. So any whittling away that we do of anything that
25 generates as a part of this mix is hurting our prospects.

26
27 ¹⁹ This is despite the fact that Applicant’s project manager admits that: “I believe that there might be
28 somebody out there that just wants Phase 1.” Kobus Dep 106:7-14.

1 Kobus Dep at 104:16-24.

2 As described above, despite its aspirations to build the biggest project possible,
3 there was never an analysis of building a smaller project, with reduced adverse impacts.

4 Kobus Dep at 97:2-98:4. However, as described in the UASC, Phase 1 (with the “ideal
5 turbine size” of approximately 3 MW) would generally involve developing just the east
6 side of the project and would have:

- 7 • 350 MW of wind
- 8 • 58 to 124 turbines (depending on the size selected)
- 9 • 300 MW solar
- 10 • 200 MW of Battery Energy Storage.²⁰

11 UASC at 2-101. The record reflects that neither the Applicant nor EFSEC staff have
12 ever seriously considered this phased or modified proposal as an alternative.

13 Though a smaller project is feasible, the Applicant is so enamored with big
14 projects, that is its proposal is deliberately and substantially overbuilt. This results from
15 limitations imposed by its preferred transmission provider, BPA, on the maximum
16 amount of power from the project that can be put into its transmission system.
17 Essentially, the Applicant’s “eyes are bigger than its stomach.”

18 After the original application for the project in February 2021, BPA limited the
19 amount of power that this project can “inject” into its transmission system. This is
20 grudgingly admitted in the updates to the Application. While BPA would agree to
21 “connect” as much as 1150 MW of nameplate generating capacity to its transmission
22 system, that connection is limited. As stated in the UASC at 2-16:

23 Up to 650 MW of **nameplate generating capacity, limited to a 350 MW grid**
24 **injection capacity, power** could interconnect to the planned BPA 230-~~kilovolt~~ (kV)
25 Bofer Canyon substation. Up to 500 MW of **nameplate generating capacity/grid**
26 **injection capacity, power** could interconnect to the planned BPA 500- kV Webber

27 ²⁰ Though the Moon Memo indicates the East BESS will be reduced to 100 MW, the West BESS will
28 be increased to 200 MW. See page 8.

1 Canyon substation.²¹

2 Thus no matter how strong the wind is blowing, or how intense the sunshine, even with
3 the full nameplate capacity achieved, BPA can accept only 850 MW for injection into the
4 system and delivery to an end user.²² The “grid injection capacity” is like a governor on
5 a gas engine, it limits the amount of energy that can be injected to the electrical grid at
6 any one time.²³ Accordingly, while the applicant touts the project as having 1150 MW of
7 “nameplate capacity,” in fact the most the project can deliver for use by the end user is
8 850 MW, a difference of 300 MW or only 74% of its advertised output.

9 Undeterred by the reality of the recent limitations on transmission capacity from
10 BPA, the Applicant will not reduce the number of turbines it wants to install. Admitting
11 the project is “overbuilt,” the project manager says if actual injection into the BPA
12 transmission falls below the 850 MW maximum grid injection capacity because wind
13 stops blowing, hypothetically the solar facilities could be ramped up to keep up the
14 maximum permitted output. As Mr. Kobus says: “The solar’s there and available. It’s
15 daytime. We can start injecting the solar to maintain 350 megawatts, even though the
16 wind has died down.” Dep at 43:1-4. Though the “grid injection capacity” materially
17 reduces the value of the project, the applicant states in the UASC: “This change by BPA
18 does not alter the facility components proposed for the project.” UASC at 2-15.²⁴ SCE
19 intends to overbuild regardless.

21 ²¹ The redline and strikeout (in blue) are in the original and reflect “updates” to the application. The
22 UASC was submitted to the Council on December 1, 2022.

23 ²² As the Applicant’s project manager admits that the BPA system: “has limitations. I mean, wires
24 have limits. Bonneville has to manage reliability on the grid, so they have to maintain the electrical
25 characteristics of everybody that’s interconnected with the grid.” Kobus Dep. at 42:3-11.

26 ²³ Much like a new electric vehicle that could go 140 mph with the installed engine, a governor
27 restricts the top speed to 100 mph. Mr. Kobus admits: “But recognize you can never exceed your
28 available injection capacity.” Dep at 48: 5-10.

²⁴ At about 3 MW per turbine (UASC at 2-17), the 300 MW limitation is the equivalent of 100 turbines
that should be removed in recognition of the reality limitation imposed by the “grid injection capacity.”

1 In assessing “net benefit” of this project, the Council must consider both the
2 potential for a smaller project, with less impacts, and whether this “overbuilt” project
3 supports a finding of “net benefit.”²⁵ In either case, the Council should determine, as
4 part of the balancing analysis, that the project is far larger and more impactful than the
5 circumstances support.

6 **VI. BALANCING ANALYSIS DEMONSTRATES THAT THIS PROJECT HAS**
7 **DIMINISHED AND LIMITED BENEFITS.**

8 As identified above, the EFSEC organic legislation requires the Council to
9 engage in a balancing analysis, ultimately to determine whether there is a “net benefit”
10 to the public interest in approving, in whole or in part, a project subject to EFSEC
11 jurisdiction.

12 On one side is the electric output of the project. SCE touts its project as
13 beneficial based on the maximum output of the wind turbines and solar arrays, its
14 “nameplate capacity.” However, “nameplate” capacity is just for show, as it is not a true
15 indicator of value or benefit, particularly for the wind turbines element of the project.²⁶
16 This is true for several reasons.

17 First, because the wind does not blow continuously and there are long periods of
18 time they do not produce their nameplate (advertised) rating. In fact, the evidence
19 confirms that capacity projections for the project “are much lower than modern wind
20 farms are producing in the solid wind zones across the United States.” See the
21 testimony of Richard Simon, Simon Wind, TCC’s wind energy expert, EXH-5501_T_
22 REVISED, page 8.

23 Second, the reality is that wind turbines only produce power when the wind
24 blows. The windiest months are March and April (low electric load months) and the

25 ²⁵ Nor were any of the redlines in the UASC included in the DEIS analysis of possible alternatives.

26 ²⁶ TCC requested that the Applicant provide meteorological data for the site to assess the potential of
27 the site for wind turbines, but that request was denied by the PALJ.

1 least windy season is summer (with high air conditioning loads). *Id.* at page 9.

2 Third, and in addition to the foregoing, regardless of whatever the averages may
3 be for wind speeds, and hence what average electric output might be, at any instant in
4 time when power is needed to meet demand, *the wind might not be blowing*. In
5 common parlance, wind is a “fickle” resource. In technical parlance, a wind resource is
6 not “dispatchable;” it cannot be turned on when a January cold spell hits the region to
7 help with “load.”

8 Fourth, particular to this proposal and partly as a result of the factors described
9 above, this project is overbuilt because of the limits on transmission capacity.

10 In addition, though the ridgeline on the north side of project is claimed as a “high
11 resource area,” the rows of upwind turbines will create “wake losses” to the downwind
12 turbines, reducing their value. EXH 5503_R (Richard Simon testimony).²⁷ Moreover, the
13 existing Nine Canyon project is downwind of turbines on the eastern end of the project,
14 but the Applicant has not “estimated the impacts of wake turbulence from the proposal
15 on that project.” Tr. 1475:15-21.

16 On the “benefit side” of the balancing equation, the proposal is a marginal
17 project, in a marginal location, with limitations due to the proximity of the turbines to
18 each other and the transmission limitation that the project cannot “inject” all of the power
19 (that might be generated) into the BPA transmission grid. In the next section of this
20 brief, we discuss the serious and substantial negative impacts of the proposal on the
21 “detriment side” of the balancing test. This analysis demonstrates that the impacts of the
22 project to esthetic resources, the environment, recreation, fire safety, property values
23 and the local economy outweigh the benefits.

24
25
26
27 ²⁷ Mr. Simon testified that the existing, but smaller Nine Canyon wind project, may be subject to “a
28 significant wake loss” because winds to it are blocked by the current project. EXH-5503_R, page 4.

1 **VII. BALANCING ANALYSIS INDICATES SIGNIFICANT HARM TO THE**
2 **ELEMENTS AND VALUES THAT EFSEC IS REQUIRED TO PROTECT.**

3 The other side of the balancing analysis that the Council must consider in
4 determining whether a “net benefit” will result from a proposal is consideration of
5 elements and values the Council is required to enhance or protect. As listed in Section
6 II of this Brief, these include visual/esthetic resources, environmental values, wildlife,
7 recreation, air quality, traditional tribal cultural issues and water supply, as provided in
8 RCW 80.50.010. In this proceeding, the Council will also consider zoning issues
9 (conditional use criteria), property values and tourism. See PHO#2, page 2. Cross-
10 state comparisons are not appropriate for the Council in this analysis; as stated in the
11 *Whistling Ridge* adjudication:

12 We do not find support in the record for the assumption that forestlands are by
13 definition more worthy of protection than the shrub steppe lands in Eastern
14 Washington.

14 *Whistling Ridge* Order 868 at page 27.

15 As will be seen, when detrimental aspects are included in the statutory balancing
16 analysis, the proposal does not produce the “net benefit” required for approval.

17 These detrimental elements, linked to required elements of Council review, are
18 listed below.

19 **7.1. Project Size, Scope and Scale.**

20 The sheer size of the project is hard to grasp. SCE proposes a 25-mile-long
21 string of multiple rows of wind turbines following the ridgelines of the Horse Heaven
22 Hills, generally parallel to I-82 and communities from Benton City past Kennewick,
23 where it will impact more than 300,000 residents and visitors. Richard Simon, TTC
24 wind energy expert²⁸ concludes – contrary to the Poulos testimony – that no existing

26 ²⁸ As described in his resume, Mr. Simon has sited or performed due diligence on more than
27 35,000 MW of operating wind turbines, about 15 % of the installed capacity in the United States. See
28 EXH-5502_T.

1 wind farm in the West impacts more nearby residents than the Horse Heaven project.
2 EXH-5501_T_REVISED. The unrelenting esthetic impacts of this linear project on a
3 large population are unique to this project; there are few 1000 MW wind farms in
4 operation: the largest in Washington is only 343 MW. EXH-5501_REVISED.

5 The overwhelming size of the HHWF presents substantial detrimental impacts.

6 **7.2 Visual and Esthetic Impacts.**

7 7.2.1 Introduction. The visual impacts from this project and its esthetic
8 degradation are unequalled in this state, or other nearby states. This is due to five
9 factors. First is the very size of the proposal. It is more than twenty five miles long,
10 presenting a continuous and unbroken line of turbines over the entire distance. Second,
11 the impact of the turbines is magnified because there are several lines or rows of
12 turbines which overlap and thus appear larger in mass. Third, the wind turbines are
13 “skylined,” prominent because they are set along a prominent ridge line rising above
14 Badger Canyon. The proposed wind turbines are visible for 25 miles and from 86
15 percent of the area within five miles of the ridgelines, and 81 percent within ten miles.
16 Fourth, more than 300,000 people live in this viewshed, orders of magnitude more than
17 are subject to view and esthetic impacts from any other wind or other renewable project
18 in Washington. Fifth, the landscape impacted, the Horse Heaven Hills, are iconic
19 features in the community. Though the valley below is densely populated, the Horse
20 Heaven Hills are substantially devoid of development of any kind, including the large
21 homes frequently built to take advantage of the views available. The feature is a
22 testament to Benton County’s plan and zoning regulations, which require conservation
23 of these “visually prominent vegetated steep slopes and elevated ridges that define the
24 Columbia basin landscape.”

25 7.2.2 The Broad Benefits of Visual and Esthetic Resources. Visual impact
26 assessment has long since matured from a simple proposition that beauty is in the eye
27 of the beholder. Scenic vistas and their preservation are now firmly established as
28

1 providing real and measurable impacts to communities. Dean Apostol, TCC’s visual
2 expert, has more than forty years experience in assessing visual impacts and has even
3 written a book on the visual impacts of renewable energy projects, The Renewable
4 Energy Landscape (Routledge Press, 2016). See his resume at EXH-5101_T. Mr.
5 Apostol has experience before this Council, having testified in the *Whistling Ridge*
6 proceeding, where his testimony informed the decision to remove 15 of the most
7 prominent turbines from the proposal.

8 In his written testimony, EXH-5102_T, Mr. Apostol references growing scientific
9 consensus that scenic views, and their preservation, provide real human benefits,
10 including a sense of identity, spirituality and calming, the stimulation of imagination, a
11 sense of place and psychological health. See pages 3-4. These are the “socio”
12 elements of the obligation to consider “socioeconomic impacts. Mr. Apostol confirmed
13 these beneficial impacts of visual resources in response to Councilmember Young’s
14 question at Tr. 1417:22 to 1420:6. Some of the benefits are more tangible, supporting
15 economic development and tourism and the enhancing of property values. Page 5.

16 In preparation for his testimony, Mr. Apostol reviewed the visual impact reports
17 prepared for the proposal (EXH-5102_T, pages 2-3) and conducted a site visit.
18 Regrettably, he found that SCE’s reports were not consistent with long-established
19 standards for visual impact assessment, listing six primary deficiencies on pages 4-5 of
20 his testimony.

21 7.2.3 Legal Standard for Consideration of Visual and Esthetic Values in
22 EFSEC Proceedings. The criteria in the EFSEC statute regarding esthetic impacts are
23 critical to the Council’s analysis.

24 RCW 80.50.010 directs the content of Council decisions: “Such action will be
25 based on these premises;” then setting forth six specific premises as the basis for
26 action. (Emphasis supplied). The second of these is:

27 (2) To preserve and protect the quality of the environment; *to enhance the*
28

1 *public's opportunity to enjoy the esthetic and recreational benefits of the air, water*
2 *and land resources; to promote air cleanliness; to pursue beneficial changes in*
3 *the environment; and to promote environmental justice for overburdened*
4 *communities.*

4 (Emphasis supplied.) The highlighted clause has been a part of the legislative direction
5 to the Council since the EFSEC's creation in 1970. See 1970 ex.s. c 45 § 1.²⁹ The
6 dictionary definition of the verb "enhance" is to "intensify, increase or further improve the
7 quality, value or extent of." See Oxford Languages Dictionary.

8 The legislature is clear that the provisions of Section 2 are mandatory by the
9 inclusion of the mandatory verb "will," not "may" or "should." Further, the action-forcing
10 provisions of Section 2 contain different Council obligations. The Council is "to preserve
11 and protect" "the quality of the environment;" the Council is "to promote air cleanliness"
12 and "environmental justice;" the Council is "to pursue beneficial changes in the
13 environment." But the Council must "enhance the public's opportunity to enjoy the
14 esthetic and recreational benefits of the air, water and land resources." Indeed, this is
15 the only place the verb "enhance" is found in RCW 80.50.010, which otherwise applies
16 verbs such as "avoid," "assure," "encourage," "promote" and "pursue." RCW 80.50.010
17 was extensively amended in the 2022 Legislative Session, including additions to the
18 "premises" section, but the phrase containing the obligation to "enhance" the "esthetic"
19 benefit of the "land resources" was not changed. Law 2022, chapter 183, Paragraph 1.³⁰

20 Our courts have fully recognized the difference in the verbs "protect" and
21 "enhance" in review of environmental legislation. In *Swinomish Tribal Cmty. v Hearings*
22 *Bd.*, 161 Wn 2d 415 (2007), the court dealt with an interpretation of the Growth
23 Management Act, Chapter 36.70A (GMA) by the Growth Management Hearings Board

25 ²⁹ The 1970 legislation created the "Thermal power plant site evaluation council." See Section 3 of
26 1970 ex.s. c 45 § 1.]

27 ³⁰ The last clause in RCW 80.50.010(2), to "promote environmental justice for overburdened
28 communities" was added during the 2022 Session.

1 (Growth Board). As stated by the Court: “At the core of the Board's decision was its
2 interpretation of the word "protect," as it appears in RCW 36.70A.172(1).” 161 Wn.2d at
3 427. Appellant Swinomish Tribal Community claimed that: “where an area is already in
4 a degraded condition, it is not protected unless that condition is improved or enhanced.”
5 *Id.* But, the Court found that: “The legislature has also recognized that "protect" has a
6 different meaning than "enhance.” *Id.* at 429. The Court concluded that:

7 As the foregoing illustrates, the legislature has not imposed a duty on local
8 governments to enhance critical areas, although it does permit it. Without firm
9 instruction from the legislature to require enhancement of critical areas, we will
not impose such a duty.

10 *Id.* at 429-30.

11 The decision of the Court in *Swinomish*, and the distinction between “preserve”
12 and “enhance” was also reviewed and affirmed in *Whatcom Cnty., Corp. v Hirst*, 186
13 Wash 2d 648 (2016). There the Court considered the argument that GMA requires
14 counties to “enhance” water quality based on a “general declaration of fundamentals”
15 included in GMA’s planning goals. 186 Wn.2d at 689. The Court concluded that:
16 “Nothing in this plain language suggests that GMA goals impose substantive
17 requirements on local government.” *Id.* The court rejected the argument and affirmed its
18 decision in *Swinomish*:

19 There, we considered the Swinomish Tribe's argument that the requirement to
20 “protect” critical areas under the GMA requires measures to “enhance” because
21 “where an area is already in a degraded condition, it is not being protected
22 unless that condition is improved or enhanced.” *Id.* at 427, 166 P.3d 1198. Further
23 In rejecting that argument, we recognized that the term “protect” may encompass
24 an option of enhancement but that the term itself does not require enhancement.
25 *Id.* at 429, 166 P.3d 1198. We also considered the legislature's deliberate use of
26 the terms “protect” and “enhance” throughout the GMA, finding that “[i]n several
27 sections of the GMA, the legislature *allows* enhancement of natural conditions
28 under the GMA without *requiring* enhancement.” *Id.* We have acknowledged that
RCW 36.70A.020 lists the enhancement of water quality as a goal of the GMA,
see *id.* but have never held that local governments are bound by these goals in
addition to the enumerated requirements of the Act. See *Quadrant Corp.*, 154
Wash.2d at 246, 110 P.3d 1132. We adhere to that holding here—the GMA does

1 not require counties to “enhance” water quality.

2 186 Wn.2d at 689-90 (emphasis in original).

3 In contrast, RCW 80.50.010(2) makes a clear distinction between “protect” and
4 “enhance” in its first two clauses. The “quality of the environment” must be “preserved
5 and protected” but does not require “enhancement.” However when it comes to “the
6 public’s opportunity to enjoy the esthetic and recreational benefits of the air, water and
7 land resources,” the Legislature has proved its “firm instruction . . . to require
8 enhancement” by use of the verb “enhance.” Indeed, the Legislature has made the duty
9 to “enhance” esthetic benefits a “premise” for Council action, not a mere goal or
10 exhortation.³¹ The Applicant bears the burden of proof that its proposal “enhances” the
11 public’s opportunity to enjoy esthetic benefits found in the Horse Heaven Hills. In its
12 recommendation, and the Governor in his final decision, there must be clear
13 documentation that the Applicant’s project meets the enhancement criteria.

14 A review of the proposal’s dramatic despoliation of the public’s opportunity to
15 enjoy the esthetic benefits of views of the Horse Heaven Hills indicates the project fails
16 to demonstrate compliance with RCW 80.50.010(2). As such the proposal as currently
17 configured must be denied.

18 7.2.4. Analysis of esthetic and visual benefits. As indicated in the statute,
19 the inquiry starts with an assessment of the “public’s opportunity” to enjoy esthetics and
20 a determination of what the public in the impacted area considers as important views.³²
21 EXH-5102_T at page 10. As Mr. Apostol described in his testimony, any visual
22 assessment must begin with this same consultation and interaction with the community.

24 ³¹ Much as the word “premise” is not defined in RCW chapter 80.50, as “protect” was not in the GMA,
25 *Swinomish* provides that: “We accord the word its common meaning and, where necessary, consult a
26 dictionary.” 161 Wn.2d at 428. The Merriam-Webster Dictionary defines a “premise” as “something
27 assumed or taken for granted.”

28 ³² The Oxford Dictionary states that there is no difference in meaning between “aesthetic” and
“esthetic,” though the former spelling is more common to Europe and the Commonwealth.

1 However, Mr. Apostol's review of the applicant's materials revealed no such effort. He
2 notes that the Applicant selected 13 "key observation points" for viewing the completed
3 project, but finds no reasons for picking those points and no documented
4 communication with the public as to whether they would consider the selected
5 "observation points" as "key" to the community. *Id.*, at 11-12. The Applicant's proffered
6 witness on visual impacts, who did not prepare the section of the ASC on esthetics,
7 testified that other than look at written comments, no public outreach effort was
8 undertaken. Tr. 1360:13-17. Nor did she testify how the KOPs were chosen.

9 The Applicant didn't know, and didn't care, what the public thought.

10 With substantially all local governments, business and community organizations
11 opposed to the project (see below), Scout didn't want to acknowledge the deep public
12 resistance to the desecration of the esthetic benefits of the Horse Heaven Hills by its
13 231 wind turbines "skylined" on them.

14 Moreover the "public" impacted by this proposed wind turbines project was not
15 just a few nearby farm houses and residences, as in the Desert Claim and Kittitas Valley
16 projects, but thousands of residents of the Tri-Cities community, one of the fastest
17 growing metropolitan areas in Washington. EXH-5102_T at 19. Because the Applicant
18 has chosen not to group or consolidate its wind turbines, but to stretch them out in
19 linear fashion, creating continuous rows of over 25 miles, the project has become an
20 esthetic impact to more than 100,000 residents and businesses in the Tri-Cities who live
21 within six miles of the north boundary of the project. EXH-5305_R_RECON at page 2.
22 As shown on the charts in Mr. Krupin's exhibit, the population impacted by the
23 Applicant's project visually impacts, by orders of magnitude, more people than any
24 other wind project in the state. *Id.* at 2-8.

25 The topography of the Horse Heaven Hills, with an elevated ridgeline, means
26 that these continuous rows would appear as a tall fence line, fully visible out to ten miles
27 or more. *Id.* at 13. The truth is that the Applicant could not have created a greater
28

1 esthetic degradation if they tried.

2 Though the Applicant carefully and deliberately avoided any kind of public
3 involvement on how to configure its wind turbines plan,³³ the UASC admits that the
4 community, through its local government, has identified the importance of the Horse
5 Heaven Hills as a visual and esthetic resource. As page 4-59 of the UASC
6 acknowledges:

7 Scenic views designated in land use plans adopted by federal, state, or local
8 government entities typically formalize a widely recognized visual value of a
9 resource and the public's desire to protect that value (e.g., a designated
10 wilderness or scenic area). Where such official designations exist, the public
11 expectation may be that the view at the location or of the identified resource will
12 be preserved, and the viewer concern is considered high.

11 (Emphasis supplied.) The UASC further identifies that Benton County, in its 2020
12 Comprehensive Plan (enacted before the original application with this Council) adopted
13 provisions to protect the Horse Heaven Hills and ridge lines impacted by this proposal,
14 including the following:

15 • PL Goal 3: Conserve visually prominent naturally vegetated steep slopes and
16 elevated ridges that define the Columbia Basin landscape and are uniquely a
17 product of the ice age floods.

18 * * *

19 • Policy 5: Consider the preservation of the ridges and hillside areas through
20 various development regulations.

21 This designation by Benton County “formalizes a widely cognized visual value” of the
22 esthetic benefits of the Horse Heaven Hills. As discussed below, the proposal placing
23 25 miles of rows and rows of wind turbines along “visually prominent” slopes is a slap in
24 the face to the public opportunity to enjoy these esthetic resources.

25 The record further indicates that Benton County has followed through on its
26 Comprehensive Plan goals to “preserve the ridges and hillside areas through various

27 ³³ Mr. Apostol pointed out that there was little to no public outreach to the community by the
28 Applicant regarding the visual impacts to the community. Tr. 1427:2-21.

1 development regulations.” The County has zoned these areas for agriculture and does
2 not allow residential subdivisions. Have the County planning and zoning efforts kept the
3 Horse Heaven Hills devoid of visual and esthetic impairments? The answer is yes.
4 Even the Applicant’s proffered visual and esthetic expert had to agree, based on the
5 photograph in the visual impact assessment, that none of the development that often
6 trashes the visual and esthetic benefit is found on the Horse Heaven Hills.³⁴ She
7 testified that the Horse Heaven Hills do not have a single place where a residence or
8 farmhouse can be seen, based on the Applicant’s own photographs. Tr. 1340-1342.
9 Except for the Nine Canyon project at the east end, the entire sweep of the 25-mile
10 project area has no significant visual impairments, despite the large urban communities
11 located in the valley on both sides of the Yakima and Columbia Rivers.

12 Not only has Benton County made visual and esthetic preservation of the Horse
13 Heaven Hills a priority, they are joined by substantially all community organizations, with
14 varied recreational, residential and commercial interests. See a list of some such
15 entities at pages 36-37. The UASC’s admission that “viewer concern is considered
16 high” is a tongue-in-cheek understatement.

17 What will be the impact of the 25-mile wind turbines project on these resources?
18 Though Applicant’s 13 “key observation points” were not selected with any documented
19 criteria, the selected KOPs do document that the project does not “protect” these views,
20 much less “enhance” them. Rather, the project desecrates the “public’s opportunity to
21 enjoy the “esthetic benefit” of the unique land forms of the Horse Heaven Hills.

22 The Council need go no farther than Appendix 3.10-2 of the DEIS, SWCA’s 2022
23 Final Visual Impact Assessment (FVIA) for the analysis of these impacts. On Table 4, at
24 pages 17-21, assesses “ Key Observation Point/Viewpoint Impact Table Turbine Option
25

26
27 ³⁴ Mr. Krupin’s testimony, supported by photographs, confirms that “a great deal of the Horse
28 Heaven Hills is untouched.” EXH-5302_T_RECON at 33-34.

1 1" which described the 244 wind turbine option that is considered "ideal" by the
2 Applicant's project manager Dave Kobus. For the Council's ready reference, Table 4 is
3 reproduced as Appendix B to this brief.

4 While detailed review is necessary here, Table 4 of the FVIA provides a summary
5 of esthetic impacts from the viewpoints selected by the Applicant. Of significance, each
6 of the KOPs with "residential" or "recreational" viewers were rated on the "Level of
7 Visual Contrast" as "Strong" and for the Magnitude of Impact as "High,"³⁵ both the
8 maximum levels of impact. See KOPs 2, 3, 5, 8, 10, 11, 13.³⁶ The same "High" impact
9 is identified for the "Dispersed Residences" near the site and the Horse Heaven Hills
10 Recreation Area. FVIA at 21. Certain areas of Benton City would also have Strong
11 visual contrast levels of magnitude if the view point was moved just a short distance.
12 See KOP 9 at FVIA page 9.

13 Repeated descriptions of impacts from residential or recreational viewpoints
14 demonstrate why the "magnitude of impact" is rated "High:"

- 15 • *The proposed turbines would dominate views from this location, approximately 5*
16 *miles away, as a large portion of the viewshed would include moving wind*
17 *turbines.*
- 18 • *The series of proposed skylined wind be highly prominent in the view, resulting*
19 *in high, long-term impacts on views particularly where views of multiple wind*
20 *turbines would overlap and appear larger in mass.*
- 21 • *Views of the Project in open, rolling hills would be unobstructed.*

22 KOP tables, FVIA pp. 17-21 (emphasis supplied). These impacts occur even though the
23 KOPs in question are substantial distances from the proposed wind turbines:

24 ³⁵ "High" in reference to impacts to "Landscape character" is defined in the FVIA (page 12) as
25 follows:

26 **Landscape character:** landscape would appear to be strongly altered and Project components
27 would dominate an intact visual setting. Project components would introduce form, line, color,
28 texture, scale, and/or movement not common in the landscape and would be visually dominant
in the landscape (strong contrast).

³⁶ In contrast, the FVIA rates visual impacts of the major solar arrays as "negligible." FVIA at 26-28.

- 1 • Residential KOP 2 High Impacts: 3 miles
- 2 • Recreation KOP 3 High Impacts: 2.5 miles
- 3 • Recreation KOP 5 High Impacts: 4.7 miles
- 4 • Residential KOP 8 High Impacts: 3.6 miles
- 5 • Residential KOP 11 High Impacts: 2.0 miles

6 *Id.*

7 The “Combined Impacts” reference at page 30 of the FVIA confirms that the wind
8 turbines would annihilate the “*public's opportunity to enjoy the esthetic and recreational*
9 *benefits of the land,*” not enhance it. The FVIA says: “the combined impacts of the
10 different Project components would result in a landscape character dominated by
11 large-scale energy infrastructure, including wind turbines, . . .” FVIA at 30.³⁷ (Emphasis
12 supplied) .This section of the FVIA continues:

13 The existing setting does include a smaller wind farm and two existing
14 transmission lines, but the scale of the Project and prominence of the proposed
turbines would result in high, long-term impacts to the existing landscape.

15 *Id.* (emphasis supplied). Moreover:

16 Since these impacts occur on viewpoints beyond the neighboring receptors,
17 these effects would be regional in extent. In summary, activities during operation
18 of all components of the Project would result in high, long-term, unavoidable,
regional impacts on visual resources.

19 *Id.* (emphasis supplied).

20 Given the conclusions of “high,” “long term,” “regional impacts” of visual
21 resources, what steps has the applicant taken to avoid these impacts? The answer is
22 essentially nothing. The UASC section on aesthetic impacts uses the same 13 KOPs
23 that SWCA did in the FVIA (see pages 4-67 to 4-75), essentially affirming the findings of

25 ³⁷ The Applicant frequently refers to the existing, but older Nine Canyon project as have existing
26 visual impacts. The FVIA notes the Nine Canyon turbines as “similar in appearance” but states that the
27 HH project’s “proposed turbines would be larger and out of scale with the existing landscape.” FVIA at
28 17, referencing KOP #1. This is visually depicted in the comparison of “Existing Conditions” with “Project
Simulation Option 1” for KOP #1 found at PDF page 57 of the FVIA.

1 the FVIA of substantial impacts to viewers at page 4-90. On the last page of the visual
2 analysis (pages 4-96 to 4-97), it provides Section 4.2.3.4 entitled “Mitigation Measures,”
3 which lists measures that would be incorporated “into the Project’s design to reduce the
4 Project’s potential for aesthetic impacts.” These “measures” include keeping dust down,
5 providing a “clean-looking facility free of debris,” providing turbines that “will be uniform
6 in design” and keeping “security lighting off when not required.” *Id.* at page 4-96.³⁸ But
7 there is no mention of removing or relocating any wind turbines to respond to the
8 findings of FVIA that the project will result in “high, long-term, unavoidable, regional
9 impacts on visual resources.” In short, the Applicant doesn’t care about esthetic impacts
10 to the community.

11 The Applicant’s indifferent approach to the impacts its project will have on the
12 community is reflected in the testimony of its visual expert, Brynn Guthrie. She was
13 asked if she “presented any proposals or worked on any proposals that would involve
14 mitigation of visual impacts?” Tr. 1363:13-15. She responded that the applicant made
15 these decisions, not her:

16 I’m aware of opportunities that the applicant is pursuing and exploring to reduce
17 impacts, including visual, but those are decisions that are coming from the
18 applicant.

19 Tr. 1363:16-19. Though presented as applicant’s expert on visual and esthetic impacts,
20 she testified she made no recommendation to avoid visual impacts nor ran any
21 simulations “that would indicate the impact of removing these turbines.” Tr. 1363:20 to
22 1364:4.

23 In the middle of the hearing, the Applicant presented the Moon Memo, which was
24 actually written by Project Manager Dave Kobus and contained an eleventh-hour-

25
26 ³⁸ During cross-examination, it was disclosed that the visual assessment material in the UASC was
27 not written by Ms. Guthrie, but by a land use planner, Shaun Brooks, whom Ms. Guthrie admitted lacked
28 her “credentials in visual analysis.” Tr. 1356:8-23.

1 attempt to address impact mitigation (EXH-4014_X)³⁹: 13 turbines (in total) were
2 removed from the project to bring the overall count to 231. According to Mr. Kobus, the
3 turbines were removed to “reduce visual impacts to resources of concern to local
4 residents and Yakama Nation.” See pages 3 and 4. However, as described above, the
5 Applicant’s agreement with the Department of Defense only allowed 235 turbines to
6 begin with, so the net reduction was just four turbines. Moreover, during cross-
7 examination, Ms. Guthrie admitted that she did not participate or provide opinions
8 regarding which wind turbines should be removed in the Moon Memo and that she didn’t
9 know who made the decision to remove the turbines, but she “assumed that it came
10 from the applicant.”⁴⁰ Tr. 1362:7-19. Nor was the Applicant’s energy consultant, Greg
11 Poulos, asked to “design a layout that would maximize the protection of views and visual
12 resources.” Tr. 1451:3-4.

13 Critically, when asked whether the removal of the 13 turbines had a material
14 impact, Ms. Guthrie said:

15 Q. Okay. And is it -- is it your opinion that the removal of the 13 turbines
16 significantly avoids or mitigates the visual impact of the project?

17 A. No.

18 Tr. 1363:2-5. Mr. Apostol confirmed that removal of these turbines doesn’t change the
19 visual/esthetic impact. Tr. 1409:9-1410:6.

20 Far from a conscious attempt at mitigation informed by the expertise of Ms.
21 Guthrie, the removal of the 13 turbines was a superficial ploy to demonstrate attention to
22 impacts. Even in her prepared supplemental testimony, Ms. Guthrie concedes that it is
23 up to the developer “to make final design decisions.” EXH-1065_S_REVISED at 3:23-
24 26. The only serious effort to address mitigation came from TCC ‘s visual expert, Mr.

25 ³⁹ Though Ms. Guthrie was supposedly the Applicant’s scenic expert, she is not listed as a recipient
26 of the Memo. See page 1.

27 ⁴⁰ Nor was the Applicant’s energy consultant, Greg Poulos, contacted about which turbines could be
28 removed. Tr. 1449.

1 Apostol. He prepared EXH-5906_R, which addressed how mitigation of impacts could
2 be approached by increasing the distance between the viewer and the turbines. This
3 would involve removing some of the northern turbines.

4 The record indicates no serious effort to “protect or preserve” esthetic values,
5 much less any effort to comply with the Legislative mandate “to enhance the public’s
6 opportunity to enjoy the esthetic and recreational benefit of the air, water and land
7 resources.” Indeed, nowhere in the UASC or the Applicant’s written testimony is the
8 statutory mandate even mentioned.⁴¹

9 The esthetic and visual impacts of the wind turbines are plainly substantial and
10 adverse, the opposite of enhancement.

11 7.2.5 Summary of visual and esthetic impacts. In summary, despite the
12 findings that the HHWF would result in “high, long-term, unavoidable, regional impacts
13 on visual resources,” the Applicant takes no steps to address esthetic and visual
14 impacts, much less to “enhance” these resources as required by RCW 80.50.010(2).
15 Absent compliance with the statutory mandate, the proposal as presently configured
16 must be denied.

17 **7.3 Wildlife Impacts.**

18 Testimony has been provided by witnesses from the Yakama Nation on wildlife
19 impacts. Early prehearing orders provided that TCC and the YN should coordinate their
20 testimony. Accordingly, YN has taken the lead in this area, though TCC continues an
21 intense interest in the protection of at-risk and special status wildlife, especially the

22
23 ⁴¹ The Legislative creation of obligation to “enhance” in RCW 80.50.010(2) is in contrast to a similar
24 provision in the Shorelines Management Act, RCW 90.58.020 adopted in 1971, just a year after the
25 EFSEC statute:

26 In the implementation of this policy the public’s opportunity to enjoy the physical and aesthetic
27 qualities of natural shorelines of the state shall be preserved to the greatest extent feasible
28 consistent with the overall best interest of the state and the people generally.
(Emphasis supplied.) “Aesthetic qualities” of natural shorelines only require “preservation” and that
subject to the qualifier that such preservation is only enforced “to the greatest extent feasible.” consistent
with other values. No such qualifiers are found in RCW 80.50.010(2) requirement to “enhance” esthetic
benefits.

1 beautiful Ferruginous Hawk, pronghorns and multiple bat species. All will be threatened
2 by the massive wind turbines and solar project.

3 As mentioned in Section 7.1 of this brief, the proposal is unique because of its
4 vast size, stretching more than 25 miles in rows of spinning turbines. The wind turbines
5 themselves are a wall of moving blades the height of the Smith Tower in Seattle,
6 spinning night and day. As with the esthetic impacts of the turbines, the Applicant offers
7 only token mitigation - the removal of four turbines - to help project wildlife and
8 threatened bird populations. The mitigation proposed is not even a dent, much less a
9 hole in the long wall impacting wildlife. In its supporting letter for TCC, the Lower
10 Columbia Basin Audubon Society recommends that “wind turbines should not be sited
11 within a **two mile radius** of active and traditional Ferruginous Hawk nesting sites.”
12 EXH-5303_T (emphasis in original).

13 TCC joins with the Yakama Nation in their brief and in their objections to this
14 project based on unmitigated impacts to wildlife.

15 **7.4 Yakama Nation Cultural Resources.**

16 TCC acknowledges and recognizes the substantial concern of the YN to impacts
17 on their cultural resources and history. The visual impacts of the project, discussed
18 above at Section 6.2, do not just include the residential, recreational and commercial
19 interests within the Tri-Cities; the “public’s opportunity to enjoy the esthetic benefits of
20 the land” includes the Yakama Nation as much as other residents of the community.
21 The view and vistas of the Horse Heaven Hills, largely spared until now from residential
22 subdivisions and luxury homes, have special meaning to Native Americans. The SWCA
23 conclusion that the project will result in “high, long-term, unavoidable, regional impacts
24 on visual resources” impinges on tribal values as much as other residents.

25 TCC joins with the YN in the opposition to the project based on impacts to cultural
26 resources.

1 **7.5 Land Use Codes.**

2 As described above, the Applicant has the burden to demonstrate compliance of
3 the project with the conditional use permit criteria under the Benton County code.

4 Order 883 also sets out the standards that must be met for a conditional use
5 permit at page 6, Paragraph 7:

6 (a) Is compatible with other uses in the surrounding area or is no more
7 incompatible than are any other outright permitted uses in the applicable zoning
8 district;

9 (b) Will not materially endanger the health, safety, and welfare of the surrounding
10 community to an extent greater than that associated with any other permitted
11 uses in the applicable zoning district;

12 With the “permitted uses” in the County code limited to agricultural and farm support
13 facilities, along with single family residential uses, the overall project will be clearly
14 “more incompatible” with low impact rural uses and will impact the “health, safety and
15 welfare of the surrounding community” more than the permitted uses. See BCC
16 11.50.040(d).

17 Though the DEIS correctly identifies the conditional use standard, it states that
18 the prior issuance of a conditional use for the Nine Canyon Wind Project meets the
19 standard. DEIS at Appendix 3.8-1 (Final page). However the code explicitly requires a
20 conditional use to be “no more incompatible than any other outright permitted uses in
21 the applicable zoning district” (emphasis supplied). The Nine Canyon project cannot be
22 used to demonstrate compatibility because it is not an “outright permitted use,” but
23 another conditional use like the HHWF.

24 In this regard, SCE has not demonstrated that its conditional use proposal (231
25 large turbines, stretching out along 25 miles of the Horse Heaven Hills, with acres of
26 solar arrays and large lithium-ion batteries) is no more impactful than the agricultural
27 uses permitted outright. Indeed, these farmlands were given special significance by
28 RCW 36.70A.177, which requires local governments to pursue “innovative zoning

1 techniques” designed to *conserve* agricultural lands and “encourage the agricultural
2 economy.” Indeed, the solar arrays and BESS proposals alone are clearly far beyond
3 the health, safety and welfare impacts of simple farms and agricultural support facilities.
4 The conditional use criteria are not met.

5 The FVIA addresses the Benton County Comprehensive Plan planning goals at
6 page 31. While it concluded the proposal might “technically comply” with the planning
7 goals,” the FVIA concedes:

8 The Horse Heaven Hills and northern ridgeline would, however, become
9 dominated by energy infrastructure, with potential long duration views from areas
10 within the communities between Benton City and Kennewick. These impacts on
11 views would be most intense where unobstructed views of a large number of
12 turbines occur.

13 *Id.*

14 As described above, application of Comprehensive Plan and zoning policies has
15 resulted in the preservation of largely natural scenic vistas, free of the hodgepodge of
16 residential subdivisions and estate-style houses that dominate such ridges in other
17 communities. The proposal stands these efforts on their head, undoing the efforts to
18 preserve and enhance the area’s natural setting and esthetic resources. The impacts
19 and risks provide additional weight to the balancing test that tips against approval of the
20 project.

21 TCC joins with Benton County in their objections to the project. The project as
22 presently configured must be denied.

23 **7.6 Fire Fighting.**

24 The evidence describes wildfire frequency near the project in this near desert
25 landscape. These fires, in relation to the proposed turbines, are documented on EXH-
26 5307_R, with western fire history on pages 2 and 4 and eastern history on pages 3 and
27 5. The perimeters of these fires are shown on pages 6-10.

28 Kahyrn Campbell, who owns the Analare Winery and resides on the McGee
grade just south of Benton City, testified about a large fire that “came roaring over the

1 top of McGee grade” toward her house, which occurred even while this adjudication was
2 underway (June 13, 2023). EXH-5800_R. She was on her property during the fire and
3 described the fire suppression effort:

4 “The heat and wind were so strong that the fire team had to evacuate and all that
5 could save us were helicopters and planes dropping water and retardant above.”

6 *Id.* at 2. Her photographs of the fire (and its aftermath) document the event and show
7 large tanker aircraft deploying suppressants. See EXH- 5801_R.

8 Ms. Campbell’s testimony was collaborated by Lonnie Click, the fire chief of
9 Benton County Fire District #1, with jurisdiction over fire activity on the project site.
10 EXH-5631_R. He describes the “significant amount of wildfire on an annual basis” and
11 the use of aerial resources to effectively fight these fires. *Id.* at 2. He pointed out that
12 “ridgelines are one of the best locations for fire containment lines” but that “with
13 installation of wind turbines ... it may make it difficult to create the optimal wildfire
14 containment line.” *Id.* at 2. He also provides photographs of aircraft working the June
15 23, 2023 fire, emphasizing that: “Obstacles create safety hazards for pilots and they
16 may not be able to fly close enough to be effective.” His supplemental testimony,
17 responding to Chair Drew’s questions, stated: “Aerial firefighting resources have proven
18 to be the most effective method for fighting the fires and preventing damage to
19 properties in the valley below.” EXH- 5912_S at 2.⁴²

20 To be effective in controlling wildfires, these aerial resources must be near the
21 ground or else the drop of retardants will be ineffective. With 500-foot-tall obstructions,
22 firefighting aircraft cannot effectively operate near or above wind turbines. This
23 limitation might be of less importance if the wind turbines were grouped so aircraft could
24 fly around them or the lines of turbines were pushed well back (south) from the

25
26 ⁴² The testimony of Linda Lehman, the Mayor of Benton City (EXH-5822) also provides photographs
27 of the June 23, 2023 fire and the use of aerial resources. See particularly page 6-9 and the City’s
28 recommendations that to: “at a minimum, move Wind Turbines back from ridgelines so that pilots do not
face additional risks of working around Wind Turbines.” *Id.* at 10.

1 ridgelines. But the current proposal would install 25 miles of turbines in several rows a
2 mile or so apart, creating a “no fly zone” in the area where wildfires occur year after
3 year.

4 The confirmed impacts on aerial firefighting and pilot safety posed by the project,
5 especially along the ridgeline, are additional significant negative impacts of the
6 proposal.

7 **7.7 Tourism and Local Economic Development.**

8 WAC 463-60-535 requires “detailed socioeconomic impact analysis” of a project,
9 which identifies “negative impacts” as well as positive ones. “Particular attention” must
10 be given to the impact on “property values” and “the local economy.” Where “a project
11 will have a primary or secondary negative impact on any element of the socioeconomic
12 environment,” the applicant is “encouraged to work with local governments to avoid,
13 minimize or compensate for the negative impact.” *Id.*, Subsection 6. These
14 governments include cities, counties, fire districts, or other special purpose districts. *Id.*

15 With or without TCC’s urging, substantially all local governments, joined by
16 community civic, economic and special purpose districts oppose the project, including
17 the following.

- 18 • **Benton County**
- 19 • **Franklin County** (DEIS Comment #2427 dated January 31, 2023.)⁴³
- 20 • **City of Kennewick** (Public Comment #374 dated April 7, 2021)⁴⁴
- 21 • **City of Benton City** (see EXH-5822)
- 22 • **City of Richland** (Resolution 2023–76 “the interests of the Richland City

24 ⁴³ The first paragraph of Franklin County’s letter described the “strong opposition in our community,
25 approximately 90%” and “the significant harm this project poses to our regional economy and the
26 damage it would bring to our beautiful vistas.”

27 ⁴⁴ Kennewick’s letter notes “it is home to 85,000 residents” and states: “Our community cares about
28 preserving the ridges and skylines that we enjoy, which support our tourism industry.”

1 Council and Tri-Cities C.A.R.E.S are aligned regarding the proposed
2 Horse Heaven Wind Farm Project)

- 3 • **City of West Richland** (DEIS Comment 644: “on behalf of the residents of
4 West Richland, the Mayor and City Council would like to voice our
5 opposition to the Scout Clean Energy’s Horse Heaven Wind Project.”)
- 6 • **Tri-Cities Association of Realtors** (1200 members “in strict opposition to
7 Scout Clean Energy’s intent to compromise and exploit our homes and
8 local resources.”)
- 9 • **Visit Tri-Cities** (“official destination marketing organization for the Tri-Cities”)
- 10 • **The Port of Pasco**, Resolution No. 1550 (March 25, 2021), Public Comment
11 #274⁴⁵
- 12 • **Tri-Cities Economic Development Council** (Tri-Dec)⁴⁶
- 13 • **Pasco Chamber of Commerce**, Public Comment #318 (March 29, 2021)⁴⁷
- 14 • **Tri-Cities Regional Chamber of Commerce** (representing 900 businesses in
15 Benton and Franklin Counties)

16 EXH-5303-T (except as noted). These comments are these essence of socioeconomic
17 impacts, as “relating to, or involving a combination of social and economic factors” as
18 defined by Merriam Webster Dictionary.

19 No renewable energy project in the state, whether before EFSEC or a local
20 permitting agency, has generated this degree of opposition. As indicated by their
21 statements, much of this opposition relates to the overwhelming size of the project and

23 ⁴⁵ The Port of Pasco letter states: “ the wide open spaces and largely unobstructed ridgelines are
24 iconic features of the Tri-Cities ice-age flood formed landscape;. . .”

25 ⁴⁶ Tri-Dec Executive Director Karl Dye testified during the hearing of Tri-Dec’s support of possible
26 leases of the Hanford site for solar or other renewable energy facilities. Tr. 815:5-17.

27 ⁴⁷ The letter from the Pasco Chamber says: “Horse Heaven Hills Wind Project could drastically
28 disrupt the unique and scenic vistas in the Tri-Cities area thereby degrading the quality of life and
tourism and economic development opportunities in our region”

1 its visual and esthetic impacts. Many of these interested members of the public explain
2 how the project impacts residential and commercial activity in the community, especially
3 the “local economy.” These community leaders and local governments know their
4 communities best and are in a unique position to express and document the community
5 opposition to this project.

6 TCC’s evidence on impacts in the community indicated how the adverse visual
7 impacts result in negative impacts to the “local economy” and tourism, factors that
8 require consideration under WAC 463-60-535(3)(c), which requires analysis of “overall
9 economic impacts and costs of the project on the economies of the county, the study
10 area and the state.”

11 Another serious and deliberate deficiency is the failure of the Applicant to comply
12 with WAC 463-60-535(6). That section provides that where a project has “a primary or
13 secondary negative impact on any element of the socioeconomic environment” the
14 Applicant should “work with local governments to avoid, minimize or compensate for the
15 negative impact.” Moreover, WAC 463-60-085(1) requires the Applicant to “summarize
16 the impacts to each element of the natural or built environment and the means to be
17 utilized to minimize or mitigate possible adverse impacts during construction, operation,
18 and decommissioning of the proposal.” Despite this clear direction, Applicant has
19 provided no proof of efforts to “avoid or minimize impacts” or to “minimize or mitigate
20 possible adverse impacts.”

21 Related to mitigation of the overwhelming visual and esthetic impacts of the
22 project, the UASC at pages 1-12 and 1-13 mentions only superficial items such as
23 “providing a clean-looking facility” and keeping “security lights off when not required.”
24 *Id.* Also as mentioned above, WAC 463-60-296 requires an: “analysis of alternatives for
25 site, route and other major elements of the proposal.” There is no discussion of
26 relocation or removal of wind turbines to avoid, mitigate, or minimize the socioeconomic
27 impacts of the project. As noted on pages 2-118 to 2-120 of the UASC, there is no
28

1 consideration of any project alternatives, including a smaller or reconfigured site plan.

2 Indeed, the FVIA concedes:

3 Due to the siting and operating requirements for wind turbines, there are limited
4 mitigation measures that would considerably reduce impacts on visual resources,
beyond downsizing the Project to reduce the number of turbines in view.

5 FVIA at 32.

6 The evidence shows the transformation of the lower Yakima Valley over recent
7 years to a focus on wine grape production and wineries. Accompanying these
8 agricultural pursuits has been an exploding tourism industry, with its foundation in the
9 unique sights of natural features of the community, including the Horse Heaven Hills.
10 There are more than a dozen wine tasting rooms, most with outdoor facilities, that would
11 be viewing the dozens of towers in their field of view. See City of Kennewick Public
12 Comment #374.

13 The experts in the economic vitality of the Tri-Cities areas – tourism
14 organizations, chambers of commerce, economic development councils, port districts
15 and real estate groups – recognize the adverse economic consequences and
16 unanimously oppose the project. In turn, these impacts heavily weigh against approval
17 of the project.

18 **7.8. Housing and Property Values.**

19 TCC has asked highly qualified experts to address whether the wind turbine
20 project will impact property values in the community, especially for residents north of the
21 project in rural and urban areas.

22 Kurt Kielisch, president of the Forensic Appraisal Group, has 39 years of
23 appraisal experience and has completed more than 8,435 valuations, is a certified
24 appraiser in several states and is a member of the American Society of Appraisers.
25 EXH-5811_R is a comprehensive report prepared by Mr. Kielisch that not only included
26 a comprehensive review of impact studies (pages 40-165) but also an assessment of a
27

1 specific wind turbine project in Logan County, Colorado comprised of 89 GE 2.8 MW
2 wind turbines with an overall height of about 500 feet (a similar turbine to those
3 proposed for the HHWF: UASC at 2-17.) An important additional finding of Mr.
4 Kielisch's work is that the wind turbines assessed in the prior studies of wind turbine
5 impacts used were of the older, smaller rotor diameter and shorter turbines than the
6 model proposed for the Heaven Hills project. EXH-5812_R at page 167.

7 Mr. Kielisch summarizes the wind farm studies as having a negative impact to
8 value of 15 to 35% for turbines more than one mile from the subject property, carefully
9 noting the turbines studied were smaller than the project under consideration. *Id.* at
10 166-170.

11 The visual and esthetic impacts of the wind turbines informs and confirms this
12 analysis of property values. Unlike other valuation studies, here there is a visual impact
13 report prepared by EFSEC consultants assessing impacts to residential properties.
14 Those studies include "Viewer Sensitivity" analysis which rates the proposal "High" for
15 Residential "Viewer Type" i.e. those who live within the visual study area. DEIS
16 Appendix 3.10-2 (the FVIA) at 8-10. To be rated "High" the landscape "would be
17 strongly altered" and the project "would dominate an intact visual setting." *Id.* at 12. In
18 the actual assessment, the impact is rated "High" due to the fact there will be "high, long
19 term impacts on views." *Id.*

20 The evidence is clear that the despoliation of the scenic vistas of the Horse
21 Heaven Hills will create distinct impacts on property values of dozens of residential
22 communities within the viewshed of the project.⁴⁸ These are essentially permanent
23 impacts to the area.⁴⁹ Even the UASC at 4-60 confirms: "It is assumed, however, that

25 ⁴⁸ The UASC admits project wind turbines are potentially visible from about 86% of the area with five
26 miles of the project and 81% within 10 miles. UASC at 4-45.

27 ⁴⁹ Outside of individual home owners, the Tri-Cities Association of Realtors, with 1200 members,
28 who advocates for "property rights for all homeowners," supports TCC: "for your time and effort

1 local residents are generally familiar with the local landscape and may be more
2 sensitive to changes in views that are important to them.” UASC at 4-60.

3 The Applicant response to testimony that property values would be impacted was
4 Morgan Shook. On cross-examination it was revealed that Mr. Shook was not an
5 appraiser (Tr. 450:12-17) and did not conduct an appraisal of any properties in the area
6 impacted by the wind turbines (Tr. 450:18-23), was not aware of the details of the
7 project or the number of turbines (Tr. 453:9-18), or how many miles of turbines were
8 proposed or the size of the project (Tr. 453:16-18). He has done no on-site research as
9 to preferences of local residents (Tr. 458:18-25) nor did he reach out to the Benton
10 County Assessor to solicit his opinions (Tr. 489:8-14). Though he was defending
11 Section 4.4 of the ASC, he wrote none of it (Tr. 475:21-24) and did not consult any local
12 interest groups regarding property values (Tr. 461:8-11). Mr. Shook’s analysis, lacking
13 any attempt at valuation of individual properties, does not provide useful information to
14 the Council.

15 The evidence plainly supports the conclusion that the high, long-term visual and
16 esthetic impacts to sensitive viewers such as local residents cause depreciation of
17 residential property values from this proposal. This impact is not to just a few nearby
18 homes, but to most residences impacted by the 25 miles of row after row of wind
19 turbines. The impact to property values is both substantial and negative.

20 **7.9 Recreation.**

21 WAC 463-60-535(4) requires a description of the “impacts and relationships
22 cause by the project on “(d) Parks or other recreational facilities.” This includes “plans
23 for . . .mitigating impacts. . . “

24 The location of wind turbines on prominent ridgelines impacts the use of long-
25 established, and highly used, recreational resources. These recreational uses include

26 _____
27 combating this egregious attack on our local homes.” EX-5303_T.

1 hiking, paragliding, birding and sightseeing along substantial natural features that are
2 not found in other parts of Benton County or adjacent areas. Each of these uses will be
3 restricted and negatively impacted by the Project. See EXH-5822, pages 5-6.

4 The discussion above regarding the council obligations of RCW 80.50.010(2)
5 applies here. The statute requires Council decisions: “to enhance the public's
6 opportunity to enjoy the esthetic and recreational benefits of the air, water and land
7 resources; . . .” As with esthetic benefits, “recreational benefits” are not to be just
8 “preserved,” “protected,” “promoted,” “encouraged” or “pursued,” but “enhanced.” The
9 special call-out of recreational benefits must be implemented in Council decision
10 making.

11 The Applicant’s visual analysis addressed impacts on recreational users at UASC
12 4-60, noting that: “for some of these viewers, scenery is a very important part of their
13 recreational experience, and recreational users may have continuous views to
14 landscape features over relatively long periods of time.” UASC at 4-60. The analysis
15 concluded that “recreators are generally assumed to have relatively high sensitivity to
16 scenic quality and landscape character.” *Id.*

17 The FVIA analysis is stronger. At page 21, it addresses views to the Horse
18 Heaven Hills Recreation Area, concluding that views along the ridgeline trail “would be
19 strongly altered by the Project” and that the proposed wind turbines “would be highly
20 prominent in the view resulting in high, long term impacts from Chandler Butte, below
21 the ridgeline trail, and from the ridgeline trail.” *Id.*

22 These dramatic impacts were verified by the DEIS in its “Summary of Impacts on
23 Recreation during Operation of the Proposed Action” at page 4-449. In assessing
24 “Recreational Use” the DEIS states:

25 Operation of the comprehensive Project would result in a high impact due to the
26 restriction of access to public land and recreational activities that occur on public
27 land near the Project. The impact would be long term for the duration of the life of
28 the Project, unavoidable, and local.

1 *Id.* Table 4.12-6b (emphasis supplied).

2
3 Recreational impacts were also discussed by TCC witness Dave Sharp. In his
4 prepared testimony (EXH-5402_T_RECON), Mr. Sharp identified turbines located near
5 or on existing trails on Kiona Ridge, regularly used by hikers. See pages 39-40. An
6 aerial photograph at page 42 shows the close proximity of these trails to proposed
7 turbines.⁵⁰

8 As discussed above regarding esthetic resources, the Council is tasked by RCW
9 80.50.010(2) to “enhance the public’s opportunity to enjoy . . . the recreational benefits
10 of the air, water and land resources; . . .” The overwhelming evidence in this
11 proceeding is that recreational uses near the project will suffer higher, longer
12 degradation due to the restriction of access and visual impacts due to whirring wind
13 turbines. These recreational opportunities, and scenic vistas, are not found elsewhere
14 in Benton County.

15 The Applicant has not met its burden of proof. Without question, the proposal
16 diminishes the public’s opportunity to enjoy the recreational benefits of the Horse
17 Heaven Hills when it is required to enhance such benefits. The proposal cannot be
18 approved.

19 **7.10 Conclusion on Balancing.**

20 This Council is mandated to conduct a balancing analysis to determine whether
21 the project will create a “net benefit” to the public. On the positive side of the analysis is
22 a wind/solar/BESS project that claims 1150 MW of production capacity, but can only
23 transfer 850 MW to an eventual customer because of BPA’s “grid injection capacity.”
24 Though the solar component provides relatively dependable generation, the large wind

25
26 ⁵⁰ Mr. Sharp also identified concerns to recreationalists from “ice throw” which occurs with the buildup
27 of ice on turbine blades during cold weather. EXH-5402_T_RECON at 39-40. The issue is not
28 academic: Mr. Sharp includes a photograph of a sign (“CAUTION FALLING ICE”) from the existing Nine
Canyon wind project, which would be surrounded by the proposal. *Id.* at 43.

1 component only operates when wind is blowing and the site has only a modest wind
2 capability.

3 On the negative side of the balancing analysis, TCC has listed multiple factors
4 that weigh against the proposal. These include wildlife and bird impacts, inconsistency
5 with Benton County land use codes, detrimental impacts to tourism and local economic
6 development, reduction of housing value, serious limitations to aerial firefighting, public
7 safety and impacts on YN cultural resources.

8 Adverse impacts on two other elements of the balancing test, esthetic and
9 recreational resources, statutorily require “enhancement,” not mere preservation of the
10 status quo. The record demonstrates high, long term, regional adverse impacts to both
11 elements, the opposite of enhancement.

12 Given the numerous and significant adverse and negative impacts and limited
13 benefit, the proposal does not achieve a “net benefit” and accordingly must be denied.

14 **VIII. FAILURE TO CONSIDER ALTERNATIVES AND MITIGATION MEASURES TO**
15 **AVOID ADVERSE IMPACTS.**

16 A major roadblock to completing the balancing analysis is the patent and
17 obdurate refusal of the Applicant to consider any alternatives to its admittedly overbuilt
18 and bloated project. This Applicant wants the largest possible project. Nothing less than
19 the whole project is considered, in blatant violation of obligations in EFSEC’s own
20 regulations that an application: “shall include an analysis of alternatives for site, route
21 and other major elements of the project.” WAC 463-60-296. The concept of analysis of
22 alternatives is reinforced in WAC 463-60-085, which requires documentation of
23 “mitigation measures,” including:

24 the means to be utilized to minimize or mitigate possible adverse impacts during
25 construction, operation, and decommissioning of the proposal, all associated
26 facilities, and any alternatives being brought forward.

26 (Emphasis supplied.)

27 Notwithstanding these clear and established requirements, the Applicant’s
28

1 project manager Mr. Kobus testified that he did not include in the UASC “an alternate
2 site layout with further turbines.” Kobus Dep 94:16-20. He claims that he was told by
3 EFSEC staff (Sonia Bumpus)⁵¹ that “no smaller” or modified project options should be
4 considered in SCE’s application. See Kobus Dep. at pages 94-97. The Council should
5 firmly reject this erroneous interpretation of the Council’s obligations.

6 The failure to consider alternatives for a more modest project, responsive to its
7 detrimental impacts, also violates the State Environmental Policy Act, RCW Chap.
8 43.21C. In particular, SEPA requires that “all state agencies. . . shall:”

9 e) Study, develop, and describe appropriate alternatives to recommended
10 courses of action in any proposal which involves unresolved conflicts concerning
11 alternative uses of available resources;

12 RCW 43.21C.030(2)(e). The record is replete with “unresolved conflicts” on the use of
13 “available resources,” emphasizing impacts on esthetic and recreational “resources.”
14 This rule is implemented by the SEPA Rules that require an EIS to “include actions that
15 could feasibly attain or approximate a proposal’s objectives, but at a lower
16 environmental cost or decreased level of environmental degradation.” WAC 197-11-
17 440(5)(b). As the record shows, multiple comments on the DEIS highlighted this major
18 violation of long established SEPA requirements.

19 Moreover, this Council’s prior decisions fully support a thorough and exhaustive
20 consideration of alternatives. For example, in *Whistling Ridge* Order 868, at page 37,
21 Paragraph 23, this Council confirmed that “aesthetics and recreation are principal
22 values to be advanced or preserved in implementation of this chapter.” This includes
23 the “responsibility to develop *site-specific* criteria for approval.” *Id.* (emphasis supplied).
24 From this authority, the Council adopted the site-specific alternative of “removing towers
25 from corridors in which they would be prominently visible from numerous key viewing

26
27 ⁵¹ EFSEC staff did not confirm this testimony on the record and did not call Ms. Bumpus as a
28 witness.

1 areas” which “would adequately protect the scenic and cultural heritage of the Gorge.”
2 *Id.* at Paragraph 24.

3 There is no question that this proposal involves “unresolved conflicts concerning
4 alternative uses of available resources; . . .” However, this is an integrated renewable
5 energy project with three elements: wind turbines, solar arrays and BESS. Importantly,
6 the majority of the “unresolved conflicts” are with the wind turbines element, not the
7 solar or BESS.

8 For example, the aerial firefighting concern is an unresolved conflict only
9 because 500 foot tall wind turbines obstruct aircraft operations. But, neither the solar
10 array nor BESS system are obstructions to aerial fighting. Indeed, if there was a fire in
11 the lithium-ion batteries that spread onto surrounding vegetation, it could be fought from
12 the air, but for the 500 foot tall spinning turbine blades.

13 Wildlife impacts have unresolved conflicts due to recognized impacts regarding
14 ferruginous hawk populations, as well as pronghorn antelope and other ground dwellers.
15 Concerns about hawk populations center on birds striking rotating turbine blades.
16 Though there are impacts to ground dwellers, the use of solar arrays, combined with
17 BESS, greatly reduces impacts to the endangered hawks.

18 TCC will not attempt to characterize or address impacts from the comprehensive
19 project to YN cultural resources; it is our observation, however, that a significant part of
20 their concern relates to the wind turbines, especially near the [REDACTED] 9

21 Issues related to deterioration of residential property values and impacts to
22 economic development and tourism are related to the wind turbines and not materially
23 impacted by the solar arrays or BESS.

24 Finally, for the two resource areas that RCW 80.50.010(2) obligates this Council
25 to “enhance,” esthetics and recreational benefits, the wind turbines are the sole
26 damaging factor. The FVIA’s assessment of the visual impacts show that for each KOP
27 the visual and esthetic impacts are “negligible for solar arrays.” See pages 26-28. The
28

1 same is true for visual and esthetic impacts from substations and BESS. Because of
2 their low profile, and because they are substantially set back from the ridgeline, these
3 facilities do not impact visual or esthetic issues.⁵²

4 The same is true for recreational impacts. As noted above, the BLM recreational
5 parcel and community trails are located along the ridgeline. Again, because they are
6 set some distance from them, the solar arrays, substations and BESS facilities do not
7 impact recreation.

8 These circumstances plainly require careful consideration of alternatives, both
9 under SEPA and EFSEC's organic statute. An obvious alternative is to de-emphasize
10 wind turbines and enhance the solar arrays and BESS facilities. One of the most
11 impacted communities, Benton City, has specifically recommended to "consider
12 expanding the solar array to balance power losses from removal of wind turbines."

13 EXH-5822_R. Indeed the Applicant's project manager, Mr. Kobus testified:

14 Well, you couple the batteries ideally with solar. Because you know solar only
15 generates when the sun shines And its, you know, an optimization technique
16 to add the storage.

17 Dep at 110:9-14. Mr. Kobus went on to say:

18 That's typically how utilities use it [BESS] in the current market is, they'll use the
19 solar to charge it, and then they'll dispatch it sometime later when there is no
20 solar and they have peak needs.

21 *Id.*, 110:20-25.

22 In addition, the inclusion of solar allows a user to avoid transmission congestion
23 and the "grid injection capacity" that has already resulted in some reduction to the wind
24 element of the project. Kobus Dep 68:1-6.

25 As described above, the substitution of solar arrays for wind turbines will address

26 ⁵² The FVIA states at page 30: "The proposed BESSs would not be visible from KOPs 1, 2, 5, 8, 9,
27 10, 11, 13, and the Horse Heaven Hills Recreation Area, therefore no impacts from these Project
28 components would occur on these views" (emphasis supplied).

1 the majority of the adverse elements of the proposals. In that manner, the proposal
2 would still be a major renewable clean energy project that “encourages the development
3 and integration of clean energy sources” RCW 80.50.010(3).

4 This limited alternatives analysis recognizes that not every site or property is
5 suitable for every type of renewable facility. The elongated site (25 miles) is uniquely
6 unsuited for wind turbines, where it “dominates” views, creating high, long term impacts
7 on most iconic landscape features.⁵³ A feasible alternative might include a modest
8 number of wind turbines set well back from the ridge line, farther away from the Tri-
9 Cities viewshed which is such an important feature of the Tri-Cities community. Such a
10 reorientation of the project is consistent with testimony from Benton City.⁵⁴ Eliminating
11 turbine strings to the south is a step toward the mitigation suggested by TCC’s witness
12 on esthetics, Dean Apostol in EXH-5906_R, as discussed in response to Council
13 questions at Tr. 1410:7 to 1415:8.

14 Consideration of economic feasibility of the project alternatives has previously
15 been considered to be outside this Counsel’s considerations. As stated in Council
16 Order 870 (Whistling Ridge), December 12, 2011 at page 12: “The Council’s decision
17 does not turn on questions of whether the project would be economically feasible for the
18 Applicant.” Though not an issue, Applicant’s Project Manager Mr. Kobus admits if just
19 Phase 1 of the project were built: “I would believe there might be somebody out there
20 that just wants Phase 1.”⁵⁵ Dep at 106:7-14. Economic feasibility, even if was a
21 Council issue, does not appear to be a material factor in the expansion of alternative

22
23 ⁵³ The site chosen is also limited because turbines cannot be located further south (and more out of
the Tri-Cities view scape) because of Department of Defense limitations. Kobus Dep at 33:9-24.

24 ⁵⁴ EXH-5822_R, page 10: “At a minimum, move Wind Turbines back from ridgelines and existing
25 housing.”

26 ⁵⁵ He also admits that “there are projects that are much smaller than this that are being developed
27 and sold either to commercial entities or to utilities.” Dep at 107:23 to 108:3. A smaller project was not
28 considered because: “we’re a big project developer.” Dep at 108:6-8.

1 analysis.

2 Here the Council should require that all reasonable alternatives be included that
3 would protect the esthetic, cultural, wildlife, recreation and property values of the public
4 and the community.

5 **IX. REQUESTED ACTION.**

6 As described in this brief, there are multiple procedural and substantive
7 deficiencies to the proposal.

8 **9.1 Incomplete Information.**

9 As a threshold matter, the proposal is not ready for review because there are
10 multiple gaps in information necessary to determine consistency with regulations.

11 First, as described in Section III, the Council should reopen the adjudication to
12 allow for integration of the completed FEIS in the proceeding. The current course of the
13 Council in forcing the parties to rely on a DEIS that will be shortly superceded (October,
14 18, 2023) is clear and prejudicial error.

15 Second, the adjudication should be reopened to require disclosure of important
16 project features as required by EFSEC regulations, including the water supply for the
17 proposal, plans for the BESS proposals, and drawings and maps showing the facilities
18 planned for the Phases proposed by the applicant. See Section 4 of this brief at pages
19 8-13.

20 Third, the most important of the missing disclosures is a complete consideration
21 of project alternatives, as required by SEPA and by EFSEC's own regulations. This
22 analysis must include consideration of alternatives that reduce impacts. See Section VII
23 herein.

24 Because the record fails to include required information and analysis, the
25 proposal should be denied.

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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 13th day of October, 2023.

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

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Washington State Energy Facility Site Evaluation Council

AGENDA

POTENTIAL ACTION ITEM

MONTHLY MEETING
Wednesday October 18, 2023
1:30 PM

VIRTUAL MEETING ONLY
[Click here to join the meeting](#)
Conference number: (253) 372-2181 ID: 56502492#

- 1. Call to OrderKathleen Drew, EFSEC Chair
- 2. Roll CallAndrea Grantham, EFSEC Staff
- 3. Proposed AgendaKathleen Drew, EFSEC Chair
- 4. Minutes **Meeting Minutes**.....Kathleen Drew, EFSEC Chair
 - September 20, 2023 Monthly Meeting Minutes
- 5. Projects
 - a. Kittitas Valley Wind Project**
 - Operational Updates.....Eric Me bardis, EDP Renewables
 - b. Wild Horse Wind Power Project**
 - Operational Updates.....Jennifer Galbraith, Puget Sound Energy
 - c. Chehalis Generation Facility**
 - Operational Updates.....Jeremy Smith, Chehalis Generation
 - d. Grays Harbor Energy Center**
 - Operational Updates.....Chris Sherin, Grays Harbor Energy
 - e. Columbia Solar**
 - Operational Updates.....Thomas Cushing, Greenbacker Capital
 - f. Columbia Generating Station**
 - Operational Updates.....Felicia Najera-Paxton, Energy Northwest
 - g. WNP – 1/4**
 - Non-Operational Updates.....Felicia Najera-Paxton, Energy Northwest
 - h. Goose Prairie Solar**
 - Project Updates.....Scott Wilson, Brookfield Renewable
 - i. High Top & Ostrea**
 - Project Updates.....Ami Hafkemeyer, EFSEC Staff
 - j. Whistling Ridge**
 - Project Updates.....Lance Caputo, EFSEC Staff
 - k. Desert Claim**
 - Resolution Amendment.....Ami Hafkemeyer, EFSEC Staff

The Council may consider taking FINAL ACTION on the Resolution granting the Amendment Request for the Desert Claim project.
 - l. Horse Heaven Wind Farm**
 - Project Updates.....Ami Hafkemeyer, EFSEC Staff
 - Final Environmental Impact Statement presentation.....Sean Greene, EFSEC Staff
 - m. Badger Mountain**
 - Project Updates.....Joanne Snarski, EFSEC Staff
 - n. Wautoma Solar**
 - Project Updates.....Lance Caputo, EFSEC Staff
 - Extension Request.....Lance Caputo, EFSEC Staff

The Council may take FINAL ACTION on granting the extension request.
 - o. Hop Hill Solar**
 - Project Updates.....John Barnes, EFSEC Staff
 - Land Use Order Motion.....John Barnes, EFSEC Staff

The Council may take ACTION on whether to direct staff to prepare a Land Use Order.

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

p. Carriger Solar

- Project Updates.....Joanne Snarski, EFSEC Staff

6. Other

- 2nd Quarter Cost Allocation.....Sonia Bumpus, EFSEC Staff

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

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

Table 4. Key Observation Point/Viewpoint Impact Table – Turbine Option 1

KOP #	Viewer Name	Viewer Type	Distance to Project	Viewer Position	Approx. Extent of Horizontal View Occupied by Project	Level of Visual Contrast	Magnitude of Impact	Impact Description
1	McNary NWR	Recreation	5.2 miles	Inferior	80 degrees	Moderate	Medium	The tall, proposed turbines would be similar in appearance to the existing Nine Canyon Wind Project, also visible from this location, but the proposed turbines would be larger and out of scale with the existing landscape. Views would be unobstructed toward the Lease Boundary. The prominence of the proposed wind turbines rising above the landscape, including additional motion introduced by the spinning turbine blades, would further attract attention from viewers and dominate the existing landscape character. Because visitors and travelers would be visiting for a limited time, the level of contrast would be reduced by the short view duration limiting the influence of the Project on these views. The Project would expand the extent of view occupied by moving wind turbines and would be prominent from this inferior viewing angle, resulting in medium, long-term impacts on views.
2	S Clodfelter Road – East, Central, and West	Residential	3.0 miles	Inferior	200 degrees	Strong	High	The proposed turbines would dominate views from this location, approximately 3 miles away, as a large portion of the viewshed would include moving wind turbines. Views of the Project in open, rolling hills would be unobstructed. Views toward the east would include the existing Nine Canyon Wind Project, which occupies only a narrow portion of the landscape as viewed from this location. The series of proposed skylined wind turbines would be highly prominent in the view, resulting in high, long-term impacts on views, particularly where views of multiple wind turbines would overlap and appear larger in mass.
3	Chandler Butte	Recreation	2.5 miles	Superior	50 degrees	Strong	High	The proposed turbines would dominate views from this location, approximately 2.5 miles away, as a moderate portion of the viewshed would include moving wind turbines. Views of the Project in an open plains landscape would be unobstructed, with views of the existing Nine Canyon Wind Project occurring approximately 20 miles away on the distant hills. Due to the superior viewing angle, the contrast between the light color of the turbines and the darker color of the ground would create strong visual contrast, visible to recreationists along Chandler Butte. The series of proposed wind turbines would be highly prominent in the view resulting in high, long-term impacts on views, particularly where views of multiple wind turbines would overlap and appear larger in mass.

DEIS Appendix 3.10-2
 SWCA 2022 Final Visual
 Impact Assessment (FVIA)
APPENDIX B

DEIS Appendix 3.10-2
 SWCA 2022 Final Visual
 Impact Assessment (FVIA)
APPENDIX B

KOP #	Viewer Name	Viewer Type	Distance to Project	Viewer Position	Approx. Extent of Horizontal View Occupied by Project	Level of Visual Contrast	Magnitude of Impact	Impact Description
4	I-82 South	Travel route	7.0 miles	Inferior	100 degrees	Moderate	Medium	The proposed turbines would attract attention from this location, approximately 7 miles away, as a large portion of the viewshed would include moving wind turbines. Due to the distance, the turbine's form would be distinguishable, but the texture and color would be muted and less detailed. Views from I-82 include an existing transmission line and the Nine Canyon Wind Project, approximately 12 miles away, with these existing features influencing but not dominating views from this location. As travelers drive I-82 from this point to KOP 6, approximately 10 miles, impacts on views of the proposed wind turbines would incrementally increase. From this location, the turbines would be viewed unobstructed and skylined, which would attract attention—particularly where only moving turbine blades would be seen over the horizon. The impacts on these views would be medium and long term.
5	Badger Mountain	Recreation	4.7 miles	Level	150 degrees	Strong	High	The proposed turbines would dominate views from this location, approximately 5 miles away, as a large portion of the viewshed would include moving wind turbines. Views of the Project in open, rolling hills would be unobstructed, with views of the Project occurring beyond developed lands of Badger and the Horse Heaven Hills ridgeline. The series of proposed skylined wind turbines would be highly prominent in the view, resulting in high, long-term impacts on views—particularly where views of multiple wind turbines would overlap and appear larger in mass.
6	Bofer Canyon Road/I-82	Travel route	1.7 miles	Level	120 degrees	Strong	High	The proposed turbines would be viewed in context with an existing transmission line from this KOP. The existing transmission line has introduced strong vertical lines into the existing setting. Due to the proximity of the proposed turbines (less than 2 miles), the introduction of movement into the landscape, and the extent of view occupied by these structures, the Project would dominate views from this location along Bofer Canyon Road and I-82. These impacts would continue to increase as viewers would pass the existing transmission line into an area where views of the proposed turbines would be highly prominent as viewed both to the east and west. Based on the landscape modifications introduced by the proposed wind turbines, the Project would result in high, long-term impacts on views.

KOP #	Viewer Name	Viewer Type	Distance to Project	Viewer Position	Approx. Extent of Horizontal View Occupied by Project	Level of Visual Contrast	Magnitude of Impact	Impact Description
7	Highway 221	Travel route, residential	5.8 miles	Level	70 degrees	Moderate	Medium	The proposed turbines would be viewed in context with a distant existing transmission line, which has introduced a series of skylined structures along the horizon. The proposed turbines would, however, appear larger and out of scale with the features of the existing landscape. Views would be unobstructed toward the Lease Boundary. The prominence of the proposed wind turbines rising above the landscape, including the introduction of motion, would further attract attention from viewers and modify the existing landscape character. The Project would be prominent within a moderate portion of the viewshed, resulting in medium, long-term impacts on views.
8	Kennewick (Canyon Lakes Area) – South and West	Residential	3.6 miles	Inferior	170 degrees	Strong	High	The proposed turbines would dominate views from this location, approximately 3.5 miles away, as a large portion of the viewshed would include moving wind turbines. Views of the Project in open, rolling hills would be unobstructed with views toward the west including an existing transmission line. Views to the southeast include the existing Nine Canyon Wind Project, which occupies a narrow portion of the landscape as viewed from this location. The series of proposed skylined wind turbines would be highly prominent in the view resulting in high, long-term impacts on views, particularly where views of multiple wind turbines would overlap and appear larger in mass.
9	Benton City	Residential, travel route, commercial	2.7 miles	Inferior	10 to 80 degrees (based on level of screening)	Moderate	Medium	The proposed wind turbines would be intermittently screened by development within Benton City, with partial screening of the Project features occurring where the Horse Heaven Hills would partially obstruct views to the south. Where visible, there would be a limited number of turbines in view, as depicted in the visual simulation (Attachment B). The presence and motion of the turbines would attract attention but would appear co-dominant with other commercial and residential developments. Views from other areas within the city may have more expansive, unobstructed views of the proposed wind turbines similar to KOPs 2 and 10. The Project would expand the extent of view occupied by moving wind turbines and would be prominent from this inferior viewing angle, resulting in medium, long-term impacts on views.

KOP #	Viewer Name	Viewer Type	Distance to Project	Viewer Position	Approx. Extent of Horizontal View Occupied by Project	Level of Visual Contrast	Magnitude of Impact	Impact Description
10	Badger Road	Residential, travel route	1.5 miles	Inferior	150 degrees	Strong	High	The proposed turbines would dominate views from this location, approximately 1.5 miles away, as a large portion of the viewshed would include moving wind turbines. Views of the proposed wind turbines, from an inferior viewing angle, would be partially screened by topography and intermittently screened by development. Movement associated with the turbine blades would be highly visible, particularly where only the blades would be visible, repeatedly rising over the hills. Based on the level of contrast introduced by the proposed wind turbines, which are much larger in scale than existing modifications in view, the Project would result in high, long-term impacts on views.
11	Highland/Finley Area	Residential	2.0 miles	Inferior	100 degrees	Strong	High	The proposed turbines would dominate views from this location, approximately 2 miles away, as a large portion of the viewshed would include moving wind turbines. Views of the Project on the Horse Heaven Hills would be unobstructed, with views toward the southwest including residential and agricultural development, as well as the existing Nine Canyon Wind Project, which occupies a moderate portion of the landscape as viewed from this location. The series of proposed skylined wind turbines would be highly prominent in the view, resulting in high, long-term impacts on views, particularly where views of multiple wind turbines would overlap and appear larger in mass.
12	County Well Road	Residential, travel route	2.5 miles	Level	100 degrees	Moderate	Medium	The proposed turbines would be viewed in context with an existing transmission line. The existing transmission line has modified the existing setting, including the introduction of distinct, vertical lines. Due to the proximity of the proposed turbines (approximately 2.5 miles), the introduction of movement into the landscape, and the extent of view occupied by these structures, the Project would attract attention and begin to dominate views from this location. In consideration of the existing modifications in view, the Project would result in medium, long-term impacts on views from this location. These impacts would continue to increase as viewers would pass the existing transmission line into an area where views of the proposed wind turbines would be prominent.

KOP #	Viewer Name	Viewer Type	Distance to Project	Viewer Position	Approx. Extent of Horizontal View Occupied by Project	Level of Visual Contrast	Magnitude of Impact	Impact Description
13	Travis Road South of Sellards Road	Residential, travel route	1.1 miles	Level	150 degrees	Strong	High	The proposed turbines would dominate views from this location, approximately 1 mile away, as a large portion of the viewshed would include moving wind turbines. Views of the Project in open, rolling hills would be unobstructed within a mostly intact existing landscape. The series of proposed skylined wind turbines would be highly prominent in the view, resulting in high, long-term impacts on views, particularly where views of multiple wind turbines would overlap and appear larger in mass.
N/A	Dispersed residences located 0.5 mile from proposed turbines (foreground views)	Residential	Less than 0.5 mile	Level	Up to 300 degrees	Strong	High	The proposed turbines would dominate views from dispersed residences located within the foreground distance zone (includes views from participating and non-participating properties). These views would be most impacted where views of the existing Nine Canyon Wind Project and existing transmission lines would be screened with the proposed turbines dominating a viewshed with limited existing modifications. The prominence of the proposed wind turbines rising above the landscape, including additional motion introduced by the turbine blades, would further attract attention from viewers and dominate the existing landscape character, resulting in high, long-term impacts on views from these locations. Viewers located on participating properties may have less visual sensitivity to modifications introduced by the Project, compared to viewers located on non-participating properties, but the level of visual contrast and Project dominance would remain the same.
N/A	Horse Heaven Hills Recreation Area	Recreation	0.8 mile	Superior, level, and inferior	Up to 140 degrees	Strong	High	Views from the Horse Heaven Hills Recreation Area vary based on location, with elevated views represented by KOP 3, located on Chandler Butte, to inferior views occurring below the ridgeline and similar to KOPs 9 and 10. In general, views from this recreation area would be highly impacted where the Project would modify a large portion of the viewshed through the introduction of moving wind turbines. While hiking on trails below the ridge but within the recreation area, views may be partially screened by topography where visitors would only see the moving turbine blades repeatedly rising over the ridgeline as described for KOP 10. Viewers along the ridgeline trail would be located directly adjacent to the proposed turbines, where views would be strongly altered by the Project. The series of proposed wind turbines would be highly prominent in the view, resulting in high, long-term impacts on views from Chandler Butte, below the ridgeline trails, and from the ridgeline trail.



Respondent No: 72

Login: Anonymous

Email: n/a

Responded At: Aug 25, 2024 19:25:37 pm

Last Seen: Aug 25, 2024 19:25:37 pm

IP Address: n/a

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- Q1. **First & Last Name** Paul Krupin
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- Q2. **Email address** Paul@Presari.com
-
- Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Board member of Tri-Cities CARES
-
- Q4. **Share any comment**
not answered
-
- Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/1b4d9b35d4c329c7658da8fe68e8f24a9f6b5a8b/original/1724639126/26923f2e962d82ac9710ab1d6861b661_Krupin_Comments_on_HHH_Draft_SCA_-_Visual_Impacts_and_their_Impacts_on_Property_Value.pdf?1724639126
-

Comments on Horse Heaven Special Meeting Draft SCA Documents

Paul J. Krupin, Board member of Tri-Cities CARES

To Ignore and Dismiss Visual Impacts and their Impacts on Property Value is Unacceptable

The new proposed EFSEC mitigations and revised SCA should not be allowed. Scientifically they make no rational sense given the information developed in the existing record.

EFSEC's Recommendations and Order 892 both recognize and acknowledge the severity of the visual impacts and the need for mitigation

The Findings of Facts in Order 892, specifically acknowledge and explicitly recognize that the project as proposed will result in significant adverse visual impacts and that further mitigation, "...including the removal of multiple turbines, must be required in order to minimize the visual impact of the Project on the Tri-Cities Region and on the Yakama Nation TCPs."

EFSEC's May 23 Recommendation eliminated a large number of the most visually obstructive wind turbines, and mitigated the visual impacts significantly.

The revised SCA and new mitigation recommendations removes the mitigations and returns the visual impacts to their original proposed levels.

TCC's property appraisal experts gave testimony warning us that real estate prices will be reduced 20 to 30 percent and properties close to the turbines may never sell.

Even the expert relied upon by Scout in the adjudication recognizes the negative impact wind turbines have on property value.

<https://www.sciencedirect.com/science/article/pii/S0301421523004226>

There is widespread agreement and ample documentation that people pay more for scenery and pay less when the views are obstructed by energy industrial facilities and infrastructure. This includes power lines, electrical substations, battery storage systems, coal, gas, or nuclear power generation facilities, and wind turbines.

The following table depicts the predicted 20 to 30 percent property value loss and the potential economic losses to real estate property in Tri-Cities.

A	B	C	D	E	F
Present Value	20 & 30 percent reduction	1000 homes	5000 homes	10,000 homes	20,000 homes
1,000,000.00	200,000.00	200,000,000.00	1,000,000,000.00	2,000,000,000.00	4,000,000,000.00
1,000,000.00	300,000.00	300,000,000.00	1,500,000,000.00	3,000,000,000.00	6,000,000,000.00
500,000.00	100,000.00	100,000,000.00	500,000,000.00	1,000,000,000.00	2,000,000,000.00
500,000.00	150,000.00	150,000,000.00	750,000,000.00	1,500,000,000.00	3,000,000,000.00

The proposed EFSEC mitigations ignore the significant adverse economic impacts that will occur as a result of visual impacts.

The consequence of ignoring the visual impacts is that economic losses of *two to six billion dollars* are not being identified and recognized.

EFSEC has obligations to protect people and the environment in Washington.

The only action that is justified is to vote against approval of the revised SCA.

Paul Krupin

Board Member Tri-Cities CARES

Kennewick WA



Respondent No: 73

Login: Anonymous

Email: n/a

Responded At: Aug 25, 2024 19:28:57 pm

Last Seen: Aug 25, 2024 19:28:57 pm

IP Address: n/a

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- Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Board member Tri-Cities CARES
-
- Q4. **Share any comment**
not answered
-
- Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/ed98462e731ddc9ebaf274e665640b388fbaa165/original/1724639324/4fab65f1e8b9c2baf29d22fc35938aad_Krupin_Comments_on_HHH_Draft_SCA_-_Fire_Buffer_Fire_Buffer___Topo_Buffer.pdf?1724639324
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Comments on Horse Heaven Special Meeting Draft SCA Documents

Paul J. Krupin, Board member of Tri-Cities CARES

TCC Comments on 0.25 Mile Fire Buffer in EFSEC Mitigation and draft SCA

The Council has created a new proposal that would restore nearly all of the wind turbines that had been eliminated by the April 29, 2024 Recommendation to the Governor.

The new 0.25 mile fire buffer mitigation fails to address aerial firefighting airspace requirements for DC-10's (VLAT's) that are used by federal agencies on the lands adjacent to the project.

Background

Order 892 states:

Socioeconomic Impacts (Order 892, Page 45)

*The Council finds the Project's roadways would improve access within the Project boundaries for ground firefighting activities. **The Council also finds that wind turbines located along the northern Project boundary would present challenges to aerial firefighting techniques historically used in the area***

The new EFSEC recommendations and the Draft SCA, ARTICLE I: SITE CERTIFICATION, C. Project Description #4, Page 9 states:

"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 (see Appendix 2: PHS-2 for additional details),"

Appendix 2 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.

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.

TCC Comment:

The proposed 0.25 mile fire buffer mitigation is inadequate and fails to take federal fleet LATs and VLATs airspace requirements into account.

The use of the 0.25 fire buffer will result in the construction of 499 ft high or 671 ft high wind turbines along the ridgeline of the Horse Heaven Hills in the northern Project boundary. This will result in the creation of a huge no-fly zone that will prevent large aircraft tankers (LATs) and Very Large Air Tankers (VLATs) from being used, subjecting residents and businesses to the very real threat of fire, property destruction, injury and death.

The EFSEC mitigation and draft SCA addresses only the fleet capabilities of the Washington DNR and its response to fire on DNR land.

The January 26, 2024 email from Russ Lane, (DNR) relied upon by EFSEC clarifies that the 0.25 mile distance refers only to the use of State owned aerial firefighting aircraft and does not recognize or take the federal fleet aircraft into account. The federal fleet has made use of LAT and VLAT size aircraft in the historic fires in the Horse Heaven Hills on record.

Mr. Lane states

“I would like to clarify the interpretation of my previous responses. I was not specifically asked to address the use of very large, airliner-type jet aircraft. I will happily defer to expertise on the maneuvering characteristics of large transport aircraft.”

See the attached email to read Mr. Lane’s email in whole.

The TCC expert witnesses provided testimony regarding the aerial firefighting airspace maneuvering buffers needed for VLATS and LATs – two miles perpendicular and four miles along the flight path.

Testimony provided by TCC aerial firefighting expert witnesses with significant experience responding to fires on federal land states that **two miles perpendicular and four miles along the flight path is needed** to safely avoid turbine obstructions.

The proposed quarter mile fire buffer distance is inadequate.

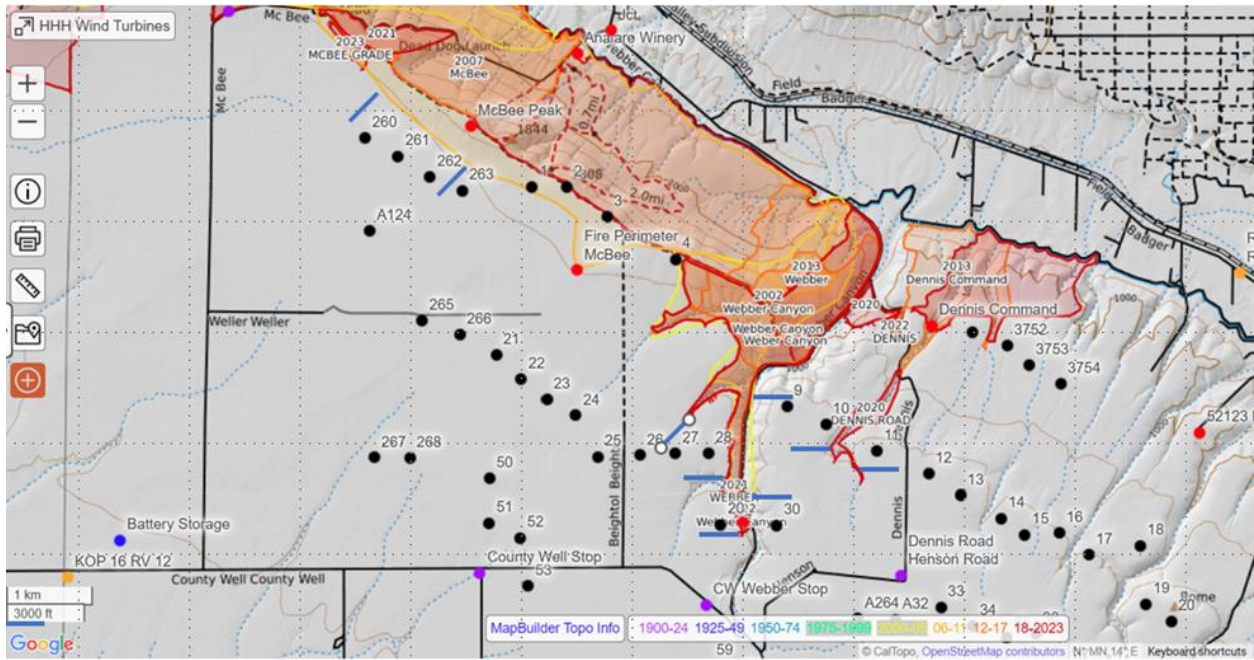
Impacts on Turbines of the 0.25 and 2.0 mile Fire Buffers and the 1.0 mile Webber Canyon Cultural Buffer

The following CalTopo Maps compares the 0.25 mile fire buffer to a 2.0 mile buffer and shows the affected wind turbines on the project. Each map uses a fire history data set from year 2000 to present.

This evaluation assumes a flight path of a DC-10 VLAT from the Federal Fleet from NW to SE along the top of the ridgeline with the aircraft similar to what occurred at this location in July 2023.

Please note the turbines identified as 3751 to 3754 were eliminated from consideration in the Moon Memo.

0.25-mile fire buffer

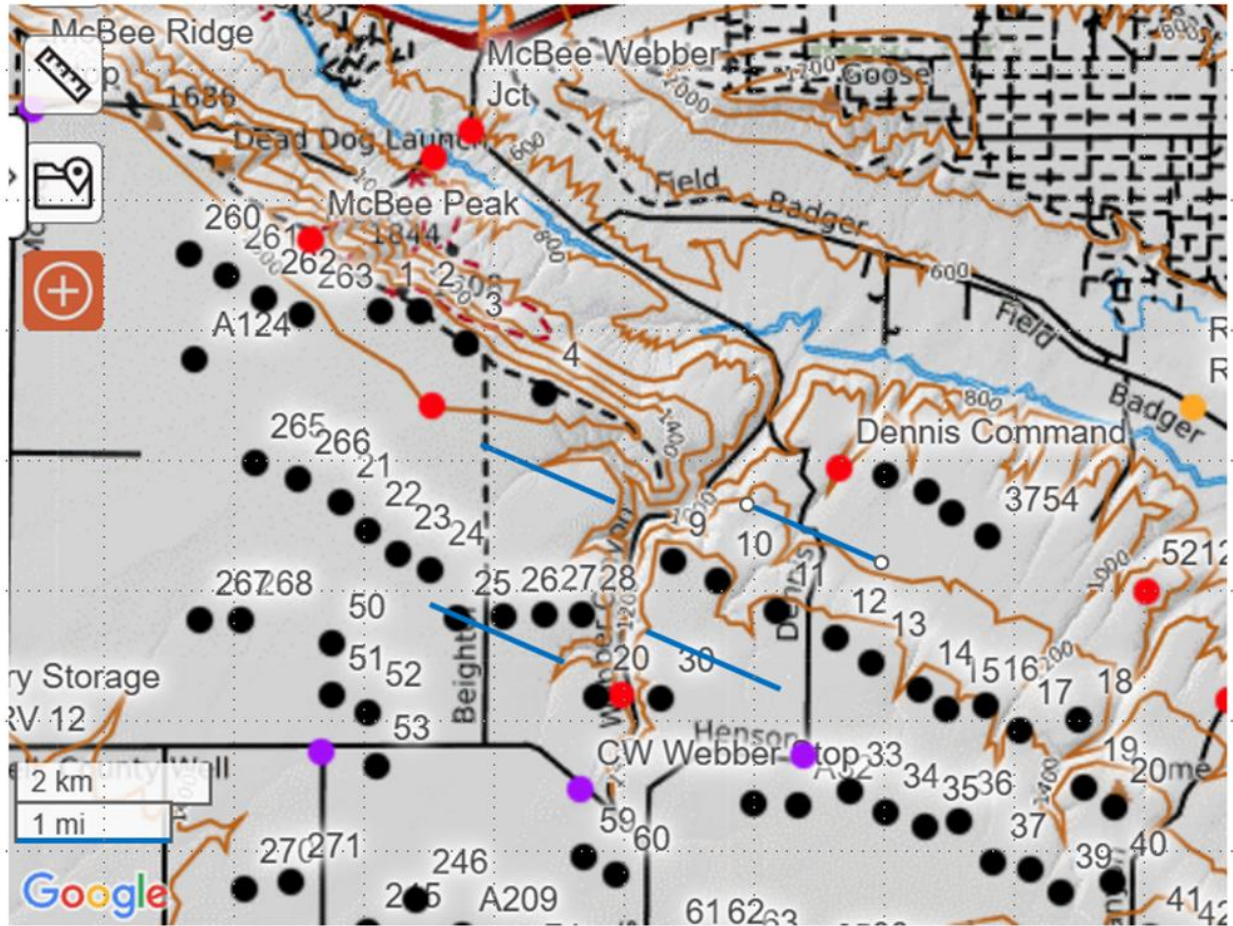


The 0.25 mile fire buffer (colored in blue) impacts the following turbine numbers from west to east:

260, 261, 262, 263, 1, 2, 3, 4, 26, 27, 28, 9, 10, 11, 20 and 30

= 16 turbines

1.0-mile Webber canyon Buffer from Topographic Break line.



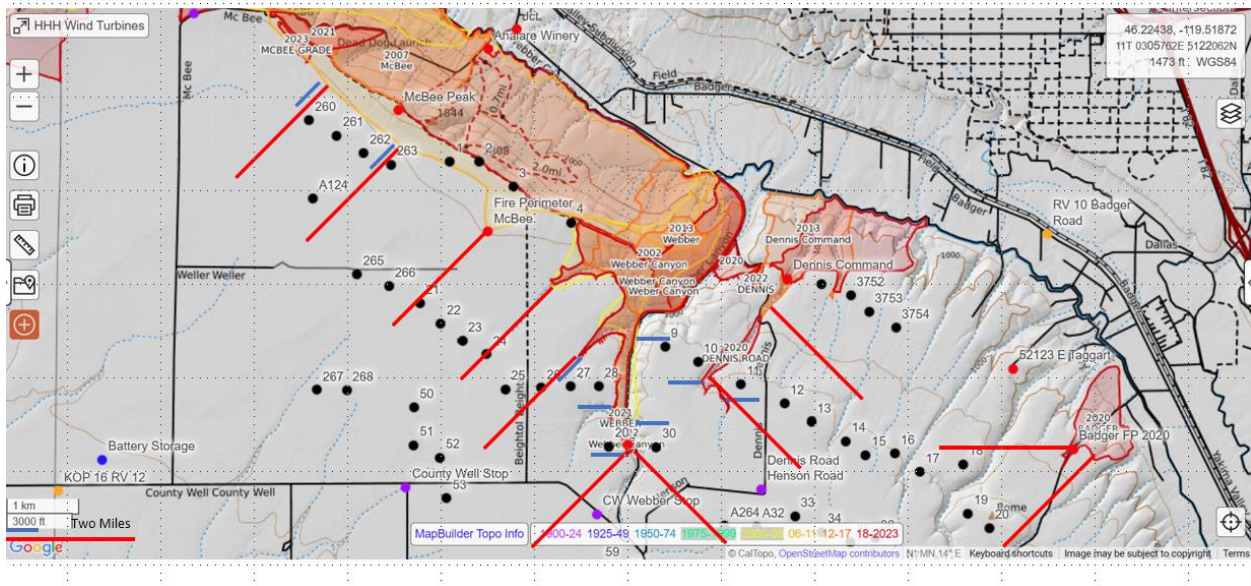
Turbines for elimination or relocation include:

25, 26, 27, 28 and 20 west of Webber Canyon and 9, 10, 11 and possibly 12 and 30 east of Webber Canyon = 10 turbines

The 10 turbines impacted by the 1.0 Topographic buffer overlap with the 16 turbines affected by the 0.25-mile fire buffer.

2.0-Mile Fire Buffer for LAT's and VLAT's

2.0 Mile Buffer from Fire Perimeters 2000 to present



The wind turbines affected by the 2.0-mile fire buffer that would need to be eliminated or relocated include:

260, 261, 262, 263, 1, 2, 3, 4, 26, 27, 28, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
A124, 265, 266, 21, 22, 23, 24, 25, 26, 27, 28, 20, 30, A264, A32

= 38 turbines

The 2.0-mile fire buffer encompasses the 1.0-mile topo buffer.

Attachment – January 26, 2024 email from Russ Lane DNR to EFSEC and others

From: Lane, Russ (DNR)
Sent: Friday, January 26, 2024 3:16 PM
To: Krupin, Paul (WaTech Guest) <Paul@Presari.com>; Taylor, Katy (DNR) <Katy.Taylor@dnr.wa.gov>; Lebovitz, Allen (DNR) <Allen.Lebovitz@dnr.wa.gov>; EFSEC mi Comments <Comments@efsec.wa.gov>; Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; Drew, Kathleen (EFSEC) <kathleen.drew@efsec.wa.gov>
Cc: 'Dave Sharp' <dave@tricityscares.org>; 'Pam Minelli' <pam@tricityscares.org>; kmbrun@gmail.com; 'Rick Aramburu' <Rick@aramburulaw.com>; Geissler, George (DNR) <George.Geissler@dnr.wa.gov>

Subject: RE: Aerial Firefighting issue EFSEC Meeting January 31 2024 on Horse Heaven Hills Wind Turbines

All,

I would like to clarify the interpretation of my previous responses. I was not specifically asked to address the use of very large, airliner-type jet aircraft. I will happily defer to expertise on the maneuvering characteristics of large transport aircraft.

I was asked to assess the impacts to DNR aerial firefighting efforts. DNR's owned and contracted fleet includes light, medium and heavy (Type 3, 2, 1) helicopters, as well as single-engine and twin-engine turboprop aircraft. The fixed wing tankers operate in both retardant and scooping configurations. The large and very large jet engine transport-type aircraft are present in the federal fleet. While we infrequently borrow DC-10 Very Large Airtankers (VLAT'S) from the USFS, they fly on less than 1% of DNR incidents.

We are comfortable that we can safely operate the three types of helicopters and the light tankers (AT-802's) at a standoff distance of approximately ¼ mile. I am reasonably certain we would hear the same for the twin-engine scoopers (CL-415) and twin tankers (Q-400). We can certainly check that with our vendor for those platforms. As always, the go/no-go call for safe operations near obstacles will be made by the pilot-in-command at the time of the mission.

We remain concerned that operations interior to a large-scale wind project would pose unacceptable risks to aircrews. However, we believe we have multiple effective tools to do aerial firefighting around the perimeter of wind projects, from a safe standoff distance.

Thanks,

Russ

Russ Lane

Division Manager
Wildland Fire Management Division
Washington Department of Natural Resources
Office: (360) 902-1308
Cell: (360) 480-9657
Russ.Lane@dnr.wa.gov



From: Paul Krupin <Paul@Presari.com>
Sent: Friday, January 26, 2024 11:39 AM
To: Taylor, Katy (DNR) <Katy.Taylor@dnr.wa.gov>; Lebovitz, Allen (DNR) <Allen.Lebovitz@dnr.wa.gov>; Lane, Russ (DNR) <Russ.Lane@dnr.wa.gov>; EFSEC mi Comments <Comments@efsec.wa.gov>; Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; Drew, Kathleen (EFSEC) <kathleen.drew@efsec.wa.gov>
Cc: 'Dave Sharp' <dave@tricityscares.org>; 'Pam Minelli' <pam@tricityscares.org>; kmburun@gmail.com; 'Rick Aramburu' <Rick@aramburulaw.com>
Subject: Aerial Firefighting issue EFSEC Meeting January 31 2024 on Horse Heaven Hills Wind Turbines

External Email

Issue: There is confusion over the DNR responses to questions posed by EFSEC staff specifically regarding the horizontal buffer distance needed for aerial firefighter aircraft, including large tactical aircraft like DC-10's and 727's.

The 0.25 mile fire buffer distance is far less than the turning radius needed to keep the large aerial firefighting aircraft safe from collisions with wind turbines.

In the adjudication Mr. David Wardell (Chairman of the Allied Aerial Firefighter Association) and Mark Baird (Veteran LAT and VLAT aerial firefighter pilot) indicates that the necessary buffer for the tactical aircraft utilized (DC-10's and

above) is at least four miles along the flight path and two miles on the perpendicular.

Mark Baird, aerial firefighter pilot gave supplemental testimony (EXH-5913_S Testimony and EXH-5910_S Resume)

Page 5 line 5 to 13 of the testimony states in pertinent part:

“Between three and four nautical miles spacing would at least make aerial firefighting possible in order to save lives and property. FAA TERPS, and ICAO Pan Ops dictate maneuvering minimum radius of turn for large aircraft as well as minimum climb rates to avoid known obstacles in approach and departure corridors where obstructions are known and accurately mapped; 2.7 nautical miles is the minimum radius of turn for category E aircraft with maneuvering speeds of 168 plus knots. A climb of 200 feet per nautical mile is the minimum for most departure procedures. If the ridge top is 2000 feet msl and it has a 500-foot tower on top of it, climb capability would be exceeded quickly.”

David Wardall, Chairman of the Allied Aerial Firefighters Association gave testimony (EXH-5096_S and EXH-5908_S)

Page 2 lines 17 to 22, state in pertinent part,

“Wind turbines present severe impediments to aerial firefighting operations. The existence of the wind turbines effectively creates a “no fly” zone which greatly increases the risk that any wildfire that either began in or near the project site or spread into it from any surrounding area, could not be quickly contained, and would grow. I believe there is a threat to the adjacent communities from this proposal by eliminating the possibility of fixed wing air attacks that needs to be acknowledged.”

Page 3 lines 8 to 26 state in pertinent part:

“... the Horse Heaven Hills Wind Farm Project is huge – 25 miles and four to six miles wide – over 60,000 acres with up to 850 MW from up to 244 turbines, each one 500 foot to 671 foot high in up to 6 rows along the ridgeline. This is a huge major obstruction to responding firefighting efforts. The size of this proposed project will make a huge “No Fly” zone for civil aircraft, medivac helicopters and of course firefighting aircraft.”

“The extraordinary length of the project creates a 25-mile barrier to fixed wing tanker aircraft. The wind turbines produce a lot of air rotating vortices type turbulence that will interfere with safe aerial firefighting operations.

Depending on the winds and the terrain, in order to make effective air drops, the minimum obstruction setback distance should be three to four miles along any flight paths needed to conduct aerial operations, and two to three miles perpendicular to the flight paths to reduce the risks posed by the turbulence downwind of the wind turbines

Paul J. Krupin, BA, MS, JD
Board Member on behalf of TRI-CITIES C.A.R.E.S
Visit: <http://www.TriCitiesCARES.org>
509-531-8390 cell 509-582-5174 landline Paul@Presari.com



Respondent No: 74

Login: Anonymous

Email: n/a

Responded At: Aug 25, 2024 19:29:49 pm

Last Seen: Aug 25, 2024 19:29:49 pm

IP Address: n/a

-
- Q1. **First & Last Name** Paul Krupin
-
- Q2. **Email address** Paul@Presari.com
-
- Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Board member Tri-Cities CARES
-
- Q4. **Share any comment**
not answered
-
- Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/cce95588f72006966dbe7e9092792fc41b116fdc/original/1724639387/56036311ba926b0502ab3741813985ec_Herald_Article_-_August_23.pdf?1724639387
-

Tri-Cities group thinks WA board about to cave after Inslee pushes for more wind turbines

BY ANNETTE CARY

UPDATED AUGUST 23, 2024 2:52 PM



Scout Clean Energy plans a wind farm on Benton County farm land south of the Tri-Cities along the Horse Heaven Hills ridgeline south of Badger Road. BOB BRAWDY bbrawdy@tricityherald.com

KENNEWICK, WA

Kennewick, WA — A Washington state council is considering lifting most proposed restrictions that would have about [halved the number of turbines](#) allowed in a proposed wind farm stretching 24 miles along the Horse Heaven Hills south of Tri-Cities.

The Washington state Energy Facility Site Evaluation Council (EFSEC) spent three years studying the proposal and hearing public comment before recommending to Gov. Jay Inslee approve the [Horse Heaven Clean Energy Center](#), with restrictions to protect [endangered ferruginous hawks](#), Native American cultural resources and fly zones now available for aerial firefighting.

It recommended eliminating a substantial number of the ridge top turbines that would dominate the skyline view from much of the Tri-Cities.

But [Inslee asked EFSEC](#) to take another look, requesting a revised approval of the project “that appropriately prioritizes the state’s pressing clean energy needs.”

He said mitigation measures should be considered that would be more specifically tailored to concerns raised about the project rather than significantly limiting the project areas where turbines could be built as it recommended.

Scout Clean Energy told the Tri-City Herald it would defer any comment until after the Aug. 29 meeting.

The draft recommendations the council will consider would drop the mandatory exclusion area for turbines around active and historical ferruginous hawk nests from 2 miles to a limit of 0.6 miles.



A ferruginous hawk flies low over sagebrush. Wallace Keck *National Park Service* via *Washington state Department of Fish and Wildlife*

The restriction was intended to increase the ability of the hawks to return to certain areas of historic usage.

Turbines built from 0.6 miles to 2 miles would need approval by a technical advisory group assembled by Scout Clean Energy.

Steps to reduce the likelihood of turbines hitting and killing ferruginous hawks might be taken, such as not operating turbines built in that area during daylight in the breeding and rearing seasons.

Inslee told EFSEC that the 2 mile restriction it proposed were “overbroad.”

Disturbance from agricultural and residential land has already caused a significant decline in the ferruginous hawk population on the proposed project site, the governor said.

More than 60% of the nesting territories of the ferruginous hawk in Washington state is concentrated in Franklin and Benton counties, which is considered the core breeding range in the state, according to the Washington state Department of Fish and Wildlife’s 2021 status review of the hawk.

It said that an average of 55 breeding pairs per year nested in the state between 1992 and 1995. But Inslee said that no ferruginous hawk has been seen nesting in the proposed wind farm project area in five years.

The draft recommendation to be considered by EFSEC does not say whether the proposed 0.6 mandatory restriction would eliminate any turbines from the project plan.

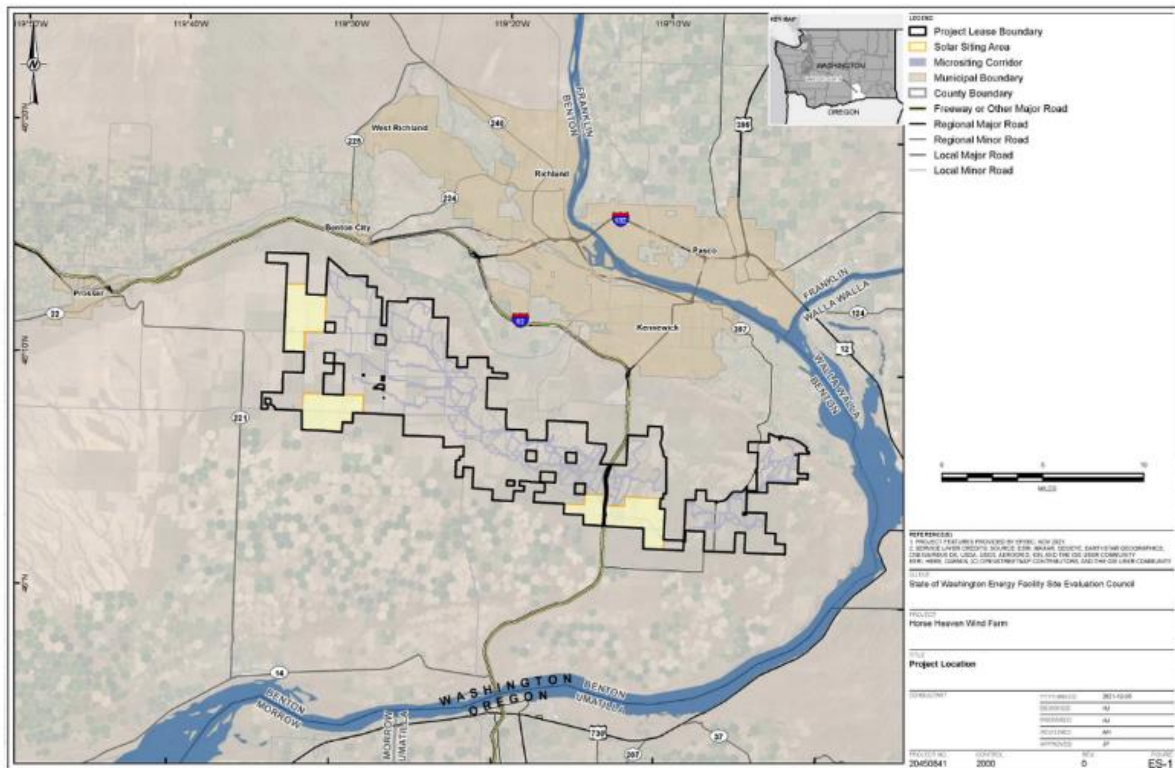
Scout Clean Energy has not made public exactly where the turbines would be put.

MORE WIND TURBINE RESTRICTIONS

The draft recommendation would ban any turbines from being built within a mile of Webber Canyon, which is southeast of Benton City.

“Webber Canyon has been identified by the Yakama Nation as an area of particular TCP (traditional cultural property) concern and prohibiting the siting of wind turbines in proximity to this area will reduce physical and visual encroachment on any TCPs associated with this geographic feature,” according to the draft recommendation.

Krupin said the Webber Canyon restriction appeared to eliminate possibly eight to 10 planned turbines.



The boundary of the proposed Horse Heaven Clean Energy Center south of the Tri-Cities is shown. Solar arrays could be in the yellow areas of the map. *Environmental Facility Site Evaluation Council*

The draft recommendation also would eliminate turbines within a quarter mile of wildfires since 2000.

That would be adequate to allow the state single- and twin-engine turboprops and helicopters used for firefighting by the Washington state Department of Natural Resources, the agency said. But it would not provide an adequate turning radius for federal DC-10s sometimes used to fight fires.

The chairman of the Allied Aerial Firefighters Association, David Wardall, said that wind turbines create a “no fly” zone that greatly increases the risk that any wildfire in or near a wind farm could not be quickly contained. To make air drops during a fire, three to four miles would be needed along flight paths and two to three miles perpendicular to flight paths to reduce the risks posed by turbulence downwind of turbines, he said.

The proposed revised restriction could possibly eliminate six to eight turbines from Scout’s original proposal, primarily near Benton City and along the Webber Canyon ridgeline crest, according to CARES.

“It looks to us like the governor is ignoring the science on wildlife, the protection of traditional cultural properties, the visual impacts and the aerial firefighting restrictions,” Krupin said.

HORSE HEAVEN PROJECT COMMENTING

The Horse Heaven wind farm is the largest proposed for Washington state, with the exception of a new plan to turn some unused federal Hanford nuclear site land just northwest of the Tri-Cities into one of the largest wind projects in the nation.

The EFSEC board includes a chairperson appointed by the Washington state governor and representatives from the the Washington state departments of Commerce, Ecology, Fish and Wildlife and Natural Resources and a representative from the state Utilities and Transportation Commission.

It makes a recommendation on energy projects to the governor, who can approve the council recommendation for the construction of the wind farm with restrictions, reject the application or direct EFSEC to again reconsider aspects of the project.

No public comment will be heard at the council's Aug. 29 meeting. But comments can be submitted electronically through Sunday, Aug. 25 at comments.efsec.wa.gov/ or by email at comments@efsec.wa.gov.

The meeting is expected to be shown on [tvw.org](https://www.tvw.org) and on the EFSEC website.

This story was originally published August 23, 2024, 5:00 AM.



Respondent No: 75

Login: Anonymous

Email: n/a

Responded At: Aug 25, 2024 19:30:36 pm

Last Seen: Aug 25, 2024 19:30:36 pm

IP Address: n/a

- Q1. **First & Last Name** Paul Krupin
-
- Q2. **Email address** Paul@Presari.com
-
- Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Board member Tri-Cities CARES
-
- Q4. **Share any comment**
not answered
-
- Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/ee3427335c44759d5f4776ec6c89cfb67f63abde/original/1724639433/f7bfa787b2489a5fa59b300345271d38_August_20_2024_TCC_OpEd_on_Horse_Heaven_Hills.pdf?1724639433
-

‘A great injustice.’ Demand rational decision-making in the Horse Heaven Hills Wind Project | Opinion

BY PAUL KRUPIN, DAVE SHARP, KAREN BRUN AND PAM MINELLI *SPECIAL TO THE HERALD*
AUGUST 20, 2024 12:14 PM



Scout Clean Energy plans a 100-square-mile Horse Heaven Hills Wind Farm, with 221 499-foot-high turbines along the prominent ridgeline four miles south of Richland and Kennewick. BOB BRAWDY
Tri-City Herald file

Governor Inslee and the Energy Facility Site Evaluation Council (EFSEC) are on the verge of approving the 100-square-mile Horse Heaven Hills Wind Farm, with 221 499-foot-high turbines along the prominent ridgeline four miles south of Richland and Kennewick.

This project stands to industrialize the landscape and change the character of the Tri-Cities for decades to come.

The mandated reconsideration decision by Inslee is a great injustice that causes notable economic harm and significant impacts to the residents of Benton County, the Tri-Cities and the Yakama Nation.

After conducting three years of technical review and analysis, EFSEC voted unanimously to cut the project by about 50% recognizing the significant negative impacts to the endangered ferruginous hawk, wildlife habitat and migration corridors.

The project will cause serious and irreparable damage to traditional cultural properties vitally important to the Yakama Nation.

The prominent wind turbines, highly visible from thousands of homes in several residential communities, will cause significant reductions in property values that will cascade through the economy of the Tri-Cities.

The 221 499-foot-high wind turbines located along the ridgeline south of Tri-Cities are hazardous obstructions that result in the creation of a huge 25-mile-wide regional no-fly zone.

This prevents employing critically important large aerial firefighting tanker aircraft that have been used year after year to protect the adjacent neighborhoods from repeat wildfires.

On April 29, 2024, the EFSEC Council mitigated the impacts and made a unanimous recommendation that balanced the impacts against the benefits.

However, on May 23, 2024 Inslee overruled the changes the EFSEC Council recommended and directed them to restore the project to near the original size, citing an undefined need for renewable energy.

Never in the 54-year history of EFSEC has a governor taken such action.

Adopting arguments presented by the developer, Inslee dismisses and ignores the impacts along with the economics and directs EFSEC to maximize the project.

His directive sweeps away the government's responsibility to protect our communities from industrial extremists without explaining how much renewable energy will be produced or where it will go.

He does not recognize that the likely benefactors are big tech data centers out-of-state, rather the citizens of Washington.

Inslee fails to recognize that this project will not generate reliable power when it is needed most — in the dead of winter and the peak of summer. In the Pacific Northwest, particularly in southeast Washington, the wind does not blow for days or weeks at a time.

For example, during the cold snap in January 2024, the Nine Canyon Wind Project south of consumed more energy than it generated. Performance at energy facilities in the Northwest was similar. Utilities had to import up to 5,000 megawatts just to keep the lights on.

Northwest utilities are building wind projects in Montana and Wyoming with more reliable wind. The HHH project will not produce reliable wind energy that benefits and satisfies Washington's needs, which are far better addressed by nuclear and hydro power.

Even with EFSEC's recommended reduction in the number of turbines, the Horse Heaven Project would still be the largest renewable project in Washington.

Overriding EFSEC and mandating the construction of hundreds of low performing, poorly located and highly impactful wind turbines near the Tri-Cities is not the right answer.

It is unreasonable to ignore the scientific and economic conclusions and the mitigations developed during the review and analysis process.

EFSEC should reject the governor's remand and stick to their original unanimous decision.

It is unacceptable and irrational for the Governor to reject the recommendation made by EFSEC.

The injustice is beyond reason.

Paul Krupin, Dave Sharp, Karen Brun, Pam Minelli

Tri-Cities CARES



From: [EFSEC \(EFSEC\)](#)
To: [EFSEC mi Comments](#)
Subject: FW: Public Comment- HHH Visual Impacts
Date: Sunday, August 25, 2024 10:35:40 PM
Attachments: [Public Comment Visual August 25.pdf](#)

From: Dave Sharp <dave@tricityscares.org>
Sent: Sunday, August 25, 2024 10:34:43 PM (UTC-08:00) Pacific Time (US & Canada)
To: EFSEC (EFSEC) <efsec@efsec.wa.gov>
Subject: Public Comment- HHH Visual Impacts

External Email

Public Comment-HHH Project
Dave Sharp
Tri-Cities CARES
Topic-Visual Impacts
Time Sent: 10:34 PM August 25, 2024

David Sharp
Vice President, Tri-Cities CARES
Email: dave@tricityscares.org
Webpage: www.tricityscares.org

Public Comment

Dave Sharp representing Tri-Cities CARES

Visual Impacts

Precedent is a word that has been used many times, whether it be EFSEC precedent from previous projects, or the Scout argument that the Nine Canyon project sets precedent for the HHH project. Tri-Cities CARES disagrees.

Websters Definition Precedent: 1. an earlier occurrence of something similar. 2. a : something done or said that may serve as an example or rule to authorize or justify a subsequent act of the same or an analogous kind.

EFSEC routinely sets precedent and is frequently reminded of that by the Applicant. There has been no specific precedent on this topic for EFSEC projects to our knowledge, and we reject the Applicant's argument that the tiny, well designed Nine Canyon is a precedent for this monster project. If EFSEC allow this project to be built as the Applicant desires, there will be no limit to encroachment that will take place.

We urge EFSEC to leave the Visual mitigation measures identified in the deliberations in place.

Conclusion-We have shown using our population/proximity interactive tool, Link follows, from a population standpoint alone, the HHH Project is significantly more impactful than other wind projects in the State, in the Northwest, and we believe nationally. The HHH project has approximately 15 times the amount of people located within three miles than the average of all other state wind projects and 7 times the population as the next highest county. We provided population proximity information during the comment period and provided testimony about the stark difference of population to large projects identified by the Applicant and the HHH projects.

Because of the many differences between the NC project and the HHH project, discussed below, we vehemently disagree that NC has set precedence.

The Governor's response to EFSEC. The Governor offers two reasons for rejecting meaningful visual mitigation; 1. His opinion, 2. An argument that the State needs the renewable energy. That argument will be made separately, but by the Applications own documentation, they can only inject 850mw into the BPA system, and even with the reduced project and solar buildout the project would still be the largest ever for Washington State.

Precedent Discussion-Tri-Cities CARES has argued that this project does not follow general wind industry practices, among other things, being a long continuous project that skirts the boundary of a 25-mile metropolitan area of over 300,000 people. The project parallels 4 cities urban grow areas and associated zoned residential communities with many thousands of residents living within 2 and 3 miles of turbines.

We also argue that the NC project is not a precedent for other reasons. From a visual standpoint, the NC original project was sited North of and at the base of Jumpoff Joe Butte. The height of the turbines was largely screened by intervening topography between the turbines and Kennewick. The last phase of the NC project installed larger turbines, but they were blended in with existing vertical

infrastructure on Jumpoff Joe or built South of the Butte. This mitigated the vertical contrast. They were out of sight, and out of mine.

Conversely, the HHH turbines are located on prominent ridges overtopping lower elevation residences. In the West central section where a large percentage of turbines are located the upsloping topography will highlight views of the entire turbine tower, and multiple rows. It should be noted that there are no structures taller than 150' West of HW 395 except temporary met towers, and no structures or towers from Kiona ridge to East of Badger Canyon drainage.

Applicant Visual Representations did not represent Worst Case Impact-The Applicant justified their generic application by saying they were using the worst-case impact scenario. For example, the tallest turbine, largest rotor diameter, etc. The visual representations prepared by the Applicant chose the least visually impactful turbine models for visual impact analysis of each height category. The more visually prominent turbines look short and squat with low ground clearance. That calls into question whether the entire Visual Section needs to be redone. We are unsure if this was merely a mistake not noticed or corrected after the Applicant added larger different designed turbines. If it was purposeful, there is a provision in RCW 80.50.130 that can cause revocation or suspension of an SCA.

Interactive Tool Application-The Applicant provided no tools to estimate the proximity of the project to population. Similarly, they Applicant did not provide coordinate locations so local landowners and residents could determine the distance from a turbine location and whether topography would screen them visually.

We had an interactive tool developed that combined data from the US Census, and the National Wind Turbine Data Base to easily analyze existing wind projects, and manually input key turbine coordinates from the HHH project not yet on the national wind turbine data base. That allowed a comparison of HHH with other wind projects. We found that the HHH project was in a different stratosphere regarding proximity to people.

For example, the HHH project had 15 times as many people located within three miles compared to the average of all other state projects.

Population Proximity Application

<https://app.powerbi.com/view?r=eyJrIjoiZTgyNGNmY2UtZGFIMS00NmUzLWE2OWItOTUwMmUyNWl3MTRhIiwidCI6IjY3NGQxNWZlTAzYzYtNGE2Mi1hYzlkLTZkNWNjZWViOGZiYiIsImMiOjN9&pageName=ReportSection16229c66d1b91798e8d2>

The Order and Recommendation to the Governor. The Order and The HHH project just went through arguably the longest and most thorough SEPA review process of any project EFSE had ever undertaken.

Both the independent Visual Expert from SWCA, and TCC's own visual expert agreed that the visual impacts were significant and unavoidable.

Order #892 confirmed what all who have studied the project knew. It created significant and unavoidable visual and other environmental impacts.

Screenshots on Google Maps to Demonstrate Proximity-The messaging in the Application references a distance of “4 miles from Kennewick”. It is much more than that, the All of Benton City Limits are within 4 miles as is a good part of the Yakima Valley. In the Central Part of the Project

Screenshot #1- The entire city limits of Benton City is within 4 miles of the project. The included google map screenshot measures out the 4 mile distance. The closest residence and business are approximately 0.9 miles from a turbine that towers looms over them by ~2000 feet.

Screenshot #2-In the West Central part of the project shows the project extending just into the Richland City limits at 4 miles, but engulfing communities and urban growth areas from the closest turbine.

Screenshot #2A-This was supposed to be the KOP at which Scout was supposed to create a Visual Representation. It is the closest point of the project boundary to a community. Somehow Scout altered the public comment request for a panoramic view from this KOP and created a new location about 2 miles West on Badger Road overlooking a rural farm setting. This calls into question the methods and basic ethics of this Applicant. Instead of being transparent about the actual visual impact their effort went into obscurity and trickery. I say trickery, because if EFSEC will look back at the early data requests for visual, you will find that Scout effectively tricked you into accepting the new location.

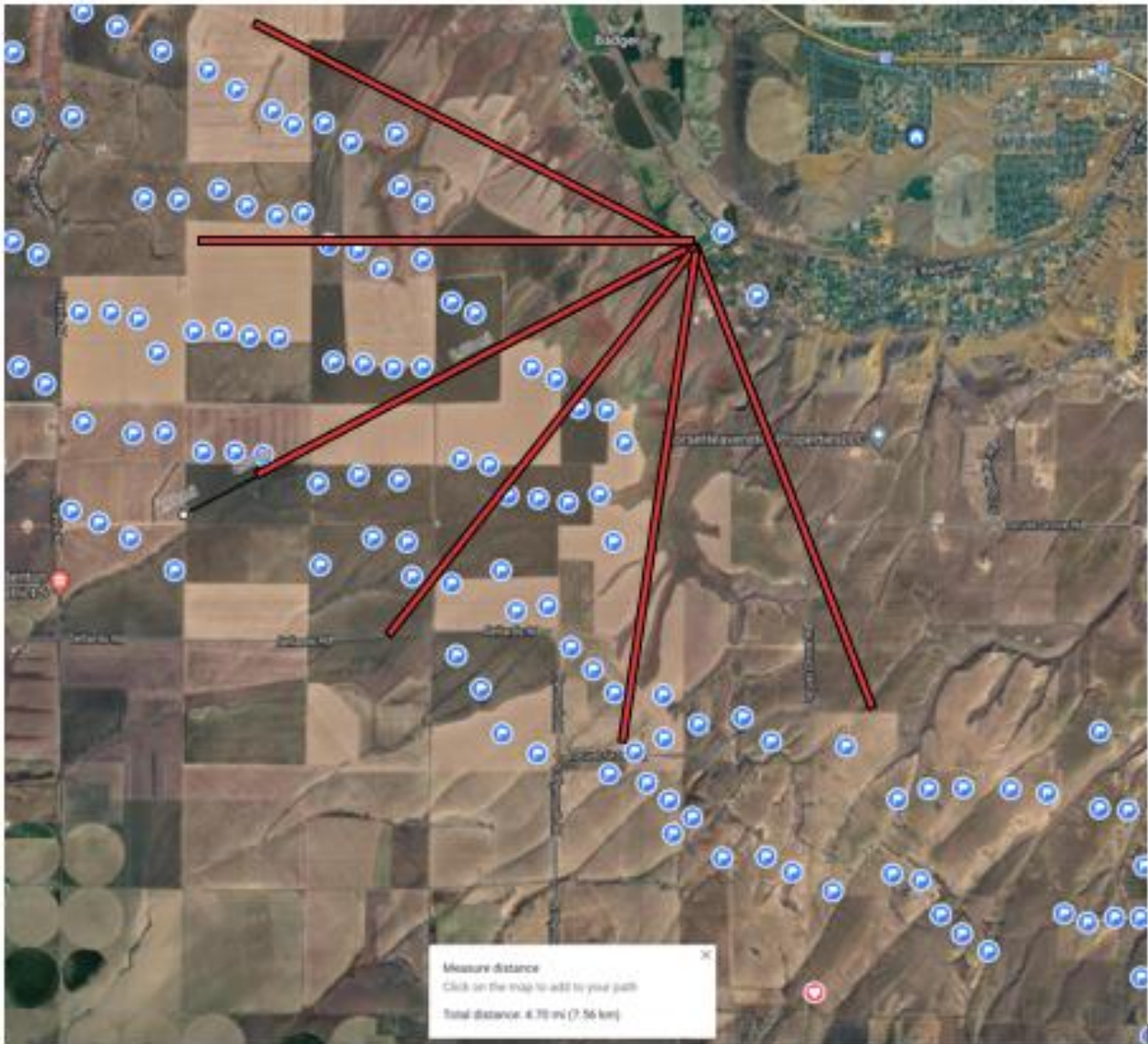
Screenshot 1, Benton City showing the entire City limits within 4 miles.



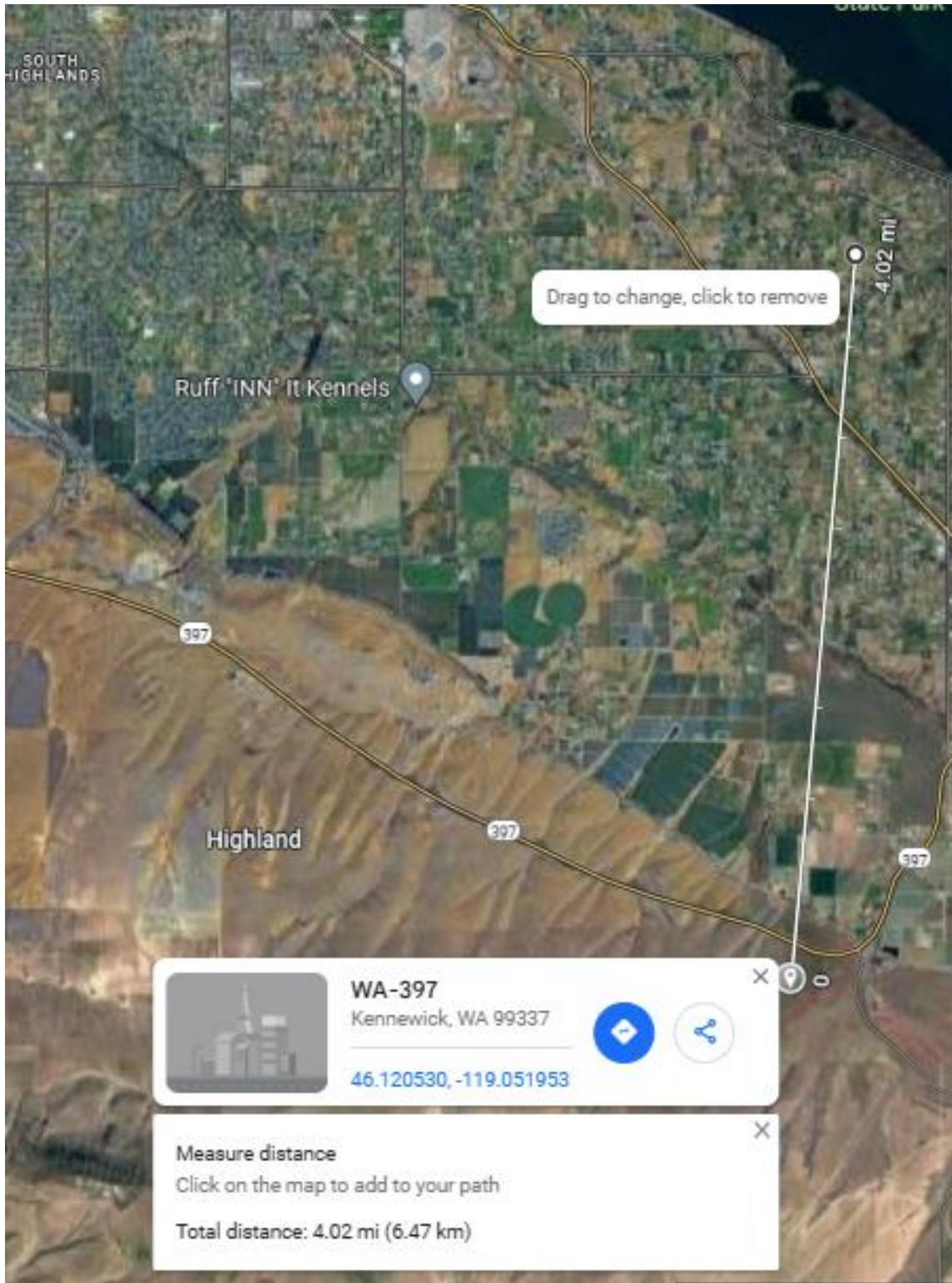
2- West Central Project-Distance from turbines to the communities between Richland City Limits and the project.



Screenshot 2a-The Real KOP 10-Not the one that was invented by the Applicant. Length of spokes approximately scaled to 4 miles in length. This is the visual representation that Scout did not want EFSEC to see.



Screen Shot 3-East Project-Extends will into Finley



From: [EFSEC \(EFSEC\)](#)
To: [EFSEC mi Comments](#)
Subject: FW: Reliability of Wind- Washington
Date: Sunday, August 25, 2024 10:50:36 PM
Attachments: [Reliability of Wind Energy-Public Comment.pdf](#)
[Nine Canyon Performance-Extreme Weather Examples.pdf](#)

From: Dave Sharp <dave@tricityscares.org>
Sent: Sunday, August 25, 2024 10:49:21 PM (UTC-08:00) Pacific Time (US & Canada)
To: EFSEC (EFSEC) <efsec@efsec.wa.gov>
Subject: Reliability of Wind- Washington

External Email

Public Comment
Dave Sharp
Tri-Cities CARES
Topic-Reliability of Wind-Washington
Time Sent 10:49 PM

David Sharp
Vice President, Tri-Cities CARES
Email: dave@tricityscares.org
Webpage: www.tricityscares.org

Public Comment-Horse Heaven Hills Project

Dave Sharp
Tri-Cities CARES

Topic-Washington State Wind Energy

Summary-Wind Energy in Washington is very unreliable. Utilities supplying Washington customers are building in Montana and Wyoming to take advantage of more robust winter winds. Solar with battery storage is the renewable technology presently being built in Washington.

Governor's Decision-The Governor's decision directing EFSEC to return the project to near full size does not recognize the complexity and issues in front of the State. The information in his letter does not line up with his own energy strategy and current utility direction, which is to import wind energy from elsewhere.

The Applicant has never committed to provide power to the Washington. Why should a project be approved when there is no commitment to provide electricity?

The Governor should reconsider his reconsideration request. Regardless, EFSEC should stand by their initial deliberative findings for the project.

Washington's Energy Needs-Washington indeed has a need for energy, but reliable energy to meet peak loads. Unreliable wind energy will not fill the bill. The Applicant appears to be developing a merchant plant expecting a lot of profit from market sales, and those sales could go anywhere.

Wind Energy Performance Nine Canyon-Attached is a chart that illustrates the Nine Canyon Project performance during wind droughts in January and July.

Utilities also recognize that renewable alone will not do the job. There is a need for dispatchable power. PacifiCorp is retrofitting a 530mw Jim Bridger unit to fire natural gas to bridge after 2025 when coal cannot be used.

Washington needs to reassess whether pancaking the CETA legislation with the Carbon Commitment Act and the Clean Fuels Act with vehicles electrification is just too much too soon.

Scout Clean Energy appears to be out of step in several areas. First, building a wind project in Washington when our utilities are building them elsewhere. Second, although advertised as a hybrid project, it is predominantly wind, when solar with battery storage is the choice of other developers in the state. Third the battery storage component is minimal compared to the collective wind and solar. That indicates to me they are designing the project to help them shape the generation into marketable blocks rather than extending generation into the early evening hours.

Wautoma has a 500mw solar project and is planning 500mw of 4-hour battery storage. It appears that project is being designed to sell to instate utilities for Customers, hopefully in state.

Discussion-Washington Wind Resources and Energy Droughts-Washington State Wind Resource is rated low to moderate by the National Renewable Energy Laboratory-NREL.

There are just three areas of the state that have wind resources high enough to support wind projects.

1. The downslope of the eastern Cascade Mountains to the Columbia River in the Kittitas Valley and at the top of the Vantage grade.
2. The Columbia River Gorge primarily just East of the Columbia Gorge National Scenic Area in Klickitat County
3. The Palouse and area around Dayton.

There is a fourth area on the East end of the Columbia Gorge after topographically flattens in the East Horse Heaven Hills and along a prominent ridge east of Wallula Gap stretching over to Walla Walla.

Meteorologically, Washington, and the Northwest in general, although during some parts of the year have robust winds, during extremely cold or hot periods, inversions dramatically decrease wind. These periods can last just a day or two, but during extreme temperature situations, wind average velocities can drop to effectively to zero for days, a week or even longer. It is not a localized phenomenon. In these situations, all of Washington and Oregon are affected. For lack of better terminology, these will be described as wind droughts.

There were two recent wind droughts within the last year.

From January 12-18, 2024, extreme cold weather temperatures blanketed the Northwest. In the Tri-Cities temperature low were below zero and highs were in the single digits to low teens. Wind dropped to near zero, and virtually all wind in Oregon and Washington was so low that project did not generate.

From July 4-July 9, 2024, high temperature climbed to near 110F in the Tri-Cities, and gradually moderated during the period to the low 100's.

The January event was a true electricity emergency. Over 5000 mw had to imported from all over the West and Canada for the 5 days of the wind drought. The amount of imported electricity is equivalent to 5 Energy Northwest Generating stations. The City of Richland had to ask a major industrial customer to voluntarily cut their electricity use. The customer, a large food processor cut an entire shift. The Northwest indeed was truly on the brink. Lost of any large facility or power line would have triggered active measures to save the grid. It was a wake-up call.

The July event was less dramatic but reinforced that wind droughts are not that rare. In November 2023, there were approximately 20 consecutive days where the BPA balancing Authority, consisting of over 2800 nameplate mw data showed the wind capacity factor averaged under 5%. In December 2023 there was a week with very little wind generation with a similar droughts. The weather was not as cold and system load was down so

Attached is a document with a graph of the Nine Canyon Project Net Generation in 5-minute increments. The January data was obtained from the Benton PUD, and the July data was requested through a public information request process because to get prompt results

All these events were region wide, and reinforced what utility planners already knew. Concentrating more wind in Washington was a zero-sum game. Some period of the year there is ample wind, and generation, but during the high load periods, December and January, Late June through late August, and in particular peak demand days, wind cannot be relied upon.

We are carrying all of the eggs in one basket to make an analogy. Therefore, planning organizations such as the Western Electricity Coordinating Council responsible to maintain grid reliability have assessed load carrying capacity for various technologies of generation. There are 5 defined areas within WECC, and each has identified capacity factor values that utilities use to build their generation portfolio.

For Example, the Effective Load Carrying Capacity of wind projects in Eastern Washington and Oregon is 10%. A utility with a 100mw nameplate wind project can only claim 10% for purposes of peak demand periods.

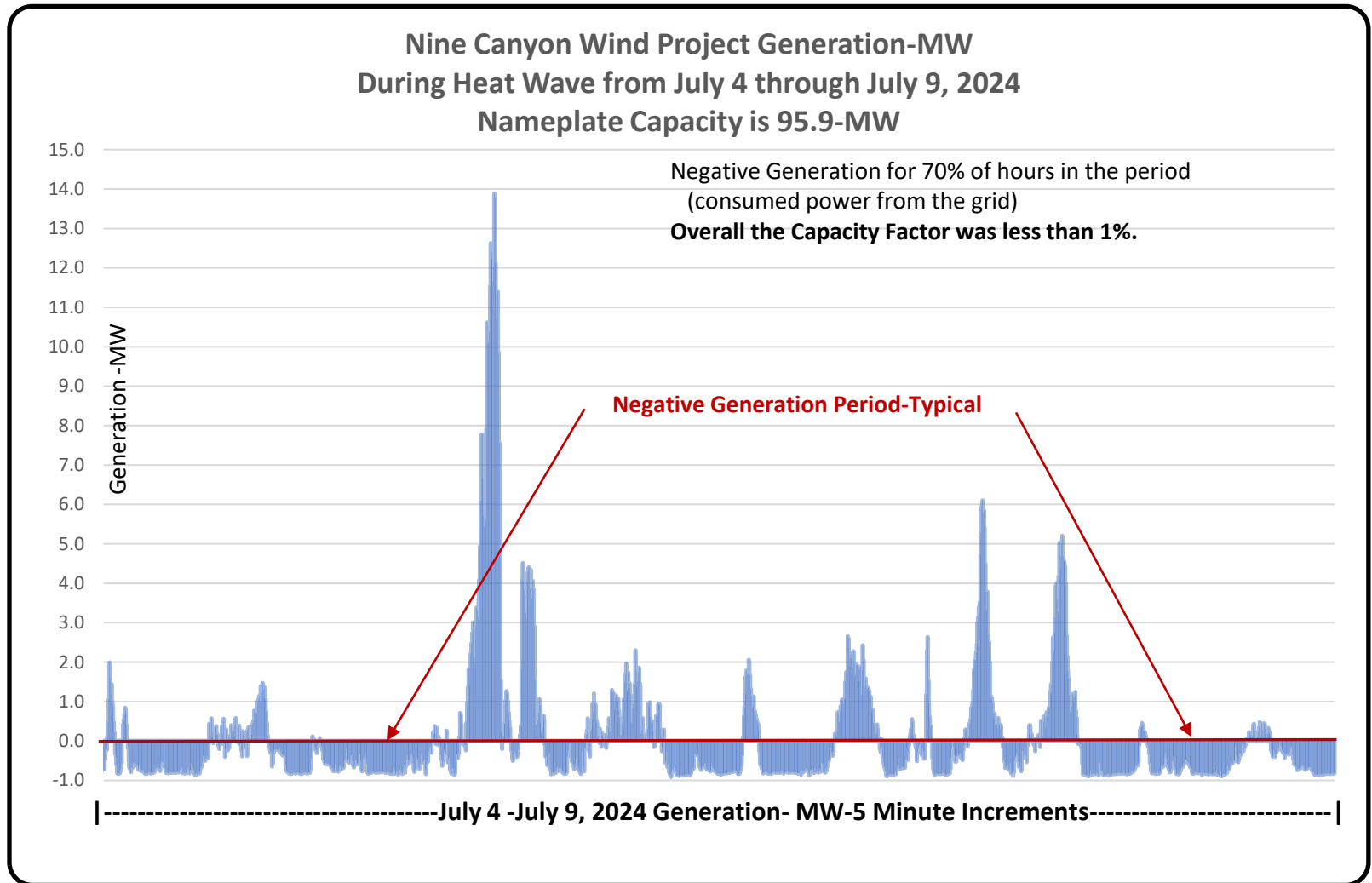
Washington utilities have abruptly stopped new local wind development and are preferring Montana and Wyoming. Montana has much stronger and reliable winter winds, and existing transmission is available as coal generation reduces. Renewable energy development in Washington is mostly solar with battery storage.

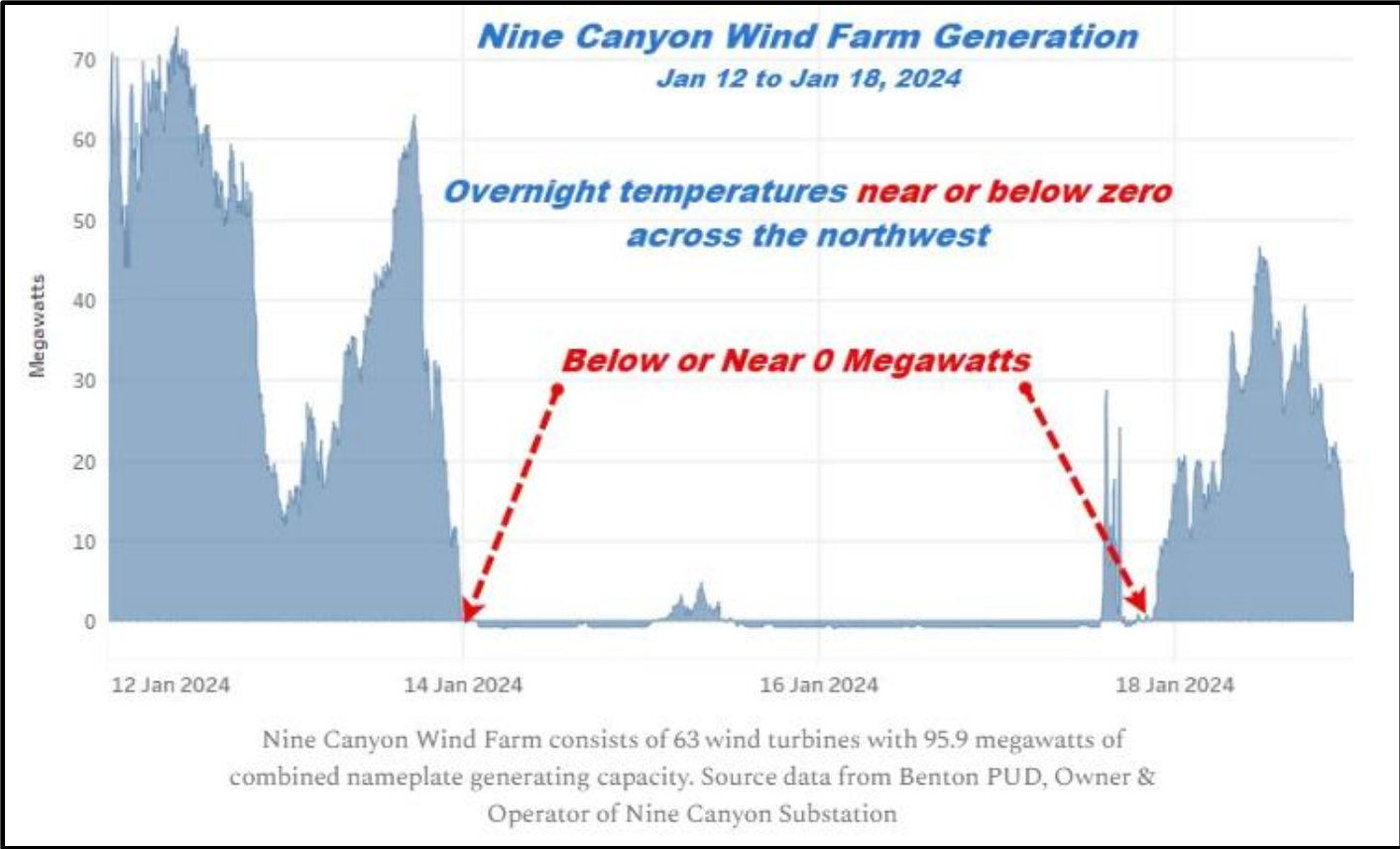
The State energy strategy recognizes this as most of the wind energy is shown as imported. The strategy does not show new wind energy to be built in the State for about 10 years.

Eastern Washington is generally sunny compared to the West side of the Cascades, and only limited by the high latitude during winter months. One peculiarity with the Horse Heaven Hills area is that during November and December we receive an inordinate amount of heavy fog, sometimes freezing. That could make solar generation even less reliable during those months.

[Nine Canyon Performance-Extreme Weather Examples.pdf](#)

Figures show the poor performance during extreme weather in the Tri-Cities Area. Bonneville Power Wind performance was Typical.





From: EFSEC (EFSEC)
To: EFSEC_m Comments
Subject: FW: Visual Impact- HHH Project Application Tool Link.
Date: Sunday, August 25, 2024 10:59:34 PM
Attachments: [Public Comment Visual August 25.pdf](#)

From: Dave Sharp <dave@tricitiecare.org>
Sent: Sunday, August 25, 2024 10:59:07 PM (UTC-08:00) Pacific Time (US & Canada)
To: EFSEC (EFSEC) <efsec@efsec.wa.gov>
Subject: Visual Impact- HHH Project Application Tool Link.

External Email

Public Comment-Horse Heaven Hills Project
Dave Sharp
Topic-Visual
Time Sent 10:58 PM August 25, 2024

This link below is the Application that TCC developed that uses the National Wind Turbine Data with the US census data to determine the population living distances from wind turbines. An earlier comment that had the link in the body of the attachment, I inadvertently left it out of the comment email. I am also including the original attachment so they are in the same document.

<https://app.powerbi.com/view?e=eyJrjoZTgyNGNmY2UzZGFIMS00NmUzLWE2OWJhOTFwMmUyNW13MTRhIiwidCI6IjY3NGQxNWZlTAZyZyNGE2M1hYzklLTZkNWNjZWVjOGZiYjIjImlmMiOjN9&pageName=ReportSection16229c66d1b91798e8d2>

David Sharp
Vice President, Tri-Cities CARES
Email: dave@tricitiecare.org
Webpage: www.tricitiecare.org

Public Comment

Dave Sharp representing Tri-Cities CARES

Visual Impacts

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EFSEC routinely sets precedent and is frequently reminded of that by the Applicant. There has been no specific precedent on this topic for EFSEC projects to our knowledge, and we reject the Applicant's argument that the tiny, well designed Nine Canyon is a precedent for this monster project. If EFSEC allow this project to be built as the Applicant desires, there will be no limit to encroachment that will take place.

We urge EFSEC to leave the Visual mitigation measures identified in the deliberations in place.

Conclusion-We have shown using our population/proximity interactive tool, Link follows, from a population standpoint alone, the HHH Project is significantly more impactful than other wind projects in the State, in the Northwest, and we believe nationally. The HHH project has approximately 15 times the amount of people located within three miles than the average of all other state wind projects and 7 times the population as the next highest county. We provided population proximity information during the comment period and provided testimony about the stark difference of population to large projects identified by the Applicant and the HHH projects.

Because of the many differences between the NC project and the HHH project, discussed below, we vehemently disagree that NC has set precedence.

The Governor's response to EFSEC. The Governor offers two reasons for rejecting meaningful visual mitigation; 1. His opinion, 2. An argument that the State needs the renewable energy. That argument will be made separately, but by the Applications own documentation, they can only inject 850mw into the BPA system, and even with the reduced project and solar buildout the project would still be the largest ever for Washington State.

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We also argue that the NC project is not a precedent for other reasons. From a visual standpoint, the NC original project was sited North of and at the base of Jumpoff Joe Butte. The height of the turbines was largely screened by intervening topography between the turbines and Kennewick. The last phase of the NC project installed larger turbines, but they were blended in with existing vertical

infrastructure on Jumpoff Joe or built South of the Butte. This mitigated the vertical contrast. They were out of sight, and out of mine.

Conversely, the HHH turbines are located on prominent ridges overtopping lower elevation residences. In the West central section where a large percentage of turbines are located the upsloping topography will highlight views of the entire turbine tower, and multiple rows. It should be noted that there are no structures taller than 150' West of HW 395 except temporary met towers, and no structures or towers from Kiona ridge to East of Badger Canyon drainage.

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Population Proximity Application

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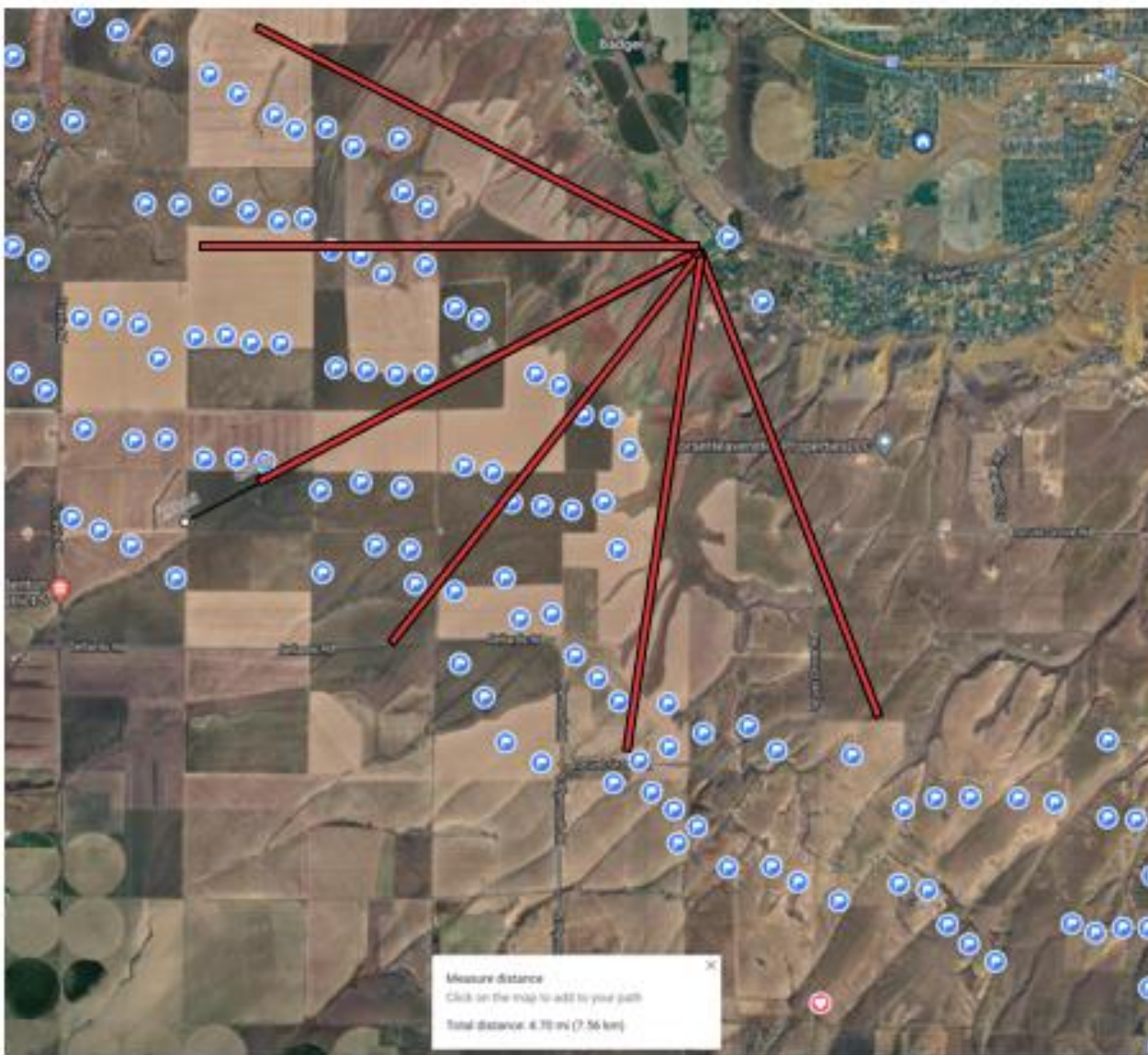
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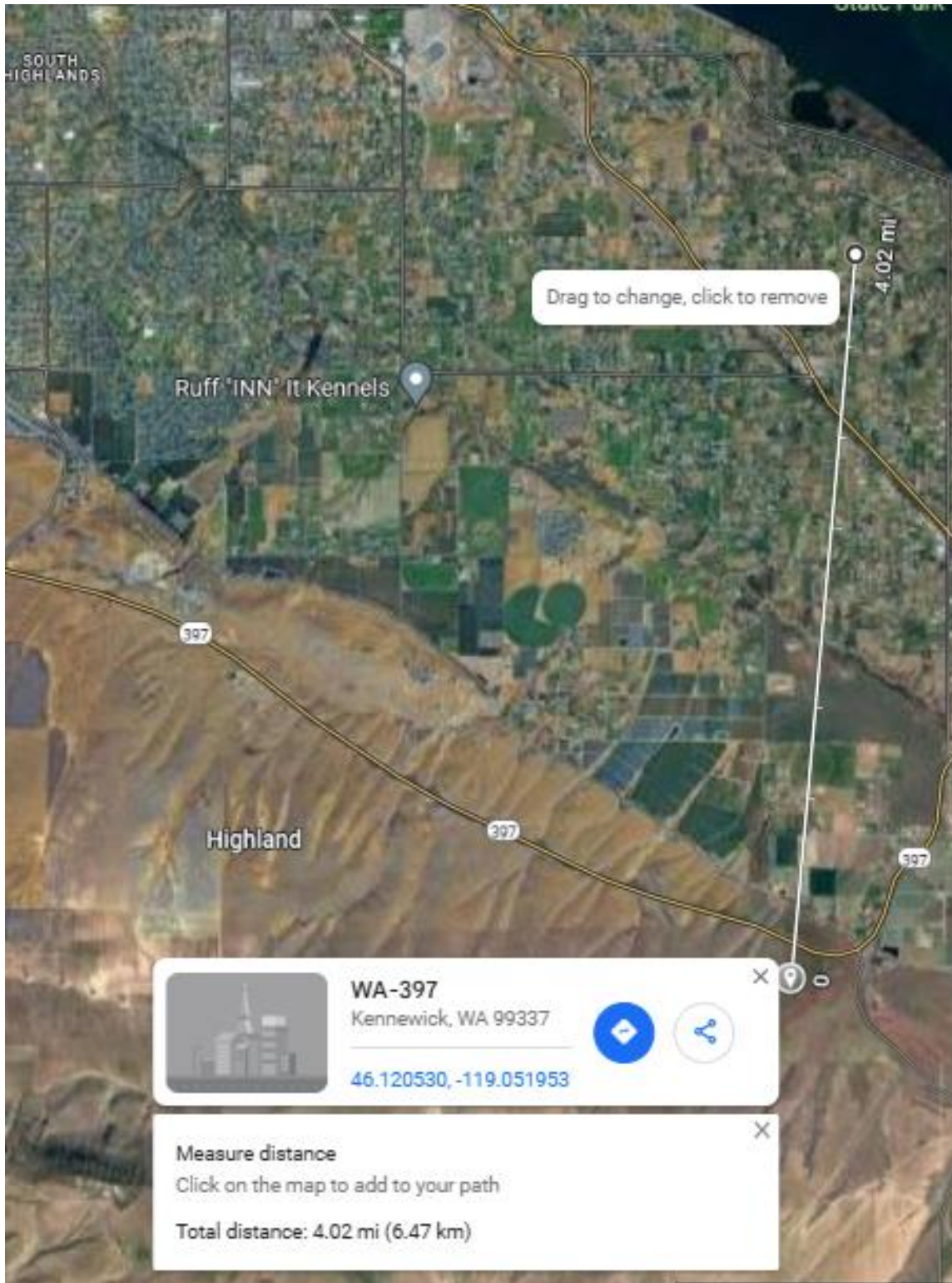
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From: [EFSEC \(EFSEC\)](#)
To: [EFSEC mi Comments](#)
Subject: FW: Public Comment- HHH Visual Impacts
Date: Tuesday, August 27, 2024 8:29:26 AM
Attachments: [Public Comment Visual August 25.pdf](#)

From: Dave Sharp <dave@tricitescares.org>
Sent: Sunday, August 25, 2024 10:35 PM
To: EFSEC (EFSEC) <efsec@efsec.wa.gov>
Subject: Public Comment- HHH Visual Impacts

External Email

Public Comment-HHH Project
Dave Sharp
Tri-Cities CARES
Topic-Visual Impacts
Time Sent: 10:34 PM August 25, 2024

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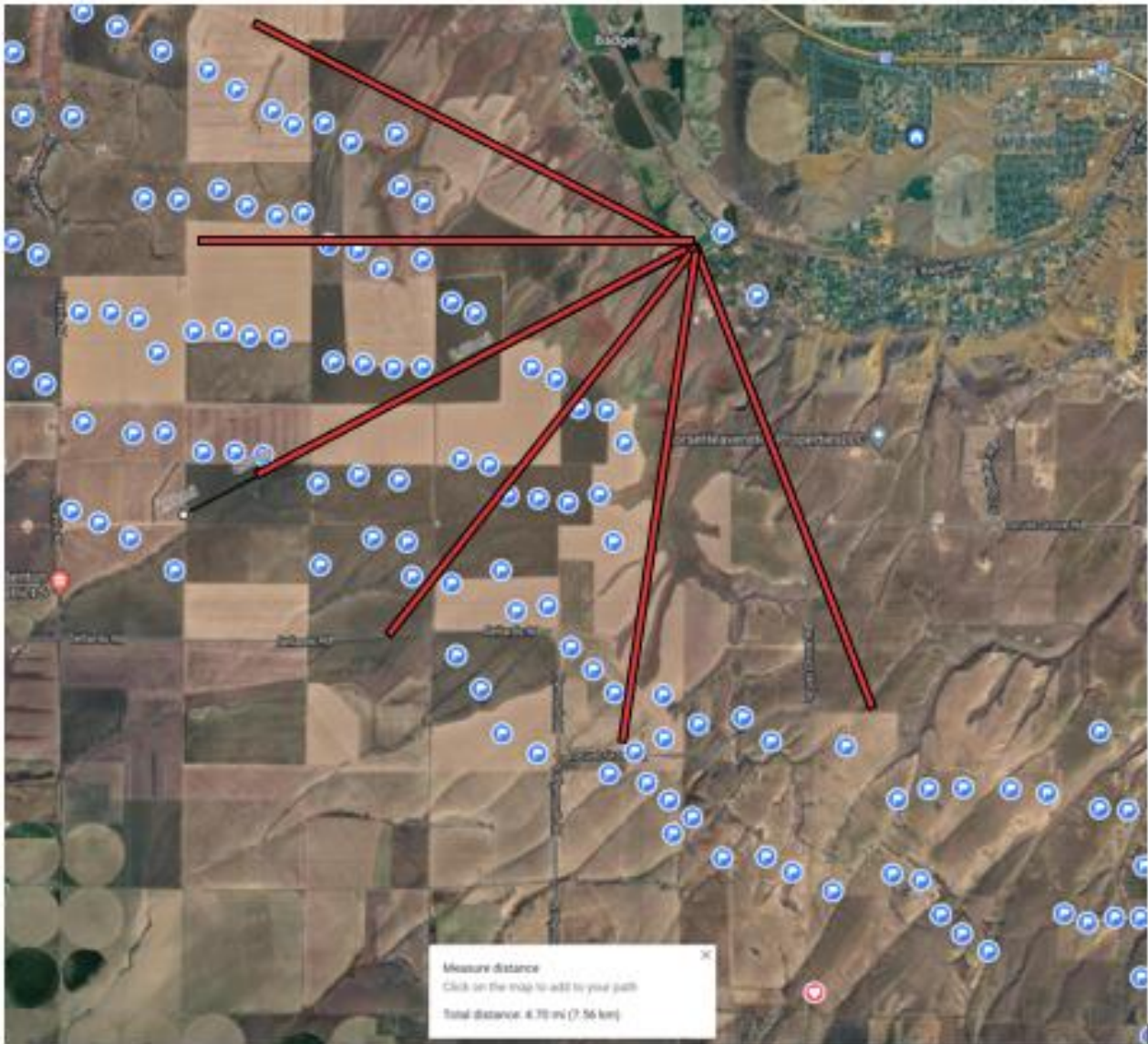
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