



STATE OF WASHINGTON
— OFFICE OF GOVERNOR JAY INSLEE —

May 23, 2024

Kathleen Drew, Chair
Energy Facility Site Evaluation Council
1300 S. Evergreen Park SW
PO Box 43172
Olympia, WA 98504

RE: Horse Heaven Wind Farm Project
EFSEC Recommendation dated April 29, 2024

Dear Chair Drew:

As an initial matter, I want to express my gratitude for the significant body of work that led to the Energy Facility Site Evaluation Council's (Council or EFSEC) recommendation to approve the Horse Heaven Wind Farm Project (Project). However, pursuant to RCW 80.50.100, I am directing the Council to reconsider certain aspects of the draft site certification agreement (SCA) submitted to my Office on April 29, 2024, as outlined below, based on the existing record before the Council.

Before identifying specific matters for reconsideration, I want to reiterate the following statutory policy statement that, among other factors, must guide the Council's work:

It is the policy of the state of Washington to reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities.

RCW 80.50.010.

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

Our State Energy Strategy shows electricity demand in Washington could grow by 13-20% over 2020 levels by 2030. By 2050, electricity load growth is expected to increase to 92% above the 2020 levels. At the same time, the Clean Energy Transformation Act prohibits use of electricity from coal-fired generation facilities to serve electric loads after 2025, requires carbon neutral electricity supplies starting in 2030, and requires 100% renewable or non-emitting electricity supplies by 2045. For these reasons, the siting and permitting of clean electricity projects is vital to addressing Washington state's power supply and clean energy requirements.

As it was originally proposed, this Project would provide 1,150 megawatts of electricity, approximately 5% of the new electricity generation needed in the next decade. For context, the region will need to build roughly twenty additional clean energy projects of this magnitude to meet Washington's projected electricity load growth by 2035.

Indeed, for these reasons the Council's statute makes clear that the siting and permitting of clean energy facilities is a critical priority for Washington:

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.

It is the intent to seek courses of action that will **balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public**. In addition, it is the intent of the legislature to **streamline application review** for energy facilities **to meet the state's energy goals** and to authorize applications for review of certain clean energy product manufacturing facilities to be considered under the provisions of this chapter.

RCW 80.50.010 (emphasis added).

In short, the statute directs the Council to balance the environmental impacts with bold action to meet our state's pressing energy needs. To this end, the Council's action should be based on the following key policies enunciated in its statute, which also emphasize the need for clean energy:

- (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.
- (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.

- (3) To encourage the development and integration of clean energy sources.
- (4) To provide abundant clean energy at reasonable cost.
- (5) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.
- (6) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay while also encouraging meaningful public comment and participation in energy facility decisions.

RCW 80.50.010.

As I have outlined here, the Council's statutory framework emphasizes the importance of permitting and siting clean energy facilities. While it is incumbent upon the Council to minimize environmental and other impacts of these projects where feasible, the critical need for rapid and large-scale growth in our state's clean energy generation capacity should guide the Council's consideration of conditions or limitations that would limit the scale of proposed clean energy projects.

With these general considerations as a background, I turn now to my evaluation of EFSEC's recommendation.

In order to review the Council's recommendation and the extensive record in this matter, I convened a team of seven advisors including policy area experts, my general counsel, and two Assistant Attorneys General. We met a number of times, in some cases on a near daily basis as we delved into the record materials. In addition, we consulted with the Council's technical staff for assistance in quickly locating information in the extensive record.

In General

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 and identifies a range of measures to mitigate to various degrees these potential impacts. The record is robust and satisfactory from my perspective for the purposes of siting and permitting the proposed Project, and I concur in the Council's determination that the Project is consistent with the County land use plan and zoning ordinances per Orders 883 and 892.

However, I am directing the Council to reconsider the conditions and mitigation in its recommendation in favor of an approach to mitigation that is **more narrowly tailored** to the specific impacts identified. Such an approach would seek to limit the conditions to those measures that are reasonably and feasibly consistent with achieving the full or near-full clean energy generation capacity of the proposed Project.

For example, the Council recommended excluding turbines from the micro-siting corridor identified as “Class 3 Impact” in Figures 2-5 and 2-6 of the Final EIS in order to minimize multiple “compounding” impacts.¹ However, I find that this approach of eliminating a large swath of the proposed turbine locations to achieve a generalized reduction in impacts across a number of categories takes an overly broad approach to addressing the very different types of impacts at issue. This results in a dramatic reduction in the overall scope of the proposed Project. The outright prohibition of turbine locations should be replaced with mitigation in the form of operational conditions that allow for build-out of the vast majority of the proposed Project.

On reconsideration, the Council should review the existing, robust record and design mitigation requirements consistent with the structure and approach that I have outlined here. The goal of the mitigation is to reduce the impacts wherever reasonably feasible. However, significant impacts may be accepted as part of this vital Project where they cannot be reasonably mitigated. 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.

Further, I specifically direct the Council to reconsider the mitigation requirements in light of my observations and direction in a number of key specific areas, including mitigation for impacts to wildlife, habitat, visual, and cultural resources.

Wildlife and Habitat

Based on my review of the record it is clear that with narrowly tailored mitigation, impacts to wildlife and habitat can be adequately mitigated including but not limited to ferruginous hawks, pronghorn antelope, several species of bats, and ground squirrels. The Council should reconsider, however, certain mitigation measures that are overbroad and would unnecessarily result in limiting the generation capacity of the Project such as mitigation for the ferruginous hawk, as well as the habitat mitigation measures included in the draft SCA.

The record shows that substantial disturbance from agricultural and residential land use has caused a significant decline in the ferruginous hawk population at the Project site and calls into question whether the ferruginous hawks will return given the considerable, permanent changes to their habitat. The sad reality is that the ferruginous hawk population has declined to minimal levels at the site over many years, due to various factors including agricultural and residential land use decisions that pre-date this Project. In fact, the record reflects that not a single ferruginous hawk has been seen nesting in the Project area in the last 5 years. As a life-long birder, this is not a fact that is pleasant to acknowledge.

The location and number of turbines the Council recommended to be removed from places where generation capacity is highest is based on the Council’s assessment of minimizing

¹ Report to the Governor on Application Docket No. EF-220011, dated April 29, 2024, at p12.

impacts to ferruginous hawk habitat in the Spec-5 mitigation provision. Given the currently existing habitat conditions for hawks, and the corresponding impact that any reduction of the Project is likely to have on generation capacity, it is important to focus hawk protection requirements to those times and places where hawks are present. Again, the impact mitigation approach must be narrowly tailored, based on the best available science and ongoing site surveys.

Rather than excluding large areas of the wind turbine micro-siting corridor based on radii of historic hawk nest sites, I direct the Council to consider, at a minimum, the following alternative mitigation approaches: First, regarding habitat mitigation, exclusion of all sage shrub-steppe and rabbitbrush acreage from the micro-siting corridor for turbines, as well as seeking ways to require or enlarge sage shrub-steppe habitat mitigation through conservation easements and other habitat protection requirements both on and off the Project site; second, consider siting restrictions that can be eliminated and replaced with operational curtailment for individual turbines, and also suspension of construction activity, whenever currently existing ferruginous hawk activity is detected within 2 miles of that turbine during the late March through late July nesting and fledgling periods each year; third, I direct the Council to consider requiring the applicant to monitor ferruginous hawk activity as well as turbine strike mortality during the life of the Project and make adjustments to operation and construction activities as needed.

Additionally, rather than prohibiting solar arrays and battery storage within 0.5 miles of historic hawk nests, the Council should consider use of alternative installation and siting approaches, where physically and financially feasible, and/or exclude sage shrub-steppe and rabbitbrush acreage from the micro-siting corridor for solar arrays. Elimination of this type of habitat from clean energy installation is not the policy of Washington state but is acceptable in this Project as it represents a de minimis reduction in generation capacity and provides advantages in this unique circumstance.

Cultural Resources

I appreciate the care taken to fulfill the Council's duty to consult with affected Tribes and the state Department of Archeology and Historic Preservation. These efforts identified tribal resources or rights potentially affected by the proposed energy facility along with ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights in accordance with RCW 80.50.060. I also acknowledge and thank the applicant for working with the Confederated Tribes of the Umatilla Nation and the Yakama Nation to identify physical traditional cultural resource sites and avoiding siting turbines and solar arrays at those sites in its Final Application for Site Certification (ASC).

I direct the Council to focus mitigation on specific and narrowly tailored approaches that do not reduce the generation capacity of the Project. The Council should explore requiring the applicant to attempt to seek access agreements for the Yakama Nation to access highest

priority, physical traditional cultural resources within the leased property boundary, including previously inaccessible sites due to it being private property. I direct 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.

Visual Impacts

Wind turbines are a fairly common occurrence across the state. While I respect the views of those who do not appreciate seeing turbines on the landscape, I also believe all sides would agree that continued and reliable electricity service is imperative. Given the state's clean energy needs and requirements, adopting a zero-tolerance policy to visual impacts is inconsistent with state statutes. I have carefully reviewed photographs and perspectives in the record that depict the visual impacts on residential neighborhoods, and it is clear that turbines will be visible only from a distance and none of the turbines will loom over anyone's home. 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.

Recreation Impacts

I agree with the Council's decision to require the applicant to develop an adaptive safety management plan to allow continued recreational activities without significantly impacting the generation capacity of the Project as proposed in the Final ASC. No reconsideration of this matter is required.

Fire and Firefighting Impacts

The Council found, and I concur, that the Project does not increase risk of fire but could impact the way certain fires are fought. The Council appropriately required the applicant to address these issues through emergency planning and mitigating conditions, including operational curtailment when necessary. I find that the Council adequately considered the risks of fire and included appropriate hazard mitigation. No reconsideration of this matter is required.

Conclusion

I hereby direct the Council to reconsider its recommendation in light of the foregoing and based on the existing record. I further direct the Council as follows: Throughout the evaluation of specific mitigation measures and wherever possible, time-limited operational and flexible requirements should be favored rather than overbroad turbine or solar placement exclusions. This will more directly provide needed mitigation where it is feasible and largely consistent with the proposed Project's purpose and need. For your convenience, attached as Appendix A is a non-exclusive list of potential mitigation measures for the Council's consideration.

The Council has deliberated on this Project for three years and developed an extensive record sufficient to make an informed decision on more appropriately, narrowly tailored mitigation measures. It is imperative that the Council conduct its reconsideration expeditiously, as required by RCW 80.50.100. It is therefore my 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.

It is my firm belief that with a narrowly tailored impact mitigation approach the Council can—and should—approve this Project in a manner that allows for maximum generation capacity largely consistent with the scale of the Project as proposed in the Final Application for Site Certification. I strongly encourage the Council to return to me their approval of this Project application that appropriately prioritizes the state's pressing clean energy needs.

Sincerely,



Jay Inslee
Governor

Appendix A

Horse Heaven Wind Farm Project

Non-exclusive List of Potential Mitigation Measures

In General

1. Reconsider conditions and mitigation approaches that are more narrowly tailored to the specific impacts, along with measures that are reasonably and feasibly consistent with the full generating capacity of the Project.
2. Reconsider exclusion of turbines from the micrositing corridor identified as “Class 3 Impact” consistent with Item 1 above.
3. Favor time-limited operational and flexible requirements rather than overbroad turbine placement exclusions.

Ferruginous Hawks

4. Exclude turbine siting from critical forage areas, such as sage shrub steppe and rabbitbrush acres, in project area.
5. Require that the applicant attempt to seek a conservation easement of 779 acres of undeveloped land within the northeast corner of the lease boundary, as proposed by the applicant.
6. Require that the applicant attempt to seek to purchase or lease and protect a similar amount of like-kind natural habitat outside of the project lease boundary to protect additional sage shrub steppe habitat within recognized ferruginous hawk nest territory and that contributes to landscape-scale habitat connectivity.
7. Require hiring a qualified investigator to conduct a comprehensive monitoring program on the protected lands in items 5 and 6 above.
8. Curtail turbine use whenever ferruginous hawk activity is detected within 2 miles of said turbine, particularly during breeding and nesting periods (late March – late July).
9. Curtail construction within 2-mile radius of detected ferruginous hawk activity, particularly during breeding and nesting periods (late March – late July).
10. Curtail operation of any turbine within 2 miles of new active nests in breeding/nesting period.
11. Consider use of alternative installation and siting approaches, where physically and financially feasible, and/or exclude sage shrub-steppe and rabbitbrush acreage from the micrositing corridor for solar arrays.
12. Require monitoring of direct strike mortality throughout the life of the project.
13. Consider use of “IdentiFlight” or similar technology, if economically feasible, and integrate use with curtailment.
14. Require monitoring of ferruginous hawk activity throughout the life of the project.

Cultural Resources

15. Require that the applicant attempt to seek to acquire access agreements that permit the Yakama Nation to intermittently access its highest priority, physical traditional cultural resources within the leased boundary area, including at sites that were previously inaccessible as private property throughout the life of the Project. Such agreements should also seek to permit access for Pronghorn antelope hunting purposes.
16. Require that the applicant attempt to explore long-term access for the Yakama Nation to its highest priority, physical traditional cultural resources within the leased boundary area *beyond* the life of the Project, including purchasing land and transferring ownership to the Yakama Nation.
17. Exclude turbine siting from critical forage areas (non-agricultural, unbroken ground), such as sage shrub steppe and rabbitbrush acres, in project area.
18. Require public-facing signage, designed in consultation with interested tribes, acknowledging the tribal cultural resources within the leased boundary area.
19. Require that the applicant attempt to seek a conservation easement of 779 acres of undeveloped land within the northeast corner of the lease boundary, as proposed by the applicant.