June 3, 2024

Energy Facility Site Evaluation Council
Attention: Kathleen Drew
PO Box 43172
Olympia, WA 98504-3172

RE: Horse Heaven Wind Farm Project, Scout Clean Energy Petition for Reconsideration

Chair Drew, Council Members, EFSEC Staff and Judge Torem:

Tri-Cities C.A.R.E.S. (TCC) is submitting this letter in response to the applicant's Petition for Reconsideration. Outlined below are the issues we have with this Petition:

1. The tone of the Petition is an insult to EFSEC staff and Council members. Throughout the Petition, the staff and Council are continually berated for setting precedent by not following the typical process for siting clean energy projects.

   Nothing about this particular project is typical – it is far larger than anything proposed thus far in Washington state and, therefore, deserves far more scrutiny. The Council should have the right to expand how it evaluates clean energy projects based on size and scale without having to justify that to an applicant.

2. The staff and Council are also criticized for not considering "the best available science."

   Apparently, only the Applicant and their paid technical experts could provide this. For example, the testimonies of their wildlife experts, Erik Jansen and Troy Rahmig, who have been studying the Horse Heaven site for 6 years, held more weight than that of State expert witnesses, Jason Fidorra and James Watson, with significantly more experience in the field. Because they have no incentive to shape the results, the State witnesses should be given deference.

   As for "best available science," the Applicant has a spotty record in that regard. Appendix M, Bird and Bat Conservation Strategy, underpins all bat and avian issues in the ASC. And yet, Appendix M, posted on September 25, 2023, is designated a draft with no attribution to a biological technical consultant. The Applicant is shown as the author of Appendix M, which summarizes and aggregates all underlying technical reports.

   To be clear, Tri-Cities C.A.R.E.S. does not trust that this Applicant has accurately aggregated the data and brought representative results to the public and Council.

For example, the Applicant designed and performed a second-year study of the Horse Heaven East portion of the project for large birds. That survey used select survey points of the first-year report performed for the Four Mile Project, which at that time was owned by another party. The Four Mile survey identified concerns, i.e., for raptors, the mean use rate was very near the highest of any Northwest wind project (see Attachment 1). The Four Mile results also showed flight paths for the survey points (see Attachment 2). Because survey and data already existed for Four Mile, the Applicant already knew where high use survey areas were. The Applicant chose to exclude the highest usage survey point for raptors and included the lowest usage rate from the second-year survey. This "cherry picking" of data resulted in a mean use survey that had lower mean use rates. More importantly, the highest usage point fell off the radar screen and, most likely, has not been seen by the Council or, possibly, the staff. The survey point in question is in the middle of a cluster of turbines (Attachment 3) which, in a typical situation, would result in those turbines being relocated or removed by the Applicant.

One of the intents of mean use surveys is to identify high use areas for species of concern to help make project decisions. In this case, the Applicant chose to bury the data and aggregate the results in an atypical manner that makes it difficult for reviewers and decision makers to make comparisons. To summarize, TCC is not saying the Applicant falsified data. We are saying that the Applicant made decisions that led to non-representative results. The science is there, but the Applicant ignored it.

More problematic is that the Applicant appears to disregard an obvious high use point that was known 5 years ago. This is another example of their open disdain for endangered wildlife. The Applicant stands a lot to gain from ferruginous hawk depopulation in the Horse Heaven Hills. Along with providing protected ferruginous hawk nest locations to the Seattle Times that were subsequently published in March 2024, this is another example of a disregard for avian impact. EFSEC should require removal of turbines in the vicinity of the high use area.

We have also found that the Applicant created new "science" when convenient. The Applicant took a Bird Exposure Index (BEI) meant to be a tool to identify the relative and comparative exposure risks based only on rotor swept height and position from the ground level and avian flight patterns. As the Applicant said in the ASC, the BEI is a unitless number, and not an amount or a rate. It does not consider foraging or mating activity, or collision avoidance actions by avian species. It also does not consider operating hours, blade profile, rotor swept area, rotational speed, etc. Yet the Applicant attempts to use the BEI as a collision risk indicator to justify different turbine models and make a claim that larger turbines will have lower collision rates per megawatt. Somehow, the Applicant has gotten away without any scientific-based mortality estimates.

They offer only a statement that the mortality rate will be in line with the Nine Canyon project. To make meaningful comparative mortality rates for each turbine model, a collision model or other comparative should be used. A legitimate collision model will not necessarily support the Applicant's assertions that larger turbines will result in a lower mortality rate. In this case, the Applicant needs to use the actual science, not create faux science.

3. In Section II.A. (Page 6), "The Project (as proposed in the ASC) was a 1.1 gigawatt hybrid energy center, strategically sited to avoid and minimize impacts." The Applicant states "The specific scale of the Project is a key component of its utility: 'to ensure an efficient, stable power source with capacity to substantially displace the need for utility-scale fossil fuel generation'."

   That statement is so far removed from reality that it's laughable. There is nothing efficient or stable about wind-generated power. The scale of the project is outside EFSEC's regulatory authority. TCC was not allowed to present testimony during adjudication regarding the amount or efficiency of the power generated by the Project. Neither should the Applicant be able to do so in this Petition.

4. In Section II.C. (Page 8) "The FEIS confirmed the Project is responsibly sited and recommended a comprehensive suite of science-based mitigation measures to address impacts." According to the Applicant, "The Applicant's expert land use planner…and visual impact technician testified that siting the Project on sub-prime agricultural lands in a rapidly urbanizing area …avoids the visual impacts typically associated with pristine, undeveloped viewsheds". The Applicant did not provide any proof of these two characteristics. We suspect that the HHH farmers would beg to differ that their land is sub-prime and the locals would be hard-pressed to find any urbanized areas there.

   As for "responsibly sited," the three most offensive turbines are located on Kiona Ridge off-agricultural land – essentially on a hiking trail. The "science-based mitigation measures" proposed by the Applicant include providing poster boards with pictures of the ridge as it was. That will make those hikers feel better about what's been done to their trails!

   The Bureau of Land Management (BLM) land that borders the project along Kiona Ridge is classified as a Class II view area – not pristine, but unspoiled. The Applicant states that they utilized the BLM Visual Resource Management methods for project development. If so, there would have been local involvement and Key Observation Points identified along with that input as well as Visual Worksheet rating sheets. There was no indication BLM methodology was used other than that the Applicant said so.

The crowning indicator that the BLM methodology was not used is that BLM would never proceed with turbine locations that turn a Class II viewshed into a Class IV (Common) viewshed.

5. On Page 9 in the same section as noted above, the applicant's mitigation for visual impacts is to provide a half-mile buffer from non-participating residents and reduce contrast by maintaining vegetation, cleaning towers, and providing opaque fencing.

   None of these proposed mitigations are adequate to prevent significant negative economic impacts on property values. Even Ben Hoen's recent reports recognize the impacts of wind turbines on property values, i.e., closer turbines = lower property values. A .5-mile buffer for the larger turbines is much too close for numerous reasons.

   In addition, the Petition relies on the testimony of the Applicant's land use planner, Leslie McClain, with 15 years of experience, and visual expert, Brynne Guthrie, with 16 years of experience. The Applicant seeks to overturn the Council's decision where the testimony of Benton County's land use planner, Greg Wendt, with 26 years of experience, and Tri-Cities C.A.R.E.S. visual expert witness, Dean Apostal, with 40 years of experience were also considered.

6. In Section III. Legal Framework (Page 8), the applicant states "The Energy Facility Site Locations Act's primary directives are 'to reduce dependence on fossil fuels by recognizing the need for clean energy…'." This same 'need' is reiterated on Page 15.

   Administrative Law Judge Torem, in his pre-hearing briefs, excluded any testimony related to need. In fact, he rejected testimony on that very topic from Rick Dunn, the Benton PUD General Manager. If it was excluded from the adjudicative hearings, it should not be taken into consideration in this Petition.

7. In Section IV. Argument (Page 15) "The Applicant provides specific suggestions as to how the Project can be saved, with detailed proposed language to be included in the SCA."

   In their opinion, the Project can only be saved by adhering to the Final Application for Site Certification. In essence, the Applicant is proposing that all EFSEC's evaluations and analysis along with the resulting recommendation be ignored. What they have proposed is a reversion to the Final Application for Site Certification which boils down to "we want it to be exactly as we presented it" and all the work EFSEC has done is for naught.

8. In Section IV.A. (Page 15) “The Council’s recommendation slashes over half the Project’s generation capacity and sets precedent to extinguish Governor Inslee’s ambitions and progress toward Washington’s clean energy future.”

   Starting on Page 16 in this section, the applicant states “CETA promises ‘family-wage job creation, recognizing that ‘[c]lean energy creates more jobs per unit of energy produced than fossil fuel sources.” CETA promises no such thing. The proffered jobs are short-lived construction jobs; any long-term jobs are in countries that supply raw materials and components.

   What the referenced RCW 19.405.010(2) really says is “the state must prioritize the maximization of family-wage job creation, seek to ensure that all customers are benefiting from the transition to a clean energy economy, and provide safeguards to ensure that the achievement of this policy does not impair the reliability of the electricity system or impose unreasonable costs on utility customers.”

   This Project will impair reliability and impose unreasonable costs on utility customers. Rick Dunn, Benton PUD General Manager, with years of experience in the electricity grid distribution business, has reviewed this project in great detail and predicts that utility rates will rise significantly across Washington state. The data to support this prediction can be found in Rick’s Substack articles.

9. In IV.B.1. (Page 21) “The Council’s recommended exclusion zones in condition Spec-5 are based on subjective, aspirational ideology that actively ignores the best available science.”

   This argument centers around the ferruginous hawk, totally ignoring the other impacts that precipitated the Council’s exclusion area recommendation. The applicant also argues that no other state or federal wildlife agencies have the same restrictions on ferruginous hawk buffer areas as Washington state.

   Washington state designated the ferruginous hawk as an Endangered Species along with restrictions to protect it. The fact that no other state or federal agency has done the same is irrelevant. The Applicant is demanding that EFSEC ignore all the scientific data, expert witness testimony, and FEIS findings. The applicant is insisting that EFSEC gut the Habitat and Special Status Species Mitigations, using a 20-year-old reference by Larsen et al to justify the 0.6 buffer but then chastising EFSEC for using a 10-year-old map in its movement corridor exclusion recommendation. The Applicant is trying to change mitigations specified by EFSEC without due process.

10. In IV.B.2 (Page 25) “Council’s delegation of final siting determinations to the PTAG through condition Hab-4 is unprecedent, unwarranted, and improper.”

The Petition states that the establishment of the Pre-Operational Technical Advisory Group (PTAG) is illegal because it delegates "substantive siting authority over final Project design to non-Councilmembers".

This is another false statement. EFSEC has not delegated any authority to the PTAG. As the draft SCA states in Article IV.G. "The Certificate Holder shall submit to EFSEC for approval proposed Rules of Procedure describing…a process for making and presenting timely PTAG recommendations to the Council" and "the ultimate authority to require implementation of additional mitigation measures, including any recommended by the PTAG, shall reside with EFSEC." In other words, every PTAG recommendation must be approved by EFSEC; thus, there is no delegation of authority to non-Councilmembers.

11. In Section IV.C.2.i. (Page 31), The Applicant states "The Project's impact to aerial firefighting is no different than any other wind project approved and operating in the state under established SCA conditions."

    This statement is simply not true. Of critical importance from a public safety standpoint, the turbines proposed along the highest ridgeline of the Horse Heaven Hills will loom over Badger Canyon and Kiona and create a "no fly zone" that prevents the use of aerial firefighting equipment.

    For many years, DC-10s have been utilized in this location, and the proximity of the turbines is an obstacle that **jeopardizes the health and safety of the public**. Fast-moving and dangerous fires on the north slopes of the Horse Heaven Hills occur nearly every year and the only way to fight them is with suitable aircraft. Allowing turbines to be constructed along this ridgeline creates a public safety hazard that will result in the loss of life and property. The no-fly zone will be around the perimeter and within the project area itself. If turbines are built out to the ridges as the Governor has directed, there will be no area where aerial firefighting can intercept a fire before it goes over the ridge where the terrain is too steep for ground firefighters.

12. In Section IV.C.2.iii. (Page 33), The Applicant states "The Council's visual impact conclusions rely on questionable evidence and subjective, unprecedented concepts propounded by a local opposition group."

    Once again, the Applicant is demanding that the Council ignore the testimony of 40-year visual expert, Dean Apostol, and even Ben Hoen (one of the Applicant's cited experts) who recently agreed that wind turbine viewsheds negatively impact property values.

13. In Section IV.C.2. iv. (Page 34), "If the Council requires avoidance of Tribal resource impacts, it must analyze and differentiate between valid, deeply held

Tribal beliefs and TCPs that meet established state standards for energy facility siting."

Tri-Cities C.A.R.E.S. will not address the specifics of this argument but submit our support of the Yakama Nation's request for additional mitigation measures.

14. In Section IV.D. (Page 39) the Applicant states "The recommendation violates numerous provisions of Washington law under the EFSLA, APA, and SEPA". The Applicant goes on to state "*First*, nowhere in Council's enumerated powers under RCW 80.50.040 is it authorized to materially change the scope of the proposed Project". *Second*, the Council is shirking its primary duty to actually *site* the Project, instead impermissibly delegating that key decision to the PTAG…"

    If the Council does not have the power to make material changes, and an unscrupulous contractor refuses to make changes, how does that work in a SEPA review? "SEPA requires the identification and evaluation of probable impacts on all elements of the environment. SEPA also **gives agencies the authority to condition** or deny **a proposal** based on the agency's adopted SEPA policies and the environmental impacts identified in a SEPA document."

    This Applicant refused to provide alternative build scenarios. As an example, in Item #2 above, the Applicant buried data and did not take action to reduce avian impact based upon high use areas. If what the Applicant says is true, then the only thing EFSEC can do is deny the SCA. That is the club that regulators have over applicants all over the country.

    However, in Washington, the Applicant has a secret weapon, and they know it. EFSEC is encouraged to deny the Applicant's attempt to relitigate the project in their Petition for Reconsideration and deny the ASC unless the Applicant is willing to accept significant mitigation equivalent to EFSEC deliberations.

    Per EFSLA, "The Council must weigh and balance the need for the proposed facility against its impacts on the broad public interest, including human welfare and environmental stewardship. The Council then determines whether the proposed facility at the particular site selected will produce a net benefit that justifies a recommendation of project approval.[1]"

    In addition, "EFSLA also requires that "[i]f the council recommends approval of an application for certification" to the Governor, it must include in the draft site certification agreement "conditions . . . to implement the provisions of this chapter [RCW 80.50.110(2)], including, but not limited to, **conditions to protect state, local governmental or community interests** . . . affected by the construction or operation of the facility…[2]"

[1] Columbia RiverKeeper v. Port of Vancouver, 188 Wn.2d 80, 95, 392 p.3d 1025 (2012)

[2] RCW 80.50.100(2); Residents Opposed to Kittitas Turbines v. EFSEC, 165 Wn.2d 275, 285 (2008)

> The applicant, once again, brings up the point of pressing need and Tri-Cities C.A.R.E.S. reiterates that ALJ Torem excluded need from the list of allowed testimonial topics. If it wasn't allowed during the adjudicative hearings, it cannot be relitigated now.

In conclusion, TCC appreciates all the work that went into analyzing the cumulative impacts and developing a compromise that provides the applicant with a project that is in line with existing Washington wind projects. By directing the Council to approach mitigation that is more narrowly tailored to the specific impacts identified, the Governor has ordered the EFSEC staff and the Council to disregard cumulative impacts, a violation of both state and Federal law.

We ask that you respond to the Governor that the EFSEC recommendation cannot be revised per his direction without violating state and federal laws. We believe the Governor needs to let EFSEC do the job it was formed to do. EFSEC must stand by its evaluation and recommendation to the Governor.

If EFSEC complies with the Governor's edits, it is essentially overriding everything done under SEPA and the APA over the past three years. By allowing the contractor to return the project to the original design, the Council and the Governor will have disregarded and disrespectfully wasted an incredible amount of taxpayer money on a process and agency that serve no purpose.

We respectfully ask that you stand firm on your recommendation to the Governor.

/s/ Tri-Cities C.A.R.E.S members Dave Sharp, Paul Krupin, Karen Brun, and Pam Minelli

Attachment 1-Four Mile Diurnal Raptor Mean Use-Second Highest of Any Northwest Wind Project.

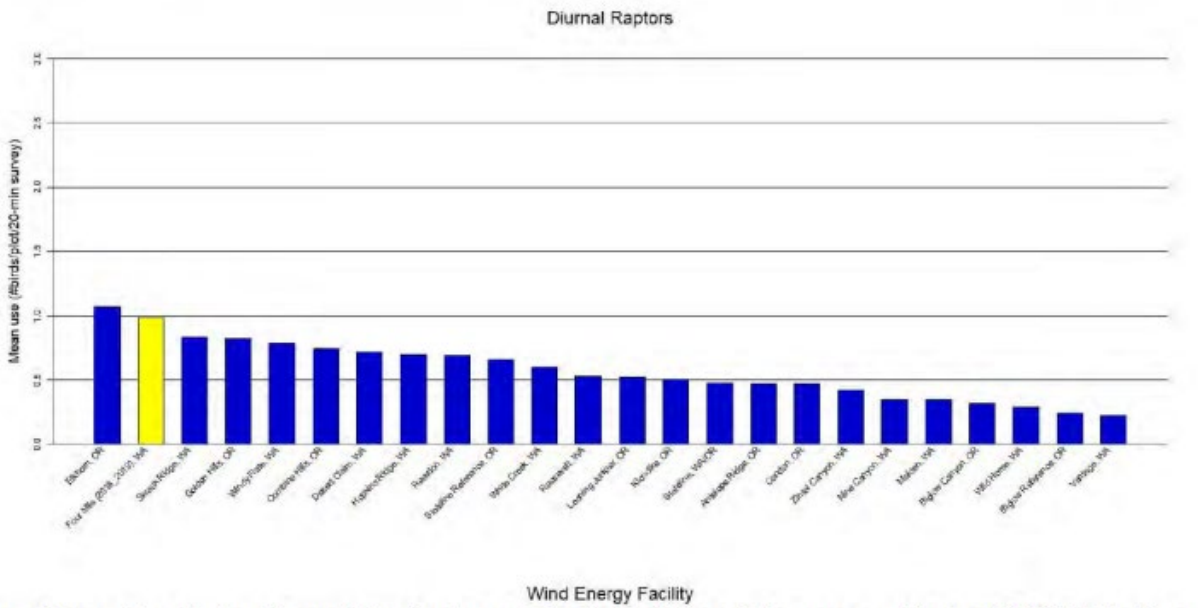

Figure 6. Comparison of estimated annual diurnal raptor use during fixed-point large bird use surveys at the Four Mile Wind Project from June 5, 2018 – May 29, 2019 and diurnal raptor use at other Oregon and Washington Wind Resource Areas with similarly collected data.

This screenshot is from Appendix K PDF page 349

Atachment 2-Four Mile Avian Use Survey- From Final ASC Appendix K, PDF page 370.

Note Survey Point #1 High (Particularly Buteos) Use Rate. This survey point was excluded from the Final Horse Heaven East

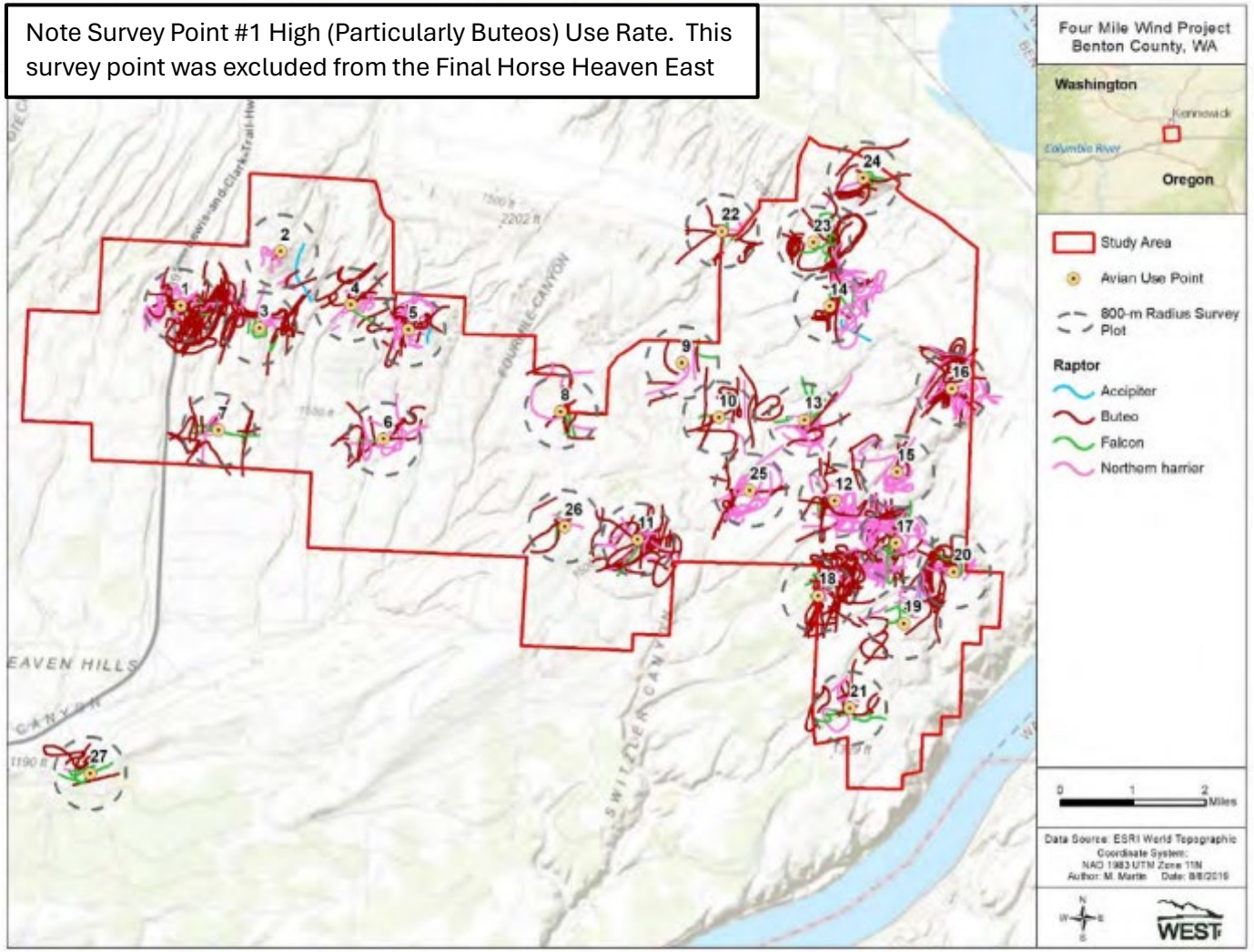

Figure 5b. Flight paths of diurnal raptor subtypes recorded during large bird surveys at the Four Mile Wind Project Study Area from June 5, 2018 to May 29, 2019.

or

Attachment 3-From Final ASC, Figure 2.3-1 With location of raptor high use survey point.