



Board of Directors  
26717 Helmick Lane  
Sedro Woolley, WA 98284

To EFSEC Board

Re: Goldeneye BESS project

Date: 10/19/2024

Dear Board –

We the board of directors for the Stewards of Skagit request the following.

- A formal adjudication review regarding the land use hearing that occurred on August 13, 2024, and a rejection of the application due the following points addressed below
  - SCC zoning
  - Magnuson-Steven Act
  - Sustainable Fisheries Act
  - Northwest Power Act
  - PSE High Risk area, no contract in place
  - GMA RCW
  - EFSEC RCW

The request for Formal Adjudication of the Land use determination and a rejection of the application based on the following points.

**1 – Applicant falsely claimed and presented portions of documents to the public that they met Zoning requirements to qualify for an expedited process.** - No land use zoning was determined by Skagit County Code was ever made as a zoning determination would require a special use permit. This is confirmed by the letter sent to EFSEC by the Skagit County Commissioners sent to EFSEC (but not appearing as a received document from EFSEC on the website), it can be viewed here.

<https://www.skagitcounty.net/Departments/Home/press/082824.htm>

The administrative decision conclusion stated

(1) “use helps supplement the PSE utility output” no such agreement exists. (per email received by our board)

4. **The Administrative Official recognizes, from comments received from this and other proposed BESS projects, that there are concerns about safety, environmental, siting, and other aspects of the proposed project. As this AOI is limited to the specific question of what type of utility development the proposed project would be, these concerns have not been considered. These concerns would be addressed as part of the special use permit process.**

As no such special use permit was ever applied for or reviewed, the applicant’s information that they “met” local zoning requirements, is false in its statement and therefore cannot be expedited through the EFSEC process.

Stewardsofskagit.org

Low Sensitivity



Board of Directors  
26717 Helmick Lane  
Sedro Woolley, WA 98284

2- **Magnuson-Stevens Act** - The Hansen Creek is a spawning creek for all 5 kinds of Anadromous Salmon and therefore the **Magnuson-Stevens Act** applies in its governing of

- “Protecting habitat that fish need to spawn, breed, feed, and grow to maturity.”

“The MSA requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the [federal] agency, that may adversely affect designated EFH. For the state of Washington, EFH has been designated for 3 species of pacific salmon, 83 species of groundfish, and 5 coastal pelagic species.”

A consultation is required if:

1. A federal agency has authorized, funded, or undertaken part or all of a proposed activity. For example, if a project requires a federal permit, then the federal agency issuing the permit must consult with NOAA Fisheries.
2. The action will “adversely” affect EFH. An adverse effect includes direct or indirect physical, chemical, or biological alterations. It includes adverse changes to:
  - Waters or substrate.
  - Species and their habitat.
  - Other ecosystem components.
  - Quality and/or quantity of EFH

Per the Applicant at the Sedro Woolley City Council meeting held on Sept 4<sup>th</sup> Federal Grant money is being used to fund this project.

The appropriate Federal stakeholders appointed by region for the Magnussen-Stevenson act are not listed by EFSEC or the applicant and therefore has not been notified properly to provide input or legal representation for the LUH. The **Corp of Engineers** is also a key stakeholder that has not been listed and has not been notified properly to provide input or legal representation for the LUH.

<https://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Permit-Guidebook/Endangered-Species/MSA/>

**The sustainable fisheries act of 1996** - The additional requirements set for by **The sustainable fisheries act of 1996** were not considered by the applicant or EFSEC during the land use hearing. This act designates EFH (the Skagit Valley, Skagit River and Hansen creek lie within the boundaries of this essential fish habitat) thereby requiring notification to additional federal agencies none of which are listed as stakeholders in the process and have not been sufficiently notified by EFSEC or the applicant.

“Established new requirements for fishery management councils to identify and describe [Essential Fish Habitat](#) and to protect, conserve, and enhance EFH for the benefit of fisheries.

- A 2002 update to EFH regulations allowed fishery management councils to designate [Habitat Areas of Particular Concern](#), specific areas within EFH that have extremely important ecological functions and/or are especially vulnerable to degradation
  
- Established a federal [EFH consultation](#) process that advises federal agencies to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH

#### 4- Northwest Power Act

<https://www.nwcouncil.org/reports/northwest-power-act/>

Between 1976 and 1980, the Act evolved in response to three crises in the Pacific Northwest.

- The first resulted from the culmination of the hydropower system and, as a result, the certainty that no more large dams would be built.
- The second crisis was one of electricity demand forecasting.
- The third crisis was the decline of salmon runs in the Snake River

Thus, the Northwest Power Act evolved from a power-allocation dispute, inaccurate energy demand forecasts, public distrust of utilities and Bonneville, public interest in [energy efficiency](#), and a desire to address the root cause of the decline of Columbia River Basin salmon, particularly those that spawned in the Snake River Basin.

<https://www.nwcouncil.org/reports/columbia-river-history/northwestpoweract/>

In 1988, the Council concluded that:

1. the studies had identified fish and wildlife resources of critical importance to the region.
2. mitigation techniques cannot assure that all adverse impacts of hydroelectric development on these fish and wildlife populations will be mitigated
3. even small hydroelectric projects may have unacceptable individual and cumulative impacts on these resources; and
4. protecting these resources and habitats from hydroelectric development is consistent with an adequate, efficient, economical, and reliable power supply. The Council, relying on these studies, designated certain river reaches in the basin as "protected areas", where the Council believes hydroelectric development would have unacceptable risks of loss to fish and wildlife species of concern, their productive capacity, or their habitat.



Board of Directors  
26717 Helmick Lane  
Sedro Woolley, WA 98284

For more information and for the formal Protected Areas provisions, see the 2014 Fish and Wildlife Program's [Protected Area Strategy](#) (Part Three, Section IV (A)(5)) and [Appendix F](#) to the Council's 2014 Columbia River Basin Fish and Wildlife Program. The operative Protected Areas database is not physically within the Fish and Wildlife Program. You may access it through the sidebar (right).

- [List of Protected Areas](#) (Excel) –
  - Listing the Skagit River as a Federally protected River and lists ALL the fish and animal species that have been identified in the different sections of the river.
  - The Applicant failed to identify the majority of the Fish and animal species indicated on this documents in their Environmental survey, as relevant to the project, as they only identified Hanson creek as being effected and NOT its over all biological impact on the river system as a whole.

5- **Highly Impacted Area** - Lack of acknowledgement by the applicant and EFSEC that this community and area is considered to be classified by PSE as a Highly Impacted area, according to the CEIP. This information was not taken into consideration presented to the public or disclosed to EFSEC by the applicant. This is requirement for PSE for any work being done that will connect to their systems.

6- **No agreement in place with PSE** - The applicant has no formal agreement in place to work with PSE for the power it intends to purchase and sell. PSE is the power system they indicate they are storing and transmitting power for, however the Email received by Aaron August, Chief Customer officer at PSE (on behalf of Mary Kipp, CEO of PSE). Indicates

“ We are not in negotiations to purchase power stored at the Goldeneye facility and have not selected it as part of any Request for Proposal (RFP).

· When PSE has a need for additional energy to meet customer demand or to comply with state law, such as Washington’s Clean Energy Transformation Act, we issue an RFP. Any entity that meets the requirements of that RFP can submit a proposal for review. “

7- **RCW for GMA** – Skagit County has deemed this proposed property as critical agricultural land within Skagit County and as such protected it per the WA state Growth Management Act. To override this designation is to override the state legislature in their efforts to protect agricultural land in WA state. The land is deemed as agricultural land, not by its current use but by it soil type and quality along with its zoning restrictions by the county. The contractor proposes that because it has not been used for “commercial” agriculture in recent years it is not agricultural land. This not only is in correct, but also shows the lack of responsibility and understanding of our WA state laws and a requirements to protect our resources in this state.

“Promote plans to protect and enhance critical areas within the area where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture in the state of Washington and reducing the conversion of farmland to other uses;”

Stewardsofskagit.org

Low Sensitivity



Board of Directors  
26717 Helmick Lane  
Sedro Woolley, WA 98284

“As an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060, the legislative authority of a county may elect to protect such critical areas through the program.”

**8- WA Supreme Court Decision** – DOC 102177 -1 Which outlines the use of viable quality soils for building is against the GMA, and that King County failed to comply with SEPA and the GMA.

**9- Survey report** –

Applicant states “the goal is to fully compensate for all wetland impacts associated with the project through the purchase of mitigation credits.”

Wetland banks provide the option of purchasing credits to offset the **unavoidable** impacts of a project. These impacts are avoidable if construction of the facility ceases.

Other concerning potential environmental impacts include:

- Likely water quality impacts to Hansen Creek during direction bore activities.
- Surface waters, wetlands and groundwater are interconnected.
- Site geotechnical report, showing infeasibility to infiltrate stormwater, potentially perched groundwater with elevations measured between approx. 51'-55', and unsuitable native soils for backfill.

Due to the lack of due diligence and responsibility on the part of the contractor as listed above we formally request that EFSEC reject this application. Protecting and preserve the much-needed GREEN FIELDS of agricultural land in WA state, to both produce food and act as a carbon sink to reduce green house gasses along with protecting the long term salmon population in this state far outweighs the minimal amount of energy that will be stored by this single BESS plant. This is NOT the proper location for this kind of facility and the potential environmental and long-term impacts are far too great to risk. The contract states it is the most “beneficial site” not the ONLY or the most responsible siting for this facility.

At a minimum and additional adjudicative hearing should take place and full SEPA review including all necessary federal agencies with proper notification be given for review comment and oversight.

Signed

Steward of Skagit Board of Directors

Connie Krier – President

[StewardsofSkagit.org](http://StewardsofSkagit.org)

Low Sensitivity