

From: [Shawna Turcott](#)
To: [EFSEC mi Comments](#)
Subject: oppose the Goldeneye BESS In SedroWoolley
Date: Monday, August 19, 2024 11:14:59 AM
Importance: High

External Email

Energy Facility Site Evaluation Council
621 woodland square loop se
Lacey, WA 98503

I represent 75 tenants that live in Manufactured homes at Van Fleet's Mobile Home Park
A 55+ Community
Located at 24892 Minkler Rd. and 24919 Hoehn Rd. in Sedro-Woolley WA 98284

EFSEC committee

This letter is to warehouse project being reviewed, for Minkler Road in Sedro Woolley.

My objection are due to the following concerns, and unanswered critical topics at this time.

The Environmental impact of this facility being located on property with a salmon creek that drains into the Skagit River. The overall impact of irreparable damage to local agricultural farmland. The noise pollution that will be produced by 14 acres of industrial fans running at maximum capacity 24/7, in an otherwise peaceful and quiet farmland. With no noise pollution from industry.

The Human impact of this project in case of emergency (fire, flood, earthquake) if an evacuation is required no emergency plan is currently in place. Our local emergency services only having 2 full time fire fighters in dist 8 and not having adequate staffing or equipment for fighting a fire of this nature. The impact to human life, well water and livestock if a fire were to occur in this area would be catastrophic. The proximity to residential homes, schools, churches and organic farmlands all within a 1 mile radius is an unreasonably risky location for a facility of this type.

The government overreach of the EFSEC to allow a private for profit warehouses to circumvent local county zoning and permitting, through an expedited process. The sole purpose of this stand alone facility is for the sale of a commodity. This is non essential warehouse and could be built elsewhere with the same level of benefit to the state, creating less impact to the environment and people.

This specific location provides no additional benefits to the state or citizens verses building this structure in an industrial or commercial area. Grays Harbor and Chehalis BESS sites are located in industrial areas. The only benefit received from this location, in an environmentally critical area and on historic agricultural farmlands, is a lower building cost and higher profit

margin for the privately owned for profit company.

Therefore as a citizen of this community who will be burdened with additional taxes to support emergency services, and whose life could be forever impacted from this facility, I strongly oppose the permitting of this site for Goldeneye BESS.

Sincerely,

Shawna Turcott

Manager Of Van Fleet's MHP A 55+ Community

24919 Hoehn Rd Unit 35

Sedro-Woolley, WA 98284

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Rylee Fleury
Candidate for County Commissioner
17246 Maple Lane
LaConner, WA 98257
360-395-8753

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AUG 21 2024

Energy Facility Site Evaluation Council
P.O. Box 43172
621 Woodland Square Loop
Olympia, WA 98504-3172

ENERGY FACILITY SITE
EVALUATION COUNCIL

August 14, 2024 RE: Goldfinch Energy Storage, LLC

I am writing to you today about the meeting that was held last night in Sedro-Woolley that was to discuss the proposed location of the battery storage facility project to be located on Ag-NRL property.

Unfortunately, I would have liked to attend the meeting, but I had previous commitments at that time.

It concerns me that it appears that the state may be circumventing Skagit County land use policies by locating this project on Ag – NRL property without the proper local approval.

It also concerns me that if the site is for wind and solar power storage that in fact there is viable wind and solar potential in the region. It is hard for me to think that there are not better places to locate this sort of project that are closer to the points of generation.

Lastly, I am concerned about potential noise pollution and how the spend batteries will be handled when their useful life has expired.

Please respond to the above comments by giving details to the Citizens of Skagit County on resolving those concerns.

Sincerely,



Rylee Fleury
Candidate for County Commissioner

Comments@efsec.wa.gov

Energy Facility Site Evaluation Council

621 woodland square loop se

Lacey, WA 98503

EFSEC committee

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Sincerely,



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AUG 27 2024

ENERGY FACILITY SITE
EVALUATION COUNCIL

oppose the Goldeneye BESS In SedroWoolley

Shawna Turcott <shawna@shelterpm.com>

Mon 8/19/2024 11:14 AM

To:Comments@efsec.wa.gov <Comments@efsec.wa.gov>

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AUG 27 2024

ENERGY FACILITY SITE
EVALUATION COUNCIL

Energy Facility Site Evaluation Council
621 woodland square loop se
Lacey, WA 98503

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Page 1 of 2 *Shawna Turcott*

Sincerely,
Shawna Turcott
Manager Of Van Fleet's MHP A 55+ Community
24919 Hoehn Rd Unit 35
Sedro-Woolley, WA 98284

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Comments@efsec.wa.gov

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Sincerely,

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AUG 27 2024

ENERGY FACILITY SITE
EVALUATION COUNCIL

STOP the lithium battery storage site in Sedro-Woolley

I am opposed to this site:

- | | Sign: | name: |
|-----|-------|---------------------------|
| 1. | | Karen A. Wilson |
| 2. | | Amanda J Pederson |
| 3. | | JUDITH THOLSTRUP |
| 4. | | Debra Bell |
| 5. | | Cristul Hernandez |
| 6. | | Tara Carrell |
| 7. | | Nicole Ellis |
| 8. | | Tim Lanata |
| 9. | | Rose Lanata |
| 10. | | Jackie Coggins |
| 11. | | Sharon Howe |
| 12. | | Mark Carrell |
| 13. | | BRYON LONETA |
| 14. | | John Coggins |
| 15. | | Annette Mauer |
| 16. | | Wilbur William Peters III |
| 17. | | DEBBY K. PETERS |
| 18. | | Diana Reger |
| 19. | | John Slayton |
| 20. | | James Beattie |
| 21. | | IDA WHIDDEN |
| 22. | | MARVEN WHIDDEN |
| 23. | | Karen I. Adams |
| 24. | | Carrie Russell |
| 25. | | Larry Uthegrove |
| 26. | | TANNA M. BEATTIE |
| 27. | | Manio Rocha |
| 28. | | Will Good |

29. John Henry Herriman

John HENRY HERRIMAN

STOP the lithium battery storage site in
Sedro Woolley

I am opposed to this site:

Signature: C. Allen

54. Jane C. Allen

55. Debbie Moxley

56. Allen H. Talbot

57. Renee Ortiz

58. Jessica Mason

59. Bernice Marty

Print Full name:

Jane C. Allen

Debbie Moxley

Allen H. Talbot

Renee Ortiz

Jessica Mason

Bernice Marty

60. Angela R. Apple

Angela R. Apple

61. Rhonda Ammons
Rhonda Ammons
360-630-1063

Contact Sheet

| | <u>Name</u> | <u>email</u> | <u>phone</u> |
|-----|--------------------|------------------------------|--------------------------|
| 1. | Karen Wilson | | 360 932-4113 |
| 2. | Amanda Pederson | Amanda.elijah0812@gmail.com | 360 941-1614 |
| 3. | JUDITH THOLSTRUP | Karljudy@comcast.net | 360.941-5352 |
| 4. | Lebra Bell | dbell@comcast.net | 360 9821707 |
| 5. | Cristal Hernandez | | 300-540-8834 |
| 6. | Tara Carrell | stouttarabode@gmail.com | |
| 7. | Nicole Ellis | ellisx5@gmail.com | |
| 8. | Tim Lanata | | 360 899-5012 |
| 9. | Rose Lanata | ylamrock85@yahoo.com | 360-708-3144 |
| 10. | Jackie Coggins | Jackie Coggins 079@gmail.com | 360 422-0883 |
| 11. | John Coggins | | 340 630 4357 |
| 12. | Sharon Howe | glazeshaw@gmail.com | 360 254 4854 |
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| 14. | Bryon Lengel | | |
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| 16. | W.W. Peters III | | |
| 17. | Debby Peters | debby.ptrs@gmail.com | 360-540-5511 |
| 18. | Diana Reper | | 360-856-0483 |
| 19. | John Slader | j.hunnylee7085@gmail.com | 360-333-0840 |
| 20. | James Beattie | gymman44@comcast.net | 360-708-1101 |
| 21. | IDA WHIDDEN | | 856-9994 |
| 22. | MARION WHIDDEN | | 856-9984 |
| 23. | Karen J. Adams | adamspk2@frontier.com | 360 856-4198 |
| 24. | Carrie Russell | giggly73@msn.com | 360 707-1923 |
| 25. | Larry up the group | Grovecio153980@live.com | 425-512-3702 |
| 26. | | | |
| 27. | TANNA M. BEATTIE | 24919 HORN RD # 67 | 360-708- 2628 |
| 28. | Mario Rocha | Jazzrocha406@gmail.com | 360 420 5636 6805 |
| 29. | Will Good | | 360 503 7922 |

John Henry Herman Goldmunder 59 @ gmail.com

Contact Sheet

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Phone #

- | | | |
|---------------------------|------------------------------|----------------|
| 30. Gary Lamphier | | 360-856-4488 |
| 31. Krisa | Krisa1387@outlook.com | 360-840-6566 |
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| 35. John Belker | PicLit@hotmail.com | 425-350-3029 |
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| 37. Derek Redding | derekredding@hotmail.com | 360-420-1406 |
| 38. Kelly Jordan | Ketty KJJordan987@gmail.com | 509-969-2867 |
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| 43. Susie Swais | | 360-941-9291 |
| 44. Terry Folk | | 406-552-3945 |
| 45. Kayla Patterson | k.rose.patterson@gmail.com | (360) 707-1823 |
| 46. Nikki Cloutz | nikki.j07172@gmail.com | (360) 935-1424 |
| 47. Trey Cloutz | cloutz193@gmail.com | 5645650554 |
| 48. Yalme | 539-46-7029 | |
| 49. Justin Michael Gandy | justinmgandy@gmail.com | 360-202-9366 |
| 50. Keith Tyminski | tyminski.kait@gmail.com | 360 840 2635 |
| 51. Kelly Rothenbuhler | kjrothenbuhler@outlook.com | 360-770-1198 |
| 52. Kimberly Ryan | mommaK775@icloud.com | 775 389 7200 |
| 53. Dennis Collier | Dennis Collier@gmail.com | 360 630 7811 |
| 54. Jane L. Collier | cookiesforcollier4@gmail.com | 360 410 2188 |

Contact Sheet

| <u>Full name:</u> | <u>Email:</u> | <u>Phone #</u> |
|---------------------|--------------------------|----------------|
| 55. Debbiemoxley | ⊖ | 360-333-3701 |
| 56. Allen H. Talbot | ⊖ | 360-547-9284 |
| 57. Renee crtr | ⊖ | 360-610-8921 |
| 58. Jessica Mason | jessicamason74@gmail.com | |
| 59. Bernice Marly | | 360-421-7078 |
| 60. Angila Apple | arapple39@gmail.com | 360.230-0381 |
| 61 Rhonda Ammons | | 360-630-1063 |

Energy Facility Site Evaluation Council

621 woodland square loop se

Lacey, WA 98503

EFSEC committee

This letter is to oppose the Goldeneye BESS warehouse project being reviewed, for Minkler Road in Sedro Woolley.

My objection are due to the following concerns, and unanswered critical topics at this time.

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Sincerely,

Brenda Belisle

Sedro-Woolley home owner

Brenda Belisle

Howard R. Belisle

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SEP 01 2024

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ENERGY FACILITY SITE
EVALUATION COUNCIL

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SEP 10 2024

ENERGY FACILITY SITE
Comments@EVALUATION COUNCIL

Energy Facility Site Evaluation Council

621 woodland square loop se

Lacey, WA 98503

EFSEC committee

PS. Can't believe we could not ask questions at the meeting? Such a dangerous project! You of course don't live near by - mean stop this!

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Sincerely,

Ingrid e Charles Hunt
22128 Hwy 9 #178
Mt Vernon, WA 98274

ing.hinton@gmail.com

PS We just heard about this & now don't have time to respond please answer me

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Comments@efsec.wa.gov

Energy Facility Site Evaluation Council

621 woodland square loop se

Lacey, WA 98503

EFSEC committee

SEP 10 2024

ENERGY FACILITY SITE
EVALUATION COUNCIL

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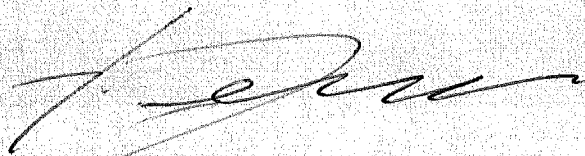
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Sincerely,



Taina Tennison

22128 St Rt 9

Mt Vernon, WA 98274

Comments@efsec.wa.gov

Energy Facility Site Evaluation Council

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Lacey, WA 98503

EFSEC committee

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SEP 10 2024

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Sincerely,

Mary Fraser
Mary Fraser

From: [John Sternlicht](#)
To: [EFSEC mi Comments](#)
Subject: EFSEC Docket No. 240004
Date: Monday, September 16, 2024 8:37:11 AM
Attachments: [image001.png](#)
[image004.png](#)
[EFSEC Goldeneye 09162024.docx](#)

External Email

Please add this letter to our comments on the above-referenced file.

John B. Sternlicht, JD, CEc.D

CEO

Economic Development Alliance of Skagit County

1932 E. College Way, Suite B

PO Box 40

Mount Vernon, WA 98273

Office: 360.336.6114 x105

www.skagit.org

email: john@skagit.org

he/him

EDASC carries out business attraction, retention and expansion, and collaborative engagement to achieve a prosperous, sustainable and equitable community while maintaining Skagit County's natural beauty and quality of life.



[Facebook](#)

<https://www.linkedin.com/company/economic-development-alliance-of-skagit-county>
[Sign Up for the EDASC Newsletter \(skagit.org\)](https://www.skagit.org)



September 16, 2024

Energy Facility Site Evaluation Council
621 Woodland Square Loop SE
PO BOX 43172
Olympia, WA 98503-3172

RE: Goldeneye BESS, Skagit County

Dear Energy Facility Site Evaluation Council:

Further regarding the above-referenced project now under your consideration, I am writing to give additional perspective and clarification of EDASC's support. While the need and support generally expressed in my initial letter of a month ago still stands, the specific site chosen is problematic as has been pointed out by the Skagit County Commissioners, the Upper Skagit Tribe, the City of Sedro-Woolley, and others. Particularly because of potential environmental impacts at this location of which we have been made aware, EDASC would like to link support for the project to a more suitable location. EDASC stands available to the applicant to assist with site selection even though we recognize that it may result in increased costs for the business.

Thank you for your consideration. Please let me know if you have any questions or require further information.

Sincerely yours,

A handwritten signature in black ink that reads "John B. Sternlicht". The signature is written in a cursive, flowing style.

John B. Sternlicht, CEO



Skagit Audubon Society

**P.O. Box 1101
Mount Vernon, WA 98273**

September 23, 2024

Energy Facility Siting Evaluation Council
P.O. Box 43172
621 Woodland Square Loop
Olympia, WA, 98504-3172
Attn: Goldeneye Energy Storage Project Public Comments

Submitted via email to comments@efsec.wa.gov.

Dear sir/madam:

Please accept the following comments from Skagit Audubon Society on the Goldeneye Battery Energy Storage System (BESS) proposed for a site just east of Sedro-Woolley in Skagit County. Skagit Audubon is the chapter of the National Audubon Society focused on Skagit County, Washington. Our 492 members are primarily residents of this county and share our organization's mission to conserve and restore natural ecosystems, focusing on birds, other wildlife and their habitats for the benefit of humanity and the earth's biological diversity. Some of our chapter's members have lived in Skagit County their entire lives while others have returned or relocated here. What brings us to calling this area "home" is the landscape and the variety and quality of habitat which supports such a diversity of birds and other wildlife.

National Audubon research has shown that climate change, even more than habitat loss, is the greatest threat to birds, just as it is a profound threat to human beings.¹ We strongly support the urgent need to reduce greenhouse gas emissions and, to that end, to rapidly transition away from burning fossil fuels. We therefore recognize the important role that battery energy storage systems play as we depend increasingly on wind and solar to produce electricity. As with those energy production facilities, it is essential to properly site BESSs in ways attentive to the particular environment and the need for resilience in the face of climate change.

Please accept the following comments further detailing our concerns related to the proposed facility.

1. The risk of fire at BESS facilities is small but real and poses significant hazards to the environment and to human health and safety.

Lithium-ion batteries at BESS facilities are subject to overheating to the point of igniting difficult-to-extinguish fires. These fires release highly toxic gases and pose significant risk of explosion. While it is true that the incidence of such accidents in proportion to the number of BESS facilities has significantly decreased, fires continue to occur. The most recent was this month in California on September 5th, not the first incident in that state.² While the chance of an accident is small, the consequences are dire. Fire at a BESS can burn for weeks during which fire departments must apply large quantities of water. Does the Minkler Road site proposed for the Goldeneye BESS in unincorporated Skagit County have

¹ [Survival by Degrees: 389 Bird Species on the Brink | Audubon](#)

² [BESS Failure Incident Database - EPRI Storage Wiki](#)

a water supply sufficient to deal with an industrial-scale lithium-ion battery fire? It is very doubtful that the fire district for the area has the personnel, training, or equipment needed. Will the owners of the BESS pay the full cost of ensuring that sufficient water, trained firefighters, and equipment are at the ready 24 hours a day for the lifetime of the Goldeneye BESS?

2. Building an energy facility in a floodplain detracts from climate resiliency.
Skagit County is undertaking the required ten-year update of its Comprehensive Plan. This update must include a newly required element addressing reduction of greenhouse gas emissions and climate resiliency. The large substation on Minkler Road adjacent to the site proposed for the Goldeneye BESS sits in the floodplain of Hansen Creek and the Skagit River. Hansen Creek is prone to flooding as is the Skagit. Atmospheric scientists tell us that climate change will increasingly bring irregular weather patterns and potentially more frequent and larger floods, including on the Skagit River, as we see happening many places around the world.³ Siting a major substation in the floodplain was likely a mistake which will need to be corrected if we are to adapt effectively to the changing climate. Building the BESS next to this substation in the floodplain will, in the long run, detract from climate resiliency rather than helping address the effects of the climate crisis.

3. Construction and operation of a BESS next to Hansen Creek risks damaging important salmon habitat.
As other commenters have noted, including the Skagit County Commissioners, Hansen Creek is an important spawning stream for multiple salmonid species, and the public has spent considerable financial resources restoring this habitat.⁴ During the first ten years after restoration of Hansen Creek where it flows through Northern State Recreation Area, Skagit Audubon carried out regular bird surveys in that area. Consequently, we know at first hand the richly diverse wildlife habitat along this creek. A spill at the Goldeneye BESS or a fire and the necessary actions to extinguish it would surely jeopardize Hansen Creek's important habitat qualities from the project site all the way to the Skagit River. It would also jeopardize the Skagit, Puget Sound's most important river for salmon reproduction as well as a primary source of domestic water for many thousands of people and of irrigation for Skagit farms.

4. The proximity of the BESS to a densely inhabited areas poses disruption and possible hazards to the nearby residents.
Although Skagit Audubon's principal focus is on wildlife and wildlife habitat, we also care about the well-being of our fellow Skagit County residents and their ability to enjoy a safe and healthy environment. We understand that the fans required to cool the BESS lithium-ion batteries generate continuous loud noise. This would degrade the quality of life for nearby residents. Beyond that, the low-incidence but high-consequence nature of a fire at the Goldeneye BESS argues strongly for not building the facility near a residential area. Were a fire to occur, the venting of toxic gases and the fire itself would require immediate evacuation and potentially staying clear of the area for weeks as well as the possibility of losing homes to fire. There is likely no perfect location for a BESS in Skagit County but a

³ [Skagit Climate Science Consortium | Skagit Climate Science Consortium](#)

⁴ [Press Release \(skagitcounty.net\)](#)

commercial or industrial area away from residences, out of the flood plain, not taking agricultural land, and away from forest would seem the preferred alternative.

5. The uneven quality of the *Application for Site Certification*'s wildlife sections indicate need for a more careful and thorough approach to site analysis.

We note that the comments from Skagit County Planning and Development Services point to numerous and significant deficiencies in the project application.⁵ Focusing solely on the references to birdlife, we find that there is, appropriately, mention of the International Migratory Bird Treaty Act and the need to confine ground and vegetation disturbance to a time of year when birds are unlikely to be nesting. We also find reference to the likelihood that parts of the proposed site provide suitable habitat for bird nesting. On the other hand, in response to the Application form's question on whether birds are present at the site, the person completing the form marked, "No."⁶ It is safe to say that no site of this size and diversity in Skagit County has no birds. For over a decade, Skagit Audubon carried out surveys just up Hansen Creek north of State Route 20 and documented 100 avian species. The checking of the "No" box suggests that the biological evaluation of the site was neither thorough nor accurate. We lack the expertise to know if this shortfall also describes the statements about the salmon species for which Hansen Creek is an important spawning stream.

We appreciate your attention to our concerns and urge you to recommend to Governor Inslee that the Goldeneye project not be approved. We urge the company proposing this facility to look more carefully at sites in commercial and industrial areas away from sensitive habitat and away from residential development. The siting of battery facilities needs to contribute to rather than detract from climate resiliency. Thank you.

Sincerely,



Timothy Manns
Conservation Chair, for the Skagit Audubon Board

Cc: Governor Jay Inslee via [Send Gov. Inslee an e-message | Governor Jay Inslee \(wa.gov\)](#)

⁵ Skagit County Planning & Development Services, Jack Moore, August 13, 2024 ([CombinedComments.pdf \(wa.gov\)](#))

⁶ *Application for Site Certification*, p.46



Date: 9/27/2024

From: Skagit Land Trust

To: State of Washington Energy Facility Site Evaluation Council (EFSEC)

RE: Goldeye BESS proposal.

We would like to comment on the Goldeneye BESS proposal to build and operate a lithium-ion BESS in unincorporated Skagit County, just outside of Sedro-Woolley. Skagit County's land use rules and regulations must be considered by EFSEC when determining whether to approve the proposed location. **Goldfinch Storage Energy did not evaluate how, or if, the project was consistent with Skagit County land use regulations. Industry, such as BESS, must be properly zoned for safety, natural resource considerations and environmental reasons. Undermining local zoning will lead to communities fighting a green energy transition, rather than supporting it.**

Skagit Land Trust (the Trust) conserves wildlife habitat, agricultural and forest lands, scenic open space, wetlands, and shorelines for the benefit of our community and as a legacy for future generations. Our organization has over 1,700 family and business supporters (members) and 500 active volunteers who work to protect the most important and beloved places in Skagit County. Today, the Trust protects more than 10,000 acres in Skagit County, including more than 48 miles of shoreline, including lands along the Skagit River.

Global warming has impacted and will continue to impact our conserved waterways, coastlines, wetlands, forests, lands, and wildlife habitat. We recognize that reducing the burning of fossil fuels for electricity, heat and transportation is considered the most effective way to halt global warming. We appreciate that energy storage is a necessary component of the transition away from the burning of fossil fuels to the use of greener energy sources. **However, we do not think the proposed site in Sedro Woolley is an appropriate location for a lithium-ion battery storage system facility. We urge you to deny the Goldeneye BESS proposal.**

Skagit Land Trust supports the Skagit County BOCC's decision to oppose the proposal to install the Goldeneye Battery Energy Storage System (BESS) at this site. The Board of County Commissioners' (BOCC) 8/28/24 statement opposing the Goldeneye BESS proposal points out that the Administrative Official Interpretation (AOI 2023-01) - subsequently used by **Goldfinch Storage Energy to show the suitability of the proposed location- was not intended for this purpose. The AOI 2023-01 clearly states "The Administrative Official recognizes, from comments received from this and other BESS projects, that there are concerns about safety, environment, 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 a special use permit process." (pg. 6, Skagit County Administrative Decision AOI 2023-01)

The Goldeneye Battery Facility Does Not Meet Skagit County Zoning

Agricultural Natural Resource Land zoning considerations

Washington's Growth Management Act mandates counties "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries; encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses." RCW 36.70A.020(8).

The proposed Goldeneye BESS site is on land zoned Agricultural-Natural Resources Land (Ag-NRL) by Skagit County. Skagit County strongly prioritizes agricultural use of this land. Not only have strict ordinances been developed to ensure the land remains available for agriculture, but a recent survey of Skagit County residents confirmed that maintaining agricultural lands is local residents' top priority.

Skagit County rules and regulations address what activities are allowed on agricultural lands. **Siting a BESS on agricultural land is clearly an incompatible use.**

- Skagit County's comprehensive plan (2016 to 2036) directs the County to take actions that "Preserve agricultural land for agricultural purposes".
- Skagit County's goal 4A-3 promotes preservation of agricultural land for agricultural uses, minimize nonfarming uses on agricultural lands; and develop incentive programs to promote farming.
- Skagit County's Goal 4A-4 states "Land uses allowed on designated land shall promote agriculture, agricultural support services, and promote diverse agricultural industries".
- Per Skagit County Code 14.16.400 the purpose of the Ag land designation is to "provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities, and operations as the primary use of the district. Non-agricultural uses are allowed only as accessory uses to the primary use of the land for agricultural purposes."

Skagit County's Countywide Planning Policies address activities allowed on agricultural lands:

- CPP 5.11: Skagit County shall conserve agriculture, aquaculture, forest, and mineral resources for productive use by designating natural resource lands and aquatic resource areas, where the principal and preferred land uses will be long term commercial resource management.
- CPP 8: Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands and discourage incompatible uses.
- CPP 8.9: Skagit County shall conserve agricultural, aquatic based, forest and mineral resources for productive use by designating natural resource lands and aquatic resource areas where the principal and preferred land uses will be long-term commercial resource management.

Skagit County's SCC 14.16.400(4)(h) was recently amended to exclude on Ag-NRL zoned land electrical generation and/or storage facilities from the major utility developments permitted with a hearing examiner special use permit. Though this amendment comes after the Goldeneye proposal, and will

therefore not impact that proposal, it clearly expresses Skagit County’s intent to not allow major utility developments on land zoned Ag-NRL. AOI 2023-01 identified the Goldeneye BESS a major utility development. EFSEC should honor Skagit County’s intent and deny the Goldeneye BESS siting proposal.

Native Fish and Endangered Species considerations

The GMA mandates counties adopt development regulations that protect critical areas, preserving the natural environment and maintaining fish and wildlife habitat. Critical areas include fish and wildlife habitat conservation areas (RCW 36.70A.030). As Salmonids are keystone species vital to ecosystems and important cultural and economic resources, the GMA further directs counties “to give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries.”

Skagit County identifies Hansen Creek, which runs through the Goldeneye BESS proposed site, a fish and wildlife habitat conservation area (HCA). Hansen Creek meets the following criteria (SCC14.24.500) for designation as a HCA, based on WAC 365-190-130 lists:

- Areas with which endangered, threatened, and sensitive species have a primary association.
- Waters of the State as defined by WAC 222-16-030.
- Areas with which anadromous fish species have a primary association.
- State priority habitats and areas associated with State priority species as defined in WAC365-190-080.
- Areas with which anadromous fish species have a primary association.

Hansen Creek supports chinook, coho, chum, pink salmon, steelhead, and other native trout species. Approximately 7 miles of Hansen Creek is accessible to anadromous fish with an additional 2.9 miles of accessible length in associated tributaries. (Hansen Creek Watershed Management Plan)

Hansen Creek is designated critical habitat for Puget Sound steelhead and Puget Sound chinook salmon, both identified as threatened by the Endangered Species Act. Washington Department of Fish and Wildlife identifies Puget Sound Steelhead as a candidate for listing in Washington as a State Endangered, Threatened, or Sensitive species. NOAA Fisheries has deemed the area, within which the proposed site is located, to be Essential Fish Habitat (EFH) for chinook, coho and pink salmon. Of note, chinook salmon are a key prey species for endangered Puget Sound Orcas.

As a designated shoreline of the state, the rules and regulations of the Washington State’s Shoreline Management Plan and Skagit County’s Shoreline Master Program (SMP) apply to Hansen Creek and 200 feet of shoreline on either side of the creek (RCW 90.58.030(2)(d)). The wetlands within the Hansen Creek watershed must be protected. They contribute to the health of Hansen Creek, improving water quality and providing erosion control. The SMP policies, goals, rules, and regulations apply to wetlands associated with Hansen Creek. EFSEC must consider SMP regulations pertinent to major utility development as it determines whether to approve the Goldeneye BESS proposal.

Hansen Creek empties into the Skagit River, 1.6 miles from the proposed site. The Skagit River has the largest remaining runs of threatened Puget Sound Chinook salmon. The Skagit River is designated a Wild and Scenic River starting from the pipeline crossing at Sedro Woolley upstream to Bacon Creek.

Washington State legislature designates the Skagit River—upstream from the Skagit Bay to the Skagit/Whatcom County line—a shoreline of statewide significance. Per the Shoreline Management Act, the natural resources and ecological systems of shorelines of statewide significance should be protected. As noted previously, Hansen Creek is a tributary of the Skagit River, emptying into the Skagit River 1.6 miles from the proposed Goldeneye BESS site. Any disaster occurring at the Goldeneye BESS site could contaminate the

shoreline and waters of Hansen Creek which in turn could contaminate the shoreline and waters of the Skagit River.

Many years of agricultural activities, periodic dredging, and timber harvesting of the headwater forest, along with straightening of the creek bed deteriorated Hansen Creek's fish habitat. In the late 1990s the Skagit Fisheries Enhancement Group (SFEG) began restoring Hansen Creek. Since that time millions of public dollars have been spent on restoration projects with the Swinomish Tribal Community, the Upper Skagit Tribe, the Sauk-Suiattle Indian Tribe, the Skagit River System Cooperative, Puget Sound Energy, Skagit County Parks and Recreation, and others working together to restore the Hansen Creek watershed. From 2009 to 2010 a restoration project on the lower Hansen Creek converted 140 acres of floodplain into 53 acres of alluvial fan and 87 acres of wetland. Creek and wetland restoration is ongoing with plans to further decrease flooding and improve rearing and spawning habitat for salmon.

Given the monies, time, energy and resources put into the restoration of Hansen Creek's salmon habitat by the federal government, Skagit County, Washington State, multiple conservation groups and Tribal entities for almost three decades, ongoing plans to continue restoration, and in recognition that salmon recovery is a top priority in Skagit County and in Washington State, EFSEC should deny the proposal to locate the Goldeneye BESS in the Hansen Creek watershed.

Risks to Community

Lithium-ion BESS facilities, like the proposed Goldeneye BESS, carry potentially high risks to human health and safety and to the environment. The Skagit County BOCC's 8/28/24 statement opposing the Goldeneye BESS proposal addresses some of the risks. SLT agrees with the BOCC that the risks provide too great a threat to the nearby community to allow the siting of the proposed BESS in this culturally and environmentally sensitive area.

Lithium-ion batteries, the most widely used battery type in BESS facilities and the type proposed for the Goldeneye Bess, have been associated with fires and explosions. The BESS Failure Incident Database was created in 2021 to inform energy storage industry stakeholders and the public about BESS failures. 63 incidents of fires at BESS sites have been found worldwide since 2011. Though the industry argues that lithium-ion battery fires occur infrequently, when they do occur, they are extremely difficult to extinguish and release deadly toxic fumes and combustible gases, hazardous to first responders, the public and the environment.

For example, a 2019 fire at a lithium-ion battery facility in Surprise, Arizona caused serious injury to eight firefighters and a police officer; four of the severely injured were career firefighters who had specialized hazardous material (HAZMAT) training. The 2024 fire at the Gateway Energy Storage Facility in Otay Mesa, California burned for nearly two weeks, releasing toxic fumes into the air.

Fumes from lithium-ion battery fires have been shown to contain hydrogen fluoride, hydrogen cyanide, hydrogen chloride, sulfur dioxide and fluorinated phosphorus, all deadly toxic chemicals posing immediate danger to life and health when inhaled, forcing evacuations of surrounding areas. Hydrogen fluoride, for example, has been found in lithium-ion battery fires at levels near 600 ppm; concentrations of 30 ppm of hydrogen fluoride are considered immediately dangerous to life and health. Additionally, runoff from water used to fight BESS fires can be contaminated by these chemicals and, in turn, can contaminate soil or groundwater absorbing the runoff.

Conclusion

EFSEC should deny the proposal to locate the Goldeneye BESS in the Hansen Creek watershed. The risk of fire and explosions with release of hazardous substances for nearby residents and the pollution of Hansen Creek posed by the proposed Goldeneye BESS is simply too great. Such an incident could easily reverse decades of effort to restore Hansen Creek to a salmon-friendly habitat and its associated wetlands to their former state. It could also reverse enormous efforts to help communities partner in adopting green infrastructure. EFSEC should deny the Goldeneye BESS proposal as it does not fit with Skagit County zoning or land use regulations.

Sincerely

A handwritten signature in cursive script, appearing to read "Molly D.", followed by a horizontal line.

Molly Doran
Executive Director
Skagit Land Trust

1020 S 3rd Street
Mount Vernon WA
98273

mollyd@skagitlandtrust.org

To: Comments@efsec.wa.gov

From: efsec@efsec.wa.gov

Received: 2024-10-08T23:01:51+00:00

Subject: FW: Best Practice for Lithium BESS incidents after 5 BESS fires in San Diego: Alternative Energy Emergency Response Coordinator

Has attachment? False

From: James DeLay <jamesdelay@hotmail.com>

Sent: Tuesday, October 8, 2024 3:16 PM

To: DOR King County Leg Authority 2 <kcxec@kingcounty.gov>

Cc: Reagan.Dunn@kingcounty.gov; dow.constantine@kingcounty.gov

Subject: Best Practice for Lithium BESS incidents after 5 BESS fires in San Diego: Alternative Energy Emergency Response Coordinator

External Email

Dear Executive Constantine, King County Council Vice-Chair Dunn, and local Council Members, Board Members, Mayors, Legislatures, and leaders and influencers of WA State,

Here's a good article about San Diego's new best practice as the first county in America which has experienced five (5) BESS fires since the first BESS fire in April 2022:

US, CA, Escondido 120 5 September 2024

US, CA, Santa Ana 17 July 2024

USA, CA, San Diego 15 May 2024

US, CA, Valley Center 18 September 2023

US, CA, Valley Center 5 April 2022

https://storagewiki.epri.com/index.php/BESS_Failure_Incident_Database

They have created a job/position called, Alternative Energy Emergency Response Coordinator, where the fire expert focuses on being a resource on active lithium battery fires... Every County should have one if they have EVs/BESS located in the County!

A couple good quotes:

"Battery fires are notoriously difficult to put out because they include so many types of combustibles — plastics, flammable liquids, electrical components and metal. They burn extremely hot and can spew toxic fumes and explosive gases. Exploding batteries can blow out windows or doors of a home."

"In late 2022, crews fighting a warehouse fire where pedicabs and lithium-ion batteries were stored in the East Village thought they were being shot at because of the noise from exploding batteries sending material into the building's metal walls."

"Firefighters say applying water won't extinguish the fires — and can create other problems with runoff and gases — so they often choose to let them burn themselves out."

“The chemical reaction that’s happening in the batteries cannot be extinguished,” Rezende said. Crews applying water are trying to prevent the next battery from going into thermal runaway, known as propagation, he said.

"When responding to a fire involving batteries," Rezende said "an incident commander will look at several factors, including the location of the fire and the risk to public safety, before choosing whether to fight it defensively or offensively."

“Either we flood it with water and do the best that we can to cool it. Or we let it self-consume — consume all the fuel and then it kind of self-extinguishes,” he said."

So, the Mattson Middle School location would be a prime example of where the environmental risks are too high to flood it with water and instead they would let it burn and the focus would/should be on evacuating all the school children/staff, families and animals, all businesses, and everyone else in the area for the days to weeks while it self-extinguishes...

Who pays for the evacuations of 800 kids and staff and the 1,000s of families/neighbors forced out of their homes for up to two weeks?

Who pays for missed school days and make up days?

Who pays for housing? Where will 1,000s of families stay- there aren't enough hotels nearby...

Who pays for their food?

Who pays for lost income and revenues for people and businesses?

Who pays for all the cleanup of the smoke and ash out of Mattson Middle School's campus and people's yards and from inside people's homes?

Here's the full article:

"San Diego Battalion Chief Shares Lithium-Ion Expertise in New Role

Sept. 25, 2024

As the region's alternative energy response coordinator, Rob Rezende responds to incidents as a technical advisor.

By Karen Kucher

Source The San Diego Union-Tribune (TNS)

•
Alejandro Tamayo (TNS)

San Diego Battalion Chief Rob Rezende was heading home from a hazmat conference in Sacramento when people started texting him about a lithium-ion battery fire in Escondido.

Before his plane took off, he watched drone footage on his phone showing smoke and flames erupting from a container at the SDG&E energy storage facility on Sept. 5.

This was the second battery storage facility fire in San Diego County since Rezende became the region’s alternative energy emergency response coordinator in April. It is a role carved out especially for him as fires involving lithium-ion batteries grow more common, locally and elsewhere.

Rezende, a battalion chief with San Diego Fire- Rescue and a 17-year department veteran, is a nationally recognized expert in lithium-ion battery fires. In his new role, other agencies like Escondido can call on him to look at their fire response.

“I don’t show up at these incidents to question the incident commander or to take over, I just come there to be a technical adviser,” said Rezende, who headed straight to Escondido after landing.

Crews were letting the fire burn out while sending water streams to cool down a nearby container. Nearby businesses were evacuated as air quality was tested. The incident was over in 12 hours. “They knew what they were doing,” said Rezende.

Battery fires are notoriously difficult to put out because they include so many types of combustibles — plastics, flammable liquids, electrical components and metal. They burn extremely hot and can spew toxic fumes and explosive gases. Exploding batteries can blow out windows or doors of a home.

In late 2022, crews fighting a warehouse fire where pedicabs and lithium-ion batteries were stored in the East Village thought they were being shot at because of the noise from exploding batteries sending material into the building’s metal walls.

Firefighters say applying water won’t extinguish the fires — and can create other problems with runoff and gases — so they often choose to let them burn themselves out.

“The chemical reaction that’s happening in the batteries cannot be extinguished,” Rezende said. Crews applying water are trying to prevent the next battery from going into thermal runaway, known as propagation, he said.

In recent years, firefighters in San Diego and elsewhere began seeing more fires involving lithium-ion batteries, but there wasn’t clear direction on how to handle them. Recognizing that no one was knowledgeable about the issue, Rezende — then the hazmat program manager — immersed himself in the topic. He traveled to conferences in the U.S. and abroad, meeting experts in the private and public sectors. He helped figure out best practices and pushed the training out to local agencies.

He became so busy with that work, fire officials agreed he should hand off his hazmat manager role and focus on lithium-ion battery fires and other alternative energy technologies full-time.

“It was just consuming so much of his time,” newly retired Fire-Rescue Chief Colin Stowell recalled. “He’s very smart and he had a lot of passion for it and he was trying to assist everybody he could, but it was just overwhelming.”

At Stowell’s urging, Rezende secured an Urban Area Security Initiative grant which funds the job as a regional resource. He now focuses on batteries and other alternative energy sources such as hydrogen fuel cells and alternative fuel vehicles. The rapidly changing technology brings new and unexpected challenges to fire crews figuring out the safest and most effective way to tackle fires.

“California is leading the way on alternative energy so we are going to be the state seeing the most and the fastest and the soonest,” Rezende said.

Helping out after the Maui fires

Even before he took his regional role, Rezende was viewed as a national expert on the topic. He was asked to consult with the U.S. Environmental Protection Agency in the aftermath of the devastating wildfires on the Hawaiian island of Maui in August 2023 that killed more than 100 people.

The team figured out what to do with all the batteries found in burned-out electric vehicles and homes in and around Lahaina. They used a liquid solution containing salt to de-energize the batteries so they could be safely transported for recycling. In all, batteries from 94 electric and hybrid vehicles and 274 residential energy-storage systems were shipped to a processing facility in Reno, Nev.

Back in San Diego, Rezende had only been in his new job a few weeks when a fire broke out May 15 at the 250-megawatt Gateway Energy Storage in Otay Mesa. A fire ignited in one of seven buildings where racks of lithium-ion batteries are stored.

Crews sprayed millions of gallons of water onto the building. Officials initially thought it was out the next evening, but the batteries kept reigniting. It took 17 days before crews were released from the fire.

Fire officials said the lithium-ion batteries experienced “thermal runaway” — a condition in which excessive heat results in a chemical reaction that spreads to other batteries.

When responding to a fire involving batteries, Rezende said an incident commander will look at several factors, including the location of the fire and the risk to public safety, before choosing whether to fight it defensively or offensively. “Either we flood it with water and do the best that we can to cool it. Or we let it self-consume — consume all the fuel and then it kind of self-extinguishes,” he said.

Early career goals didn’t include firefighting

Rezende didn’t grow up wanting to be a firefighter.

The son of a Brazilian diplomat, he was born in Los Angeles and moved to Brazil with his family before returning to the U.S. when he was 12.

Tall and athletic, he initially wanted to be a fitness trainer for a pro soccer team and earned master’s degrees in exercise physiology and nutritional sciences at San Diego State University. Armed with two graduate degrees, he briefly considered pursuing a doctorate before deciding instead to work as an exercise physiologist in the Fire Department’s wellness program. He eventually opted to make the fire service a career and graduated from the academy in 2007.

In his new job, he’s a frequent speaker at conferences and meets with elected leaders and fire officials around the region as they consider energy storage facilities in their jurisdictions. Rezende said he will ensure training keeps up with emerging technologies, and he’s pushing for departments to better track fires that involve lithium-ion batteries. The city of San Diego had 104 fires involving lithium batteries in 2023 and 63 this year as of late August.

The city has put out public service announcements warning residents not to leave e-bikes unattended while charging them. The city also urges residents to use cords and power adapters provided by the manufacturer and to be aware of signs a battery is failing, such as overheating or emitting an odd odor.

Rezende would also like to see better options for residents looking to discard old or damaged lithium-ion batteries, which cannot be tossed into municipal trash because of the risk of sparking a fire or causing explosions in trash trucks or landfills. The city’s hazmat team has helped test prototypes of battery disposal containers, which Rezende envisions one day could be placed at drop-off locations at some city facilities. The team also is working with a UCLA researcher who is measuring contaminants on firefighter gear from battery fires — and who is trying to find the best way to clean them.

“My top priority is keeping my guys safe,” he said. “If we can protect the firefighters, we can protect the public.”

As for the future, Rezende would like to see an outreach program in high schools to educate teens about how to use and store batteries safely and provide warnings about the danger of altering e-bikes and e-scooters to go faster.

Here's the link:

https://www.firehouse.com/operations-training/news/55142458/san-diego-battalion-chief-shares-lithium-ion-expertise-in-new-role?fbclid=IwY2xjawFyjgtleHRuA2FlbQlxMAABHbuMbBWKpqzje_cl_c-E0mvZ-1nkGy2gLw9Y3NtkQWreSxzZY7eRmamVnA_aem_d3z5xXGf1ND6CehcOTo9bA

My Best,

James

Attachments:

[]

To: Comments@efsec.wa.gov
From: cckrier@gmail.com
Received: 2024-10-19T15:54:41+00:00
Subject: PDR- Missing information in project files
Has attachment? False

External Email

EFSEC board
Re: Goldeneye

Please consider this an official public disclosure request for a copy of the below documents. letters or emails, the dates they were recieved and the dates they were input into the project files for review by the board.

Documents requested

Letter or email from skagit county commissioners

Letter or email from state elected officials, Carolyn Eslick, Sam Lowe and Kieth Wagner

Letter or email from city of sedro woolley city council

Letter or email from Upper Skagit Indian Tribal council.

Upon review of the information in the project files, I am not seeing letters that are known to have been sen to EFSEC by government entities. It appears as though documents are not being fulling input into the files and in tern information is being withheld from the public and possibly not recieved by the board. During crucial decision making times.

Thank you
Connie Krier

Cc: skagit county council

Attachments:

[]

To: Comments@efsec.wa.gov
From: RuleMaking@efsec.wa.gov
Received: 2024-10-28T17:43:14+00:00
Subject: FW: Rules about public comments
Has attachment? False
Forwarding from rulemaking email to comments email.

Ali Smith (She/They)

Management Analyst 3
Energy Facility Site Evaluation Council (EFSEC)
[EFSEC Home](#) | [About EFSEC](#)

From: Sigrid Novak <sigridnovak7@gmail.com>
Sent: Sunday, October 27, 2024 5:26 AM
To: EFSEC mi Rule Making <RuleMaking@efsec.wa.gov>
Subject: Rules about public comments

External Email

It is unconstitutional to cut us the residents out of the process by eliminating public comments in regards to the installation of the lithium storage facilities. The potential impact of this station, specifically the one on Minkler In Sedro Woolley, is horrendous to us personally as well as our neighbors. You simply cannot run us over and disregard our rights as property owners and residents in protest of this project!
I protest the elimination of public comments on all levels!

Sigrid Novak



360-739-2692



To: Comments@efsec.wa.gov
From: RuleMaking@efsec.wa.gov
Received: 2024-10-28T17:44:05+00:00
Subject: FW: Bess
Has attachment? False
Forwarding from rulemaking email to comments email.

Ali Smith (She/They)

Management Analyst 3
Energy Facility Site Evaluation Council (EFSEC)
[EFSEC Home](#) | [About EFSEC](#)

From: gene fleury <genefleuryjr@gmail.com>
Sent: Sunday, October 27, 2024 1:49 PM
To: EFSEC mi Rule Making <RuleMaking@efsec.wa.gov>
Subject: Bess

External Email

Unfair rules regarding the battery station located in sedro woolley..

Attachments:

☐

To: Comments@efsec.wa.gov

From: RuleMaking@efsec.wa.gov

Received: 2024-10-28T17:46:08+00:00

Subject: FW: BESS

Has attachment? False

Forwarding from Rulemaking to Comments inbox based on email subject. Ali Smith (She/They) Management Analyst 3 Energy Facility Site Evaluation Council (EFSEC) EFSEC Home | About EFSEC -----Original Message----- From: jon fleur Sent: Sunday, October 27, 2024 11:36 AM To: EFSEC mi Rule Making Subject: BESS External Email Public COMMENT you guys want to do away with that, I thought Democrats were into TRANSPARENCY and democracy. You guys are trying to do away with public comments Does not seem like an open system then. 100% AGAINST that idea. Jon Fleurichamp

Attachments:

□

RECEIVED

DEC 02 2024



Nov. 14, 2024

ENERGY FACILITY SITE
EVALUATION COUNCIL

To whom it may concern:

The Skagit Valley Clean Energy Alliance is a 501 c(3) nonprofit organization, headquartered and operated in the town of La Conner. Our mission is to assist Skagit County in moving forward with all possible speed, on all possible elements of the ongoing transition to clean energy.

Our technical advisor, Greg Whiting, is an expert on advanced energy systems. He has worked on the development and introduction of advanced energy technologies since 1987. His employers have included a battery material manufacturer, three major electric utilities (FPL, TXU and Seattle City Light), the Port of Seattle, and two consulting firms that have assigned him to energy technology development projects on behalf of other utilities and the US military. Mr. Whiting was working on the development of lithium-ion battery technology as early as 1993, when the largest available lithium-ion battery would fit into a (brick-sized) cell phone.

Regarding utility-scale battery energy storage systems (BESS), Mr. Whiting advises:

One of the biggest problems faced by the utility industry is that, historically, it has been very difficult to store electric energy on a large scale.

Electricity is not used at exactly the same rate during all 8760 hours of a 365-day year. During a relatively small number of "peak" hours, the amount of electricity that has to be generated and delivered on a typical northwestern grid is three, or even four, times as much as the amount required during "off-peak" hours.

To meet demand during peak hours, the generation and transmission/distribution (T&D) systems have to be very significantly overbuilt, relative to demand during most hours of the year. The industry's generation assets are capable of producing, and the T&D system is capable of delivering, far more total energy than is actually required.

Even so, during the 20 - 200 highest peak hours of the year, generation from little-used backup generators ("peakers") may be required, to supplement the generation systems that are usually running. As peakers are used very infrequently, their owners must charge more, to utilities, for the electricity the peakers produce than typical. Peak energy costs (to utilities) can be orders of magnitude higher than typical. In Washington, these costs are factored into overall rates and contribute to higher rates. (In other markets, like Texas, peak costs can sometimes be passed on to consumers, which occasionally results in well-publicized \$10,000/month residential utility bills.)

Additionally, new renewable energy systems, especially wind and solar systems, are capable of producing energy with zero marginal cost and zero fuel. Wind and solar generation costs have fallen more than 99% over the last 20 years and are still falling. In developing new generation plants, wind and solar are now often favored over coal and gas, not just because of environmental considerations, but because of lower total costs. However, wind and solar systems are dependent on immediate weather conditions and are seasonal.

Therefore, installing solar energy on a large scale to, say, help reduce summer utility peaks in California, is having an unusual effect: Energy can be available on wholesale markets at negative costs during other hours. In other words, to maintain grid stability and reliable operation, it is sometimes necessary to actually pay some customers to take energy off the grid - during the very hours during which renewable energy output is at its maximum. In extreme cases, renewable generation can even be curtailed; i.e., renewable generation assets, which have already

been built, and which could produce energy with no fuel consumption and at virtually zero marginal cost, are turned off, instead of being allowed to run and produce this clean, free electricity.

Finally, growth is not uniform in all territories. In places like northwestern Washington, which is electrically connected to southwestern British Columbia, rapid growth in Seattle and Vancouver, and more rural areas like Skagit County, can require construction of new generation and T&D assets, because the existing grid is not necessarily capable of delivering enough energy to the locations in which growth is occurring.

Cost-effective utility-scale energy storage systems, such as battery energy storage systems (BESS) based on lithium-iron phosphate batteries, are a highly desirable technology. If energy can be stored economically:

- Energy from existing generation assets can be stored during off-peak hours and then used during on-peak hours. This would reduce the need for high-cost, fossil-fuel based, often inefficient peakers. BESS systems thus can reduce costs for all customers and reduce emissions, while simultaneously helping generation providers to use existing fossil fuel assets more efficiently instead of building new fossil fuel assets.
- Energy can be stored during periods of negative wholesale pricing, and/or during periods in which renewables would otherwise be curtailed. This also helps to keep overall customer rates down, and captures zero-emission energy that would otherwise be wasted, which can replace energy from plants that have emissions.
- To the extent that grid congestion exists, judiciously located (e.g., near existing infrastructure and within the area in which peaks and grid congestion would otherwise occur) energy storage systems can be used to relieve congestion during peaks, avoiding construction of new fossil-based peak generation systems and avoiding, or at least minimizing, costly and environmentally disruptive construction of new T&D systems (transmission wires, substations, etc.)

Lithium ion (LiON) batteries are a very new technology that has only recently become available to solve this problem. Until recently, the cost of lithium-ion batteries has been too high for BESS systems to be economic. However, as with solar and wind costs, LiON costs have fallen very significantly. In 1994, a lithium ion battery cost around \$400,000 per kilowatt-hour of energy storage capacity. Wholesale costs are now in the neighborhood of \$100 - \$150 and are still falling. There are now situations (notably one in South Australia that has gotten significant publicity within the utility industry) in which BESS systems are the best solution to some or all of the above-described problems.

BESS technologies are an emerging, and extremely important, part of the energy transition. It is in Skagit County's best interests: to keep utility costs down; to avoid major new T&D or generation construction; to take advantage of the availability of negative- or zero-cost, and/or otherwise-curtailed renewable energy; and to minimize emissions, to approve the installation of judiciously-sited, cost-effective battery energy storage systems.



Greg Whiting, BS, MS, MBA, Professional Engineer, Certified Energy Manager
La Conner, WA
greg.whiting@alpineflamingo.com



Terry Nelson, President, Skagit Valley Clean Energy Alliance
terry@svcea.org

From: [connie Krier](#)
To: [EFSEC mi Comments](#)
Subject: Fish kill near BESS fire in MO - Goldeneye opposition
Date: Tuesday, November 5, 2024 7:06:00 AM

External Email

Council members -

Please read and include the information about the BESS fire in Missouri with the Goldeneye information.

The dead Fish and PFAS leaching into the ground is exactly what citizens are trying to prevent in Skagit county. We are told over and over by the contractor fires "rarely" happen and their is "no contamination" potential from fires, the evidence says otherwise.

In Missouri they don't drink from an aquifer, however in Skagit county we do not have that privilege. All the farms and homes in the area use wells from an aquifer under the Goldeneye site.

Imagine this environmental disaster in the heart of our richest farmlands in the state.

Copy and paste link or google the information.

<https://www.ksdk.com/article/news/local/fredericktown-mo-battery-plant-fire-dead-fish-kill-updates-investigation-firefighting-foam-lithium-battery-fire/63-02253d7c-de87-450d-a324-c78b5d404b88>

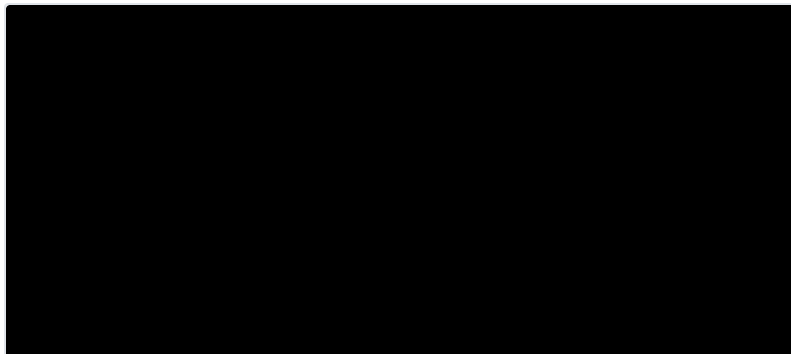
Thank you
Connie Krier

From: [CEASE2020](#)
To: [Amanda McKinney](#); [Kyle Curtis](#); [Jerome Delvin](#); [Lori Zoller](#); [Jacob Anderson](#); [Dan Christopher](#); [Scott Edelman](#); [evan.evangelopoulos@klickitatcounty.org](#); [Planning Users](#); [Corry, Chris \(LEG\)](#); [King, Curtis](#); [Rep. Dan Newhouse](#); [DOR Gina Mosbrucker](#); [Dye, Mary](#); [Klicker, Mark](#); [Boehnke, Matt \(LEG\)](#); [Warnick, Judy](#); [Office of Governor Inslee](#); [GOVOutBound](#); [Inslee, Jay \(GOV\)](#); [EFSEC mi Comments](#); [Cantwell, Maria](#); [Rep. Dan Newhouse](#); [Honeyford, Jim](#)
Cc: [Donald Jenkins](#)
Subject: C.E.A.S.E.
Date: Wednesday, November 20, 2024 9:02:38 AM

External Email

Hi, watch the video. The Klickitat County BESS ordinance needs to prohibit BESS anywhere in Klickitat County. One ordinance with one sentence " NO BESS ANYWHERE IN KLICKITAT COUNTY". Simple. Greg Wagner C.E.A.S.E.

[A Mason County man a new battery energy storage system next door to him is a nightmare](#)



A Mason County man says a new battery energy storage system next door to...

Hundreds more are planned for Texas in 2024, as the Lone Star State leads the nation for large-scale energy stor...

LOCAL NEWS

Nearly 3 miles of dead fish found in Fredericktown after battery plant fire, official says

Officials are monitoring the nearby Little St. Francis River to see if fish kills are happening further downstream, the Missouri Department of Conservation said.



Credit: KSDK

<https://www.ksdk.com/article/news/local/fredericktown-mo-battery-plant-fire-dead-fish-kill-updates-investigation-firefighting-foam-lithium-battery-fire/63-02253d7c-de87-450d-a324-c78b5d404b88>

All fish and other living creatures have died almost 3 miles down stream from the lithium battery fire...

LOCAL NEWS

'Thousands' of dead fish in Missouri town under investigation after nearby battery plant fire

The washed-up carcasses are triggering resident worries about potential chemical contamination.



Credit: KSDK

Author: Hunter Bassler

Published: 5:17 PM CDT November 1, 2024



<https://www.ksdk.com/article/news/local/fredericktown-dead-fish-kill-under-investigation-lithium-battery-plant-fire-missouri/63-d801710d-4de6-42e5-ac5e-61a1f36309d4>



'Thousands' of dead fish in Missouri town under investigation after nearby battery plant fire

The washed-up carcasses are triggering resident worries about potential chemical contamination.

www.ksdk.com

These BESS do not belong anywhere near people's homes, schools, hospitals, and creeks and streams or any other body of water.

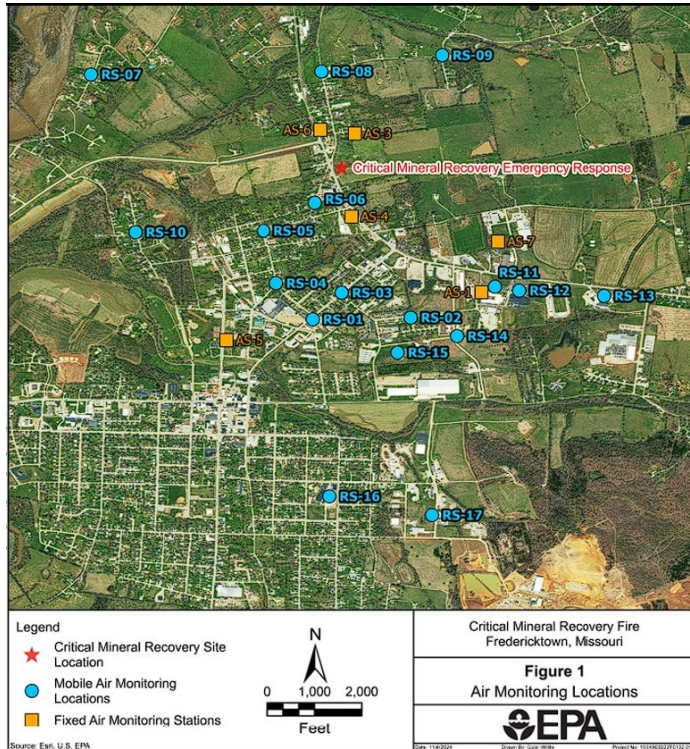
They should be required to have a 20-million-gallon retention water containment system with an impervious liner under the whole facility and all the gravel/concrete to enable all (100%) of the toxic run-off water to be totally contained until toxic waste removal teams can safely remove all the toxic water...

But, that still doesn't account for all the toxic ash, gas, and smoke...

Here's the EPA's reports on air quality:

https://response.epa.gov/site/doc_list.aspx?site_id=16725

Please note, while Hydrogen fluoride is listed in the table- HF detection results/data were NOT included until Nov 2nd (4 days after the fire started- where they reported, "nothing to see here!")



Here's a quick summary of the air quality reports from their 24 air quality testing sites (7 stationary sites and 17 mobile sites):

For Oct 31st- in the first report, they only provided data from two of the 7 stationary air testing sites shown on the map- and both were upwind and didn't have any smoke blowing towards them due to up to 17mph winds blowing the toxic smoke away from town

For Nov 1st- the same thing, only 2 of 7 sites data were shared and both were upwind and reported nothing to be concerned about...

For Nov 2nd- they showed data for 5 of 7 sites (and dropped air testing data for Site #2 off the list)- and finally include data from two sites downwind and those sites show dangerous levels of PM2.5 and PM10 but only provided hydrogen fluoride data for ONE of the downwind sites- which was **after the fire had been burning for 4 days** (and after heavy rains "cleaned" the air- and sent all the contaminants to the ground and rivers- where thousands of fish were killed). That sensor showed minimal levels of HF remaining- so nothing to see here

The ONE downwind site (AS-6) that they showed data for was the site that was NOT the highest impacted by toxic smoke site- the site directly in the line of the smoke/plume was AS-3, at which they did NOT test for hydrogen fluoride until 8 days after the fire started...

For Nov 3rd- they showed 6 of the 7 sites' data but only two sites tested for hydrogen fluoride- and the results said nothing to worry about...

For Nov 4th- the same: nothing to see here

For Nov 5th- the same: nothing to see here

For Nov 6th- added two more Hydrogen Fluoride sensors (4 total hydrogen fluoride sensors now): nothing to see here

For Nov 7th- the same: nothing to see here

For Nov 8th- added one more Hydrogen Fluoride sensor to the site that was initially in the direct line of the plume (5 total): nothing to see here

For Nov 9th- the same nothing to see here

For Nov 10th- the same nothing to see here

For Nov 11th- the same nothing to see here

For Nov 12th- the same nothing to see here

The EPA air quality testers were on site and testing the air quality for 14 days in all...

Basically, TRUST US, nothing to see here!

Yet, they had 22 air quality sensors sites and kept the shelter-in-place and evacuation orders in place for several days- and only showed results for 6 sites...

Why not share all the data? Why did they only share two sites' data until the 4th day when they showed the locations of the other sites on the map starting on their first day (Oct 31st)?

Yes, they tested for Hydrogen Fluoride-

Hydrogen fluoride, HF Fatal if swallowed, is fatal if inhaled and causes severe skin burns and eye damage.

The immediate dangerous to life or health (IDLH) level for HF is 0.025 g/m³ (30 ppm) and the lethal 10 minutes HF toxicity value (AEL-3) is 0.0139 g/m³ (170 ppm). The release of hydrogen fluoride from a Li-ion battery therefore can be a severe risk.

Sensor #6 showed Hydrogen Fluoride levels at .17ppm on the 4th day of the fire- and the first day they tested for it.... Which was also after the rain and strong winds...

But, where are the tests of other known toxins release by burning lithium batteries:

Hydrogen chloride, HCl Severe skin burns and eye damage, is toxic if inhaled, may damage fertility or the unborn child, causes serious eye damage, may cause damage to organs through prolonged or repeated exposure, may be corrosive to metals, may cause respiratory irritation and contains gas under pressure and may explode if heated.28

Hydrogen cyanide, HCN Fatal if swallowed, is fatal if inhaled, causes damage to organs through prolonged or repeated exposure, is very toxic to aquatic life (with long lasting effects) and is an extremely flammable liquid and vapour.15

Nitrogen dioxide, NO₂ Fatal if inhaled, causes severe skin burns and eye damage; and may cause or intensify fire (oxidiser).0.961.91

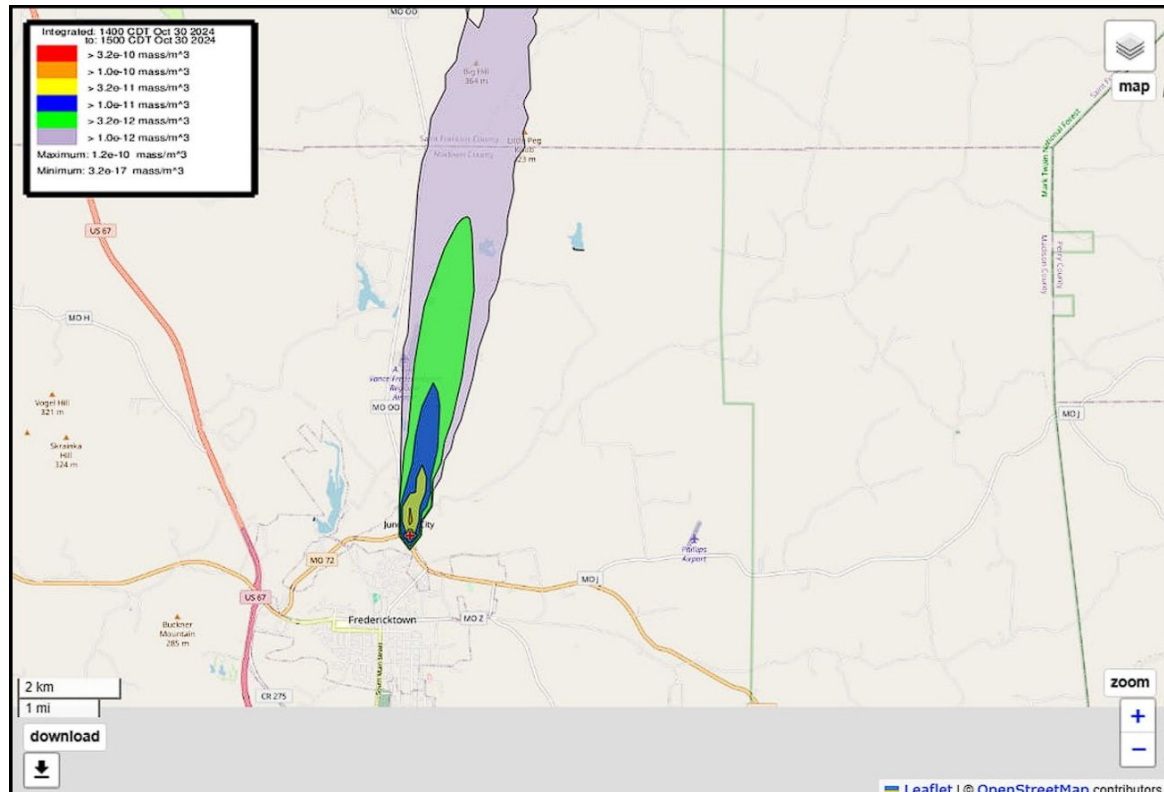
Sulphur dioxide, SO₂ Severe skin burns and eye damage and is toxic if inhaled.1.32.7

Solvents Highly flammable liquid and vapour [53]. Very irritating to eyes, skin and airways [44].DEC 700, PC 8.5cDEC 1000, PC 8.5c

Shouldn't they be testing for all toxins released by burning lithium batteries?

I also find it interesting that they don't provide results from all 22 air quality testing sites- and don't even include all 7 stationary sites shown on their map but include results from three sites that were up-wind from the fire and didn't get any dangerous readings thanks to up to 17mph winds blowing the smoke away from town....

They got so lucky that the wind was blowing away from town- if the wind had been blowing into town, this might have been a mass casualty event...



There are lithium BESS being proposed all over WA state- some are stand-alone and others are mentioned as an accessory to wind and solar generation projects... Almost all of them are NOT being proposed in heavy industrial zoned areas- but, instead in residential zoned areas or near people's homes, near lakes, creeks/streams/rivers...

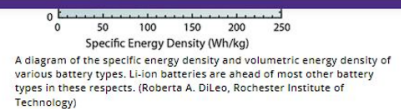
Lithium BESS are the wrong "solution" for grid scale energy storage- even UW's study came away with that Conclusion:

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do not contain toxic lead or cadmium.

High energy densities and long lifespans have made Li-ion batteries the market leader in portable electronic devices and electrified transportation, including electric vehicles (EVs) like the Nissan Leaf and the Tesla Model S as well as the hybrid-electric Boeing 787. In terms of decarbonizing our economy's energy use, Li-ion technology has its greatest potential in EVs and electrified aviation.



What are some disadvantages of Li-ion batteries?

Despite their transformative effect on technology, Li-ion batteries still have a number of shortcomings, particularly with regards to safety. Li-ion batteries have a tendency to overheat, and can be damaged at high voltages. Most Li-ion electrolytes are highly flammable, so damaged batteries can experience thermal runaway and combustion. Because of the risks associated with these batteries, a number of shipping companies **refuse to perform bulk shipments of batteries by plane**. Li-ion batteries require safety mechanisms to limit voltage and internal pressures, which can increase weight and limit performance in some cases. Li-ion batteries are also subject to aging, meaning that they can lose capacity and frequently fail after a number of years. **Degradation, cost, and safety make Li-ion batteries a poor fit for grid-scale energy storage.** And despite the high energy density of Li-ion compared to other kinds of batteries, they are still around a hundred times less energy-dense than gasoline, which contains 12,700 Wh/kg by mass or 8760 Wh/L by volume.

CEI Research Highlights

A major focus of CEI energy storage research is the development of novel materials to improve battery performance. Some CEI researchers develop

Ideally, we would make a law to stop all 1MW+ Lithium BESS and move toward safe long duration energy storage alternatives that don't carry any of the risks.

Thank you,

James

PS, Just so you know, BESS would have been worthless during our recent power outage as the power would have been stuck in the batteries due to the downed lines...



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.

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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 4th 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.



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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;”

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“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

Low Sensitivity

From: [EFSEC mi Rule Making](#)
To: [EFSEC mi Comments](#)
Subject: FW: Battery Energy Storage System Facility Community Concern
Date: Monday, October 28, 2024 10:46:42 AM
Attachments: [Skagit County Commissioners Oppose Goldeneye BESS Project.pdf](#)

Forwarding from rulemaking email to comments email.

Ali Smith (She/They)
Management Analyst 3
Energy Facility Site Evaluation Council (EFSEC)
[EFSEC Home](#) | [About EFSEC](#)

From: Zindra Nelson <zindra@yahoo.com>
Sent: Saturday, October 26, 2024 10:40 PM
To: EFSEC mi Rule Making <RuleMaking@efsec.wa.gov>
Subject: Battery Energy Storage System Facility Community Concern

External Email

To Whom it May Concern:

I strongly oppose any BESS sites in Skagit County, and strongly support a long term moritorium against them for our citizens and our farmland.

I also oppose any rulemaking that would silence public comment.

On 9/4/24, I went to the Sedro Woolley City Council Meeting and spoke against it, along with many other community members. As someone who attends Inspire Church in Sedro Woolley on Township, as well as being someone who runs/participates in 2 homeschool programs that meet there, I believe BESS, Project Goldeneye, is a serious concern to our community.

At the City Council meeting, the City Council brought in four members from the Tenaska Company to do a presentation. While they were able to walk us all through a powerpoint, when asked direct questions, they could answer one questions directly. (Link to video below.)

Before a different public meeting in August, they issued letters to those who live within a one mile radius of the PSE Sedro substation - saying that they need to be able to evacuate within 3 minutes of a fire at the plant at any moment. Inspire Church is close to that substation and the planned build site.

As someone who attends Inspire where there are hundreds of attenders, and as someone who feels responsible for the 325 people that are registered and in attendance at Friday School weekly, I am concerned about evacuation as well as shelter in place orders. There is no way that we could evacuate 325 people from the 2 buildings with 3-5 minutes. Which means we would need to shelter in place.

I stated when I spoke at the meeting, that we (as Friday School, First Class Skagit County Homeschool Coop) are not trained for that type of emergency, we don't have the type of supplies needed, and we don't have the means to prepare for this type of emergency especially since we do not receive public school funding. I have no idea where Inspire Church would stand on that type of preparedness. At the meeting, when we asked the representatives from Tenaska directly about evacuation plans, they said have no plan in place. They plan on supplying that information once the need in the process requires it, which is not

good enough.

As far as shelter in place goes, I've read some on what that entails. But exposure is what caught me off guard. If exposed to the gas from one of these fires, you are to dispose of your clothing. You are to cut your shirt off, do not take it off over your head. According to the CDC's website, if exposed to the gas, if it gets in your eyes, you could go blind. If it gets on your skin - severe burns/blisters within 24 hours. If you breathe it in, you could drown from your lungs filling with water. If exposed you are to seek immediate medical treatment. Exposure can be fatal.

The following were at the SW City Council meeting, and went on the record as opposing the project:

The Sedro Woolley City Council

The Upper Skagit Tribe

The people of Skagit County (about 400 public present from what we could tell)

The Port of Skagit

All three Skagit County Commissioners were in attendance, 2 spoke. Attached is the press release.

I personally spoke with everyone on the City Council after the meeting. No one wants it in Sedro Woolley. The Council feels like the state will try to push it through regardless. The community of Skagit County is planning on fighting it.

Below are links with further information on the topic. News Coverage. The link to the video Council meeting (you could listen to the companies presentation). Articles on Lithium Battery fires. Information/overview of the goldeneye project. CDC information on health if exposed.

Skagit Valley Herald's Coverage on the City Council Meeting:

https://www.goskagit.com/news/business/city-council-joins-in-opposing-battery-storage-facility/article_8bff2e88-6b93-11ef-a907-8fe27aa1603e.html

Replay of the SW City Council meeting on 9/4/24 where there was a presentation as well as public comment:

<https://sedrowoolleywa.portal.civicclerk.com/event/184/media>

Here is information on the project:

<https://www.efsec.wa.gov/energy-facilities/goldeneye-bess>

<https://www.efsec.wa.gov/energy-facilities/goldeneye-bess/goldeneye-bess-application>

The overview advertising website for the project:

<https://goldeneyeenergystorage.com/>

The facebook group Stewards of Skagit County #STOPBESS with 2000 Skagit County members:

<https://www.facebook.com/groups/1054570489577476>

News - Battery Storage Fire (BESS) Fire Coverage:

<https://www.youtube.com/watch?v=iTeDqvK8iX4>

https://www.theepochtimes.com/us/renewable-energy-battery-facility-catches-fire-in-san-diego-county-5719497?c=share_pos3&pid=iOS_app_share

<https://www.nbcsandiego.com/news/local/lithium-ion-battery-fire-in-escondido-prompts-large-response/3615328/>

<https://www.sandiegouniontribune.com/2024/06/20/fire-in-otay-mesa-puts-battery-storage-projects-under-scrutiny/>

News - Article talks about BESS in WA/Oregon - specifically Sedro:

<https://washingtonstatestandard.com/2024/09/05/battery-farms-the-energy-industrys-new-darling-line-up-to-enter-pacific-nw/>

News - Here is King 5 News coverage:

<https://www.king5.com/video/news/local/opposition-mounts-against-proposed-lithium-ion-energy-storage-facility-in-skagit-county/281-35b667cb-aa4d-4fee-889e-29093501e323>

News - Fox 13 Seattle News Coverage

<https://www.fox13seattle.com/news/sedro-woolley-lithium-battery-facility>

CDC information on the effects on people from lithium battery fires:

<https://emergency.cdc.gov/agent/hydrofluoricacid/basics/facts.asp>

Attached, the Commissioners press release, a letter from three state representatives, and a map of mile radius map from around the proposed facility.

Again, I strongly oppose BESS sites in Skagit County, and support a long term moritorium.

Thanks,
Zindra Nelson

August 28, 2024

Skagit County Commissioners Oppose Goldeneye BESS Project

The Board of Skagit County Commissioners has issued the following statement regarding the Goldeneye battery energy storage system project (BESS) east of Sedro-Woolley.

“After careful consideration of the application materials provided by Goldfinch Energy Storage and comments from the community, we must oppose the Goldeneye BESS project, proposed at a location in unincorporated Skagit County just east of Sedro-Woolley. The energy storage system threatens decades of collaborative local-tribal work and many millions of public dollars spent to restore Hansen Creek, home to four species of Pacific salmon, steelhead trout, and other wildlife. The Goldeneye BESS proposal would also convert Skagit farmland for industrial development, undermining our community’s long-term protection of Skagit Valley’s farmland and farming economy. Goldfinch Energy Storage has failed to adequately explore alternative sites for this project, instead proposing a location in a sensitive natural resource area for both agriculture and salmon, including Endangered Species Act-listed chinook. We strongly encourage the Washington State Energy Facility Site Evaluation Council to reject this proposal. It is contrary to Skagit County’s Comprehensive Plan, adopted County code, and our community’s intergenerational commitment to protect the Skagit’s floodplain for farming and fisheries.”

The Board of Skagit County Commissioners will continue to advocate on our community’s behalf as the Washington State Energy Facility Site Evaluation Council (EFSEC) and the Governor consider the Goldeneye BESS project.

In addition, the Board of County Commissioners will be evaluating whether major utility developments should be sited on Skagit farmland in general. Currently, [Skagit County Code](#) requires major utility developments on farmland (properties zoned Ag-NRL) obtain a Hearing Examiner Special Use Permit, which involves an open record hearing after significant public notice. The Hearing Examiner Special Use Permit also requires the applicant conduct a vigorous alternative site analysis to ensure no project site other than Skagit farmland would be suitable.

Background on the Goldfinch Energy Storage Proposal

Goldfinch Energy Storage has [applied](#) to the Washington State Energy Facility Site Evaluation Council (EFSEC) to develop a battery energy storage system (BESS) project in unincorporated Skagit County just east of Sedro-Woolley on Minkler Road. The project involves land on both sides of Hansen Creek, as well as a plan to tunnel under the creek.

The Goldeneye BESS project would consist of energy storage buildings containing racks of lithium-ion batteries and other electrical and communication equipment. The project site parcels are zoned Agriculture-Natural Resource Lands (Ag-NRL) and Rural Reserve (RRv).

The [EFSEC process](#) supersedes Skagit County’s authority to evaluate projects based on the County’s land use, environmental, and development regulations. EFSEC will make a

recommendation to the Governor. The Governor makes the final decision.

In early 2023, Goldfinch Energy Storage requested Skagit County Planning & Development Services issue an administrative official interpretation (AOI), determining whether the proposed Goldeneye BESS project would be defined as a “major utility development” or “major regional utility development.” [AOI 2023-01](#) was issued on February 1, 2023, and declared the proposed project to be a “major utility development” because it was determined the project lacked regionality as the energy stored would ostensibly only be used to supplement power grid needs within Skagit County, the project is of relatively small scale, and the project would not have large impacts compared to other major regional utility developments. Since then, Goldfinch Energy Storage has used AOI 2023-01 to argue the proposed Goldeneye project is allegedly consistent with Skagit County land use regulation.

In considering the AOI, Skagit County Planning & Development Services staff did not evaluate whether the proposed project was consistent with Skagit County land use regulation. The Board of County Commissioners does not believe the proposed Goldeneye project is consistent with Skagit County’s land use code, plans and regulations and AOI 2023-01 does not constitute Skagit County’s consent or approval of the Goldeneye project.

To find more information on the application by Goldfinch Energy Storage to EFSEC, or to sign up for project updates, please visit the [EFSEC website](#).



Washington State Legislature

August 23, 2024

Energy Facility Site Evaluation Council
621 Woodland Square Loop SE
Lacey, WA 98503

We are writing in opposition to the Goldeneye BESS proposal to be sited on agricultural land adjacent to Hansen Creek in Skagit County. As legislators representing the area we must thoughtfully weigh benefits versus risk and the will of our constituents living nearby.

Our first knowledge of the project came just prior to an Informational Meeting conducted in tandem with a Land Use Hearing held in Sedro-Woolley on August 13, 2024. Official notices of these meetings were provided to a very limited number of people so most people learned about it through social media. There is a sense in the community that this was done purposely to limit opposition.

Questions concerning the business model to recoup the \$250 M investment were vague at best; "it's complicated", "it depends" are not satisfying, confidence building answers and not what legislators expect from company representatives. Goldeneye creates no energy, it only consumes and stores energy, presumably for sales to the general market probably at premium prices due to its "renewable status." We are not opposed to profits but if we are to sacrifice our precious guarded agricultural lands it should be for new energy producing sources, not just a clever way to monetize existing power.

The proposed site is not only agricultural land it is directly adjacent to a salmon bearing stream, Hansen Creek, that has a history of flooding. The proposal actually requires tunneling under the creek to connect with PSE's transmission site. Hansen Creek also flows directly into the Skagit River, the importance of which cannot be overstated. It is hard to imagine a less appropriate location given the nature of lithium-ion batteries and their well-known issues with thermal runaway and combustion particularly when water is introduced to the chemical reaction. A cocktail of toxic gasses (hydrogen fluoride among them) is emitted during combustion which could endanger both local residents and any firefighters attempting to extinguish such a conflagration.

This technology does have potential; we are not opposed to its use but, siting criteria should include avoiding populated areas, fish producing bodies of water, vulnerable drinking water sources (to include groundwater), critical wildlife habitat, and agricultural

Legislative Building • Olympia, WA 98504-0482

areas. While this will preclude many financially tempting locations, we believe the public's safety should take priority. We ask that the Goldeneye BESS facility be sited in a safer, more appropriate location.

Kind regards,

Keith Wagoner
Senator

Carolyn Eslick
Representative

Sam Low
Representative

Cc: EFSEC Council Members
Governor Jay Inslee
Skagit County Commissioners



Northern State
Recreation Area

Washington Gutter

Cokedale

Minkler

Lyman

30.00 mi

Cedar Springs Lodge

Day Creek

Hart Island

Clear Lake

Clear Lake Beach

Baker Heights

Janick Dressage



Respondent No: 1

Login: Anonymous

Email: n/a

Responded At: Dec 11, 2024 21:41:24 pm

Last Seen: Dec 11, 2024 21:41:24 pm

IP Address: n/a

| | |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | George Mumford |
| Q2. Email address | mumfordgn@msn.com |
| Q3. Are you part of an Agency or Organization? | No |
| Q4. Share any comment | <p>Why would you permit a commercial battery storage facility on rural farmland right next to a reclaimed salmon stream? These facilities should be confined to industrial zones. I'm unaware of any support for this project in Skagit County.</p> |
| Q5. Upload your document or picture (optional) | not answered |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Respondent No: 2

Login: Anonymous

Email: n/a

Responded At: Dec 13, 2024 16:59:48 pm

Last Seen: Dec 13, 2024 16:59:48 pm

IP Address: n/a

| | |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | Lora Claus |
| Q2. Email address | lorac@skagitonians.org |
| Q3. Are you part of an Agency or Organization? | Yes (please specify) Skagitonians to Preserve Farmland |
| Q4. Share any comment | Please see attached document. Thank you. |
| Q5. Upload your document or picture (optional) | https://s3-us-west-1.amazonaws.com/ehq-production-us-california/0caa80fe69b67af68e9d764e04cc2534e8040203/original/1734137984/192b6ba5eb12729e9a7a130bfb8375c3_2024_1213_SPF_Comment_Goldeneye_BESS.pdf?1734137984 |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



December 13, 2024

Energy Facility Site Evaluation Council ("EFSEC")
621 Woodland Square Loop SE
Lacey WA 98503-3172
comments@EFSEC.wa.gov
(360) 664-1345

RE: Comment Regarding Draft Land Use Consistency Order, Goldeneye Energy Storage LLC

Skagitonians to Preserve Farmland **disputes** that the proposed site of the Goldeneye project is consistent and compliant with local provisions, contrary to the draft order. All proposed project parcels of the Goldeneye BESS are zoned as Agricultural - Natural Resource Lands.

Current Skagit County code excludes a special use pathway for major utility developments for energy storage on Agricultural - Natural Resource Lands.

On November 4, 2024, SCC 14.16.400(4)(h) was amended by the Board of Skagit County Commissioners to exclude major utility developments involving the generation and/or storage of electricity from special use permits on Agricultural - Natural Resource Lands. SCC 14.16.400(4)(h) is referenced repeatedly in the draft order (page 7 items 30 & 31, page 9 item 7). These are references to outdated code.

On page 4, item 17 of EFSEC's draft order, it is stated "EFSEC considers whether the pertinent local land use provisions "prohibit" the site "expressly or by operation clearly, convincingly and unequivocally." The amended code SCC 14.16.400(4)(h) clearly, convincingly, and unequivocally excludes major utility developments involving the generation and/or storage of electricity from the special use permit pathway on Agricultural - Natural Resource Lands.

Proponents of the Goldeneye project have erroneously cited the Administrative Official Interpretation (AOI) 2023-01 as confirmation of land-use consistency and compliance with county code.

In the press release "Skagit County Commissioners Oppose Goldeneye BESS Project" released on August 28, 2024, they state:



In early 2023, Goldfinch Energy Storage requested Skagit County Planning & Development Services issue an administrative official interpretation (AOI), determining whether the proposed Goldeneye BESS project would be defined as a "major utility development" or "major regional utility development." AOI 2023-01 was issued on February 1, 2023, and declared the proposed project to be a "major utility development" because it was determined the project lacked regionality as the energy stored would ostensibly only be used to supplement power grid needs within Skagit County, the project is of relatively small scale, and the project would not have large impacts compared to other major regional utility developments. Since then, Goldfinch Energy Storage has used AOI 2023-01 to argue the proposed Goldeneye project is allegedly consistent with Skagit County land use regulation.

In considering the AOI, Skagit County Planning & Development Services staff did not evaluate whether the proposed project was consistent with land use regulation. The Board of County Commissioners does not believe the proposed Goldeneye project is consistent with Skagit County's land use code, plans and regulations and AOI 2023-01 does not constitute Skagit County's consent or approval of the Goldeneye project.

The Goldeneye project does not meet the general criteria for a special use permit.

Furthermore, the draft order on page 7 continuing on page 8, item 31, notes the applicant bears the burden of proof to show the major utility development meets the general criteria for approval of a special use permit, provided under SCC 14.16.900(1)(b)(v). The major utility development does not meet either A or B as shown below.

(A) The proposed use will be compatible with existing and planned land use. | **The Goldeneye project is not compatible with existing and planned use of Agricultural-Natural Resource Lands.**

(B) The proposed use complies with the Skagit County Code | **Due to amendment of SCC 14.16.400(4)(h) the Goldeneye project does not comply with Skagit County Code.**

Protection of Skagit County farmland from competing uses is required by state law.

The Washington Supreme Court, in *King County v. Friends of Sammamish Valley*, stated:



Agricultural land that is specifically designated must be maintained and enhanced for potential future use under the GMA, even if the land is not being used for agricultural production currently. The GMA requirement ensures the land is preserved for future agricultural uses.

Eight acres of lithium-ion batteries do not belong on Agricultural - Natural Resource Land.

Superseding the values, land ordinances, and local government in the name of green energy projects gives green energy an unnecessarily negative reputation in Skagit County. There are more appropriate sites for these facilities than Agricultural - Natural Resource Land.

Special use permit application from NextEra Energy to develop a BESS near the Port of Skagit (Skagit County public hearing scheduled Dec 20, 2024) is proposed on property zoned as Bayview Ridge Heavy Industrial in the Bayview Ridge Urban Growth Area.

Siting proposed projects on land with the appropriate zoning allows Skagit County to consider modernizing energy infrastructure without permanently degrading valued agricultural land.

Through its land use code and comprehensive planning process, and with the hard-earned dollars of its residents, Skagit County has worked for decades to prevent development on farmland. Fast-tracking a siting decision that conflicts with county code and the unanimous objection of local government is unnecessary.

The proposed site of the Goldeneye BESS Project, on Agricultural - Natural Resource Land, is not consistent with land use ordinances under Skagit County Code, and we respectfully request that EFSEC find the same.

Sincerely,

SKAGITONIANS TO PRESERVE FARMLAND

A handwritten signature in blue ink that reads "Kim Good Rubenstein".

Kim Good Rubenstein
Chair

A handwritten signature in blue ink that reads "Lora Claus".

Lora Claus
Executive Director



Respondent No: 3

Login: Anonymous

Email: n/a

Responded At: Dec 14, 2024 15:19:22 pm

Last Seen: Dec 14, 2024 15:19:22 pm

IP Address: n/a

| | |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | JudiHaugness |
| Q2. Email address | thedevinhouse@gmail.com |
| Q3. Are you part of an Agency or Organization? | Yes (please specify) Stewards. Of Skagit |
| Q4. Share any comment | <p>I. am opposed to the Goldeneye project in Sedro Woolley WA. It is being. Proposed on AG Farmland. Too c lose to Hansen Creek. 400 '- Spawning creek to 5 types of fish. Our City council,, Our County Commissioners and the Upper Skagit Tribe. This should have had an approved land use permit from our county permitting and NEVER fast. Tracked thru EFSEC DENY IT!</p> |
| Q5. Upload your document or picture (optional) | not answered |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Respondent No: 4
Login: Cckrier
Email: cckrier@gmail.com

Responded At: Dec 14, 2024 16:40:33 pm
Last Seen: Dec 15, 2024 00:26:19 am
IP Address: 98.97.44.216

Q1. **First & Last Name** Connie Krier

Q2. **Email address** cckrier@gmail.com

Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Stewards of Skagit

Q4. **Share any comment**

I have been signed up for updates for this page since August and did not receive notification that comment period was re-opened, I only found out through a newspaper article. The main EFSEC website does not indicate comment period is open or has been re-opened. Additionally the posting is dated December 11, 2024 and states the comment period will end August 13th 5pm- 11:59 pm. When EFSEC only allowed a 6 hour window, when WA state law requires a "reasonable amount of time" be allowed for commenting. Now the postings are incorrect and notification not given to the public the comment period has been re-opened. This is a violation of the public's rights to proper notification of public comment period. All of those leans heavily in favor of the applicant and should be investigated by the AG of WA for illegal activities and monetary fines for the entire EFSEC board as allowed by law. This entire process of notifying, allowing comment and keeping the public informed has been flawed for this project and multiple public disclosure requests along with screen shots of EFSEC primary website proves inconsistencies in public notifications, document upload dates and now the discovery of coaching by the EFSEC staff to the applicant on how to work the process to have their project expedited. There should be no vote taken on the December 18th meeting and proper notification and public comment rules followed by EFSEC staff.

Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/326a12ddc32ab79dec8a1d3290ef947179fa7eba/original/1734223103/db7ec681aae4560ea7d11a76d1aba33a_inbound3857296411206283800.jpg?1734223103

Q6. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/b3f6e626028cfea27548015eca807d924bc09087/original/1734223111/2ab507ece4bcd06e5282e4dfb508fc75_inbound2342191164482680027.jpg?1734223111

Q7. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/adaf855afb3b0486c5f60634a8e3ab8bc017c1a0/original/1734223121/aea266c26019fa01cd342413536afee0_inbound3630490451111478338.jpg?1734223121

Q8. **Upload your document or picture (optional)** not answered



Upcoming Action Item: Goldeneye BESS Land Use Consistency Draft Order

The public comment period will be open Tuesday August 13th from 5pm until 11:59pm.

Please share your comments by typing in the box below. You may also upload a document or picture.

Thank you for your comments.

*Note: The image above is a stock photo, not an actual picture of the project

Important Note: Public comments submitted to the Council via the internet or in writing become public records under the Washington State Public Records Act (RCW 42.17). Information included in the comment such as the commenter's e-mail and mailing address becomes a public record once it is provided to EFSEC and may be subject to public inspection and copying if not protected by federal or state law. For additional information please see our [Privacy Notice](#).

Share your comment, upload a document or a...



Open Comment Campaigns

December 11, 2024

PUBLISHED

Upcoming Action Item: Goldeneye BESS Land Use Consistency Draft Order

The public comment period will be open Tuesday August 13th from 5pm until 11:59pm.

Pleas...

[View Campaign](#)

[Home](#) /

Upcoming Action Item: Goldeneye BESS Land Use
Consistency Draft Order

Upcoming Action Item: Goldeneye BESS Land Use Consistency Draft Order

The public comment period will be open Tuesday August 13th from 5pm until 11:59pm.

Please share your comments by typing in the box below. You may also upload a document or picture.

Thank you for your comments.

*Note: The image above is a stock photo, not an actual picture of the project

Important Note: Public comments submitted to the Council via the internet or in writing become public records under the Washington State Public Records Act (RCW 42.17). Information included in the comment such as the commenter's e-mail and mailing address becomes a public record once it is provided to EFSEC and may be subject to public inspection and copying if not protected by federal or state law. For additional information please see our [Privacy Notice](#).

Share your comment, upload a document or a p...



Respondent No: 5
Login: Cckrier
Email: cckrier@gmail.com

Responded At: Dec 14, 2024 16:50:21 pm
Last Seen: Dec 15, 2024 00:26:19 am
IP Address: 98.97.44.216

- Q1. **First & Last Name** Connie Krier
-
- Q2. **Email address** connie.krier@grainger.com
-
- Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Stewards Of Skagit
-
- Q4. **Share any comment**
- The land use is inconsistent with Skagit county code, as there is a moritorium in place to prevent energy projects on agriculture/farmland in place at this time. The applicant has not notified the proper entities for the Magnosen stevens act or NOAA due to thos area being designated an and essential fish habitat per FEDERAL agencies. The local Trobal entity has denounced the use of this land for this project. I do not have time to provide my full comments with references and details as the re-opening of comments was not sent as a notification from EFSEC to the public that is signed up for notifications, and the posting states incorrect dates. However the newspaper was given correct information, how is that proper information was given to a newspaper but not posted appropriately for the public to view. I check EFSEC main website daily and no where on their website does it indate public comment was re-opened a d there is not link to the comment portal from the EFSEC main page. This is a violation of mine and others rights as a member of the public with vested interest in this project.
-
- Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/2e791bfbb17b98a43688b1e0e3a7fb3388a0d089/original/1734223685/d2e5adba4c4f3838003b2527d82f4a1c_inbound243431736043341641.jpg?1734223685
-
- Q6. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/b3508b3f508819d2a101099ca1e6b9cf2d4035aa/original/1734223695/a2a96716733039a40e22f945a6d17e0c_inbound1959244965674161119.jpg?1734223695
-
- Q7. **Upload your document or picture (optional)** not answered
-
- Q8. **Upload your document or picture (optional)** not answered
-



through comments.efsec.wa.gov/.

This will not be the last opportunity for the public to comment on Goldeneye — if EFSEC does determine the project is in compliance with Skagit's land use code, the process then moves on to State Environmental Policy Act (SEPA) review, which also requires public and stakeholder input.

Meanwhile, NextEra Energy Resources has applied to build a **200-megawatt system** west of Mount Vernon near the Port of Skagit on land zoned for heavy industrial uses. That project, located on 22.5 acres in the Bayview Ridge Urban Growth Area, is proceeding through the local permitting process rather than the EFSEC process. The Skagit County planning department completed a SEPA review of the project in June 2024 and issued a **Mitigated Determination of Nonsignificance**.

Open Comment Campaigns

December 11, 2024

PUBLISHED

Upcoming Action Item: Goldeneye BESS Land Use Consistency Draft Order

The public comment period will be open Tuesday August 13th from 5pm until 11:59pm.

Pleas...

[View Campaign](#)



Respondent No: 6

Login: Anonymous

Email: n/a

Responded At: Dec 14, 2024 17:06:30 pm

Last Seen: Dec 14, 2024 17:06:30 pm

IP Address: n/a

Q1. **First & Last Name** Judi Haugness

Q2. **Email address** thedevinhouse@gmail.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

You are not notifying people properly to allow them to comment- I was just notified through word of mouth and NOT through notice by EFSEC, that public comment period was re-opened without proper notification. The dates on your posting are incorrect and are a violation of my rights to have reasonable time to write an appropriate response. The land use request for this project is inconsistent with skagit county code and the moratorium currently in place. I reserve my rights on this subject due to improper notification regarding public comment.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 7
Login: Keith Tyminski
Email: tyminskeith@gmail.com

Responded At: Dec 14, 2024 18:33:41 pm
Last Seen: Dec 15, 2024 02:24:23 am
IP Address: 174.204.72.103

| | |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | Keith Tyminski |
| Q2. Email address | tyminskeith@gmail.com |
| Q3. Are you part of an Agency or Organization? | Yes (please specify) STOP BESS Sedro-Woolley |
| Q4. Share any comment | <p>I was just notified through word of mouth and NOT through notice by EFSEC that the public comment period was re-opened without proper notification. The dates on the posting are incorrect and are a violation of my rights to have reasonable time to write an appropriate response. The land use request for this project is inconsistent with Skagit County code and the moratorium currently in place. I reserve my rights on this subject due to improper notification.</p> |
| Q5. Upload your document or picture (optional) | not answered |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Respondent No: 8
Login: BCY
Email: brandi_cvvc@yahoo.com

Responded At: Dec 14, 2024 22:30:48 pm
Last Seen: Dec 15, 2024 06:28:47 am
IP Address: 98.97.44.211

Q1. **First & Last Name** not answered

Q2. **Email address** not answered

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

I was just notified through word of mouth and NOT through notice by EFSEC, that public comment period was re-opened without proper notification. The dates on your posting are incorrect and are a violation of my rights to have reasonable time to write an appropriate response. The land use request for this project is inconsistent with Skagit count code and the moratorium currently in place. I reserve my rights on this subject due to improper notification.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 9
Login: No lithium batteries
Email: devriesrp@icloud.com

Responded At: Dec 15, 2024 07:31:22 am
Last Seen: Dec 15, 2024 15:28:28 pm
IP Address: 66.235.36.142

Q1. **First & Last Name** Randie Devries

Q2. **Email address** devriesrp@icloud.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

I was just notified through word of mouth and NOT through notice by EFSEC, that public comment period was re-opened without proper notification. The dates on your posting are incorrect and are a violation of my rights to have reasonable time to write an appropriate response. The land use request for this project is inconsistent with skagit county code and the moratorium currently in place. I reserve my rights on this subject due to improper notification.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 10

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 12:21:51 pm

Last Seen: Dec 15, 2024 12:21:51 pm

IP Address: n/a

| | |
|-------------------------------------------------------|----------------------------------------------------------------------------------------|
| Q1. First & Last Name | Rene |
| Q2. Email address | rene19572003@yahoo.com |
| Q3. Are you part of an Agency or Organization? | No |
| Q4. Share any comment | Poisoning the land for profit. This is not acceptable no matter what our governor says |
| Q5. Upload your document or picture (optional) | not answered |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Respondent No: 11

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 12:46:45 pm

Last Seen: Dec 15, 2024 12:46:45 pm

IP Address: n/a

Q1. **First & Last Name** Gene Fleury

Q2. **Email address** genefleuryjr@gmail.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

The possibility of a fire that our local fire department can't put out. We have mostly volunteer firemen. Also the skagit river could get polluted. This area is also close to a fault line witch is why a nuclear power plant was not allowed in this area.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 12

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 15:33:38 pm

Last Seen: Dec 15, 2024 15:33:38 pm

IP Address: n/a

| | |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | Bonnie Helms |
| Q2. Email address | invitationtoabandon@gmail.com |
| Q3. Are you part of an Agency or Organization? | No |
| Q4. Share any comment | <p>This is not a permitted utility in county code. https://www.codepublishing.com/WA/SkagitCounty/html/SkagitCounty14/SkagitCounty1416.html#14.16.190 Number 5, subsection C. Utility development: includes, but is not limited to, facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products. A utility development is one of the following types: (1) Minor utility development: an unmanned utility development designed to serve a small local community that would be considered a normal utility service for the area. (2) Major utility development: a utility development that is not a minor utility development or a major regional utility development. (3) Major regional utility development: a utility development that is designed to serve a region. There is a moratorium on BESS in Skagit County: https://www.skagitcounty.net/Departments/Home/press/092324b.htm NFPA reports they may need to update their guidelines for lithium BESS (this is oft quoted by politicians who promote this product's safety): https://www.nxtbook.com/nxtbooks/nfpa/journal_2024winter/index.php#/p/8 Writing these rules has led to lots of recent litigation. See I-2066 initiative suit over gas ban that is causing a headache for regulatory writing, as well as pending suits from Yakima Nation, TRI-City CARES and Benton Co against Inslee over EFSEC powers. Tell us how this benefits the location specifically that justifies forfeiting farmland? How do we ensure this is not just storage for AI and data centers as Inslee has stated? https://washingtonstatestandard.com/2024/09/24/inslee-says-opposition-to-wind-and-solar-projects-could-slow-use-of-ai/ Is the energy to be sold at premium out of state? EFSEC is a state agency, not a federal, and crossing state lines is also over your head. I dissent to this project in its entirety. Halt the process and give people adequate notice and time to evaluate their response. It is your duty to deny this permit and stop this process.</p> |
| Q5. Upload your document or picture (optional) | not answered |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Respondent No: 13

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 15:58:46 pm

Last Seen: Dec 15, 2024 15:58:46 pm

IP Address: n/a

Q1. **First & Last Name**

Connie Krier

Q2. **Email address**

cckrier@gmail.com

Q3. **Are you part of an Agency or Organization?**

Yes (please specify)

Stewards of Skagit

Q4. Share any comment

The dates posted on the website are incorrect and there a violation of WAC 42.30.250. Therefore if action is taken on this project at the meeting on Dec 18th the entire board will be in violation of RCW 42.30.120 and subject to the penalties addressed The Land use is inconsistent with Skagit County Code due to the current moratorium in place, and the necessary special use permits required by the county that are NOT address by EFSEC as they are County specific not state controlled. The following federal laws cannot be superseded by the state. Magnuson Stevens act - Corp of engineers draining of critical waterways for essential fish habitat with NOAA (not part of JARPA), The northwest Indians fisheries commission as part of the federal treaty of 1970 has not been addressed or included as a stakeholder in the application process, the 1996 fisheries act, the NW power act. Additionally The state protection of Agricultural land, the protection of this land listed as agriculture by Skagit county. The purpose of EFSEC per RCW 80.50 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. The land in questions is protected farmland on multiple environmental levels, farmable soil is not determined by if farming is currently occurring as the applicant believes. The is the most desirable because it is the most profitable place, the cost of the land is low per acre because of its agriculture classification and proximity to the substation this is not the only feasible location and is not environmentally responsible to allow profits to outweigh the environment. This will not produce a beneficial change to the environment our community with be considered overburden, this area is considers a Highly impacted area with a highly vulnerable community per the PSE named communities map. none of this is address in the applicants information. The council is to 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. Not all Battery storage or alternative energy projects are tracked through EFSEC and therefor duplications are taking place, the currently PSE interconnection CUE has multiple projects to take place in Skagit county not all will be tracked through EFSEC. There is currently another BESS being permitted in Skagit county, neither project acknowledges the overburden to the local resources 2 of these facilities will create. Both claim to be helping the citizens of Skagit county, claiming without "their" project we will have power shortages. Yet Skagit county is not the largest consumer of power in the and per PSE Que we could have up to 8 projects in our county that uses less power than most counties who have NO BESS facilities planned. It is supposed to be EFSECs JOB to protect the vulnerable population, the environment and ensure resource burden is shared throughout the state to areas that are using those resource. It appears as though Skagit is intended to shoulder the burden of most of the "alternative energy" and BESS facilities for western WA, due to our inexpensive farmlands and having a population that is easily taken advantage of Additionally the public has not had an opportunity for meaningful public comment in that the first opportunity to comment on the land use was only allowed for 5 hours most of which was during overnight hours 5PM-11:59PM on August 13, 2024. The hearing was the public meeting started at 5pm and the hearing was over by 8pm, therefore the public comments were still open even after the hearing decision was finalized. Meaning public comments could not have been taken into consideration for the hearing. This now being the second opportunity for comment and is flawed by the incorrect dates being posted for comment and stating comments had to be received 3 business days prior to the meeting date. No information on the project page was given about public comment being re-opened and you must sign up on an independent second EFSEC website outside the project page or main EFSEC page to receive notifications about the comments being reopened. The notice sent from the comment page was dated Dec 11 Tuesday AFTER 5PM, the hearing Dec 18th Wednesday at 1:30pm. This means 3 business days prior would be Thursday by close of business. This allowed exactly 24 hours for comment to be given, so while the applicant and EFSEC have weeks and months to prepare, the public had no idea EFSEC was doing a review of the land use hearing decision from the August 13th meeting. The public was lead to believe the August 13th meeting was final. EFSEC has already posted their decision to approve the land use, per the draft posted for the meeting on the 18th. This was posted PRIOR to opening public comments, and has a vote scheduled for the draft that was already written. This clearly indicates EFSEC board has no intention of taking the publics comments into consideration as the draft has already been written and published as part of the meeting for Dec 18th. Public comment is NOT allowed at ANY EFSEC meeting that is held in person even if vote is being taken. To be MEANINGFUL the comments must actually be reviewed and taken into consideration, not just dropping into a project file as a checked off item. If comments are not even available prior to a decision how are they being distributed to the governing body.

Q5. Upload your document or picture (optional)

https://s3-us-west-1.amazonaws.com/ehq-production-us-california/6b6a3c3fc44fa9884d67482a1ffaa3e70338cab2/original/1734307046/ddcb571d206c0b699c0864b87721ecdd_Public_Comm ent_timeline_WAC_.png?1734307046

Q6. Upload your document or picture (optional)

https://s3-us-west-1.amazonaws.com/ehq-production-us-california/b4b28f8e06e34c7ebdfe3314986b5c3c0596fe80/original/1734307061/10a2eb83aeb2632bae9e27ee60c559fa_violation_penalty_WAC_.png?1734307061

Q7. Upload your document or picture (optional)

https://s3-us-west-1.amazonaws.com/ehq-production-us-california/51a9ede495aadb60497c3621b282d8e70e7d9187/original/1734307075/2a9a5596fb407e90f6ffae9281f6ae19_PSE_Named_area_map.png?1734307075

Q8. Upload your document or picture (optional)

https://s3-us-west-1.amazonaws.com/ehq-production-us-california/6e86866f0cd1f1942a31b8b8927cf7a8b0bbbb25/original/1734307089/00dff99985c4a8568a46fa1051a0b3c5_Letter_Stewards_of_Skagit_to_EFSEC.pdf?1734307089

Notices soliciting public comment—Time period.

(1) A public agency that is required by state law to solicit public comment for a statutorily specified period of time, and is required by state law to provide notice that it is soliciting public comment, must specify the first and last date and time by which written public comment may be submitted.

(2) An agency that provides a notice that violates this section is subject to the same fines under the same procedures as other violations of this chapter are subject to under RCW 42.30.120.

Violations—Personal liability—Civil penalty—Attorneys' fees and costs.

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of five hundred dollars for the first violation.

(2) Each member of the governing body who attends a meeting of a governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, and who was previously assessed a penalty under subsection (1) of this section in a final court judgment, shall be subject to personal liability in the form of a civil penalty in the amount of one thousand dollars for any subsequent violation.

(3) The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(4) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action. Pursuant to RCW 4.84.185, any public agency which prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

Legend



Counties




PSE Named Communities

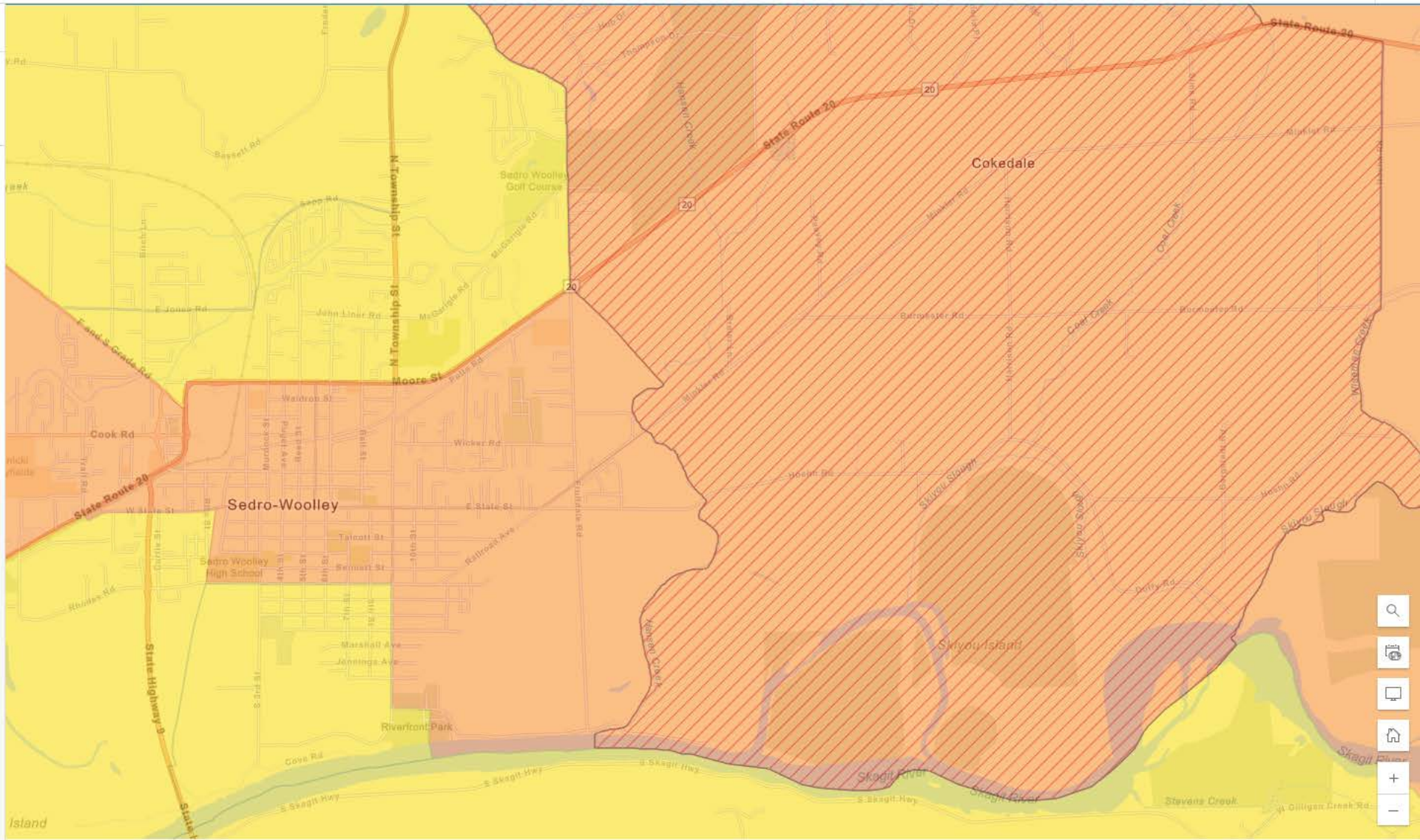
Highly Impacted Community (HIC)



Vulnerable Populations (VP)

vulnerability_label

-  high
-  medium
-  low



Map navigation controls including:

- Search icon
- Home icon
- Full screen icon
- Print icon
- Zoom in (+) and zoom out (-) icons



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.

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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 4th 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.



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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;”

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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 in NOT the proper location for this kind of facility and the potential environmental and long-term impacts are far to great to risk. The contract state 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

Low Sensitivity



Respondent No: 14

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 16:01:02 pm

Last Seen: Dec 15, 2024 16:01:02 pm

IP Address: n/a

| | |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | Kathryn Nims |
| Q2. Email address | thebirdmam@gmail.com |
| Q3. Are you part of an Agency or Organization? | No |
| Q4. Share any comment | Let us be clear. We do NOT want BESS in our valley. It is environmentally a disaster for the land, wildlife, fish and most importantly humans. It is NOT green. |
| Q5. Upload your document or picture (optional) | not answered |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Respondent No: 15

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 16:53:52 pm

Last Seen: Dec 15, 2024 16:53:52 pm

IP Address: n/a

Q1. **First & Last Name** Robert Warner

Q2. **Email address** bobwarner1955@gmail.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

The Sedro-Woolley location is too close to Hansen Creek, too close to town and schools. This site is also on protected farmland. Please use common sense and reject this location.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 16

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 17:34:22 pm

Last Seen: Dec 15, 2024 17:34:22 pm

IP Address: n/a

Q1. **First & Last Name** Scott Patterson

Q2. **Email address** houseofdigital@gmail.com

Q3. **Are you part of an Agency or Organization?** **Yes (please specify)**
Stewards of Skagit

Q4. **Share any comment**

This project has the potential to seriously damage a fragile ecosystem. There have been far too many discrepancies in this process, which seems to be rushed in under false pretenses. I was just notified through word of mouth and NOT through notice by EFSEC, that public comment period was re-opened without proper notification. The dates on your posting are incorrect and are a violation of my rights to have reasonable time to write an appropriate response. The land use request for this project is inconsistent with skagit county code and the moratorium currently in place. I reserve my rights on this subject due to improper notification.

Q5. **Upload your document or picture (optional)** https://s3-us-west-1.amazonaws.com/ehq-production-us-california/713fc975b6d1d848071b1ec1a387856bf3b105f9/original/1734312851/c94df07612abd27937cbaae1ea46bc8d_IMG_0226.png?1734312851

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered

Upcoming Action Item: Goldeneye BESS Land Use Consistency Draft Order

The public comment period will be open Tuesday August 13th from 5pm until 11:59pm.

Please share your comments by typing in the box below. You may also upload a document or picture.

Thank you for your comments.

*Note: The image above is a stock photo, not an actual picture of the project

Important Note: Public comments submitted to the Council via the internet or in writing become public records under the Washington State Public Records Act (RCW 42.17). Information included in the comment such as the commenter's e-mail and mailing address becomes a public record once it is provided to EFSEC and may be subject to public inspection and copying if not protected by federal or state law. For additional information please see our [Privacy Notice](#).

Share your comment, upload a document or a p...



Respondent No: 17

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 17:37:05 pm

Last Seen: Dec 15, 2024 17:37:05 pm

IP Address: n/a

Q1. **First & Last Name** Deborah Lubbe

Q2. **Email address** mountainchipmonk@gmail.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

Building a BESS near any of our farming communities or towns is SELFISH ! It is for financial gain of a few incredibly careless individuals who see the opportunity for self gain and promotion by acquiring tax money in the form of grants and defaulting Washington State citizens of millions as well as polluting and destroying our foothills, wildlife and our way of life forever.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 18

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 17:38:36 pm

Last Seen: Dec 15, 2024 17:38:36 pm

IP Address: n/a

Q1. **First & Last Name** Darla Jensen

Q2. **Email address** Dcmarsh5@yahoo.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

Skagit County is a agricultural location that has no place for battery storage systems. I was just notified through word of mouth and NOT through notice by EFSEC, that public comment period was re-opened without proper notification. The dates on your posting are incorrect and are a violation of my rights to have reasonable time to write an appropriate response. The land use request for this project is inconsistent with skagit county code and the morototium currently in place. I reserve my rights on this subject due to improper notification.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 19

Login: Anonymous

Email: n/a

Responded At: Dec 15, 2024 17:50:07 pm

Last Seen: Dec 15, 2024 17:50:07 pm

IP Address: n/a

Q1. **First & Last Name** Kayla Patterson

Q2. **Email address** k.rose.patterson@gmail.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

I live within 1/2 a mile of this proposed BESS site and I am disgusted in my local legislature as well as the EFSEC trying to pull the wool over my communities eyes and slip this project in without anyone noticing or having time to object. This land is sacred to our local wildlife and waterways. This facility going in right next to my home will significantly affect the value of my home, which is already suffering in this economy. But most importantly, if and WHEN anything were to go wrong at this site (which has HAPPENED many, many times) my family would have absolutely no way to evacuate the area in time to avoid the health consequences of inhaling these fumes. I have a 9 month old baby and a 5 year old. It is just not feasible to properly prepare for a (very likely) disaster this close to home. I cannot believe nobody has spent a little bit more time and effort to find a better location for this project. A location that doesn't place HUNDREDS of families, businesses, and wildlife in danger. I was just notified through word of mouth and NOT through notice by EFSEC, that public comment period was re-opened without proper notification. The dates on your posting are incorrect and are a violation of my rights to have reasonable time to write an appropriate response. The land use request for this project is inconsistent with skagit county code and the moratorium currently in place. I reserve my rights on this subject due to improper notification.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



December 13, 2024

Energy Facility Site Evaluation Council ("EFSEC")
621 Woodland Square Loop SE
Lacey WA 98503-3172
comments@EFSEC.wa.gov
(360) 664-1345

RE: Comment Regarding Draft Land Use Consistency Order, Goldeneye Energy Storage LLC

Skagitonians to Preserve Farmland **disputes** that the proposed site of the Goldeneye project is consistent and compliant with local provisions, contrary to the draft order. All proposed project parcels of the Goldeneye BESS are zoned as Agricultural - Natural Resource Lands.

Current Skagit County code excludes a special use pathway for major utility developments for energy storage on Agricultural - Natural Resource Lands.

On November 4, 2024, SCC 14.16.400(4)(h) was amended by the Board of Skagit County Commissioners to exclude major utility developments involving the generation and/or storage of electricity from special use permits on Agricultural - Natural Resource Lands. SCC 14.16.400(4)(h) is referenced repeatedly in the draft order (page 7 items 30 & 31, page 9 item 7). These are references to outdated code.

On page 4, item 17 of EFSEC's draft order, it is stated "EFSEC considers whether the pertinent local land use provisions "prohibit" the site "expressly or by operation clearly, convincingly and unequivocally." The amended code SCC 14.16.400(4)(h) clearly, convincingly, and unequivocally excludes major utility developments involving the generation and/or storage of electricity from the special use permit pathway on Agricultural - Natural Resource Lands.

Proponents of the Goldeneye project have erroneously cited the Administrative Official Interpretation (AOI) 2023-01 as confirmation of land-use consistency and compliance with county code.

In the press release "Skagit County Commissioners Oppose Goldeneye BESS Project" released on August 28, 2024, they state:



In early 2023, Goldfinch Energy Storage requested Skagit County Planning & Development Services issue an administrative official interpretation (AOI), determining whether the proposed Goldeneye BESS project would be defined as a "major utility development" or "major regional utility development." AOI 2023-01 was issued on February 1, 2023, and declared the proposed project to be a "major utility development" because it was determined the project lacked regionality as the energy stored would ostensibly only be used to supplement power grid needs within Skagit County, the project is of relatively small scale, and the project would not have large impacts compared to other major regional utility developments. Since then, Goldfinch Energy Storage has used AOI 2023-01 to argue the proposed Goldeneye project is allegedly consistent with Skagit County land use regulation.

In considering the AOI, Skagit County Planning & Development Services staff did not evaluate whether the proposed project was consistent with land use regulation. The Board of County Commissioners does not believe the proposed Goldeneye project is consistent with Skagit County's land use code, plans and regulations and AOI 2023-01 does not constitute Skagit County's consent or approval of the Goldeneye project.

The Goldeneye project does not meet the general criteria for a special use permit.

Furthermore, the draft order on page 7 continuing on page 8, item 31, notes the applicant bears the burden of proof to show the major utility development meets the general criteria for approval of a special use permit, provided under SCC 14.16.900(1)(b)(v). The major utility development does not meet either A or B as shown below.

(A) The proposed use will be compatible with existing and planned land use. | **The Goldeneye project is not compatible with existing and planned use of Agricultural-Natural Resource Lands.**

(B) The proposed use complies with the Skagit County Code | **Due to amendment of SCC 14.16.400(4)(h) the Goldeneye project does not comply with Skagit County Code.**

Protection of Skagit County farmland from competing uses is required by state law.

The Washington Supreme Court, in *King County v. Friends of Sammamish Valley*, stated:



Agricultural land that is specifically designated must be maintained and enhanced for potential future use under the GMA, even if the land is not being used for agricultural production currently. The GMA requirement ensures the land is preserved for future agricultural uses.

Eight acres of lithium-ion batteries do not belong on Agricultural - Natural Resource Land.

Superseding the values, land ordinances, and local government in the name of green energy projects gives green energy an unnecessarily negative reputation in Skagit County. There are more appropriate sites for these facilities than Agricultural - Natural Resource Land.

Special use permit application from NextEra Energy to develop a BESS near the Port of Skagit (Skagit County public hearing scheduled Dec 20, 2024) is proposed on property zoned as Bayview Ridge Heavy Industrial in the Bayview Ridge Urban Growth Area.

Siting proposed projects on land with the appropriate zoning allows Skagit County to consider modernizing energy infrastructure without permanently degrading valued agricultural land.

Through its land use code and comprehensive planning process, and with the hard-earned dollars of its residents, Skagit County has worked for decades to prevent development on farmland. Fast-tracking a siting decision that conflicts with county code and the unanimous objection of local government is unnecessary.

The proposed site of the Goldeneye BESS Project, on Agricultural - Natural Resource Land, is not consistent with land use ordinances under Skagit County Code, and we respectfully request that EFSEC find the same.

Sincerely,

SKAGITONIANS TO PRESERVE FARMLAND

Kim Good Rubenstein
Chair

Lora Claus
Executive Director

**An Interim Ordinance Declaring An Emergency And Adopting A Moratorium On The
Acceptance Of Permit Applications For Major Utility Development Projects
Involving Electrical Energy Generation Or Storage
On Skagit County Agricultural (Ag-NRL) Lands**

WHEREAS pursuant to the Growth Management Act, Chapter 36.70A RCW (“GMA”), the Board of Skagit County Commissioners has adopted the Skagit County Comprehensive Plan and Title 14, the Unified Development Code, for all unincorporated areas of Skagit County; and

WHEREAS, RCW 36.70A.390 and RCW 36.70.795 authorize the Board to adopt moratoria, interim zoning ordinances, and interim official controls to preserve the *status quo* while new plans and regulations are being developed; and

WHEREAS, RCW 36.70A.390 and RCW 36.70.795 permit the County to adopt such measures without notice and public hearing when deemed appropriate to promote the public health, safety and welfare, provided that the County holds a public hearing within sixty (60) days after the adoption of the interim ordinance; and

WHEREAS, with its rich, subirrigable soil, temperate maritime climate and relatively abundant rainfall and water supply, Skagit Valley farmland is uniquely positioned to face climate-related disruption that is already rendering food production a tenuous proposition in other areas of the nation and world; and

WHEREAS, the protection of Skagit County’s agricultural land base has required generations of sacrifice by which Skagit landowners have intentionally forgone the business opportunity and wealth that intensive development has produced in other Puget Sound counties; and

WHEREAS, only some 89,000 acres of prime Skagit farmland remain, and continued conversion of prime Skagit farmland to other uses is likely to have far-reaching effects on the stability and viability of Skagit County’s agricultural economy; and

WHEREAS, uniquely suited for seed production due to its maritime proximity, the Skagit Valley produces a substantial portion of the world’s brassica, spinach and other crop seed; and

WHEREAS, Skagit County’s prime agricultural soil is a critical and irreplaceable natural resource that we are duty-bound to protect for future generations, and protecting the Skagit for commercially viable agriculture is squarely in the public interest; and

WHEREAS, Skagit Valley farmland is a regional treasure used and enjoyed by many tens of thousands of tourists and visitors each year as well as birds and other wildlife, providing high-quality, locally-available food, ecosystem services, habitat, and recreation; and

WHEREAS, Skagit County has declared that natural resource lands, including agricultural lands, are a cornerstone of our community’s economy, culture, and history, and as such, farmland protection and enhancement is of paramount importance to Skagit County and its citizens; and

WHEREAS, our protection of Skagit County farmland from competing uses is required by state law, *see* RCW 36.70A.020(8) *and* RCW 36.70A.177; and

WHEREAS, the Washington Supreme Court recently emphasized counties' obligation to protect and enhance agricultural land over the long term:

Agricultural land that is specifically designated must be maintained and enhanced for potential future use under the GMA, even if the land is not being used for agricultural production currently. The GMA requirement ensures the land is preserved for future agricultural uses.

King County v. Friends of Sammamish Valley et al, No. 102177-1 at 36 (September 19, 2024); and

WHEREAS, the Board of Skagit County Commissioners has consistently and unanimously declared that development unrelated to agriculture is to be discouraged on Skagit Agricultural Natural Resource Lands (Ag-NRL); and

WHEREAS, Skagit County has adopted a broad range of GMA Comprehensive Plan goals and policies that are intended to ensure the long-term conservation of Skagit farmland. *See, e.g.*, Comprehensive Plan Goal 4A; Countywide Planning Policy (CPP) 5.8, 5.11, 8, and 8.9; and

WHEREAS, Skagit County's agricultural land zoning has long been some of the most restrictive in the nation, consistent with our community's firm and unshakeable commitment to preserve Skagit farmland and open space in a rapidly urbanizing region. *See*, Skagit County Code 14.16.400; and

WHEREAS, our community's intergenerational willingness to extinguish the development value of Skagit farmland to secure its long-term protection has kept Skagit farmland prices relatively low compared to the market price of lands zoned for industrial, commercial and residential use; and

WHEREAS, because Skagit farmland is relatively inexpensive compared to other zoning categories due to our intergenerational protection of farmland, a broad range of industrial, commercial, and residential developers and business interests have even greater incentive to use Skagit farmland for project proposals; and

WHEREAS, allowing Skagit farmland to be used for industrial, commercial and residential development, by whatever argument or legal pathway, will push land values beyond the economic reach of agricultural use while reducing the amount of farmland available for agricultural use as the primary activity; and

WHEREAS, the Board has significant concern that further loss of Skagit farmland to development will jeopardize the critical mass of productive farmland necessary to support crop rotation, regional agricultural infrastructure, and farm-related services, posing an existential threat to both Skagit farmland and the viability of the Skagit's agricultural economy; and

WHEREAS, the Board finds it contrary to sound public policy that our community’s intergenerational protection of farmland and the low land valuation it has produced should be exploited by non-agricultural industrial development interests; and

WHEREAS, the Skagit is the U.S. West Coast’s third largest river by discharge volume; the Skagit and Samish Rivers pose significant flood risk; and a significant majority of Skagit Ag-NRL lands are within the FEMA-regulated floodplain of the Skagit and Samish Rivers; and

WHEREAS, according to the U.S. Army Corps of Engineers, the diking and drainage system that protects the Skagit Delta only provides 25-year flood protection, meaning that there is significant flood risk on the Skagit/Samish floodplain; and

WHEREAS, the Board finds it more likely than not that climate change and sea level rise will exacerbate flooding and inundation risks; and

WHEREAS, in our successful negotiations for additional and earlier drawdown flood storage at Seattle’s Skagit River Hydroelectric Project, and in our filings before the U.S. Federal Energy Regulatory Commission related to the ongoing Skagit Project relicensing, we pledged to discourage further industrial, commercial and residential development in the floodplain; and

WHEREAS, given the flood risk issues our community already faces, the Board finds that additional industrial development on Skagit farmland/floodplain will exacerbate this existing public safety and environmental challenge; and

WHEREAS, Skagit County has received a significant number of project proposals and inquiries that involve the potential siting of electrical energy generation and storage facilities on Skagit Ag-NRL lands; and

WHEREAS, such electrical energy generation and storage facilities are not intended to service or support Skagit agricultural activity, but rather is a form of industrial development intended to participate in the larger electrical grid, ultimately to support continued industrial, commercial and residential growth in the region; and

WHEREAS, via Administrative Official Interpretation Nos. 2023-01, 2023-02 and 2024-01, the Skagit County Administrative Official determined that such proposed electrical generation and storage developments constitute “Major Utility Development” for the purposes of Skagit County Code 14.04.020, which interpretation was not appealed; and

WHEREAS, per Skagit County Code 14.16.400(4)(h), “Major Utility Development” is allowed on Skagit lands zoned Ag-NRL with a Hearing Examiner Special Use Permit; and

WHEREAS, Skagit County has reasonable fear that access to Skagit County Ag-NRL lands for industrial electrical energy generation and storage activity will interfere with and jeopardize our long-term protection of Skagit County’s farmland and farming economy; and

WHEREAS, the Skagit County Planning Commission is currently considering permanent regulations relating to electrical energy generation and storage on lands zoned Ag-NRL, and the Board is concerned that the prospect of new development regulations may precipitate a rush to initiate new uses and activities inconsistent with the intent expressed herein as well as the public peace, health and safety; and

WHEREAS, the Board finds that an emergency exists within the County, and the immediate adoption of an interim ordinance effecting a moratorium is necessary for the preservation of the public peace, health, and safety and for the support of Skagit County government and its existing institutions; and

WHEREAS, this action is taken consistent with the State Environmental Policy Act (SEPA) provisions at WAC 197-11-880 regarding emergency actions.

NOW, THEREFORE, BE IT ORDAINED:

The Board of County Commissioners adopts the foregoing findings of fact, finding further as follows:

1. The United States Supreme Court in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) held that moratoria are essential tools for successful development regulation and re-affirmed that moratoria are not per se takings.
2. The regulations currently in effect do not adequately ensure the protection of Ag-NRL lands as agricultural lands of long-term commercial significance in Skagit County.
3. Skagit County intends to develop permanent regulations to address the deficiencies in the current regulations.
4. This interim ordinance is exempt from the public participation requirements of the GMA, subject to the requirements of RCW 36.70A.390.
5. An emergency exists and the immediate adoption of a moratorium imposed by this ordinance is necessary for the protection of the public health, safety, property, and peace.

NOW THEREFORE, BE IT FURTHER ORDAINED:

Section 1. The Board hereby declares a temporary moratorium providing that no permit application for a Major Utility Development involving electrical energy generation or storage shall be accepted or processed under Skagit County Code 14.16.400(4)(h).

Section 2. This ordinance shall not apply to any application vested before the date of this ordinance. An application shall be vested pursuant to Skagit County Code 14.02.050 when the application is deemed complete pursuant to Skagit County Code 14.06.090.

Section 3. This ordinance shall take effect immediately upon passage by the Board of County Commissioners.

Section 4. The moratorium created by this ordinance shall be effective for six (6) months.

Section 5. The ordinance and moratorium may be renewed for one or more six (6) month periods if a subsequent public hearing(s) is held, and findings of fact are made prior to each renewal.

Section 6. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 7. The Board of Skagit County Commissioners will hold a public hearing on October 21, 2024 at 1:30 p.m. in the Commissioners Hearing Room, 1800 Continental Place, Mount Vernon, Washington, to hear public testimony on this matter in accordance with RCW 36.70A.390.

WITNESS OUR HANDS AND THE OFFICIAL SEAL OF OUR OFFICE this 23rd day of September 2024.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



Peter Browning, Chair

Lisa Janicki

Lisa Janicki, Commissioner

Ron Wesen

Ron Wesen, Commissioner

ATTEST:

Amber Evers

Clerk of the Board

APPROVED AS TO FORM:

Will Honea

Will Honea, Senior Deputy
Skagit County Prosecuting Attorney

APPROVED AS TO CONTENT:

Jack Moore

Jack Moore, Director
Planning & Development Services

From: [Al Chandler](#)
To: [EFSEC mi Comments](#)
Subject: RE: Goldeneye project Sedro Woolley
Date: Saturday, December 14, 2024 9:57:23 AM

External Email

To whom it may concern.

Please do not ruin our town of Sedro Woolley with this project. It would be a horrible thing to do to our farm land that it is proposed to sit on, the salmon creek running next to it, the neighborhood surrounding it, including a senior mobile home park, families on private property, farms and schools. Our infrastructure is not such where it could handle an emergency. Yes the towns in Skagit County are growing but we have now and will continue to have enough electric power to manage for years to come, per PSE.

If these facilities really need to be built, please place them out in an area where, if there was a leak and/or fire, the damage would be very minimal. I know part of the reason they want to build where it is proposed is because it is right next to a grid. Please do your research as there are more than 6,000 electric grids that they could be built near and MANY of them would not cause the upheaval that this one does. At the Sedro Woolley city council meeting earlier this year the engineer from Tenaska stated that this type of storage facility would be outdated in the next 10 or so years. Why put our citizens through all of this for that!! They also stated that the recent fires were of "older" facilities and that the newer builds are not having the same issues. That is NOT true. When researched it showed that most of the fires in the last few years were actually more of the newer facilities than the older ones and there was way more damage to the surrounding and outlying areas than they stated would happen.

Our farms in the area include, fruits and vegetables, chickens (2 Foster Farms facilities within less than 2 miles of the proposed site), a dairy that

provides milk to the largest milk producer in Washington, Darigold, as well as beef and other livestock farms. Many within a 2 to 3 mile radius. Any kind of issues of leakage or fire would decimate the livelihood of any farm within this radius. My husband and I have livestock, including cows, horses, a mule, chickens, ducks, dogs and a cat. We could take the dogs and cat if we were evacuated but what of the rest??? How would they be fed, watered, etc. The water would not be drinkable for the animals and although the livestock would hopefully have grass to eat, if something were to happen in the winter, they would need to be fed daily. The birds definitely need feed daily. What of our gardens and fruit trees???

I truly believe that if this was proposed for your neighborhood, you would be just as upset as we are!!!

Thank you for your time.

Cynthia Chandler

Sedro Woolley, Washington



Respondent No: 1

Login: Anonymous

Email: n/a

Responded At: Jan 06, 2025 11:28:47 am

Last Seen: Jan 06, 2025 11:28:47 am

IP Address: n/a

| | |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | Connie Krier |
| Q2. Email address | cckrier@gmail.com |
| Q3. Are you part of an Agency or Organization? | Yes (please specify) Stewards of Skagit |
| Q4. Share any comment | Please see the updated letter and attachments |
| Q5. Upload your document or picture (optional) | https://s3-us-west-1.amazonaws.com/ehq-production-us-california/243ea2700cf2ef32284927a55b0d025e3d66d723/original/1736188363/2ffc28f8fb3ceab22b53e92272d93461_Letter_Stewards_of_Skagit_to_EFSEC_jan.pdf?1736188363 |
| Q6. Upload your document or picture (optional) | https://s3-us-west-1.amazonaws.com/ehq-production-us-california/03942f4a89d2a99f16e280a011f46dcd6ff7309b/original/1736188446/c322398db17e38d2188f54fd7ed3c6_WA_supreme_court_ag_decision.pdf?1736188446 |
| Q7. Upload your document or picture (optional) | https://s3-us-west-1.amazonaws.com/ehq-production-us-california/d2db17c1e85be7a131c228e60f44ffa469510c3/original/1736191476/5a21b0f2a94425a895b4a29235fba173_LUH_notification_public_comment.pdf?1736191476 |
| Q8. Upload your document or picture (optional) | https://s3-us-west-1.amazonaws.com/ehq-production-us-california/6b6a3c3fc44fa9884d67482a1ffaa3e70338cab2/original/1736191667/354a4eb2eae3cfadff918a959a415da5_Public_Comment_timeline_WAC_.png?1736191667 |



Board of Directors
26717 Helmick Lane
Sedro Woolley, WA 98284

To EFSEC Board

Re: Goldeneye BESS project

Date: 1/6/2025 - updated

Dear Board –

We the board of directors for the Stewards of Skagit assert that the LUH conditions for meeting Skagit County code for the expedited process have not been met by the applicant.

- 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 -Special use permit requirements needed
 - Magnuson-Steven Act
 - Sustainable Fisheries Act
 - Northwest Power Act
 - PSE High Risk area, no contract in place
 - GMA RCW
 - EFSEC RCW
 - The Supreme Court opinion on conversion of Ag-NRL and rural lands is especially important, as it supports the language in the Skagit County code prohibiting commercial non-ag businesses on farms and rural lands. The request for Formal Adjudication of the Land use determination and a rejection of the application based on the following points.
 - Skagit County Moratorium currently in place

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. EFSEC falsely claims their process it will cover all necessary items for a special use permit; however SCC specifically requires that a level 2 special use permit be specifically determined by a hearing administrator that is separate and independent from the permitting agency and allow for public testimony and statements at such hearing in compliance with SCC to include a staff report presentation by the agency, input from all agencies affected, public notification and public comment requirements. None of these are allowed for in the EFSEC process, as EFSEC does not allow for an independent review, nor does EFSEC allow for the same level of public comment

Stewardsofskagit.org

Low Sensitivity



Board of Directors
26717 Helmick Lane
Sedro Woolley, WA 98284

that SCC requires and therefore the EFSEC process does not and cannot comply with equivalent permitting requirements of SCC.

<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.

3 – Skagit County Moratorium - Skagit County Commissioners Adopt Interim Ordinance Imposing Moratorium for Energy Projects on Skagit Farmland adopted on September 23rd, 2024 for any projects not yet permitted in Skagit County. As this project has not yet been permitted, simply being applied for does not exempt this applicant from the requirements of this moratorium. Therefore this project does not meeting Skagit County Permitting requirements.

4- **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:

Stewardsofskagit.org

Low Sensitivity



Board of Directors
26717 Helmick Lane
Sedro Woolley, WA 98284

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:
 - o Waters or substrate.
 - o Species and their habitat.
 - o Other ecosystem components.
 - o Quality and/or quantity of EFH

Per the Applicant at the Sedro Woolley City Council meeting held on Sept 4th 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.

- o 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

<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.

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) –



Board of Directors
26717 Helmick Lane
Sedro Woolley, WA 98284

- 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.

6- 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.

7- 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. “

8- 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;”

“As an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060, the

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legislative authority of a county may elect to protect such critical areas through the program.”

9 - WA Supreme Court Decision – DOC 102177 -1 Which outlines the use of viable quality soils for building is against the GMA of WA state and Skagit County

The Supreme Court opinion on conversion of Ag-NRL and rural lands is especially important, as it supports the language in the Skagit County code prohibiting commercial non-ag businesses on farms and rural lands.

10 - Survey report –

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

PER RCW 90.84.050 Approval of use of credits by the department— Requirements. Prior to authorizing use of credits from a bank as a means of mitigation under a permit issued or approved by the department, the department must assure that all appropriate and practicable steps have been undertaken to first avoid and then minimize adverse impacts to wetlands. In determining appropriate steps to avoid and minimize adverse impacts to wetlands, the department shall take into consideration the functions and values of the wetland, including fish habitat, groundwater quality, and protection of adjacent properties. The department may approve use of credits from a bank when: (1) The credits represent the creation, restoration, or enhancement of wetlands of like kind and in close proximity when estuarine wetlands are being mitigated; (2) There is no practicable opportunity for on-site compensation; or Certified on 7/12/2024 Combined Chapter 90.84 RCW Page 3 (3) Use of credits from a bank is environmentally preferable to on-site compensation. [1998 c 248 s 6.]

Wetland banks provide the option of purchasing credits to offset the **unavoidable** impacts of a project.

These impacts are avoidable if construction does not take place in this area.

Issues not addressed by the survey report

- Likely water quality impacts to Hansen Creek during direction bore activities, construction, or use of water during emergency.
- 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.
- Where the wetland mitigations will take place and if they will be located within the same watershed
- The effects of this wetland mitigation to the drainage of the farm valley with its 100 + years of drainage swales, creeks and drainage ditches to keep farm fields healthy and viable. Building up the site by 3 feet above flood plain will change the drainage flow for the farm valley and mitigation of farmland drainage has not been accounted for in any of the documents. If the project effects the cross-drainage systems for the farmlands of east



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Skagit Valley the water and proper drainage farmers rely on could be decimated and farmland destroyed from this project.

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 an 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

FILE

IN CLERK'S OFFICE
SUPREME COURT, STATE OF WASHINGTON
SEPTEMBER 19, 2024

THIS OPINION WAS FILED
FOR RECORD AT 8 A.M. ON
SEPTEMBER 19, 2024

SARAH R. PENDLETON
ACTING SUPREME COURT CLERK


CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY, a political subdivision)
of the state of Washington,)

No. 102177-1

Respondent,)

v.)

En Banc

FRIENDS OF SAMMAMISH VALLEY,)
a Washington nonprofit corporation; and)
FUTUREWISE,)

Filed: September 19, 2024

Petitioners,)

A FARM IN THE SAMMAMISH)
VALLEY LLC; MARSHALL LEROY)
d/b/a ALKI MARKET GARDEN;)
EUNOMIA FARMS, LLC; OLYMPIC)
NURSERY INC.; C-T CORP.; ROOTS)
OF OUR TIMES COOPERATIVE;)
REGENERATION FARM LLC;)
HOLLYWOOD HILLS ASSOCIATION;)
TERRY AND DAVID R. ORKIOLLA;)
and JUDITH ALLEN,)

Defendants.)

JOHNSON, J.—This case concerns King County Ordinance 19030

(Ordinance or Ordinance 19030), which altered zoning and business licensing

regulations for wineries, breweries, and distilleries (WBDs), and accompanying tasting rooms, within land designated as agricultural and rural under the King County comprehensive plan. The issue presented is whether the Ordinance and the investigations King County (County) undertook prior to passage comply with the requirements set forth in the Growth Management Act (GMA), ch. 36.70A RCW, and the State Environmental Policy Act (SEPA), ch. 43.21C RCW.

The Central Puget Sound Growth Management Hearings Board (Board) determined that the County failed to comply with SEPA and the GMA and invalidated portions of the Ordinance. Appeal of the Board's final order was certified directly to the Court of Appeals, which reversed the board decision. Friends of Sammamish Valley (FOSV) and Futurewise sought review, arguing that the County's initial failure to fully engage with the threshold determination process under SEPA and failure to address preservation of land designated agricultural required invalidation under the GMA. The County, in response, argues that SEPA and the GMA do not require them to consider potential environmental impacts because the Ordinance is a "nonproject action" not requiring environmental review under SEPA and because the GMA presumes that an ordinance is valid on adoption. We reverse the Court of Appeals and reinstate the Board's order.

FACTS AND PROCEDURAL HISTORY

Ordinance 19030 applies to all of King County, but the focus of this case is on the impact to the agricultural and rural areas of Sammamish Valley.

Sammamish Valley, particularly the Woodinville area, has developed into a destination in Washington for WBDs and tasting rooms. Many alcohol related businesses are located in the Woodinville city limits, but many have also been established outside the city limits in unincorporated King County. The County's comprehensive plan designated certain areas in Sammamish Valley as appropriate for long-term protection and classified that land as agricultural under King County's comprehensive plan. Expansion, authorization, and restrictions on additional WBDs are addressed under the Ordinance.

In response to the growing adult-beverage industry, the King County Council initiated the "Sammamish Valley Wine and Beverage Study" in 2016. The study provided policy and code recommendations regarding economic development, transportation, agriculture land use, and rural land use. The study outlined accessory uses in the agricultural and rural areas and how such uses could be expanded to serve the economic development of the community. It also uncovered that 54 WBDs were operating in unincorporated King County, and only 4 of those had permits to operate. King County produced another action report in

2018, which gave specific zoning code recommendations. The findings and recommendations of the two studies became the basis for Ordinance 19030.

Before passage of the Ordinance, county staff completed a SEPA checklist, in order to make a threshold determination about the potential environmental impact of the proposed action. Admin. R. (AR) at 29-48; WAC 197-11-315. The County's responsible official determined that the proposed Ordinance was a nonproject action and made a threshold determination of nonsignificance (DNS), indicating no adverse environmental issues were implicated. AR at 26-27; WAC 197-11-310, -330, -340. As a result of the staff report, no environmental impact statement (EIS) was conducted after the DNS. The County passed Ordinance 19030 on December 4, 2019.

The Ordinance made a number of zoning changes in rural and agricultural areas of King County, imposing new licensing requirements for alcoholic beverage businesses in these areas. A number of alterations were made to the existing code, some tightening restrictions on allowed uses and others expanding allowed uses. The Ordinance set different sizes of WBD facilities, classifying the uses as I, II, or III. The Ordinance eliminated the requirement that beverage sales must be limited to products produced on-site and grown in the Puget Sound and replaced it with a requirement that 60 percent of the products processed must be grown on-site. The Ordinance amended the former code to require that tasting and retail sales of

products may occur only as an accessory to the primary WBD production use, whereas the former code simply stated that the tasting of products must be provided in accordance with state law. The Ordinance established temporary use permits for large events and imposed limits on the number of guests allowed based on the size of the facility (WBD IIs can have up to 150 people, WBD IIIs can have up to 250 people). The Ordinance authorized that up to 25 percent of any site with these facilities could be paved. The Ordinance also created “Demonstration Project Overlay A” in the area adjacent to Woodinville, establishing “remote tasting rooms.” Ordinance, Attach. A. Tasting rooms were not explicitly allowed prior to the Ordinance, and the Ordinance provided an avenue for them to become licensed on the parcels in the demonstration project area.

FOSV filed a petition for review with the Board on March 4, 2020, challenging the validity of Ordinance 19030. Futurewise filed a petition for review with the Board on March 5, 2020, challenging the same. The Board provided an order on dispositive motions, declaring Ordinance 19030 invalid on May 26, 2020. In sum, the Board agreed with the petitioners as to the threshold issues of the timing and sufficiency of the SEPA checklist and determined that the Ordinance was invalid for violations of the GMA.

The County, in an initial proceeding, appealed that order to the superior court. The superior court reversed the Board’s order. It found that the Board had

exceeded its statutory authority in reviewing the motions for summary judgment, and had improperly applied the CR 56 standard. The matter was remanded back to the Board, with a direction that it rescind its order of invalidity and conduct a full hearing on the issues of SEPA and GMA compliance.

The Board held a full hearing on the merits and issued a new final decision and order on January 3, 2022, with a corrected version issued on January 27, 2022. The Board evaluated a number of SEPA issues and concluded that the County had failed to establish a prima facie showing of SEPA compliance and that the County violated SEPA by basing its DNS on an inadequate checklist. The Board also considered a number of GMA issues and concluded that the adoption of Ordinance 19030 was clearly erroneous in light of the requirements of the GMA and SEPA, and that the Ordinance substantially interfered with GMA goals. Sections 12-29, and 31, and map amendments No. 1 and No. 2 of the Ordinance were declared invalid, and the matter was remanded to the County to come into compliance.

The County again appealed, and the action was transferred to Division One of the Court of Appeals. The Court of Appeals reversed the Board's order of invalidity and remanded for entry of a finding of compliance with the GMA and

SEPA. *King County v. Friends of Sammamish Valley*, 26 Wn. App. 2d 906, 530 P.3d 1023, *review granted*, 2 Wn.3d 1006 (2023). We accepted review.¹

ISSUES²

- I. Does Ordinance 19030 violate the GMA?
- II. Did the DNS issued for Ordinance 19030 violate SEPA?

ANALYSIS

I. GMA Compliance

Under the GMA, authority is assigned to Growth Management Hearing Boards to adjudicate compliance. RCW 36.70A.280, .300; *Lewis County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 157 Wn.2d 488, 497, 139 P.3d 1096 (2006).

Planning agencies are given broad deference by the reviewing Board.

“[C]omprehensive plans and development regulations, and amendments thereto, adopted under [the GMA] are presumed valid upon adoption.” RCW 36.70A.320(1).

The presumption of validity can be rebutted where the Board finds evidence of a clear error based on the requirements of the GMA. “The board shall find

¹ A number of amici briefs have been submitted in support of FOSV and Futurewise from Agricultural Organizations, Black Farmers Collective, Western Washington Agricultural Association, Orca Conservancy, Sierra Club, and Susan Boundy-Sanders and Paula Waters.

² The parties have presented different classifications of the issues in this case, with the two petitioners each presenting three separate issues, and the County presenting its own issues. However, all of the issues can be boiled down to these two questions.

compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.” RCW 36.70A.320(3). An action is “clearly erroneous” if the Board is “left with the firm and definite conviction that a mistake has been committed.” *King County v. Cent. Puget Sound Growth Mgmt. Hr’gs Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000) (quoting RCW 36.70A.320(3); *Dep’t of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)).

When a board decision is appealed, courts review the Board’s decision pursuant to the Administrative Procedure Act (APA), chapter 34.05 RCW. RCW 34.05.570(3). The court looks at the record before the Board and reviews the Board’s legal conclusions de novo, giving substantial weight to the Board’s statutory interpretations. When there are mixed questions of law and fact, the court determines the law, and then applies the law to the facts as found by the Board. *Thurston County v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008).

The burden is on the party asserting the error to demonstrate that the Board erroneously interpreted or applied the law, or that the order is not supported by substantial evidence. *King County*, 142 Wn.2d at 553. Boards established by the GMA are to be given deference because of the specialized experience its members

are required to have.³ Courts review the Board’s order for substantial evidence—whether a sufficient quantity of evidence exists in the record that a fair-minded person could be persuaded of the truth or correctness of the Board’s order.

Thurston County, 164 Wn.2d at 341.

The deference afforded to planning agencies by the Board and the deference granted to the Board by reviewing courts may seem somewhat contradictory.

However, in *Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 110 P.3d 1132 (2005), we recognized that deference afforded to county planning actions supersedes the deference granted by the APA, so long as the county planning action meets and is consistent with the goals and requirements of the GMA. We held that when a Board fails to apply the more deferential standard of review, the ruling is not entitled to deference.

Quadrant, 154 Wn.2d at 238.

Though the parties do not substantively dispute the standard of review, the petitioners emphasize that substantial weight should be given to the Board, while the County emphasizes that deference must be given to county planning decisions per the legislative intent. Here, the Board acknowledged and clearly stated that it was applying the deferential standard of review in its ruling. Unless the facts show

³ “The board shall consist of five members qualified by experience or training in pertinent matters pertaining to land use law or land use planning and who have experience in the practical application of those matters.” RCW 36.70A.250(1).

that the Board failed to apply the standard of review correctly, the Board decision is entitled to deference when challenged. The determining question therefore is whether substantial evidence shows that the County's interpretation of the GMA is clearly erroneous, or put another way, whether a sufficient quantity of evidence exists in the record that a fair-minded person could be persuaded that the Board was correct.

The GMA is found in chapter 36.70A RCW, and the rules for the GMA are found in chapter 365-196 WAC. The GMA is "intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences." RCW 36.70A.011. The GMA was established to provide a framework for land use planning and regulation of development, in response to unplanned growth and a lack of common goals. WAC 365-196-010. RCW 36.70A.020 sets a number of goals, which are not exclusive but may be supplemented by cities and counties so long as no conflict with the GMA arises. WAC 365-196-060. The goals include encouraging urban growth, reducing sprawl, and protecting and enhancing the natural environment. RCW 36.70A.020.⁴

⁴ "The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans, development regulations, and, where specified, regional plans, policies, and strategies:

"(1) Urban growth. Encourage development in urban areas where adequate public

The GMA requires that development regulations preserve natural resource and critical areas, and that land adjacent to such areas not interfere in their continued use. RCW 36.70A.060. Counties' comprehensive plans must include measures governing rural development and protection of the rural character of the area, with measures such as containing and controlling rural development, protecting critical areas, and protecting against conflicts with agricultural, forest, and resource lands. RCW 36.70A.070(5). The GMA requires that comprehensive land use plans must conform to the act, and any development regulations must be consistent with and implement the comprehensive plans. RCW 36.70A.130. Counties may also use innovative zoning techniques in agricultural lands to conserve the areas and encourage agricultural economy, but nonagricultural uses

facilities and services exist or can be provided in an efficient manner.

“(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

“

“(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.

“

“(10) Environment. Protect and enhance the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

“

“(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.”

should be limited to lands not suitable for agricultural purposes. RCW

36.70A.177.⁵

⁵ “(1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

“(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

“(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;

“(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

“(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

“(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and

“(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

“(3) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

“(a) Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter;

“(b) Accessory uses may include:

“(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

“(ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses; and

“(c) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection (3) in areas designated as agricultural lands of long-term

The land focused on in this case lies outside of the city of Woodinville and has been designated under King County’s comprehensive plan as agricultural, rural, or a combination of the two. This designation is significant here because an agricultural designation carries with it a statutory requirement that cities and counties assure the agricultural and rural nature of the land is preserved. RCW 36.70A.060(1)(a).⁶

In its assessment of the Ordinance, the Board focused on four areas of GMA compliance—accessory uses, comprehensive plan farmland and environmental policies, comprehensive plan agricultural production district buffer policies, and County demonstration project requirements—all areas designated under the County’s comprehensive plan.

First, the Board found that the Ordinance violated RCW 36.70A.060(1)(a) because it failed to conserve productive agricultural land by allowing incompatible uses, and it did not restrict agricultural accessory uses and activities to be

commercial significance.

“(4) This section shall not be interpreted to limit agricultural production on designated agricultural lands.”

⁶ “Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.”

consistent with the size, scale, and intensity of the existing agricultural uses on the property. Also, the Ordinance's allowing further development in areas that did not have "prime soil[]" impermissibly expanded nonagricultural uses, thus violating RCW 36.70A.177(3)(b)(ii). AR at 49433.

Next, when reviewing consistency with comprehensive plan farmland and environmental policies, the Board concluded that the matter was not ripe for review until the County had remedied the SEPA and GMA noncompliance issues the Board had already identified. The Board assessed several matters addressing compliance with comprehensive plan agricultural production district buffer policies, and concluded that implementing the Ordinance without adequate environmental review and sufficient development regulations to ensure compatibility with the natural environment would thwart the county's

implementation of King County comprehensive plan policy R-201,⁷ in violation of RCW 36.70A.130(1)(e).⁸

Finally, the Board addressed whether the Ordinance’s demonstration project was consistent with established requirements set by the County. The Board found that the remote tasting rooms in Demonstration Project Overlay A thwarted policies and enforcement of zoning regulation King County Code 21A.32.040, which provides, “Any use, structure or other site improvement not established in compliance with use and development standards in effect at the time of

⁷ “King County’s land use regulations and development standards shall *protect* and *enhance* the following attributes associated with rural character and the Rural Area:

“a. The natural environment, particularly as evidenced by the health of wildlife and fisheries (especially salmon and trout), aquifers used for potable water, surface water bodies including Puget Sound and natural drainage systems and their riparian corridors;

“b. Commercial and noncommercial farming, forestry, fisheries, mining, home-occupations and home industries;

“c. Historic resources, historical character and continuity important to local communities, as well as archaeological and cultural sites important to tribes;

“d. Community small-town atmosphere, safety, and locally owned small businesses;

“e. Economically and fiscally healthy Rural Towns and Rural Neighborhood Commercial Centers with clearly defined identities compatible with adjacent rural, agricultural, forestry and mining uses;

“f. Regionally significant parks, trails and open space;

“g. A variety of low-density housing choices compatible with adjacent farming, forestry and mining and not needing urban facilities and services;

“h. Traditional rural land uses of a size and scale that blend with historic rural development; and

“i. Rural uses that do not include primarily urban-serving facilities.” AR at 9236 (emphasis added).

⁸ “Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.” (The Board references RCW 36.70A.130(1)(d), but based on the text and the context of its decision, it intended RCW 36.70A.130(1)(e).)

establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal” The Board found that the Ordinance was internally inconsistent with the zoning regulation, in violation of RCW 36.70A.130(1)(e).⁹ In summary, the Board concluded that the Ordinance was inconsistent with sections of the County’s comprehensive plan, and, as required under RCW 36.70A.130, any land use plan and development regulations are subject to continuing review and evaluation, including consideration of critical area ordinances and population analysis, which the County did not do.

The Board concluded that the Ordinance was clearly erroneous based on the entire record and in violation of the goals and requirements of the GMA because it substantially interfered with the fulfillment of multiple GMA planning goals.

The County has argued that Ordinance 19030 does comply with the GMA, and that the order of the Board failed to apply the law and the Board misunderstood portions of the Ordinance and the legality of the existing WBDs. The County argues that the Board did not follow the plain language of the GMA and impermissibly shifted the burden of proof to the County rather than the petitioner. Essentially, the County asserts that the Board did not give the Ordinance the required deference and failed to understand several of its provisions.

⁹ “Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.”

As discussed above, the Board did give the County the required deference. Deference does not require the Board to rubber-stamp every action taken by the County, but requires the Board to look closely at the Ordinance and the requirements of the GMA and presume that the Ordinance follows those requirements unless evidence shows otherwise. Here, the evidence did show otherwise. Whether the WBDs are currently legal or illegal is irrelevant. Under either interpretation, the language of the Ordinance expanded some aspects of WBDs while placing tighter restrictions on others, and the net environmental effect of those changes on designated agricultural land should have been considered in the environmental review.

The County goes on to assert that the Board's order did not align with RCW 36.70A.302¹⁰ because the Board failed to provide facts that supported the conclusion that the Ordinance would substantially interfere with GMA goals. The County's argument relies on analysis in *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014), *overruled in part by Chong Yim v. City of*

¹⁰ “(1) The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

“(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

“(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

“(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.”

Seattle, 194 Wn.2d 682, 451 P.3d 694 (2019), and *Davidson Serles & Associates v. Central Puget Sound Growth Management Hearings Board*, 159 Wn. App. 148, 244 P.3d 1003 (2010). The County argues that even if a potential SEPA violation exists, it is irrelevant because the Board did not properly find a GMA violation.

In *Town of Woodway*, this court stated that boards have the ability to review plans for both GMA and SEPA violations, but the boards are limited to two remedies—noncompliance or invalidity. 180 Wn.2d at 178. The *Davidson Serles & Associates* case outlined what the Board must find in order to make a determination of invalidity:

In sum, the Board is empowered with the authority to invalidate a jurisdiction's comprehensive plan or development regulations where the Board (1) makes a finding of noncompliance, (2) remands, (3) makes a determination supported by findings and conclusions that the continued validity of the plan or regulation will *substantially interfere with the fulfillment of the goals of the GMA*, and (4) specifies the portion of the action that is invalid and explains why.

159 Wn. App. at 157.

Here, the Board specifically acknowledged what was necessary to invalidate the Ordinance.¹¹ The Board then comprehensively analyzed the legal requirements. First, the Board entered findings of fact detailing how the Ordinance and the County's checklist failed to comply with SEPA and GMA provisions and cited to which regulations were violated. Second, the Board remanded to the County with a

¹¹ Findings of Fact 1-12; Conclusions of Law A-D. AR at 49444-46.

schedule to come into compliance. AR at 49451-52. The Board's order detailed exactly what the County must do, including a full, environmental review.

Third, the Board provided findings and conclusions explaining how the Ordinance substantially interferes with the fulfillment of the goals of the GMA. The order specifically pointed to the goals found at RCW 36.70A.020(8), (10), and (12). Those statutory sections require the maintenance of natural resource industries and agriculture, protection of the environment including water and air quality, and ensuring that public facilities are adequately available at the time of occupancy and use.

A number of findings of fact laid out exactly why specific sections of the Ordinance and map attachments¹² were invalid. For example, the Board described that the development of rural and agricultural land with no environmental review failed to maintain the natural resource industries and failed to protect water quality. The issue of water runoff is particularly important in this area because the Sammamish River is a crucial salmon route already threatened by development. AR at 49422-23. The Board also noted that allowing large public gatherings in rural spaces that do not have on-site sewage systems did not ensure sufficient public facilities.

¹² Sections 12-29, 31, and map amendments No. 1 and No. 2.

The County's argument is essentially that the potential environmental impact is unknown until it occurs. But that is why the potential environmental impact is required when considering code changes, and here the County's DNS checklist did not address any potential environmental impacts and concluded no potential environmental impacts existed, violating the statutory requirements to plan.

Overall, acting without *any* information on the potential environmental effects of an omnibus ordinance that affects zoning designations, types of uses, permitting thresholds, setbacks, lot sizes, paving up to 25 percent of an area for parking, facilities requirements, and business licensing requirements conflicts with the requirements to protect and enhance agriculturally significant land. RCW 36.70A.020, .060. The Board's specific findings, conclusions, and order correctly comply with the goals of the GMA.

The County also emphasizes that RCW 36.70A.177 allows the County to use innovative zoning techniques to make use of land and allows accessory uses such as the type set out in the Ordinance. However, RCW 36.70A.177 does not give counties such unlimited discretion, especially in areas identified and classified under the County's comprehensive plan.

In *King County*, 142 Wn.2d 543, we established that while counties have broad discretion to develop plans and development regulations suited to unique local circumstances, such discretion does not allow a proposed action to convert

agricultural land to uses that do not support agricultural land preservation. The GMA does not allow “innovative” techniques that convert prime agricultural soil to unrelated uses. The explicit purpose of RCW 36.70A.177 is to provide for creative alternatives that still maintain and enhance the agricultural environment. The Board correctly concluded that the Ordinance has the opposite potential effect.

The Board found that the Ordinance interfered with RCW 36.70A.177(3)(a).¹³ To support this finding, the Board pointed out that the Ordinance allowed accessory uses of wine tasting and large-scale events with no adequate regulations and adequate setbacks to prevent conflicts with agricultural activities. The Ordinance also has no specific restrictions on agricultural accessory uses and activities to keep them to an appropriate size, scale, and intensity consistent with the *existing agricultural use*. RCW 36.70A.177(3)(b)(ii).

In *King County*, we noted that the GMA requires counties to “designate agricultural lands of long-term commercial significance,” to “assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products,” and to “conserve agricultural land in order to maintain and enhance the agricultural industry and to discourage incompatible uses.” 142 Wn.2d at 556, 557

¹³ “Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter.”

(emphasis removed); RCW 36.70A.020(8), .060(1), .170(1)(a). The County has the responsibility, once that designation exists, to conserve and enhance agricultural lands under the GMA. The Ordinance may well be the antithesis of that statutory requirement, particularly when no environmental review has been conducted.

The holding of *King County* supports the Board's order. In that case, we held that the County could not construct temporary soccer fields in an agricultural area because the project would result in removal of designated agricultural land from its availability for agricultural production, and, even on a temporary planned basis, we concluded that removal violated the statute. We noted that the GMA mandates conservation of limited irreplaceable agricultural resource land, and recreational facilities were not consistent with conservation. *King County*, 142 Wn.2d at 562-63. Under that case, constructing temporary grass soccer fields was not consistent with the mandates of the GMA. Applying that reasoning here, we hold that constructing permanent WBD facilities and paved parking areas cannot be consistent with the GMA.

The Board went into significant detail about GMA compliance and the provisions of the Ordinance. But the requirements of the GMA are quite clear—agricultural land must be conserved, by maintaining or enhancing the land, and by discouraging incompatible uses. The GMA does not allow the County to presume that expanding WBDs and tasting rooms on agricultural land, and expanding the

pavement, sewage, and buildings to support them, with no environmental review is an allowed accessory/compatible use. Though the County claims that its proposed accessory uses are consistent with RCW 36.70A.177, without a comprehensive SEPA review, this claim fails. A myriad of questions remains as to the agricultural use of the properties that fall under the Ordinance and the viability of the land in this designated agricultural area. Further questions remain as to the ability of the County's proposed accessory uses and how those uses actually conserve the agricultural nature of the land, as they must. The Board properly found that the Ordinance violated the requirements of the GMA.

II. SEPA Compliance

SEPA is found in chapter 43.21C RCW, and the rules for SEPA are found in chapter 197-11 WAC. The goals of SEPA are to (1) create harmony between people and the environment, (2) prevent damage to the environment, (3) stimulate the health and welfare of humans, and (4) enrich understanding of natural resources and systems. RCW 43.21C.010. Under SEPA, an EIS is required and must be prepared for any proposals and actions with a probable, significant, adverse environmental impact. RCW 43.21C.031.¹⁴ An environmental review is

¹⁴ “(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined

also required to be completed as early as possible in the planning process to ensure that plans reflect environmental values. WAC 197-11-055(1).

SEPA sets the guideline that agencies should include in every proposal for new legislation and major actions that significantly affect the environment, a detailed report about (1) the environmental impact, (2) any adverse environmental effects, (3) alternative options, (4) the relationship between short-term uses and long-term productivity, and (5) any irreversible commitments of resources. RCW 43.21C.030(c). The agency must consider both short- and long-term impacts, and direct and indirect impacts. WAC 197-11-060. SEPA acts as a full disclosure directive to consider any potential environmental impacts of a project.

SEPA mandates that county planning agencies make a threshold determination for any proposal that meets the definition of action. RCW 43.21C.033(1); WAC 197-11-310(1). Under SEPA, the definition of “action” covers just about everything, and within that category are project and nonproject

document. Actions categorically exempt under RCW 43.21C.110(1)(a) and 43.21C.450 do not require environmental review or the preparation of an environmental impact statement under this chapter.

“(2) An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.”

actions. Nonproject actions are decisions on policies, plans or programs, such as “[t]he adoption or amendment of comprehensive land use plans or zoning ordinances.” WAC 197-11-704(2)(b)(ii). A nonproject action is not fully exempt from environmental review and must still comply with SEPA, unless it falls under one of the categorical exemptions (which do not apply here). RCW 43.21C.450. SEPA allows for phased review, and a nonproject proposal or action may be approved based on an EIS assessing a broad impact, and any subsequent project actions may use that EIS in a later review, requiring that environmental review should be front loaded and forward looking. WAC 197-11-443, -060(5).

SEPA provides a checklist to assist planning agencies in making threshold determinations. WAC 197-11-315, -960. The agency must base its threshold determination on reasonably sufficient information on the environmental impact of the proposal and take additional steps if such information is not available. WAC 197-11-335. The threshold determination decides whether a proposal has a probable significant adverse impact, and, if so, will require an EIS. WAC 197-11-300(2). “A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts.” WAC 197-11-330(5). The lead agency can then either issue a DNS (if no probable significant

adverse impact exists) or a determination of significance (if probable significant adverse impact exists).¹⁵ WAC 197-11-310(5).

A threshold determination that an EIS is not required is reviewed under the “clearly erroneous” standard, and a reviewing court will overturn an agency’s DNS when “[a]lthough there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *King County v. Wash. State Boundary Rev. Bd.*, 122 Wn.2d 648, 661, 860 P.2d 1024 (1993) (alteration in original) (quoting *Norway Hill Pres. & Prot. Ass’n v. King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976)). The record must show that relevant environmental factors were considered in a way that sufficiently amounts to prima facie compliance with the requirements of SEPA. *Wild Fish Conservancy v. Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 867, 502 P.3d 359 (2022); *Chuckanut Conservancy v. Dep’t of Nat. Res.*, 156 Wn. App. 274, 286-87, 232 P.3d 1154 (2010).

Further, we have held that proposed land-use related actions, such as zoning ordinances, are

not insulated from full environmental review simply because there are no existing specific proposals to develop the land in question or because there are no immediate land use changes which will flow from the proposed action. Instead, an EIS should be prepared where the responsible agency determines that significant adverse environmental impacts are probable following the government action.

¹⁵ A threshold DNS allows the agency to avoid a full EIS.

Wash. State Boundary, 122 Wn.2d at 664. Thus, we must determine whether the record shows that environmental impacts are probable as a result of the Ordinance.

The first matter to resolve is which SEPA checklist this court should consider. The County produced one checklist prior to the threshold determination. AR at 29-48. After the Board determined that the Ordinance was invalid initially, the County attempted to come into compliance and completed another checklist. King County's Suppl. Br., App. E. The second checklist was not used by the County to make a threshold decision about the Ordinance because it was not produced until after the Ordinance was passed. The Court of Appeals did consider the second checklist in its analysis. The petitioners assert that the Court of Appeals erred in using the second checklist rather than the one that was actually cited by the Board and relied on for the threshold determination.

As noted above, when a Board decision is appealed, we review the Board's decision and look at the record that was before the Board. In its opinion, the Court of Appeals looked at a later version of the SEPA checklist that was not part of the DNS and not cited by the Board. We conclude that the Court of Appeals erred in considering a later checklist that was not part of the County's original DNS. Rather, we must consider the first checklist that was used in making the threshold determination and that was reviewed by the Board.

Next, we turn to the content of the SEPA checklist that was generated by the County to make the DNS. In that checklist, the County answered nearly every question under part B, “Not applicable for this nonproject action.” A few answers elaborated that certain environmental elements existed, but none of the answers provided an analysis of potential impacts of the Ordinance. AR at 33-45. Part B addresses the environmental elements. While some of the answers in part B acknowledged that there may be some potential environmental impact, the checklist relied on existing laws to provide sufficient environmental protections and did not elaborate on any protections or impact mitigation provided by the Ordinance.

The Board determined that the checklist was insufficient to establish compliance with SEPA. That decision was based on a number of findings. First, the Board found that the checklist failed to address the full range of probable impacts of the future projects that the Ordinance would allow violating WAC 197-11-060(4).¹⁶ The Board based this on its finding that the County used existing, unallowed WBDs as the baseline condition and failed to fully address the impact of

¹⁶ “(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

“(d) A proposal’s effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.”

the new developments that would be authorized by the Ordinance. The County did not address all future project actions the proposal would allow and, in fact, did not consider impacts of *any* future actions in the SEPA checklist. Instead, the County deferred all environmental review to the individual project action stage.

Second, the Board found that the Ordinance impermissibly “balanced” the potential negative impacts of the proposal with the potential benefits, in violation of WAC 197-11-330(5).¹⁷ The Board noted that a SEPA checklist is meant to be a full disclosure document, with enough information to inform the planning agency of all likely, significant environmental impacts of the proposed action.

Third, the Board found that the checklist violated RCW 43.21C.030(c)¹⁸ and WAC 197-11-060(4)¹⁹ because the checklist did not disclose the likely

¹⁷ “A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.”

¹⁸ “Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

“(i) the environmental impact of the proposed action;

“(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

“(iii) alternatives to the proposed action;

“(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

“(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented”

¹⁹ “(4) Impacts.

“(a) SEPA’s procedural provisions require the consideration of ‘environmental’ impacts (see definition of ‘environment’ in WAC 197-11-740 and of ‘impacts’ in WAC 197-11-752),

environmental impacts of establishing Demonstration Project Overlay A, eliminating the on-site production requirement or reducing the minimum lot size in the rural area. Fourth, the Board found that the checklist failed to consider all reasonably foreseeable impacts of the proposed Ordinance by delaying review to the project action stage and did not consider cumulative environmental impacts, in violation of WAC 197-11-060 and WAC 197-11-055.²⁰

The final conclusion of the Board was that the County failed to establish prima facie showing of SEPA compliance. The order noted that the checklist was inadequate because it did not contain reasonably sufficient information about

with attention to impacts that are likely, not merely speculative. (See definition of ‘probable’ in WAC 197-11-782 and 197-11-080 on incomplete or unavailable information.)

“(b) In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal’s impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC 197-11-330(3) also).

“(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

“(d) A proposal’s effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

“(e) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC 197-11-792) may be wider than the impacts for which mitigation measures are required of applicants (WAC 197-11-660). This will depend upon the specific impacts, the extent to which the adverse impacts are attributable to the applicant’s proposal, and the capability of applicants or agencies to control the impacts in each situation.” (Boldface omitted.)

²⁰ This section addresses timing: “(1) Integrating SEPA and agency activities. The SEPA process shall be integrated with agency activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.” (Boldface omitted.)

environmental effects in this agricultural area to support the DNS, violating WAC 197-11-335. Additionally, the content of the environmental review was not aligned with SEPA's goals and policies, WAC 197-11-060, and the proposal did not include any information required by RCW 43.21C.030(c).²¹ The Board noted that the Ordinance was "clearly erroneous" based on the entire record, applying the proper standard of review and deference required of them.

The Court of Appeals reversed the Board and ordered that the DNS be reinstated. It found that the Board used an inappropriate baseline in considering the effects of Ordinance 19030, reasoning that the appropriate baseline from which to gauge the impact of the Ordinance were the existing uses in the area at the time the Ordinance was enacted. It stated that the Ordinance did not legalize any previously illegal uses, and therefore it was speculative to evaluate the Ordinance based on the possibility that the existing uses could have been forced to stop operations had the Ordinance not been passed. The court also found that the County did not engage in

²¹ "Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

- "(i) the environmental impact of the proposed action;
- "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- "(iii) alternatives to the proposed action;
- "(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
- "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

any improper balancing of impacts because there was no likelihood of the Ordinance generating new, nonspeculative adverse impacts. In doing so, the Court of Appeals disregarded the agricultural designation under the County's comprehensive plan.

The County encourages us to affirm the Court of Appeals on this basis. The County asserts that it was not required to answer the questions in part B of the SEPA checklist because it classified the Ordinance as a nonproject action. The County relies on WAC 197-11-315(1)(e), which states that an agency must use the provided SEPA checklist for a threshold determination except for nonproject proposals when the agency determines that the questions in part B do not contribute meaningfully to the analysis of the proposal, though parts A, C, and D at a minimum must still be completed.

The County's argument disregards what this court has said regarding SEPA. In *Washington State Boundary*, 122 Wn.2d 648, we said that a proposed land use action is not exempted from environmental review just because there are no current, specific development proposals or immediate land use changes that will result from the proposed action. Rather, the rule we adopted was that an EIS must be prepared by the relevant agency when the agency "determines that significant adverse environmental impacts are probable following the government action." *Wash. State Boundary*, 122 Wn.2d at 664.

In this case, the record discloses current, specific developments and land use changes that are probable to result from the proposed action. The proposed action creates opportunities for new and existing WBD businesses to open or expand operations within land classified as rural and agricultural. The fact that businesses have already been established, whether legal or illegal, is irrelevant. What controls arises from the comprehensive plan's rural and agricultural designation. Ample evidence exists in the record showing what businesses are likely to operate in this area, which is sufficient to inform an environmental review, as the changes under the Ordinance apply countywide to all rural and agricultural land. The County must consider the likely environmental impact if all the land located in the area is put to its maximum use under the new regulation because it is very probable that the land in this popular winery destination area and other areas will be used in that manner.²² The Board expressly noted that the County must evaluate the potential impacts allowed by the changed designation where these "impacts are not merely hypothetical but can be known or are reasonably foreseeable." AR at 49412. As the Board found, "In sum, when a county amends its Comprehensive Plan or changes zoning, a detailed and comprehensive SEPA environmental review is required to

²² As noted, 54 WBDs already operate, and it is entirely predictable that under the Ordinance, more will open.

understand and evaluate the impact of the change in allowable uses.” AR at 49413 (emphasis removed). We agree.

We have also established that the appropriate baseline to compare the environmental impacts of the proposed action is the *condition* of the existing environment, rather than considering the current *uses* of the land. *Wild Fish Conservancy*, 198 Wn.2d at 872. The Court of Appeals in this case looked at the current *uses* of the land, the current operating WBDs, because they erroneously concluded that the Ordinance had no effect in reversing or enforcing the existing code. The Court of Appeals relied on *Quadrant* for that premise but misunderstood that case. That case held that counties and cities planning under the GMA may consider vested rights in the land when determining whether land is characterized by urban growth. *Quadrant*, 154 Wn.2d at 228. It did not say that the appropriate baseline is to consider unlicensed existing uses of the land, and the case did not look at agriculturally designated land but, instead, land designated as an urban growth area. The baseline that the Court of Appeals considered is not useful in this case because it is an ever-changing status as buildings are constructed and land is developed. This view is not consistent with the protections of agricultural land under the GMA.

The Board looked at the current *condition* of the land, noting that the land is primarily agricultural and rural in nature, and the Ordinance would have an effect

on the existing condition of the land. This comparison is consistent with our analysis in *Wild Fish Conservancy*, where we said that it is useful to establish a baseline environmental condition to compare a proposal's impact. 198 Wn.2d at 871. The designation of the land as agricultural defines the existing environmental condition.

We agree that the Board made the proper comparison between the Ordinance and the baseline condition of the environment within this rural and agricultural zone. The Ordinance allows much of the agricultural and rural land in Sammamish Valley and elsewhere in King County to serve as semiretail event space, potentially impacting the environment. While some businesses already exist and impact the condition of the land, under the Ordinance, more structures will be built, land will be paved, and water usage and sewage will inevitably increase, all having a very likely impact on the condition of the land and a negative impact on the environment. Since under the GMA conservation and enhancement of agriculturally designated land is required, and this land is agricultural and rural, the proper baseline to consider is that land designation or condition because such a designation controls the planning decisions.

The County asserts that the Ordinance changes the zoning code to enact stricter requirements and therefore does not require environmental review. But that argument misses the point of SEPA. The County disregards the language in WAC

197-11-330(5), which requires that a threshold determination may not balance the beneficial aspects of a proposal with its adverse impacts. Even where proposals are designed to in some ways improve the environment, significant adverse environmental impacts could result and must still be reviewed for what adverse impacts are likely to occur overall. The County has argued that the Ordinance will tighten the controls on WBDs and connected events. However, allowing expanded businesses and events may still impact the environment and, as such, must be reviewed for those potential adverse impacts. Potential positive impacts are irrelevant.

Importantly here, the *type* of land that is affected by the Ordinance must impact the breadth of the SEPA analysis. The land in question is mostly agricultural and is designated as such. Agricultural land that is specifically designated must be maintained and enhanced for potential future use under the GMA, even if the land is not being used for agricultural production currently. The GMA requirement ensures the land is preserved for future agricultural uses. “The County [is] required *to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.*” *King County*, 142 Wn.2d at 556. That agricultural designation has an effect on the SEPA review considerations for ordinances that impact such land. Any action (even creating a temporary, grass

soccer recreation field, *see King County*, 142 Wn.2d at 545) that removes potential future productivity of agricultural land may have a probable significant environmental impact.

The County argues further that the Board has the authority only to invalidate an ordinance for noncompliance with the GMA, so under its view, even if the County did fail to follow SEPA threshold determination requirements, because there is no GMA violation, the Board should not have invalidated the Ordinance. We disagree. As stated above, without full environmental review, the Ordinance does violate the GMA. Further, the Board is specifically tasked with review of SEPA compliance, as outlined in RCW 36.70A.280 and .300. To conclude that the Board may review SEPA compliance but take no action for noncompliance would disregard the statutory power designated to the Board. Under that statutory directive, the Board must follow the steps for a determination of invalidity laid out in RCW 36.70A.302, which the Board here correctly did.

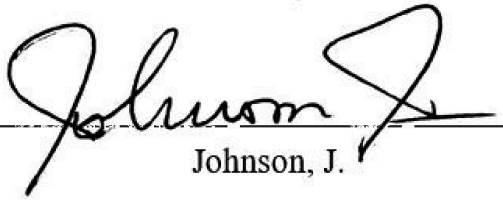
Overall, we find that the Board did establish sufficient facts showing that the County failed to consider potential environmental impacts in its SEPA checklist. The Board found that the checklist did not disclose any potential environmental impacts of the Demonstration Project Overlay A, which establishes remote tasting rooms in a rural area not previously allowed. The checklist did not disclose any environmental impacts for expanding WBDs into rural, agricultural areas. The

checklist did not address likely environmental impacts of removing the on-site production requirement and replacing it with a requirement that 60 percent of the products processed on-site must be grown on-site, and the loophole it creates in not requiring that a specific amount of sales must be of products produced on-site. The checklist did not address any likely environmental impacts associated with reducing minimum lot size or with allowing more events to occur during the summer months through temporary use permits or any potential water pollution effects of these changes.

The Board concluded that it was left with the definite and firm conviction that a mistake had been committed when the County issued the DNS. We agree. Overall, the number of changes created by the Ordinance, and the complete lack of engagement with the environmental portion of the SEPA checklist by the County supports the Board's conclusion. The County must *meaningfully* engage in the SEPA process when making a threshold determination and must complete a full environmental review where significant environmental impacts are likely to occur on land designated as agricultural.

CONCLUSION

We reverse the Court of Appeals and reinstate the Board's final decision and order.




Johnson, J.

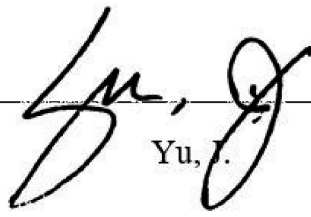
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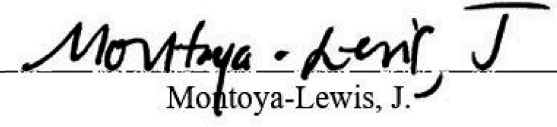
González, C.J.



Owens, J.



Yu, J.



Montoya-Lewis, J.

STEPHENS, J. (dissenting in part)— Land use planning in Washington takes place at the county level, and the Growth Management Hearings Board is tasked with reviewing county planning and zoning actions to ensure compliance with the Growth Management Act (GMA), ch. 36.70A RCW, and with the State Environmental Policy Act (SEPA), ch. 43.21C RCW. The Growth Management Hearings Board may invalidate a county action it finds to be in conflict with the requirements of the GMA, and it may order additional environmental review if it finds an action noncompliant with SEPA. But in fulfilling this oversight role, both under the GMA and SEPA, the Growth Management Hearings Board must afford deference to the county, presuming the validity of its actions absent a showing of clear error. Only where the factual record leaves the board with a “firm and definite conviction that a mistake has been committed” should it intercede, and the party challenging the action has the burden of demonstrating such error. *Lewis County v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006) (quoting *Dep’t of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)). This deferential standard of review requires that the board fully and accurately consider what the challenged plan or development regulation entails, as both a legal and factual matter.

Here, the Central Puget Sound Growth Management Hearings Board (Board) misinterpreted several provisions of King County Ordinance 19030 (Ordinance or Ordinance 19030). The Board also failed at times to presume the county's compliance with SEPA and the GMA absent an affirmative showing to the contrary. These errors caused the Board to erroneously invalidate the bulk of Ordinance 19030. I would largely affirm the well-reasoned opinion of the Court of Appeals, which properly construes the Ordinance and measures its impact in light of existing conditions under prior code. With one exception, discussed below, I would hold that the Ordinance complies with SEPA and the GMA, and remand to the Board for entry of a corrected order.

DISCUSSION

This case concerns challenges to Ordinance 19030 under both SEPA and the GMA. Part I of this opinion addresses the Board's SEPA analysis. With one exception, I agree with the Court of Appeals that the Board's findings are erroneous and should be reversed. Part II of this opinion concerns the Board's GMA analysis and explains how the Board misapplied the statute and erroneously invalidated the ordinance.

I. SEPA

SEPA is a procedural statute aimed at “injecting environmental awareness into all levels of governmental decision-making.” *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 80, 104, 392 P.3d 1025 (2017) (Stephens, J. dissenting). SEPA requires, at a minimum, that an agency’s responsible official make a threshold determination as to whether an action will “[have] a probable significant, adverse environmental impact.” RCW 43.21C.031, .033. This determination must be based on information reasonably sufficient to evaluate the environmental impact of the proposal and the agency must complete an environmental checklist to document its analysis. WAC 197-11-335, -315. Based on this checklist, the agency’s responsible official must then issue a determination of significance or a determination of nonsignificance (DNS), as the case may be. WAC 197-11-310, -330. It is incumbent on the agency to show that ““environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA.”” *Chuckanut Conservancy v. Dep’t of Nat. Res.*, 156 Wn. App. 274, 286-87, 232 P.3d 1154 (2010) (quoting *Juanita Bay Valley Cmty. Ass’n v. City of Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973)).

When challenged, a county’s determination that a full environmental review is unnecessary—or would be better deferred to a later stage of development—should

be reversed only where the Board finds it “clearly erroneous” on the facts presented in the record. *Norway Hill Pres. & Prot. Ass’n v. King County*, 87 Wn.2d 267, 273-74, 552 P.2d 674 (1976). Generally, if the Board finds a SEPA violation, it must remand for the county to come into compliance, and, pending further environmental review, the challenged action remains in effect absent a finding of GMA invalidity. When the Board finds an action noncompliant with SEPA, and judicial review is sought, courts review the Board’s legal conclusions de novo and its factual findings for substantial evidence. *Thurston County v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 164 Wn.2d 329, 190 P.3d 38 (2008). A party aggrieved by an agency decision is entitled to relief if they can establish one of the grounds enumerated in the Administrative Procedure Act (APA): the relevant grounds here being that the agency erroneously interpreted or applied the law or that the agency order is not supported by substantial evidence when viewed in light of the whole record before the court. RCW 34.05.570(3)(d), (e).

King County’s responsible official—Ty Peterson—was presented a checklist in which much of the impact analysis was reduced to some variation of “[n]ot applicable for this nonproject action.” Admin. R. at 33-45. The county had concluded that either the Ordinance was unlikely to significantly alter the status quo or that the impacts were too speculative to meaningfully review until after specific

proposals were submitted. There is nothing inherently wrong with deferring environmental review to the project stage. Indeed, as the Board noted in its order, “project level impacts may properly be deferred to the permitting stage.” Clerk’s Papers (CP) at 19. However, it is not permissible to defer environmental review for “impacts that are allowed by virtue of the change in designation itself.” CP at 19. In other words, “an agency may not postpone environmental analysis to a later implementation stage if the proposal would affect the environment without subsequent implementing action.” *Spokane County v. E. Wash. Growth Mgmt. Hr’gs Bd.*, 176 Wn. App. 555, 579, 309 P.3d 673 (2013). The question here is whether, based on the record, Ordinance 19030 has any effects that would likely impact the environment and that should have been included in the checklist to inform Mr. Peterson’s decision to issue a DNS.

The Board answered yes to this question, concluding that there were reasonably foreseeable environmental impacts that would flow directly from the Ordinance and that failure to at least consider those impacts in the checklist was clear error. Specifically, it found that (A) the county should have measured the anticipated impact of the Ordinance using a baseline condition that included no WBD uses rather than accepting existing “illegal” uses as part of the status quo, (B) the elimination of the on-site production requirement from the prior code would

“greatly facilitate the proliferation” of WBDs, (C) the demonstration project established by the Ordinance would override the requirement that 75 percent of the sites embraced by the Agricultural Production Buffer Special District Overlay (APB) be maintained as open space and would permit development previously disallowed, (D) the reduction in minimum lot sizes for WBDs in the rural area (RA) would lead to the proliferation of businesses in the RA zone, and (E) the system of temporary use permits created by the Ordinance would likely increase the frequency and intensity of events held at WBDs in the RA zone. CP at 22-32. The county assigns error to each of these findings, so I will consider them in turn. Given the deference owed to county planning and the legal framework for GMA and SEPA review, I conclude that the Board erred with respect to each finding except its analysis of section 25(E)(1) of the Ordinance.

A. The county appropriately factored existing WBD uses into the baseline environmental condition for purposes of its threshold determination

In evaluating the likelihood and intensity of environmental impacts, it is useful for agencies to establish a “baseline” condition against which the impacts of future conditions can be predicted. *Wild Fish Conservancy v. Wash. Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 869, 502 P.3d 359 (2022). How to ascertain the appropriate baseline will vary depending on the facts of the case, but we recently

indicated it should consider the “*condition* of the existing environment.” *Id.* at 872. In *Wild Fish Conservancy*, we held the appropriate baseline condition for the land—which had previously been used to farm Atlantic salmon, a use that would shortly be disallowed—was the “existing condition of the environment of Puget Sound, which ha[d] been subject to commercial salmonid farming for over three decades.” *Id.* We rejected the petitioner’s contention that the baseline should be the condition of Puget Sound *without* salmonid farming, instead, recognizing that the proposal ““must degrade the existing condition of the environment to have significant adverse impact.”” *Id.* at 871. In other words, the agency may appropriately take the environment as it finds it and need determine only whether its action is likely to *further* significantly degrade the environment. Failure to improve or restore environmental conditions is not an adverse environmental impact in itself. *Id.*

Certainly, the concerns voiced by petitioners here evoke sympathy, at least in the abstract. If the county were to turn a blind eye to noncompliant uses that degrade the land, and then amend its regulations to bless those same noncompliant uses, this could effectively short-circuit SEPA review. The Board believed such was the case, finding that Ordinance 19030 legalized existing “illegal” uses of the land that had a negative environmental impact and that the county failed to consider the conditions that would exist on the land had it fully enforced existing code provisions. But as

the Court of Appeals correctly pointed out, the record does not support this conclusion. On the contrary, the existing King County Code (KCC) already permitted WBD uses in the agricultural and RA zones and allowed for tasting rooms in the RA zone.¹ It does not follow that because some of those businesses may have been noncompliant with the prior code to some degree, the county could have shut them down entirely, resulting in a baseline without WBDs. Further, the licensing scheme under section 11(B) of Ordinance 19030 requires existing WBDs to either demonstrate that their business complies with prior code—in which case the environmental impact would remain constant—or that it has taken steps to comply with the expanded requirements of Ordinance 19030.

The Board misinterpreted the legal effect of Ordinance 19030 by failing to account for the full extent of WBD development already permissible under prior code. This, in turn, led the Board to the erroneous conclusion that the environmental impact to be considered was the difference between the Sammamish Valley absent any such uses and the proliferation of uses it foresaw under Ordinance 19030—a stark and erroneous comparison. The appropriate analysis, which the county

¹ Ordinance 14781, enacted in 2003, added “winery/brewery” as a permitted use in the A and RA zones and allowed tasting of products produced on-site. In 2013, the county enacted Ordinance 17539, adding distilleries to the list of permitted uses alongside wineries and breweries, and subject to the same development conditions.

followed, instead compares the potential environmental impacts of prior code—which already authorized much of what Ordinance 19030 addresses—to determine whether any aspects of Ordinance 19030 would clearly intensify the environmental impacts of WBDs in *excess* of what was previously allowable. Without a clear understanding of what was previously allowed, the Board did not reasonably afford deference to the county’s determination. A discussion of the remaining SEPA findings demonstrates more specific ways the Board mischaracterized the nature of the change brought about by Ordinance 19030 and thus erroneously invalidated the Ordinance.

- B. The Board erroneously interpreted Ordinance 19030 as eliminating the on-site production requirements and paving the way for “sham” WBDs to sell products produced off-site

King County’s prior code allowed for the “tasting of products produced onsite.” King County Ordinance 17539. Ordinance 19030 amends this language to read that “tasting and retail sales of products produced on-site may occur only as accessory to the primary winery, brewery, distillery production use and may be provided in accordance with state law.” The Board interpreted the prior code as limiting tasting to only those products produced on-site and read Ordinance 19030 as instead permitting tasting and sales of beverages produced anywhere. This is a clear misreading of the Ordinance. By its express terms, Ordinance 19030

authorizes tasting and retail sales only of “products produced on-site” and further limits these activities by requiring they be subordinate to the primary winery, brewery, or distillery production use.

The majority likewise misstates the effect of Ordinance 19030 as creating a “loophole” by failing to require a specific amount of sales be from products produced on-site. Majority at 38. A proper reading of the Ordinance shows that it requires 100 percent of beverage sales be of products produced on-site. And whereas prior code did not actually define when a product could be deemed “produced on-site,” Ordinance 19030 requires at least two stages of production—including crushing, fermenting, barrel or tank aging, or finishing—occur on-site, and that one of these activities be crushing, fermenting, or aging. There is nothing to suggest how this amendment is likely to lead to a proliferation in WBD facilities when, if anything, it is *more* restrictive than prior code in defining what may be sold at WBD facilities.

C. The Board erred in reading Ordinance 19030 as conflicting with county policies governing the development of residential subdivisions within agricultural production buffer districts

The Board further concluded that by establishing the demonstration project—which newly allows for “remote tasting rooms” (RTRs) on 13 parcels of land in the RA zone—the Ordinance was likely to have additional environmental impacts, especially in view of the fact these developments would be allowed within an APB

in violation of KCC 21A.38.130. This code provision dictates that for residential subdivisions locating in an APB, “[l]ots shall be clustered in accordance with K.C.C. 21A.14.040 and at least seventy-five percent of a site shall remain as open space, unless greater lot area is required by the Seattle-King County department of public health.” The Board read Ordinance 19030’s provisions governing the development of RTRs as “overrid[ing] existing code.” CP at 24. But as the Court of Appeals pointed out, there is no conflict between the Ordinance and APB policy because, by its express terms, the policy applies only to residential subdivisions. *King County v. Friends of Sammamish Valley*, 26 Wn. App. 2d 906, 530 P.3d 1023 (2023). The Board’s contrary reading is clearly erroneous.

D. It is unclear that reducing the minimum lot size for WBD II uses would result in a net increase in parcels eligible for WBD development

The Board found that by reducing the minimum lot size for WBD uses in the RA zone from 4.5 to 2.5 acres, Ordinance 19030 “increases the number of parcels eligible for siting of WBD[s].” CP at 25. But again, the Board failed to consider the proper baseline as to how many parcels could already be developed for WBD uses and the intensity of environmental impacts reasonably anticipated from those uses. As the county points out, prior code made virtually *every* parcel in the RA zone eligible for some level of WBD development under the allowance for “home

industries.” Per KCC 21A.30.090, home industries may be sited on parcels one acre or greater. In assessing the impact of Ordinance 19030, the county reasonably assumed that eliminating home industry WBDs while simultaneously decreasing the minimum lot requirement for some WBD uses in the RA zone to 2.5 acres would have a neutral impact on the overall intensity of development and its attendant environmental impact. While other approaches might have been taken, it was not clear error for the county to offset the newly allowed and disallowed uses in its assessment.

- E. The Board failed to consider the extent to which special event permitting for WBDs was already allowed under prior code, which contained fewer express limitations on the discretion of permit issuers

The Board opined that Ordinance 19030 would newly allow the county to “exempt WBD [e]vent [c]enters from zoning restrictions,” using a system of temporary use permits, thereby overriding zoning limitations on building occupancy, use of portable toilets, parking, performance stages, tents, traffic controls, and operating hours, and all without any “attempt to quantify the amount of development that will become allowable.” CP at 26. The Board also stated that the Ordinance would allow WBD II and III facilities to cluster their special events in the summer months by changing the allowance from 2 per month to 24 per year, and chafed at the checklist’s failure to “disclose what number of events currently occur with such

concentration being prohibited.” CP at 26-27. The Board’s analysis here is flawed in two regards. First, the Board failed to note that temporary use permits were already available under prior code and that prior code contained fewer express limitations on what permit reviewers could approve.² Second, in assessing the relative environmental impact of Ordinance 19030 vis-à-vis prior code, the Board failed to make the proper comparison between the maximum use the land could be put to under each scenario. Beyond mere surmise, the Board provided no basis for determining whether, as a practical matter, limiting events to 2 per month would result in fewer events per year than if WBDs could host all of them during the summer. Given the language of the provisions, we must assume the full allotment of events would occur under either scheme, and there is therefore no “expansion” of the number of allowable events. At any rate, the county did not clearly err in assessing impacts based on such an assumption.

² Previously, KCC 21A.32.100, governing temporary use permitting, provided only that a permit was required for “[a] use not otherwise permitted in the zone that can be made compatible for a period of up to sixty days a year” or the expansion of an established use that “(1) [i]s otherwise allowed in the zone; (2) [i]s not inconsistent with the original land use approval; (3) [e]xceeds the scope of the original land use approval; and (4) [c]an be made compatible with the zone for a period of up to sixty days a year.” Prior code contained no clear direction on when the need for a permit would be triggered and contained no express limitations on occupancy.

However, the Board was right to call out Ordinance 19030's exemption for WBDs II and III uses in section 25(E)(1). That proviso waives the requirement that WBD II and III uses be pursuant to a temporary use permit in specific circumstances: if the WBDs were already operating under a Washington State Liquor and Cannabis Board production license before the effective date of Ordinance 19030, the parcel on which they operate is at least 8 acres, the structures used for events maintain a setback of at least 150 feet from interior property lines, the parcel is located in the RA zone, the parcel has direct access to a principal arterial or state highway, and the events not use amplified outdoor sound before 12:00 p.m. or after 8:00 p.m. If these criteria are met, the venue is free to hold as many as 96 events a year without need for any temporary use permits.

The Board found there were five parcels in the Sammamish Valley that could take advantage of this exemption and that the county made no attempt to quantify how much additional impact could be expected. CP at 27. I agree the record supports the Board's conclusion that this amendment would likely result in an appreciable uptick in events on the covered properties, and that SEPA requires something more than a cursory glance before the county could reasonably conclude the environmental impacts would be insignificant. Accordingly, I join in affirming the portion of the decision invalidating this provision.

Overall, however, the Board failed to afford proper deference to the county's assessment of environmental impacts because it conducted its review using a flawed understanding of the baseline against which to assess Ordinance 19030 and the effect of its provisions. Without taking into account the existing conditions prior to the Ordinance, the Board could not reliably identify what actually changed and whether any changes would likely result in additional environmental impacts beyond those that could be expected under prior code. This is true for all the Board findings save its analysis of the exemption for WBD II and III uses outlined in section 25(E)(1) of the Ordinance, where the negative impact is clearly shown. I would reverse the Board's findings of SEPA noncompliance except as applied to this single provision, for which I would affirm both the remand order and the order of invalidity.

I turn now to the Board's determination that the Ordinance is out of compliance with the GMA.

II. GMA

The GMA, dating to 1990, requires counties with specified populations to adopt comprehensive growth management plans. RCW 36.70A.040. Unlike SEPA, which is a procedural statute, the GMA imposes substantive limitations on the planning discretion of covered jurisdictions. Relevant here are those provisions mandating the designation and preservation of agricultural lands. Additionally, the

GMA requires that comprehensive plans be internally consistent and that development regulations be “consistent with and implement the comprehensive plan.” RCW 36.70A.130(1)(e). A regulation or land use decision that fails to generally conform to the county’s comprehensive plan is, by extension, a violation of the GMA and invalid. In this case, the Board found Ordinance 19030 violated the GMA provisions governing allowable accessory uses on agricultural lands, and that it further violated the GMA by internally conflicting with King County’s own plan concerning agricultural production district buffer zones and policies concerning the preservation of rural land uses.

When reviewing plans and development regulations for compliance with the GMA, the Board must presume validity “unless [the Board] determines that the action by the . . . county . . . is clearly erroneous in view of the entire record before the [B]oard and in light of the goals and requirements of [the GMA].” RCW 36.70A.320 (1), (3). When a Board’s final order is challenged under the APA, courts review its findings of fact for substantial evidence, and its legal conclusions de novo, although we accord substantial weight to the Board’s interpretations of the GMA’s requirements in view of its experience and technical expertise in this area. *Thurston County*, 164 Wn.2d at 341-42.

A. The Board erroneously read Ordinance 19030 to authorize the repurposing of prime agricultural lands in violation of RCW 36.70A.170 and RCW 36.70A.177

A mandatory element of comprehensive plans is the designation of agricultural lands of long-term commercial significance. RCW 36.70A.170. Once so designated, the county must protect these agricultural lands and ensure that the uses of adjacent lands do not interfere with their continued viability as farmland. RCW 36.70A.067. While the GMA permits counties to use “innovative zoning techniques” to encourage the economy in agricultural areas, their discretion is constrained by the mandate to reserve prime agricultural soils for agricultural uses. RCW 36.70A.177; *King County v. Cent. Puget Sound Growth Mgmt. Hr’gs Bd.*, 142 Wn.2d 543, 14 P.3d (2000). To that end, RCW 36.70A.177 places specific limitations on accessory uses in agricultural zones. If the accessory use is nonagricultural—for example, developing new buildings, parking, or supportive uses—such use must be designed and operated in a manner that does not interfere with the overall agricultural use of the property and neighboring properties; specifically, nonagricultural uses may not be located outside the general area already developed, and they may not convert more than one acre of agricultural land. RCW 36.70A.177(3)(a), (b)(ii). The GMA advises counties to limit accessory uses to portions of the land with poor soils or that are otherwise unsuitable for agriculture.

RCW 36.70A.177(1). If the accessory use is agricultural, it must be designed and operated in harmony with the agricultural uses of the property, although the GMA imposes no quantitative spatial limitations on such uses. RCW 36.70A.177(3)(b)(i).

The Sammamish Valley Agricultural Production District is designated agricultural land. Unless and until the county redesignates this area, the primary use must be agricultural. RCW 36.70A.030(3), .060. The Board believed Ordinance 19030 stood at odds with this requirement, finding it thwarts the conservation of productive agricultural land in violation of RCW 36.70A.060(1)(a); fails to restrict agricultural accessory uses to those that are consistent with the size, scale, and intensity of existing agricultural uses of the property in violation of RCW 36.70A.177(3)(b)(ii); allows the conversion of agriculturally viable land to incompatible uses in violation of RCW 36.70A.177(3)(b)(ii); and sanctions events that are likely to interfere with the continued agricultural uses of WBD properties and neighboring lands in violation of RCW 36.70A.177(3)(a), RCW 36.70A.070(5)(c)(v), and RCW 36.70A.060(1)(a). This was error because these conclusions lack support in the record.

To start, the Board's order is unduly skeptical—mocking, even—of the county's argument that wine making—and by extension, wine tasting—could be considered an agricultural accessory use, retorting that “[u]nder this definition,

consuming a hamburger at a fast-food tasting room is an agriculturally-related experience if some portion of the meat, lettuce, tomato or other ingredient are produced onsite.” CP at 37. This ignores that viticulture plainly *is* agriculture, and that the on-site production requirement, paired with the requirement that 60 percent of inputs be grown on-site, means that over half the WBDs sales must be derived from produce—for example, grapes—grown on the property. RCW 36.70A.030(6) (“‘Agricultural land’ means land primarily devoted to the commercial production of . . . viticultural . . . products.”) To the extent the order acknowledged the Ordinance’s restrictions, it dismissed the 60 percent threshold as sufficient for GMA compliance on the ground that “[the county] cites no statute that allows [it] to establish that a use is accessory by setting a bright-line threshold of onsite production or manufacturing.” CP at 39. This approach unduly restricts planning discretion and turns the standard of review on its head, requiring that the county affirmatively prove GMA compliance rather than making the petitioners prove noncompliance.

The Board also found the Ordinance would increase the amount of agricultural land available for development, both in the quantity of eligible parcels and the portions of which such lands could be converted to buildings, parking, or other accessory uses. As to the quantity of eligible parcels, the Board again credited the petitioners’ claim that reducing the minimum acreage to site a WBD II in the RA

zone from 4.5 to 2.5 acres would increase the number of WBDs in the area and increase the chance that those uses could conflict with neighboring farms in the A zone. But as discussed above, this concern is not substantiated in the record, the Board having failed to account for the number of parcels already eligible for WBD development under prior code.

At a more granular level, the Board was concerned that by instructing WBDs in the A zone to site their nonagricultural accessory structures on portions of the land “without prime agricultural soils,” the Ordinance, by negative implication, encourages them to build on soils that, while not “prime,” are still viable farmland. CP at 37 (quoting Ordinance 19030). The Court of Appeals dismissed this concern, explaining that in applying Ordinance 19030, “the County must follow section .177, it may permit WBDs in agricultural lands only when the primary use on site is growing crops or raising livestock, and it may permit WBD facilities to be sited only on portions of agricultural land unsuitable for agricultural purposes.” *Friends of Sammamish Valley*, 26 Wn. App. 2d at 932-33. Neither interpretation is entirely correct, in my view.

RCW 36.70A.177 states that nonagricultural accessory uses shall be confined to those portions of the land “already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to

nonagricultural uses.” This means the accessory structures—whether buildings, parking, or supportive uses—must be clustered near existing development. Of course, this might mean that viable agricultural land directly abutting existing buildings will be converted, but in no case more than one acre. Ordinance 19030 could be read to conflict with this, at least insofar as it suggests development may occur *either* on land within the already developed portion of agricultural lands *or* on lands without prime soils, whether clustered near existing development or not. But, this reading does not follow if there is a way to harmonize these provisions. *Associated Gen. Contractors of Wash. v. State*, 2 Wn.3d 846, 864, 544 P.3d 486 (2024) (“we attempt to harmonize statutes even if they are not completely ambiguous”). And indeed, they can be harmonized: where a portion of the land has already been developed for buildings and residential uses, nonagricultural uses must be sited in this general area and shall not convert more than one acre of agricultural land. If, however, the land has not previously been developed, a nonagricultural accessory use must be confined to lands without prime soils and again may not convert more than one acre of agricultural land. Further, all accessory uses must be designed and operated “so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties.” RCW 36.70A.177(3)(a).

Lastly, there are insufficient findings to support the Board's conclusion that events of the size and frequency permitted by the Ordinance, without additional setback requirements, would violate the GMA by interfering with agricultural uses of neighboring properties. The Board failed to presume such uses are GMA-compliant and require a clear showing to the contrary. Moreover, as the Court of Appeals noted, the Board "overlook[ed] that temporary use permits are subject to the County's discretion to impose limitations to avoid the conflicts the Board fears." *Friends of Sammamish Valley*, 26 Wn. App. 2d at 936. The Board's concerns seem more focused on the county's ability or willingness to diligently enforce its code provisions than on the express provisions of the Ordinance being challenged. Applying the required presumption that the county will enforce the new code, there is no basis for the Board's finding of noncompliance with the GMA.

B. Ordinance 19030 does not fail to generally conform with the county's comprehensive plan and policies

Finally, the Board's conclusion that Ordinance 19030 conflicts with the county's own comprehensive plan and policies is unsupported. RCW 36.70A.130(1)(e) requires that "[a]ny amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." The Board found several aspects of Ordinance 19030 to conflict with King County's

comprehensive plan (KCCP) and concluded they were invalid under the GMA. Specifically, it found Ordinance 19030 failed to conform with KCC 21A.38.130 (Special district overlay – agricultural production buffer) and KCC 21A.32.040 (Nonconformance – abatement of illegal use, structure or development).³ The first finding is plainly unsupported, as explained above: the Board erred in concluding the demonstration project violated the county’s APB policy SO-120 because that provision deals solely with the development of *residential subdivisions* in APB zones. The Court of Appeals correctly recognized that “Ordinance 19030 does not authorize any ‘residential subdivisions’ and does not authorize any use that would not still be subject to SO-120.” *Friends of Sammamish Valley*, 26 Wn. App. 2d at 939.

The Board also found the demonstration project violated KCC 21A.32.040, which states:

Any use, structure or other site improvement not established in compliance with use and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the provisions of K.C.C. Title 23.

³ The petitioners also challenged Ordinance 19030 as inconsistent with KCCP farmland and environmental policies but the board found the matter was not ripe for review “until the County has remedied the areas of SEPA and GMA noncompliance already identified.” CP at 42.

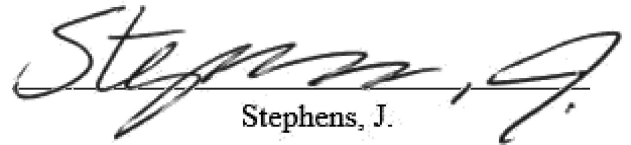
The Board believed existing WBD uses within the demonstration project zone were “apparently unlawful” and would be subject to termination under this code provision, and that by “legalizing” these uses, Ordinance 19030 frustrates the policy of KCC 21A.32 .040. CP at 48-49. But again, this conclusion rests on the faulty premise that the uses were, in fact, “illegal” and terminable through code enforcement. This conclusion is not supported by substantial evidence, as there is no showing that enforcement actions would have succeeded in shuttering any existing WBDs in the Sammamish Valley.

In sum, the Board erred in finding Ordinance 19030 violates the GMA because it misconstrued key provisions and erroneously put the burden on the county instead of requiring the Ordinance challengers to prove noncompliance. The Board’s finding that Ordinance 19030 would lead to a proliferation of WBD developments in excess of what was already permissible requires conjecture and is unsupported by the record. Further, the Board failed to accord section 18(B)(3)(g) of the Ordinance a reasonable construction that would avoid conflict with RCW 36.70A.177(3)(b)(ii), as required by settled rules of statutory construction. It also erred in concluding that Ordinance 19030 conflicts with KCC 21A.38.130, as that provision is plainly inapplicable to the type of development contemplated by the challenged Ordinance. And finally, the Board’s conclusion that KCC 21A.32.040

required the county to seek the abatement of existing WBD uses rests on the faulty premise—unsupported by the record—that those uses were illegal under the prior code. The Court of Appeals properly reversed the Board’s finding of noncompliance with the GMA, and so would I.

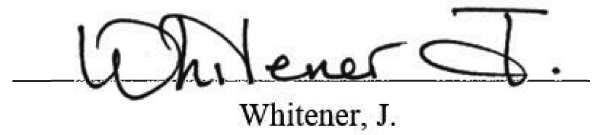
CONCLUSION

The Board’s SEPA and GMA analyses suffer from a fundamental misunderstanding of what Ordinance 19030 permits, how it differs from prior code, and its compatibility with related provisions of the GMA and the county code. At times, the errors arise from a misreading of the Ordinance itself or relevant portions of SEPA and the GMA. These are legal errors subject to reversal under RCW 34.05.570(3)(d). In addition, key factual findings are unsupported by sufficient evidence that, coupled with the Board’s failure at times to presume the county’s compliance absent a showing to the contrary, undercuts the Board’s ultimate determination of SEPA and GMA noncompliance and constitutes both a legal and factual error subject to reversal under RCW 34.05.570(3)(d) and (e). I would affirm the Court of Appeals and reverse the Board’s final order—except as to that portion of its decision invalidating section 25(E)(1) of the Ordinance for noncompliance with SEPA.


Stephens, J.


Madsen, J.


Gordon McCloud, J.


Whitener, J.

**State of Washington
Energy Facility Site Evaluation Council**

**Goldeneye Battery Energy Storage System Project
EFSEC Docket No: 240004
NOTICE OF INFORMATIONAL PUBLIC HEARING
AND LAND USE CONSISTENCY HEARING
August 13, 2024
5:00 PM**

PLEASE NOTE—this notice is updated to correct an error in the date of the Land Use Hearing.

Description of Proposal: On June 27, 2024, the Washington State Energy Facility Site Evaluation Council (EFSEC) received an application for the proposed construction of a renewable energy facility in Skagit County, Washington. The Application for Site Certification (ASC) from Goldfinch Energy Storage, LLC proposes the construction of a 200-megawatt (MW)/800-megawatt hour (MWh) battery energy storage system (BESS), located in unincorporated Skagit County, Washington. The ASC and other materials are posted on the EFSEC website: <https://www.efsec.wa.gov/energy-facilities/goldeneye-bess>.

Proponent: Goldfinch Energy Storage, LLC
412 West 15th Street, 15th Floor
New York, New York 10011

State Environmental Policy Act (SEPA) Lead Agency: EFSEC

SEPA Threshold Determination Required: A threshold determination is required to determine whether an Environmental Impact Statement (EIS) is required. The threshold determination will be made based on the probable project impacts identified in the information presented in the ASC. A threshold determination of non-significance (DNS) may be issued if the SEPA responsible official (EFSEC Director) determines there will be no probable significant adverse environmental impacts. An EIS is not required if a DNS is issued.

Meeting Location: The Public Information Meeting and Land Use Consistency Hearing will be hybrid, held in-person and virtually via Microsoft Teams. You may attend the meeting in person at:

Sedro-Woolley Community Center
703 Pacific St
Sedro-Woolley, WA 98284

Additional information about the venue, such as maps and directions, can be found on our website: <https://www.efsec.wa.gov/energy-facilities/goldeneye-bess>. You may attend the meeting virtually via Microsoft Teams, or via phone:

- Meeting link: <https://bit.ly/GoldeneyeInfoMtgLUH>
- Call-in number: +1 (564)-999-2000, Conference ID: 507869111#

To better facilitate the hybrid format, EFSEC asks speakers to sign up ahead of the meeting. Anyone wishing to speak during the Public Information Meeting or the Land Use Hearing, please notify EFSEC by phone at (360) 664-1345 or email at efsec@efsec.wa.gov before 5:00 pm on August 13, 2024. Please review EFSEC's public meeting rules on our website: <https://www.efsec.wa.gov/about-efsec/public-meeting-ground-rules>.

Public Comment: Public Comment will be accepted during both the Public Information Meeting and Land Use Consistency Hearing. If you are unable to attend the meeting, please send your comment in writing to efsec@efsec.wa.gov, or by postal mail to the EFSEC office mailing address below. An online database will also be open during the meeting at <https://comments.efsec.wa.gov/> for the submission of written comments.

Energy Facility Site Evaluation Council
P.O. Box 43172
621 Woodland Square Loop
Olympia, WA, 98504-3172

Open House: August 13, 2024, 5pm – 5:30pm: The Applicant and EFSEC staff will be available to answer questions about the Project and the EFSEC review process.

Public Information Meeting: August 13, 2024, 5:30 – 7 PM or last speaker, whichever comes first: As required by RCW 80.50.090 (1) and WAC 463-26-025, EFSEC will hold a Public Information Meeting. At this meeting, EFSEC Staff and the Applicant will introduce themselves. The Counsel for the Environment, an Assistant Attorney General appointed by the Washington Attorney General, will be introduced and will explain the duties of this position. The Applicant and EFSEC staff will then make presentations. Following the presentations, the public will be invited to provide comments. In order to allow as many speakers as possible, speakers will have limited minutes to provide comments, and any additional comments will be directed to be submitted online or postal mail. Duration of speaking time will be announced at the meeting, depending on the number of speakers signed up.

Land Use Consistency Hearing: August 13, 2024, 7 PM – 8:00 PM or last speaker, whichever comes first: As required by RCW 80.50.090 (2) and WAC 463-26-035 at approximately 6:30 PM, EFSEC will hold a Land Use Hearing. During this hearing, the public will be given an opportunity to provide testimony regarding the proposed Project's consistency and compliance with land use plans and zoning ordinances. In order to allow as many speakers as possible, speakers will have limited minutes to provide comments, and any additional comments will be directed to be submitted online or postal mail. Duration of speaking time will be announced at the meeting, depending on the number of speakers signed up.

Note: The Land Use Consistency Hearing will begin no later than 30 minutes after the conclusion of the Public Information Meeting, which may end before 7 PM.

For information regarding the project, please contact EFSEC Site Specialist Zia Ahmed at (360)-515-2015, or by email at zia.ahmed@efsec.wa.gov. If you have special accommodation needs or need language translation services to provide your comment, please contact EFSEC staff at (360) 664-1345 or send an email to efsec@efsec.wa.gov.

NOTE: This is the last notice you will receive by mail. If you wish to continue to receive notices for this project, please sign up for the Goldeneye Battery Energy Storage System (BESS) project email list by visiting our website at: <https://www.efsec.wa.gov/energy-facilities/goldeneye-bess>.

Notices soliciting public comment—Time period.

(1) A public agency that is required by state law to solicit public comment for a statutorily specified period of time, and is required by state law to provide notice that it is soliciting public comment, must specify the first and last date and time by which written public comment may be submitted.

(2) An agency that provides a notice that violates this section is subject to the same fines under the same procedures as other violations of this chapter are subject to under RCW 42.30.120.



Respondent No: 2

Login: Anonymous

Email: n/a

Responded At: Jan 06, 2025 12:11:37 pm

Last Seen: Jan 06, 2025 12:11:37 pm

IP Address: n/a

Q1. **First & Last Name** Jessica Hu

Q2. **Email address** design@parkerhu.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

We do not support any building of these sites until sufficient research and public disclosure is made available. How are you going to stop a fire that all around the world experts still cannot figure how to safely put out or plan for? What about local schools and the environment? This type of technology is not being handled with enough caution.

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered



Respondent No: 3

Login: Anonymous

Email: n/a

Responded At: Jan 06, 2025 14:28:09 pm

Last Seen: Jan 06, 2025 14:28:09 pm

IP Address: n/a

| | |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | Rick Hartson |
| Q2. Email address | rickh@upperskagit.com |
| Q3. Are you part of an Agency or Organization? | Yes (please specify) Upper Skagit Indian Tribe |
| Q4. Share any comment | not answered |
| Q5. Upload your document or picture (optional) | https://s3-us-west-1.amazonaws.com/ehq-production-us-california/b7a361bb404912dd06c5982e1ffc814469c58eb1/original/1736202484/169544f2722d3ddc819f235b2283db0e_USIT_itr_Gold_eneye_EFSEC_Land_Use_Order_encl.pdf?1736202484 |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Upper Skagit Indian Tribe
25944 Community Plaza Way,
Sedro Woolley, WA 98284
Phone (360) 854-7090 Fax (360) 854-7042

Uploaded to <https://comments.efsec.wa.gov/january-2025-upcoming-action-item-goldeneye-bess-land-use-consistency-draft-order>

January 6, 2025

Energy Facility Site Evaluation Council
621 Woodland Square Loop
P.O. Box 43172
Olympia, WA 98504-3172

RE: Upper Skagit Tribe comments on Order Determining Land Use Consistency for the Goldeneye Storage Project

To the Energy Facility Site Evaluation Council,

The Upper Skagit Indian Tribe (Tribe), a federally recognized Indian Tribe and signatory to the 1855 Treaty of Point Elliot, submits this letter concerning the Goldeneye Storage Project, a battery energy storage system proposed for unincorporated Skagit County. Goldfinch Energy Storage, LLC submitted an Application for Site Certification (Application) to the Energy Facility Site Evaluation Council (EFSEC) on June 27, 2024. On January 15, 2025, the EFSEC will consider an Order Determining Land Use Consistency that, if approved, would find the Project consistent with local land use plans and zoning ordinances. According to the order, EFSEC evaluation of land use consistency is not dispositive of the Goldeneye Project application and a determination of land use consistency is neither an endorsement nor an approval of the project.

The Tribe considers the upcoming decision of great importance and urges the EFSEC to deny the Order Determining Land Use Consistency. The Tribe submitted a letter on September 9, 2024 explaining concerns with the Goldeneye Project. It is necessary to modernize the power grid and improve reliability of renewable energy sources, but the Goldeneye Project would pose undue risk to treaty-reserved resources, including anadromous salmon and steelhead. The project would be located along Hansen Creek, which is designated Critical Habitat for federally-listed Chinook Salmon and Steelhead Trout and has been a focus of local salmon recovery efforts. The confluence with the Skagit River is approximately 1.5 miles downstream from the proposed project site. Considering the importance of Skagit Basin stocks for Puget Sound salmon recovery, there is potential for wide-reaching consequences. The proposed location of the Goldeneye Project poses too great a threat to salmon recovery.

The Tribe requests that the EFSEC deny the Order Determining Land Use Consistency and recommend to the Governor's office that the Goldeneye Application for Site Certification be rejected. If you have questions or wish to discuss in greater detail, please contact the Tribe's Policy Representative, Scott Schuyler, (360) 854-7009, scotts@upperskagit.com.

Sincerely,



Doreen Maloney
General Manager
Upper Skagit Indian Tribe

Cc:

Board of Skagit County Commissioners
JT Austin, Assist. Director of Policy & Planning, Washington Governor's Office of Indian Affairs
Julia Johnson, Mayor, City of Sedro Woolly
Elizabeth Babcock, Supervisor, North Puget Sound Branch, National Marine Fisheries Service
Jennifer Washington, Chairwoman, Upper Skagit Indian Tribe
Scott Schuyler, Policy Representative, Upper Skagit Indian Tribe

Enclosure:

Letter from Upper Skagit Indian Tribe dated September 9, 2024, to Energy Facility Site Evaluation Council regarding the Application for Site Certification of the Goldeneye Energy Storage Project



Upper Skagit Indian Tribe
25944 Community Plaza Way,
Sedro Woolley, WA 98284
Phone (360) 854-7090 Fax (360) 854-7042

Submitted electronically to comments@efsec.wa.gov; hard copy to follow

September 9, 2024

Energy Facility Site Evaluation Council
621 Woodland Square Loop
P.O. Box 43172
Olympia, WA 98504-3172

RE: Goldeneye Energy Storage Project

To the Energy Facility Site Evaluation Council,

Upper Skagit Indian Tribe (Tribe), a federally recognized Indian Tribe and signatory to the 1855 Treaty of Point Elliot, submits this comment letter in response to the June 2024 application for site certification by Goldfinch Energy Storage, LLC for the Goldeneye Energy Storage Project. The Tribe recognizes the need to modernize the power grid, including development of renewable and carbon-neutral modes. However, the proposed location of the project would potentially cause unique harm to the Tribe, including impacts to treaty protected resources, as well as unmitigated cultural impacts. As such, the Tribe opposes the project as described in Goldfinch's application.

The project would be located adjacent to Hansen Creek, which is an important salmon and steelhead stream. Hansen Creek supports four species of anadromous salmon and Steelhead Trout, has designated critical habitat for ESA-listed Chinook Salmon and Steelhead Trout, and is a priority tributary for restoration (Skagit Watershed Council, 2022). During the last several decades, millions of public funds have been used for habitat restoration throughout the watershed, with large-scale actions between the Northern State Recreation Area and Minkler Road, resulting in improved habitat and ecological function through alluvial fan sediment processes, wetland restoration, floodplain reconnection, riparian planting, property acquisition and restored longitudinal connectivity. This substantial progress toward salmon recovery has been possible through partnerships among local governments, tribes, and Puget Sound Energy.

The proposed development, located within the Skagit River 100-year floodplain and encompassing a section of Hansen Creek, would restrict future restoration opportunities. Were the properties available for restoration purposes, it would be possible to build upon the actions completed upstream of Minkler Road. Future restoration could include floodplain reconnection,

riparian planting, and replacement of the Minkler Road Bridge. The proposed location of the Goldeneye project would limit the feasibility and scope of such future actions.

The Goldeneye project would harm resources and critical areas along Hansen Creek. As proposed, the project would lock the existing riparian zone in a degraded state, which ignores the intent of existing regulatory mechanisms, including the state Growth Management Act and Shoreline Management Act (e.g. RCW 36.70A.020). Additionally, new structures and fill would be added to the Skagit River floodplain, in contradiction to the requirements of the FEMA Puget Sound Floodplain Biological Opinion (NOAA, 2007) and the strategy described in the 2005 Skagit Chinook Recovery Plan to protect and restore large river and tributary floodplains. The Goldeneye project goes the wrong direction by expanding development in sensitive floodplain areas. The Flood Analysis completed in Attachment K is inadequate, as it assesses Hansen Creek floods. The project would place fill in the Skagit River floodplain, hence a flood analysis and habitat impact assessment are required to determine the effect on Skagit River flood elevations and floodplain habitat (Skagit County Code, Chapter 14.34). Meanwhile, the proposal to use mitigation bank credits to compensate for unavoidable impacts would result in off-site mitigation and overall degradation to the Hansen Creek watershed.

The risk of contamination to soil and groundwater posed by fire is not described. The application provides high level details for the avoidance and suppression strategy, but the consequences of fire are not discussed (Attachment N). It is necessary to understand the fate of battery chemicals and any fire suppression chemicals that may be used. The application does not adequately describe how far downstream the impact would likely extend, but at approximately 1.5 miles away, the Skagit River appears at risk. Presence of shallow groundwater, prevailing drainage gradients and potential dispersal of hazardous materials clearly puts Hansen Creek at high risk (Attachment L). Environmental remediation would be exceedingly damaging and it would be essentially impossible to avoid impacts to cultural resources. The Tribe has experienced first-hand the degree of ground disturbance and resource damage in the wake of industrial accidents (the Olympic Pipeline gasoline spill in December 2023 provides a recent example). The application should explain the likelihood of contamination and the potential extent and degree of resource damage.

The Tribe shares concerns of Skagit County regarding how the project would conflict with the Comprehensive Plan and long-term strategies to restrict development on key resource lands (see press release from Skagit County Commissioners dated August 28, 2024). Skagit tribes and local governments are engaged in dialogues to balance interests and achieve shared values on the landscape. In the Skagit River floodplain this means finding ways for agriculture and salmon recovery to coexist and thrive. The land development described in the Goldeneye application would interfere with these efforts by altering resource-rich land in a key part of the watershed. These decisions are best left to the local governments and Tribes that know these issues intimately.

Construction of the Goldeneye project would cause unavoidable damage to Tribal cultural and natural resources. The Tribe opposes the project and urges the Energy Facility Site Evaluation

Council to recommend to the Governor's office that Goldfinch's application be rejected. If you have questions or desire follow up, please contact the Tribe's Policy Representative, Scott Schuyler, (360) 854-7009, scotts@upperskagit.com.

Sincerely,



Doreen Maloney
General Manager

Cc:

Ron Wesen, Commissioner, Skagit County

Lisa Janicki, Commissioner, Skagit County

Peter Browning, Commissioner, Skagit County

JT Austin, Assist. Director of Policy & Planning, Washington Governor's Office of Indian Affairs

Julia Johnson, Mayor, City of Sedro Woolly

Jennifer Washington, Chairwoman, Upper Skagit Indian Tribe

Scott Schuyler, Policy Representative, Upper Skagit Indian Tribe



Respondent No: 4

Login: Anonymous

Email: n/a

Responded At: Jan 07, 2025 18:11:50 pm

Last Seen: Jan 07, 2025 18:11:50 pm

IP Address: n/a

Q1. **First & Last Name** Mikala Staples Hughes

Q2. **Email address** mikalastaples@gmail.com

Q3. **Are you part of an Agency or Organization?** No

Q4. Share any comment

Dear Members of the Washington State EFSE Council, I am writing to formally request that EFSEC deny the applicant's proposal to construct and operate the stand-alone Battery Energy Storage System (BESS) and related interconnection and ancillary support infrastructure. My opposition is based on several legal, policy, and regulatory concerns that demonstrate this project is incompatible with both state and local laws, as well as prior court decisions. As farmland continues to diminish worldwide, this site represents far more than just a piece of land; it is a vital asset to Skagit County's agricultural foundation, directly supporting the local economy and sustaining Washington's food supply. Converting this fertile, irreplaceable farmland for industrial purposes—particularly for a high-risk lithium battery storage facility—would be a reckless and shortsighted decision. The long-term consequences would be severe, jeopardizing the environment, the community, and the future of agriculture in the region. The following are several significant concerns with the proposed project:

Violation of Agricultural Land Protection Laws The proposed BESS would violate multiple Washington State laws and regulations designed to protect agricultural lands, particularly the Agricultural - Natural Resource Lands (Ag-NRL) designation. The Washington State Growth Management Act (GMA), the Skagit County Comprehensive Plan, and Skagit County codes all emphasize the conservation of agricultural lands, making this project incompatible with those policies. Additionally, the Washington State Supreme Court's recent ruling in *King County v. Friends of Sammamish Valley and Futurewise* (September 19, 2024) made clear that: "The GMA does not allow 'innovative' techniques that convert prime agricultural soil to unrelated uses..." This decision reinforces the importance of preserving agricultural lands, further illustrating the inappropriateness of the Goldeneye BESS proposal.

Non-Compliance with the Growth Management Act and Local Codes The proposed BESS is inconsistent with the Washington State Growth Management Act (GMA), Skagit County's Countywide Planning Policies (CPP), and Skagit County's Comprehensive Plan. Specifically, Skagit County cannot permit non-agriculture-related uses or accessory uses within Ag-NRL zones. Under RCW 36.70A.020(8), the state recognizes the necessity of preserving and enhancing natural resource industries, including agriculture. It also discourages incompatible uses that threaten agricultural lands. Additionally, RCW 36.70A.177 restricts non-agricultural uses in agricultural zones, emphasizing that any accessory uses must support ongoing agricultural activities. The BESS does not meet this criterion. Moreover, the Administrative Interpretation issued by Skagit County fails to align with the requirements outlined in SCC 14.16.020(3)(a-d), which provide clear guidelines for uses within zoning districts.

EFSEC's Duty to Consider Adverse Impacts It is also concerning that EFSEC has not adequately considered the probable significant adverse environmental impacts of the Goldeneye BESS proposal. WAC 197-11-330 requires the evaluation of both beneficial and potentially harmful effects of a project. The current proposal has overlooked its potential adverse impacts on agriculture, wildlife, water resources, and the rural environment in Skagit County.

Lack of Compliance with Skagit County's Siting Criteria The proposed Goldeneye BESS does not meet the siting criteria required for agricultural zones under Skagit County's Unified Development Code (SCC 14.16). Non-agricultural uses must be accessory to agriculture and must not interfere with farming activities. The BESS does not qualify as an accessory use, as it is neither dependent on soil nor related to agricultural practices. Furthermore, the project does not adhere to RCW 36.70A.365, which restricts major industrial developments to urban growth areas or areas outside of critical zones. The Goldeneye BESS fails to meet key permitting criteria, including the protection of critical areas and an assessment of developable land outside of urban growth areas.

Conclusion For these reasons, I respectfully urge EFSEC to reject the Goldeneye BESS proposal. This project does not comply with state and local laws that protect agricultural lands, and it does not meet the necessary criteria for approval. It is critical that EFSEC prioritize the long-term preservation of agriculture in Skagit County and deny this proposal. Thank you for your consideration of this important issue. I trust the Council will thoroughly evaluate the legal, environmental, and policy implications of this project and make a decision that supports the best interests of Skagit County and its agricultural community. Sincerely, Mikala Staples Hughes Mount Vernon, WA

Q5. Upload your document or picture (optional)

https://s3-us-west-1.amazonaws.com/ehq-production-us-california/a82f62da5d31a4a154cd5a74a8a513d70772857a/original/1736302302/59b2cf04e072738df298b58d05f3d4b9_010725_BEES_Letter.pdf?1736302302

Q6. Upload your document or picture (optional)

not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered

Mikala Staples Hughes
Mount Vernon, WA 98233

January 7, 2025

Washington State Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, WA 98504-3172

Dear Members of the Washington State EFSE Council,

I am writing to formally request that EFSEC **deny** the applicant's proposal to construct and operate the stand-alone Battery Energy Storage System (BESS) and related interconnection and ancillary support infrastructure. My opposition is based on several legal, policy, and regulatory concerns that demonstrate this project is incompatible with both state and local laws, as well as prior court decisions.

As farmland continues to diminish worldwide, this site represents far more than just a piece of land; it is a vital asset to Skagit County's agricultural foundation, directly supporting the local economy and sustaining Washington's food supply. Converting this fertile, irreplaceable farmland for industrial purposes—particularly for a high-risk lithium battery storage facility—would be a reckless and shortsighted decision. The long-term consequences would be severe, jeopardizing the environment, the community, and the future of agriculture in the region.

The following are several significant concerns with the proposed project:

Violation of Agricultural Land Protection Laws

The proposed BESS would violate multiple Washington State laws and regulations designed to protect agricultural lands, particularly the Agricultural - Natural Resource Lands (Ag-NRL) designation. The Washington State Growth Management Act (GMA), the Skagit County Comprehensive Plan, and Skagit County codes all emphasize the conservation of agricultural lands, making this project incompatible with those policies.

Additionally, the Washington State Supreme Court's recent ruling in *King County v. Friends of Sammamish Valley and Futurewise* (September 19, 2024) made clear that: "*The GMA does not allow 'innovative' techniques that convert prime agricultural soil to unrelated uses...*" This decision reinforces the importance of preserving agricultural lands, further illustrating the inappropriateness of the Goldeneye BESS proposal.

Non-Compliance with the Growth Management Act and Local Codes

The proposed BESS is inconsistent with the Washington State Growth Management Act (GMA), Skagit County's Countywide Planning Policies (CPP), and Skagit County's Comprehensive Plan. Specifically, Skagit County cannot permit non-agriculture-related uses or accessory uses within Ag-NRL zones.

Under RCW 36.70A.020(8), the state recognizes the necessity of preserving and enhancing natural resource industries, including agriculture. It also discourages incompatible uses that threaten agricultural lands. Additionally, RCW 36.70A.177 restricts non-agricultural uses in agricultural zones, emphasizing

that any accessory uses must support ongoing agricultural activities. The BESS does not meet this criterion.

Moreover, the Administrative Interpretation issued by Skagit County fails to align with the requirements outlined in SCC 14.16.020(3)(a-d), which provide clear guidelines for uses within zoning districts.

EFSEC's Duty to Consider Adverse Impacts

It is also concerning that EFSEC has not adequately considered the probable significant adverse environmental impacts of the Goldeneye BESS proposal. WAC 197-11-330 requires the evaluation of both beneficial and potentially harmful effects of a project. The current proposal has overlooked its potential adverse impacts on agriculture, wildlife, water resources, and the rural environment in Skagit County.

Lack of Compliance with Skagit County's Siting Criteria

The proposed Goldeneye BESS does not meet the siting criteria required for agricultural zones under Skagit County's Unified Development Code (SCC 14.16). Non-agricultural uses must be accessory to agriculture and must not interfere with farming activities. The BESS does not qualify as an accessory use, as it is neither dependent on soil nor related to agricultural practices.

Furthermore, the project does not adhere to RCW 36.70A.365, which restricts major industrial developments to urban growth areas or areas outside of critical zones. The Goldeneye BESS fails to meet key permitting criteria, including the protection of critical areas and an assessment of developable land outside of urban growth areas.

Conclusion

For these reasons, I respectfully urge EFSEC to reject the Goldeneye BESS proposal. This project does not comply with state and local laws that protect agricultural lands, and it does not meet the necessary criteria for approval. It is critical that EFSEC prioritize the long-term preservation of agriculture in Skagit County and deny this proposal.

Thank you for your consideration of this important issue. I trust the Council will thoroughly evaluate the legal, environmental, and policy implications of this project and make a decision that supports the best interests of Skagit County and its agricultural community.

Sincerely,



Mikala Staples Hughes

Mount Vernon, WA



Respondent No: 5

Login: adam

Email: adam@snoqualmietribe.us

Responded At: Jan 07, 2025 23:57:51 pm

Last Seen: Jan 08, 2025 07:56:28 am

IP Address: 24.18.100.198

| | |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1. First & Last Name | Adam Osbekoff |
| Q2. Email address | adam@snoqualmietribe.us |
| Q3. Are you part of an Agency or Organization? | Yes (please specify) Snoqualmie Indian Tribe |
| Q4. Share any comment | <p>Hello Please keep the Snoqualmie Indian Tribes Department of Archaeology and Historic Preservation updated regarding the above mentioned project. Thank you. Adam Osbekoff Cultural Resource Compliance Manager Snoqualmie Indian Tribe Department of Archaeology and Historic Preservation adam@snoqualmietribe.us</p> |
| Q5. Upload your document or picture (optional) | not answered |
| Q6. Upload your document or picture (optional) | not answered |
| Q7. Upload your document or picture (optional) | not answered |
| Q8. Upload your document or picture (optional) | not answered |



Respondent No: 6

Login: Anonymous

Email: n/a

Responded At: Jan 08, 2025 02:16:00 am

Last Seen: Jan 08, 2025 02:16:00 am

IP Address: n/a

Q1. **First & Last Name** Kali Archipley

Q2. **Email address** archikal28@gmail.com

Q3. **Are you part of an Agency or Organization?** No

Q4. **Share any comment**

I am deeply concerned regarding this ongoing issue of a lithium atorage facility being installed anywhere in Skagit Valley. I'm a disabled veteran and a mother and we chose Skagit Valley as our home partly because of our love and respect for the native ecosystems and indigenous history here. Allowing for a company to introduce a facility with so many harmful effects in an area with such important ecosystem and agriculture requirements would be irresponsible at best. This is not the way for Skagit to support its economy. We are better off investing in regenerative agriculture and being good stewards to our land, and that does not involve furthering the agendas of those who are invested in neither. This battle is akin to the nuclear testing performed in desert states in the 1940s, with residents being unaware of the very real harm potential. Our government leaders who endorse this plan lack political and moral courage and should consider resignation. Thank you for your time. Kali Archipley, AE1, USN-R

Q5. **Upload your document or picture (optional)** not answered

Q6. **Upload your document or picture (optional)** not answered

Q7. **Upload your document or picture (optional)** not answered

Q8. **Upload your document or picture (optional)** not answered