



Board of County Commissioners

January 31, 2023

Energy Facility Site Evaluation Council
Sonia Bumpus, EFSEC Manager
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Re: Horse Heaven Wind Farm Project Proposal – Draft Environmental Impact Statement

Dear Ms. Bumpus,

Thank you for the opportunity to comment on the Draft Environmental Impact Statement (“DEIS”) for the Horse Heaven Wind Farm (the “Project”), which is proposed to be located south of the cities of Kennewick and Richland, in unincorporated Benton County.

In summary, Benton County is deeply concerned that the DEIS does not meaningfully discuss or disclose impacts to the County’s agricultural lands of long-term commercial significance that will be caused by the Project.

1. The Project will result in the conversion of agricultural lands of long-term commercial significance without disclosing the environmental impacts of the conversion.

The Growth Management Act, Ch. 36.70A RCW, (“GMA”) imposes on Benton County a mandate for conservation of a type of natural resource land identified by the GMA as Agricultural Lands of Long Term Commercial Significance (“ALLTCS”). RCW 36.70A.060. Benton County is required “(1) to designate agricultural lands of long-term commercial significance; (2) to assure the conservation of agricultural land; (3) to assure that the use of adjacent lands does not interfere with their continued use for agricultural purposes; (4) to conserve agricultural land in order to maintain and enhance the agricultural industry; and (5) to discourage incompatible uses.” *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 558 (2000) (*Soccer Fields*).

The conservation of ALLTCS is a mandate that Benton County *must* follow. See *Yakima Cnty. v. E. Wash. Growth Mgmt. Hearings Bd.*, 146 Wn. App. 679, 687 (2008) (“The legislature has been particularly concerned with agricultural lands when addressing the problem of growth management. Read together, RCW 36.70A.020(8), .060(1), and .170, reveal a legislative mandate for the conservation of agricultural land.”) (internal citation omitted). Once Benton County designates lands as ALLTCS, it cannot either de-designate ALLTCS or allow non-agricultural uses upon ALLTCS without first making a determination that the lands no longer meet ALLTCS status. *Clark Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 234, *vacated in part on other grounds*, 177 Wn.2d 136 (2013). These are essential parts of the GMA

regardless of the relationship between the GMA and Ch. 80.50 RCW, the Energy Facilities Site Locations Act, and any related issues of preemption. *See Residents Opposed to Kittitas Turbines v. State Energy Facilities Evaluation Council*, 165 Wn.2d 275 (2008).

The County has properly designated lands as ALLTCS throughout the Project area. Approval of the Project would undermine the GMA's agricultural lands conservation mandate by allowing the inappropriate conversion of large tracts of ALLTCS to an unrelated, non-agricultural use, thus resulting in the long-term removal of ALLTCS. The Project will result in the permanent conversion of 6,869 acres of ALLTCS and the temporary conversion of 2,957 acres of ALLTCS. DEIS, p. 4-261. There is no discussion in the DEIS as to how the "temporarily converted" ALLTCS will be returned to ALLTCS status nor what the impacts of the permanent and temporary conversions will be on the broader region affected by the Project. Due to the economics of dryland farming in the Project area, this area is likely to suffer irreversible losses as a viable area of agricultural resource lands.

2. The conversion of ALLTCS will have a high, cumulative impact.

Any DEIS must comply with SEPA's requirement that an EIS shall "provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality." WAC 197-11-400(2). To do so in this case would require the DEIS to meaningfully disclose and discuss the impacts of permanently converting almost 7,000 acres of ALLTCS to new land uses. These new land uses will replace and thereby eliminate not only the ALLTCS lands themselves, but also the functions and values of ALLTCS as a type of natural resource lands. The DEIS does not discuss this in any detail.

The DEIS discloses that 6,869 acres will be permanently taken out of agricultural production as a result of the Project. DEIS, p. 4-261-262. While the DEIS discloses how many bushels of wheat may be lost during a single season, the DEIS does not discuss what this loss would mean to the overall agricultural economy, nor does the DEIS disclose what the economic loss over the entire life of the Project would be. *See* DEIS, p. 4-263-267. All the DEIS discloses in regards to taking land out of production is that "[t]he Project would financially support ongoing agricultural ownership and operations via its lease agreements with participating landowners." DEIS, p. 4-261.

In this way, the DEIS suggests that a set of business transactions reached between the Project's proponent and participating landowners is a valid substitute for a considered analysis of the impacts and mitigation measures that correspond with the loss of such a large area of ALLTCS. There is no other discussion or analysis of the economic impact of taking almost 7,000 acres of ALLTCS out of production.

Dryland farming has an economy of scale requiring large operations, typically in the thousands of acres. This is due to the fact that dryland farming has low per-acre yields and profits. Because of these economies of scale and the variability inherent in dryland farming, it is likely that the placement of the Project's infrastructure will have an acute cumulative impact. By fragmenting farming operations within and beyond the Project area, there is a likelihood that the County will experience pressure to allow non-agriculture rural uses to replace an intact, regional agricultural area. The disruptive effect of the Project on farming operations requires consideration not only on its own terms but also because of how this disruption will be apt to result in the transition of this land to other uses that may have little or nothing to do with agriculture. This disruption will be both direct and indirect. It likely will be permanent in the Project area. Road building, traffic, and new land use pressures will range beyond the Project area and will tend to cause large-scale changes to the landscape as a viable farming area. The most obvious cumulative impact is the propensity of additional alternative energy facilities to proliferate throughout this ALLTCS area, with the attendant obliteration of the farm-based natural resource lands area. This simply has not been acknowledged or analyzed in the DEIS.

While lease agreements may compensate farmers for their direct loss of revenue, the DEIS also does not disclose the impact that taking nearly 7,000 acres of ALLTCS out of production may have on agricultural support businesses. The farming economy is not limited to the actual farms—farmers need support in order to properly and efficiently run their farms. One of the biggest industries within the Tri-Cities is agricultural support products and services. These important services and products include, but are in no way limited to: (1) the transportation of agricultural products, supplies, and equipment, including the trucking industry and operations; (2) the sale, repair, maintenance, and servicing of agricultural equipment, vehicles, implements, and machinery; (3) the winery industry, including American Viticultural Areas; and (4) commercial agricultural establishments providing sale, storage, repair, and/or sale of irrigation, mechanical, and excavation services.

The spinoff impacts on these individuals and entities due to the loss of ALLTCS—both short-term and in conjunction with the risk of wide scale supplanting of farm lands with alternative energy facilities—was not disclosed and analyzed in the DEIS. See WAC 197-11-448(1) (“SEPA contemplates that the general welfare, social, *economic*, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions.”)

The DEIS claims that, overall, the identified impacts from the project will be, at most, “low.” DEIS, p. 4-271-273. A “low” impact is deemed appropriate, according to the DEIS, where “[c]hanges to agricultural production or loss of GMA Agricultural lands would be measurable, but the changes would not impact the ability of a farm to remain profitable and continue operations. Any changes to GMA Agricultural lands would be reversible following the decommissioning stage.” DEIS, p.4-

260. This is superficial and unrealistic. It is possible that farms would remain profitable and continue operations, even accounting for the loss of acres; however, that analysis is not disclosed in the DEIS. Case law in Washington suggests that *any* conversion of ALLTCS is a high impact because it is presumptively irreversible. See *Soccer Fields*, 142 Wn.2d at 562 (argument that land could be returned to agricultural use was unpersuasive to find that zoning complied with GMA requirements in regard to ALLTCS); *Lewis Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 508 (2006) (noting that *Soccer Fields* court “concluded that the soccer field zoning was noncompliant because it ‘would result in a long-term removal’ of agricultural land from agricultural production, possibly never returning to agricultural use.”).

Without a comprehensive discussion and disclosure of the impacts of the Project by the permanent and temporary conversion of ALLTCS, the DEIS does not support the conclusion that “[w]ith mitigation measures and the continued authority of Benton County zoning ordinances and land use requirements, the Proposed Action does not meaningfully contribute to a cumulative impact on agricultural productivity, profitability, or farm operations within the spatial and temporal setting.” DEIS, p. 5-11.

This conclusion is also misleading because it implies that compliance with Benton County zoning ordinances and land use requirements, such as, for instance, conditional use permit (“CUP”) criteria, will prevent or mitigate the Project’s impacts. This is illusory because the Project will not be able to obtain a CUP under the Benton County Code. See BCC 11.50.040(d). It is telling to briefly consider how the Project’s impacts clash with, rather than meet, the code’s CUP-related tests: (1) the Project is incompatible with outright permitted uses because the Project will directly replace agricultural use of the land; (2) turbines, solar arrays, and related facilities are of greater danger than ordinary farm uses and will require a variety of special security and safety measures (DEIS, p. 2-26); and (3) the Project will discourage the development of otherwise permitted uses, including low-density homes and agriculture.

3. The proposed mitigation measures are inadequate to appropriately mitigate the environmental impacts of conversion of ALLTCS.

The DEIS proposes one wholly inadequate mitigation measure—LSU-5—which requires that the applicant submit a site restoration plan to EFSEC. DEIS, p. 4-269. A to-be-submitted restoration plan that is not an actual part of the SEPA record cannot be evaluated and does not constitute any effective mitigation at all. As a matter of substantive law, the fact that land may, in the future, be returned to its “preconstruction character” does not comply with the GMA’s mandate that ALLTCS be preserved. *Soccer Fields*, 142 Wn.2d at 562. This is also important for SEPA review purposes, because the likelihood is high (albeit unexamined) that the marginal economics of dryland farming in this area will never justify a return to agricultural use. The “preconstruction character” suggested by LSU-5 is unlikely to be the equivalent of the existing use of these

ALLTCS lands, nor can it be simply assumed that the land's resource values will or can ever be re-established.

Surprisingly for a purported mitigation measure, LSU-5 acknowledges that one likely outcome of the Project is that future site conditions may require that the land be put to an alternate use. The DEIS provides no discussion of the potential range or intensity of alternate uses (including what impacts they may impose in their own right) or how the likely alternate uses provide mitigation corresponding to the impact in the first place of permanently taking almost 7,000 acres of ALLTCS out of production. These impacts must be disclosed prior to any final EIS or project action. See *Soccer Fields*, 142 Wn.2d at 562; *Lewis Cnty.*, 157 Wn.2d at 508. It is certainly possible to study and predict what future transitional or long-term land uses may arise when the land is no longer agricultural. But the DEIS simply does not face up to this task at all.

Outside of the lack of disclosure of impacts resulting from the long-term conversion of ALLTCS, there is also no discussion on the integration of industrial non-agricultural uses into the Horse Heaven Hills. Facilities, roads, and transmission lines for power will all change and impact grazing and farming activities, even on those lands that can still be classified as ALLTCS. The claims that “[i]ndirect land use impacts are not anticipated” and that “further discussion of indirect impacts of the Project on land use is not warranted” are not supported. DEIS, p. 4-262-263. These indirect impacts must be disclosed and studied in the final EIS.

4. Conclusion.

The impacts from the loss of ALLTCS as a result of the Project must be thoroughly analyzed and discussed before a final EIS may be issued.

Once again, the Board of Benton County Commissioners wish to thank you for the opportunity to comment.

Sincerely,

BOARD OF BENTON COUNTY COMMISSIONERS

Will McKay, Chairman

Jerome Delvin, Chairman Pro-Tem

Michael Alvarez, Commissioner

