BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of:	**)**	**OAH Case 2024-ABC-06692**
The Application for Site	**)**	**INTERVENOR ALEXANDERSON'S**
Certificate for the Yellow	**)**	**APPLICATION FOR**
Rosebush Energy Center	**)**	**REHEARING/RECONSIDERATION**

Intervenor Alexanderson applies for rehearing/reconsideration on selected issues.[1]

1. **Intervenor was deprived of procedural rights** to present a case and challenge his adversaries by testimony, rebuttal and cross-examination. These rights were cut off nearly five months ago by the HO's ruling on summary disposition. Summary disposition was impermissible because some contested issues of fact were decided without adversarial procedures and others were left undecided.
2. **The Council delegated issues out of the contested case.** When it became apparent that a no-net-loss finding depended upon resolving disputed facts, fact-finding and ruling were improperly delegated to administrative staff. Because only the Council can exercise its quasi judicial authority, this abdication excused the applicant from proving no-net-loss in an adversarial proceeding with testimony, rebuttal and cross-examination. Now, post site certificate, the applicant will only "demonstrate" this core issue to administrative staff. The Council's finding that there is no net loss lacks a factual basis and instead purports to warrant that the facts will appear after the case is closed. The Council improperly disregarded Intervenor's written comments in opposition to this delegation, and disregarded facts pertaining to the issue, including his proffered eye witness affidavit on one key fact,

[1] In doing so he does not waive the right to seek judicial review on matters not addressed herein.

explaining why mule deer do not cross the Deschutes River Canyon. The Council also blinded itself to the thorough ODFW radio-collar study that proves the deer herds do not mix across the river canyon. Intervenor's ability to challenge the Council's diversion of a core contested case issue to staff was unreasonably limited to a 5 min oral statement.

3. **Avoidable damage is ineligible for compensatory mitigation**. Applicant has failed to show why erecting its 50 miles of barrier fencing and 2 million panels in designated mule deer winter range was unavoidable in spite of a vast expanse of less important habitat nearby. The Council considers that it does not have authority over site selection and boundaries but only governs trivial placement of roads, arrays and batteries inside the Developer's drawing of a "micrositing corridor." However, the council does have complete authority over siting and must make findings validating claimed unavoidability in order to unlock use of compensatory mitigation. Applicant's maps, oral and written descriptions obscure and deny over 1000 acres of fenced incursions into Priority Wildlife Connectivity Areas. These have escaped depiction and quantification until now and easily can be avoided by downsizing the project by 21%
4. **The Council refused to consider the cumulative effects on wildlife** of the project being clamped tightly around the previously approved three Bakeoven projects. This failure was based on staff counsel's incorrect claim that Intervenor had not raised the issue in his petition to participate.[2] In addition to dramatically increasing the barrier effects of the combined fencing and leaving only a public road for

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[2] "Mr. Alexanderson did not raise a cumulative effects argument in his petition to participate in the contested case. . ."
ODOE Response to Exceptions 2026-07-24_CORRECTED (1).pdf p.9. In fact the Petition incorporated Intervenor's comments by reference as required:
Alexanderson Petition to Participate.pdf The comments are specific to cumulative effects of Bakeoven and the project. Attachments p 488.
The applicant did not contend that the issue had not been properly raised.

animals to navigate, the project fencing will close a wildlife throughway in the Bakeoven/Sunset project turning the gap into a useless and dangerous dead end fire and predator trap for big game and most other terrestrial wildlife.

5. **Passive Preservation of other habitat Fails the Textual Mandate to "Recreate" or "Replace" lost Habitat.** The Council's acceptance of the Tygh Ridge site and project area canyons as a compensatory mitigation offset treats passive preservation as the legal equivalent of habitat creation. Under **OAR 635-415-0005**, the mandatory mitigation hierarchy requires an applicant to **"recreate"** or **"replace"** the biological capacity lost to development. The text of the rule utilizes **"preserve"** solely in relation to managing and monitoring the remaining impacted habitat to prevent further degradation—not as an independent method to generate mitigation credits. By allowing the applicant to claim mitigation credits for merely promising not to develop steep, rocky canyon lands, the Council has improperly rewritten the rule to insert preservation as a means to avoid recreating what was destroyed.

First Ground for Rehearing: Intervenor was deprived of procedural rights to challenge applicant's claims that it had:

A.Met essential preconditions to employ compensatory mitigation including proving that its planned destruction of sensitive habitat could not be avoided after good faith consideration of location and design alternatives.

B. Avoided placing fences and panels in the Priority Wildlife Connectivity Areas. Whether these actually were avoided is disputed.

C. Qualified the Tygh Ridge site as meeting the in-proximity and in-kind requirements. This requires a finding defining the home range of the affected deer as something other than the ineligible Columbia

Plateau.

D. Adequately accounted for outside the fence habitat damage not reflected by the inside acreage count. Intervenor points to peninsulas of fencing and arrays extending into the PWCAs, blocking and fragmenting travel routes contrary to ODFW staff advice; also a many mile blockade from the combined Bakeoven and YR projects with no throughway for wildlife except a high speed highway.

Disputed facts are involved in each of these claims. Applicant provided no witnesses and briefed the summary determination as if the application record and attorney's recital of self-serving statements settled all the issues, leaving no reasonable room for dispute. The HO clearly expected Intervenor to put on his whole case four months early and with no chance to compel testimony or cross examine the applicant.

Four months after the HO's dismissal the Council approved ending the contested case on summary determination and then delegated to staff a post-certificate determination of disputed facts. These two acts are irreconcilable. Delegating factual disputes proves that summary dismissal was wrong.

Second Ground for rehearing, The Council removed issues from the contested case. This was an error because the Council's quasi judicial function over the siting of energy facilities is not delegable. The Oregon Energy Facility Siting Council possesses complete and exclusive authority—plenary power—to decide whether an energy facility may be constructed and where it may be sited. The advice provided by staff and its counsel that the "Council does not analyze whether impacts of a facility that generates solar electricity could be avoided by siting the proposed facility in an alternative location" is a straw man. The contention is not that the Council must study alternative sites. Rather, the Council must find whether the developer has demonstrated the fact of unavoidability by its

good-faith alternatives analysis compliant with the mandatory mitigation hierarchy: "**Avoiding the impact altogether by not taking certain development action or parts of that action.**" OAR 635-415-0005(10)(a). Compensatory mitigation is permitted only for unavoidable habitat damage. Here the “certain development action” is placement of arrays and fences in especially valuable habitats. The Council is the only institution with authority to resolve disputes about this.

Ever since the legislature established this Council and its predecessor, the Nuclear and Thermal Energy Council, in 1971, its core statutory mission has been to dictate what energy projects can go where. One of its earliest decisions was to prohibit a nuclear plant at Boardman as long as military bombers were practicing nearby. NTEC allowed a coal plant instead.[3] This was before the habitat mitigation rule came into effect.

Now the rule provides an additional mandate for consideration of energy facility development on wildlife. The Council must weigh wildlife habitat concerns in its siting energy facilities because location is the dominant factor in permitting habitat damage. Solar projects are the most land intensive of all, not just by acreage count but because fencing excludes and forces detours on all but the smallest terrestrial wildlife. It takes their space, forage, travel routes, thermal cover, and solitude while exposing them to fire, predators, high speed vehicles and heavy snow hazards.

The Council must exercise its Plenary Authority Over Siting. It cannot rely on other agencies or administrative staff to carry out its quasi judicial functions: There are at least three reasons for this:

Councilors are appointed for their representative wisdom and experience in energy matters. They were not selected to pass the buck back to other state agencies or administrative staff. They are not expected to be as expert as ODFW, or the Department of Public Health on radiation matters in

[3] https://www.oregon.gov/energy/facilities/Facilities%20library/BCP_final_order_022775.pdf

the Wah Chang case or The FAA on airplane safety in the Boardman Nuclear case or the Nuclear Regulatory Commission on financial ability as in the Pebble Springs case.[4]

B. The legislature provided for the EFSC to be one stop siting and one stop complaining. If EFSC abdicates, there is nowhere to go for an applicant or an opponent.

C. For a decision to be reviewed it must reveal the acts found and how the statutory and administrative law applies. An incomplete decision is unreviewable and must be reversed. Intervenor was entitled to challenge and rebut the applicant on the core issue of no-net-loss and was not permitted to do so.

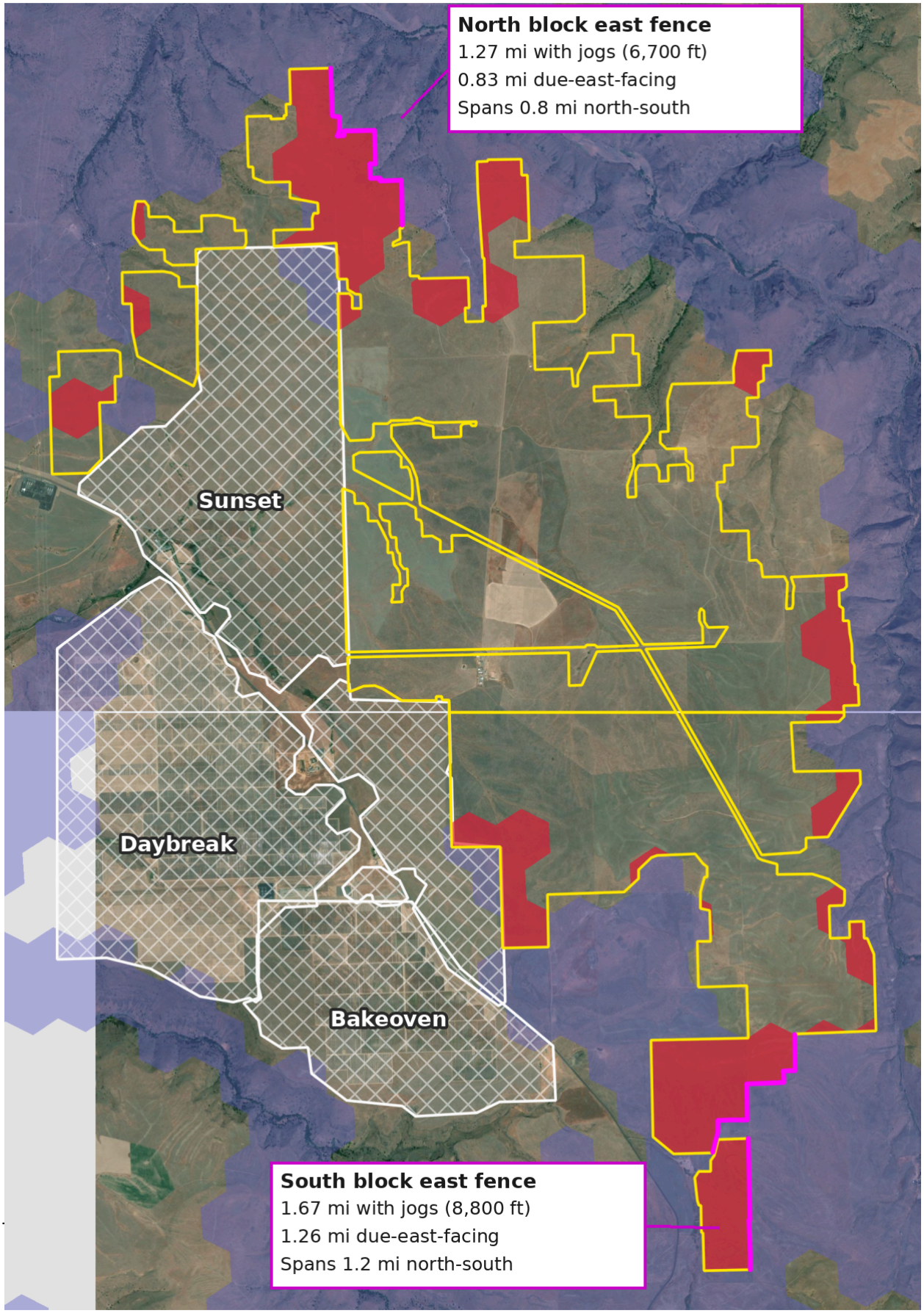
Third Ground for Rehearing -Avoidable damage is ineligible for compensatory mitigation. Intervenor's exhibits R-1 and R-2 show that the developer chose to site the project near the east edge of mule deer winter range beyond which a vast expanse of similar terrain exists outside mule deer winter range and outside PWCAs Another apparent yet unexploited means of avoiding sensitive habitat is downsizing to eliminate the project's intrusion into Priority Wildlife Connectivity Areas mapped within the developers proposed fence lines.

In his Exception 14 Intervenor showed the PWCA's in the project area and compared their footprint to the applicant's fence lines and facility layout. Intrusions can be inferred from that comparison, but only generally. On the next page Intervenor proffers a complete and measurable view otherwise absent from the record:

[4]See INTERVENOR'S COMMENT ON MATERIAL CHANGE, ALTERNATIVE PROPOSAL, MOTION AND PROFFER OF EVIDENCE filed September 16, 2026. That filing is incorporated herein by reference and Intervenor reoffers it in support of this Application.

3. Fenced project area inside PWCAs

About 1,035 acres (20.7%) of the fenced area lies inside PWCA hexagons



Key to page 1

Fenced area inside a PWCA hexagon

PWCA hexagon
ODFW Priority Wildlife Connectivity Area

Fence line
The applicant's mapped fence

East fence including jogs
The two large red blocks, inside PWCA hexagons only

Neighboring solar projects
Bakeoven, Daybreak and Sunset, approved as one Bakeoven project and later split

Terms used in the balloons

East fence including jogs: The continuous fence from the first to the last east-facing edge, counting the jogs between them.

Due-east-facing: Only the edges whose outward side faces within 45 degrees of east.

Spans: The north-south width of the barrier, from its northernmost to its southernmost east-facing edge.

This exhibit extracts fence lines from the applicant's Exhibit C 2.2 and 2.3 and applies an overlay using the official data set from the Oregon Connectivity Assessment and Mapping Project (OCAMP) study quoted in the applicant's Motion for Summary Determination

When the contested case hearing was cancelled on June 4, the record contained many assurances from the applicant that the project layout avoided PWCAs. Applicant's Motion for Summary determination on April 6, 2026 consisted of 204 pages emphasizing the importance of PWCAs, and actually using the acronym 204 times. It states: "**PWCA Regions are large, contiguous areas and represent the highest-value habitat for facilitating movement from PWCA Region to PWCA Region"**. Attachments pp 21,32, 715,YR Motion for Summary Determination p. 5.

and this: "**Yellow Rosebush modified the Facility layout to avoid potential impacts to priority wildlife habitat areas adjacent to nearby canyons. . .**" YR Motion for Summary Determination p. 5.

The record, however, only includes one facility layout. No earlier one, with more than 50 miles of fence and over 2 million panels is in evidence.

Mr. Watson stated: "Applicant understands that there are herds of bighorn sheep in the area. Potential impacts to big game species were addressed in Exhibit P and **impacts will be minimized through avoidance of the PWCAs."** FO Attachments p. 804.

Apparently the developer only avoided steeper PWCAs not suitable for arrays, and has now been authorized to use 1,034 PWCA acres considered flat enough for panels. And the developer has been silently approved by this Council to extend peninsulas of fencing and blocks of arrays into the larger PWCAs contrary to ODWF staff recommendations: " **ODFW recommends avoiding creating "peninsulas" of fencing, or chunks of fenced areas that stick out into the greater PWCA region."** Attachments p 15.

By rule, OAR 635-415-0025, an avoidable harm is ineligible for compensatory mitigation. Because a partial downsizing is entirely practicable on this 4,992-acre footprint, the invasion of this "highest value habitat" can be completely avoided. Not doing so leaves the habitat equation with an uncompensated loss. Unavailability of offset means the "No Net Loss" standard is not met barring a site certificate absent an express public interest override by the Council.

Fifth Ground for Rehearing. Preservation of existing habitat Fails the Textual Mandate to "Recreate" or "Replace" lost Habitat. The applicant contends that acreage loss can be offset by renting undeveloped land and keeping it that way. While improving existing habitat counts against a quality degradation, a quantity loss is not offset by controlling habitat

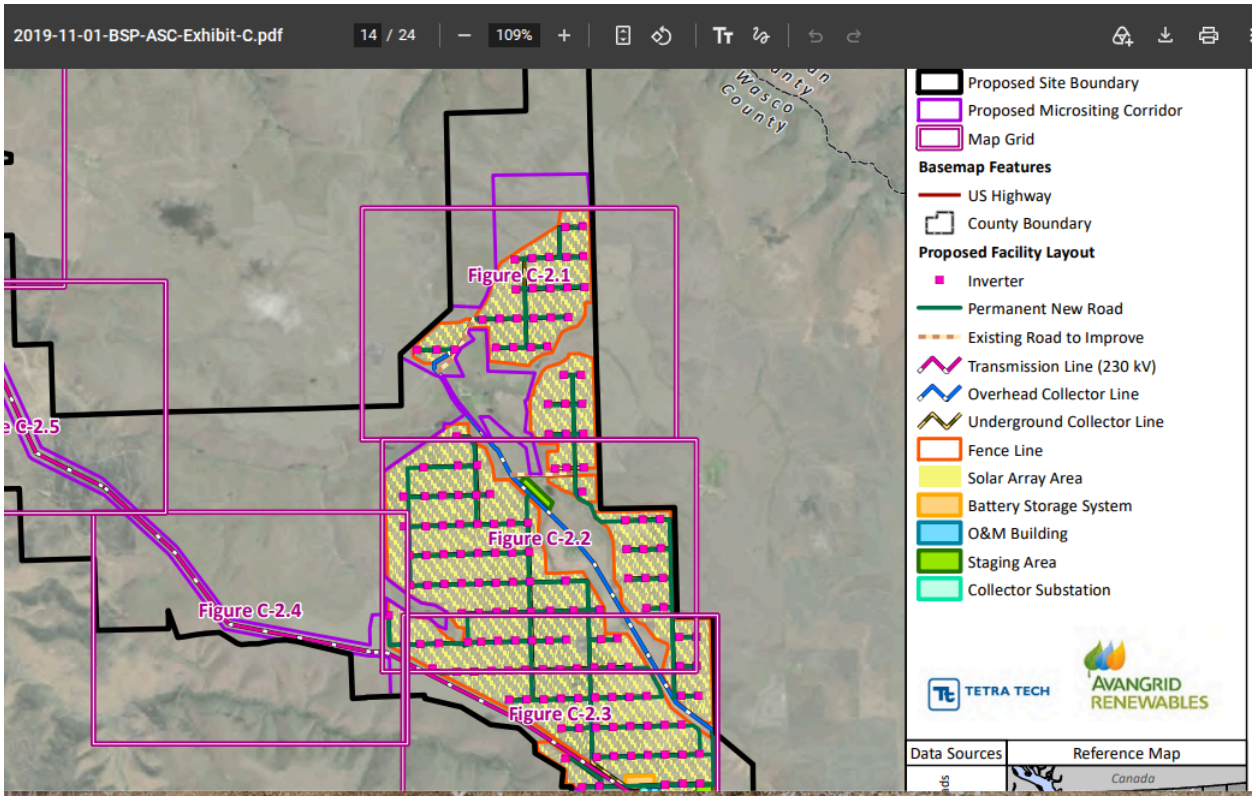
already used and counted as such. Counting it twice is widely recognized as a scam. Jurisdictions that do allow preservation to offset destruction require proof that a real immediate threat of losing the compensatory habitat has been avoided. For example, federal guidance requires: "The habitat must be under a **demonstrable threat of loss or substantial degradation from human activities that would not otherwise be expected to be restricted."**[5]

That is not the case here. The canyons at the project site have remained undeveloped for centuries without any help from the applicant. They are by nature unsuitable for crops, dwellings, greenhouses, data centers and solar arrays. Giving a developer credit for creating habitat by not damaging them is not fooling anyone. It is a pretense that will do nothing to benefit wildlife actually losing space. The developer here is not going to install solar panels in Buck Hollow Creek. This will not help salmon and should not be considered a credit against stream damage elsewhere.

The Council refused to consider cumulative effects on wildlife argued in Intervenor's Exceptions. Wintering animals suffer more from a larger detour than from a small one. All deer face greater danger from high speed vehicles if they are funneled into a public highway.[6] Clamping the project tightly around the 3 existing and approved Bakeoven projects is a location choice, a bad one from a wildlife perspective. The Bakeoven facility and fence layout left a significant corridor between the approved arrays as shown below.

[5] *Federal Guidance for the Establishment, Use and Operation of Mitigation Banks*, 60 Fed. Reg. 58605 (Nov. 28, 1995)

[6] Ironically, a construction vehicle speed limit inside the project will be enforced to protect wildlife.



Now, the Council has approved Yellow Rosebush to blockade this throughway with fences running north from Bakeoven road and deep into the PWCAs bordering Buck Hollow Creek. Where the Sunset project left a gap YR will close it. Must the Council pretend that the deer and foxes will still be able to pass? The applicant argues that there is no requirement for the Council to consider cumulative effects.[7] Yet it cannot be denied that Council's site certificate turns the Bakeoven/Sunset gap into a dead end fire and predator trap for all but the smallest terrestrial animals. Where is this damage inventoried and compensated? What was done or considered to avoid it?

The Council's decision to not see obvious cumulative effects is predicated on Intervenor's alleged failure to raise the issue in comments on the DPO. "Mr. Alexanderson did not raise this issue in his comments on the Draft Proposed Order." PO Attachments p 45. However, hIs comment is found at

[7] There was no requirement in the rules for NTEC to consider low flying bombers.

p 488 of the FO Attachments: “**What are the cumulative effects considering the adjacent Bakeoven projects are already evicting the deer?**”

The Mule Deer Management Plan is administrative law on the topic and establishes that a major cause of mule deer decline is cumulative loss of habitat and that mortalities caused by vehicle collisions are a significant contributing factor.[8] It is undisputed that the applicant’s habitat damage obligation was assessed solely on the acreage inside the fence.

s/Alvin Alexanderson

Intervenor, pro se

[8] MDMP p 112, 29 “Even small development actions can result in cumulative landscape level impacts leading to significant population level effects.”