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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Application of:
Scout Clean Energy, LLC, for Horse Heaven
Wind Farm, LLC, Applicant

DOCKET NO. EF-210011
BENTON COUNTY’S PRE-
HEARING BRIEF

I. INTRODUCTION

Benton County (the “County”) respectfully submits this pre-hearing brief in opposition to Scout Clean Energy, LLC’s application for site certification for the Horse Heaven Wind Farm. The Horse Heaven Wind Farm cannot meet the criteria for a conditional use permit under the Benton County Code and additionally results in the inappropriate conversion of state-protected agricultural lands of long-term commercial significance. The Energy Facility Site Evaluation Council should recommend denial of the application for site certification to the Governor.

II. STATEMENT OF FACTS¹

¹ All documents supporting the County’s statement of facts can be found on EFSEC’s website. <https://www.efsec.wa.gov/energy-facilities/horse-heaven-wind-project>

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3 Scout Clean Energy, LLC (“Scout”), submitted an application for site certification
4 (“ASC”) to the Energy Facility Site Evaluation Council (“EFSEC”) for a proposed wind and
5 solar energy generation facility to be located along the Horse Heaven Hills in Benton
6 County, Washington, with a nameplate energy generating capacity of up to 1,150 megawatts
7 on February 8, 2021. Scout submitted an updated ASC to EFSEC on December 1, 2022.
8 The Horse Heaven Wind Farm (“HHWF”) boundary encompasses approximately 72,428
9 acres. Within this large lease boundary, the HHWF proposes to install up to either 244
10 turbines with a height of 499 feet or 150 turbines with a height of 657 feet. In addition, the
11 HHWF proposes to install three solar arrays, with both the wind and solar components
12 storing their energy capacity in three battery energy storage systems. In total, the HHWF
13 will result in the permanent conversion of 6,869 acres of land in the County’s Growth
14 Management Act Agricultural District (“GMAAD”).
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17 Only a *draft* environmental issue statement (“DEIS”) has been issued for the HHWF.
18 As part of its comments on the DEIS, the County noted that there was no discussion in the
19 DEIS on the impact of the HHWF to land designated as agricultural land of long-term
20 commercial significance (“ALLTCS”) within the GMAAD. The County filed a Motion to
21 Stay with EFSEC on May 18, 2023, requesting that the adjudication be stayed pending the
22 issuance of the final environmental impact statement (“FEIS”) for the HHWF. The County
23 based its motion on both the requirements of the State Environmental Policy Act and the fact
24 that no party, including EFSEC, knows how the FEIS will respond to the County’s comments
25 regarding impacts to ALLTCS. Similarly, the County does not know how the layout and
26 specifics of the HHWF may change as a result of all comments received on the DEIS in the
27 FEIS. However, based upon the DEIS, the only mitigation measure proposed for the
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3 conversion of ALLTCS is a restoration plan once the wind turbine and solar infrastructure
4 associated with the HHWF is decommissioned. DEIS, p. 4-269; Updated ASC, Appendix A.

5 Pre-filed testimony, including direct, rebuttal, and reply testimony, was filed by all
6 parties. A non-consecutive, seven and a half-day-long hearing is scheduled to commence on
7 August 14, 2023, and end on August 25, 2023.

8 **III. ARGUMENT**

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10 Pursuant to Council Order No. 883 and Pre-Hearing Order No. 2, in order for EFSEC
11 to recommend approval of the HHWF to the Governor, Scout must show that the HHWF
12 complies with Benton County’s conditional use permit (“CUP”) criteria. Order No. 883,
13 ¶23; Pre-Hearing Order No. 2, p. 2. Scout cannot do so in this case because the size, scope,
14 and scale of the HHWF renders it incompatible with outright permitted uses in the GMAAD
15 and otherwise in conflict with CUP criteria. In addition, EFSEC should recommend denial of
16 the HHWF as it results in the improper conversion of ALLTCS, putting those lands to non-
17 agricultural uses in violation of the mandates of the Growth Management Act (“GMA”), Ch.
18 36.70A RCW, which results in a violation of the purpose of the GMAAD and therefore the
19 County’s zoning requirements.

20 21 **A. The Horse Heaven Wind Farm, even with conditions, does not meet Benton** 22 **County’s conditional use permit criteria.**

23 Benton County’s CUP criteria are found in the Benton County Code (“BCC”) and
24 require that a proposal, as conditioned, meet the following criteria:

- 25 (1) Is compatible with other uses in the surrounding area or is no more
26 incompatible than are other outright permitted uses in the
27 applicable zoning district;
28 (2) Will not materially endanger the health, safety, and welfare of the
29 surrounding community to an extent greater than that associated
30 with any other permitted uses in the applicable zoning district;

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- (3) Would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with other permitted uses in the applicable zoning district;
- (4) Will be supported by adequate service facilities and would not adversely affect public services to the surrounding area; and
- (5) Would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district.

BCC 11.50.040(d). These are the same criteria that were in effect when Scout submitted its ASC. ASC, p. 2-152-158. The true key for obtaining a CUP under the BCC is that the applicant, in this case Scout, must show that the HHWF is compatible with other permitted uses in the GMAAD or is no more incompatible than outright permitted uses in the GMAAD. BCC 11.50.050 (“It is the applicant’s burden to present sufficient evidence to allow the above conclusions to be made.”). EFSEC must understand that neither Benton County nor any other party to the adjudication has to show that the HHWF is incompatible in order for a CUP to be denied. It is Scout’s burden to present sufficient evidence to allow the above conclusions to be made. BCC 11.50.040(d). If such evidence is not presented, or all necessary reasonable conditions are not identified by Scout so as to allow EFSEC to make the conclusions required above, the conditional use application shall be denied. *Id.* As detailed in Mr. Wendt’s pre-filed testimony, and as Mr. Wendt will testify at hearing, regardless of any conditions that EFSEC may impose on the HHWF, due to grossly disproportionate scale compared to any other permitted uses in the GMMAD, among other fatal flaws, it cannot satisfy Benton County’s CUP criteria. BEN EXH 2001_T.

The HHWF will occupy over 100 square miles of the Horse Heaven Hills and permanently extinguish over 10 square miles of protected farmland. No mitigation measures

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3 or conditions of approval respond to these basic realities. No other use permitted in this
4 zoning district is remotely comparable.

5 The starting point for any compatibility analysis is comparing the size, scale, and
6 scope of the proposed project with the outright permitted uses in the underlying zoning
7 district. “Compatibility” is the congruent arrangement of land uses and/or project elements
8 to avoid, mitigate, or minimize (to the greatest extent reasonable) conflicts. BCC
9 11.03.010(53). Crucially, compatibility does not evaluate, and therefore renders irrelevant,
10 the impact of a project on surrounding landowners to maintain their ability to farm or the
11 increase in cost to agricultural uses and practices. Instead, compatibility focuses on the size,
12 scope, and scale of a proposed use in a zone as compared to the permitted uses in a zone.

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14 The permitted uses in the GMAAD are listed *infra*, p. 9-10. Most permitted uses in
15 the GMAAD are agricultural-related and limited to one parcel, with the agricultural activities
16 sometimes encompassing around a thousand or so acres. BEN EXH 2001_T, p. 7. A typical
17 parcel size in the GMAAD ranges from 150 to 640 acres. *Id.* The HHWF’s entire project
18 boundary is 72,742 acres or, assuming the largest typical parcel size, approximately 113
19 times larger than a typical project in the GMAAD. *Id.* Even just taking the HHWF’s wind
20 energy micrositing corridor, which will house all turbines and supporting infrastructure, it
21 encompasses 11,850 acres and is approximately 18 times larger than a typical project in the
22 GMAAD. *Id.* This does not count the solar arrays, which will take up an additional 10,755
23 acres, which by itself is approximately 16 times larger than a typical project in the GMAAD.
24 The wind energy micrositing corridor and solar arrays combined (22,605 acres) is
25 approximately 35 times larger than a typical project in the GMAAD.
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3 As noted above, the test for compatibility is whether the proposed use is the same or
4 complementary to surrounding uses in the zoning district based upon project scale, traffic
5 impacts, and/or operational impacts and conflicts. When discussing orderly and compatible
6 development, the first step must be to look at the permitted uses in a zone. *Id.*, at p. 10.
7 Permitted uses in a zone are uses that the legislature of the planning jurisdiction, in this case
8 the Benton County Board of County Commissioners (the “Board”), has determined to be
9 orderly and compatible with one another—i.e., a single-family home in a rural area may be
10 compatible with a horse stable as they have similar intensity of use. *Id.* With an unpermitted
11 use, or even a potential conditional use, there is a higher likelihood for conflict in the
12 intensity of uses. *Id.* Conflict in the intensity of uses results in incompatible uses. *Id.* In
13 order to determine the likelihood of conflict, one must compare and contrast the intensity of a
14 proposed conditional use with the intensity of outright permitted uses. *Id.*

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16 The HHWF micrositing corridor encompasses 11,850 acres and will house 244
17 turbines. Appendix F to the Updated ASC shows an average parcel size of 341 acres for the
18 landowners with whom Scout holds a lease agreement. Understanding that the lease
19 agreements cover the entire project boundary, the exact number of parcels the micrositing
20 corridor covers is unknown to the County. However, taking this average parcel size of 341
21 acres, the micrositing corridor can be assumed to cover 35 parcels. 244 turbines across 35
22 parcels averages out to approximately seven turbines per parcel. This does not include the
23 necessary haul routes associated with each turbine, which may cross multiple parcels.
24 Dryland farming can encompass thousands of acres and multiple parcels, but usually only has
25 about two or three structures associated with the entire operation. BEN EXH 2001_T, p. 11.
26 Permitted uses in the GMAAD are similar, encompassing large areas but including few
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3 structures and roads. In addition, Scout’s own witness admits that the roads in the GMAAD
4 are closer to dirt tracks as compared to the graveled service roads that will be installed for the
5 HHWF. SCE EXH 1035_R, p. 5. Permitted uses in the GMAAD are low intensity activities
6 when it comes to their use of the land. The intensity of the HHWF is significantly greater
7 than the intensity of permitted uses within the GMAAD, as it covers a much larger land area,
8 involves more ground disturbance, and is not ancillary to existing agricultural uses, rendering
9 the HHWF incompatible with development as compared to permitted uses.
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11 While Benton County will put on evidence and testimony during the adjudication
12 hearing that the HHWF does not comply with *any* of the required CUP criteria, the key point
13 for EFSEC to understand is that the HHWF is fundamentally incompatible with permitted
14 uses in the GMAAD due to its intensity of use and should not be allowed as a conditional
15 use.
16

17 **B. The Horse Heaven Wind Farm violates the Growth Management Act’s mandate**
18 **to conserve and protect agricultural lands of long-term commercial**
19 **significance.²**

20 In addition to its inability to satisfy Benton County’s CUP criteria, the HHWF suffers
21 from another fatal flaw—it impacts and unlawfully converts ALLTCS in violation of the
22 GMA. One of the issues for adjudication under the regulations implementing the Energy
23 Facility Site Locations Act (Ch. 80.50 RCW) is a proposal’s consistency with zoning and
24 land use regulations. WAC 463-30-300(2). The HHWF is located within Benton County’s
25 GMAAD. The purpose of the GMAAD:
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28 ² The County acknowledges that Pre-Hearing Order No. 2 excluded from adjudication the
29 issue of compliance with the Growth Management Act. However, the County's position is
30 that non-compliance with the GMA has a substantial relationship to EFSEC’s evaluation of

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[i]s to meet the minimum requirements of the State Growth Management Act (Chapter 36.70A RCW) that mandates the designation and protection of agricultural lands of long term commercial significance. This chapter protects the GMA Agricultural District (GMAAD) and the activities therein by limiting non-agricultural uses in the district to those compatible with agriculture and by establishing minimum lot sizes in areas where soils, water, and climate are suitable for agriculture purposes. This chapter is intended to work in conjunction with Chapter 14.05 BCC entitled “Right to Farm” which protects normal agricultural activities from nuisance complaints.

BCC 11.17.010 (emphasis added). Therefore, in order for the HHWF to be consistent with the requirements of the GMAAD, it must also be consistent with the requirements of the GMA.

1. The GMA requires conservation of agricultural lands of long-term commercial significance (“ALLTCS”).

The GMA imposes on cities and counties a mandate for conservation of a type of natural resource land identified by the GMA as ALLTCS. RCW 36.70A.060. Jurisdictions are 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 *must* be followed. *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

the issue of land use as the HHWF is located on land zoned GMAAD, which was enacted to meet the minimum requirements of the GMA.

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3 management. Read together, RCW 36.70A.020(8), .060(1), and .170, reveal a legislative
4 mandate for the conservation of agricultural land.”) (internal citation omitted). Once land is
5 designated as ALLTCS, it cannot either be de-designated or put to non-agricultural uses
6 without the local jurisdiction first making a determination that the lands no longer meet
7 ALLTCS status. *Clark Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204
8 (2011), *vacated in part on other grounds*, 177 Wn.2d 136 (2013).

9
10 The GMA’s design is “to maintain and enhance the agricultural industry by assuring
11 the conservation of agricultural lands of long-term commercial significance, and preventing
12 interference with agricultural activities by nearby non-agricultural land uses.” *Soccer Fields*,
13 142 Wn.2d at 554. EFSEC must “give effect to the Legislature’s stated intent to *conserve*
14 such land in order to *maintain* and *enhance* the agricultural industry.” *Id.*, at 559. The fact
15 that the HHWF proposes to convert the land back to agricultural uses once the HHWF’s life
16 is complete is both unsupported by the record and, more importantly, is irrelevant. Case law
17 in Washington suggests that *any* conversion of ALLTCS is improper because it is
18 presumptively irreversible. *See Id.*, at 562 (argument that land could be returned to
19 agricultural use was unpersuasive to find that zoning complied with GMA requirements in
20 regard to ALLTCS); *Lewis Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488,
21 508 (2006) (noting that *Soccer Fields* court “concluded that the soccer field zoning was
22 noncompliant because ‘it would result in a long-term removal’ of agricultural land from
23 agricultural production, possibly never returning to agricultural use.”).

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26 2. The HHWF will result in the improper and illegal conversion of agricultural
27 lands of long-term commercial significance.

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3 In order to fulfill the GMA’s mandate to protect ALLTCS, Benton County enacted
4 the GMAAD. BCC 11.17.010. Permitted activities within the GMAAD are limited to
5 agricultural uses and non-agricultural uses “which are dependent upon, supportive of,
6 ancillary to, or compatible with, agricultural production as the principal land use.” *Id.* These
7 permitted activities include: agricultural activities; agricultural-related industries; agricultural
8 stands; bakeries associated with agriculture; single-family homes; manufactured homes;
9 commercial specialty/exotic animal raising; aquaculture; adult family homes; club houses,
10 grange halls associated with agriculture; custom agricultural services; personal airstrips;
11 public or quasi-public buildings; schools/churches; dog kennels; cell towers (no greater in
12 height than 150’); personal use wind turbines (no greater in height than 60’); meteorological
13 towers; and commercial horse stables.
14

15 The HHWF will encompass a total lease boundary of 72,428 acres within the
16 GMAAD. All land within the GMAAD is ALLTCS. BEN EXH 2002, p. 54. Therefore,
17 without a de-designation of the land, the GMA prohibits activities within the GMAAD that
18 result in the conversion of ALLTCS. It is undisputed that within the project boundary, the
19 HHWF will result in the permanent conversion of 6,869 acres—over 10 square miles—of
20 ALLTCS. Updated ASC, p. 2-6. This is not supposition by the County because it is plainly
21 acknowledged in the DEIS.
22

23 Loss of agricultural productivity would persist throughout the life of the
24 Project and would not be restored when construction is complete (WDFW
25 2009). Permanent disturbance from Project construction (which extends
26 into operation and decommissioning) would occur in the areas of the final
27 tower footings and associated access roads, the substations, fencing
28 around the solar arrays, and all areas occupied by permanent structures.
Permanent disturbance also includes areas identified by the Applicant as
modified habitat, which includes areas within the fencing around solar
arrays. The areas under and between solar arrays would be disturbed

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during Project construction and would be replanted following construction; however, areas under the solar arrays would not support agricultural activities.

DEIS, p. 4-261. There has been no de-designation of any of the land within the HHWF lease boundary. Therefore, any place where infrastructure is placed or roads are constructed within the HHWF project boundary converts ALLTCS. This is unlawful under the GMA and the BCC.

Scout seems to suggest that the County is opposed to the HHWF because the County wants to use the Horse Heaven Hills as an area to expand the rapidly growing Tri-Cities. SCE EXH 1035_R, p. 13 (“This sleight-of-hand technique used by the County to scapegoat Scout Clean Energy is a thin veil that poorly hides the County’s true long-term plans for the Horse Heaven Hills and its farms.”). First, the suggestion is completely wrong. In order to allow for residential development in the GMAAD, the County would first have to conduct a comprehensive land use analysis to determine if the necessary factors are present for de-designation of ALLTCS. *Clark Cnty*, 177 Wn.2d 136. The County undertook this kind of analysis during its 2018 comprehensive plan update. BEN EXH 2002, p. 956-980. The County does not expect to be able to de-designate any more ALLTCS in the Horse Heaven Hills area pursuant to the factors in WAC 365-190-050. Additionally, if the County did de-designate ALLTCS, its concern about the *improper conversion* of ALLTCS would be moot. The land would no longer be ALLTCS and could be put to any number of non-agricultural uses. Second, Scout’s suggestion continues to showcase that Scout either misunderstands the County’s argument, or simply does not care about the County’s attempt to conserve ALLTCS.

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3 Benton County acknowledges that, at the time of Scout’s application, “wind turbine
4 farms” were authorized pursuant to a CUP in the GMAAD. However, the definition of a
5 wind turbine farm was simply “two or more wind turbines on one parcel.” BCC
6 11.03.010(191). From a base definitional level, any number of projects could be submitted to
7 the County for a “wind turbine farm.” In this case, Scout proposes a project boundary of
8 72,428 acres, with 244 wind turbines to be constructed across an 11,850-acre micro-siting
9 corridor. Updated ASC, p. 2-1.
10

11 Understanding that the ambiguity as to potential proposals for a “wind turbine farm,”
12 some of which may conflict with the agricultural conservation mandate of the GMA and
13 GMAAD, the Board updated the conditional uses allowed in the GMAAD in 2022, removing
14 “wind turbine farms.” BEN EXH 2001_T, p. 8. In interpreting a statute, a court is to look to
15 the legislative history of a statute, which includes amendments. *State v. Kingen*, 39 Wn.
16 App. 124, 129 (1984). While Benton County’s comprehensive plan was updated after Scout
17 submitted its ASC, EFSEC should still take into consideration the Board’s amendments as a
18 statement of its views on compatible uses in the GMAAD. The legislative history in this
19 case shows that the Board intended to provide for uses that are compatible and ancillary with
20 the other permitted uses in the GMAAD, such as one or two 60-foot wind turbines for
21 personal use on a farm. This is because a massive wind turbine farm the size and scale of the
22 HHWF results in the improper conversion of ALLTCS to non-agricultural uses.
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24 a. *The HHWF’s decommissioning plan is not sufficient mitigation.*
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26 As a matter of substantive law, the fact that land may, in the future, be returned to its
27 “preconstruction character” does not comply with the GMA’s mandate that ALLTCS be
28 preserved. *Soccer Fields*, 142 Wn.2d at 562 (“The County’s argument that the land could be
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3 returned to agricultural use at a future time, despite the intensive use demanded by the
4 growing urban population and the profitability of that use, is unpersuasive.”). Benton
5 County’s concerns regarding HHWF’s conversion of ALLTCS is due to the fact that “once
6 gone, *the capacity of those lands to produce food is likely gone forever.*” *Lewis Cnty. v. W.*
7 *Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 496 (2006) (emphasis added).
8

9 Simply put, Benton County does not agree with Scout that its decommissioning plan
10 provides sufficient support for the proposition that the converted ALLTCS can be returned to
11 viable agricultural production. Scout does not provide any evidence to back up such claims,
12 which in any event are at odds with previous decisions of the Washington State Supreme
13 Court. *See Lewis Cnty.*, 157 Wn.2d at 496; *Soccer Fields*, 142 Wn.2d at 562.

14 b. *The HHWF will result in improper agricultural fragmentation.*

15 In addition to conversion of ALLTCS, the HHWF will also result in agricultural
16 fragmentation within the GMAAD. Dryland farming has an economy of scale requiring
17 large operations, typically in the thousands of acres. This is due to the fact that dryland
18 farming has low per-acre yield and profits. By fragmenting farming operations within and
19 beyond the HHWF area, the County will experience pressure to allow non-agriculture rural
20 uses to replace an intact, regional agricultural area. The disruptive effect of the HHWF on
21 farming operations will be apt to result in the transition of this land to other uses that will
22 have little or nothing to do with agriculture. Road building, traffic, and new land use
23 pressures will range beyond the HHWF area and will cause large-scale change to the
24 landscape as a viable farming area. Simply put, the HHWF will result in the conversion of
25 ALLTCS and future fragmentation of the land within the GMAAD.
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28 **IV. CONCLUSION**

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Due to the size, scale, and scope of the HHWF, it is incompatible with outright permitted uses in the GMAAD and cannot satisfy Benton County’s CUP criteria. Additionally, the HHWF will result in the improper conversion of ALLTCS and cause agricultural fragmentation within the GMAAD. EFSEC should recommend denial of the HHWF to the Governor.

DATED this 9th day of August, 2023.

MENKE JACKSON BEYER, LLP

/s/ Kenneth W. Harper
KENNETH W. HARPER, WSBA #25578
AZIZA L. FOSTER, WSBA #58434
807 North 39th Avenue
Yakima, WA 98902
(509) 575-0313
kharp@mjb.com
zfoster@mjb.com
Attorneys for Benton County

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

<p>Energy Facility Site Evaluation Council PO Box 43172 Olympia, WA 98504-3172</p>	<p><input type="checkbox"/> By United States Mail <input checked="" type="checkbox"/> By Email: adjudication@efsec.wa.gov adamtorem@write.me jonathan.thompson@atg.wa.gov lisa.masengale@efsec.wa.gov sonia.bumpus@efsec.wa.gov andrea.grantham@efsec.wa.gov alex.shiley@efsec.wa.gov</p>
<p>Timothy L. McMahan Crystal S. Chase Stoel Rives LLP 760 SW Ninth Avenue, Suite 3000 Portland, OR 97205 <i>Counsel for Scout Clean Energy, LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input checked="" type="checkbox"/> By Email: tim.mcmahan@stoel.com willa.perlmutter@stoel.com ariel.stavitsky@stoel.com Emily.Schimelpfenig@stoel.com</p>
<p>Sarah Reyneveld Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 <i>Counsel for the Environment</i></p>	<p><input type="checkbox"/> By United States Mail <input checked="" type="checkbox"/> By Email: Sarah.Reyneveld@atg.wa.gov CEPSeaEF@atg.wa.gov Julie.Dolloff@atg.wa.gov jenna.slocum@atg.wa.gov</p>
<p>J. Richard Aramburu Law Offices of J. Richard Aramburu, PLLC 705 2nd Ave, Suite 1300 Seattle WA 98104-1797 <i>Counsel for Tri-Cities C.A.R.E.S.</i></p>	<p><input type="checkbox"/> By United States Mail <input checked="" type="checkbox"/> By Email: Rick@aramburu-eustis.com aramburulaw@gmail.com carol@aramburulaw.com</p>
<p>Ethan Jones Shona Voelckers Jessica Houston Yakama Nation Office of Legal Counsel 401 Fort Road PO Box 151</p>	<p><input type="checkbox"/> By United States Mail <input checked="" type="checkbox"/> By Email: ethan@yakamanation-olc.org shona@yakamanation-olc.org jessica@yakamanation-olc.org</p>

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Toppenish, WA 98948 <i>Counsel for Yakama Nation</i>	
Ryan Brown, Chief Deputy Prosecuting Attorney Benton County Prosecuting Attorney 7211 West Okanogan Place, Building A Kennewick, WA 99336 <i>Counsel for Benton County</i>	[] By United States Mail [x] By Email: Ryan.Brown@co.benton.wa.us

DATED THIS 10th day of August, 2023.

/s/ Julie Kihn

JULIE KIHN