

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITING EVALUATION COUNCIL

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

DOCKET NO. EF-210011  
  
REBUTTAL TESTIMONY AND  
ATTACHMENTS OF LESLIE MCCLAIN  
ON BEHALF OF SCOUT CLEAN  
ENERGY

**REBUTTAL TESTIMONY AND ATTACHMENTS OF LESLIE MCCLAIN  
ON BEHALF OF  
SCOUT CLEAN ENERGY  
EXH-1023\_R**

**JUNE 30, 2023**

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1 **I. INTRODUCTION AND QUALIFICATIONS:**

2 Q. Please state your name, occupation, and where you live.

3 A. My name is Leslie McClain. I reside in White Salmon, Washington.

4 Q. Where are you employed?

5 A. I am employed at Tetra Tech, an environmental consulting, engineering, and  
6 permitting firm, which among other things, serves the energy industry.

7 Q. Please describe your professional expertise.

8 A. I have a BA in Environmental Studies and Public Administration from Carroll  
9 College. I've been a professional land use/environmental planner for 15 years and  
10 have extensive experience in land use permitting, environmental review, and project  
11 coordination for infrastructure projects in Washington, Oregon, and Hawaii. I  
12 specialize in renewable energy project permitting.

13 Q. Please describe the purpose of this rebuttal testimony.

14 A. I am testifying in response to the pre-filed direct testimony of Greg Wendt and  
15 Michelle Cooke, both of whom work for the Benton County Planning Department.

16 Q. Are you able to answer questions under cross examination regarding your testimony?

17 A. Yes.

18 Q. Please describe your work on the Horse Heaven Project (the "Project").

19 A. I am one of the authors and senior reviewers of Chapter 2.0 (the "Proposal") of the  
20 Application for Site Certification ("ASC") for the Project. Specifically, I supported  
21 the effort to evaluate pertinent federal, state, and local requirements needed to permit,  
22 construct, and operate the Project, as described in ASC section 2.23. In particular, I  
23 analyzed the pertinent local ordinances and permits as evaluated in ASC Section  
24 2.23.3.

25 Q. Are you familiar with the Energy Facility Siting Council's Order No. 883, finding the  
26 proposed site to be "consistent with land use regulations"?

1 A. Yes, I am.

2 Q. Please describe your understanding of Council Order No. 883.

3 A. Early in the permitting process, EFSEC determines whether the proposed Project is  
4 consistent with existing, local land use regulations. For the Project, EFSEC issued  
5 that determination in Order No. 883. In making that determination, EFSEC defined a  
6 “Test for Consistency and Compliance.” Per the Consistency and Compliance test,  
7 “EFSEC considers whether the pertinent local land use provisions prohibit the site  
8 expressly or by operation clearly, convincingly and unequivocally. If a site can be  
9 permitted either outright or conditionally, it is consistent and in compliance with the  
10 local land use provisions.” Order No. 883 at p. 7 (internal quotations omitted). In  
11 Order No. 883, the Siting Council used this test and held as follows:

12 “Applying the facts to the test established, we conclude the Site is  
13 consistent with the pertinent portions of the land use provisions  
14 because neither the pertinent portions of the Plan nor the pertinent  
15 portions of the zoning ordinances clearly, convincingly, and  
16 unequivocally prohibit the Facility. The Plan does not provide  
17 guidance on the siting of renewable energy facilities. The zoning  
18 ordinances specifically allow the proposed use to be authorized in the  
19 [Growth Management Act Agricultural District] GMAAD zone as a  
20 conditional use. We note that the County previously permitted the  
21 Nine Canyon Wind Project (25 turbines) in this zoning district.  
22 Therefore, we conclude the pertinent land use provisions do not  
23 clearly, convincingly or unequivocally prohibit the Facility. Under the  
24 established precedent for a minimal threshold for determining land use  
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1 consistency, the Facility is consistent and in compliance with Benton  
2 County’s land use provisions.” *Id.*

3 The eventual expansion of the Nine Canyon Wind project included 63 wind  
4 turbines.

5 In short, Order No. 883 states the Project *could* be sited in the proposed location  
6 under the land use regulations in place at the time of the application. The Council  
7 reserved further decisions for later EFSEC proceedings, after which EFSEC may  
8 recommend and impose conditions of approval for the Project to address Benton  
9 County’s Conditional Use Permit (CUP) and variance criteria in a Site Certificate  
10 Agreement (SCA). *Id.*

11 In addition to determining the Project is consistent with the County’s “land use  
12 provisions,” EFSEC made clear that “[t]he Council’s land use consistency  
13 determination does not prejudice whether the Facility has met or can meet Benton  
14 County’s conditional use criteria.” *Id.* at 7-8. The Council specifically directed that  
15 “the matter shall be set for an adjudication to consider any conditions which might be  
16 required for the construction, operation and maintenance of the Facility in the  
17 GMAAD, consistent with Benton County’s conditional use criteria in effect at the  
18 time the application for site certification was filed with EFSEC.” *Id.* at 9. The  
19 Council adopted the following Conclusions of Law and Order:  
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23 **CONCLUSIONS OF LAW**

- 24 (1) The Council has jurisdiction over the subject matter of this proceeding and the  
25 parties to it pursuant to RCW 80.50.090 and WAC chapter 463-26.  
26 (2) The Council provided adequate notice to interested parties, and the Council has  
adequate information to render a land use consistency decision.

- 1 (3) Under the Benton County Code, the Facility meets the definitions of a “solar  
2 power generation facility, major” and a “wind turbine farm.”
- 3 (4) The Facility Site is on land zoned GMAAD, an area of Benton County primarily  
4 dedicated for agricultural uses. However, major solar power generation facilities and  
5 wind turbine farms are conditionally permitted in the GMAAD.
- 6 (5) A site is consistent and in compliance with land use plans and zoning ordinances  
7 if it is permitted absolutely or conditionally. To be inconsistent and noncompliant, the  
8 plan or ordinances must expressly, or by operation, clearly convincingly, and  
9 unequivocally prohibit the facility site.
- 10 (6) The Applicant has met its burden of proof of demonstrating that the site is  
11 consistent and in compliance with Benton County’s Comprehensive Plan and  
12 applicable zoning ordinances in effect as of the date of the application as required by  
13 RCW 80.50.090(2).
- 14 (7) The matter will be scheduled for an adjudication to consider whether the Council  
15 should recommend approval of the Application and, if so, to determine specific  
16 conditions to include in a draft site certification agreement that address the County’s  
17 criteria for issuance of a conditional use permit.

18 **ORDER**

19 **THE COUNCIL ORDERS:**

- 20 (1) Scout Clean Energy’s application is consistent and in compliance with local land  
21 use plans and zoning regulations.
- 22 (2) Scout Clean Energy’s application would require a conditional use permit under  
23 local zoning regulations.
- 24 (3) The matter shall be set for an adjudication to consider any conditions which might  
25 be required for the construction, operation and maintenance of the Facility in the  
26 GMAAD, consistent with Benton County’s conditional use criteria in effect at the  
time the application for site certification was filed with EFSEC. The adjudication may  
be held concurrent with, or separate from the adjudication related to the application  
for site certification under RCW 80.50.090(3).

Q. In your professional opinion, with land use consistency determined by Order No. 883,  
what is the County’s role in responding the upcoming land use adjudication?

1 A. Order No. 883 requires that the land use adjudication consider any conditions which  
2 might be required for construction, operation, and maintenance of the Facility in the  
3 GMAAD, consistent with Benton County’s conditional use criteria in effect at the  
4 time the application for site certificate was filed with EFSEC. I believe it is the  
5 County’s role to provide the Council recommendations for conditions to place on the  
6 Project which address the County’s conditional use criteria. Such criteria generally  
7 aim to mitigate and minimize potential impacts of the Project on other proposed land  
8 uses, and to provide for the compatibility of surrounding uses. This generally means  
9 a given development would not interfere with the ongoing use of the subject land nor  
10 the existing uses of the nearby land. Here, use of land for wind, solar, and battery  
11 energy storage facilities would be conditioned to allow for the ongoing agricultural  
12 use of the land.  
13

14  
15 Q. What is your opinion regarding the County’s response to the Council’s request for  
16 mitigation measures pursuant to the conditional use criteria?

17 A. In its testimony, the County has essentially given no direction to the Council in this  
18 regard. I assume that the County will be able to do so in the land use portion of the  
19 adjudication. As a preliminary note, the Benton County testimony does not even  
20 mention by name EFSEC Order No. 883, which concluded the Project “is consistent  
21 and in compliance with Benton County’s land use provisions.” Rather, the testimony  
22 repeats arguments that the Project is not compatible with the County’s GMAAD,  
23 essentially maintaining that the Project is not eligible for a CUP, regardless of the  
24 conditions. In my opinion, this posture is at odds with the process as explained in  
25 Order No. 883 and the “local land use” provisions as detailed by EFSEC and as  
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1 analyzed and discussed in my testimony below. In Order No. 883 (Conclusion of  
2 Law No. 6), EFSEC determined that “the Applicant has met its burden of proof of  
3 demonstrating that the site is consistent and in compliance with Benton County’s  
4 Comprehensive Plan and applicable zoning ordinances in effect as of the date of the  
5 application as required by RCW 80.50.090(2).” The Applicant demonstrated in  
6 Section 2.23.3.2 of the ASC that the project is consistent with the BCCP, and in  
7 particular to the Natural Resource Goal 1 Policy 3 which is referenced in Mr.  
8 Wendt’s testimony:  
9

10 ***Chapter 4: Natural Resource Lands Element***

11 ***NR Goal 1: Conserve and maintain agricultural land of long-term commercial***  
12 ***significance as the local natural resource most essential for sustaining the County's***  
13 ***agricultural economy.***

14 ***Policy 3: Recognize that only uses related or ancillary to, supportive of,***  
15 ***complimentary to, and/or not in conflict with agricultural activities are appropriate***  
16 ***in areas designated GMA Agriculture.***

17 ***Statement of Compliance***

18 *The Project qualifies as an appropriate conditional use in Benton County’s GMA AG*  
19 *land use designation and corresponding GMAAD zoning district at the time of initial*  
20 *application and as determined by EFSEC under Council Order No. 883. The Project*  
21 *is generally supportive of and does not conflict with adjacent and surrounding*  
22 *agricultural activities as demonstrated in the Applicant’s statement of compliance to*  
23 *BCC 11.17.070(t), which sets criteria for wind farms in the GMAAD zoning district,*  
24 *BCC 11.42.100, which sets criteria for major solar power generation facilities in the*  
25 *County, and to the conditional use criteria under BCC 11.50.040(d). Therefore, the*  
26 *Project is consistent with this policy of the BCCP.*

Fundamentally, now that EFSEC has issued Order No. 883, the relevant question in  
the present stage of the adjudication boils down to “whether applicable conditional  
use criteria are in fact met.” The response to that question will ultimately come in the  
form of EFSEC recommending or imposing conditions of approval in the Site

1 Certification Agreement as related to the County’s CUP criteria.

2 Q. Does the County testimony objectively evaluate whether the CUP criteria can be met?

3 A. No, at least not in a constructive way. Mr. Wendt’s testimony is structured as a step-  
4 by-step rejection of the Project under the CUP criteria in Benton County Code (BCC)  
5 § 11.50.040—*this is the current code, adopted after the Applicant filed its EFSEC*  
6 *ASC, not the applicable code upon which the Applicant based its analysis.*

7  
8 Confusingly, Mr. Wendt’s testimony also concedes the Project is required to obtain a  
9 CUP “under the Benton County Code in effect at the time of project application” (see  
10 pages 2 and 8-9). But his testimony does not attempt to apply the law in effect at the  
11 time of Project application, which included “wind turbine farm” and “solar power  
12 energy facility, major” as conditionally permissible uses within GMAAD under BCC  
13 11.17.070(t) and (cc) – and as noted by EFSEC, the same code provisions of BCC  
14 11.17.070(t) applied in permitting the Nine Canyon Wind Project. Rather, the Benton  
15 County testimony focuses on the law in effect today (the amended version of BCC  
16 11.17.070, which no longer contains the wind farm category or the solar power  
17 energy facility, major category as a conditional use in the GMAAD) which is not  
18 applicable, without any explanation for doing so.  
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21 Q. Does the County provide any meaningful direction on how to apply Benton County  
22 Code to the Project?

23 A. Very little. Mr. Wendt essentially declines to provide meaningful direction on how to  
24 apply the County code to the Project, stating that “until the [Final Environmental  
25 Impact Statement (FEIS)] is issued ... I cannot evaluate whether [the Project]  
26 complies with the CUP criteria.” Ms. Cooke made a similar caveat regarding the



1 pending FEIS in her testimony, essentially refusing to apply the criteria to the Project.  
2 In a nutshell, the County testimony does not propose any definite suggestions for  
3 EFSEC to impose conditions of approval in the Site Certification Agreement based on  
4 the County’s applicable CUP criteria. Where the County does purport to apply the  
5 CUP criteria, the main areas of concern are: (i) reduction in GMAAD land available  
6 for farming; (ii) road traffic and wear, especially during construction; (iii) capacity of  
7 Benton County Fire District 1, including road and water access; and (iv) generalized  
8 impacts to topsoil and shrub-steppe ecosystem – a curious stance given the decades of  
9 County approvals of rural subdivisions and home sites which have massively  
10 degraded and diminished the shrub-steppe ecosystem and habitat, with little regard  
11 for ecology or efforts to manage growth. This failure to propose conditions of  
12 approval is unhelpful for EFSEC. In the ASC and in my testimony below, given our  
13 anticipation of the vacuum of the County response, we have evaluated the CUP  
14 criteria, enabling EFSEC to consider reasonable conditions. The story the County  
15 testimony is trying to tell essentially boils down to a zero-sum conflict between wind  
16 energy use versus family farming. This absolutely false choice is repeated throughout  
17 Ms. Cooke’s testimony. It flies in the face of the compelling strategy of building  
18 clean energy to address climate change while also investing in agricultural  
19 economies—as evidenced by Mr. Wiley’s testimony, the Project’s lease payments  
20 will provide substantial support to local farmers in their efforts to continue often  
21 multi-generational agricultural operations which are currently under threat due to the  
22 continued increase in farming costs and the constant fluctuation in commodity prices  
23 and the weather. There are various aspects of the County Testimony which are  
24 factually inaccurate or at least utterly speculative, including statements about  
25 permanently impacted acreage of farmland and unfounded claims that landowners  
26 won’t ever return the leased land to agricultural production. These opinions ignore

1 the fundamental opportunity the Project provides to local farmers. With fresh  
2 revenues from wind and solar leases, farmers can improve their farming operations  
3 and profitability, and they can resist the ever-increasing pressure to sell out to  
4 residential land speculators and further the downward spiral of converting untold  
5 farm and habitat acres for housing development.

6 Q. In brief, please summarize the Applicant’s response to the four main issues noted  
7 above, regarding the CUP criteria.

8 A. 1. Reduction in GMAAD land available for farming: As discussed above and in  
9 the ASC, County land use planning and zoning has significantly diminished acres  
10 available for farming, encouraging conversion of habitat and agricultural land use for  
11 sprawling residential development. The Benton County 2006 Comprehensive Plan  
12 lists a total of 744,752 acres in the GMAAD while the 2018 Comprehensive Plan  
13 (updated in 2020) lists a total of 649,153 acres in the GMAAD. This is a reduction of  
14 95,599 acres or approximately 13 percent of the total 2006 GMAAD acreage in the  
15 County. It is clear that the reduction to GMAAD lands in Benton County is occurring  
16 due to urbanization and other land use conversions and not due to utility scale solar or  
17 wind projects as the existing wind and solar facilities within the County have sited  
18 without the need to convert GMAAD land to a different land use as solar and wind  
19 were conditionally allowed in the GMAAD from 2006 to 2018. The Project will not  
20 require removal of land from the GMAAD and will in fact encourage and enable  
21 ongoing farming on the site, especially on lands where the landowner will continue to  
22 farm around the wind turbines. In contrast to renewable energy facilities, residential  
23 conversions are a permanent *change in zoning*, which permanently *destroys the*  
24 *ability to use the land for agricultural purposes*. See Mr. Wiley’s testimony for  
25 more details regarding the compatibility of the Project with his wheat farming  
26 operations. Substantial lease revenues from the Project will encourage ongoing

1 farming and discourage conversion of farmland to sprawling residential  
2 developments. See Mr. Wiley’s testimony for more details regarding the benefits the  
3 lease revenues will offer his wheat farming operations and provide opportunities to  
4 improve and expand is agricultural operations.

5 2. Road traffic and wear, especially during construction: The responsibility of  
6 the Applicant to address road impacts and traffic management are routine issues  
7 readily addressed through conditions. Road impacts and traffic management are  
8 discussed in detail in Section 4.3.2 of the Applicant’s ASC and associated mitigation  
9 measures are addressed in Section 4.3.3 of the ASC.

10 3. Capacity of Benton County Fire District 1, including road and water access:  
11 The ASC includes analysis of fire risk and the environmental review indicates that the  
12 risk is considered low. There is no published history of range fires caused by the  
13 Nine Canyon Wind Project, and while the County points to a single wind turbine fire  
14 in the Northwest, that example does not signal any appreciable risk of fire. The Nine  
15 Canyon Wind Project is a real, not speculative, precedent and example of low fire  
16 risk, and the lack of strain on current fire and other emergency resources is based on  
17 20 years of actual operations at the wind project in Benton County, which has  
18 operated without incident pursuant to the CUP conditions imposed on that project.  
19 The Applicant must and will ensure that there is no untenable risk of fire attributed to  
20 the Project. The risk of fire or explosion during construction and operation of the  
21 Project is discussed in Section 4.1.2 of the ASC. A Draft Emergency Response Plan,  
22 which addresses fire and other emergency procedures, is included as Appendix P of  
23 the ASC. The Applicant will coordinate with the Benton County Fire Marshal and  
24 other appropriate agencies to finalize the Emergency Response Plan, which will be  
25 submitted to EFSEC for approval prior to construction. Other emergency plans that  
26 will be developed by the Applicant and submitted to EFSEC for approval prior to

1 construction are identified in Section 4.1.2.5 of the ASC. Typical fire mitigation  
2 measures that will likely be included in a Final Emergency Response Plan are  
3 identified in Section 4.1.2.1.3 of the ASC. The Applicant will coordinate with local  
4 emergency services personnel and provide training to emergency personnel where  
5 necessary.

6 4. Generalized impacts to topsoil and shrub-steppe ecosystem: This is a curious  
7 stance given the decades of Benton County approvals of rural subdivisions and home  
8 sites which have massively degraded and diminished the shrub-steppe ecosystem and  
9 habitat, with little regard for ecology or efforts to manage growth. The Project is  
10 almost entirely proposed on agricultural lands, where agricultural land uses will  
11 persist in the majority of the project lease boundary. As described in Section 4.2.1 of  
12 the ASC, upon decommissioning of the project, the Applicant will replace topsoil and  
13 reseed areas where facilities were located with grasses and/or other vegetation  
14 reasonably acceptable to the landowner. The Applicant is not aware of irreversible  
15 impacts to topsoils, and impacts to the shrub-steppe ecosystem are being addressed in  
16 the proposed Habitat Mitigation Plan, which has been reviewed by EFSEC and  
17 WDFW.

18 Q. Given a lack of cooperation from the County, what actions has the Applicant taken to  
19 ensure that CUP-based conditions are addressed in the land use review?

20 A. When we drafted the ASC, we included a substantial analysis of the CUP criteria and  
21 how the Project can comply with Benton County's CUP criteria. We had hoped  
22 Benton County would respond constructively and engage with the Applicant and  
23 EFSEC to develop meaningful mitigation measures. Lacking that cooperation from  
24 the County, the ASC, at Section 2.23.3 includes the Applicant's detailed analysis of  
25 the CUP criteria, responding to what the Applicant believes to be impacts that can be  
26

1 mitigation in accordance with the Benton County Code. The ASC presents a detailed  
2 “statement of compliance” addressing the code provisions.

3 Q. Please explain the County’s CUP requirements and process.

4 A. In the ASC, p. 2-152, we evaluated the County’s CUP criteria. The Code allows for  
5 the issuance of a CUP, meaning the use is allowed subject to conditions, in  
6 consideration of the imposition of conditions, so long as the use as conditioned meets  
7 the following standards:

- 8 (1) *The use is compatible with other uses in the surrounding area or is no*  
9 *more incompatible than are any other outright permitted uses in the*  
10 *applicable zoning district;*
- 11 (2) *The use will not materially endanger the health, safety, and welfare of the*  
12 *surrounding community to an extent greater than that associated with any*  
13 *other permitted uses in the applicable zoning district;*
- 14 (3) *The use would not cause the pedestrian and vehicular traffic associated*  
15 *with the use to conflict with existing and anticipated traffic in the*  
16 *neighborhood to an extent greater than that associated with any other*  
17 *permitted uses in the applicable zoning district;*
- 18 (4) *The use will be supported by adequate service facilities and would not*  
19 *adversely affect public services to the surrounding area; and*
- 20 (5) *The use would not hinder or discourage the development of permitted*  
21 *uses on neighboring properties in the applicable zoning district as a result*  
22 *of the location, size or height of the buildings, structures, walls, or required*  
23 *fences or screening vegetation to a greater extent than other permitted*  
24 *uses in the applicable zoning district.*

25 Below is the evaluation we undertook in the ASC.

- 26 (1) *Is compatible with other uses in the surrounding area or is no more*  
*incompatible than are any other outright permitted uses in the applicable*  
*zoning district;*

**Statement of Compliance**

The Project is a renewable energy generation facility consisting of wind and  
solar facilities as well as the two optional BESS. In total, the Project’s permanent

1 disturbance footprint would occupy approximately 6,869 acres of Benton County’s  
2 GMAAD zoning district which represents approximately 1.1 percent of the existing  
3 GMAAD area in the County (see Section 4.2.1). Total agricultural land within the  
4 Project’s permanent disturbance footprint (6,866 acres) represents approximately 0.9  
5 percent of the existing agricultural lands in Benton County, as identified in the  
6 Benton County land cover dataset, which includes some additional land outside of the  
7 GMAAD zoning district (see Section 4.2.6). Land uses and habitat attributes in the  
8 Project Lease Boundary are predominantly cropland, pastureland, open shrub-steppe  
9 habitat and grassland, with few and interspersed single-family rural residences.

10 “Compatibility” of the Project with “other uses in the surrounding area” under  
11 the County code provisions is judged by whether the Project would have a  
12 substantiated negative impact on the ability of surrounding landowners to maintain  
13 their *existing use of the land*, including the ongoing use for agricultural activities and  
14 residential uses. These criteria do not require a demonstration that there will be no  
15 change, nor does the change in the use of the Project site itself indicate lack of  
16 “compatibility.” Compatibility is objectively measured by factors including whether  
17 the Project would result in the imposition of additional costs, impair or materially  
18 change commercial operations, impair transportation circulation, isolate existing  
19 properties, and whether the Project would compel or force changes in known and  
20 accepted agricultural practices and other existing uses of the surrounding lands;  
21 generally, the question is whether the Project would undermine existing uses or cause  
22 any increase in the costs of agricultural uses and practices of the land. As  
23 demonstrated throughout this ASC, the Applicant has developed measures to avoid,  
24 mitigate, or minimize (to the greatest extent reasonable) potential conflicts with  
25 surrounding land uses.

1           Based on a review of topographic maps and historical aerial photographs  
2           between 1958 and 2019, historical uses surrounding the Project Lease Boundary have  
3           consisted of rural pasture and agricultural land, cultivated crops with scattered wells  
4           and grain elevators, and ranch properties. Current uses on land surrounding the  
5           Project Lease Boundary are consistent with the historic uses summarized above.  
6           Structures associated with surrounding land uses include rural residences, barns,  
7           corrals, and other rural and agricultural structures. Additionally, an operating wind  
8           energy facility, the Nine Canyon Wind Project, is located north of and adjacent to the  
9           Project Lease Boundary. Section 4.2.6 and Figure 4.2.6-1 identify existing land cover  
10          surrounding the Project Lease Boundary based on land types identified in the Benton  
11          County Comprehensive Plan (“BCCP”), using the most recent data available (Benton  
12          County 2020a and 2020b). As depicted on Figure 4.2.6-1, land north of and adjacent  
13          to the Project Lease Boundary consists predominately of dryland agriculture and  
14          agricultural rangelands with small areas of adjacent development. Land to the east  
15          and south and adjacent to the Project Lease Boundary consists predominately of a  
16          mixture of dryland and irrigated agriculture. Land west of and adjacent to the Project  
17          Lease Boundary consists of dryland agriculture. The wind, solar and battery storage  
18          uses would be benign in impacts to these existing uses of surrounding lands, enable a  
19          highly beneficial use for clean energy, and in no way force changes of uses on  
20          surrounding lands. Roads associated with the Project are generally advantageous for  
21          agricultural activities associated with the existing use and may serve to limit soil  
22          erosion and airborne dust (for further evidence to this point, see testimony from Mr.  
23          Wiley).

24                 For the purposes of demonstrating compliance with the applicable provisions  
25                 of BCC 11.50.040(d), the Project is analyzed as two separate uses of land: (1) “Wind  
26                 Turbine Farm,” containing two or more “Wind Turbines” and related support

1 structures [see BCC 11.03.010(190) and (191)]; and (2) “Solar Power Energy  
2 Facility, Major” including related support structures and the optional BESS (see BCC  
3 11.03.010(167)). These separate land uses are addressed in turn below.

4 **Wind Turbine Farm.** The Project is compatible with the existing  
5 agricultural, renewable energy generation, and interspersed residential land uses in  
6 areas surrounding the Project’s proposed wind facility components. Except for  
7 agricultural land that would be permanently disturbed by Project facilities during the  
8 life of the Project (see Section 4.2.6), the Project does not preclude or erode existing  
9 or future agricultural uses within the Project Lease Boundary. Agricultural uses  
10 would continue within the Project Lease Boundary and surrounding area during  
11 construction and operation. As described in Section 4.2.6, Project Turbines are  
12 largely compatible with existing agricultural operations, including grazing activities.  
13 Cattle, sheep, and other domestic animals can graze up to the Turbines and around  
14 above ground transmission and collector line support structures. Construction of new  
15 access roads or improvements to existing roads would not limit farming practices as  
16 farmers would continue to have access (or anticipated improved access) to  
17 agricultural fields. While not anticipated, construction and operation of the Turbines  
18 may result in some minor alterations to aerial application of pesticides or fertilizers;  
19 however, these alterations would not change harvesting patterns and would not be  
20 significant so as to increase the cost of farming within the Project Lease Boundary or  
21 on surrounding lands. The Applicant would coordinate with landowners to ensure no  
22 disruption to current land use activities.

23 As demonstrated in the BCCP (Benton County 2020b), existing wind farms  
24 are presently located in agricultural areas, including the Nine Canyon Wind Project  
25 adjacent to the Project Lease Boundary. Prior studies have found that large-scale  
26 wind energy facilities do not have a negative impact on the value of agricultural



1 properties that host wind turbines or on rural residential or agricultural properties  
2 surrounding wind facilities (Hoen et al. 2009; Hoen et al. 2013; MaRous & Company  
3 2018). In addition, the Project’s wind facility components would comply with  
4 Benton County’s applicable setback standards addressed above in response to BCC  
5 11.17.070 and BCC 11.17.120. Therefore, the Project’s “wind turbine farm”  
6 components are compatible with other uses of the lands in the surrounding areas.

7 **Solar Power Energy Facility, Major.** Construction, operation, and  
8 maintenance of the proposed solar arrays and optional BESS would reduce the area  
9 available for agricultural cultivation within the Project Lease Boundary for the life of  
10 the Project. However, the Applicant is working with landowners to microsite the  
11 solar arrays within the Solar Siting Areas to minimize adverse impacts to the  
12 landowners’ ongoing agricultural operations. While the solar arrays and optional  
13 BESS may preclude over 6,000 acres from agricultural practices, depending on final  
14 design, the facilities would not change land uses or preclude access to farm operations  
15 on surrounding properties. The solar arrays and optional BESS would not necessitate  
16 relocating existing farm access routes or farm infrastructure and would not result in  
17 changes to the practices for planting, irrigating, fertilizing, or harvesting on  
18 surrounding properties. In addition, the Applicant would ensure the Project’s solar  
19 arrays and optional BESS would comply with Benton County’s applicable setback  
20 and screening standards addressed above in response to BCC 11.17.120 and BCC  
21 11.42.100. Therefore, the Project’s “solar power energy facility, major” components  
22 are compatible with other uses in the surrounding areas.

23 Benton County considers minor solar power energy facilities, wineries,  
24 breweries, distilleries, personal airstrips, utility yards and buildings (such as  
25 substations), and meteorological towers as permitted uses within the GMAAD zoning  
26 district. As demonstrated throughout this ASC, the Project’s major solar power

1 generating facility components, taking into account mitigation, would be no more  
2 incompatible (i.e., would be equally compatible) on surrounding areas compared to a  
3 minor solar power generating facility or utility substation, which are allowable uses in  
4 the GMAAD.

5 Construction of the Project may have limited temporary impacts to  
6 neighboring land uses, but would follow site-specific [best management practices]  
7 BMPs to minimize potential impacts to traffic, noise, air quality, and vegetation, as  
8 described in the respective resource sections of this ASC. These temporary impacts  
9 would not make the Project incompatible with surrounding uses of the lands given the  
10 primarily temporary nature of much of the disturbance in comparison to the overall  
11 acreage in agricultural production on surrounding lands. In addition, operation of the  
12 Project would not negatively impact land uses beyond the Project footprint (see  
13 Section 4.2.6 for additional analysis of potential impacts to agriculture).

14 **Combined Project Facilities.** Based on the proposed Project layout, no  
15 residences or businesses would be displaced due to the Project and impacts to non-  
16 participating property values are not anticipated from the Project. The proposed  
17 Project has been designed with input from participating landowners, with whom the  
18 Applicant has lease agreements that include terms, as applicable, to avoid or reduce  
19 impacts to existing onsite land uses. Following construction, temporary impact areas  
20 would be returned to pre-construction conditions, which primarily consist of crop and  
21 pasture lands. Upon decommissioning of the Project, the Applicant would remove all  
22 above-grade facilities as well as below-grade facilities to not less than 3 feet below  
23 grade. The Applicant would also replace topsoil and reseed areas where facilities  
24 were located with grasses and/or other vegetation reasonably acceptable to the  
25 landowner. Therefore, no irreversible changes to land use would remain beyond the  
26 operating life of the Project.

1           The Project would incorporate measures to reduce the potential for aesthetic  
2 impacts as described in Section 4.2.3. For example, the Project would use non-  
3 reflective materials in muted tones, as well as white or light gray, non-reflective paint  
4 to eliminate the need for daytime aviation lighting and eliminate glare from the  
5 Turbines per FAA regulation. Section 4.2.3 also summarizes the shadow flicker  
6 analysis conducted for the Project. Potential shadow flicker impacts were assessed  
7 against the industry standard threshold of 30 hours per year. Of the 742 receptors  
8 analyzed in the study, only seven were predicted to experience more than 30 hours of  
9 shadow flicker per year and these seven receptors are Project participants (see  
10 Appendix G). Residences on neighboring non-participating properties would not  
11 experience shadow flicker in exceedance of industry standard thresholds. Therefore,  
12 shadow flicker is not expected to result in a significant environmental impact for the  
13 proposed Project. Section 4.2.2 summarizes glare modeling analysis completed for  
14 the Project. The analysis indicates that the surrounding observation points and  
15 vehicle routes would not experience glare as a result of the Project (see Appendix H).  
16 As described in Section 2.23.1.1 of this ASC, the Applicant has also consulted with  
17 the DoD and modified the siting of Turbines following instruction from NORAD to  
18 ensure the Project is compatible with military training activities.

19           The Applicant is coordinating with appropriate local, state, and federal  
20 agencies, and underlying landowners to obtain applicable permits and authorizations  
21 outlined in Table 2.23-1 prior to Project construction. These approvals would further  
22 demonstrate compatibility with current land uses within the Facility Lease Boundary  
23 and in relation to surrounding areas.

24           As noted in Section 2.23.3.2, the Project is consistent with applicable goals  
25 and policies of the BCCP and would provide economic benefits that are supportive of  
26 existing land uses. These benefits include direct wind and solar lease payments to

1 landowners, new local temporary and long-term employment for construction and  
2 operations, and taxes paid to Benton County.

3 For the reasons described above, the Project is compatible with other uses of  
4 the lands in the surrounding areas and complies with BCC 11.50.040(d)(1).

5 (2) *Will not materially endanger the health, safety, and welfare of the*  
6 *surrounding community to an extent greater than that associated with any*  
7 *other permitted uses in the applicable zoning district;*

7 **Statement of Compliance**

8 The Project would implement a variety of BMPs to preserve, and not endanger, the  
9 health, safety, and welfare of the surrounding community. Mitigation measures  
10 proposed for the Project are summarized in Section 1.10. Proposed actions include,  
11 but are not limited to:

- 12 • Compliance with all County setback requirements as described in this ASC;
- 13 • Development and implementation of a Transportation Management Plan. This  
14 plan would include measures to avoid and reduce Project-related delays on local  
15 roadways and protect public safety;
- 16 • Use of non-reflective materials in muted tones to reduce potential aesthetic, glare,  
17 and shadow-flicker impacts
- 18 • Implementation of a Dust Control Plan to avoid or minimize dust generated from  
19 construction activities to protect local air quality;
- 20 • Coordination with Benton County Fire Marshal concerning hazardous materials  
21 storage Special Permit and Project fire safety measures.
- 22 • Coordination with local emergency service providers to develop procedures for  
23 response to natural hazards and human-caused incidents. The Applicant would  
24 register each Turbine location and the O&M facilities with the rural  
25 identification/addressing (fire number) system and 911 system;
- 26 • Implementation of a SWPPP as well as all erosion control measures identified in  
accordance with the Ecology Stormwater Management Manual for Eastern  
Washington, to be included in the ESCP; and
- Implementation of a SPCC Plan to prevent leaks or spills and provide for rapid  
response in the unlikely event of an incident.

The Project would not materially endanger the health, safety, and welfare of the  
surrounding community. No extremely hazardous materials would be used for the

1 Project and no special emergency services would be required. During construction,  
2 some additional risk for workers or the public may exist, as it would for any large  
3 construction project. However, work plans and specifications would be prepared to  
4 address worker and community safety during construction. The Applicant or  
5 designated contractor would work with local emergency service providers to develop  
6 appropriate emergency prevention and response procedures. The Project would follow  
7 site-specific plans that are protective of health and safety, including but not limited to a  
8 Stormwater Pollution Control Plan, Dust Control Plan, SPCC Plan, and Benton County  
9 Special Permit General obtained from the Fire Marshal, which would be submitted to  
10 EFSEC before construction.

11 In addition, the Project would be constructed with a SCADA system that allows  
12 real-time and remote detection of any potential safety issues. The Project substations  
13 and O&M facilities would be fenced and monitored to prevent unauthorized access.  
14 Project infrastructure would be kept locked, and additional security would be provided  
15 as appropriate. No trespassing signs and signs with emergency contact information  
16 would be posted as needed. Additional detail regarding Project design features and  
17 activities is provided in the Project Description in Section 2.3, and further health and  
18 safety information is provided in Section 4.1.2. Therefore, the Project complies with  
19 BCC 11.50.040(d)(2).

20 *(3) Would not cause the pedestrian and vehicular traffic associated with the*  
21 *use to conflict with existing and anticipated traffic in the neighborhood to*  
22 *an extent greater than that associated with any other permitted uses in the*  
*applicable zoning district;*

23 **Statement of Compliance**

24 During Project construction, there would be a temporary increase in traffic on  
25 local roadways for short-term periods spread out over the duration of phased  
26 construction described in Section 2.15. Movement of construction equipment and

1 large-scale Project components, such as Turbine blades, would be coordinated with  
2 local landowners to ensure that Project-related traffic does not interfere with the  
3 transport of agricultural products. An estimated 16 to 20 personnel would be  
4 employed onsite during the lifespan of the Project (see Section 2.15.2). During  
5 operations, there would be minimal Project-related traffic associated with vehicles  
6 commuting to the site and conducting periodic O&M activities. During Project  
7 decommissioning, potential traffic impacts would be similar to those evaluated for  
8 construction and the Applicant would implement similar controls (see Section 4.3.3).

9 Section 4.3 provides additional detail regarding proposed road improvements,  
10 control measures to minimize potential impacts to local traffic, and access for  
11 emergency vehicles. With implementation of these mitigation measures, the Project is  
12 not expected to conflict with existing and anticipated traffic in the project vicinity to  
13 an extent greater than that associated with any other permitted use in the GMAAD.  
14 Therefore, the Project complies with BCC 11.50.040(d)(3).

15 *(4) Will be supported by adequate service facilities and would not adversely*  
16 *affect public services to the surrounding area; and*

17 **Statement of Compliance**

18 The Project would be in the service area of the Kennewick Police Department,  
19 Benton County Sheriff’s Office, Washington State Patrol, Benton County Fire  
20 Department District 1, Kennewick Fire Department, Trios Health Southridge  
21 Hospital, and Kennewick School District. The Project would likely be built using a  
22 “phased approach” with distinct, fully functional portions of the Project potentially  
23 being built and implemented in a staggered manner. More information regarding the  
24 construction schedule and construction workforce estimates of the example phased  
25 approach is provided in Section 2.15 of this ASC.

1           On average, the Project could employ between approximately 230 and 260  
2 workers per month depending on the construction phase (see Section 2.15.1). Actual  
3 construction employment will be higher or lower than this average and could reach a  
4 maximum of up to approximately 350 to 375 workers during some months. This  
5 workforce could create a short-term increase in the need for emergency services,  
6 including police, fire, and medical response during the phased construction periods.  
7 However, the Applicant would coordinate with local service providers and develop  
8 service agreements to ensure the Project is within their response capacity.  
9 Construction workers are not anticipated to relocate their families to the Project  
10 vicinity for the duration of the phased construction periods. Therefore, no additional  
11 demand for local school or non-emergency health services is anticipated during  
12 construction. During operations, the addition of up to 16 to 20 permanent employees  
13 and their families would represent a minimal potential change to local schools and  
14 other public services. Section 4.1.2 and Section 4.4 provide additional detail  
15 regarding Project control measures to manage and minimize the need for public  
16 services. With these conditions, the Project would not adversely affect public  
17 services to the surrounding area. Therefore, the Project complies with BCC  
18 11.50.040(d)(4).

19           (5) *Would not hinder or discourage the development of permitted uses on*  
20 *neighboring properties in the applicable zoning district as a result of the*  
21 *location, size or height of the buildings, structures, walls, or required*  
22 *fences or screening vegetation to a greater extent than other permitted*  
23 *uses in the applicable zoning district.*

24           **Statement of Compliance**

25           The Project Lease Boundary is located entirely within Benton County’s  
26 GMAAD zoning district and is largely surrounded by adjacent properties within the  
GMAAD zoning district. Two short portions of the Project Lease Boundary are  
adjacent to Benton County’s Rural Lands Five Acre District (RL-5) (Figure 2.1-4).

1 Allowable uses in the RL-5 zoning district are generally consistent with allowable  
2 uses in the GMAAD zoning district such as single-family dwellings, utility buildings  
3 and substations, and other agricultural uses. As described in response to BCC  
4 11.50.040(d)(1), the Project is compatible with surrounding land uses including active  
5 agricultural operations and existing residential development. Accordingly, the  
6 Project would not hinder or discourage the development of permitted uses on  
7 neighboring properties within the GMAAD or RL-5 zoning districts. In summary, the  
8 Project would not cause any changes, nor impose additional costs on the uses of the  
9 surrounding lands. The Project would comply with required setback buffers  
10 addressed above in response to BCC 11.17.070, BCC 11.17.120, and BCC 11.42.100,  
11 and would comply with other development standards, building requirements, and  
12 fencing standards necessary for development in the GMAAD zoning district.  
13 Specifically, the wind facility components comply with the development standards  
14 for wind turbine farms addressed under to BCC 11.17.070(t), and the solar array and  
15 BESS components comply with the development standards for major solar power  
16 generating facilities under BCC 11.42.100(b).

17 Studies have shown wind farms do not negatively impact the property values  
18 of agricultural properties that host wind turbines or on rural residential or agricultural  
19 properties surrounding wind facilities (Hoen et al. 2009; Hoen et al. 2013; MaRous &  
20 Company 2018). There would be temporary, short-term impacts to traffic in the  
21 Project Lease Boundary during the Project construction period. However, these  
22 impacts would be mitigated through implementation of traffic control measures  
23 identified in Section 4.3.3 and would not hinder or discourage the development of  
24 other permitted uses in the area.

25 As described above in response to BCC 11.50.040(d)(1), the Project would  
26 incorporate measures to reduce potential aesthetic, glare, and shadow flicker impacts



1 which are addressed in Section 4.2.2 and Section 4.2.3. The shadow flicker analysis  
2 conducted for the Project demonstrates that residences on neighboring non-  
3 participating properties would not experience shadow flicker in exceedance of  
4 industry standard thresholds (see Appendix G – Shadow Flicker Report). The glare  
5 modeling analysis completed for the Project indicates that surrounding observation  
6 points and vehicle routes would not experience glare as a result of the Project (see  
7 Appendix H – Glare Analysis Report). Based on the reasons provided above, the  
8 Project is not expected to hinder or discourage the development of permitted uses on  
9 neighboring properties within the GMAAD zoning district and the Project complies  
10 with BCC 11.50.040(d)(5).

11 Q. Does Mr. Wendt’s and/or Ms. Cooke’s testimony suggest conditions to impose on the  
12 Project to satisfy the five criteria listed in Benton County Code 11.50.40? Please  
13 explain.

14 A. No. Given the apparent unwillingness of the County to provide input on appropriate  
15 conditions for the Project, the County planners appear to be leaving this question to  
16 EFSEC.

17 Q. What conditions would a county in Washington typically impose on a similar project  
18 to satisfy such criteria for a conditional use permit?

19 A. Typical conditions, addressed in the ASC excerpts above, include issues such as dust  
20 control, stormwater management, fire risk controls, roadway impact mitigation, etc.  
21 The conditions imposed on the Nine Canyon Wind Project are a good example for  
22 EFSEC’s consideration. These conditions are attached to my testimony.

23 Q. Do you agree with the assertion in Mr. Wendt’s testimony that the project is “in  
24 conflict with agricultural activities” in the surrounding area, regardless of the  
25 conditions imposed on the project? Please explain.

26

1 A. No. I have addressed this issue in detail above. Mr. Wendt’s opinion is not  
2 supported by any meaningful information. In contrast, the ASC provides substantial  
3 detail regarding the lack of conflict with agricultural land uses. It is the County’s  
4 history of agricultural conversions for urban development that has caused significant  
5 reduction in GMAAD lands and in agricultural land uses. As noted above, the  
6 County-sanctioned residential conversions in recent years in nearly 100,000 acres—  
7 acres that will never again be farmed or available as habitat.

8 Q. Do you agree with the conclusions in Mr. Wendt’s testimony that the project will  
9 “materially endanger the health, safety, and welfare of the area” by placing too much  
10 strain on existing public services? Please explain.

11 A. No. There is no material evidence supporting this opinion. As stated earlier in this  
12 testimony, the risk of fire or explosion during construction and operation of the  
13 Project is discussed in Section 4.1.2 of the ASC. Moreover, the Applicant will be  
14 required to demonstrate that there will be no “material danger” health, safety, and  
15 welfare; reasonable conditions similar to those imposed on the Nine Canyon Wind  
16 Project are equally applicable here, and the scale of the Horse Heaven Project does  
17 not lead to a conclusion that impacts cannot be mitigation with routine CUP  
18 conditions.

19 Q. Do you agree with the assertion in Ms. Cooke’s testimony that the project “will result  
20 in 6,869 acres of prime farmland being permanently taken out of agricultural  
21 production”? Please explain.

22 A. No. First, I take issue with the characterization that the entire 6,869 acres of  
23 permanent disturbance in the Project Lease Boundary is prime farmland. The term  
24 “prime farmland” is not defined by Ms. Cook, but is assumed to refer to the USDA  
25 Natural Resources Conservation Service (NRCS) farmland classification system.  
26 None of the soils in the Project Lease Boundary are considered prime farmland when

1 not irrigated. The majority of the Project Lease Boundary is composed of Ritzville  
2 silt loam, 0-5 percent slopes which has an NRCS farmland classification of “prime  
3 farmland if irrigated”. However, as none of the farmland within the Lease Boundary  
4 is irrigated, it would not be considered prime farmland per the NRCS classification  
5 system. Significantly, the Project does not propose to remove any irrigated  
6 agricultural lands from production, which are the higher value agricultural lands in  
7 Benton County. Second, farming will continue around the project facilities and as  
8 evidenced by Mr. Wiley’s testimony, the Project will have a low impact on the  
9 existing farm operations and the lease payments will assist the Project’s landowners  
10 with improving and expanding their farm operations, ensuring the continuation of  
11 family-owned farm operation in the area and avoiding the conversion of these  
12 farmlands to residential and urban development. Third, EFSEC will likely impose  
13 conditions governing the retirement and restoration of the lands occupied by Project  
14 facilities, thereby ensuring that the majority of the 6,869 acres of permanent  
15 disturbance in the Project Lease Boundary could be returned to agricultural use at the  
16 end of the Project’s useful life. Approximately 6,570 acres of the Project’s  
17 permanent disturbance is associated with the solar siting areas, within which soil  
18 disturbance and soil compaction will be minimized to the extent practicable to ensure  
19 revegetation below and between the panels is successful and to minimize runoff and  
20 soil erosion. I will also note that only 203 acres of the Project’s permanent  
21 disturbance footprint is attributed to new access roads. Therefore, Ms. Cooke’s  
22 statements regarding the land not being able to revert back to agricultural use due to  
23 extreme compaction, importation of road base material, and other effects the roads  
24 will have on the land (e.g., erosion, changes in drainage patterns, weed introduction,  
25 etc.) is not relevant to the majority of the 6,869 acres of permanent disturbance.  
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