



February 23, 2023

Energy Facility Site Evaluation Council
Sonia Bumpus, EFSEC Manager
621 Woodland Square Loop, PO Box 43172
Olympia, WA 98504-3172
efsec@utc.wa.gov

Re: Land Use Consistency: Hop Hill Solar Project

Dear Ms. Bumpus,

Thank you for the opportunity to comment on the land use consistency of the Hop Hill Solar Project located in Benton County. Please accept this letter as Benton County's public comment and written testimony regarding the Hop Hill Solar Project proposal.

As proposed, the Hop Hill Solar Project (Project) is in an area designated as Growth Management Act Agriculture by Benton County's Comprehensive Plan and located within the Growth Management Act Agricultural Zoning District (GMAAD) on the Benton County Zoning Map.

After a detailed review of the submitted application, Benton County finds the proposed Project is not consistent with the County's land use plans, specifically, the County's Growth Management Act Agricultural Zoning District (GMAAD) which does not allow or permit industrial solar facilities as an allowable, accessory, or conditional use. The rationale for prohibiting uses of this type in the GMAAD Zoning District is supported by both the Benton County Comprehensive Plan goals and policies and the Washington State Growth Management Act (GMA).

Benton County Comprehensive Plan

The Project area is proposed to be sited in an area designated Growth Management Act Agriculture by the Benton County Comprehensive Land Use Plan. This area is further designated as having agricultural long-term commercial significance as that term is contemplated by the Growth Management Act. The County's agricultural lands consist of dry land, irrigated, and rangeland land uses.

The proposed industrial use and location of the Project is not consistent nor compatible with the goals and policies of the County's Comprehensive Plan or its implementing regulations such as the County GMAAD Zoning District and/or Critical Area Regulations. With an approximately 11,000-acre solar siting project area, the replacement of long term commercially significant agricultural land with a non-agricultural use is inconsistent with the County's goals and regulations which seek to protect agricultural and natural resource lands in Benton County.

Growth Management Goals

The Growth Management Act Planning Goals are adopted to guide the development of comprehensive plans and development regulations¹ which in turn allow communities the ability to implement regulations to determine if a use (location, size, and scale) is compatible with an existing area and whether it complies with the associated plans

¹ RCW 36.70A.020 Planning Goals

and documents adopted by the County. Notable GMA Goals, as they relate to the impacts of this Project, include the following:

- Natural Resource Industries - Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, while discouraging incompatible uses².
- Environment - Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

Loss of Long-Term Commercially Significant Agricultural Lands

Benton County has highly productive agricultural soils with over \$900 million generated by Benton County crops and livestock per year. The land use designation for the proposed project area is Growth Management Act Agricultural. Agriculture, specifically long term commercially significant agriculture, is the cornerstone to Benton County's economy, natural resources industries, and way of life. The Comprehensive Plan states the following as it relates to agriculture and long term commercially significant agriculture in Benton County:

- NR Goal 1: Conserve and maintain agricultural land of long-term commercial significance as the local natural resource most essential for sustaining the County's agricultural economy.²
 - Policy 1: Conserve areas designated "GMA Agriculture" in the Comprehensive Plan for a broad range of agricultural uses to the maximum extent possible and protect these areas from the encroachment of incompatible uses.
 - Policy 3: Recognize that only uses related or ancillary to, supportive of, complimentary to, and/or not in conflict with agricultural activities are appropriate in areas designated GMA Agriculture.
- Agricultural land is defined as land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.³
- Long-term commercial significance includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.⁴ GMA requires each county to designate appropriate agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.⁴
- Growth Management Act Agriculture includes agricultural land (such as dryland, irrigated land, and rangeland) identified by the County based on the criteria established by the GMA. The GMAAD Zoning District conserves agricultural lands by establishing a 20-acre minimum parcel size and (with exceptions e.g., resort destinations, wineries) limits the range of other land uses to those which are dependent upon, supportive of, ancillary to, or compatible with, agricultural production as the principal land use.⁵ Agricultural land constitutes about 59 percent of the total land in Benton County.⁵

² Benton County Comprehensive Plan, Section 2.3 Natural Resource Lands, Page 17 (2021)

³ RCW 36.70A.030 (3) Definitions, Agricultural Land

⁴ RCW 36.70A.030 (15) Definitions, Long Term Commercial Significance

⁵ Benton County Comprehensive Plan, Section 3.3.2.5 Agricultural Land Use Designation, Page 44 (2021)

The Benton County Comprehensive Plan provides guidance for the protection, maintenance, conservation, and enhancement of the County's agricultural lands and their natural resource-based industries while discouraging incompatible uses. It further charges the County to reduce the inappropriate conversion of agricultural lands and assure that rural development is compatible with surrounding rural and agricultural areas.

This Project is not consistent with these directives and the goals and policies of preserving and protecting the County long term commercially significant agricultural lands.

Conservation of Critical Areas

The Project is proposed to be sited in an area designated for agricultural uses⁶ (Growth Management Act Agriculture) and accessory agricultural activities. The Project area further consists of designated critical areas, including wetlands, frequently flooded areas, geologically hazardous areas, and fish and wildlife conservation areas.

The proposed project is not consistent with the County's goals of protecting the critical areas and the County's Critical Area Ordinance. In accordance with BCC Title 15⁷, the County shall require a Critical Area Project Review to determine whether the project is likely to impact the functions and values of a critical area and whether the project adequately addresses the impacts and avoids impacts to critical areas associated with the project.

The Project area is in a part of the Benton County with known wildlife habitat and habitat corridors. The Comprehensive Plan states the following as it relates to the Critical Area Goal related to sustaining the County's natural environment:

- CA Goal 4: Sustain a diverse, productive, and high-quality natural environment for the use, health, and enjoyment of County residents.⁸
- Policy 2: Integrate natural resources and critical areas such as rivers, creeks, ridges, and slopes into a linked pattern of open lands where feasible, to serve multiple open space functions such as buffers, visual resources, recreation, and wildlife habitat/corridors.

Based upon the limited information provided, it's clear the project will have a negative impact on the County's critical areas, but additional information will need to be provided to determine the full impact and the minimum mitigation measures, if possible, for each development site.

Protection of Rural Character and Lifestyle

The protection of rural character and lifestyle is paramount in Benton County. The goals and policies of the Comprehensive Plan seek to ensure that land uses are compatible with surrounding uses that maintain public health, safety, and general welfare. The policies aim to protect surrounding areas from incompatible uses that, if approved, would degrade the existing rural character which residents hold in high regard. The Comprehensive Plan states that Benton County must:

- Preserve rural lifestyles outside UGAs and incorporated areas while accommodating new population growth consistent with the protection of rural character and to encourage low impact recreational uses and protect open spaces that preserve rural character;⁹
- Promote industries that are diverse and support an agriculturally based economy; and

⁶ Benton County Comprehensive Plan, Appendix A, Figure 5 Future Land Use Designations Map (2021)

⁷ Benton County Code, Title 15, Environment, Chapter 15.02, Section 15.02.170

⁸ Benton County Comprehensive Plan, Section 2.5 Critical Areas, Page 23 (2021)

⁹ Benton County Comprehensive Plan, Section 2.2.3 Rural Lands, Page 14 (2021)

- Promote and protect tourism related to viticulture and other agricultural activities

The Benton County Comprehensive Plan discusses the community's priorities¹⁰ for Benton County. These include:

- Preservation of rural character;
- Protection of natural resources, hillsides, and open spaces;
- Limiting sprawl; and
- Protecting farmland.

The size and location of the of the proposed Project fails to preserve and protect the County's rural character and lacks consistency with the community's vision for Benton County as the Project proposes negative impacts to the County's natural resources and preservation of farmland.

Lack of Consistency with the Comprehensive Plan

The County Comprehensive Plan requires the County to encourage long term conservation and stewardship of natural resources lands for the benefit of current and future residents. With over 59% of the County's total land area being in the GMA Agricultural designation, these areas provide not only the agricultural land (dryland, irrigated land, and rangeland) which makes up the majority of the County's economy, but it also provides the open spaces and vistas which preserves the County's rural character.

The County Comprehensive Plan provides goals and policies that:

- Prevents the loss of the County's long term commercially significant agricultural land;
- Protects the County's naturally vegetated steep slopes, wildlife, and habitat;
- Supports a robust agricultural economy that focuses on preserving and protecting the rural character in Benton County that so many of its residents care about.

The location, size, and environmental impacts of this industrial scaled proposal are not consistent with the goals and policies of the Benton County Comprehensive Plan.

Benton County Zoning Regulations

To implement the Growth Management Act and the Benton County Comprehensive Plan, Benton County created the Growth Management Act Agricultural Zoning District (GMAAD). The Comprehensive Plan directs the County to conserve and maintain agricultural lands of long-term commercial significance as the local natural resource most essential for sustaining the County's agricultural economy,¹¹ and through this, the County created the Growth Management Act Agricultural Zoning District (GMAAD)¹².

The Benton County Code states the purpose of the GMAAD Zoning District (chapter) is 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. The 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

¹⁰ Benton County Comprehensive Plan, Section 1.2.3 Community Vision, Page 4 (2021)

¹¹ Benton County Comprehensive Plan, Section 2.3 Natural Resource Lands, Page 17 (2021)

¹² Benton County Zoning Ordinance, Chapter 11.17 Growth Management Act Agricultural District

agricultural 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.¹³

Prohibited Use in the GMAAD Zoning District

The applicant submitted the Hop Hill Project application to EFSEC on December 22, 2022. The application submittal is not in compliance or consistent with the Benton County Comprehensive Plan or the GMAAD Zoning District.

The proposed project is located within the County's GMAAD and the permissible uses within the GMAAD are set forth in chapter 11.17 of the Benton County Code. BCC 11.17.070 was amended by Ordinance No. 640, effective on December 21, 2021, to remove Major Solar Power Generator Facilities as a conditional use. This ordinance is not a temporary moratorium as inferred by applicant's February 21, 2023, memorandum. Consequently, Major Solar Power Generator Facilities are not allowed under any conditions within the GMAAD.

This project is not vested with the County's regulations that existed prior to the December 21, 2021. Prior to applying with EFSEC in 2022, the applicant submitted an incomplete application for a Benton County Conditional Use Permit (CUP) on December 20, 2021, thus the application was not vested at the time of submittal. Applicant's February 21, 2023, memorandum states that applicant received no meaningful opportunity to address the deficiencies of its application under the County Code and infers that its application should have been deemed complete as of December 20, 2021, with citation to RCW 36.70C.070. Applicant fails to mention that its December 20, 2021, submission did not satisfy several requirements necessary for an application to be deemed complete as set forth in BCC 11.50.040(b) and (c) and BCC 17.10.090(b)(2) and (3). RCW 36.70B.070(2) states that an application is complete only when "it meets the procedural submission requirements of the local government" The County promptly notified the applicant of these deficiencies by letter dated December 30, 2021, and applicant did not respond with a complete application until March 29, 2022. The County's prior findings and conclusion regarding this process are consistent with these facts and state in part:

- On December 21, 2021, Benton County adopted County Resolution 2021-919 and Ordinance 640¹⁴ prohibiting Solar Power Generator Facilities as a conditional use permit option in the GMAAD Zoning District to protect its long term commercially significant agricultural lands and to ensure consistency and compliance with the County's Comprehensive Plan.
- On December 30, 2021, Benton County informed the applicant that the CUP application submitted on December 21, 2021, was deemed incomplete for reasons including that it was not signed by all persons with ownership interests in the subject parcels, did not identify the real property involved with any degree of certainty, did not include a SEPA checklist signed to verify its content, and included a deficient site plan that failed to identify the boundaries and total acreage of the project.
- The applicant did submit a complete CUP application for the project on March 29, 2022. To the extent that the vested rights doctrine applies to applications for conditional use permits under Washington State law, the CUP did not vest until March 29, 2022, as a complete application had not been submitted pursuant to Benton County code until such date.
- On September 13, 2022, an official Benton County Code Interpretation¹⁵ was made stating that the CUP application could not be approved because it requested permission to conduct a use that is not currently a conditional use option and was not a conditional use option on March 29, 2022, when the application became complete or any time there-after. This code determination was not appealed or challenged by the applicant. The application was closed on October 11, 2022.

The applicant did not submit a complete application prior to December 21, 2021, and was not vested until March 29, 2022, when it submitted a complete application, consequently, the Hop Hill Solar Project proposes a non-agricultural use that is **prohibited** within the GMAAD Zoning District. The County's Zoning Code does not allow this Project as an allowed, accessory, or conditional use option¹⁶.

The applicant is requesting the EFSEC Council preempt applicable County land use plans and zoning ordinances, while also stating that the project is consistent with the County's planning provisions. Based upon the proposed location of the proposed project, the proposal does not meet the intent of RCW 36.70, is not consistent with the goals and policies in the County's Comprehensive Plan and is a prohibited use in the GMAAD Zoning District. The County's land use codes and policies should be held in effect and should not be preempted by this proposal.

¹³ Benton County Zoning Ordinance, Chapter 11.17, Section 11.17.010 Purpose (2008)

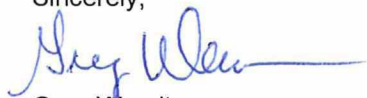
¹⁴ Benton County Resolution 2021-919 and Benton County Ordinance No. 640

¹⁵ Benton County Code Interpretation, September 13, 2022, BrightNight's Application for Conditional Use Permit

¹⁶ Benton County Zoning Ordinance, Chapter 11.17, Section 11.17.040, Section 11.17.050, and Section 11.17.070

Thank you again for the opportunity to comment on this proposed project. We respectfully request that EFSEC deny the applicants request due to the lack of consistency with the local plans, ordinances, and associated environmental impacts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Wendt", with a long horizontal flourish extending to the right.

Greg Wendt

Director of Community Development

Benton County, Washington