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5 BEFORE THE STATE OF WASHINGTON  
6 ENERGY FACILITY SITE EVALUATION COUNCIL

7 In the Matter of:

EFSEC DOCKET NO. 279466

8 Innergex Renewable Development USA,  
9 LLC (IRD), for Wautoma Solar Energy  
10 Project, LLC,

BENTON COUNTY’S POST-HEARING  
BRIEF

11 Applicant.

12 **I. INTRODUCTION**

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14 Benton County (the “County”) respectfully submits this post-hearing brief in opposition to  
15 Innergex Renewable Development USA, LLC’s (“Applicant”) application for site certification for  
16 the Wautoma Solar Energy Project (“Project”). There are no proposed conditions for the Project  
17 that sufficiently recognize and address the State and local interests against the permanent  
18 conversion of protected local agricultural lands of long-term commercial significance  
19 (“ALLTCS”). The Energy Facility Site Evaluation Council (“Council”) should recommend denial  
20 of the application for site certification to the Governor as it would not be able to meet the  
21 requirements of RCW 80.50.100(2) when creating a draft certification agreement. If the Council  
22 disagrees, it should impose all of the conditions set forth in the Table A5 of the Applicant’s  
23 Application and the Revised MDNS to increase the chance that the situs could be returned to  
24 agricultural use.

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1 **II. STATEMENT OF FACTS**

2 Benton County incorporates by reference the Stipulation of Facts filed herein on August  
3 14, 2024 and the Statement of Facts filed herein in Benton County’s Brief.

4 **III. ARGUMENT**

5 Pursuant to the Order Commencing Adjudication; Setting Deadline for Petitions to  
6 Intervene (July 12, 2024), the Council limited the first topic of the adjudicative proceeding to:  
7 Whether the Council should recommend to the Governor that the state preempt the land use plans,  
8 zoning ordinances, or other development regulations for the site for the alternative energy resource  
9 proposed by the Applicant. Following the adjudicative hearing on this issue, Benton County’s  
10 position remains that the Council should recommend against preemption.  
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12 In addition to the statutory requirement under EFSLA, that the Council “review and  
13 consider comments received during the application process in making its recommendation”, the  
14 Council need also consider what conditions it must include in any draft certification agreement  
15 that “protect state, local governmental, or community interests, or overburdened communities as  
16 defined in RCW 70A.02.010 affected by the construction or operation of the facility, and  
17 conditions designed to recognize the purpose of laws or ordinances, or rules or regulations  
18 promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or  
19 hereafter amended.” RCW 80.50.100(1)(b) and RCW 80.50.100(2); *See also* Residents Opposed  
20 to Kittitas Turbines v. State Energy Facility Site Evaluation Council (EFSEC), 165 Wash. 2d 275,  
21 285, 197 P.3d 1153, 1158 (2008) (“...EFSEC must include conditions in a site certification to  
22 protect the interests of the local government or community affected by the proposed facility”,  
23 citing former version of RCW 80.50.100).  
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1 The testimony before the Council from Benton County’s Director of Community  
2 Development, Greg Wendt and Planning Manager, Michelle Mercer shows that Benton County  
3 has a significant interest in the preservation of its Growth Management Act Agricultural District  
4 (“GMAAD”) lands and ALLTCS - which makes up the majority of its total acreage. Additionally,  
5 that the purpose of its code is to protect ALLTCS from conversation away from agricultural use.  
6 The testimony also shows that in 2021, Benton County determined that Solar Power Generator  
7 Facilities, Major were not actually compatible with agricultural use or Growth Management Act  
8 protections and that, therefore, the conditional use option permitting for such facilities needed to  
9 be removed. This Council has also heard testimony that Benton County has no outright ban upon  
10 Solar Power Generator Facilities, Major and has established lands within the County where such  
11 facilities are compatible with those designated land uses.  
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13 Despite Benton County’s stated interests and carefully crafted code provisions, Applicant’s  
14 propose no conditions to address the narrow issue of mitigating the loss of GMAAD lands during  
15 the life of the project. *See Revised Application*, p. 35. Applicant’s employee, Laura O’Neill  
16 estimates that the need for these projects typically last around 30 years. That is 30 years of, at  
17 minimum, 2,978 and up to 5,852 acres in just this one project being taken out of agricultural  
18 production. *See Stipulation of Facts*, D.6 and D.9. Instead of addressing the land use issue,  
19 Applicant has framed the conditions listed in its Application, Table A5 and the Revised MDNS as  
20 enough to mitigate the County’s interest because they promote the potential return of the land to  
21 future agricultural use and claim the conditions make it compatible with surrounding agricultural  
22 uses. Even if this Council determines that that the conditions will improve the chances of future  
23 agricultural use or that the proposed Project is not wholly incompatible with other permitted uses  
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1 in the GMAAD, Applicant’s arguments have not addressed the County’s interest in the loss of  
2 ALLTCS while the project is active.

3 The record shows the conditions in the Revised Mitigated Determination of  
4 Nonsignificance are meant to “mitigate any significant adverse impacts on the *environment*”, not  
5 land use regulations. *See* Revised MDNS, p. 2, emphasis added. The Revised MDNS even goes  
6 on to discuss that even with a site restoration plan, that there is the possibility “future site  
7 conditions or land ownership no longer allows for the land to be returned to agricultural  
8 production”. *Id.*, p. 9.

9  
10 Despite any positive ancillary impact the Project may have in the community or on the  
11 Lessor, the fact remains that the Project will affect the amount of ALLTCS available for  
12 agricultural use for decades and there are no conditions proposed to offset the interests of the state,  
13 local government, and community in protecting those lands. Thus, the Council cannot satisfy the  
14 conditions requirement of RCW 80.50.100(2) and should recommend denial of the Revised  
15 Application.

### 16 CONCLUSION

17 If approved, the proposed Project will convert ALLTCS in which Benton County has an  
18 interest in protecting. The Applicant has failed to provide sufficient information that would allow  
19 the Council to meet the statutory standards set under EFSLA in creating conditions that  
20 acknowledge and mitigate the impact on that interest. The conditions listed in Table A5 of the  
21 Application and the Revised MDNS alone do not address that interest. If only those conditions are  
22 imposed, a standard will be set that affords no true acknowledgement or protection of Benton  
23 County’s interests in preserving its agricultural lands. Thus, Benton County respectfully requests  
24 the Council recommend against preemption of its land use regulations.  
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1 If the Council disagrees, the conditions stipulated to by the Applicant should be included  
2 in a draft certification agreement to at least mitigate some of the impacts of the Project.

3 Dated this 2<sup>nd</sup> day of October 2024.

4 Respectfully submitted,

5 ERIC EISINGER  
6 Prosecuting Attorney

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service as required under the Prehearing Conference Order, Section 4 as follows:

<p><b>ENERGY FACILITY SITE EVALUATION COUNCIL</b> ATTN: Wautoma Adjudication 621 Woodland Square Loop SE P.O. Box 43172 Olympia, WA 98504-3172</p>	<p><input type="checkbox"/> U.S. Regular Mail, Postage Prepaid <input type="checkbox"/> Commercial Parcel Delivery, Fedex Overnight Express <input checked="" type="checkbox"/> Filed Via Electronic Mail to <a href="mailto:adjudication@efsec.wa.gov">adjudication@efsec.wa.gov</a> <input checked="" type="checkbox"/> Copy via Electronic Mail to <a href="mailto:efsec@efsec.wa.gov">efsec@efsec.wa.gov</a></p>
<p><b>OFFICE OF THE ATTORNEY GENERAL</b> Attn: Jonathan Thompson 1125 Washington St. SE P.O. Box 40100 Olympia, WA 98504-0100 P: 360-586-6740</p>	<p><input type="checkbox"/> U.S. Regular Mail, Postage Prepaid <input type="checkbox"/> Commercial Parcel Delivery, Fedex Overnight Express <input checked="" type="checkbox"/> Via Electronic Mail to <a href="mailto:jonathan.thompson@atg.wa.gov">jonathan.thompson@atg.wa.gov</a> and <a href="mailto:CEPSeaEF@atg.wa">CEPSeaEF@atg.wa</a></p>
<p><b>COUNSEL FOR THE ENVIRONMENT</b> Office of the Attorney General AAG Yuriy Korol 805 5th Avenue, Suite 2000 Seattle, WA 98104-3188 P: 509-735-3591</p>	<p><input type="checkbox"/> U.S. Regular Mail, Postage Prepaid <input type="checkbox"/> Commercial Parcel Delivery, Fedex Overnight Express <input checked="" type="checkbox"/> Via Electronic Mail to <a href="mailto:yuriy.korol@atg.wa.gov">yuriy.korol@atg.wa.gov</a></p>
<p><b>COUNSEL FOR APPLICANT</b> Erin L. Anderson Andrew J. Lewis Van Ness Feldman LLP 1191 Second Avenue, Suite 1800 Seattle, WA 98101 Phone: (206) 623-9372</p>	<p><input type="checkbox"/> U.S. Regular Mail, Postage Prepaid <input type="checkbox"/> Commercial Parcel Delivery, Fedex Overnight Express <input checked="" type="checkbox"/> Courtesy Copy via Electronic Mail to <a href="mailto:eanderson@vnf.com">eanderson@vnf.com</a> and <a href="mailto:alewis@vnf.com">alewis@vnf.com</a></p>

DATED this Dated this 2<sup>nd</sup> day of October 2024, at Kennewick, Washington.

*LeeAnn Holt*

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Attorney