

**Respondent No:** 1**Login:** Anonymous**Email:** n/a**Responded At:** Jun 03, 2024 19:18:29 pm**Last Seen:** Jun 03, 2024 19:18:29 pm**IP Address:** n/a**Q1. Name**

David Robert

**Q2. Email**

dlrobert@embarqmail.com

**Q3. Share any comment**

My name is Dave Robert, one of the brothers with the Robert Ranch. We will be using our land for half of the Wautoma Solar Project. The two main reasons to have the project on our land is the remote location and the ability to keep our ranch for the next generations. Our ranch is located 20 miles north of Sunnyside and 40 miles east of the Tri-Cities. We are very isolated and only have a few neighbors to the west – the majority of our neighbors have no problem with the project. Our deep irrigation well water level is constantly lowering every few years. In the near future, we may not have enough water to maintain many irrigation crops. The solar project could be a great benefit to help the water level increase with 80% less irrigation water usage, and subsequently keep the ranch going for our next generations to come.

**Q4. Upload your document (optional)**

not answered

**Q5. Upload a picture (optional)**

not answered

**Q6. Did you also share a video?**

No

**Q7. What is the title of your video?**

not answered

**Respondent No:** 2**Login:** Anonymous**Email:** n/a**Responded At:** Jun 03, 2024 19:20:02 pm**Last Seen:** Jun 03, 2024 19:20:02 pm**IP Address:** n/a**Q1. Name**

Robin Robert

**Q2. Email**

marylarsen194@yahoo.com

**Q3. Share any comment**

My name is Robin Robert, one of the brothers with the Robert Ranch. Our ranch will be used for half of the Wautoma Solar Project. This project will be a great job creator for our local community. The construction should last for a year and a half. This project will help with stable income for all our family members. Currently it is very difficult to keep the ranch afloat with less water to irrigate and higher prices for fuel, fertilizer, and equipment costs. This project will enable the family ranch to stay in the hands of our future generations.

**Q4. Upload your document (optional)**

not answered

**Q5. Upload a picture (optional)**

not answered

**Q6. Did you also share a video?**

No

**Q7. What is the title of your video?**

not answered

**Respondent No:** 3**Login:** Anonymous**Email:** n/a**Responded At:** Jun 04, 2024 05:20:44 am**Last Seen:** Jun 04, 2024 05:20:44 am**IP Address:** n/a

Q1. **Name** Lorre Gefre

Q2. **Email** yellowdesert@yahoo.com

Q3. **Share any comment**

To All Whom It May Concern: RE: Proposed Wautoma Solar Energy Project MDNS Comments Thank you for the opportunity to comment. I have been active from the beginning in comment periods via email, scheduled public comment and Innergex hosted community forums that I could attend at Cafe near the Proposed Wautoma Site. NOTE: emailed comments to Inslee-Murray Process with mention of gratitude of thanks to Sen. Patty Murray for her perseverance in the preservation area called Hanford Reach. The privately owned land Leased to Innergex for Wautoma Solar Energy Project butts up or may be near to Hanford Reach. I had received from Innergex a color handout of information regarding Wautoma Solar Energy Project. In this handout is a mention of studying more than 3,500 acres, anticipate the project as currently contemplated to occupy about 3,000 acres. The MDNS date of issuance being May 20, 2024 and comment period to end June 4th doesn't give much time to process MDNS for comments. The Project Lease Boundary of 5,852 acres of privately owned land and stated Within The Lease Boundary, the Project Area would occur 4,573 acres. I live directly across St. Rt. 241 from Proposed Wautoma Solar Facility. Innergex addressed 2 letters to me, "Dear neighbor, dated May 21, 2024 Registered Mail and mentioned public comment period in the coming days...the letters were signed for on the 3rd of June after my mailbox had been broken into and a vacant parcel notice left inside to even know about the Innergex letters (for the record only). I have many photos but not time to download which show miles of wildland ecosystem needed for wildlife, grazing livestock, farmland and sky views otherwise unseen by many. 4 sites with thousands of acres have already been approved in my understanding for Solar Panels/infrastructure, etc. on St. Rt. 24, not far from Wautoma Site. I have lived in these areas most all my life and know what is at stake and to be lost forever. Historical are lives of Natives and things made/used by them can still be present. Fires! I have repeatedly expressed concern of no fire departments in our area. Need specially trained firefighters to put solar facility fires out. Facilities do not have to tell if fires generated from their facilities. People do live here, also. The toxins could be a health risk for miles and no telling for how long. Does anyone really know the consequences if uncontrolled? Assume property values, especially with homes, likely to decrease in value and quality of life in the name of clean, renewable energy. My uneducated personal opinion...I do not see batteries as clean energy. Where would the many be disposed of when necessary? Leakage possibility? It is too big, too fast to even imagine with Wautoma and all sites close by and in combined battery disposals. Who absorbs the gigantic cost and who gets the energy from proposed site? It isn't clear to me who would use new power source. Water availability issues and possible pollution are of high concern to me. Extreme and unknown weather conditions to cause possible effects on performance ability in a solar powered facility. Cost could be a hardship to consumers if not dependable energy source. I don't believe proposed projects are approved to fail but I am not convinced that some issues can be mitigated or enough at best. Over 20 years ago...MDNS was issued on a project for assurance environmental concerns/issues would be followed by a business allowed in an established community. If not followed, believed meaningful enforcement by governing officials would take effect. Lack of manpower and funds, nothing was enforced, occasional threats and then became the publics legal burden. The officials gone that granted business approval, operation is almost unrecognizable of the approved project with MDNS. I care about natural resources we have been blessed with and that future generations will have what they need and be able to enjoy life. My words and opinions are what I have to give. A voice for what cannot defend or care for itself. Our ecosystem needs all of us to make correct decisions. Thank you for your time.

Q4. **Upload your document (optional)** not answered

Q5. **Upload a picture (optional)** not answered

Q6. **Did you also share a video?** No



**Respondent No:** 4

**Login:** Anonymous

**Email:** n/a

**Responded At:** Jun 04, 2024 10:31:16 am

**Last Seen:** Jun 04, 2024 10:31:16 am

**IP Address:** n/a

Q1. <b>Name</b>	Laura O'Neill
Q2. <b>Email</b>	loneill@innnergex.com
Q3. <b>Share any comment</b>	not answered
Q4. <b>Upload your document (optional)</b>	<a href="https://s3-us-west-1.amazonaws.com/ehq-production-us-california/ae48b79de8a84ae7ee7c4ae459bde905df1e89d2/original/1717522252/36e04a3a8d01477be09b29015118ecc8_2024-06-04_Public_Comment_Letter_Wautoma_Innnergex.pdf?1717522252">https://s3-us-west-1.amazonaws.com/ehq-production-us-california/ae48b79de8a84ae7ee7c4ae459bde905df1e89d2/original/1717522252/36e04a3a8d01477be09b29015118ecc8_2024-06-04_Public_Comment_Letter_Wautoma_Innnergex.pdf?1717522252</a>
Q5. <b>Upload a picture (optional)</b>	not answered
Q6. <b>Did you also share a video?</b>	No
Q7. <b>What is the title of your video?</b>	not answered



**Respondent No:** 5

**Login:** Anonymous

**Email:** n/a

**Responded At:** Jun 04, 2024 11:50:18 am

**Last Seen:** Jun 04, 2024 11:50:18 am

**IP Address:** n/a

Q1. <b>Name</b>	Rich Nall
Q2. <b>Email</b>	rich.nall@gmail.com
Q3. <b>Share any comment</b>	file provided
Q4. <b>Upload your document (optional)</b>	<a href="https://s3-us-west-1.amazonaws.com/ehq-production-us-california/544c2b71af4f27f8bbb8a9524f1384d0004899b9/original/1717527007/637e8d12534a98c988740779a224ba92_Wautoma_Solar_MDNS_Comments.docx?1717527007">https://s3-us-west-1.amazonaws.com/ehq-production-us-california/544c2b71af4f27f8bbb8a9524f1384d0004899b9/original/1717527007/637e8d12534a98c988740779a224ba92_Wautoma_Solar_MDNS_Comments.docx?1717527007</a>
Q5. <b>Upload a picture (optional)</b>	not answered
Q6. <b>Did you also share a video?</b>	No
Q7. <b>What is the title of your video?</b>	not answered



**Respondent No:** 6  
**Login:** wjossart  
**Email:** wally@overallmanagement  
company.com

**Responded At:** Jun 04, 2024 12:29:06 pm  
**Last Seen:** Jun 03, 2024 21:07:16 pm  
**IP Address:** 208.45.191.50

Q1. Name	Walter Jossart
Q2. Email	wally@overallmanagementcompany.com
Q3. Share any comment	Please accept the attached letter in support of the Wautoma Solar Project.
Q4. Upload your document (optional)	<a href="https://s3-us-west-1.amazonaws.com/ehq-production-us-california/320964eb3d361d04ed31bd08d47cd7b73e59f3f8/original/1717529058/057d2ca3e0d2c8bb629fd2f723825431_Wautoma_Solar_Project_EFSEC_Comments.pdf?1717529058">https://s3-us-west-1.amazonaws.com/ehq-production-us-california/320964eb3d361d04ed31bd08d47cd7b73e59f3f8/original/1717529058/057d2ca3e0d2c8bb629fd2f723825431_Wautoma_Solar_Project_EFSEC_Comments.pdf?1717529058</a>
Q5. Upload a picture (optional)	not answered
Q6. Did you also share a video?	No
Q7. What is the title of your video?	not answered

**Respondent No:** 7**Login:** Anonymous**Email:** n/a**Responded At:** Jun 04, 2024 22:01:46 pm**Last Seen:** Jun 04, 2024 22:01:46 pm**IP Address:** n/a**Q1. Name**

Michael Robert

**Q2. Email**

michaelandlyndarobert@gmail.com

**Q3. Share any comment**

I am a family member in the Robert 5 + 1 LCC and our LLC is part of the Wautoma Solar project. here are my comments: 1. The solar project is sited in a valley just north of the Rattlesnake Mountains and is a very secluded location. It cannot be seen from the Yakima valley. It can only be seen from a 5 mile part of Hwy 241 and a 2 mile part of Hwy 24. These are not highly travelled highways. 2. Our family ranch although fairly large is very dependent of hay farming and hay prices are very volatile. We also raise cattle and cattle prices are also volatile. The income from the solar project would provide steady, dependable income. 3. We also plan to use sheep to graze under the solar panels which is a clean, environmental way to clear grass and weeds. 4. I am not aware of any issues with solar panels causing harm to wildlife where as wind machines are a risk to birds.

**Q4. Upload your document (optional)**

not answered

**Q5. Upload a picture (optional)**

not answered

**Q6. Did you also share a video?**

No

**Q7. What is the title of your video?**

not answered



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

Central Region Office

1250 West Alder St., Union Gap, WA 98903-0009 • 509-575-2490

May 30, 2024

Sonia Bumpus  
The Energy Facility Site Evaluation Council  
PO Box 47250  
Olympia, WA 98504-7250

**RE: 202402169; EF-220355**

Dear Sonia Bumpus,

Thank you for the opportunity to comment on the Mitigated Determination of Non Significance for the **Wautoma Solar Energy Project**. We have reviewed the application and have the following comment.

**Water Resources Program:**

Surface and groundwater availability varies by watershed and the sub-basins within those watersheds. Water availability also depends on the water rights held by others in each area. Additionally, climate change is increasing the uncertainty of Washington's water supplies. Just this year on April 16, 2024, Ecology declared a drought emergency for most of Washington. It is important and vital to plan early for a project's water needs. In order for Department of Ecology's Water Resources Program to meaningfully evaluate and provide feedback for this project, we will need additional information on water source and water use needs including quantity.

A water right permit is required for all surface water diversions and for any groundwater withdrawals that will exceed 5,000 gallons per day for domestic supply, exceed 5,000 gallons per day for industrial purpose, or for the irrigation of more than one-half acre of non-commercial lawn or garden (Chapter 90.03 RCW Surface Water Code and Chapter 90.44 RCW Regulation of Public Ground Waters). Groundwater withdrawals of up to 5,000 gallons per day used for single or group domestic supply, up to 5,000 gallons per day used for industrial purposes, stock watering, and for the irrigation of up to one-half acre of non-commercial lawn and garden are exempt from the permitting process. Water use under the RCW 90.44.050 exemption establishes a water right that is subject to the same privileges, restrictions, laws and regulations as a water right permit or certificate obtained directly from Ecology. Alternatively, a



May 30, 2023

Page 2 of 2

temporary water right permit may be an option, or water may need to be obtained from a different area and hauled in from an existing water right holder.

If you have questions please contact Breean Zimmerman at (509) 406-5130 or email at [Breean.Zimmerman@ecy.wa.gov](mailto:Breean.Zimmerman@ecy.wa.gov).

Sincerely,

A handwritten signature in black ink that reads "Jessica Swift". The script is cursive and fluid.

Jessica Swift

On behalf of SEPA Coordinator

Central Regional Office

509-571-7360

[crosepacoordinator@ecy.wa.gov](mailto:crosepacoordinator@ecy.wa.gov)



June 4, 2024

Sonia Bumpus, EFSEC Director  
Energy Facility Site Evaluation Council  
1300 S. Evergreen Park SW  
PO Box 43172  
Olympia, WA 98504

RE: Wautoma Solar Project - Docket: # EF-220355  
Mitigated Determination of Nonsignificance

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Dear Ms. Bumpus,

Thank you for the opportunity to comment on the draft Mitigated Determination of Nonsignificance (MDNS) for the Wautoma Solar Energy Project (the Project). Innergex Renewable Development USA LLC (Innergex), the Applicant for this Project, welcomes the comments received from members of the public, as well as agencies and Tribes during the public comment period for the MDNS. We are writing this letter to provide additional information on the project and directly address topics discussed in the MDNS and the related public comment period.

We would first like to take the opportunity to thank the Washington Energy Facility Site Evaluation Council (EFSEC) staff who have been working on the Project's review. Their involvement has been key in developing a Project which considers responsible siting guidelines and for which environmental impacts will be mitigated to a nonsignificant level. The input of related agencies, serving as subject matter experts on specific topics, such as Washington Department of Fish and Wildlife, Department of Ecology, and Washington State Department of Agriculture, has also been instrumental in informing the Project's layout and characteristics.

We believe that the Wautoma project fits squarely within the EFSEC framework that emphasizes the need for clean energy facilities. That framework necessarily must guide the agency, including the MDNS, to ensure that reasonable conditions and limitations are placed on the project so as to not thwart or frustrate achieving the state's stated objectives around clean energy.

#### Clean Energy Transformation Act

In 2019, Washington passed the Clean Energy Transformation Act, which anticipates and, in fact, requires utilities to have a neutral consequence to the environment from greenhouse gas emissions by 2030, and that deadline is now just six years away. What that means is that hundreds, if not thousands,

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#### Innergex Renewable Energy Inc.

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of megawatts of electricity that are now generated by carbon-emitting fuels such as coal or natural gas need to be offset completely by 2030. Hundreds, if not thousands, of megawatts in six years, and it takes at least a year, and in many cases longer, to get a single project through the permitting process. The state is behind on hitting these targets, and it is time to start moving forward to meeting those goals. Those goals benefit everybody, not just the residents of Benton County or even Washington. The climate change targets of this legislation are global.

#### Siting Considerations

Innergex has designed the Project to include the following considerations/benefits:

- sited in an isolated, sparsely populated area,
- minimal visual and acoustic impacts,
- minimal impact to shrub steppe habitat ,
- layout designed to provide both east-west and north-south open (unfenced) corridors to provide movement corridors for big game, preserving wildlife habitat connectivity,
- fencing designed with a four-inch gap at the bottom to allow passage of small game, as well as no barbed wire on top,
- avoidance of potentially NRHP-eligible or otherwise legally protected archaeological and cultural resources,
- avoidance of streams and wetlands, and
- avoidance of rare plants and listed sensitive species.

#### Mitigating Conditions

Innergex appreciates the spirit and intent of the MDNS, which is to ensure that the Council, as decision-maker, is fully informed about the potential environmental impacts of the Project and how they may be mitigated to a level that is less than significant. Through adherence to these measures, significant adverse impacts of Wautoma Solar on the environment will be mitigated to a nonsignificant level.

However, Innergex has carefully reviewed the proposed mitigation measures as written and has several concerns about them. For the purposes of clarity and timeliness of finalization, the company has provided specific comments on several of them herein, along with suggested edits to conform them to the facts of this proposal and, where appropriate, to the law as well. In advance of our specific comments, we have offered brief comments about the State Environmental Policy Act's (SEPA) requirements, and respectfully ask that this letter be discussed with appropriate individuals that serve EFSEC to ensure that the work and efforts of EFSEC are properly captured in a defensible final MDNS.

A fundamental tenet of SEPA is that each recommended condition must have a nexus, or a connection, with an impact arising from the specific proposal. Several of the conditions presented in the MDNS may have emanated from other facilities' conditions and, while they may have had a nexus with that project, there is no nexus here that supports the conditions being imposed on the Wautoma project. Lacking a nexus, the conditions must be removed. In other words, when the facts do not support the existence of an adverse impact, a condition cannot be imposed under SEPA. This does not speak to measures that may be imposed to ensure an application complies with the standards found in RCW 80.50 or Chapter 463 WAC, but simply that they cannot be SEPA conditions.

Even when a nexus exists, an additional principle of law applicable to the SEPA context is proportionality. If a nexus exists between the project and an impact, then the condition or measure designed to ameliorate it must be in rough proportionality to the magnitude of the impact. As discussed below, several of the conditions presented in the MDNS do not meet this standard and revised language is suggested where appropriate to bring the measures into conformity with the proportionality standard.

Last, an MDNS identifies a project's impacts and contains recommended measures to ameliorate them. We believe the agency's intent is to ensure that all the impacts identified in what will become the final MDNS will be reasonably and responsibly mitigated, a goal shared by Innergex. Required plans may contain granular and specifically detailed means of mitigating impacts, and adaptive management can help EFSEC understand the effectiveness of measures upon operation, after which EFSEC may suggest modifications based on data reviewed and lessons learned during operations. However, it is inappropriate for a final MDNS to launch a search for impacts not already identified. To the extent that this is reflected in the language below, suggested revised language is presented below.

## **Water**

### *Quantity – Water Rights*

*The Applicant would ensure that water rights held by the landowner in relation to irrigated farmlands within the Project Boundary are maintained and returned to the landowner following Project decommissioning. These rights can be retained either by meeting identified minimum water usage rates on an annual basis or by placement of the rights within a trust for the duration of the Project. This would be documented and provided to EFSEC prior to the start of operations.*

### **Innergex Response**

There are multiple existing water rights within the Project area. Innergex will be using a subset of one water right during construction and operation of the project. The majority of available water within the

multiple water rights will remain under the control of the landowners, as will decisions on potential conservation strategies. Neither Innergex nor EFSEC have control over the owners of water rights that are not used for this Project, and neither can abrogate a non-participating third-party's use of such rights. It is not reasonable to assign responsibility for overall or specific aspects of the existing water right to Innergex. This condition must be removed or modified to require the Applicant to *encourage* the landowners' responsible use but cannot impose the duty to guarantee it upon the Applicant.

Innergex suggests the following edits to this mitigation measure:

*The Applicant would ensure that ~~the subset of the onsite water rights held by the landowner in relation to irrigated farmlands within the Project Boundary~~ leased for Project use is ~~are maintained~~ beneficially used during the term of the lease and returned to the landowner following Project decommissioning. ~~These rights can be retained either by meeting identified minimum water usage rates on an annual basis or by placement of the rights within a trust for the duration of the Project. This would be~~ Confirmation of a lease agreement for the Project's water requirements from either the holder of the onsite water right or from a certified water vendor or municipality will be documented and provided to EFSEC prior to the start of operations.*

## **Plants**

### *Technical Advisory Committee*

*The Applicant, in consultation with EFSEC, would establish a Technical Advisory Committee (TAC) prior to the start of construction. The TAC may be composed of representatives from the Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Agriculture, local interest groups, not-for-profit groups, and landowners and would be responsible for reviewing and providing technical advice on documents, reports, and data produced by the Applicant in relation to management of wildlife, habitat, and prime farmland. The TAC would also provide direction on adaptive management throughout the life of the Project. The TAC would be responsible for, at minimum:*

- Providing input to, and review of, Project wildlife and habitat management plans (i.e. Vegetation and Weed Management Plan, Detailed Site Restoration Plan, Wildlife Habitat Management and Mitigation Plan, etc.)*
- Reviewing and providing advice to EFSEC on the final Project design following finalization of the microsite plan*
- Advising on the monitoring of mitigation effectiveness and reviewing monitoring reports*
- Advising on thresholds to be applied to the Project that would trigger the need for additional mitigation measures to reduce Project impacts to the desired level*

- *Advising on new or expanded mitigation measures that would be implemented at EFSEC's directive as adaptive management to ensure mitigation success thresholds are reached*
- *Advising on mitigation measures that can be removed or replaced based on new information (i.e. hydroseeding being unnecessary when native vegetation naturally recruits to the site)*

#### Innergex Response

A Technical Advisory Committee can have an important role in helping to identify and implement adaptive management strategies during Project operation. The TAC's role is to observe how natural resource management plans function once a project becomes operational, and to develop and share with EFSEC recommended adaptations to the mitigation measures in such plans to the extent they are not functioning as planned. The third bullet accomplishes this appropriately. EFSEC has enjoyed decades of success with this approach at other jurisdictional facilities and there is nothing in the record or the law that requires or commends revision to this time-tested approach to adaptive management to ensure the project's mitigation performs as expected.

However, a TAC does not play a role in the design of a facility or the development of initial plans for resource management or decommissioning planning. Those roles are properly reserved, depending on the nature of the plan, for EFSEC, WDFW and the Applicant. This is particularly true regarding the fourth bullet: EFSEC routinely uses the expertise of the agency and WDFW, as the case may be, to determine the suitability of plans to ameliorate project impacts, which EFSEC has already identified through this MDNS.

EFSEC cannot and should not delegate this project development role to an undefined body. In a similar, and important vein, EFSEC cannot delegate authority to the TAC to impose anything: EFSEC alone has that authority, and we urge the agency to take care in crafting language that does not cross the threshold of a TAC's role as advisory only.

Moreover, the extent of time it will take to mobilize and charter a TAC for this project could unreasonably delay the start of Project construction. Innergex is concerned that the first two bullets in this mitigation measure risk unnecessary delay and potential change to measures that have already been drafted and reviewed by EFSEC, WDFW, EFSEC's third-party consultants, as well as opportunities for comments from the public.

Additional input from the TAC on these plans should not be necessary and could introduce new and unnecessary elements to plans that have already been deemed to be sufficient to mitigate for identified

impacts. Innergex strongly recommends that the role of the TAC be focused on the operational phase of a project, reviewing success of various mitigation measures (e.g., revegetation success, soil health, etc.) and advising on adaptive management strategies to help reach success thresholds.

Innergex's position is that existing oversight mechanisms are more than sufficient to review the project's pre-construction plans, including WDFW approval of the Habitat Management Plan and EFSEC review of the Vegetation and Weed Management Plan.

The Applicant requests that the mitigation measure be reworded to better reflect the TAC's scope and timing of implementation:

*The Applicant, in consultation with EFSEC, would establish a Technical Advisory Committee (TAC) prior to the start of ~~construction~~ **operation**. The TAC may be composed of representatives from the Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Agriculture, local interest groups, not-for-profit groups, and landowners and would be responsible for reviewing and providing technical advice on documents, reports, and data produced by the Applicant in relation to management of wildlife, habitat, and prime farmland. The TAC would also provide direction on adaptive management throughout the life of the Project. The TAC would be responsible for, at minimum:*

- ~~Providing input to, and review of, Project wildlife and habitat management plans (i.e. Vegetation and Weed Management Plan, Detailed Site Restoration Plan, Wildlife Habitat Management and Mitigation Plan, etc.)~~*
- ~~Reviewing and providing advice to EFSEC on the final Project design following finalization of the microsite plan~~*
- Advising on the monitoring of mitigation effectiveness and reviewing monitoring reports*
- ~~Advising on thresholds to be applied to the Project that would trigger the need for additional mitigation measures to reduce Project impacts to the desired level~~*
- Advising on ~~new or expanded~~ **modified** mitigation measures that would be implemented at EFSEC's directive as adaptive management to ensure mitigation success thresholds are reached*
- Advising on mitigation measures that can be removed or replaced based on new information (i.e. hydroseeding being unnecessary when native vegetation naturally recruits to the site)*

## Plants

### Monitoring

*The Applicant's Vegetation and Weed Management Plan would include a commitment to, within 60 days of Project completion, create an as-built report that documents the amount of modified habitat, temporary disturbances, and permanent impacts associated with the Project. Vegetation monitoring of modified habitat would be conducted annually for a minimum of three years, though EFSEC may, under advisement from the TAC, elect to extend this monitoring period. The TAC would review these monitoring reports for progress in meeting measurable success criteria for revegetation and impose remedial management actions if success criteria are not being reached. At the end of the revegetation monitoring period, areas of modified habitat and temporary disturbance that have met the established success criteria would be eligible for offset by the Applicant at the respective ratios. Areas that have not met the success criteria after the end of the revegetation monitoring period would be considered permanent impacts and would be added to the offset requirement.*

### Innergex Response

The Applicant requests that the monitoring mitigation measure be reworded to better reflect the TAC's advisory role and retain flexibility to identify alternate measures should the revegetation criteria not be achievable:

*The Applicant's Vegetation and Weed Management Plan would include a commitment to, within 60 days of Project completion, create an as-built report that documents the amount of modified habitat, temporary disturbances, and permanent impacts associated with the Project. Vegetation monitoring of modified habitat would be conducted annually for a minimum of three years, though EFSEC may, under advisement from the TAC, elect to extend this monitoring period. The TAC would review these monitoring reports for progress in meeting measurable success criteria for revegetation and ~~impose~~ **recommend** remedial management actions if success criteria are not being reached. At the end of the revegetation monitoring period, areas of modified habitat and temporary disturbance that have met the established success criteria would be eligible for offset by the Applicant at the respective ratios. **EFSEC may impose additional mitigation requirements for a** Areas that have not met the success criteria after the end of the revegetation monitoring period, **potentially including** ~~would be considered permanent impacts and would be added to the~~ **additional** offset requirements.*



**Animals and Habitat***Habitat Management and Mitigation Plan*

*Prior to the start of construction, a Final Wildlife Habitat Management and Mitigation Plan would be developed in coordination with WDFW and EFSEC, as described in the ASC, to include considerations of any potential additional mitigation as identified by WDFW or other micro-siting options that may be feasible to further reduce the impact to habitat connectivity. Among micro-siting options, the Applicant would consider if incremental expansion of Project wildlife corridors is practicable through intra-site relocation of solar arrays.*

**Innergex Response**

The inclusion of 'potential additional mitigation' in this condition is inappropriate because the analysis conducted has already identified project impacts, and sufficient information is currently available to address mitigation needs. The existing draft Habitat Management and Mitigation Plan has been reviewed and approved by WDFW. We request the removal of the phrase "potential additional mitigation", as its inclusion in this measure makes the project design unnecessarily unpredictable.

**Animals and Habitat***Habitat Mitigation*

*The Applicant would prepare a Final Wildlife Habitat Management and Mitigation Plan prior to Project construction, which may identify additional impacts to Priority Habitats. All impacts to Priority Habitats and rabbitbrush shrubland would be mitigated for at the following ratios:*

- *Eastside (interior) grass*
  - *1:1 for permanent impacts*
  - *0.5:1 for altered habitat impacts*
  - *0.1:1 for temporary impacts*
- *Shrub-steppe*
  - *2:1 for permanent impacts*
  - *2:1 for altered habitat impacts*
  - *1:1 for temporary impacts*
- *Rabbitbrush shrubland*
  - *2:1 for permanent impacts*
  - *2:1 for altered habitat impacts*
  - *1:1 for temporary impacts*

#### Innergex Response

While the Wautoma Project has largely minimized impacts to Shrub-steppe and Rabbitbrush shrubland habitat types, we are concerned that EFSEC is deviating from accepted recent precedent, such as that set for the High Top/Ostrea and Goose Prairie solar projects, in which ‘altered’ habitat was approved for mitigation at a reduced ratio. Altered habitat, which is area inside the solar fenceline that is not covered by an impermeable surface, continues to provide habitat for wildlife though its value may be reduced by disturbance and the presence of fencing. Requiring mitigation at the same ratio as if these areas were covered in gravel is a disincentive to developers to minimize the impermeable surface or otherwise maintain areas suitable for wildlife. EFSEC and WDFW have previously agreed to this concept and Innergex believes it should be maintained here.

The High Top and Ostrea mitigation requirements included a 2:1 ratio for permanent (i.e. impermeable) impacts to shrubsteppe habitat and a 1:1 ratio for ‘altered’ (i.e. fenced, but not paved or graveled) impacts. The Goose Prairie mitigation requirements included a 2:1 ratio for permanent impacts to shrub steppe and a 1.85:1 ratio for altered impacts to shrub steppe. Nothing in the record factually demonstrates the existence of an elevated impact associated solely with Wautoma that would otherwise support the disproportionate measure used here. Lacking the evidence to support this disproportionality, the standard measure must apply.

It is Innergex’s position that should EFSEC wish to deviate from established guidelines and precedent set on other projects, post-acceptance of a complete application, it would be advisable for EFSEC to issue a guidance or standards document, with an effective date, which could inform future project planning. Without such guidance, it causes uncertainty and disruption in the industry as a whole as well as for individual applicants.

When an applicant has spent multiple years in consultation with WDFW and agreed to mitigation ratios, basing budgetary forecasts on the offsetting mitigation owing from the agreed-to ratios (land to be leased for a conservation easement), it is not appropriate to abruptly alter ratios after the fact.

We understand that the decision to change mitigation ratios seems to be driven by concerns over cumulative impacts from multiple projects. This reinforces the need for more systematic guidance, as described above. While it may slightly curb cumulative impacts on priority habitat, the new strategy may exacerbate other cumulative impacts (e.g., on agricultural land), since it creates a financial incentive to further avoid priority habitats and site projects on other types of land.

The cost of increased mitigation requirements may be a project-killer for projects with more priority habitat than Wautoma – the perceived benefits of this strategy should be balanced against Governor’s mandate for more renewable energy.

Innergex requests that EFSEC retain the existing habitat ratios that have applied to previous projects and were negotiated over the past several years with WDFW, as documented in Table 3 of the Project’s Habitat Management Plan, which include reduced “altered habitat” ratios of 1:1 for shrub steppe and rabbitbrush shrubland habitats.

### **Environmental Health**

#### *Green Strip Firebreak*

*The Applicant would construct and maintain a “green strip” along the northern and western boundaries of the site to reduce the risk of spread of wildfire either into or out of the site. The dimensions and composition of this strip would be determined in coordination with WDFW and EFSEC.*

#### **Innergex Response**

Innergex is committed to working with WDFW and EFSEC to find opportunities to develop green strips similar to those that WDFW has implemented elsewhere in the area. However, the rationale and feasibility for placing these strips in a specific location has not yet been developed and it is not clear that the northern and western boundaries of the site are suitable for this purpose.

Innergex suggests using language from the Habitat Management Plan for this mitigation measure.

“Applicant will work with the landowner and WDFW to determine if there are areas within the Project Lease Boundary or in the vicinity where the use of green strips would be beneficial. If green strips are selected as a fire protection measure, the Applicant would work with WDFW to determine an appropriate width, linear distance, and seed mix for the green strips.”

*The Applicant will work with the landowner and WDFW to determine if there are areas within the Project Lease Boundary or in the vicinity where the use of ~~would construct and maintain a~~ “green strip” would be beneficial. If green strips are selected as fire prevention measures, the Applicant would work ~~along the northern and western boundaries of the site to reduce the risk of spread of wildfire either into or out of the site. The dimensions and composition of this strip would be determined in coordination with WDFW and EFSEC~~ to determine an appropriate width, linear distance, and seed mix for the green strips.*

## **Environmental Health**

### *Artificial Water Source*

*The Applicant would locate an artificial water source outside of the fenced project area to provide a water source for helicopter fire suppression.*

### **Innergex Response**

We request that this requirement be rewritten to be less prescriptive. The intent of the requirement is to ensure continued viability of a water source to the extent necessary for compliance with the Emergency Response Plan (ERP). Innergex has retained a qualified fire safety professional to develop the ERP. This plan is still under development and will not be finalized until a later stage in the project's development timeline.

We are committed to ensuring appropriate fire-fighting resources are available but the exact makeup of those resources has not yet been identified. Moreover, creating a new artificial water source may have unintended consequences. While it is possible that after consultation with the appropriate firefighting agencies, it may be concluded that an artificial water source is the appropriate solution, it is premature to prescribe this as a condition of the SCA as other options may turn out to be more appropriate. Innergex suggests the following language:

*The Applicant would work with local fire fighting agencies, DNR, and EFSEC to finalize an Emergency Response Plan prior to construction, to include appropriate measures to enhance firefighting capabilities in the area. These measures may include location of ~~locate~~ an artificial water source outside of the fenced project area to provide a water source for helicopter fire suppression, or may include other alternative measures.*

## **Land and Shoreline Use**

### *Site Restoration Plan*

*... If future site conditions or land ownership no longer allows for the land to be returned to agricultural production, the Applicant would submit a request to EFSEC for an alternative land use that would be in alignment with the Lease Boundary's preconstruction rural character and resource value. If the Detailed Site Restoration Plan requests an alternative land use, EFSEC may require that the Applicant provide additional mitigation to offset impacts from a permanent conversion of the land.*

#### Innergex Response

Land use after decommissioning of the project is not under Innergex's or EFSEC's control. The decision on what the land will be used for is solely within the rights of the landowner, and authorization for such uses lies only with the County. It is not a legally enforceable request to require Innergex to maintain control over use of the land once its lease ends nor is it legally enforceable for EFSEC to prescribe what the landowner does with their own land. Moreover, EFSEC is already requiring mitigation for permanent impacts to the land. As a result, there is no identified impact here that would warrant additional mitigation. We request that the excerpted language above be removed from this MDNS measure.

#### Noise and Vibration

##### *Laydown Yards*

*Avoid laydown and equipment storage/parking areas closer than 2,500 feet from the nearest noise sensitive receptor (NSR) location. These laydown and storage areas would have more noise sources for longer periods of time than other areas; therefore, setting these locations further from NSR locations would limit the sound level and the duration that such equipment can impact an NSR.*

#### Innergex Response

Innergex suggests the following edit to this mitigation measure:

*Unless an alternative agreement has been made with the owner of such a property, avoid laydown and equipment storage/parking areas closer than 2,500 feet from the nearest noise sensitive receptor (NSR) location. These laydown and storage areas would have more noise sources for longer periods of time than other areas; therefore, setting these locations further from NSR locations would limit the sound level and the duration that such equipment can impact an NSR.*

#### Visual Aesthetics

##### *Opaque Fencing*

*Install opaque fencing to directly screen views of the solar arrays where sited within 150 feet of viewpoints (i.e. public roadways) or residences. To allow the proposed fencing to blend into the setting, color-treat the opaque fencing material to minimize color contrast with the existing landscape.*

#### Innergex Response

Innergex suggests the following edit to this mitigation measure:

*Unless an alternative agreement has been made with the owner of such a property, Install opaque fencing to directly screen views of the solar arrays where sited within 150 feet of viewpoints (i.e. public roadways) or residences. To allow the proposed fencing to blend into the setting, color-treat the opaque fencing material to minimize color contrast with the existing landscape.*

#### Visual Aesthetics

##### *BESS Design*

*To the extent practicable, design BESS to blend with the adjacent agricultural character, including selecting materials and paint colors to reduce contrast with the existing setting. By mimicking design characteristics of agricultural structures in the area, the BESS facilities would appear consistent with the area's agricultural setting, including the overall visual scale of those existing structures.*

#### Innergex Response

This measure is not addressing an identified impact. Sited in the center of the project generally, the BESS will be surrounded by panels and therefore will be seen in the context and character of a solar energy facility, not a purely agricultural setting. and therefore cannot contrast visually. Moreover, BESS infrastructure is designed and manufactured in standard colors (typically white). It is not feasible to repaint these units, as that action may invalidate warranties and may impact fire safety. We request that this mitigation measure be removed from the MDNS.

#### Recreation

##### *Hunting*

*The Project area is located within District 4 (which includes the Blackrock Valley hunting grounds), which has high quality hunting opportunities. To mitigate the impacts to access and use of the Blackrock Valley hunting grounds by the Project, the applicant would develop a Recreational Hunting Access Management Plan in coordination with WDFW prior to construction which would include:*

- *A map of the allowed hunting areas and access points during construction and operation*
- *Allowed access times*
- *Types of games and hunting seasons*
- *Identification of potential health and safety risks to hunters during Project construction, operation, and decommissioning*

- *Appropriate mitigation measures such as scheduling and planning construction activities with the aim of minimizing conflicts with important hunting seasons as much as practicable*
- *Engagement procedures with key stakeholders such as WDFW, guided hunting outfitters, and recreational hunters*

#### Innergex Response

As previously discussed with EFSEC staff and detailed in Innergex's response to Data Request 1, hunting will not be permitted within the project area during construction or operation of the project. A clause prohibiting hunting during the construction and operational phases of the Project has been written into the land lease agreements with participating landowners. In any event, it is unreasonable to require the Applicant to invite the discharge of weapons near solar panels. It is critical that we avoid damage to equipment; such damage would impact our ability to meet energy production requirements in our power purchase agreements. We request that this mitigation measure be removed from the MDNS. If development of a Recreational Hunting Access Management Plan is required, consultation with WDFW should not be referenced, nor should the bulleted list of detailed information, as none of this information will be contained within a plan that simply states that no hunting is permitted. Moreover, the project is entirely located on privately owned land; ultimately the landowners have the ability to restrict hunting on their land.

#### **Historic and Cultural Resources**

##### *Tribal Engagement*

*Maintain ongoing engagement with affected Tribes to facilitate identification, location, quantification, and mitigation of potential impacts to TCPs. Tribal review of site/engineering plans would provide input to guide design and avoidance without confidential disclosure of sensitive locations. This engagement should also include opportunities to evaluate the effectiveness of any implemented mitigation measures throughout the Project's lifecycle. Appropriate mitigation measures may include (but are not limited to) the demarcation of "no-go," culturally sensitive areas to be avoided by contractors through Project redesign, refinement, or maintenance of safe access by Tribes.*

#### Innergex Response

Clarity is important. The one Tribe that has indicated it is affected by this project is Yakama Nation, and any conditions in this MDNS should identify it thus. Cultural resources have already been identified through cultural resource surveys. Multiple exchanges between EFSEC and Yakama Nation resulted in a letter with specific requested mitigation measures, the majority of which are being implemented. Further work to assess impacts or identify mitigation measures is neither necessary nor productive. This



condition incorrectly implies there is need for more assessment or more measures when there is not. Stating otherwise would defeat the purpose and utility of an MDNS.

In addition, the EFSEC council cannot and should not delegate to any third party, Tribe or otherwise, the authority to review engineering plans for any facility. The applicant alone is responsible for properly designing and engineering the project. Further, an applicant's engineer's wet-stamp shifts liability because an engineer has certified responsibility for the plan's integrity. Allowing or inviting the redesign or engineering of a facility indicates that EFSEC or its invitees are expected to assume the legal liability to ensure that the facility operates appropriately. It is most likely that EFSEC and any third party's liability policies do not cover losses for facilities designed or engineered by such third parties, and Innergex's liability policies similarly do not. Because of that, no developer of any type of facility (solar, BESS, residential, commercial, or otherwise) can, will or should allow a third-party to redesign or reengineer a project.

Insofar as the agency intends to solicit input, it should be limited expressly to input – not 'go-no go' decisions - about the layout alone. Innergex is obligated to comply with the cultural resources survey report referenced below; in light of that, there is no need for nor it is appropriate to require *"Appropriate mitigation measures may include (but are not limited to) the demarcation of "no-go," culturally sensitive areas to be avoided by contractors through Project redesign, refinement, or maintenance of safe access by Tribes."*

The measure as written implies that Tribes currently have access to the Project Area. This is not correct – there is no access to privately owned land to be maintained (i.e., lack of a nexus). We note that the topic of mitigation for TCPs and other cultural resource concerns was recently addressed to EFSEC by Governor Jay Inslee in the Horse Heaven project. While that project was evaluated on its own merits and is not binding on Wautoma, we anticipate a recommendation on this matter reaching the Governor's desk at some point in the future. Mindful of that and the need to maximize the megawatts of clean energy to reach the state's aggressive climate and clean energy transition goals, we ask that this condition be revised in light of his feedback.

Innergex suggests that this mitigation measure be reworded as follows:

*The Applicant has completed a cultural resource survey of the Project Area and has committed to avoiding all potentially NRHP-eligible or otherwise legally protected resources identified during those surveys. In addition, as requested by Yakama Nation, the Applicant has incorporated animal passage*



*corridors into the design and will avoid all precontact archaeological sites and isolates with a minimum 30 meter buffer. An Inadvertent Discovery Protocol has been drafted and must be finalized prior to construction, for approval by EFSEC in consultation with Yakama Nation CRP and DAHP. The Applicant shall maintain ongoing engagement with Yakama Nation affected tribes to facilitate identification, location, quantification, and mitigation of potential impacts to TCPs. Tribal review of site/engineering plans would provide input to guide design and avoidance without confidential disclosure of sensitive locations. This engagement should also include opportunities to evaluate the effectiveness of any implemented mitigation measures throughout the Project's lifecycle. Appropriate mitigation measures may include (but are not limited to) the demarcation of "no-go," culturally sensitive areas to be avoided by contractors through Project redesign, refinement, or maintenance of safe access by Tribes.*

## **Historic and Cultural Resources**

### *Ongoing Discussions*

*Mitigation discussions would be ongoing once site impacts are fully assessed by EFSEC, affected Tribes, and DAHP. These discussions would likely occur on a case by case basis for each archaeological resource and historic property and include affected Tribes and DAHP.*

### **Innergex Response**

On May 17, 2024, DAHP issued a letter of concurrence with the findings of and proposed mitigation measures within the Cultural Resources Survey Report prepared for the Project. Within that report, Innergex has committed to avoidance of all applicable resources. Yakama Nation has taken multiple opportunities to review the report and has provided feedback on several points, which has been addressed in the final report. This MDNS is the determination of the project's impacts. There should not be any additional impacts to be assessed by EFSEC, affected Tribes, and DAHP. The only further assessment of Project impacts or additional mitigation warranted would be in response to any discoveries made pursuant to the Inadvertent Discovery Plan. We request that this mitigation measure be modified to explicitly refer to the IDP as the format and vehicle for any supplemental impact or mitigation discussion. Suggested modification as follows:

*The Draft Inadvertent Discovery Plan must be finalized and approved by EFSEC prior to construction. Mitigation discussions would be ongoing once site impacts are fully assessed by EFSEC, affected Tribes, and DAHP. These discussions would likely occur on a case by case basis for each for any case where additional archaeological resources and or historic properties are identified during construction and include affected Tribes and DAHP as described in the Inadvertent Discovery Plan.*

## Historic and Cultural Resources

### TCPs

*As the Applicant further refines the Project layout, they anticipate that reduction and/or relocation of panels is likely as part of micrositing. During this process, there must be a reduction in the total panel footprint within Benton County Assessor Parcels 133240000000000 and 132241000002000 to reduce visual impacts and physical encroachment on a Yakama Nation-identified TCP landform. The exact scale of the reduction would be determined during the micrositing process, but all reductions and/or relocations must first come from these identified parcels.*

### Innergex Response

Initially, we note that the prescriptive nature of this condition is internally inconsistent with the staff report on the MDNS, which is advisory. There are numerous factors that may contribute to decisions around reductions in size of a project, relocation of panels, or general micrositing within the project area. Layout refinement generally occurs at a later stage of project development, prior to construction. Technical/environmental constraints, equipment design specifications and input received from the participating landowners and the surrounding community between now and that future point in time will inform the final layout. In addition, the final layout will depend in large part on the needs of the eventual purchaser of the power generated by the project. While we are open to prioritizing these two parcels in the refinement process, it is premature and inappropriate to mandate removal of panels from these sections before all of this information has been analyzed and fed into the layout refinement process.

In addition, TCP landforms referenced in this mitigation measure have not been defined. It is not permissible under RCW 43.21C and caselaw thereunder, including the line of cases developed federally and known as Nolan/Doland, to impose mitigation measures for undefined impacts to undefined resources.

Innergex recommends modifying the mitigation language as follows to appropriately reflect the Applicant's commitment:

*As the Applicant further refines the Project layout, they anticipate that reduction and/or relocation of panels ~~is likely~~ may occur as part of micrositing. During this process, ~~there must be a~~ reductions in the total panel footprint will be prioritized to the extent practicable within Benton County Assessor Parcels*



*133240000000000 and 132241000002000 to reduce visual impacts and physical encroachment on a Yakama Nation-identified TCP landform. The exact scale of the reduction would be determined during the micrositing process, but all reductions and/or relocations must first come from these identified parcels.*

## **Transportation**

### *Train Crossings*

*To mitigate for potential collisions at train crossings, the Applicant should work with WSDOT and Operation Lifesaver to provide train safety presentations to employees and contractors to increase knowledge regarding train safety, including train track crossings. The Applicant should establish procedures to be followed if the load should become lodged at a rail crossing and would review the emergency contact numbers for each crossing.*

### **Innergex Response**

This mitigation measure does not address any identified impact (lack of nexus) and is unnecessary, overbroad and vague. Transport of materials for construction of a solar facility is already subject to myriad state and federal highway safety standards, some of which appear in the design of crossings and others in the qualifications for and requirement upon the millions of commercial vehicle operators that travel America's roads in the course of industry and commerce daily. Notably, this project does not pose any unusual risks to train crossings. Any oversized loads such as transformers will be handled in accordance with Washington State Department of Transportation and Washington Utilities and Transportation Commission mandated procedures. The applicant requests that this measure be removed as it is not necessary or appropriate for this project.

Very truly yours,

INNERGEX RENEWABLE DEVELOPMENT USA, LLC.

A handwritten signature in blue ink, appearing to read "Nuno Louzeiro", with a stylized flourish at the end.

Nuno Louzeiro  
Senior Director - Development