

1
2
3
4
5 BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

6 In the Matter of:

EFSEC DOCKET NO. EF-220355

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

BENTON COUNTY'S PETITION FOR
RECONSIDERATION

10 Applicant.

11
12 **I. INTRODUCTION**

13 Energy Facility Site Evaluation Council ("Council") issued the Adjudicative Order
14 Recommending Preemption of Local Land Use Laws ("Order") dated November 20, 2024
15 ("Order") with regard to Innergex Renewable Development USA, LLC's ("Applicant")
16 application for site certification for the Wautoma Solar Energy Project ("Project"). Benton County
17 (the "County") respectfully submits this Petition for Reconsideration of the Adjudicative Order
18 Recommending Preemption of Local Land Use Laws dated November 20, 2024 ("Order").
19

20 **II. ARGUMENT**

21 **1. Benton County's petition is authorized under WAC 463-30-335.**

22 A party to the adjudicative proceedings may petition the Council to reconsider its
23 recommendation to the Governor. WAC 463-30-335.¹
24

25 ¹ The petition for reconsideration shall specify the challenged portions of the recommendation to
26 the governor and shall refer to the evidence of record and legal authority which is relied upon to
support the petition.

1 The Council's recommendation follows adjudication of two issues:

2 1. If the Energy Facility Site Evaluation Council (EFSEC or
3 Council) should recommend to the Governor that the state preempt
4 the land use plans, zoning ordinances, or other development
5 regulations for the site for the alternative energy resource proposed
6 by Innergex Renewable Development USA, LLC, for Wautoma
7 Solar Energy Project (Applicant).

8 2. If the Council approves the Applicant's request for preemption,
9 what conditions the Council should include, if any, in a draft
10 certification agreement to consider state or local governmental or
11 community interests affected by the construction or operation of the
12 alternative energy resource and the purposes of laws or ordinances,
13 or rules or regulations promulgated thereunder that are preempted
14 pursuant to RCW 80.50.110(2).

15 Order, p. 7. The Council found that it should recommend preemption and that the
16 conditions in the Revised MDNS "consider the purposes of the zoning ordinances that would be
17 preempted". Order, p.15.

18 The Council's authority is governed by Chapter 80.50 RCW and Chapter 463-28 WAC,
19 which provide little in the way of a standard for determining whether to recommend preemption
20 of local land use provisions. In making its recommendation to the Governor, however, the Council
21 must include conditions in the draft certification agreement to implement the provisions of
22 [Chapter 80.50 RCW], "including, but not limited to conditions to protect state, local
23 governmental, or community interests... affected by the construction or operation of the facility,
24 and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations
25 promulgated thereunder, that are preempted or superseded..." RCW 80.50.100(2) and WAC 463-
26 28-070 (asserting conditions must consider state or local government interests).

27 Insofar as Benton County's interests and purposes behind its governing code was
28 considered, Benton County asserts they are mischaracterized in the Order. Thus, the basis for the
29 Council's decision to recommend preemption warrants reconsideration.

1 **2. The Order incorrectly characterizes Benton County’s argument, zoning regulations,**
2 **and interests and fails to consider alternative siting.**

3 The Order states in relevant part:

4 The Council finds it is not tenable to argue that all agriculturally
5 zoned land in Benton County must be protected without exception
6 against clean energy development.

6 ...

7 The County admits that it designates all agricultural land in the
8 county, without exception (constituting 59 percent of the land under
9 county and city zoning jurisdiction) as Agricultural Lands of Long-
10 term Commercial Significance (ALLTCS). Testimony of Greg
11 Wendt. The record of this adjudication also demonstrates that the
12 county’s designation does not consider site-specific factors, such as
13 limited water availability, that may cause individual properties to
14 have relatively lower agricultural value. *See Id.*; Testimony of Leslie
15 McClain.

16 Order, p. 13. The order further characterizes Benton County’s post hearing brief as arguing that
17 “no conditions to address the narrow issue of mitigating the loss of GMAAD lands during the life
18 of the project.” Order, p. 11. The full quote merely states that “Applicants propose” no conditions
19 to address that issue. The above sections mischaracterize Benton County’s arguments, zoning
20 regulations, and interest in protecting agricultural lands as being sweeping and rigid- outright
21 prohibiting solar siting. The Order also fails to consider available alternatives for siting which were
22 raised in the adjudicative hearing.

23 Benton County has an interest in protecting agricultural lands of long-term commercial
24 significance. Order, p. 9. In determining what agricultural lands should be considered for
25 protection, Benton County *does* consider water availability, parcel size, and other factors on a
26 county or area wide approach as required by WAC 365-190-050(1). Benton County Exhibit C, p.
213. To protect its interest in preserving agricultural lands, Benton County has tailored its code to
limit incompatible and non-agricultural uses in the Growth Management Act Agricultural District

1 (GMAAD) zone. *Id.*, p. 9-10. One such limitation effort was the removal of the conditional use
2 permitting option for a commercial solar power generator facility, major (“Solar Facilities”) for
3 GMAAD lands. *Id.*, p. 10, Benton County Exhibit D, p. 3. In his testimony, Greg Wendt clarified
4 that Solar Facilities in particular are a non-compatible use in GMAAD zones because of the size
5 and scale of the projects. While some non-agricultural uses are permitted in the GMAAD zone
6 without requiring an offset of the agricultural use, the scale of those projects generally have a
7 lessor impact. Testimony of Greg Wendt.

8
9 However, Benton County’s preference for siting Solar Facilities outside of GMAAD zones
10 does not prohibit them outright.

11 It is undisputed that the largest portion of agricultural lands in Benton County is designated
12 as Growth Management Act agricultural lands, which consists of 649,153 acres or nearly 59% of
13 Benton County’s total land. However, these are not the only lands available for agriculture or solar
14 use. There are 3,677 acres of industrial lands and 278,794 acres of unclassified lands. Benton
15 County Exhibit C, pgs. 42-43. Each permit agricultural uses² as well as the siting of a Solar Power
16 Generator Facility, major under a conditional use permit.³ Testimony of Michelle Mercer. There
17 is no indication in the Order that the availability of other compatible Benton County lands, as
18 raised in the hearing, was considered as a possible condition for balancing local interests in
19 protecting GMAAD lands.

20
21 \\\

22
23 _____
24 ² BCC 11.33.030(c), BCC 11.35.030(e), and BCC 11.41.010(a) respectively allow agricultural use
in Light and Heavy Industrial Districts and Unclassified Districts.

25 ³ BCC 11.33.060(k) and BCC 11.35.060(i) respectively allow for Solar Power Generator Facilities,
Major in Light and Heavy Industrial Districts with a conditional use permit. BCC 11.41.060 allows
26 for all uses not already specified which are not otherwise prohibited by law under a conditional
use permit.

1 **CONCLUSION**

2 This Council is tasked with balancing the need for renewable energy resources against the
3 interest of the state and local governments. To meet that goal, it is required to consider those
4 interests and impose conditions to support them and the purpose of laws or regulations being
5 preempted. Benton County has an interest in protecting its GMAAD lands as required by law, and
6 has drafted its local zoning regulations to permit Solar Facilities in areas of Benton County that
7 will have a lower impact on agricultural lands of long term significance. Benton County
8 respectfully requests that the Council reconsider its recommendation to the Governor until it has
9 likewise considered the possibility of siting the Applicant’s proposed facility in areas Benton
10 County has deemed compatible with such uses.
11

12
13 Dated this 12th day of December, 2024.

14
15 Respectfully submitted,

16 ERIC EISINGER

17 Prosecuting Attorney

18 By 

19 LEEANN HOLT, WSBA #53807

20 Chief Deputy Prosecuting Attorney, Civil
21 Attorneys for Benton County

22 7122 W. Okanogan Place, Ste. A230
23 Kennewick, WA 99336

24 Telephone: (509) 735-3591

25 Fax: (509) 222-3705

26 Email: LeeAnn.Holt@co.benton.wa.us

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>ENERGY FACILITY SITE EVALUATION COUNCIL 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 adjudication@efsec.wa.gov <input checked="" type="checkbox"/> Copy via Electronic Mail to efsec@efsec.wa.gov</p>
<p>OFFICE OF THE ATTORNEY GENERAL 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 jonathan.thompson@atg.wa.gov and CEPSeaEF@atg.wa</p>
<p>COUNSEL FOR THE ENVIRONMENT 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 yuriy.korol@atg.wa.gov</p>
<p>COUNSEL FOR APPLICANT 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 eanderson@vnf.com and alewis@vnf.com</p>

DATED this 12th day of December, 2024, at Kennewick, Washington.



LEEANN HOLT, Attorney