

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of the Application of:

Innergex Renewable Development USA, LLC,
Wautoma Solar Energy Project

Applicant

DOCKET NO. EF-220355

COUNCIL ORDER NO. 897

ORDER DENYING BENTON COUNTY
PETITION FOR RECONSIDERATION

OVERVIEW

On Thursday, December 12, 2024, Benton County filed a Petition for Reconsideration (Petition) of the Council’s Adjudicative Order Recommending Preemption of Local Land Use Laws (Order) dated November 20, 2024. Innergex filed a response to the Petition on December 18, 2024.

The Council has considered the points raised by Benton County in its petition but finds that they do not warrant any change to the Order’s findings and conclusions.

DISCUSSION

1) The Order’s incomplete quotation of the County’s post hearing brief is not material to the Order’s findings and determinations.

The Petition makes a fair, but immaterial criticism of the Order’s incomplete quotation of a sentence in the County’s post hearing brief. Petition at 3. The Order used the quote for the still accurate proposition that Benton County did not propose any conditions (beyond those recommended in the Mitigated Determination of Non-significance (MDNS) and in the Application for Site Certification) to recognize the purposes of the County’s zoning ordinances in the event the Council recommended preemption.

Consistent with the County’s request, the Council has recommended including all of the conditions offered by the Applicant and recommended in the MDNS to recognize the purposes of the County’s preempted agricultural zoning for the site.

2) The Council stands by its characterization of Benton County’s process for designating agricultural lands of long-term commercial significance (ALLTCS).

In the Order, the Council stated that:

The record of this adjudication also demonstrates that the county’s designation does not consider site-specific factors, such as limited water availability, that may cause individual

properties to have relatively lower agricultural value. *See Id.*; Testimony of Leslie McClain.

The County's Petition objects to this observation. Petition at 3. But the County's explanation for its objection states that in "determining what agricultural lands should be considered for protection, Benton County *does* consider water availability, parcel size, and other factors on a county or area wide approach as required by WAC 365-190-050(1)." (Underline emphasis added.) Not only does the County concede that it uses a "county or area wide approach" to designation of ALLTCS, but the rule it cites provides that:

In classifying, designating and de-designating agricultural resource lands, counties must conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10). Counties and cities *should not review resource lands designations solely on a parcel-by-parcel basis*.

(Emphasis added.) Given the admittedly generalized nature of the process for designating agricultural resource lands, the Council is not persuaded that its characterization was incorrect.

The Council stands by its conclusion that the site-specific factors presented in the adjudication demonstrate that the site has relatively marginal agricultural value, despite being included within the county or area wide designation of agricultural lands of long-term commercial significance pursuant to WAC 365-190-050(1). The Council further stands by its conclusion that the adjudicative record shows the Wautoma Solar Project (Project) as certified will be consistent with surrounding agricultural uses and allow the site's property owners to continue their agricultural practices in a more sustainable manner.

3) The Council did not ignore the fact that the County lists major solar facilities as conditionally permitted uses on industrially zoned lands and on unclassified Hanford Nuclear Reservation lands.

The County acknowledges that 59% of Benton County's total land, and all its agriculturally zoned land, is designated as ALLTCS and does not allow for major solar facilities.

The Petition argues, however, that these are not the only lands available for agriculture or solar use. "There are 3,677 acres of industrial lands and 278,794 acres of unclassified lands. Benton County Exhibit C, pgs. 42-43. Each permit agricultural uses as well as the siting of a Solar Power Generator Facility, major under a conditional use permit. Testimony of Michelle Mercer." On this basis, the County's petition requests "that the Council reconsider its recommendation to the Governor until it has likewise considered the possibility of siting the Applicant's proposed facility in areas Benton County has deemed compatible with such uses."

The Council acknowledges that the County Code ostensibly lists major solar facilities as conditionally permitted uses in the County's limited industrial zones and that such facilities could perhaps be sited on the "unclassified lands" constituting the federally owned and

controlled Hanford Nuclear Reservation. However, the Council was not persuaded that it should recommend against preemption on this basis, nor that the Applicant can or should be required to show that it considered alternative sites in those areas.

Again, the Council reiterates its finding that the site-specific characteristics of the Project are more than adequate to support the Council's recommendation to preempt Benton County's land use laws, notwithstanding the County's arguments that alternative sites were available.

Conclusion

For the foregoing reasons, the Council denies Benton County's Petition for Reconsideration. DATED and effective at Olympia, Washington, on the 27th day of December 2024.

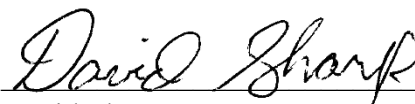
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Kathleen Drew
Chair

Separate Statement of Dave Sharp, Council Member for Benton County: County asserts they were mischaracterized in the Order as characterizing all Agricultural Lands as Long term Commercial Significance (ALLTCS). The Petition for Reconsideration made reference to testimony, Exhibit C, which identified some agricultural land as lower significance, and nearly 289,000 acres of unclassified land as potentially available to support a solar project. Benton County requested that the Council reconsider its recommendation to the Governor until it has considered the possibility of locating the Applicant's facility in areas Benton County has deemed compatible with such uses. I agree with Benton County.

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David Sharp
Benton County