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## Transcript of Proceedings

*September 25, 2024*

### WA State Energy Facility Site Evaluation Council v.

EF-220355

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2 (All parties appearing remotely.)

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7 Eli Levitt (NOT PRESENT)  
8 Department of Ecology

9 Mike Livingston  
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11 Lenny Young  
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13 Stacey Brewster  
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1 BE IT REMEMBERED that on Wednesday,  
2 September 25, 2024, at 9:00 a.m. Pacific time, before  
3 the Washington Energy Facility Site Evaluation  
4 Council; Kathleen Drew, Chair; and Dan Gerard,  
5 Administrative Law Judge, the following proceedings  
6 were had, via videoconference, to wit:

7  
8 <<<<<< >>>>>>

9  
10 CHAIR DREW: This is Kathleen Drew,  
11 chair of the Energy Facility Site Evaluation Council,  
12 calling the -- this meeting to order for the  
13 adjudicative hearing for the Wautoma Solar energy  
14 project.

15 Ms. Owens, will you call the roll of the Wautoma  
16 council.

17 MS. OWENS: Yes, chair.

18 Department of Commerce.

19 Department of Ecology.

20 Department of Fish and Wildlife.

21 MR. LIVINGSTON: Mike Livingston,  
22 present.

23 MS. OWENS: Department of Natural  
24 Resources.

25 MR. YOUNG: Lenny Young, present.

1 MS. OWENS: Utilities and  
2 Transportation Commission.

3 MS. BREWSTER: Stacey Brewster,  
4 present.

5 MS. OWENS: For -- sorry. For  
6 Benton County, Dave Sharp.

7 For Washington State Department of Transportation,  
8 Paul Gonseth.

9 MR. GONSETH: Paul Gonseth, present.

10 MS. OWENS: Chair, we have three  
11 from the regular Council and one from the optional  
12 council. Is that enough for a quorum?

13 CHAIR DREW: That is. Thank you.

14 Judge, I will hand it over to you.

15 JUDGE GERARD: Thank you. Hey, good  
16 morning, everyone. Let me go ahead and begin by  
17 setting the record, and then I'm going to describe the  
18 process for today's proceedings. And then we'll get  
19 into the adjudication, itself.

20 We're on record in the matter of Wautoma Solar,  
21 OAH Docket 279466. And the date is September 25th,  
22 2024, and the time is 9:02 a.m. Pacific.

23 We are recording this hearing by audio methods.  
24 In addition, I do believe we do have a court reporter  
25 on this meeting.

1 Court reporter, if so, would you go ahead and  
2 speak up, please.

3 Perhaps we don't have a court reporter. If the  
4 court reporter does join at a later time, I would ask  
5 that whoever arranged them have them announce  
6 themselves.

7 Ms. Owens.

8 MS. OWENS: The court reporter is  
9 John Botelho. I'm not sure why he is not able to  
10 speak.

11 JUDGE GERARD: Okay. He -- parties  
12 are automatically on "mute" when they join the  
13 proceedings. So if he is present, I'd ask you to go  
14 ahead and unmute yourself and just announce it just so  
15 we are all aware that you are present.

16 MR. SHARP: This is Dave Sharp. Can  
17 you hear me?

18 JUDGE GERARD: I can. Mr. Sharp,  
19 are you acting as the court reporter today?

20 MR. SHARP: Excuse me?

21 JUDGE GERARD: Are you acting as the  
22 court reporter today?

23 MR. SHARP: No. I'm just trying to  
24 get onto the adjudication.

25 JUDGE GERARD: Mr. Sharp, we just

1 started the adjudication. We're setting the record.  
2 So I'd ask you to go ahead and put yourself on "mute,"  
3 if you would, please.

4 Thank you, sir.

5 All right. So, as I was saying, my name is Dan  
6 Gerard. I'm an administrative law judge with the  
7 Washington State Office of Administrative Hearings, and  
8 I will be the presiding officer in today's  
9 adjudication.

10 Yes, Chair Drew.

11 CHAIR DREW: A couple of things are  
12 coming in from the chat.

13 Ms. Osborne from the Department of Commerce has  
14 noted that she's having trouble with Teams, but she is  
15 present.

16 And our court reporter has reported that he can't  
17 unmute himself on this.

18 JUDGE GERARD: Okay. Let me see if  
19 I have the functionality to unmute Mr. Botelho, and  
20 then we'll have him announce himself for the record.  
21 Thank you for the -- the clarification.

22 CHAIR DREW: Also, if I might, Dave  
23 Sharp is the community member for Benton County on the  
24 Council.

25 JUDGE GERARD: Thank you.

1 CHAIR DREW: So he's present as  
2 well.

3 JUDGE GERARD: All right. I'm  
4 unable to actually mute somebody with the functionality  
5 that I have. Let's go ahead and proceed.

6 I do believe there is an ability to unmute  
7 yourself if you can't do so with your computer. I  
8 don't recall the exact mechanism. I don't usually deal  
9 with that particular portion of it.

10 Ms. Owens, I don't know if you're -- I don't know  
11 who is actually on behalf of EFSEC controls these --  
12 the technological aspects, but if you could find out  
13 how to unmute or someone to unmute themselves beyond  
14 just the function, that would definitely be beneficial.

15 MS. OWENS: This is Ms. Owens. I  
16 did try to unmute them myself, but it also does not  
17 give me the option, and I'm an organizer. It might be  
18 best if they leave the meeting and re-enter. That  
19 might fix the issue.

20 JUDGE GERARD: I don't believe so,  
21 actually. I think because everyone comes into the  
22 meeting, itself, muted from the get-go. So we're going  
23 to have to find a way. 'Cause obviously if that's the  
24 case, then other participants aren't going to be able  
25 to speak up either if we can't get a workaround for

1 that.

2 So let's -- before we get too far in, 'cause I'd  
3 like to hear from the parties -- I'd like to make sure  
4 that those who are currently muted can unmute  
5 themselves. And I'm going to pick someone randomly  
6 just to get a sample.

7 Ms. Holt, you represent Benton County. Can you  
8 unmute yourself and speak up, if you can, please.

9 MS. HOLT: I'm able to. Thank you.

10 JUDGE GERARD: Very good.

11 And, Ms. Anderson, are you present on behalf of  
12 Wautoma?

13 MR. LEWIS: Your Honor, this is  
14 Andrew Lewis, also representing the applicant with  
15 Ms. Anderson. She is currently unable to join the  
16 meeting and trying to get in, so we're working with IT  
17 on trying to figure that out.

18 JUDGE GERARD: Let's hold off on  
19 setting the record and getting started until we get  
20 everybody who's a participant joined. In that way, we  
21 have the sufficient quorum; we have the parties who are  
22 going to participate so we don't have to repeat the  
23 process.

24 So the participants I need to make sure are  
25 present are all the Council members who satisfy the



1 quorum. I also need the representatives and respective  
2 parties of interest. That is Benton County, Wautoma  
3 adjudication, as well as counsel for the environment.

4 The rest of the parties, if they're simply  
5 observing, they don't need to speak up through the  
6 adjudication. So we don't need to concern ourselves  
7 with the technological aspects of theirs.

8 So let's give everyone a moment to make sure  
9 they're fully joined. Then I'll describe the process.  
10 Then we'll get started with the adjudication.

11 (Pause in proceedings from  
12 9:06 a.m. to 9:12 a.m.)  
13

14 CHAIR DREW: If I could correct the  
15 record for who is present at the meeting since we had  
16 kind of a rough technological start. Ms. Osborne from  
17 the Department of Commerce is present. And Dave Sharp,  
18 Mr. Sharp, from Benton County representative, is  
19 present. So the only Council member not present is  
20 Mr. Eli Levitt from the Department of Ecology.

21 Is that correct, Ms. Owens?

22 MS. OWENS: That is correct.

23 CHAIR DREW: Thank you.

24 JUDGE GERARD: Thank you, Chair

25 Drew.

1 And thank you, Ms. Owens, for sending it to them.  
2 I will discuss the use of the chat too in just a  
3 moment.

4 (Pause in proceedings from  
5 9:13 a.m. to 9:17 a.m.)  
6

7 JUDGE GERARD: Okay. It looks like  
8 we do have the party participants present, so let's go  
9 ahead and begin. I'd just like to confirm one last  
10 time that everyone is present and can hear me.

11 Ms. Anderson, you have just as the  
12 representative's portion, not your witnesses, Mr. Lewis  
13 and yourself present on behalf of the applicant; is  
14 that correct?

15 MS. ANDERSON: That's correct.

16 JUDGE GERARD: Very good.

17 And, Ms. Holt, we did confirm it earlier. It's  
18 just you on behalf, at this point, on behalf of Benton  
19 County?

20 MS. HOLT: That is correct, Your  
21 Honor.

22 JUDGE GERARD: And, Mr. Korol, you  
23 are the one representative on behalf of the counsel for  
24 the environment. Is that also correct?

25 MR. KOROL: That is also correct,

1 Your Honor.

2 JUDGE GERARD: Okay. And I don't  
3 believe there's been any changes within the quorum.

4 Chair Drew, were you ready for me to go ahead and  
5 reseal the record and begin?

6 CHAIR DREW: Yes.

7 JUDGE GERARD: As I was stating,  
8 we're on record in the matter of Wautoma Solar, OAH  
9 Docket 279466. I'm Administrative Law Judge Dan Gerard  
10 with the Washington State Office of Administrative  
11 Hearings. And this adjudication is being held on  
12 September 25th, 2024, at 9:18 a.m.

13 As I said before, I am administrative law judge  
14 with OAH, but I am just the presiding officer in  
15 today's adjudication. This means that I will oversee  
16 the conduct and the flow of today's proceedings. I'm  
17 going to start today by describing the process in which  
18 we will follow, and then I'll go around and see if  
19 there's any questions before we move on with the actual  
20 hearing, itself.

21 And as the hearing progresses, I would ask those  
22 of you who are just observing or are witnesses to mute  
23 yourself until it is your time to -- to either testify.  
24 The party participants, obviously I would ask that you  
25 keep yourself unmuted, if possible. That way, if there

1 are any objections, you can do them timely. If you are  
2 going to leave yourself unmuted, I would ask that you  
3 turn all cell phones off so we don't get unnecessary  
4 artifacts into the record.

5 As we had confirmed earlier, too, we also have  
6 present today a court reporter. We are recording the  
7 hearing in addition to the court reporter's services.  
8 In light of that, I would ask that all parties speak  
9 loudly and clearly today when they are speaking. We  
10 are only recording the audio portion of today's  
11 proceedings and not the video. So today I will  
12 instruct all witnesses, when they answer, to answer  
13 orally with yeses or noes, not head shakes or nods or  
14 any other visual cues that will not be captured by the  
15 record.

16 If any time today the court reporter cannot hear  
17 or understand you, at this point they have my  
18 permission to ask the party to repeat themselves. If  
19 the court reporter does need a break, as it is an  
20 exceptionally tasking job, I would ask that they speak  
21 up to let me know. Otherwise, if I don't hear from  
22 him, I'll assume that they are capable of continuing  
23 on.

24 We are going to start today by giving the parties  
25 an option to make opening statements of no more than

1 five minutes. An opening statement is a party's  
2 preview of what they believe the evidence will show.  
3 An opening statement is not evidence, however, and  
4 cannot be relied upon unless that evidence is presented  
5 either in the exhibits or through sworn testimony.

6 I also would remind the Council, who are the  
7 decision-maker in this case, that any preparing briefs  
8 are also just argument and not evidence that they can  
9 rely upon unless that evidence is solicited through  
10 sworn testimony today or adopted or so entered into the  
11 record. The same thing applies to post-hearing briefs  
12 and closing arguments.

13 After the parties have been given an opportunity  
14 to give an opening statement, we will then move on to  
15 the presentation of the cases, starting first with the  
16 applicant.

17 The applicant may call the witnesses in whatever  
18 order they deem appropriate. The applicant's attorneys  
19 will be given the chance to question their witnesses.  
20 After they are finished questioning each witness, the  
21 party participants -- and that is to say Benton County  
22 as well as the counsel for the environment -- will also  
23 be given the chance to question the witnesses provided  
24 by the applicant. And also the Council members may  
25 also ask questions after all the party participants

1 have been given the chance to question those witnesses.

2 That process will repeat through each of the  
3 witnesses that are called, and that process will also  
4 repeat with each presentation of a party's case.

5 After the applicant has presented all of their  
6 witnesses and rests their case, we will then move on to  
7 allowing Benton County to present their case in chief.  
8 Again, they may call their witnesses in whatever order  
9 they deem appropriate, will be allowed to question  
10 those witnesses. The applicant, the counsel for the  
11 environment, and the Council may also ask questions of  
12 those witnesses in due order.

13 After Benton County has rested their case, we will  
14 finally at that point allow the counsel for the  
15 environment to present any testimony or argument at  
16 that point if they wish to do so.

17 Please note that any time, the parties may object  
18 to any question asked by the attorneys or by the  
19 Council. I will instruct the witnesses to stop  
20 answering a question if a party objects. I will hear  
21 the objection and make a ruling on it. Depending upon  
22 my ruling, either I will instruct the witness to answer  
23 the question, or I will instruct the party not to  
24 answer the question and tell counsel to move on to the  
25 next question.



1           After all parties have been given the chance to  
2 make closing arguments, we will adjourn the hearing and  
3 close the record. The parties will then have one week  
4 from the close of record to provide post-hearing briefs  
5 to the Council. The deliberations regarding the  
6 outcome of this matter may begin as soon as we adjourn  
7 today and will not wait until the briefs are received  
8 or after the submission deadline.

9           In addition, I will create a draft of proposed  
10 facts and a summation of the applicable law to Council  
11 following today's adjudication. But the Council is  
12 under no obligation to ratify or accept my draft  
13 findings, and the Council makes the final decision in  
14 this case. To use common parlance, the Council is the  
15 jury in this matter, although they will take a more  
16 active role in questioning witnesses than are  
17 customarily understood in common law proceedings.

18           It will be the -- the Council's decision to  
19 determine the weight given to the evidence. And by  
20 "evidence," I mean both the documents entered into the  
21 record and the sworn testimony. It will also be up to  
22 the Council how to rectify any conflicts in the  
23 evidence and to determine the credibility of the  
24 witnesses.

25           We will plan on taking a break today around noon



1 after a logical stopping point of a party's  
2 presentation of the case. If it looks like we will not  
3 finish today, I would propose we take a 30-minute lunch  
4 rather than an hour. That way, we can finish up the  
5 process. We will take that discussion up when we get  
6 closer to that particular point.

7 In addition, I do have the capability of setting  
8 up breakout rooms if the parties do request. If you  
9 are going to make that request, I would ask that you  
10 give me a few minutes to figure out the technological  
11 aspects of it, and we can set those up.

12 Also I would ask the parties refrain from using  
13 the chat function in today's proceedings, as it is  
14 neither picked up by the audio recording or by the  
15 court reporter. If there is an emergent situation,  
16 parties can simply use it, use the chat function. I  
17 will repeat what's on the chat function for the record.  
18 But the better practice is simply to -- to not use it  
19 unless absolutely necessary.

20 So that is a brief summation of how the hearing is  
21 going to go. After I ask if there's any questions, I'm  
22 going to confirm with the parties -- or the Council,  
23 rather -- what was received, and then we will segue  
24 into opening statements.

25 So starting first with the parties -- yes,

1 Ms. Anderson.

2 MS. ANDERSON: Does Your Honor wish  
3 for us to turn our cameras on when we're doing direct  
4 and cross, or would you prefer us to leave the cameras  
5 off?

6 JUDGE GERARD: We're holding a video  
7 hearing. The preference is for people to utilize it  
8 with the functionality. I'm not going to require it,  
9 but it would be better form since we've all agreed this  
10 would be the method. So my preference would be, yes,  
11 keep the cameras on when we are participating so I know  
12 you're present, but I'm not going to require it.

13 MS. ANDERSON: Thank you, Your  
14 Honor.

15 JUDGE GERARD: Okay. So, and  
16 Ms. Anderson, any other questions about how we're going  
17 to conduct today's hearing?

18 MS. ANDERSON: No, sir.

19 JUDGE GERARD: Ms. Holt, any  
20 questions?

21 MS. HOLT: No, sir.

22 JUDGE GERARD: And, Mr. Korol, any  
23 questions?

24 MR. KOROL: No, Your Honor.

25 JUDGE GERARD: Chair Drew, any

1 questions of the proceeding or the manner in which we  
2 hold the proceeding today?

3 CHAIR DREW: No. Thank you.

4 JUDGE GERARD: Okay. And rather  
5 than go throughout the entirety of the -- of the  
6 Council, if anyone on the Council or sitting on the  
7 Council has any questions, please unmute yourself, and  
8 go ahead and raise that question.

9 Okay. Ms. Owens, can you please repeat back to me  
10 who is currently present on behalf of the Council so  
11 when I allow them to ask questions, I can logically  
12 scroll through their -- the names?

13 MS. OWENS: Yes. Absolutely.

14 Chair Drew, of course. Elizabeth Osborne. Mike  
15 Livingston. Lenny Young. Stacey Brewster. Dave  
16 Sharp. And Paul Gonseth.

17 JUDGE GERARD: Thank you.

18 All right. Last week, we conducted a prehearing  
19 or second prehearing conference to pre-admit evidence  
20 as well as to take any objection to the proposed  
21 witnesses.

22 In the prehearing conference, I pre-admitted  
23 Applicant's Exhibits 2 through 6, 8 through 12, and 14  
24 through 27. I would like to confirm with the Council  
25 they have all received those exhibits and not had

1 access to or read anything outside the scope of those  
2 exhibits I just named.

3 Chair Drew, did you receive and have you reviewed  
4 Applicant's Exhibits 2 through 6, 8 through 12, and 14  
5 through 27?

6 CHAIR DREW: Yes, I have.

7 JUDGE GERARD: And did you review or  
8 see anything else besides what was entered in the  
9 record on behalf of the applicant?

10 CHAIR DREW: No, I have not.

11 JUDGE GERARD: Okay. I'm going to  
12 ask the same questions of all the parties.

13 Mr. Osborne, same question for you for the  
14 applicant's materials.

15 MS. OSBORNE: It's "Ms." And, yes,  
16 I have. Thank you.

17 JUDGE GERARD: I'm sorry.

18 MS. OSBORNE: Not at all.

19 JUDGE GERARD: I knew that. I'm  
20 sorry. Please confirm your answer, Ms. -- Ms. Osborne.

21 MS. OSBORNE: Yes, the -- answering  
22 in the affirmative.

23 JUDGE GERARD: Yes, you did receive  
24 them, review them?

25 MS. OSBORNE: Yes.

1 JUDGE GERARD: Did you receive  
2 any -- did you review anything else in the applicant's  
3 material besides those?

4 MS. OSBORNE: No.

5 JUDGE GERARD: Very good.

6 And, Mr. Livingston, please also answer the  
7 question to both parts, if you would.

8 MR. LIVINGSTON: Correct. Yes, Your  
9 Honor.

10 JUDGE GERARD: Yes, you did receive  
11 the material, or, yes, you reviewed material outside  
12 the scope of what was admitted? I'm just making sure  
13 what your answer is.

14 MR. LIVINGSTON: I apologize, Your  
15 Honor. I did receive the material, and I did not  
16 receive anything outside the record. Thank you.

17 JUDGE GERARD: Thank you.

18 And, Mr. Young, same question for you, sir.

19 MR. YOUNG: Yeah, I have not  
20 reviewed the materials, and I did not receive and  
21 haven't seen anything outside the record.

22 JUDGE GERARD: Okay. Although you  
23 didn't review it, have you had -- have you been -- they  
24 been made available to you to review?

25 MR. YOUNG: Yes.

1 JUDGE GERARD: Okay. And,  
2 Ms. Brewster, same question.

3 MS. BREWSTER: Yes, I did receive  
4 and review the materials. I have not reviewed anything  
5 outside of the record.

6 JUDGE GERARD: Very good.

7 And Mr. Sharp.

8 MR. SHARP: Yes, I have received and  
9 reviewed the materials.

10 And the second question, a number of the -- some  
11 of the exhibits referenced back to the application.  
12 And I went back to that part of the application in  
13 several instances to look at what they said.

14 JUDGE GERARD: Okay. The  
15 application is a foundational document, so --

16 MR. SHARP: Okay.

17 JUDGE GERARD: -- I don't have  
18 concerns about that. More concerned about anything  
19 else beyond the application that was not reviewed.

20 MR. SHARP: No, I haven't.

21 JUDGE GERARD: Very good.

22 Mr. Gonseth, same question for you, sir.

23 MR. GONSETH: I have received the  
24 materials, reviewed them, and I have not reviewed  
25 anything outside what has been submitted.

1 JUDGE GERARD: Okay. In addition, I  
2 did enter Benton County's Exhibits A through E in their  
3 entirety. I'm going to ask the same question in both  
4 parts: Did you receive and review it, and did you  
5 review anything else outside of the scope of that?

6 Chair Drew.

7 CHAIR DREW: Yes, I did receive  
8 those exhibits. I did not review anything outside of  
9 those exhibits.

10 I did ask our staff to separate the exhibits in  
11 our list so we could easily access them, because they  
12 were combined into one list. So that's now what's  
13 available online for the information of the Council  
14 members. It made it a little difficult to separate out  
15 the different exhibits as we looked at them, so...

16 JUDGE GERARD: Okay.

17 CHAIR DREW: But I did not review  
18 anything outside of that.

19 JUDGE GERARD: Thank you, Chair  
20 Drew.

21 Ms. Osborne, same question for you on Benton  
22 County's.

23 MS. OSBORNE: Yes, Your Honor, I  
24 received and reviewed those exhibits and have not seen  
25 anything outside of what's been submitted.

1 JUDGE GERARD: Mr. Livingston.

2 MR. LIVINGSTON: I have received and  
3 reviewed all the exhibits, and I have not reviewed  
4 anything outside of those. Thank you.

5 JUDGE GERARD: Mr. Young.

6 MR. YOUNG: I've received all the  
7 materials and not reviewed them, and I have not  
8 reviewed anything outside the record.

9 JUDGE GERARD: Ms. Brewster.

10 MS. BREWSTER: I have received and  
11 reviewed those exhibits. I have not reviewed anything  
12 outside of what was submitted.

13 JUDGE GERARD: Thank you.

14 Mr. Sharp.

15 MR. SHARP: I have reviewed and --  
16 received and reviewed the exhibits and have not  
17 reviewed anything else.

18 JUDGE GERARD: And, finally,  
19 Mr. Gonseth.

20 MR. GONSETH: I have received the  
21 exhibits and reviewed them. I have not reviewed  
22 anything outside the exhibits.

23 JUDGE GERARD: And, lastly, for the  
24 counsel of the environment, they did not submit any  
25 exhibits for consideration. I just need to confirm



1 with the Council: They did not receive anything from  
2 the counsel for the environment.

3 Chair Drew, can you confirm you did not receive  
4 anything from the counsel for the environment for  
5 today's adjudication?

6 CHAIR DREW: I did not.

7 JUDGE GERARD: Thank you.

8 I'm going to go around the last parts of the  
9 Council with the same question.

10 Ms. Osborne.

11 MS. OSBORNE: I did not.

12 JUDGE GERARD: Mr. Livingston.

13 MR. LIVINGSTON: No, I did not.

14 JUDGE GERARD: Mr. Young.

15 MR. YOUNG: I have not reviewed  
16 anything from counsel of the environment.

17 JUDGE GERARD: Thank you.

18 Ms. Brewster.

19 MS. BREWSTER: No, I haven't  
20 received anything.

21 JUDGE GERARD: Mr. Sharp.

22 MR. SHARP: No, I have not received  
23 anything.

24 JUDGE GERARD: And, finally,  
25 Mr. Gonseth.

1 MR. GONSETH: I also have not  
2 received anything.

3 JUDGE GERARD: Excellent.

4 Okay. So with that -- oh. In addition to -- both  
5 the applicant and Benton County did submit prehearing  
6 briefs. Again, those are not substantive evidence. If  
7 the Council members have not received those, they can  
8 reach out to their staff to get those to review after  
9 the proceedings. But let's go ahead and segue into the  
10 opening statements.

11 So, as I said in my initial opening, we will begin  
12 with allowing the applicant to present an opening  
13 statement, no more than five minutes, if they choose to  
14 do so.

15 So with that, Ms. Anderson, do you wish to make an  
16 opening statement on behalf of the applicant, Wautoma  
17 Solar?

18 MS. ANDERSON: Yes, sir.

19 JUDGE GERARD: Please begin.

20 MS. ANDERSON: Good morning, Your  
21 Honor, Madam Chair, and Council members. Can you hear  
22 me okay?

23 JUDGE GERARD: You're a little  
24 soft-spoken, but we can hear you okay, yes.

25 MS. ANDERSON: I'll try to speak

1 louder. Thank you for that.

2 JUDGE GERARD: Thank you.

3 MS. ANDERSON: My name is Erin  
4 Anderson. My colleague Andrew Lewis and I represent  
5 the applicant, Innergex Renewable Development USA, in  
6 this matter.

7 There is only one topic before the Council today,  
8 and that is land use. The reason we're here discussing  
9 land use is because the Wautoma Solar energy project is  
10 inconsistent with the Benton County Code  
11 Provision 11.17.040 and Benton County Comprehensive  
12 Plan provisions. And when EFSEC project is found to be  
13 inconsistent with local land-use provisions, two  
14 questions arise: One is preemption, and two, what  
15 conditions can be put in a site certificate that  
16 recognize the preempted local land-use provisions.

17 Those two issues, preemption and conditions, are  
18 the only two issues for you to resolve here today.  
19 Unlike recent matters before you, there are no  
20 environmental impacts for the Council to wrestle with  
21 here, because EFSEC's SEPA responsible official has  
22 already issued a final mitigated determination of  
23 nonsignificance under the State Environmental Policy  
24 Act.

25 Now, the Council is familiar with Benton County

1 and its Growth Management Act Agricultural District, or  
2 GMAAD, zone from a recent project proposal. When that  
3 prior matter was before you, both wind and solar major  
4 were allowed uses in the GMAAD zone with the  
5 conditional use permit under Benton County  
6 Code 11.17.040. However, Benton County has altered its  
7 land-use code since you last saw them. Today those  
8 uses have been removed from the Benton County Code.

9 Due to land-use inconsistency, Innergex is asking  
10 that this Council recommend the governor preempt the  
11 County's conflicting land-use provisions to allow this  
12 important clean energy project to move forward.

13 There is clean authority and precedent for EFSEC  
14 to recommend preemption based on the court case of  
15 Residents Opposed to Kittitas Turbines vs. EFSEC, or  
16 ROKT vs. EFSEC. As in this case, Kittitas County  
17 conducts its planning and zoning under the Growth  
18 Management Act. In effort to thwart the siting of a  
19 wind facility there, Kittitas County adopted zoning  
20 ordinance that precluded the Kittitas Valley wind  
21 project.

22 However, EFSEC implemented the policies of  
23 RCW 80.50.010 by recommending preemption and proposed  
24 conditions in the site certification agreement to  
25 recognize the preempted regulations. On appeal,

1 Kittitas County argued that the Growth Management Act  
2 takes precedence over EFSLA and therefore preemption  
3 was not allowed.

4 In a unanimous nine-to-nothing decision, the  
5 Washington Supreme Court rejected the County's argument  
6 and expressly found that EFSLA takes precedence in the  
7 face of a contrary planning and zoning provision under  
8 the Growth Management Act. This remains the law today.

9 Tellingly, Benton County's brief does not address  
10 this holding in ROKT vs. EFSEC, and instead, like  
11 Kittitas County, it insists that the Growth Management  
12 Act -- and, indirectly, Benton County -- can  
13 unilaterally thwart statewide energy policy. This it  
14 cannot and, frankly, should not do.

15 Now, moving on from Issue 1, preemption, to  
16 Issue 2, what conditions can be imposed in the SCA, the  
17 Council is going to hear ample evidence about what  
18 those conditions are. Both the applicant and  
19 participating landowner representatives, one of whose  
20 land has been in his family for over 100 years, will  
21 testify how those conditions will not only render this  
22 project compatible with the GMAAD and comprehensive  
23 plan but also how this project is, in fact, supportive  
24 of their ability to continue in the business of  
25 agriculture.

1           Their testimony will show you why this project is  
2 well-sited at this precise location and how the  
3 conditions for the site certification also satisfy all  
4 of the conditional use permit criteria that would have  
5 applied had Benton County not banned major solar in the  
6 GMAAD zone. In fact, Benton County, in its own brief,  
7 agrees with the applicant that if the Council should  
8 recommend preemption, those are the conditions that  
9 should be imposed here.

10           In sum, EFSLA commends reducing our dependence on  
11 fossil fuels and recognizes the pressing need for more  
12 clean energy facilities. There are no environmental  
13 issues to balance the project against due to the SEPA  
14 MDNS.

15           The applicant and EFSEC's own staff have developed  
16 robust conditions that serve to address local  
17 regulations. The County agrees that these are the  
18 correct conditions should you preempt, and for these  
19 reasons, the Council can be confident in recommending  
20 that the governor preempt and approve the Wautoma Solar  
21 energy project subject to that rigorous set of  
22 conditions, which will recognize not only preempted  
23 local regulations but will also give effect to the  
24 mission of EFSEC, which is to site energy facilities.

25           Thank you.

1 JUDGE GERARD: Thank you,  
2 Ms. Anderson.

3 Ms. Holt, do you wish to make an opening statement  
4 on behalf of Benton County?

5 MS. HOLT: Yes, sir.

6 So I'm LeeAnn Holt. I'm counsel for Benton  
7 County. It's nice to meet you-all.

8 Today the Council is faced with two primary  
9 questions: First, should it recommend to the governor  
10 that he should preempt state and local use regulations?  
11 To recommend preemption, the Council is required to  
12 create a draft certification agreement that contains  
13 conditions that protect state, local, and community  
14 interests which will be affected by the project as well  
15 as conditions designed to recognize the purpose of the  
16 laws, rules, or regulations that are being preempted.

17 As testimony will show, Benton County is a largely  
18 agricultural-based community with approximately 58  
19 percent of its lands making up the Growth Management  
20 Act Agricultural District, or the GMAAD district. The  
21 purpose of Benton County's GMAAD code is to reflect the  
22 state and local interests in protecting a finite  
23 resource of agricultural lands: Lands where, once  
24 converted, are presumptively permanently converted.

25 While applicant claims the project is compatible

1 with agricultural uses, such claim mistakenly relies on  
2 criteria for conditional uses located in past versions  
3 of Benton County's code which did not apply at the time  
4 of the application. The purported benefits to the  
5 lease and landowners, energy needs of the state, and  
6 potentially surrounding properties don't address the  
7 taking of the subject property, itself, out of  
8 agricultural lands for current and prospective  
9 production. In fact, applicant concedes in its  
10 application that it proposes no conditions which  
11 directly address the land use.

12 You'll hear testimony on Benton County's position,  
13 which is that there are no feasible conditions that  
14 sufficiently protect its interest during the life of  
15 the project and potentially beyond as the creation of  
16 new GMAAD lands to make up for this potential loss is  
17 unlikely. If the standard set will be that no offset  
18 of the presumptive permanent loss of GMAAD lands is  
19 necessary, then counties essentially lose the ability  
20 to preserve their own agricultural lands, the majority  
21 of Benton County's lands.

22 One of the applicant's considerations when siting  
23 this project was the open nature afforded by  
24 agricultural lands, a consideration that's likely going  
25 to be attractive to other applicants. Lack of



1 limitation could open the floodgates for private  
2 industries to consume, bite by bite, Washington  
3 agricultural lands with no upper limit. The decision  
4 the Council makes today on this issue will have lasting  
5 future effects on all counties' abilities to protect  
6 their interests, and we ask the Council to recommend  
7 against preemption.

8 If the Council disagrees with Benton County's  
9 position, the second question is what conditions the  
10 Council should impose on the project. As I already  
11 stated, Benton County's position is there are no  
12 conditions proposed at this point that make up for the  
13 loss of land use.

14 However, the applicant has agreed to follow the  
15 environmental conditions set forth in the revised MDNS  
16 and Table 5 -- or I'm sorry -- Table A5 of their  
17 application. And to the extent that those are agreed,  
18 Benton County would ask that those be imposed, because  
19 that will at least increase the possibility that one  
20 day the lands could be suitable again for agricultural  
21 use. Thank you.

22 JUDGE GERARD: Thank you, Ms. Holt.

23 Mr. Korol, do you wish to make an opening  
24 statement on behalf of counsel for the environment?

25 MR. KOROL: No, Your Honor. Thank

1 you.

2 JUDGE GERARD: Okay. Then with  
3 that, let's go ahead and begin with the applicant's  
4 case in chief.

5 Ms. Anderson, please call your first witness.

6 MS. ANDERSON: Thank you, Your  
7 Honor. My first witness is Laura O'Neill.

8 JUDGE GERARD: Ms. O'Neill, are you  
9 present? If so, go ahead and take yourself off "mute."  
10 And if you have video capability, go ahead and turn it  
11 on, please.

12 **THE WITNESS: Yes. Laura O'Neill**  
13 **for the applicant, present.**

14 JUDGE GERARD: Do you have video  
15 capabilities? And, if so, can you turn it on?

16 **THE WITNESS: I -- it looks to me**  
17 **like my video capability is on. Can you not see me?**

18 JUDGE GERARD: I personally can't.  
19 If someone else can see you, it may just be something  
20 on my end.

21 MR. LIVINGSTON: Your Honor, this is  
22 Council Member Livingston. I can see her. She's on  
23 the next screen over in the Teams.

24 JUDGE GERARD: Thank you, sir. I  
25 see her now. I appreciate the direction. Very good.

1 Ms. O'Neill, have you been present throughout the  
2 explanation of the process?

3 **THE WITNESS: Yes, I have.**

4 JUDGE GERARD: I'm going to repeat  
5 just briefly. Speak loudly and clearly. No head nods.  
6 No uh-huhs or huh-uhs. Yes or noes, if you can, in  
7 full articulation. We are only recording the audio  
8 portion, not the video.

9 If today you cannot hear or understand when  
10 someone is asking you a question, please let me know,  
11 and I'll have them repeat the question.

12 In addition, if you hear any of the parties say  
13 "object," please stop your answer at that point so I  
14 can rule on the objection without having to get the  
15 answer potentially on the record. Any questions?

16 **THE WITNESS: Thank you.**

17 **Understood. Thank you.**

18 JUDGE GERARD: I'm going to swear  
19 you in as a witness. Please raise your right hand.

20 Do you solemnly swear or affirm the testimony  
21 you're about to give will be the truth, the whole  
22 truth, and nothing but the truth, under penalty of  
23 perjury?

24 **THE WITNESS: I do.**

25 JUDGE GERARD: You are under oath.

1 Ms. Anderson, please begin.

2 MS. ANDERSON: Thank you, Your  
3 Honor.

4  
5 LAURA O'NEILL, having been first duly sworn  
6 by Judge Gerard, was  
7 examined and testified as  
8 follows:

9  
10 DIRECT EXAMINATION

11 BY MS. ANDERSON:

12 Q Ms. O'Neill, will you please state your name and  
13 occupation for the record.

14 A Yes. My name is Laura O'Neill, and I'm an  
15 environmental manager.

16 Q And who do you work for?

17 A I'm employed by a company called Innergex Renewable  
18 Energy. We operate exclusively in renewables. We  
19 develop, own, and operate 88 clean energy facilities  
20 within the United States, Canada, France, and Chile,  
21 with many more projects in development.

22 Q What can you tell me about Innergex, its values and  
23 approach to business?

24 A Well, we are exclusively a clean energy company. Only  
25 hydro, wind, and solar facilities. And we principally

1 hold and operate our own facilities. In this way,  
2 whichever agency or jurisdiction sites a project knows  
3 who it will be dealing with --

4 JUDGE GERARD: Just a moment.  
5 Ms. O'Neill, something's going on with your audio. You  
6 faded in and out from when you initially joined. Can  
7 you speak up, or if there's a speaker, get it closer to  
8 you so we can hear you clearly.

9 THE WITNESS: Sure. I see the  
10 speaker inching closer. So I will also try and speak  
11 up.

12 JUDGE GERARD: Thank you.

13 THE WITNESS: Okay.

14 Q (By Ms. Anderson) Would you please describe your  
15 professional experience.

16 A Sure. I've worked in the renewables business since  
17 2008, beginning my career as an environmental  
18 coordinator. In this role, I was doing regulatory  
19 assessments for operational projects, developing permit  
20 applications for our construction and operational  
21 projects. This work evolved into working with  
22 landowners, stakeholders, agencies, indigenous groups,  
23 and consultants through the project development process  
24 as well as coordinating the environmental assessments  
25 and major permitting efforts for our development

1 projects within Western Canada and the U.S. Pacific  
2 Northwest.

3 Q Okay. And, Ms. O'Neill, what is the purpose of your  
4 testimony today?

5 A I'm here to support the Wautoma Solar energy's --  
6 energy project's approval process. I will describe the  
7 project, the application for site certification, and  
8 why the project is well-sited in this location so that  
9 the Council can recommend approval with preemption of  
10 local land-use provisions, confident that it can  
11 include conditions that will ensure that this facility  
12 reflects those community interests and remains  
13 consistent with the purposes of those local land-use  
14 provisions being preempted.

15 Q Are you able to answer questions under  
16 cross-examination today?

17 A Yes, I am.

18 Q Okay. Ms. O'Neill, how would you describe your work on  
19 the Wautoma project specifically?

20 A To date, I've led the environmental assessment and  
21 siting of the project with EFSEC. And I will continue  
22 to be responsible for ensuring that the development  
23 occurs in accordance with all the requirements and  
24 conditions imposed upon it.

25 Q Okay. You mentioned the application for site

1 certification.

2 What was your role in preparation of the site  
3 certification application?

4 **A I oversaw the application and sponsored its**  
5 **preparation.**

6 Q Did you alone prepare the ASC?

7 **A No. It's -- as you've seen, it's quite voluminous.**  
8 **Covers many subjects in great detail. We used a**  
9 **company called Tetra Tech, an environmental consulting**  
10 **firm with numerous experts across multiple disciplines,**  
11 **to prepare the various parts and put it all together.**

12 Q Who did you principally work with on the ASC, and how?

13 **A Tetra Tech's project manager was Linnea Fossum.**  
14 **Ms. Fossum and I worked together closely and with their**  
15 **various subject matter experts to develop and author**  
16 **each section of the ASC.**

17 We worked closely with a land-use planner, an  
18 environmental planner at Tetra Tech named Leslie  
19 McClain, who provided senior review of Attachment D to  
20 the ASC, which addresses land-use consistency.  
21 Ms. McClain will testify later in -- at greater detail  
22 about land-use issues.

23 Q So what is included in an application for site  
24 certification?

25 JUDGE GERARD: Just a moment. Hold

1 on. I'm sorry, Ms. Anderson. You're very, very faint.  
2 I want to make sure that the Council hears the question  
3 so they can put it in context of the answer.

4 Can you speak up and repeat the question, please.

5 MS. ANDERSON: Yes, I will.

6 Q (By Ms. Anderson) What is included in the  
7 application --

8 JUDGE GERARD: Much better.

9 Q (Continuing by Ms. Anderson) -- for site  
10 certification?

11 **A At a high level, the sections address all environments**  
12 **of Washington's Energy Facility Site Location Act, or**  
13 **EFSLA, all those laws and regulations and how the**  
14 **project complies with them, and also why the County**  
15 **should preempt Benton County's ban on major sol- --**  
16 **solar facilities in the GMAAD zone. In addition to the**  
17 **main body, it also contains 19 attachments.**

18 Q Ms. O'Neill, you referenced the Energy Facility Site  
19 Location Act.

20 This is EFSLA, which is referred to as Revised  
21 Code of Washington 80.50; is that correct?

22 **A Correct.**

23 Q Okay. I realize I'm likely to use a lot of acronyms  
24 today. Are you comfortable with me using acronyms,  
25 such as "SEPA," for the State Environmental Policy Act;



1 "ASC" for the application; "EFSEC" or "Council" for the  
2 Energy Facility Site Location -- Site Evaluation  
3 Council, and so on?

4 **A Yes, I am.**

5 Q Okay. Regarding whether to recommend approval of the  
6 application for site certification, you are aware that  
7 the only topic before the Council in this adjudication  
8 is land use; namely, A, whether the governor should  
9 preempt local laws inconsistent with EFSLA, and B, what  
10 conditions can be placed in the SCA to reflect the  
11 purpose of local land-use provisions that are  
12 preempted; is that correct?

13 **A Yes, it is.**

14 Q Okay. When was your application for site certification  
15 received at EFSEC?

16 **A That was in June of 2022, as can be seen on the  
17 website.**

18 Q And has that ASC been updated since then? And, if so,  
19 why?

20 **A It has been updated. Revisions were made --**

21 JUDGE GERARD: Speak up,  
22 Ms. O'Neill, please.

23 THE WITNESS: Sure.

24 It -- it was revised, because EFSEC regulations  
25 require that an updated ASC be filed with EFSEC before

1 this adjudicative hearing in order to show additions  
2 and edits that were made to the application in response  
3 to EFSEC questions and input from other stakeholders,  
4 such as Yakama Nation and other agencies.

5 Q (By Ms. Anderson) Do you know when that updated ASC  
6 was filed?

7 A Yes. That was on August 23rd of this year.

8 Q All right.

9 MS. ANDERSON: Your Honor and  
10 Ms. O'Neill and Council, I'm going to have what is  
11 marked for identification as Applicant Exhibit 2 put up  
12 on the screen. My colleague Mr. Lewis will put that up  
13 in the share screen. Please let me know when you can  
14 see that.

15 MR. LEWIS: And, Your Honor, I am --  
16 I am sharing Exhibit --

17 JUDGE GERARD: Exhibit 2? Is that  
18 correct, Mr. Lewis?

19 Mr. Lewis, you've now overlaid the screen with  
20 the participants on there. Would you please remove  
21 that from that specific screen.

22 All right. Ms. Anderson, we can see the document,  
23 if you wish to continue, or if you want to wait for  
24 Mr. Lewis to do whatever he's doing, we can do that as  
25 well.

1 MS. ANDERSON: I can see the  
2 document. I'm ready to proceed.

3 Q (By Ms. Anderson) Ms. O'Neill, can you identify what  
4 this document is for me?

5 A Yes. It is the revised application for site  
6 certification. My understanding is, due to technical  
7 issues, one --

8 JUDGE GERARD: Ms. O'Neill, I really  
9 need you to speak up and be consistent with it. I'm  
10 not sure why there's an ebb and flow with the volume.

11 THE WITNESS: Okay. This is the  
12 most current revised application for site  
13 certification. I understand that due to technical  
14 issues, one of the attachments to the revised ASC was  
15 not able to be incorporated within that exhibit.

16 MS. ANDERSON: And, Your Honor, if I  
17 have Mr. Lewis put up Applicant's Exhibit 3 on the  
18 screen, I would ask Ms. O'Neill to identify it once it  
19 appears.

20 THE WITNESS: Yes, this -- that is  
21 the exhibit that could not be combined electronically.  
22 And together, Exhibits 2 and 3 comprise the current  
23 revised ASC.

24 Q (By Ms. Anderson) And are you sponsoring the Wautoma  
25 Solar energy facility as presented in the ASC marked as

1 Exhibits 2 and 3?

2 **A Yes, I am.**

3 MS. ANDERSON: Your Honor, if you  
4 would like me to move to admit exhibits, I'm happy to  
5 do so and would do so now.

6 JUDGE GERARD: They've already been  
7 admitted. That was the purpose of the prehearing  
8 conference last week.

9 MS. ANDERSON: Very good.

10 Q (By Ms. Anderson) Ms. O'Neill, are you expressly  
11 asking that the EFSEC siting Council recommend that the  
12 governor preempt and approve the project with  
13 conditions that will be discussed later in your  
14 testimony to ensure that the project is consistent with  
15 Benton County land-use plans that would be preempted?

16 **A Yes, I am.**

17 Q Very good.

18 Would you please give the Council a brief overview  
19 of the Wautoma Solar energy project.

20 **A Certainly. The project is a 470-megawatt solar**  
21 **voltaic -- photovoltaic energy generation facility with**  
22 **a four-hour battery energy storage system.**

23 JUDGE GERARD: Ms. O'Neill, speak  
24 for the volume, please.

25 **THE WITNESS: Yeah.**

1 JUDGE GERARD: Thank you.

2 And, Mr. Lewis, take down the exhibit if we're not  
3 going to reference it at this point.

4 Thank you.

5 If you'd go ahead and pick up from the beginning,  
6 please, so we can all hear you clearly.

7 THE WITNESS: Sure.

8 The project is a 470-megawatt solar photovoltaic  
9 energy generation facility with a four-hour battery  
10 energy storage system. The PV system will consist of a  
11 series of solar panels mounted on a solar tracker  
12 racking system aligned in what we call arrays.

13 The system includes the solar panels, the racking  
14 system that rests upon posts set in the ground, buried  
15 collector lines, and power conversion systems. The  
16 batteries can either store energy for future use or  
17 move power directly onto the grid.

18 The project also includes a substation to increase  
19 the voltage from the collector lines to a level  
20 suitable for the grid, a short overhead 500-kilovolt  
21 generation tie transmission line, an operations and  
22 maintenance building, project access roads, and the  
23 perimeter fencing.

24 Q (By Ms. Anderson) What are the general location and  
25 parameters of where this project is proposed for

1 siting?

2 A It's located in a rural, sparsely populated area. It's  
3 about 12 and a half miles northeast of the city of  
4 Sunnyside and one mile south of the State Route 241 and  
5 24 interchange within unincorporated Benton County,  
6 Washington.

7 Q And how many acres are involved in the Wautoma project?

8 A Innergex has leased 5,852 acres of land that is owned  
9 or controlled principally by two families, the Robert  
10 family and the Keeler family, representatives of which  
11 are testifying today. However, this number is not the  
12 final number of acres that will be involved.

13 The way solar siting is done, once the general  
14 area is identified, leases are entered into so we can  
15 access the site and assess it in more detail. Those  
16 five hundred [sic] eight hundred fifty-two acres that  
17 were initially leased gave us the ability to conduct  
18 studies to identify the most suitable footprint within  
19 and what areas to avoid.

20 The preliminary studies led us to narrow in on a  
21 smaller area. We've called that the official project  
22 area, which is smaller at 4,573 acres. And within the  
23 project area, itself, only 2,978 acres will be fenced  
24 in and therefore unavailable for agricultural use  
25 during the operational term of the project.

1           So once the facility is built, we revise the  
2           leases to reflect the smaller number of acres actually  
3           used, so the unused acres will no longer be encumbered  
4           by the leases.

5           I wanted to note that Benton County, in its  
6           opening brief, mistakenly used the initial lease figure  
7           of 5,852 acres. The area unavailable for ag use during  
8           the life of the project is actually only about half of  
9           that amount, given the steps I just described, to  
10          eliminate develop- -- development in the unsuitable  
11          areas within the larger lease area.

12          I'll also note that the combined holdings of the  
13          two families in this area are over 12,000 acres, and  
14          over 9,000 acres will still be available to the  
15          landowners for continued ag use adjacent to the  
16          project.

17 Q Thank you.

18          So what surrounds this project site?

19 A As noted, Highway 24 is to the north. Steep slopes up  
20          to Rattlesnake Ridge wye to the south. To the east is  
21          the Hanford nuclear reservation, and Highway 241 is to  
22          the west.

23 Q Will this project feature hilly ground or prominent  
24          elevated geologic features?

25 A It will not. It will be constructed on relatively flat

1 terrain with average slopes of less than 3 percent.  
2 And there are no prominent elevated geologic features  
3 or -- or tall vertical features.

4 Q What about wetlands?

5 A No. No wetland disturbance. It's a very arid  
6 (videoconference audio distortion).

7 (Clarification by reporter.)

8  
9 THE WITNESS: Arid or dry.

10 (Clarification by reporter.)

11  
12 THE WITNESS: The full sentence was:  
13 This is a very arid part of the county.

14 THE REPORTER: Thank you so much.

15 THE WITNESS: Yeah.

16 MS. ANDERSON: Thank you,  
17 Ms. O'Neill.

18 Q (By Ms. Anderson) Did the presence or absence of such  
19 features inform how this site was chosen?

20 A Yes. We did examine the County's critical areas  
21 ordinance and design the project to avoid these areas,  
22 such as steep slopes, wetlands, and the like. These  
23 areas will continue to be protected throughout the  
24 project layout as well -- as well as through the  
25 conditions we have imposed upon the project ourselves.



1 This is found in Section A.5 of the ASC, which can be  
2 referenced on Pages 27 to 38. This contains the  
3 mitigation measures that we proposed in the  
4 application. EFSEC has also recommended additional  
5 measures in the MDNS based on their consultation with  
6 various natural resources -- natural resource agencies.

7 MS. ANDERSON: Ms. O'Neill and Your  
8 Honor, if I have Exhibit 2 put back up on the screen  
9 and turn to Page 27 of the ASC.

10 Q (By Ms. Anderson) Is this the Section A.5 of your  
11 application that you are referencing?

12 A That's correct.

13 Q And you are asking the Council to apply these measures  
14 as conditions in the SCA?

15 A Correct.

16 Q Okay. We can take that exhibit down.

17 Can more information about critical areas be found  
18 in the ASC?

19 A Yes, it can be found. In fact, the -- the County's  
20 critical areas regulations are referenced 68 times  
21 within the ASC.

22 Q And does the ASC speak to decommissioning?

23 A It does. That is part of the proposal. In addition to  
24 the preliminary decommissioning plan in the ASC, we  
25 will have to submit a more detailed site restoration

1 plan to EFSEC prior to the start of construction.

2 Q So if this project is approved, will Innergex restore  
3 the site to the substantially same agricultural  
4 condition that existed prior to the project?

5 A Yes, we will. During the review process, EFSEC  
6 solicited agency, tribal, and stakeholder comments.

7 One agency that commented was the Washington  
8 Department of Agriculture, which focuses exclusively on  
9 agricultural issues. They commented to EFSEC about  
10 potential effects the project could have on the land  
11 beneath it and whether that could be restored to a  
12 condition that could be made available for agricultural  
13 purposes.

14 So in response to that comment, EFSEC required us  
15 to prepare a draft soil monitoring plan addressing  
16 those concerns, which was shared with the Department of  
17 Ag.

18 Additionally, in the decommissioning plan,  
19 we decommission the facility to a level below ground,  
20 which will require restoring the soil. We also have to  
21 post a security bond that will ensure that  
22 decommissioning and restoration are performed so the  
23 land is returned to a condition available for ag use at  
24 the end of the facility's life.

25 These conditions are on top of measures already

1 discussed, built into Section A.5. These include other  
2 measures to protect soil and groundwater, including  
3 spill prevention, control, and countermeasure plans;  
4 requirements for the use of EPA and Department of Ag  
5 approved herbicides, as well as primary and secondary  
6 spill containment measures.

7 Q Now, you heard and you understand that the County has  
8 taken the position that the ASC does not contain any  
9 conditions related to land use.

10 Did you hear that --

11 JUDGE GERARD: And, Ms. Anderson, I  
12 really can't hear you particularly clearly. I'm really  
13 struggling to hear. So please be mindful, when you're  
14 speaking, to speak very loudly, even if it sounds like  
15 you're speaking louder than normal.

16 MS. ANDERSON: Very good.

17 Q (By Ms. Anderson) You understand, Ms. O'Neill, that  
18 the County has taken the position that the ASC does not  
19 contain any conditions related to land use?

20 A I did read that and hear it in the opening statement.  
21 However, I wanted to clarify that while mitigation  
22 measures related to land use were not expressly  
23 categorized in that way in the ASC, there are numerous  
24 measures proposed throughout under other topic headings  
25 that do mitigate land-use impacts.

1           **In addition, EFSEC has identified these and other**  
2           **mitigation measures in the MDNS under the category**  
3           **titled "Land and Shoreline Use."**

4                           MS. ANDERSON: All right. Your  
5           Honor, Ms. O'Neill, and Council, I'm going to have what  
6           is marked as Exhibit 16 put on the screen.

7 Q (By Ms. Anderson) Would you please identify this for  
8 me.

9                           JUDGE GERARD: Just a moment. You  
10          broke up. Is that 1-6 or 6?

11                          MS. ANDERSON: 1-6.

12                          JUDGE GERARD: Thank you. Please  
13          continue.

14                          **THE WITNESS: Yes, I can identify**  
15          **this as the revised MDNS for the project, which was**  
16          **issued in June of this year. It is EFSEC staff's final**  
17          **revised set of conditions that it recommends the**  
18          **Council place on our project if it is going to**  
19          **recommend approval. And, again, these conditions are**  
20          **in addition to those in the application at Section A.5.**

21 Q (By Ms. Anderson) What is an MDNS?

22 A In short, it's the -- the staff's final determination  
23 that the project's impacts on the environment will not  
24 be significant if the conditions contained in it are  
25 imposed on the project.

1 Q And does this MDNS address impact to agricultural  
2 soils, agricultural land uses, and the like?

3 **A It does.**

4 Q Now, I recognize you didn't testify that you are a land  
5 planner. However, can you identify examples of how the  
6 MDNS conditions promote land-use consistency with the  
7 GMAAD district?

8 **A Yes, I can. If we could scroll through the document.**

9 Q Are you referring to Exhibit 16?

10 **A Correct.**

11 Q We'll have that put back up on the screen.

12 **A Okay. So we see on Page 2, there's a condition  
13 prohibiting soil disturbance --**

14 JUDGE GERARD: Ms. O'Neill, please  
15 speak up, ma'am.

16 THE WITNESS: Okay. Yeah. On  
17 Page 2, we see a condition prohibiting soil disturbance  
18 following major precipitation events to limit soil  
19 erosion.

20 Also on Page 2, there are reduced speed limits.  
21 This will reduce dust emissions and soil loss, also  
22 helping to avoid conflicts with agricultural equipment.  
23 These slow speeds will also help to minimize  
24 interaction with other vehicles. For example, schools  
25 and churches are allowed in the GMAAD zone, which can

1 draw a lot of traffic. While there are no schools or  
2 churches currently in the area, these are preventative  
3 measures to ensure consistency in the future.

4 Q (By Ms. Anderson) Any more examples that you would  
5 call out?

6 A Sure. Again, not a land-use planner, but I can call  
7 out on Page 4. Yes. The vegetation and weed  
8 management plan will prevent proliferation of weeds  
9 that could otherwise interfere with crops grown in the  
10 area. So I think I've addressed the -- the significant  
11 soil monitoring and restoration conditions.

12 Q Well, how can the Robert and Keeler families -- and for  
13 that matter, Benton County -- be sure that Innergex  
14 will restore this site?

15 A Thanks for asking. EFSEC doesn't simply take our word  
16 for it. EFSEC has the authority to establish --  
17 establish those conditions to ensure we comply with  
18 restoration. The MDNS contains a stringent set of  
19 conditions related to decommissioning and soil  
20 restoration that should be placed in the SCA if the  
21 project is recommended for approval. Those conditions  
22 include periodic soil monitoring through the life of  
23 the project, monitoring for compaction, topsoil depth,  
24 water holding capability, organic carbon content,  
25 organic matter, nutrient content, pH levels,

1           **productivity, and soil structure.**

2   Q   So if the Council recommends approval of the project  
3       subject to all of these MDNS conditions, would Innergex  
4       be done with the project once it has performed all the  
5       decommissioning and soil restoration?

6   A   **No. In fact, you can see on Page 4, under "Restoration**  
7       **Plan," the -- the MDNS -- are we there yet? Okay. The**  
8       **MDNS here requires that Innergex do five years of**  
9       **post-restoration monitoring to ensure that the measures**  
10      **taken were effective.**

11   Q   And Innergex agrees that the Council should impose all  
12      of these conditions in the SCA?

13   A   **We do.**

14   Q   Very good.

15           Ms. O'Neill, do you know if these conditions are  
16      less, equal to, or more robust than soil monitoring and  
17      restoration found in MDNSs for other solar projects  
18      EFSEC has approved in Washington?

19   A   **They are actually more robust. I reviewed SEPA**  
20      **conditions developed by EFSEC for other approved solar**  
21      **projects, such as High Top and Ostrea and Goose Prairie**  
22      **Solar in Yakima County. The conditions proposed for**  
23      **Wautoma are far more comprehensive and longer in**  
24      **duration.**

25           It's -- it's clear to us that EFSEC takes this

1           topic very seriously. They ask for lots of information  
2           and then crafted comprehensive conditions to address  
3           the agriculture -- agricultural nature of the land.  
4           And they included those provisions to hold us to  
5           account not only during construction, operations, and  
6           decommissioning, but for that five-year period  
7           thereafter.

8   Q   Now, before the revised final MDNS was issued, was the  
9       first draft of the MDNS issued by EFSEC?

10  A   Yes, it was. That contained 15 pages of information  
11       and draft conditions over a range of topics.

12                                   MS. ANDERSON: All right. Your  
13       Honor, Council, and Ms. O'Neill, I'm going to have put  
14       up on the screen Innergex Exhibit 14.

15  Q   (By Ms. Anderson) Can you see that, Ms. O'Neill?

16  A   Yes, I can.

17  Q   Does this document include directions that tell people  
18       how to comment on it if they have concerns about it?

19  A   Yes, it does.

20  Q   Thank you.

21                                   Beyond distributing the initial draft of the MDNS,  
22       did EFSEC staff explain its analysis and how it arrived  
23       at the conditions it was inviting comment on?

24  A   Yes. At the same time, they issued a SEPA staff memo  
25       which explains the staff's thinking on why the measures



1           **were proposed.**

2    Q   All right.  I'm going to show you and the Council and  
3           Your Honor Innergex Exhibit 15.

4           Is this the staff memo?

5    A   **Yes, it is.**

6    Q   All right.  I'm going to move on to this specific  
7           project.

8           Why did Innergex choose this state for a solar and  
9           battery facility?

10   A   **There were multiple reasons.**

11           **First, EFSLA, the Energy Facility Site Location**  
12           **Act, this act itself focuses on the need to reduce**  
13           **dependence on fossil fuels.**

14                    JUDGE GERARD:  Ms. O'Neill, you just  
15           cut out that last part of the testimony.  I need you to  
16           repeat, please.

17                    THE WITNESS:  Okay.  So the other  
18           state policies -- including CETA, the Climate  
19           Commitment Act, and the Energy Independence Act -- all  
20           are driving a rapid transformation to non-carbon-  
21           emitting electricity.  These state laws reflect that  
22           Washington consumers have been demanding clean energy  
23           for years.  We see this by many requests for proposals  
24           put out by various utilities over the last two decades  
25           seeking more and more clean energy.

1 Q (By Ms. Anderson) So why did -- excuse me.

2 When did Innergex first focus on this site in  
3 Benton County?

4 A That was in 2020.

5 Q And why?

6 A Again, a variety of reasons.

7 First, Benton County has a clear, sunny climate  
8 that allows generation of lots of solar electricity.

9 Also, we have landowners willing to lease some of  
10 their land and water to us while being able to remain  
11 in the business of agriculture on lands we have not  
12 leased.

13 The site is sparsely populated with very few  
14 residents surrounding. It is also flat and does not  
15 feature prominently on the landscape. However, the  
16 site is large enough that we can site the arrays far  
17 back from the property boundaries, minimizing visual  
18 effects, as well as avoiding those critical areas and  
19 also providing for wildlife movement through the site.

20 There are also relatively close substations to the  
21 project, which means shorter transmission lines to get  
22 the power to the grid.

23 Q You mentioned leasing water.

24 What are the project's needs for water during  
25 construction and operations?

1 A The project will require a small amount of water during  
2 construction and for cleaning panels during operation.  
3 It was important to us that we avoid bringing water in  
4 by truck, if possible, to minimize traffic and  
5 associated emissions and dust related to those truck  
6 trips.

7 The landowners here, the Keelers and Robert  
8 family, have four separate water rights covering their  
9 collective acreage. They're going to make a small  
10 amount of us available to the project. They are in the  
11 process of modifying their own rights to reflect their  
12 future ag activities and changed ownership structure.

13 Q Can you explain a little bit more what you mean?

14 A Yes. So it's my understanding that originally the  
15 Robert family held approximately 12,000 acres. As the  
16 land was passed down through generations and through  
17 the sale of some of it to the Keeler family, the  
18 ownership is now in two blocks: Robert Ranch and the  
19 Keeler family. And amongst that land are four water  
20 rights. So the two families need to realign those  
21 rights so that certain amounts are apportioned to the  
22 individual owners.

23 Now, all of this water is drawn from a single  
24 aquifer which has been declining for decades. The  
25 Robert Ranch family is actually planning to invest some

1 of the revenue from our solar leases into changing its  
2 ranch operations from a focus on the less-profitable  
3 but more water-hungry crop production to focus on a  
4 more profitable and less water-demanding livestock  
5 operation.

6 Similarly, the Keelers are changing their ag  
7 operations to focus their water use on their  
8 viticulture operations, which has a plan for expansion.  
9 So in this process, both families are willing to assign  
10 the small portion of water we need for the project to  
11 the land leased.

12 As a result of this overall water strategy, once  
13 the changes are complete, there will be less water used  
14 between the Keelers, Robert Ranch, and the project,  
15 less than what is used today to irrigate crops, which  
16 are not terribly profitable.

17 This will also allow some of the water to remain  
18 in a trust administered through the Department of  
19 Ecology. It's -- it's my understanding that because  
20 water will go into trust and go unused until a future  
21 date when it is needed, this could help the aquifer  
22 recharge.

23 So, in summary, our project will generate an  
24 additional stream of income for the landowners, and at  
25 the same time, enable them to use the water more

1 responsibly by reducing overall usage, putting some  
2 into trust, giving relief to the aquifer, and allowing  
3 the landowners to expand their agricultural activities.

4 Q Thank you for that fulsome explanation.

5 What else made Benton County and this site  
6 attractive to Innergex?

7 A Well, it's important to note that, in 2020, when we  
8 began investigating this project, the Benton County  
9 Code did allow commercial solar with a conditional use  
10 permit in the GMAAD zone, which is where this project  
11 is proposed. It is only since December of 2021 that  
12 facilities such as this became prohibited.

13 Q Now, did Innergex go about engaging with the County for  
14 this proposal? And if you did, tell me how.

15 A We did. In -- in summer 2021, we reached out to both  
16 the County planning department and its board of County  
17 commissioners as well as to EFSEC. We sought to  
18 introduce the company and the proposed project and  
19 wanted to talk with them about their respective  
20 permitting processes. At this time, we also reached  
21 out to other surrounding stakeholders.

22 MS. ANDERSON: All right. Your  
23 Honor, Council, Ms. O'Neill, I'm going to have Innergex  
24 Exhibit 4 put up on the screen.

25 Q (By Ms. Anderson) Would you please identify this for

1 me, Ms. O'Neill.

2 A Sure. This is our preapplication outreach log. We use  
3 this to track who we reach out to, responses received,  
4 how to follow up on tasks, all to ensure robust  
5 engagement with the community.

6 As an example, on Page 1, the -- the first line in  
7 green, we did reach out to Benton County. Also, the  
8 first line in blue, we reached out to the Warm Springs  
9 Tribe, as an example. The list continues covering  
10 various parties, County officials, state legislators,  
11 tribes, landowners, the local farm bureau, and so on.

12 Q Okay. Now, I noted in the fourth row, there's an entry  
13 on July 21, 2021, titled LO'N.

14 Is that you?

15 A That is me. This -- this line refers to outreach I  
16 initiated to the Benton County community development  
17 director, Greg Wendt.

18 Q Why did you want to speak with Mr. Wendt?

19 A As mentioned, I wanted to discuss permitting options,  
20 also explain what was going on with the site in terms  
21 of agriculture, how we would obtain water rights, how  
22 micro-siting is done to reduce -- reduce amounts of  
23 land used within the larger leased area, how we had  
24 incorporated county codes, including the critical areas  
25 ordinance, into our design.

1           In short, to -- to make an introduction to the  
2           company to solar facility gen- -- to the solar facility  
3           in general and describe the project, and also to answer  
4           any questions the County might have.

5   Q   Did Mr. Wendt respond to your outreach?

6   A   He did not.

7   Q   Tell me about engagement that Innergex undertook with  
8           various communities and stakeholders.

9   A   Well, in addition to what's shown in the log, in  
10          general we -- we try to provide the public at large  
11          with good online access to current information through  
12          our website, which has a dedicated page to this  
13          project.

14   Q   Did you reach out to Native American tribes?

15   A   Yes. We -- we did reach out to all tribes identified  
16          by the Department of Archaeological and Historic  
17          Preservation as -- as tribes with interest in the area.  
18          Throughout the application process, EFSEC works as the  
19          liaison between tribes and DAHP regarding tribal  
20          interests on the project.

21                I will note that DAHP has concurred with the  
22          measures in our proposal, and we will continue to  
23          engage with interested tribes pursuant to the MDNS  
24          conditions calling for ongoing tribal engagement.

25   Q   Did Innergex reach out to any underrepresented

1 communities or other stakeholder group?

2 **A Yes. We've held multiple live and virtual community**  
3 **meetings. We send routine updates to neighboring**  
4 **property owners. Through that, we've -- we've**  
5 **identified -- or sorry -- advertised in Spanish about**  
6 **the open house. And also on the website, there is a**  
7 **link that can convert materials automatically from**  
8 **English to Spanish so members of the Spanish-speaking**  
9 **community will have access to the same information**  
10 **as -- as in English.**

11 **Q Now, at some point, Benton County removed solar**  
12 **generation --**

13 **JUDGE GERARD: Ms. Anderson, I need**  
14 **you to speak up and repeat the question, please.**  
15 **Again, I'm not sure why it keeps up and down with it.**

16 **Q (By Ms. Anderson) All right. At some point, Benton**  
17 **County removed solar generation facility, major, from**  
18 **the uses allowed in the GMAAD zone, correct?**

19 **A That is correct. That was on December 21st, 2021. The**  
20 **board of commissioners adopted Ordinance**  
21 **Amendment 2021-04, which, among other changes, removed**  
22 **wind power generation facility, major, and solar power**  
23 **generation facility, major, from the list of uses**  
24 **allowable with a conditional use permit in the GMAAD**  
25 **zone.**



1 Q Since passage of that ordinance, have you learned  
2 anything further about the then or current board of  
3 County commission members' opinions of this project?

4 A Yes. I've both read their comments in the minutes of  
5 that December 2021 public hearing and also read  
6 comments in the newspaper. Nothing I read indicated  
7 that it was this specific project that was driving the  
8 legislation. In fact, I had the impression they viewed  
9 Wautoma as a good project in this location. It was my  
10 impression that opposition to a different proposal led  
11 the County to ban future clean energy projects.

12 MS. ANDERSON: All right.

13 Ms. O'Neill, Your Honor, and Council, I'm going to have  
14 put on the screen Innergex Exhibit 11.

15 Q (By Ms. Anderson) Can you see that, Ms. O'Neill?

16 A Yes, I can. It is the minutes of that December 2021  
17 public hearing at which they revised their code.

18 Q So if you look at Exhibit 6 and return to the  
19 recounting of the minutes, what did any of the  
20 commissioners say about siting of solar in Benton  
21 County?

22 A If we could scroll to Page 6. We -- okay. We can  
23 see -- on Page 6, we can see Commissioner McKay stated  
24 that solar is less of an eyesore than wind farms. He,  
25 in bringing this up specifically and comparing the two,

1 suggests to me that commissioners were concerned with  
2 the visual -- visual effects of wind energy. This is  
3 consistent with what I read in a newspaper interview  
4 with then Commissioner Small, who commented there that  
5 he actually supports Innergex's proposal to place solar  
6 panels in a remote part of the county.

7 MS. ANDERSON: Ms. O'Neill, Your  
8 Honor, Council, I'm going to put up Innergex  
9 Exhibit 27.

10 Q (By Ms. Anderson) Ms. O'Neill, can you see that?

11 A Yes. That -- that is the article I referred to in  
12 which Commissioner Small commented favorably on the  
13 project.

14 Q Where is that in that exhibit, if you can tell?

15 A This is -- this is on Page 4. And I understand that  
16 the County has not decided to take up any examination  
17 of where solar might be sited in the county despite  
18 comments to the contrary. But in this article,  
19 Commissioner Small's reference to the Horse Heaven  
20 project continues to suggest to me that the elected  
21 officials of Benton County were more concerned about  
22 locating wind in Benton County rather than solar.

23 Q Thank you.

24 Did you stop trying to engage with the County  
25 after it ended its role as the permitting agency for

1 major solar in Benton County?

2 **A No. We continued outreach with the County. We invited**  
3 **the County and the surrounding community to a virtual**  
4 **open house presentation in April 2022, which was during**  
5 **the pandemic. This meeting was attended by the Benton**  
6 **County Planning Department staff. And we also made a**  
7 **presentation to the board of County commissioners about**  
8 **the project in May 2022.**

9 MS. ANDERSON: Your Honor, Council,  
10 Ms. O'Neill, I'm going to put up Innergex Exhibit 17.

11 Q (By Ms. Anderson) Can you see that?

12 **A Yes, I can. This is the minutes from the -- the**  
13 **meeting in May 2022 when we presented to the County.**

14 Q What did you learn from the commissioners about the  
15 County's view of your project from this meeting?

16 **A Okay. So we see on Page 3, where we have completed the**  
17 **presentation, you can see that Chairman Small said he**  
18 **was in favor of solar since it had far less impacts**  
19 **than the windmills.**

20 Commissioner McKay said that he liked that this  
21 project was out in no-man's-land and had low  
22 visibility.

23 Q Now, it is true the County has not changed its zoning  
24 code, notwithstanding these comments?

25 **A That is true.**

1 Q Okay. So why did you present to the County even though  
2 EFSEC was reviewing the project?

3 A Well, even though the County had relinquished its  
4 authority to approve projects like this, we wanted them  
5 to know about how and where we had designed the project  
6 to minimize impacts to ag uses and, in fact, even  
7 enhance them. The project can and will coexist with  
8 and be supportive of agricultural interests in the  
9 area. We wanted to reassure the County of -- of these  
10 features and benefits of the project.

11 Q Thank you.

12 You mentioned earlier that Innergex has designed  
13 the project to comply with the provisions of the Benton  
14 County land use code and comp plan, and today it meets  
15 those zoning provisions except for the single  
16 subsection that eliminated this use in the GMAAD zone  
17 with the conditional use permit. That's correct?

18 A It is. And don't misunderstand. I'm not a land-use  
19 planner. And you'll hear from Ms. McClain later, who  
20 will answer more-detailed questions. But, yes, the ASC  
21 acknowledges that we are not consistent with  
22 Subsection 11.17.040 of the Benton County Code.  
23 However, we can see in Attachment D of the ASC, there's  
24 a lot of detail about ways the project is both  
25 compatible with agricultural activities and supportive

1 of them.

2 As I understand it, the Benton County  
3 Comprehensive Plan envisions uses that are compatible  
4 or supportive of agriculture in its agricultural zones.  
5 This project is supportive of agriculture. We -- it  
6 will help support the landowners' ability to continue  
7 with ag practices and conserve water in this era of a  
8 depleting water supply. We're confident that EFSEC  
9 staff has recommended comprehensive conditions that, if  
10 placed in the SCA, will recognize the purpose of the  
11 code provision that we are requesting for preemption.

12 Q And was a land-use consistency hearing held on your  
13 application?

14 A Yes. That was in August 2022, the same night as the  
15 Council's public informational hearing on the project.  
16 And both events were held at the community college in  
17 Pasco.

18 Q Did the Council enter an order to the effect that the  
19 land use was inconsistent and therefore a hearing would  
20 be held to consider conditions that could reflect any  
21 preempted local regulations?

22 A Yes. That order was issued on November 16th, 2022.  
23 And that's really why we're here today: To assess the  
24 conditions that could reflect the County and  
25 community's interest in the GMAAD zone should

1       **preemption be recommended.**

2       Q    So once the order on land-use consistency was issued,  
3       how did EFSEC go about reviewing your application?

4       A    **We received many questions from EFSEC staff, including**  
5       **several written data requests that we responded to, and**  
6       **EFSEC sought input from other agencies also.**

7       Q    Did you engage with other agencies, yourself, about  
8       review of the ASC?

9       A    **Yes. Several times, we spoke with WDFW about potential**  
10      **wildlife and habitat impacts, design changes in**  
11      **response to their input, and mitigation measures to**  
12      **minimize impacts. As shown in MDNS, there are**  
13      **mitigation ratios for habitat impacts, and those --**  
14      **those reflect our discussions with WDFW.**

15                We also worked extensively with EFSEC and DAHP  
16      about tribal interests. However, I will limit my  
17      comments about engagement with DAHP out of respect for  
18      the fact that tribes are sovereign nations and much of  
19      the information about tribal interests is confidential.

20      Q    Thank you for that.

21                But to clarify: DAHP has concurred with your  
22      classification of identified cultural resources and  
23      approach to avoidance buffers proposed by Innergex on  
24      those resources, correct?

25      A    **They have. The letter of concurrence was provided on**

1       **May 17th of this year.**

2   Q   And was it after DAHP's concurrence that EFSEC staff  
3       issued its initial SEPA determination that, if the  
4       Council imposed the conditions as recommended, the  
5       project would not have a significant adverse  
6       environmental impact under SEPA?

7   A   **That's correct.**

8   Q   Have you talked previously with EFSEC staff about  
9       conditions that might be recommended on this project?

10  A   **Yes. As mentioned earlier, Section A.5 of the ASC.**

11                   JUDGE GERARD: Please speak up,  
12       Ms. O'Neill. Again, I couldn't hear you. Thank you.

13                   **THE WITNESS: Okay. As mentioned**  
14       **earlier, at Section A.5 of the ASC, contains a long**  
15       **list of measures proposed as part of the project to**  
16       **minimize and prevent environmental and land-use**  
17       **impacts. So the discussion started there with EFSEC**  
18       **staff.**

19  Q   (By Ms. Anderson) But did the MDNS add additional  
20       conditions on top of the conditions that you proposed  
21       in Section A.5?

22  A   **Yes, it certainly does. The staff doesn't just include**  
23       **the -- the conditions from the AS C and issue a**  
24       **determination of nonsignificance. They -- they added**  
25       **mitigated conditions to address items raised by staff**

1 as well as others during the two-year review period for  
2 this proposal.

3 Q Innergex is willing to accept all those additional  
4 conditions put forth by EFSEC staff, correct?

5 A Correct.

6 Q And does this specifically include all of the measures  
7 to reduce impacts on adjacent ag landowners, like weed  
8 control, slow speeds to manage dust, and visual  
9 screening?

10 A Correct.

11 Q And does this include all of the requirements related  
12 to ensuring the project land is returned to a condition  
13 that will allow ag uses at the end of the project life?

14 A Yes, It does.

15 Q All right. Just a few miscellaneous questions.

16 Ms. O'Neill, does your ASC ask EFSEC to approve  
17 any project other than your own?

18 A No. We are -- we're not asking for approval of  
19 anything other than this Wautoma proposal. And we  
20 expect that this project be evaluated on its own  
21 merits.

22 Q Do you have any reason to think that this Council is  
23 planning to use your project in order to set the stage  
24 for any other project's approval?

25 A No, I don't.



1 Q And did the EFSEC staff ignore the potential for  
2 cumulative impacts in Benton County's GMAAD zone that  
3 could possibly result from other potential projects?

4 **A No. They -- they addressed it head-on in the staff**  
5 **memo.**

6 Q I'm going to ask you to pause there.

7 MS. ANDERSON: Council, Your Honor,  
8 I'm going put back up on the screen Exhibit 15 and turn  
9 to Page 31.

10 Q (By Ms. Anderson) Ms. O'Neill, you can proceed.

11 **A Okay. Here --**

12 JUDGE GERARD: And speak up, please.

13 **THE WITNESS: Okay. Here, you can**  
14 **see that they have acknowledged that future projects,**  
15 **when combined with Wautoma, could have cumulative**  
16 **impacts. EFSEC staff stated that, for any future**  
17 **projects in close proximity to the project area, EFSEC**  
18 **will consider whether the cumulative impacts from those**  
19 **projects, when combined with the Wautoma project, could**  
20 **be reduced through mitigation.**

21 Q (By Ms. Anderson) Ms. O'Neill, do you have any reason  
22 to believe that EFSEC will not do what they say?

23 **A No, I do not.**

24 Q Why not?

25 **A Well, it's my understanding that SEPA review is**

1 required for all energy facilities at EFSEC, and I'm  
2 unaware of a scenario where counties or other parties  
3 would not be given notice and an opportunity to comment  
4 on EFSEC's evaluation of future cumulative impacts from  
5 any other proposed project.

6 Q So as for your own project, would you kindly give me a  
7 brief summary of what Innergex has done to minimize the  
8 impact to the GMAAD land use in Benton County and the  
9 measures that you've taken to render your project  
10 compatible with other area uses?

11 A Sure. We have made efforts to reduce project impacts  
12 on ag lands as much as possible. We've condensed the  
13 solar array through micro-siting to reduce the overall  
14 footprint, leaving as much of the project area free of  
15 fencing as it is practicable. We will perform regular  
16 soil testing for a variety of soil characteristics.  
17 There will also be a technical advisory committee  
18 that -- that can recommend adapted -- adaptive  
19 management measures to the Council. And this is a  
20 significant mitigative action to maintain the  
21 agricultural nature and character of the lands  
22 throughout the operational term.

23 In addition, our detailed site restoration plan  
24 will include commitments to restore all ag lands to the  
25 pre-project condition. This will include minimizing

1 use of and then removal of gravel and aggregate  
2 material, performing localized grading and discing to  
3 match the surrounding elevations. We will replace  
4 topsoil from where it has been stockpiled on-site.

5 Conditions also require us to revegetate disturbed  
6 areas with an appropriate hydroseed mix. And as  
7 discussed, we will be -- we'll be required to post a  
8 security bond to ensure decommissioning and restoration  
9 is completed. And, of course, there is the five-year  
10 monitoring program after restoration to make sure we  
11 get it right.

12 Q So, Ms. O'Neill, with these and the other conditions in  
13 the MDNS and the ASC, are you confident that the  
14 project will be conditioned to ensure the project can  
15 be sited without adversely affecting the GMAAD zone in  
16 the event that Benton County Code 11.17.040 is  
17 preempted and the land will be returned to a condition  
18 for future ag use?

19 A Yes, I am.

20 MS. ANDERSON: Thank you,  
21 Ms. O'Neill. I have no further direct questions for  
22 you. However, other parties to this matter as well as  
23 the chair, Council, and judge may have questions, so  
24 remember you're under oath to answer those questions.

25 THE WITNESS: Understood.

1 MS. ANDERSON: Thank you.

2 JUDGE GERARD: All right. Thank  
3 you, Ms. Anderson.

4 At this point, Ms. Holt, do you have any questions  
5 of Ms. O'Neill? And, if so, go ahead and begin.

6 MS. HOLT: I do, Your Honor. Thank  
7 you.

8  
9 CROSS-EXAMINATION

10 BY MS. HOLT:

11 Q Good morning, Ms. O'Neill. I'm LeeAnn Holt. I'm  
12 counsel for Benton County.

13 MS. HOLT: Can everybody hear me  
14 okay? Am I talking at a reasonable volume for you?

15 JUDGE GERARD: You are. Thank you.

16 MS. HOLT: Okay. Thank you.

17 Q (By Ms. Holt) So, Ms. O'Neill, I'd like to touch on a  
18 couple things that you talked about earlier.

19 You talked a little bit about the size of the  
20 project.

21 What was the total acreage of the lease?

22 **A It was 5,852.**

23 Q And you mentioned that lease or that acreage amount is  
24 malleable.

25 Is that why you -- do you foresee that amount

1 changing in an upward trajectory or a downward  
2 trajectory?

3 **A Downward.**

4 Q Okay.

5 **A As I explained, that was the original lease area.**

6 **Essentially, the big blob that we studied to determine**  
7 **what the -- the most appropriate solar array area would**  
8 **be within that area.**

9 Q So now that there's been some research and observations  
10 made, what is the proposed project area that you  
11 believe will likely be taken out of ag use on these  
12 properties?

13 **A We -- we propose 2,978 acres will be fenced in, and**  
14 **that will be the area unavailable for ag use during the**  
15 **term of the project and which will be returned to**  
16 **availability for ag use following decommissioning.**

17 Q Does the lease allow for ag use on the properties -- or  
18 the acreage surrounding that 2,000 acres?

19 **A Yes, it does. And as discussed, once the project is**  
20 **built, we will only be leasing that smaller amount.**  
21 **The rest will be returned to the landowners for their**  
22 **own agricultural practices.**

23 Q Are you aware of any plans or intent to utilize that  
24 land around the 2,000 acres during the life of the  
25 project for ag use?

1 A I am. As you will hear from our two landowners who  
2 will testify later, ongoing agricultural activities  
3 will occur adjacent to the project. The Keeler family  
4 operates a vineyard essentially within the project area  
5 or immediately adjacent to. They actually have plans  
6 to expand that vineyard. And the Robert family will --  
7 will continue their -- their cattle ranching operations  
8 adjacent to the project.

9 As mentioned, they -- there will be 9,000 acres  
10 held by those two landowners that -- that are available  
11 for their ag use.

12 Q As a point of clarification, you mention adjacent to  
13 the project.

14 When you're talking about the cattle ranching and  
15 the viticulture, are you talking about the 5,000 acres  
16 or adjacent to that?

17 A I'm speaking about adjacent to the roughly 3,000 acres  
18 that the project will occupy during operations.

19 Q Correct.

20 My question is: When you say "adjacent," I'm  
21 asking how adjacent.

22 Will that be within the 5,000 acres that were  
23 originally leased or outside of that?

24 A Sorry. Yes, it will. In addition to other lands held  
25 by these landowners that -- that were not under lease.

1 Q So you also talked a little bit about the  
2 attractiveness of this site location.

3 Did you consider other sites within Benton County?

4 **A Not that I'm aware of. Our development team is always**  
5 **looking at sites throughout -- throughout the country,**  
6 **but I'm not aware of any other specific sites in the**  
7 **county.**

8 Q Once you guys became aware of the change in Benton  
9 County Code that would no longer allow for site usage,  
10 were there any efforts to look at other areas within  
11 Benton County at all or outside of Benton County?

12 **A Not that I'm aware of.**

13 Q Okay. Just a second here.

14 I believe you testified that you reached out to  
15 Benton County.

16 What was the method of the initial contact?

17 **A That was by e-mail.**

18 Q Okay. And did you receive a response from Benton  
19 County on that?

20 **A I did not.**

21 Q Did you follow up with them by phone call or additional  
22 e-mails?

23 **A Well, yes. When -- when we learned of the proposed**  
24 **ordinance change, removing solar and wind from -- from**  
25 **the GMAAD zone, Innergex followed up with several**

1 letters to the board of County commissioners to  
2 encourage the County to -- to not take this action and  
3 to continue to maintain their ability to site within  
4 their own county, to evaluate projects on their own  
5 merits. We also attended the -- the public meeting on  
6 December 20 -- 21st, 2021.

7 Q Okay. And in terms of calendar dates, about when did  
8 that occur, the follow-up?

9 A I would have to review my records. It -- I would  
10 say -- I couldn't pinpoint the exact date, but it was  
11 in the lead-up to the December meeting.

12 Q Perhaps more generally, would it have been during  
13 summer still, into the fall?

14 A I don't have that date available.

15 Q Okay. In your efforts to follow up with the County,  
16 did you ever ask the County about where in the county  
17 you might be able to site this in accordance with  
18 Benton County codes?

19 A Not specifically. It's -- it's our understanding  
20 that -- that solar and wind, major, are allowed in the  
21 industrial zone. However, there -- there's not really  
22 enough acreage available in that zone to adequately  
23 site such a project.

24 Q Okay. I would like to share with you -- I believe you  
25 had touched on Exhibit 11. I can pull that up for you.



1           Sorry. This is not -- okay. Sorry. Technical  
2           difficulty here.

3           Are you able to see that Exhibit 11?

4 **A I can. Although if you're able to enlarge it slightly,**  
5 **that would be appreciated.**

6 Q That -- has that helped?

7 **A Yeah. Yeah.**

8 Q Okay. Could you read that first sentence for me.

9 **A "Commissioner" -- where, "Commissioner McKay discussed**  
10 **growing up on a farm"?**

11 Q Correct.

12 **A Okay. "Commissioner McKay discussed growing up on a**  
13 **farm and understood farming circumstances but indicated**  
14 **that solar and wind power are not consistent resources.**  
15 **He mentioned that even if the County went by [sic] a**  
16 **case-by-case basis, applicants could go to EFSEC, which**  
17 **would ultimately have the final decision. Commissioner**  
18 **McKay also indicated that at this time, he would be in**  
19 **favor of possibly revisiting in the future as solar is**  
20 **less of an eyesore than wind farms and he was looking**  
21 **out for Benton County's future growth."**

22 Q Were you aware of those comments back in the fall of  
23 2021?

24 **A The comments made that I just read --**

25 Q Correct.

1 **A -- from December 2021?**

2 **Q Correct.**

3 **A You mentioned the fall, so I wasn't sure.**

4 **Q I'm sorry. I misspoke.**

5 **A Okay. Yes, I'm aware of the minutes of this meeting**  
6 **and the comments within.**

7 **Q So he -- Mr. -- or I'm sorry.**

8 Commissioner McKay seemed to indicate the  
9 possibility for future growth in the area of solar in  
10 Benton County.

11 Did you reach out to the County at all to talk  
12 about what that might look like and how that might work  
13 with the project?

14 **A Well, yes. As testified, we -- we did continue to**  
15 **reach out to the County. We made the presentation**  
16 **in -- in May of 2022 to continue to provide project**  
17 **updates and -- and -- and information about the**  
18 **project.**

19 **Q So in that follow-up, you provided information to the**  
20 **County, but did you seek information from the County?**

21 **A Seeking information from the County on -- on what**  
22 **exactly?**

23 **Q On potential future solar provisions.**

24 **A No.**

25 **Q Okay. Can you read the second paragraph there on that**

1 exhibit.

2 **A Yeah.**

3 "Commissioner Devlin [sic] indicated that he did  
4 not want Benton County to become the dumping site for  
5 renewables here in western Washington. Commissioner  
6 Devlin [sic] indicated that he understood the plight  
7 for farmers and viewed this as a moratorium which could  
8 be looked at again in the future. Commissioner Devlin  
9 [sic] saw this as an opportunity to review our  
10 ordinances and identify areas within our region for  
11 boundaries to see what the future approach could be.  
12 He stated there was time to plan."

13 **Q** Okay. With these comments from Commissioner Delvin, do  
14 they seem to indicate that they're -- the County's  
15 willing to work with renewable energy sources on future  
16 approaches?

17 **A** They -- they do not indicate that to me. They indicate  
18 that they intended to review in the future whether they  
19 would continue with -- with the ban or revisit that  
20 decision.

21 **Q** Okay.

22 **A** And to -- to my knowledge, that decision has not been  
23 revisited.

24 **Q** Okay. I am going to stop sharing that. Hopefully we  
25 can see your face again. And I'll move on to other

1 questions.

2 I can pull up Exhibit 22. I will attempt to share  
3 that with you.

4 Are you able to see that exhibit?

5 **A I can see it. It's -- it's quite small. I don't think**  
6 **I could read it properly.**

7 Q Okay.

8 **A I think we can go now.**

9 Q Any better?

10 **A Yeah, I think we can manage that.**

11 **You would like me to read this?**

12 Q Are you familiar --

13 **A Oh.**

14 Q Are you familiar with this statute?

15 **A Yes, I am.**

16 Q Okay. Is it fair to say that, based on your prior  
17 testimony, your interpretation of that statute is that  
18 Benton County's code, which does not permit the  
19 proposed project, is already preempted?

20 **A Yes, it is.**

21 Q How would you reconcile that with other provisions of  
22 Chapter RCW 80.50 that state the Council may limit  
23 topics to whether the land-use planning should be  
24 preempted?

25 MS. ANDERSON: Your Honor, I'm going

1 to object at this point. Ms. O'Neill has not -- excuse  
2 me. Ms. O'Neill has not been established as an  
3 attorney and is not in an appropriate position to  
4 evaluate the comparative effect or relevance of various  
5 statutes.

6 If Ms. Holt wants to inquire about Ms. O'Neill's  
7 legal prowess, she may do so, but until then, I think  
8 this is an inappropriate line of inquiry.

9 JUDGE GERARD: Ms. Holt, response?

10 MS. HOLT: Yes. I believe we are --  
11 we have her testimony that they believe the law allows  
12 for preemption. I'm simply asking what her  
13 understanding is of the laws that allow EFSEC not to  
14 recommend preemption. If she can testify one  
15 understanding of the law, I don't understand why she  
16 can't testify her understanding of a different statute.

17 MS. ANDERSON: Wait for the judge.

18 JUDGE GERARD: Yes, hold on.

19 Ms. Anderson, any response before I make the  
20 ruling?

21 (Clarification by reporter.)

22  
23 JUDGE GERARD: I asked Ms. Anderson  
24 if she had any response prior to making my ruling.

25 MS. ANDERSON: No, Your Honor.

1 Provided we establish that Ms. O'Neill's legal  
2 experience is limited, I don't have an objection.

3 JUDGE GERARD: All right. The  
4 objection is sustained. Establish the foundation first  
5 for the witness to opine on the inner workings between  
6 those two. Once you've established a foundation for  
7 it, you can re-ask the question. If there are  
8 objections at that point, we'll take them up.

9 MS. HOLT: Thank you, Your Honor.

10 Q (By Ms. Holt) Ms. O'Neill, you've talked about your  
11 education and training.

12 Do you have any legal training?

13 A I do not.

14 Q Okay. In the course of your employment, have you  
15 familiarized yourself with Chapter 80.50 RCW?

16 A Yes, I have on -- on a basic level.

17 Q Okay. And on that basic level, are you aware of  
18 RCW 80.50.90, which states the Council may limit topics  
19 to whether land-use planning should be preempted?

20 A Is that something you could pull up for my reference?

21 Q I would have to ask leave of the Court to do so. I  
22 don't believe we have that as an exhibit.

23 A My -- my understanding is that that is the -- the  
24 statute that -- that was called out in the order  
25 commencing the adjudication. Because the project

1 received an MDNS and environmental impacts would be  
2 mitigated to a level that's nonsignificant, this  
3 hearing could be limited to land use. I -- I believe  
4 that's what you're referencing.

5 Q My question is: Would you agree that the Council has  
6 the ability to recommend for or against preemption?

7 A I would agree with that.

8 Q Okay. I will stop sharing that document.

9 And when it comes to preemption, what is your  
10 understanding of limitations with that recommendation?  
11 Are there conditions that need to be imposed?

12 A Yes. With -- if preemption is rec- -- is recommended,  
13 the Council should impose conditions to render the  
14 project compatible with the local codes which are being  
15 preempted.

16 Q Okay.

17 A And in our case, we've -- we've seen substantial  
18 discussion of the conditions in Section A.5 and in the  
19 MDNS that -- that will support this.

20 Q And I would like to transition to A.5. So, again, if I  
21 may share a window, I would like to share what has been  
22 marked as Exhibit No. 2, the Wautoma revised  
23 application. Let me try and enhance that a little bit  
24 so you can see better.

25 Are you familiar with that table there?

1 **A Yes, I am.**

2 Q Okay. Looking at the heading there in gray, can you  
3 tell me what mitigation measure is addressed there?

4 **A The -- the one on the screen is titled "Implementation  
5 of Geotechnical Recommendations."**

6 Q And there in the gray space.

7 **A I'm sorry. The header is "Earth."**

8 Q "Earth." Okay.

9 I'm sorry. If I might scroll down just a little  
10 bit here.

11 In the section discussing best management  
12 practices, can you tell me a little bit about what  
13 those look like and how that will affect the subject  
14 property that you're asking preemption on?

15 **A Okay. So there -- there is a description of DMPs here  
16 in Section A.5. The sediment and erosion control plan  
17 will be implemented, a construction phase.**

18 **Construction and operation phases management plans.  
19 These address stormwater runoff, erosion measures,  
20 potential flooding, although that's not much of a risk  
21 in this area.**

22 I'm not sure what you're asking me beyond what is  
23 written.

24 Q I guess I'm trying to focus: In terms of best  
25 management practices, how does this address the loss of



1 agricultural land if the land is to be preempted?

2 A Well, it's -- it's undisputed that those almost 3,000  
3 acres will be temporarily lost for agricultural  
4 purposes during the operational term of the project.  
5 The measures we've proposed here and those in the MDNS  
6 mitigate effects of the project, itself, during the  
7 operational term, like soil erosion, dust control, that  
8 kind of thing. But we're -- we're not stating that --  
9 we're conceding that those acre- -- that acreage will  
10 be temporarily unavailable to ag use.

11 Q Okay. If I move down to Page 48 there, the section  
12 titled "Land Use" in gray, could you read that for me?

13 A Yeah.

14 "Based on the information provided in  
15 Section 4.14.C and in the Land-Use Consistency Review  
16 (see attachment D), the project will have no  
17 significant adverse effects on land use. Therefore, no  
18 land-use mitigation or monitoring measures are  
19 proposed. Mitigation measures specific to other topics  
20 (example, wetlands and surface waters, wildlife  
21 habitat, or geological hazards) are addressed in their  
22 respective resource sections in Part 3 and Part 4 of  
23 this application."

24 Q So if I understand your prior testimony, you're  
25 conceding that the project area of approximately 3,000

1 acres will not be available for agricultural use during  
2 the life of the project; is that correct?

3 **A That is the area that will be occupied by the project**  
4 **for its solar farm purposes. So, yes, within the fence**  
5 **line, it will not be available for agricultural use**  
6 **during the term of the project.**

7 **Q And if I understand the section on Page 48 discussing**  
8 **land use, you are proposing no conditions that would**  
9 **offset that loss of agricultural use?**

10 **A Well, I think that's a little misleading. As**  
11 **discussed, many mitigation measures are proposed to**  
12 **render the project compatible with agricultural use in**  
13 **the area. Those measures are listed throughout A.5,**  
14 **just under different headings as you saw in "Earth."**  
15 **And in the MDNS, land-use mitigation measures are under**  
16 **the heading "Land and Shoreline Use." So those are the**  
17 **measures we've proposed and that have been implemented**  
18 **by EFSEC onto the project.**

19 (Audible videoconference  
20 disruption.)

21  
22 JUDGE GERARD: Mr. Holappa, will you  
23 go ahead and mute yourself, please, sir.

24 **Q (By Ms. Holt) Ms. O'Neill, do those measures, which**  
25 **you allege make the project compatible with local ag**

1 use, create additional ag lands to offset the loss of  
2 this 3,000 acres?

3 **A I'm not sure what you mean by create additional land,**  
4 **but we -- we will be occupying close to 3,000 acres of**  
5 **land, and the remaining landholdings of our**  
6 **participating landowners will be available for their**  
7 **agricultural activities.**

8 Q Okay. And if this project were not approved, will the  
9 remaining acreage for the landowners be available for  
10 ag use?

11 **A If this project were not approved, the landowners would**  
12 **retain control of the entirety of their landholdings.**

13 Q Okay. So approval of the project, would it be fair to  
14 say, does not impact whether the landowners' other  
15 holdings would continue to be ag land?

16 **A Approval of the project would approve us to operate our**  
17 **solar farm on the 3,000 acres. And, yes, the -- the**  
18 **remaining landholdings would be available to the**  
19 **landowners for whatever purposes they -- they wished.**

20 Q And that would be the same if the project were not  
21 approved; is that correct?

22 **A Correct.**

23 Q Okay. Are there any conditions in this Table A.5 that  
24 would allow Benton County to have an additional 3,000  
25 acres available for ag use that are not already slated

1 for ag use?

2 **A I -- I think you're suggesting -- or I think you're**  
3 **asking if -- if our proposal includes a provision to**  
4 **rezone other land within the GMAAD? I'm not quite sure**  
5 **what is meant.**

6 **Q Any -- any method of making 3,000 other acres of**  
7 **property available for ag use that is not already**  
8 **marked --**

9 (Interruption by reporter due  
10 to simultaneous speaking.)

11  
12 **Q (By Ms. Holt) -- not already marked as ag use?**

13 **THE REPORTER:** And may I have the  
14 answer again, please.

15 **THE WITNESS:** No, it does not.

16 **What I will -- what I will note is that the -- the**  
17 **area unavailable for ag use during the operational term**  
18 **of the project as conditioned by EFSEC will be returned**  
19 **to the landowners and restored to a condition making it**  
20 **available for agricultural use following**  
21 **decommissioning.**

22 **Q (By Ms. Holt) Okay. Well, let's talk about**  
23 **restoration here.**

24 **I'd like to share with you what's been marked as**  
25 **Exhibit 16. This is -- can you identify this document**

1 for me? I'll move up to the top.

2 **A Yes, I can. That is the -- the revised MDNS.**

3 **Q** Okay. And looking at Page 2 of the document, there is  
4 a section called "SEPA Threshold Determination."

5 Can you read what that determination is for us?

6 **A It was a mitigated determination of nonsignificance.**

7 **Sorry. Would you like me to read the whole**  
8 **section?**

9 **Q** Yes. Please.

10 **A "EFSEC has issued a mitigated determination of**  
11 **nonsignificance, or MDNS, under WAC 197-11-350 based on**  
12 **a determination that the enclosed mitigation" --**  
13 **"mitigating conditions, along with required compliance**  
14 **with applicable county, state, and federal regulations**  
15 **and permit requirements, would mitigate any significant**  
16 **adverse effects [sic] on the environment. An**  
17 **environmental impact statement, or EIS, is not required**  
18 **under RCW 43.21.C-030 [sic], Section 2, Section 3" --**  
19 **"Section c. This determination was made after review**  
20 **of the application and other information on file with**  
21 **the lead agency and existing regulations applicable to**  
22 **the proposal (see attached memo from EFSEC staff). The**  
23 **Environmental" --**

24 MS. HOLT: That will be sufficient.

25 Thank you.

1 **THE WITNESS: Okay.**

2 Q (By Ms. Holt) In that threshold determination --

3 JUDGE GERARD: Wait. Hold on,  
4 Ms. Holt. I think the court reporter needed  
5 clarification.

6 THE REPORTER: I figured it out  
7 afterwards. I think it was, "That will be sufficient."  
8 Is that correct, Counsel?

9 MS. HOLT: Correct.

10 THE REPORTER: Thank you.

11 JUDGE GERARD: Please continue.

12 Q (By Ms. Holt) Is it fair to say that based on that  
13 paragraph, the focus of this revised MDNS is  
14 environmental concerns?

15 A **That is correct. Although it -- it does state, at**  
16 **least in the staff memo, that -- that the County's**  
17 **input on land-use consistency was considered.**

18 Q Okay. Is there anything in this threshold  
19 determination regarding land use as it relates to  
20 Benton County's potential loss of ag acreage?

21 A **Well, there are several mitigating conditions that --**  
22 **that will be imposed on the project to, you know,**  
23 **render the project compatible with -- with the measures**  
24 **in -- in the comp plan and in their zoning. In fact,**  
25 **you know, as discussed, soil monitoring, erosion**

1 controls, slow speeds, et cetera. I'll note that --  
2 that we -- we have demonstrated that we will be  
3 compatible with all Benton County codes and provisions  
4 barring the one, the purposes of allowable with the  
5 CUP.

6 Q Okay. Does that compatibility offset the potential  
7 loss of ag acreage?

8 A Well, the -- the loss will be temporary during the  
9 operational term. And I'm not sure if you're asking  
10 again whether we are proposing offsetting 3,000 acres  
11 or creating new acres. That is not part of the  
12 proposal.

13 Q Have you looked into any options that would allow you  
14 to do that, to impose such conditions?

15 A Do you mean have we suggest -- discussed with the  
16 County how to create new -- new ag land?

17 Q Either through discussions with the County or  
18 independent investigation?

19 A No, we have not.

20 Q Okay. If I can move down to Page 9. Give me just a  
21 second here to look -- find what I was looking for.

22 I'm looking at the section titled "Land and  
23 Shoreline Use." Give me just a second here.

24 Starting with the section that says, "If future  
25 site conditions," could you read that sentence?

1 JUDGE GERARD: Ms. Holt, I'm going  
2 to stop you there. It's in the record. If there's a  
3 specific point you wish to address the witness on, ask  
4 it directly. We don't need to repeat what's already in  
5 the record for that with that specific portion. Thank  
6 you.

7 MS. HOLT: Very good. I will do  
8 that.

9 Q (By Ms. Holt) Ms. O'Neill, does this section consider  
10 the possibility that even with the conditions in this  
11 revised MDNS, that the property may not be suitable in  
12 the future for the return as ag producing land?

13 **A It does consider this.**

14 (Clarification by reporter.)  
15

16 JUDGE GERARD: The witness has  
17 answered, Ms. Holt, if you're waiting for that. You  
18 can go ahead and move on to your next question.

19 MS. HOLT: Yeah. Sorry. That threw  
20 me off a little bit.

21 Q (By Ms. Holt) So, Ms. O'Neill, would it be fair to say  
22 that is not a foregone conclusion that the property  
23 will be returned to ag producing land even if all these  
24 conditions are followed?

25 **A We are committed to the success of restoration. EFSEC**



1 has also, through the MDNS, applied a Technical  
2 Advisory Committee that will be comprised of agency  
3 experts and the like that can recommend adaptive  
4 management if -- if there are issues with the  
5 restoration.

6 In addition, we will have a bond securing --  
7 securing our completion of these. And this is really a  
8 question for the future. This isn't a site -- an  
9 enforcement issue. If -- if we were to not complete  
10 our restoration as mandated as shown in this -- this  
11 measure, we would work with EFSEC to -- to figure out  
12 what to do at that point. EFSEC may require that the  
13 applicant provide additional mitigation to offset  
14 impacts.

15 Q Okay. So even if that worst-case scenario were to  
16 occur -- that even with all of these efforts, the land  
17 was not suitable for ag producing land -- has Innergex  
18 thought of any conditions that would repair the damage  
19 to the County in terms of loss of ag lands?

20 A As stated in this condition, that is something that  
21 would be discussed with EFSEC at the time. And if  
22 additional measures or mitigation are required at that  
23 point, we would -- we would follow that direction.

24 Q In any of the documents from the applicant or through  
25 EFSEC, are you aware of any proposed land-use

1 mitigation conditions that address the loss of subject  
2 properties as actual or potential ag during the life of  
3 the project?

4 **A Again, if you're considering the temporary loss of the**  
5 **2,978 acres within the fence line, those -- those acres**  
6 **will be unavailable for ag during the operational term.**  
7 **And within the fence line, we've discussed at length**  
8 **the mitigation measures that will condition the project**  
9 **to a consistent state with adjacent ag.**

10 Q Is Innergex proposing any conditions that recognizes  
11 the County's interest in having the total number of ag  
12 lands that it has designated?

13 MS. ANDERSON: Your Honor, I'm going  
14 to object. This has been asked and answered multiple  
15 times at this point. This is badgering the witness.

16 JUDGE GERARD: Sustained. Though I  
17 don't think it's badgering, but I definitely think it  
18 is asked and answered.

19 Please move on to your next question.

20 MS. HOLT: That is all the questions  
21 that I have for her. Thank you.

22 JUDGE GERARD: Thank you.

23 **THE WITNESS: Thank you.**

24 JUDGE GERARD: All right.

25 Mr. Korol, does the counsel for the environment have

1 any questions of Ms. O'Neill?

2 MR. KOROL: I do not.

3 JUDGE GERARD: Okay. At this point,  
4 the Council is allowed to ask questions. Chair Drew,  
5 I'd like to first consult with you in front of  
6 everybody, obviously. As the chair, would you prefer  
7 to ask the first question, or would you prefer to ask  
8 it after the rest of the Council members have had their  
9 opportunity? I'd like to see your preference on that.

10 CHAIR DREW: I have -- I would -- I  
11 would prefer to ask them after. At this point, I have  
12 no questions.

13 If I might suggest, Judge, I think that a way to  
14 go about this would ask the Council members to raise  
15 their hand if they have any questions so we don't have  
16 to go through asking each one.

17 JUDGE GERARD: Sure. If that is a  
18 preferred preference, as long as everyone can hear me,  
19 I'm agreeable to do that.

20 So based upon Chair Drew's suggestion, do any of  
21 the members of the Council have questions? Please  
22 raise your hand, and I will allow you to speak in turn.

23 I have -- let me see if I can find the hands as  
24 they go up. Here we go.

25 Mr. Sharp, it appears you've actually had your

1 hand up first. Please go ahead and ask your question.

2 If you're asking a question, you're on "mute,"  
3 sir.

4 MR. SHARP: Let me turn -- let me  
5 turn my camera on too.

6 I wanted to ask the applicant if they had  
7 considered a situation where if there was a fire on the  
8 site. And as I understand it, there are items on-site  
9 that could cause a fire which could damage the soils  
10 and the land, and that might be pertinent to the line  
11 of questioning that we just heard. But I wanted to  
12 find out if the applicant had considered that.

13 **THE WITNESS: Yes, we certainly have**  
14 **considered fire and emergency response in our project**  
15 **planning. At this point, we -- we have engaged a**  
16 **specialty consultant to advise us on fire response**  
17 **measures and emergency response. We've -- and we've**  
18 **certainly discussed -- discussed with our landowners**  
19 **the conditions in the county.**

20 We have entered into preliminary discussions with  
21 the County emergency response department, with the fire  
22 marshal, and they have advised us that they'd be happy  
23 to speak with us about fire protection measures  
24 following the project's approval.

25 MR. SHARP: So if there was a

1 situation where the soil was contaminated or damaged,  
2 does the -- does the project include restoring that  
3 land or removing it?

4 **THE WITNESS: Yes. Absolutely.**

5 MR. SHARP: Okay. Thank you.

6 **THE WITNESS: Thank you.**

7 JUDGE GERARD: Any other questions,  
8 Mr. Sharp?

9 MR. SHARP: No. Thank you.

10 JUDGE GERARD: Mr. Young, please ask  
11 your question.

12 MR. YOUNG: Thank you.

13 I have a couple of questions about the outreach  
14 log. Would it be possible for Innergex Exhibit 4, the  
15 outreach log we looked at previously, to come back up  
16 on the screen?

17 JUDGE GERARD: Ms. Anderson, can you  
18 please do that.

19 MS. ANDERSON: Yes, sir. One  
20 moment. I believe that was Exhibit 4, but I'm pulling  
21 it up now.

22 MR. YOUNG: Thank you.

23 My first question is: Is this outreach log  
24 comprehensive? Does it include all -- all efforts by  
25 the -- the company or its contractors to -- to do

1 outreach, or is this just selected outreach events that  
2 are entered into the log?

3 **THE WITNESS:** I couldn't say that  
4 it's fully comprehensive. I'm sure -- we have multiple  
5 departments feeding into this log -- between community  
6 relations, indigenous relations, environment,  
7 development, government relations -- so I could not  
8 represent that it is a hundred percent comprehensive.

9 MR. YOUNG: I'm just looking at, for  
10 example, the -- what's shaded in blue. It looks like  
11 contact to four different tribes.

12 **THE WITNESS:** Yes.

13 MR. YOUNG: And no response was  
14 received, and that's in August. August 11th. And then  
15 the next chronological entries are up in November.

16 And I -- where I was thinking about this was, does  
17 that mean that when an initial contact was made to the  
18 tribes and no response was received, that three and a  
19 half months later, there had been no follow-up, no  
20 attempt to recontact the tribes?

21 **THE WITNESS:** Well, that initial  
22 outreach, as you can see, was an initial outreach in  
23 informing them and soliciting feedback on our cultural  
24 resources survey. But as -- I may not have discussed  
25 this explicitly earlier. But once the project really

1 gets going and engagement with the lead agency takes  
2 place -- i.e., EFSEC -- all communication with tribes  
3 runs through EFSEC and through DAHP.

4 It's our understanding that -- that -- that  
5 applicants do not engage directly with the tribes at  
6 that point. So that is the reason for perhaps you've  
7 seen a gap in our direct outreach, but the agencies  
8 certainly were -- were in contact with interested  
9 tribes.

10 And I will note also that -- that no tribes  
11 provided any comments on our MDNS or identified  
12 themselves as parties to this proceeding.

13 MR. YOUNG: Okay. That's -- that's,  
14 I think, kind of what I was after.

15 But -- but the initial contact was by the company  
16 or your contractors in August. But after that time,  
17 when you didn't get an initial response, the company or  
18 the contractors did not recontact the tribe, but -- but  
19 EFSEC or DAHP may have done so. Is that --

20 JUDGE GERARD: Mr. --

21 MR. YOUNG: Is that correct?

22 THE WITNESS: Yeah, Innergex  
23 provided the initial outreach. And then subsequent,  
24 the agencies took over communication.

25 MR. YOUNG: Okay.

1 MS. ANDERSON: Your Honor, I'm  
2 loathe to interrupt, but I believe that the witness  
3 said this was to the best of her knowledge, not a  
4 comprehensive because she manages a variety of teams.  
5 So I just want to put this in that context.

6 JUDGE GERARD: Ms. Anderson, you  
7 will have ample opportunity to clarify that with your  
8 witness on redirect. So please don't interrupt at that  
9 point. You'll have your opportunity at that.

10 MR. YOUNG: Was the -- was -- was  
11 the company or contractors ever again in direct contact  
12 with tribes after the August 11th initial outreach?

13 **THE WITNESS: Yes, we were. In**  
14 **fact, our attorney, Ms. Anderson, was contacted**  
15 **directly by the attorney for Yakama Nation earlier this**  
16 **year. The tribe wished to speak directly with -- with**  
17 **our company about the project.**

18 MR. YOUNG: Okay. So there was a  
19 response in 2024 after this initial contact in 2021?

20 **THE WITNESS: That is correct.**

21 MR. YOUNG: Thank you. I don't have  
22 any other questions about this at this time.

23 JUDGE GERARD: Okay.

24 Mr. Livingston, do you have questions of the  
25 witness?



1 MR. LIVINGSTON: Yeah. Thank you,  
2 Your Honor. Couple of them.

3 Real quick. First -- and it's a follow-up to  
4 Mr. Sharp's question.

5 Can you tell me who in the -- which fire district  
6 you talked to? 'Cause the way I understand that, that  
7 area is in a no-man's-land as far as fire coverage  
8 goes. So who are you in discussions with there?

9 THE WITNESS: I was in discussions  
10 with the Benton County fire marshal.

11 MR. LIVINGSTON: Okay.

12 THE WITNESS: We had reached out.  
13 It's probably in that outreach log, but one of my  
14 colleagues had reached out to -- to the fire marshal a  
15 couple years ago at the outset of our application just  
16 to gather more information and introduce the project.

17 And earlier this year, I -- I reached out again to  
18 the fire marshal. I apologize. I can't remember his  
19 name offhand. We -- we spoke. And actually during  
20 that conversation, the fire marshal related to me that  
21 he had discussed my request for a meeting with the  
22 director of planning. And the fire -- the fire marshal  
23 was advised not to engage with Innergex because of the  
24 prohibition on solar projects enacted by the County.

25 We continued to follow up with the fire marshal in

1 attempt to engage with them and eventually received a  
2 response that -- that they would engage with us but  
3 only after the project approval was completed.

4 MR. LIVINGSTON: Thank you.

5 THE WITNESS: So that's our status.  
6 We're -- we're waiting for -- for the resolution of  
7 this -- of this process, and then we will reengage with  
8 the fire marshal.

9 MR. LIVINGSTON: Thank you. That --  
10 that area we've discussed for years about the fact that  
11 we don't have fire coverage and there's large fires  
12 that often get started on the Yakima training center at  
13 the Army's post there. And I'm just curious if there  
14 would be ever the potential to have a discussion  
15 between perhaps the other solar projects that are going  
16 in the vicinity about establishing -- helping establish  
17 a local fire district. I understand there needs to be  
18 community support for that. But this -- this large  
19 investment area seems like it would be a worthy  
20 conversation to have.

21 JUDGE GERARD: Mr. Livingston, I'm  
22 going to ask you, the rest of the Council, to limit  
23 your correspondence with the witness to just questions.  
24 This is just testimony. And this is not a dialogue.  
25 This is an adjudication. So if you have questions that

1 the witness can answer, you're certainly welcome to ask  
2 it. But I would ask that you don't interject  
3 testimony, which is akin to what you're doing at this  
4 point.

5 MR. LIVINGSTON: Appreciate that,  
6 Honor.

7 My question is: Would they be interested and  
8 willing to have that type of conversation in the future  
9 about establishing a local fire district in the area?

10 **THE WITNESS: Yes, we would be**  
11 **interested.**

12 MR. LIVINGSTON: Okay. Thank you.

13 And then one other question is: You mentioned  
14 that the -- the Roberts family will be pursuing more  
15 agricultural activities related to cattle grazing  
16 versus irrigated agriculture and that you mention that  
17 that was more profitable.

18 Can you explain that a little bit more? From my  
19 understanding, typically irrigated agriculture yields  
20 more per acre economically than cattle grazing.

21 **THE WITNESS: Mm-hmm. Well, a**  
22 **representative from the family, Robin Robert, will be**  
23 **testifying later, so he -- he will certainly go into**  
24 **greater detail. But my -- my basic understanding is**  
25 **that due to the declining aquifer, it's taking more and**

1 more water to -- to produce the same yield from the  
2 irrigated crops and that -- that is partially driving  
3 the -- the reduction in -- in economic viability of --  
4 of the irrigated ag practices.

5 MR. LIVINGSTON: Thank you.

6 JUDGE GERARD: All right.

7 Mr. Young, we'll get to you in just a moment.

8 Ms. Holt, you're not part of the Council, and I've  
9 limited this to Council, so -- to the Council's  
10 questions. If you have an objection, you can speak up  
11 to those any time.

12 What was the purpose of your hand being raised  
13 before I allow Mr. Young to ask questions?

14 MS. HOLT: Thank you, Your Honor. I  
15 did not want to interrupt the Council, but I did have  
16 an objection to the statement regarding what the fire  
17 marshal told her about engaging with Innergex. I  
18 believe that that is a hearsay statement and that  
19 should be stricken from the record.

20 JUDGE GERARD: Okay. Unfortunately,  
21 your objection is untimely. It's already been stated.  
22 And, two, this is an administrative proceeding under --  
23 governed under RCW 34.05, so hearsay statements are  
24 admissible so long as they're inherently reliable. You  
25 can certainly make the argument in closing that that

1 statement was not reliable or how the Department should  
2 rely -- or the Council should rely upon it. But the  
3 objection is overruled for hearsay. Secondly, it  
4 was also untimely.

5 So in order to preserve your record, it is in your  
6 interest rather just to interject at the time before  
7 the witness answers the question.

8 MS. HOLT: Understood.

9 JUDGE GERARD: Thank you.

10 Mr. Young, any questions -- or any follow-up  
11 questions of Ms. O'Neill?

12 MR. YOUNG: Thank you.

13 Reflecting upon your responses to questions from  
14 Ms. Anderson and Ms. Holt, but it seemed that in some  
15 places, the company has gone ahead and put certain  
16 things into the application for site certification that  
17 are different types of mitigations or measures to  
18 reduce impacts, but in other places, your response was  
19 that more or less the company is relying upon EFSEC to  
20 properly condition the application.

21 How did you -- how did you distinguish what things  
22 the company was going to put forward proactively versus  
23 the things you just take a more passive approach and  
24 wait to be conditioned by EFSEC?

25 **THE WITNESS: I'm not sure if I**

1 would characterize our approach as passive. The -- the  
2 measures put into -- into the ASC were based on best  
3 management practices and results of our studies and  
4 advice from our subject matter experts at Tetra Tech,  
5 our consulting firm.

6 EFSEC's additional mitigation measures, as I  
7 understand them, are -- are based on their review of  
8 the ASC, their consultant's review, other subject  
9 matter experts from various agencies. So those are  
10 concerns that have been expressed and mitigated through  
11 EFSEC's review. There was not a strategy to sit back  
12 and wait. We proposed what we thought was appropriate,  
13 and we certainly appreciate EFSEC's review and -- and  
14 the additional mitigations that have been recommended  
15 in the MDNS.

16 MR. YOUNG: Thank you. And I have  
17 one final question for you.

18 We've been talk- -- or I've heard a little bit  
19 about decommissioning. How realistic is it to assume  
20 that this project will be decommissioned and return --  
21 and the land returned to agriculture 30 years from now?

22 Is something going to happen in the next 30 years  
23 that makes -- makes the 400 megawatts of energy that  
24 the project will produce no longer needed at that point  
25 in the future?

1                   **THE WITNESS:** It's a bit of a  
2 hypothetical, but, you know, we -- we intend to, you  
3 know, contract the project for -- for a power purchase  
4 agreement, that those typically last around 30 years.  
5 You know, and we've certainly been -- the conditions  
6 have been imposed upon us to restore the land at the  
7 end of the operational term. So we -- we are happy to  
8 comply with all the conditions imposed.

9                   MR. YOUNG: Thank you.

10                  JUDGE GERARD: Mr. Sharp, any  
11 follow-up questions of Ms. O'Neill?

12                  MR. SHARP: Yes.

13                  I wanted to ask: Is -- is washing the panels, 20  
14 percent of the panels a year, is that a standard  
15 practice in a dusty environment?

16                  **THE WITNESS:** That is what has been  
17 advised by members of our -- our Innergex team who work  
18 on operational projects. I don't have firsthand  
19 knowledge of -- of the normal schedule, but that is  
20 what has been advised based on our other operations.  
21 And definitely some of those other operations take  
22 place in dusty environments or deserts even.

23                  JUDGE GERARD: Any other questions  
24 of --

25                  MR. SHARP: Well, I just was

1 somewhat surprised at that level of cleaning based on  
2 other stuff. But, no, I don't have any more.

3 JUDGE GERARD: All right. I don't  
4 see any other hands raised.

5 Any other questions from Council before I allow  
6 Ms. Anderson to redirect her witness?

7 Chair Drew.

8 CHAIR DREW: Thank you.

9 I do have a question. And going back to your  
10 testimony -- and this may be appropriate also for the  
11 property owners. But there was an assumption made by  
12 the County that, without your project, the same  
13 agriculture would take place over the next 30 years on  
14 the land that you are leasing and a discussion of how  
15 many acres would be in agriculture.

16 I guess I would ask: With your knowledge of the  
17 land and perhaps what would take place, is that  
18 accurate?

19 THE WITNESS: I would say it's  
20 accurate that that acreage would be available for  
21 agricultural use if the project were not approved.  
22 Obviously it would be up to the landowners, what they  
23 wanted to do with that land. And certainly they will  
24 be testifying later to their -- their future  
25 intentions.



1           **As briefly discussed by myself and will be**  
2           **discussed further, the aquifer is declining, and**  
3           **irrigated agricultural practices are becoming less of a**  
4           **profitable operation. So in the absence of the**  
5           **project, it would be up to the landowners to decide**  
6           **what practices they would take on the land.**

7                           CHAIR DREW: Thank you.

8                           JUDGE GERARD: Any other questions,  
9           Chair Drew? All right.

10                          Ms. Anderson, any redirect of your witness?

11                           MS. ANDERSON: Very briefly.

12  
13                                           REDIRECT EXAMINATION

14           BY MS. ANDERSON:

15   Q   Ms. O'Neill, I want to make sure I understand the  
16       answer to one of your questions.

17                          Of the 5,000 acres that you have leased, all of  
18       those acres that are not part of the project area will  
19       become available for ag activities; is that correct?

20   A   **That is correct.**

21   Q   All right. If this project goes forward, are there any  
22       benefits to the landowners in regard to wise use of  
23       their water?

24   A   **Yes, there are. As discussed, the aquifer is**  
25       **declining. The water needed for the project's**

1 construction and operation is -- is less than what is  
2 currently being used for their irrigated agriculture.

3 So the water strategy, as I described briefly and  
4 will be discussed in greater detail later, is to put  
5 the bulk of the water into trust while the project  
6 operates. We will use some for the project, and the  
7 landowners will use some water for their ongoing  
8 agricultural activities. But we expect that putting  
9 the water in trust will allow the aquifer to recharge  
10 and improve conditions for future agricultural use.

11 Q Does this project generate revenue to them to be able  
12 to pursue that strategy?

13 A Yes. And I think you will also hear later, the lease  
14 payments will support their efforts to continue and  
15 even expand their agricultural activities on their  
16 adjacent land parcels.

17 Q All right. Briefly, in regard to engagement with  
18 Native American tribes --

19 JUDGE GERARD: Speak up,  
20 Ms. Anderson, please.

21 MS. ANDERSON: I'm sorry.

22 Q (By Ms. Anderson) In regard to engagement with Native  
23 American tribes, can you describe for me how many  
24 exchanges occurred at EFSEC between various parties and  
25 tribes without disclosing the content?

1 A I -- I probably couldn't name the exact number off the  
2 top of my head. But there were numerous exchanges; in  
3 particular, with Yakama Nation. They -- they commented  
4 multiple times on -- on the application and throughout  
5 the -- the review process. We -- we responded to  
6 several inquiries of theirs via EFSEC and DAHP.

7 Q Did you make changes to the project as a result of  
8 their input?

9 A We did. In -- yes, we did.

10 Q And does the MDNS commend continued engagement with  
11 them?

12 A Yes, it does.

13 Q And you are committed to that?

14 A Yes, we are.

15 Q All right. Insofar as fire measures, are there other  
16 fire measures contained in the conditions that EFSEC  
17 has advanced for this project?

18 A There are. We will be holding a 10,000-gallon water  
19 tank on-site. We will be relocating an existing  
20 watering pond that is -- that will be within the fence  
21 line. We are relocating that outside of the fence to  
22 maintain that source of water. And we will be working  
23 with WDFW to develop what they call green strips around  
24 strategic perimeter areas of the project to provide  
25 firebreaks around the project. In addition, the -- the

1 project access roads will all be graveled and -- and  
2 also provide a firebreak.

3 MS. ANDERSON: All right. I have  
4 nothing further, Your Honor.

5 JUDGE GERARD: Okay. Thank you,  
6 Ms. O'Neill.

7 We're at 11:40. I'd like to discuss where we are  
8 with the case and concluding today by 5 p.m. before we  
9 take any sort of break.

10 We still have five witnesses that are listed:  
11 Three for the -- sorry? Three for the applicant and  
12 two for Benton County. We spent little over two hours  
13 with that particular witness.

14 Ms. Anderson, do you see any concerns of us  
15 finishing on time today with the remainder of your  
16 presentation of the case but being done by 5 plus  
17 closing arguments?

18 MS. ANDERSON: No, I don't, Your  
19 Honor. Although I think I would like to take advantage  
20 of the offer or consideration of a half-an-hour lunch  
21 break to be sure of that.

22 JUDGE GERARD: Okay. Yeah. That's  
23 what I want to get the consensus of everybody before we  
24 do that, including EFSEC.

25 Ms. Holt, the same questions for you. Do you see

1 any concerns with us finishing on time with -- with the  
2 time we do have remaining?

3 MS. HOLT: I do not. If we take the  
4 half-hour lunch, I feel like the remaining witnesses  
5 will go a little bit faster.

6 JUDGE GERARD: And, Chair Drew, do  
7 you have any objection to us taking a half-hour break  
8 and perhaps a little over and rejoining at 12:15?

9 CHAIR DREW: I do not.

10 JUDGE GERARD: Okay. Then let's go  
11 ahead and break at this point rather than get partly  
12 into a witness and have to break it up. So let's  
13 reconvene at 12:15 p.m.

14 I'm going to stop the record and disconnect, and  
15 then everyone is welcome to join. If you -- stay on if  
16 you have technical difficulties. Otherwise, we'll  
17 reconvene in 35 minutes. Thank you.

18 (Witness excused.)

19 (Pause in proceedings from  
20 11:41 a.m. to 12:16 p.m.)

21

22 JUDGE GERARD: We're back on record  
23 in the matter of Wautoma Solar, OAH Docket 279466 and  
24 EFSEC Docket EF-220355. The time is 12:16 p.m. on  
25 September 25th, 2024.

1           We were off the record for about 35 minutes. I do  
2 need to confirm with all parties that I did not have  
3 any communication with them and either substantive or  
4 otherwise during that break. I would ask that anybody  
5 who believes I did have contact with them to go ahead  
6 and raise your hands. We'll have you speak up for the  
7 record. If there are no hands raised, then we will  
8 assume that there were no communications.

9           So if anyone does believe I had communication with  
10 them during the break, please raise your hand.  
11 Otherwise, we'll go ahead and continue.

12           Seeing no hands. And my representation is I  
13 didn't speak with anybody. Let's go ahead and move on.

14           Chair Drew, would you like me or Ms. Owens to make  
15 a roll call of the Council before we allow Ms. Anderson  
16 to call her next witness?

17                           CHAIR DREW: Yes.

18                           JUDGE GERARD: Would you like me to  
19 do it --

20                           CHAIR DREW: So can you --

21                           JUDGE GERARD: -- or Ms. Owens? I'm  
22 sorry.

23                           CHAIR DREW: Would you like her to  
24 do it?

25                           JUDGE GERARD: Yes, please. Go

1 ahead. Thank you.

2 MS. OWENS: Thank you.

3 Chair Drew.

4 CHAIR DREW: Present.

5 MS. OWENS: Department of Commerce.

6 MS. OSBORNE: Elizabeth Osborne is  
7 present.

8 MS. OWENS: Department of Ecology.  
9 Department of Fish and Wildlife.

10 MR. LIVINGSTON: Mike Livingston,  
11 present.

12 MS. OWENS: Department of Natural  
13 Resources.

14 MR. YOUNG: Lenny Young, present.

15 MS. OWENS: Utilities and  
16 Transportation Commission.

17 MS. BREWSTER: Stacey Brewster,  
18 present.

19 MS. OWENS: Benton County.

20 MR. SHARP: Dave Sharp, present.

21 MS. OWENS: Washington State  
22 Department of Transportation.

23 MR. GONSETH: Paul Gonseth, present.

24 MS. OWENS: I believe that is all  
25 the Council members.

1 JUDGE GERARD: Okay. And before we  
2 did restart the recording, I did confirm that  
3 Ms. Anderson is back for the applicant.

4 Ms. Anderson, can you please confirm that.

5 MS. ANDERSON: Can you hear me? I  
6 am here.

7 JUDGE GERARD: Thank you.

8 Ms. Holt, also for Benton County, we did confirm  
9 she's present.

10 Would you please confirm.

11 MS. HOLT: I am present.

12 JUDGE GERARD: And, finally,  
13 Mr. Korol for the department -- or counsel for the  
14 environment. Would you please confirm that you're  
15 present.

16 MR. KOROL: I am present.

17 JUDGE GERARD: Very good.

18 So with that, unless there's any order of business  
19 we need to take care of before, applicant, please call  
20 your next witness.

21 MS. ANDERSON: Thank you, Your  
22 Honor. My next witness is Ms. Leslie McClain.

23 Good afternoon, Ms. McClain. Would you please  
24 state your name --

25 JUDGE GERARD: Wait. I still have



1 to swear her in and give her instructions. I was just  
2 writing notes. Give me a moment, please. Thank you.

3 Go afternoon, Ms. McClain. Have you been present  
4 throughout this -- the proceeding so far?

5 **THE WITNESS: Yes.**

6 JUDGE GERARD: Have you heard the  
7 instructions I gave the other witness?

8 **THE WITNESS: Yes.**

9 JUDGE GERARD: Do you have any  
10 questions based upon those instructions?

11 **THE WITNESS: No.**

12 JUDGE GERARD: Okay. Please raise  
13 your right hand.

14 Do you solemnly swear or affirm the testimony  
15 you're about to give will be the truth, the whole  
16 truth, and nothing but the truth, under penalty of  
17 perjury?

18 **THE WITNESS: Yes.**

19 JUDGE GERARD: You are under oath.

20 Ms. Anderson, please begin.

21 MS. ANDERSON: Thank you, Your

22 Honor.

23 ////

24 ////

25 ////



1 Q (By Ms. Anderson) Ms. McClain, can you identify that?

2 A Yes. This is my current résumé.

3 Q Thank you.

4 Please describe for the Council your work --

5 JUDGE GERARD: Counsel, I'm not --  
6 I'm not seeing the document shared.

7 MR. LEWIS: Yeah, we're -- we're  
8 getting the document.

9 MS. ANDERSON: Okay.

10 MR. LEWIS: My apologies.

11 JUDGE GERARD: Please continue.

12 Q (By Ms. Anderson) Please describe for the Council your  
13 work on the Wautoma Solar project.

14 A Sure. So I helped author and do senior review of  
15 Attachment D, which is the land-use consistency review  
16 analysis for the ASC.

17 Q And are you able to answer questions under  
18 cross-examination?

19 A Yes.

20 Q All right. Ms. McClain, what is the purpose of  
21 Attachment D to the ASC?

22 A It's required by the Energy Facility Site Location Act,  
23 or EFSLA. It's intended to inform EFSEC on how the  
24 project's either consistent with the local land-use  
25 regulations or how it can be conditioned to recognize

1 the purpose of the local regulations that may be  
2 preempted.

3 Q So are you saying that if a proposal is not consistent  
4 with the land-use regulation, EFSEC can exercise  
5 discretion to authorize a project?

6 A Yes.

7 Q Okay. And what is that process called?

8 A It's called preemption.

9 Q Do you know why preemption is granted to the Council?

10 A Yeah. My understanding is that, through EFSLA, the  
11 legislatures recognize that there's a need for clean  
12 energy in the state of Washington and has authorized  
13 EFSEC with the authority to site clean energy  
14 facilities, including the authorization to preempt  
15 local regulations if they're in conflict with the  
16 purpose and intent of EFSLA.

17 Q And does EFSEC separately have regulatory standards  
18 that an applicant has to meet for their project to be  
19 approved?

20 A Yes. There's an entire regulatory chapter under the  
21 Washington Administrative Code. I believe it's  
22 Chapter 4 -- 463-60.

23 Q Okay. And to the best of your knowledge, has the  
24 applicant, Innergex, submitted an application that  
25 addresses each of those requirements?

1 A Yes. The Wautoma Solar project's ASC addresses how the  
2 project meets all the standards of that chapter. The  
3 ASC is quite large because that section of the rules is  
4 quite thorough.

5 Q So if a project applies for site certification, they  
6 must demonstrate they can comply with the standards?

7 A Yes.

8 Q Okay. And if locally adopted regulations prohibit a  
9 use in a specific zone?

10 A Then, as we kind of touched on earlier, then the State  
11 has the choice to preempt those local regulations.

12 Q And why is that?

13 A Because as energy is a statewide concern, I understand  
14 that the legislature has given EFSEC that authority to  
15 preempt.

16 Q Okay. Do you know what policies the Council should  
17 look to in making their decision to preempt?

18 A Yeah. So my read of EFSLA, RCW 80.50, it's the policy  
19 of the State to reduce dependency on fossil fuels, and  
20 it's also the policy of the State to increase renewable  
21 energy facilities. So if a local jurisdiction prevents  
22 EFSEC from carrying these policies out through the  
23 passing of, for example, passing of bans on renewable  
24 energy facilities in certain zones, then EFSEC would  
25 have the authority to preempt these ordinances if they

1 find them inconsistent with the statewide policy under  
2 EFSLA.

3 Q Okay. And what is your purpose in testifying today?

4 A So today I'm testifying in my capacity as a  
5 professional land-use planner regarding the project --  
6 that the project is substantially consistent with the  
7 applicable sections of Benton County's land-use code  
8 and comprehensive plan and to explain why this project  
9 should be conditioned so that the Council can recommend  
10 preemption to the governor.

11 Q And can you state why Innergex, then, is here today?

12 A So, in summary, Benton County's Code Chapter 11.17.070  
13 was modified by the County in December of 2021 to  
14 remove solar power generation facility, major, from its  
15 list of conditionally allowed uses in the Growth  
16 Management Act Agricultural District, which is what we  
17 reference as the G-M-A-A-D, or the GMAAD. And that's  
18 where the project's located.

19 And so since it's no longer conditionally allowed  
20 in the Benton County Code, Innergex has requested EFSEC  
21 consider a recommendation to the governor to preempt  
22 this specific section of Benton County's code for the  
23 Wautoma Solar project.

24 Q And am I correct in noting that I earlier incorrectly  
25 referenced the Benton County Code when I referenced

1 11.17.040 and it's really 070, correct?

2 **A That's correct. 040 of the code lists the outright**  
3 **permitted uses in the GMAAD, and 070 references the**  
4 **conditionally allowed uses in the GMAAD zone.**

5 **Q All right. Does the application for site certification**  
6 **also explain how the project complies with the Benton**  
7 **County conditional use criteria?**

8 **A Yes.**

9 **Q Okay. Why do you think this facility should be**  
10 **permitted where it's proposed?**

11 **A I think that this facility is really well-sited. I**  
12 **think that it is compatible with the other agricultural**  
13 **uses that are going to be occurring right outside the**  
14 **solar fence line. And I think that it's -- it's**  
15 **consistent with the County's comprehensive plan, and I**  
16 **think it will be supporting the local landowners'**  
17 **ability to continue to do agriculture at the site.**

18 **Q Okay. Does preemption occur without any regard for the**  
19 **local regulations that are superseded?**

20 **A No, not at all. It's -- the -- if the Council decides**  
21 **to preempt in this case, then per my understanding of**  
22 **the rules of preemption, they need to consider what**  
23 **conditions that they should include with an approval**  
24 **that acknowledges the local land-use codes and**  
25 **comprehensive plan.**

1 Q So based on your review of the Benton County Code, what  
2 is the purpose of the GMAAD zoning district?

3 A Yeah, so if you go into the Benton County Code and read  
4 Chapter 11.17, it spells out what the purpose of the  
5 GMAAD is, and it's to protect agricultural lands in the  
6 county in accordance with the Growth Management Act.  
7 And that includes lands of long-term commercial  
8 significance. And it does this by limiting  
9 nonagricultural uses in the district to those that are  
10 compatible with agricultural uses and also by  
11 establishing minimum lot sizes.

12 Q Okay. So does the GMAAD zone only allow ranching and  
13 farming?

14 A No, not at all. If you look at the Benton County Code,  
15 like we just referenced that Subsection 040 lists  
16 outright permitted uses in the zone. Several of these  
17 are not agriculture-related, such as schools and  
18 churches, single-family homes. Those are permitted in  
19 the -- in the GMAAD.

20 And then also under the conditionally allowed uses  
21 under Subpart 070, there are nonagricultural uses  
22 listed there, such as gravel pits or sand and gravel  
23 pits, solid waste disposal facilities, commercial  
24 airstrips, just to name a few.

25 Q Do you know how big the GMAAD zone is in Benton County?



1 **A There's a table in the comprehensive plan, and I**  
2 **believe it lists just under 650,000 acres, which I**  
3 **think is just under 60 percent of the total landmass of**  
4 **the county.**

5 Q Okay. Did you listen to Ms. O'Neill's testimony  
6 earlier today?

7 **A Yes, I did.**

8 Q Do you recall how many acres the project proposes to  
9 take out of agriculture production based on her  
10 testimony?

11 **A Yes. They plan to take out just under 3,000 acres,**  
12 **which, I believe, if you do the math, is approximately**  
13 **half of 1 percent of the total GMAAD landmass.**

14 Q Okay. And where would one look to find information  
15 about how this project can be conditioned to be  
16 compatible with the GMAAD zone?

17 **A I point you to the applicant's land-use consistency**  
18 **analysis, which is Appendix D.**

19 MS. ANDERSON: All right. Your  
20 Honor, Council, Ms. McClain, I'm going to show you  
21 Exhibit 2. We'll bring out Page 283 of the PDF.

22 Q (By Ms. Anderson) Where in Appendix D to the ASC would  
23 the Council find that information about land-use  
24 consistency analysis?

25 **A Yeah, I would point the Council to two sections of this**

1 document. The first one would be Chapter 2, which  
2 walks through the applicable -- the applicable goals  
3 and policies of the comprehensive plan, and then  
4 Section 3 walks through the applicable sections of the  
5 development code.

6 And in this, we -- we cite, under 11.17.070, we  
7 have them strike out the old language of the solar  
8 generation, major, that was previously in the code as a  
9 conditional use, but we struck it out just to show  
10 that, at the time of the submittal of the application,  
11 that was no longer listed allowed use, but we wanted to  
12 include that so that we could show if it was still  
13 included, that then the CUP criteria would apply, and  
14 then we walk through the CUP criteria.

15 Q Thank you.

16 So we're going to touch on both comprehensive  
17 planning and land-use zoning. Let's start with the  
18 comp plan.

19 Under the Growth Management Act, cities and  
20 counties are required to develop plans to identify  
21 how -- how -- how what? What do we do in a comp plan?

22 A Okay. So under the Growth Management Act, all cities  
23 and counties are required to develop a comprehensive  
24 plan as a guidance document to -- to basically make a  
25 vision for how they want their -- the land in their

1 county to be used.

2 And so these comp plans have a variety of goals  
3 and policies, and that's the case in the Benton County  
4 Comprehensive Plan. It includes, like, a wide range of  
5 topics, including economic opportunities, you know,  
6 management of natural resources, management of water  
7 resources, utilities, public lands, parks. Lots of  
8 different topics are covered in the comprehensive plan.

9 Q Okay. Is it your professional opinion that the Wautoma  
10 Solar energy project is consistent with the Benton  
11 County comp plan provisions?

12 A Yes. It's consistent with the applicable provisions.

13 Q And how is that?

14 A So there's quite a few goals and policies that are  
15 discussed in Section 2 of the -- the land-use  
16 consistency analysis that's before you. I'm not going  
17 to go through all of them, but I -- unless you want me  
18 to, but I'll go through a few.

19 So if you scroll down to Land Use Goal 1 -- let's  
20 see. Land use goal. Yeah, there we go.

21 So it -- the goal says to ensure that the land  
22 uses are compatible with surrounding uses that maintain  
23 public health, safety, and general welfare. Then  
24 there's some applicable policies under that.

25 And so I -- I -- you know, I think that there's

1 plenty of evidence that we provide in this document but  
2 also in the ASC that -- that make the case that the  
3 project will be compatible with the surrounding uses.

4 In particular, the surrounding uses in this case  
5 are agricultural uses, so we have lots of best  
6 management practices and mitigation measures that we  
7 cover in the ASC but are also captured in the MDNS that  
8 relate to the control of dust, traffic, weeds, soil  
9 erosion. There's also a mitigation measure specific to  
10 soil health. And then water quality, like stormwater  
11 runoff. All these things are captured so that we can  
12 ensure that the project can be made compatible with the  
13 surrounding uses.

14 I also want to point out Land Use Goal 2, which is  
15 a little bit further down in the document. And this  
16 land-use goal talks about private property rights. And  
17 so this Policy 1 says that it's a policy of the comp  
18 plan to prevent regulations that create undue adverse  
19 economic impacts or unnecessarily restrict the use of  
20 private property.

21 And so in this case, there is where the comp plan  
22 is -- again, like, lots of different topics are covered  
23 in it. In this case, one of them under land use is  
24 private property rights. This -- like, one of the  
25 implementing -- like, the way I see it as a

1 professional land-use planner is that our -- that the  
2 counties and cities will enact zoning ordinances to  
3 implement the comp plan, and so one of the things is  
4 that they -- there are specific uses that are  
5 envisioned for different zones. So, like, in the  
6 GMAAD, it's agricultural uses.

7 But the -- the comp plan and the zoning ordinance  
8 also acknowledge that other non- -- non-agriculture  
9 uses in this case or uses that aren't the primary use  
10 can be allowed in the zone as long as it's, you know,  
11 consistent with the primary use.

12 So in this case, being able to site a solar  
13 facility in the GMAAD allows private property owners to  
14 pursue economic opportunities that are also compliant  
15 and consistent with the agricultural uses of their  
16 land. There's other examples of that too, like  
17 somebody wanting to site a event facility, which is  
18 also a conditionally allowed use in the code, as they  
19 are looking to diversify their income streams with  
20 having wedding venues on their land. So that would be  
21 conditionally allowed with conditions to make it  
22 compatible with agricultural use.

23 And then I just want to maybe touch on the natural  
24 resource goals. They're a little further down in the  
25 document. The Natural Resource Goals 1 and 2, these

1 ones really capture what the Growth Management Act  
2 requires of the County in terms of protecting the  
3 agricultural lands.

4 So, again, these goals and underlying policies,  
5 they -- when you read through them, they're not  
6 prohibiting nonagricultural use, but rather, they're  
7 encouraging that nonagricultural uses in the zone are  
8 not incompatible with agriculture. So there's  
9 substantial evidence that we present in the ASC and  
10 then also in the MDNS that the project, if it's  
11 appropriately conditioned, can be made compatible with  
12 adjacent agricultural uses.

13 And then also I'd like to point to Policy 3, in  
14 particular, under here. 'Cause it says recognize that  
15 only uses related or ancillary to, supportive of,  
16 complementary to, or not in conflict with the  
17 agricultural activities are appropriate in areas of the  
18 GMAAD.

19 So in that case, they specifically talk about  
20 supportive of, complementary to. And so, you know, you  
21 already heard a little bit from Ms. O'Neill, but you'll  
22 hear this from the landowners later in the proceeding.

23 This project very much is supportive of and  
24 complementary to the agricultural uses that they are  
25 currently doing out there and are planning to continue

1 to do and invest in further on their lands outside the  
2 solar fence line, including from Mr. Jossart, who's  
3 going to be representing Wautoma Farms. He's going to  
4 talk about their vineyard and their plan expansion to  
5 it and how the solar facility is going to support that.

6 And then Mr. Robert of the Robert family ranch,  
7 who's been managing this land for over a hundred years,  
8 he's going to talk about their cattle operations, how  
9 this project is going to support that, and how they're  
10 going to be able continue to do some limited alfalfa  
11 growing outside the solar fence line to support their  
12 cattle operations. So you'll hear more from them.

13 But the point I'm trying to make is that this  
14 project is not just compatible, but it's also  
15 supportive of agricultural operations in the GMAAD.

16 And then the last -- the last goal and policy I  
17 want to point you to is some of the water resource  
18 goals in the comprehensive plan. And there's -- you  
19 know, I think that it comes to no surprise to probably  
20 anybody in the county that there is a scarcity of  
21 groundwater in the Yakima Basin, and that's for sure  
22 true for the underlying aquifer in this area.

23 And so some of these goals are to promote, you  
24 know, you know, appropriate management of groundwater  
25 resources and to protect the long-term sustainability

1 of the aquifer. And so we've already touched on this a  
2 bit, but the landowners are looking to creatively  
3 manage the limited groundwater that they have for their  
4 ongoing agricultural uses.

5 Q So if the County points to other goals and policies in  
6 the comp plan that they contend conflict with the  
7 project, can those be harmonized with the ones that you  
8 just described that endorse the project?

9 A Yeah. I mean, it has to be a balancing act with, you  
10 know, looking at uses in -- the use of land in the  
11 county and in the state. And so in this case, this  
12 project tries to really harmonize the intent of the  
13 GMAAD by supporting and being compatible with the  
14 agricultural uses in the area.

15 Q All right. Does the Benton County comp plan and  
16 development code envision only ag uses in the GMAAD  
17 zone?

18 A No. As I mentioned before, there's many  
19 nonagricultural uses that are outright permitted in the  
20 GMAAD zone, and then there are other ones that are  
21 conditionally allowed.

22 Q Okay. Can you give me examples of uses that are either  
23 allowed outright in the GMAAD or allowed with the CUP?

24 A Yeah. So some nonagricultural uses allowed outright  
25 include single-family residences, schools, churches.



1 Some of the -- the nonagricultural uses that are  
2 conditionally allowed are gravel pits, landfills,  
3 asphalt manufacturing. There's others. Just the ones  
4 that come to mind.

5 Q Okay. And are these uses -- landfills and asphalt  
6 manufacturing, gravel pits -- are those compatible with  
7 an ag zone?

8 A Well, for the outright permitted uses, Benton County  
9 has determined them to be compatible because they're  
10 just outright permitted. And for the conditionally  
11 allowed ones that, you know, the assumption would be  
12 that if, you know, someone were to propose a  
13 conditionally allowed use, that they've come to the  
14 County, and the conditions would be applied to make it  
15 compatible.

16 But I'd say that some of these uses could -- could  
17 potentially be more difficult to make compatible than a  
18 solar facility. For example, like, stone or a gravel  
19 quarry would have a pretty permanent impact to the  
20 land, where in the case of this solar project, Wautoma  
21 Solar project is going to be required to restore the  
22 land to, you know, substantially similar conditions as  
23 it is today at the time of decommissioning.

24 Q Okay. So are all GMAAD lands considered the same, each  
25 acre of land the same?

1 A No. There's variations in, you know, the productivity  
2 of -- of different agriculture lands in the GMAAD.

3 Q Okay. And what makes land most productive?

4 A Well, I would say especially in areas like this where  
5 it's super dry, there's not a lot of -- there's -- I  
6 think there's, like, five to six inches annually of  
7 rainfall. The -- the number-one factor of production  
8 is whether or not there's adequate and reliable  
9 irrigation water.

10 Q And is this your opinion alone?

11 A So, like, not -- no. Because the other piece that the  
12 comprehensive plan points to is also the soil  
13 productivity classification. So the Natural Resource  
14 Conservation Service, or the NRCS, they inventory all  
15 the soils in the state, and then they apply different  
16 productivity criteria to each.

17 And so the soils in this specific area of the  
18 Wautoma Solar project, a good number of them are  
19 designated as prime farmland if irrigated. So in this  
20 case, the -- the soils are acknowledged as prime  
21 farmland if they have irrigation water. And if they  
22 don't, they're not considered prime farmland.

23 Q And when land doesn't have adequate water, what  
24 happens?

25 A In really arid places, that really limits what you can

1 do agriculturally with it. So if you don't have  
2 irrigation in a place like, you -- it limits if you're  
3 even able to grow real crops, or if -- if you can,  
4 it -- it -- if it's really dry, it's probably not going  
5 to give you nearly the amount of yield that you would  
6 have in areas with more rainfall.

7 Q Okay. What do you know about the availability of water  
8 on the land that Innergex has leased?

9 A Yeah, so first off, the landowners will be able to talk  
10 to this in more detail, as they -- they know their land  
11 the best and their water rights the best. But I was  
12 able to review the Aspect report, which I believe is  
13 included as an exhibit, and also talk to the landowners  
14 a bit about their agricultural practices, so I can  
15 speak to -- to that a bit here.

16 MS. ANDERSON: Okay. Your Honor,  
17 Council, Ms. McClain, I'm going to put up on the screen  
18 Innergex Exhibit 19.

19 Q (By Ms. Anderson) Is this the Aspect report you're  
20 referring to?

21 A Yes.

22 Q All right. What is your understanding of the purpose  
23 of this report?

24 A So my understanding is the landowners commissioned this  
25 report from Aspect Consulting to support them with the

1 request that they have to the Department of Ecology to  
2 amend their collective water rights so that they better  
3 match up with their -- their delineated parcel  
4 boundaries and then also to support a strategy to  
5 manage their water as they're facing a declining supply  
6 in the underlying aquifer, the water that's available  
7 in their primary irrigation well.

8 The other thing I understand is that in order to  
9 modify a water right, they must prepare information to  
10 support the modification request. And so that  
11 information is in this document, and it's in the form  
12 of a draft report, because I understand that that's --  
13 that's how it's submitted, is it's submitted as a draft  
14 to the Department of Ecology, and they review it to  
15 make a decision of whether or not to approve an  
16 adjustment to the water right.

17 Q All right. What is so significant about this report  
18 insofar as the ag land that's involved in this case?

19 A So this report is really interesting and informative,  
20 because it provides information regarding the historic  
21 irrigation use of these properties but also the  
22 historic well levels of their primary irrigation well.

23 Q Okay. And showing you Page 19 of this exhibit.

24 Do you see that?

25 A Yeah. Yeah. This -- this table right here shows you

1 what the historic water levels were, or were in our,  
2 you know, up until, I guess, about twenty eight -- 2017  
3 based on the records Aspect was able to acquire from  
4 Department of Ecology.

5 So Well No. 1 is their primary well, which is in  
6 the blue dots. And you can see that back in, you know,  
7 about 1974, 1975, the water level -- that's -- I  
8 understand based on what's in the information in this  
9 report is that that's about when that well was  
10 installed -- - that the water level was just over a  
11 hundred feet below ground.

12 And you can see the trajectory of the dots. It  
13 just has continued to decrease over time to the point  
14 where it's, you know, over 400 feet deep, the water  
15 level, in 2013. And in 20 -- let's see. I think it  
16 says 2017, it was, well, maybe 375 feet deep is what  
17 I'm reading here.

18 So the important takeaway from here is that the  
19 trend is that the water level is going down and that  
20 the -- that the aquifer and the water source isn't  
21 keeping up with the extraction of water for the  
22 irrigation uses.

23 Q So when you say "going down," does that mean that an  
24 irrigator has to go deeper and deeper and deeper in  
25 their well to reach water?

1 A That's right.

2 And also after talking to the landowners -- and  
3 they can talk about this more during their testimony --  
4 but they recently spent, I think, over a hundred  
5 thousand dollars improving the well to allow them to  
6 continue to go deeper and still, you know, obtain water  
7 out of this well.

8 Q Does the report also show how many acres Ecology  
9 believes they have water rights to irrigate today?

10 A Yeah, so it's not just about what the water rights --  
11 the number of, I guess, acre-feet that they are granted  
12 in their water right, but the Ecology also needs to  
13 see, like, how -- where the water has been spent or  
14 where irrigation has occurred over the past five years.

15 And so the Aspect report provides that  
16 information, and it basically points to about 750 acres  
17 are what is, you know, currently being used or that  
18 they can point to for -- for proving out that that's  
19 how much water right that they have based on current --  
20 and recent use.

21 But my understanding is that they had -- that at  
22 one point they irrigated more acres than that; that  
23 they've had to diminish that number of acres because of  
24 the -- the lowering of the access to water out of their  
25 wells.

1 Q Okay. So if there are 750 acres of valid water rights,  
2 how much of the underlying land is left without water  
3 rights?

4 A So there's about 12,000 acres total between the two  
5 landowners' landholdings, so that leaves, you know,  
6 just over 11,000 acres that don't have irrigation.

7 Q And am I correct that under the Benton County  
8 Comprehensive Plan and their hierarchy for valuing  
9 productivity of lands, this is not prime farmland under  
10 the NRCS criteria because it lacks irrigation?

11 A That's correct.

12 Q Thank you.

13 What else does this report reflect on as far as  
14 the ag land that's involved in the case?

15 A It -- it basically reflects that -- that this area  
16 is -- that the agriculture potential of these  
17 landowners' lands is constrained by the fact that they  
18 only have limited irrigation water and that that  
19 irrigation water is continuing to be, you know, less  
20 and less as -- as the aquifer diminish.

21 And so given that the trend of their current  
22 agriculture operations -- which right now they have  
23 about four pivots. They have a variety of different  
24 crops that they're growing out there. But my  
25 understanding is, like, the alfalfa, for example, takes

1 a lot of water and that it's -- that they're unable to  
2 cut as many rounds of harvest each year on their  
3 alfalfa fields because they don't have as much water to  
4 put on their alfalfa fields.

5 So the -- there's diminishing returns on their  
6 irrigated land, and so they need to get creative with  
7 what the water -- what water supply that they have,  
8 diversify their land uses, and find agriculture  
9 activities they can do into the long-term future using  
10 the limited water resources that they have.

11 Q So how does this project figure into that?

12 A So this project will provide income streams,  
13 diversified income streams, that they can use that  
14 money to reinvest in their agricultural operations.  
15 And it also will help -- because they're going to be  
16 able to diversify and rethink how they do their  
17 agricultural operations, they're going to be using in  
18 total less water, with the hope that they can stabilize  
19 their aquifer.

20 Q Okay. And what is the significance of this project,  
21 then, in that framework?

22 A So there's -- there's kind of a couple different things  
23 to kind of consider with this, is that, you know,  
24 they're using the sun not only to grow a limited number  
25 of crops with their vineyard and the alfalfa fields



1 that they're going to continue to have, but they're  
2 also using the sun to create energy, and they're going  
3 to be making revenues off of the solar leases.

4 So, again, diversified income streams off of the  
5 natural resource of solar that will help them keep  
6 their agricultural production, you know, efficient and  
7 economically viable throughout the future.

8 And this is, like, precisely the scenario that is  
9 envisioned based on my review of the comp plan's  
10 policies regarding the water resources and land use in  
11 terms of getting property -- private property rights  
12 the ability to seek economic opportunity.

13 Q So is it fair to say that, in this way, the landowners'  
14 ability to remain in agriculture and thrive is  
15 supported by the solar facility?

16 A Yes, I think that's fair to say.

17 Q Okay. What other information shows that this project  
18 is or can be conditioned to recognize the County's  
19 land-use regulations?

20 A Yeah, so just as I mentioned, the project's going to be  
21 compatible with and supportive of agricultural uses in  
22 the immediate vicinity, but it also meets all the other  
23 applicable criteria in the GMAAD zone, such as the lot  
24 size criteria, setback criteria.

25 There's also conditions that will make sure that

1 the compatibility in terms of -- like, a lot of times  
2 there's concerns about, you know, the spread of weeds  
3 or dust management. Those both will be addressed  
4 through weed management plan, dust mitigation measures  
5 that are part of the conditions in the -- the MDNS as  
6 well as spelled out in the ASC.

7 There's also, you know, something that I haven't  
8 really seen as a commitment for other solar projects --  
9 so it's great to see here -- are some specific soil  
10 monitoring conditions that -- that Innergex is going to  
11 do throughout the operational period and be reporting  
12 that back to EFSEC to ensure that the soils are, you  
13 know, in good -- in good standing and that it will set  
14 the project up well for restoration at the end and the  
15 implementation of the site restoration plan, which is  
16 another requirement under the ASC and the MDNS.

17 Q Do you know if those periodic reports are actually  
18 going to be sent to the Department of Agriculture as  
19 well?

20 A I believe the Department of Ag will probably be on the  
21 Technical Advisory Committee, so I'm sure that they'll  
22 have opportunity to review those soil monitoring  
23 reports. In fact, I think Department of Agriculture  
24 was the one that suggested these soil monitoring  
25 conditions, and so they are aware of this. And that,

1        **you know, came through with their comments on the ASC.**

2    Q    Okay. So if the Council were to choose to preempt the  
3        local land-use regulations here, should the conditions  
4        in the final MDNS, in Section A.5 of the ASC, be  
5        included in the site certification?

6    **A    Yes.**

7                    MS. ANDERSON: All right. Thank  
8        you, Ms. McClain. I have no further questions for you  
9        at this time. Please recall, however, you are under  
10       oath for questions from others. So please stay on.

11                   JUDGE GERARD: Thank you.

12                   Ms. Holt, any questions of Ms. McClain?

13                   MS. HOLT: A few.

14

15                   CROSS-EXAMINATION

16        BY MS. HOLT:

17    Q    Good morning.

18                   Ms. McClain, the parties appear to agree that  
19        EFSEC can preempt. But what must EFSEC consider when  
20        it's making that recommendation?

21    **A    EFSEC should consider the local land-use ordinances in**  
22        **their conditions that they consider to attach to**  
23        **approval if they choose to preempt.**

24    Q    Okay. Does it also have to consider interests of the  
25        County?

1 A Did you say "interests of the County"?

2 Q Yes.

3 A Can you, I guess, explain what you mean by that?

4 Q The purposes behind the creation of those regulations  
5 that are being preempted.

6 A I mean, they -- they need to consider both the, I  
7 guess, the policies of the comprehensive plan, and then  
8 they also need to consider the policies of EFSLA.

9 Q Do the conditions have to reflect those considerations?

10 A The -- the condition -- I think that the way that the  
11 phrasing in the WAC is, is that they need -- the  
12 conditions need to reflect basically their review of  
13 those plans, their acknowledgment of those plans.

14 Q Okay. I believe EFSEC has entered a determination  
15 regarding the project being inconsistent with local  
16 land-use codes.

17 I heard early on in your testimony today that it  
18 is consistent.

19 Which is it?

20 A It's consistent with all portions of the applicable  
21 provisions of the development code except for  
22 11.17.070, which is the list of conditionally allowed  
23 uses in the GMAAD.

24 Q Okay. And being inconsistent with the portion ending  
25 in 070, does that make it overall consistent or

1 inconsistent?

2 **A Inconsistent. I mean, EFSEC made that determination**  
3 **that the project was -- hadn't -- was not in land-use**  
4 **consistency, which is why we're in this adjudication.**

5 Q Okay. And I heard you touch on the CUP criteria.

6 But as the law exists now and at the time of the  
7 application, does that CUP criteria apply to a solar  
8 energy facility, major?

9 **A Technically, no. But we included it in our land-use**  
10 **consistency analysis. Because if EFSEC were to**  
11 **preempt, that could be criteria that they might want to**  
12 **look at. Because if it was as it was before December**  
13 **2021 included as a conditional use in the GMAAD, it**  
14 **would have applied, so -- but it's up to EFSEC. I**  
15 **mean, technically the CUP criteria does not apply.**

16 Q Okay. To the extent that the project is compatible  
17 with adjacent uses, does that fact create an exception  
18 for the CUP applying?

19 **A Can you restate your question?**

20 Q I believe we've heard testimony that the project is  
21 somehow compatible with the adjacent agricultural uses  
22 of the property surrounding the site.

23 Does that fact move this project into a position  
24 where it now qualifies for some sort of exception that  
25 would allow the CUP criteria to apply?

1 **A No.**

2 Q Okay. Are you familiar with Table A.5 of the  
3 application?

4 **A Yes.**

5 Q Okay. Does it provide consideration or conditions that  
6 directly address the county's potential loss of the  
7 approximately 3,000 acres of land during the life of  
8 the project?

9 **A It does -- it addresses the compatibility of the use in**  
10 **agriculture zone, but it does not spell out**  
11 **compensatory mitigation or otherwise of creating 3 --**  
12 **you know, 3 -- just under 3,000 acres of new GMAAD**  
13 **land, no. If that's what you're asking.**

14 Q Okay. I am.

15 And are you familiar with the revised MDNS?

16 **A Yes.**

17 MS. ANDERSON: May be a good idea to  
18 put that exhibit up.

19 MS. HOLT: I'm sorry. I couldn't  
20 hear.

21 JUDGE GERARD: Yeah. Who was  
22 asking? Ms. Anderson, are you -- is that you chiming  
23 in or somebody else?

24 MS. ANDERSON: My question is, if  
25 we're going to ask specific questions, can we put it up

1 on the screen?

2 JUDGE GERARD: I don't think that --  
3 unless she's going to reference something specifically  
4 from the document, I think her question was general  
5 enough if she's familiar with it. If she does get into  
6 the specifics, I think it'd benefit the witness's  
7 testimony. But based on what she's currently  
8 presented, I don't think it's required, so...

9 MS. ANDERSON: Very good.

10 JUDGE GERARD: Thank you.

11 Q (By Ms. Holt) Okay. So I have the same question with  
12 regard to the revised MDNS.

13 Does that document provide considerations or  
14 conditions that directly address the county's potential  
15 loss of 3,000 acres of ag lands during the project's  
16 life?

17 A I think you went through this in quite a bit of detail  
18 with Laura's testimony, but there are lots of  
19 mitigation measures in there that address the  
20 compatibility. And the -- when you look at the  
21 comprehensive plan and the development code, there are  
22 nowhere does it say that it's not allowed to have  
23 nonagricultural uses in the zone.

24 So there's no requirement in SEPA or otherwise to  
25 mitigate for a loss of agricultural land, so the SEPA

1        **determination is that is non- -- that they determine**  
2        **nonsignificance in the topic of land use as you'll see**  
3        **in the -- the SEPA determination from EFSEC.**

4                    JUDGE GERARD: Ms. McClain, that  
5        didn't answer the question you were asked. I would ask  
6        that you do answer what was asked. If you don't  
7        understand it, then counsel can rephrase it.

8                    **THE WITNESS: Okay.**

9                    JUDGE GERARD: Please re-ask the  
10       question, Ms. Holt.

11    Q (By Ms. Holt) So my question was: With regard to the  
12       revised MDNS, does that document provide considerations  
13       or conditions directly addressing the county's  
14       potential loss of approximately 3,000 acres of ag lands  
15       during the project life?

16    **A No.**

17    Q Okay. Is Innergex, in any of its documents or here  
18       today, making any recommendations that addresses that  
19       issue?

20    **A The loss -- the temporary loss of 3,000 acres, no.**

21                    JUDGE GERARD: Hold on one second,  
22       everyone.

23                    Ms. Anderson, we're getting feedback from, I  
24       think, your line in conjunction with Ms. McClain  
25       probably being in the same room. If you're not going



1 to object, can you go ahead and mute your line during  
2 your testimony?

3 MS. ANDERSON: My screen is muted.

4 JUDGE GERARD: I'm getting feedback  
5 from somewhere that I'm not sure where it's coming  
6 from. We'll go ahead and continue. If it becomes too  
7 onerous, then we'll have to track down what the issue  
8 is, so...

9 MS. HOLT: Those are all the  
10 questions that I have for you, Ms. McClain.

11 JUDGE GERARD: Okay. So let's move  
12 on to the Council's question following Chair Drew's  
13 lead prior. If any Council members do have questions,  
14 go ahead and raise your hand, and we'll take them in  
15 order.

16 Mr. Livingston.

17 MR. LIVINGSTON: Yeah, just one  
18 quick one.

19 There's, I think you said, about 750 acre-feet of  
20 water rights have been determined to be on the property  
21 currently.

22 Do you know how much water will be used when the  
23 project's implemented on the property as a whole  
24 between agriculture and the -- and the project?

25 **THE WITNESS: I don't off the top of**

1 my head. And it's 750 acres of land that are being  
2 irrigated. Acre-feet's a bit different.

3 MR. LIVINGSTON: Yeah.

4 THE WITNESS: I know one number I  
5 have at the top of my head is 120,000 gallons annually  
6 during construction. I know it's quite a bit less  
7 that's anticipated for the solar operations. But as  
8 far as the solar plus the ongoing ag that's planned by  
9 the property owners, I don't have those numbers in my  
10 head, but I know that when we looked at it  
11 comparatively to what they're currently using, it's,  
12 like, 4 -- in total, 4 percent of what they're  
13 currently using out there.

14 MR. LIVINGSTON: So 96 percent less  
15 water use than currently.

16 THE WITNESS: That will be left in  
17 the aquifer or in the well, yeah.

18 MR. LIVINGSTON: Thank you.

19 THE WITNESS: And it will be put in  
20 trust. Yeah.

21 (Clarification by reporter.)

22  
23 THE WITNESS: And it will be put in  
24 trust, the Department of Ecology trust.

25 THE REPORTER: Thank you.

1 JUDGE GERARD: Mr. Livingston, do  
2 you have any follow-up questions before I allow  
3 Mr. Young to ask the question?

4 MR. LIVINGSTON: I'm all done.  
5 Thank you, Judge.

6 JUDGE GERARD: Mr. Young, apologies  
7 for accusing you of interrupting. Your hand was  
8 raised. That gave me the visual cue.

9 Do you have any questions of Ms. McClain?

10 MR. YOUNG: No problem. I have one  
11 question.

12 Is this solar project contingent upon Department  
13 of Ecology approving the proposal from the landowners  
14 for transferring and updating water rights?

15 **THE WITNESS: No. My understanding,**  
16 **that the description in the ASC for sourcing water for**  
17 **the solar project is that there's multiple options**  
18 **being pursued, including purchase of water from nearby**  
19 **municipalities.**

20 MR. YOUNG: Thank you.

21 **THE WITNESS: Yep.**

22 JUDGE GERARD: All right. Any other  
23 questions from the Council?

24 And, Chair Drew, any follow-up questions from you  
25 directly as the chair before I allow redirect?

1 CHAIR DREW: I do not.

2 JUDGE GERARD: Okay. Ms. Anderson,  
3 if you have any redirect of your witness, please go  
4 ahead and do that at this point.

5 MS. ANDERSON: I do not, Your Honor.  
6 Thank you.

7 JUDGE GERARD: Okay. Then, with  
8 that, Ms. Anderson, please call your next witness.

9 Ms. McClain, thank you for your testimony.

10 **THE WITNESS: Thank you.**

11 (Witness excused.)

12

13 MS. ANDERSON: Thank you, Your  
14 Honor.

15 The next witness that I would call is Mr. Wally  
16 Jossart.

17 JUDGE GERARD: All right.

18 Mr. Jossart, are you on the call, sir?

19 **THE WITNESS: Yes, I am.**

20 JUDGE GERARD: And have you been  
21 present throughout the entire proceedings?

22 **THE WITNESS: Not the entire**  
23 **proceedings, no. I've been present for most of it,**  
24 **though.**

25 JUDGE GERARD: Did you hear the

1 portion where I explained what was expected of a  
2 witness during the participations, or I can go over  
3 that with you.

4 **THE WITNESS: I was not on during**  
5 **that.**

6 JUDGE GERARD: It's a very brief --  
7 brief description. I'll give it to you.

8 Today we're only recording the audio portion of  
9 today's proceedings. It's being audio recorded as well  
10 as taken down by a court reporter. The video portion  
11 is not. So when you are answering today, please don't  
12 respond with head nods or head shakes as they will not  
13 be picked up either by the recording or by the court  
14 reporter.

15 Also, please avoid using uh-huhs or huh-uhs when  
16 responding. Those can get confusing for the record.  
17 Say "yes" or "no," if you can.

18 If any time today you cannot hear another  
19 participant or don't understand a question, just let me  
20 know. We'll have them repeat it.

21 If you hear "objection" from any of the parties,  
22 please stop your answer immediately as I do need to  
23 make a legal ruling on it.

24 And if the court reporter can't hear you, he may  
25 interrupt in order to get a clarification of what you

1 said.

2 So that's the general expectations.

3 Any questions?

4 **THE WITNESS: No, sir.**

5 JUDGE GERARD: Raise your right  
6 hand. I'm going to swear you in as a witness, please.

7 Do you solemnly swear or affirm the testimony  
8 you're about to give will be the truth, the whole  
9 truth, and nothing but the truth, under penalty of  
10 perjury?

11 **THE WITNESS: Yes. I do.**

12 JUDGE GERARD: You are under oath.

13 Ms. Anderson.

14 MS. ANDERSON: Thank you, Your  
15 Honor.

16  
17 WALLY JOSSART, having been first duly sworn  
18 by Judge Gerard, was  
19 examined and testified as  
20 follows:

21  
22 DIRECT EXAMINATION

23 BY MS. ANDERSON:

24 Q Would you please state your full name and spell your  
25 last name for the record, please.

1 **A Wally Jossart, J-o-s-s-a-r-t.**

2 Q Mr. Jossart, are you generally familiar with the  
3 Wautoma Solar energy project proposed for siting in  
4 Benton County by Innergex?

5 **A Yes, I am.**

6 Q All right. Are you familiar with Wautoma Farms?

7 **A Yes, I'm familiar with Wautoma Farms. It's the**  
8 **operating lands for the family, the Roberts family and**  
9 **the Keelers, so yes.**

10 Q Okay. And do you refer to the owners and the land as  
11 "Wautoma Farms"?

12 **A Yes, that's -- that's how I refer to them. Correct.**

13 Q Thank you.

14 How many acres does Wautoma Farms own in Benton  
15 County insofar as the Keelers?

16 **A About 1500 acres.**

17 Q And what is your relationship to that?

18 **A I'm the investment manager for the family. I oversee**  
19 **the investments across multiple asset classes for them,**  
20 **and this property is one of those investments.**

21 Q All right. Does Wautoma Farms have leases with  
22 Innergex for some of their land?

23 **A Yes, it does.**

24 Q Do you know when those properties were purchased by  
25 Wautoma Farms?

1 **A In 2021.**

2 **Q** Okay. Were the leases already in place at time of the  
3 purchase?

4 **A Yes, they were.**

5 **Q** And who were these lands purchased from?

6 **A We purchased the farm, the Wautoma Farms, from members**  
7 **of the Roberts family.**

8 **Q** Okay. And why was Wautoma Farms interested in this  
9 property?

10 **A A combination of reasons. First off, the -- the**  
11 **vineyard was -- you know, we were looking at the**  
12 **vineyard as a -- as a -- an investment that would be**  
13 **complementary to, you know, other assets that we own in**  
14 **our portfolio, but also for the solar lease revenue**  
15 **that would come from the -- this project with Innergex.**

16 **Q** Okay. How does that solar income factor in the  
17 acquisition here?

18 **A** Well, both are important. We anticipated the  
19 investments in the vineyard based upon both the revenue  
20 we could earn from selling the -- the fruit, the grapes  
21 that we would grow, but also the revenue from the solar  
22 lease as a source of capital to invest in the vineyard.

23 **Q** Okay. Does the land also include two irrigated pivots  
24 and lambing sheds?

25 **A** It does.



1 Q Okay. And lambing sheds are where mother -- mother  
2 sheep are brought to have their babies?

3 A **That's correct.**

4 Q Okay. Was the vineyard mature with vines and producing  
5 marketable grapes at the time of acquisition?

6 A **No, it was not.**

7 Q Why not?

8 A **Prior -- the member of the Roberts family who was  
9 farming the grapes at one point experienced a pretty  
10 significant frost due to the climate out in -- in and  
11 around the vineyard, and after experiencing that loss,  
12 decided not to replant or re- -- reinvest in the -- in  
13 the vineyard.**

14 Q Okay. What has Wautoma Farms done on the property  
15 since it was acquired?

16 A **Since we've purchased it, we've revitalized those  
17 plants that we could save and replanted those that  
18 were -- were -- you know, that we were unable to -- to  
19 revitalize. We've hired a professional farm manager.  
20 We have seasonal staff, a member of six -- six farm  
21 workers that work throughout the -- the growing season.**

22 **We invested in the infrastructure: Trellises,  
23 wires, things of that sort. Wind machine to combat  
24 frost and other tools and equipment. We've also --  
25 we've also -- just really quick, earlier this year,**

1 we've, in partnership with the Roberts, also had to  
2 make a significant investment in our well that helps  
3 irrigate both our grapes and the crop circles on the  
4 property.

5 Q So all told, how much do you think Wautoma Farms has  
6 invested in this property to date?

7 A Between 1.7 and \$1.8 million.

8 Q And what kind of --

9 A That's in addition to what we paid for the property, so  
10 that's --

11 Q Ah. I see.

12 So those are separate?

13 A Yes.

14 Q Okay. What kind of returns have you seen on the  
15 vineyard since the land was purchased three years ago?

16 A We haven't seen any yet. So the -- the vineyard was  
17 not -- was in a -- in a condition where it wasn't  
18 producing marketable fruit. For those that may be  
19 familiar with -- with -- with wine grapes and the  
20 cultivation process, it takes several years. We're  
21 expecting it to take three years before we have a  
22 marketable crop. So we haven't seen any -- any return  
23 yet. Our first sellable crop will likely be next year.

24 Q All right. How did Wautoma Farms decide that acquiring  
25 land that included a 60-acre vineyard that required

1 replanting would provide you an adequate return on your  
2 investment?

3 **A Well, we didn't look at it just as -- as -- from a --**  
4 **from the prospective of the vineyard individually. It**  
5 **was a combination of the revenue we would earn off of**  
6 **the vineyard in addition to the lease revenue that was**  
7 **anticipated from the leases that were already in place**  
8 **with Innergex.**

9 **Q All right. Now, does Wautoma Farms have any plans for**  
10 **expanding the vineyard?**

11 **A We do. We have 25 acres adjacent to the existing**  
12 **vineyard that we are anticipating investing in in the**  
13 **future.**

14 **Q And will the vineyard be adjacent to the solar**  
15 **facility?**

16 **A It will.**

17 **Q How about the expansion area? Is that also adjacent to**  
18 **the solar facility?**

19 **A Yes, that's correct.**

20 **Q All right. Are you counting on the solar lease revenue**  
21 **being part of the funding plan for the expansion of the**  
22 **vineyard?**

23 **A Absolutely. Yes.**

24 **Q Okay. Now, are you also dependent on irrigation water**  
25 **to cultivate grapes on this land?**

1 **A We are.**

2 Q All right. Where does your irrigation water come from?

3 **A There are two wells on the property. It comes from one**  
4 **primary well, which I believe was previously described**  
5 **by one of the former people that testified. I think**  
6 **Leslie testified.**

7 Q Okay. Has Wautoma Farms spent money drilling the well  
8 deeper or somehow deepening the well since you acquired  
9 this property?

10 **A Yes, we have. The -- we've -- we've spent about**  
11 **200,000 earlier this year on going deeper and upgrading**  
12 **the well given the decreasing aquifer and the**  
13 **difficulty in getting enough water to irrigate the**  
14 **crops that are currently on the property.**

15 Q All right. And do you share these water rights with  
16 the Robert family as your adjacent owners?

17 **A Yes, we do.**

18 Q All right. And I hope you heard Ms. O'Neill testify  
19 earlier, you're in the process of reallocating those  
20 water rights?

21 **A Correct.**

22 Q All right. I'm going to put up on the screen what's  
23 already been admitted as Innergex Exhibit 19.

24 Do you recognize this? And I'm going to have one  
25 moment for it to get up on the screen.

1 Do you see that now?

2 **A Yes, I do.**

3 Q If we turn to Page 19 of this exhibit, what does this  
4 table show?

5 **A This is a graph of the depth of the water table, I**  
6 **think from both Well 1 and Well 2, blue dots**  
7 **representing Well 1. I think it shows, over time, the**  
8 **depths by which to reach that water table has been**  
9 **declining.**

10 Q Okay. And are you working with the Robert family and  
11 Innergex on a water strategy to reallocate the rights  
12 to allow all parties enough water from this aquifer?

13 **A Yes, we are.**

14 Q Okay. Would the solar facility interfere with your  
15 ability to operate and manage the 60-acre vineyard?

16 **A No, it would not.**

17 Q Would it prevent Wautoma Farms from expanding?

18 **A No, it wouldn't. In fact, it will help fund that**  
19 **expansion. They're both critical together.**

20 Q Okay. Should the land that is being leased be returned  
21 to Wautoma Farms in substantially the same condition as  
22 it is today once this project is decommissioned?

23 **A Yes.**

24 Q All right. And should the EFSEC Council put conditions  
25 on any approval of the solar facility to -- to make

1 sure that that happens?

2 **A Yes, I think they should.**

3 MS. ANDERSON: All right. I have  
4 nothing further at this time. Thank you, Mr. Jossart.  
5 You're still under oath. And there are other  
6 individuals that may ask questions of you, so please  
7 remain on the line.

8 **THE WITNESS: Okay.**

9 JUDGE GERARD: Ms. Holt, any  
10 cross-examination of the witness?

11 MS. HOLT: Just a few questions.

12

13 CROSS-EXAMINATION

14 BY MS. HOLT:

15 Q Good morning or, I guess, afternoon now, Mr. Jossart.

16 **A Good afternoon.**

17 Q Want some clarification. What is the scope of assets  
18 that Wautoma seeks out? You had mentioned this  
19 vineyard. You had mentioned the solar. But are there  
20 any other projects or types that Wautoma is seeking to  
21 invest in?

22 **A Not under -- not under the, I guess, entity of Wautoma,  
23 no. Just this farm and this vineyard.**

24 Q Was the decision to invest in this vineyard independent  
25 from the possibility of the solar project?

1 **A** When we purchased the property, the leases had already  
2 been signed and were already in place.

3 **Q** Before you signed the leases, did you reach out to  
4 Benton County at all to talk about permitting?

5 **A** The Roberts family signed the leases in 2020 when this  
6 was an allowable use. So when we purchased the  
7 property, those leases were already signed by the prior  
8 landowners and transferred to us.

9 **Q** What are Wautoma's plans for the vineyard if the solar  
10 project application is not approved?

11 **A** Well, we'll continue to lease the farmland, I would  
12 imagine, to existing tenants. We have a couple of crop  
13 circles on property. We have looked at the possibility  
14 of expanding the vineyard. But, again, the water table  
15 and the amount of water available to us is in great  
16 decline, so we have obvious concerns about its  
17 viability moving forward.

18 **Q** Does Wautoma have any concurrent plans to expand  
19 agricultural operations onto the leased property  
20 outside of the project's immediate site --

21 **A** No, we do not.

22 **Q** -- outside of the 3,000 acres?

23 (Interruption by reporter due  
24 to simultaneous speaking.)

25 ////

1 MS. HOLT: I believe the question  
2 was:

3 Q (By Ms. Holt) Did Wautoma consider any -- have any  
4 current plans for agricultural use on the project's  
5 site outside of the immediate fencing?

6 A No, we do not.

7 JUDGE GERARD: Hold on one second.  
8 Ms. Holt, I think we've kind of narrowed down the issue  
9 with the reverb. And for some reason, when people are  
10 speaking when you're unmuted, that's when the echo's  
11 happening.

12 Is there any chance you can ask the question, mute  
13 it, let them answer, so we don't get that feedback, and  
14 see if that fixes the issue? It's inconvenient, but it  
15 will certainly clarify the audio recording.

16 MS. HOLT: I can do that. Yes, sir.

17 JUDGE GERARD: Thank you.

18 MS. HOLT: I do not have any further  
19 questions for him.

20 JUDGE GERARD: My timing as good as  
21 always. I asked you too late.

22 Okay. So with that being said, let's move on to  
23 the Council.

24 If Council members do have questions of  
25 Mr. Jossart, please raise your hand, and we'll take you



1 in order.

2 Okay. Seeing no hands raised. I'm going to offer  
3 it to Chair Drew for one last opportunity. Then we'll  
4 move on to the next witness.

5 Chair Drew, any questions of Mr. Jossart?

6 CHAIR DREW: No questions. Thank  
7 you.

8 JUDGE GERARD: Very good.

9 And, Ms. Anderson, any redirect of Mr. Jossart?

10 MS. ANDERSON: No, sir.

11 JUDGE GERARD: Mr. Jossart, thank  
12 you very much for your testimony, sir. You can  
13 obviously stay on if you choose to do so, but we're  
14 going to call the next witness.

15 **THE WITNESS: Thank you.**

16 (Witness excused.)

17

18 JUDGE GERARD: All right.

19 Ms. Anderson, please call your next witness.

20 MS. ANDERSON: Thank you, Your  
21 Honor. I would call Mr. Robin Robert.

22 JUDGE GERARD: Mr. Robert, are you  
23 on the call, sir? I'm sorry. Actually, Robin is an  
24 androgenous name.

25 Robin Robert, are you on the call? And we'll

1 discern the gender in just a moment.

2 **THE WITNESS: Yes.**

3 JUDGE GERARD: Thank you,  
4 Mr. Robert, it sounds like. Okay.

5 Have you been present throughout the entirety of  
6 the proceedings?

7 **THE WITNESS: Oh, it's, yeah, Robin**  
8 **Robert, yeah.**

9 JUDGE GERARD: Yes, sir. Very good.

10 **THE WITNESS: Yes.**

11 JUDGE GERARD: And have you heard  
12 the instructions I've given to the remainder of the  
13 witnesses?

14 **THE WITNESS: Yes.**

15 JUDGE GERARD: Do you have any  
16 questions about what's expected of you today?

17 **THE WITNESS: No, sir.**

18 JUDGE GERARD: Then let's swear you  
19 in as a witness. Please raise your right hand.

20 Do you solemnly swear or affirm the testimony  
21 you're about to give will be the truth, the whole  
22 truth, and nothing but the truth, under penalty of  
23 perjury?

24 **THE WITNESS: Yes.**

25 JUDGE GERARD: You are under oath,

1 sir.

2 Ms. Anderson.

3 MS. ANDERSON: Thank you, Your  
4 Honor.

5

6 ROBIN ROBERT, having been first duly sworn  
7 by Judge Gerard, was  
8 examined and testified as  
9 follows:

10

11 DIRECT EXAMINATION

12 BY MS. ANDERSON:

13 Q Mr. Robert, could I ask you to please state your full  
14 name for the record.

15 A Robin Robert.

16 Q Okay. And are you part of --

17 A And my --

18 Q -- the Robert -- oh. Go ahead.

19 A Oh. Do you want me to spell my last name?

20 Q Sure.

21 A Okay. R-o-b-e-r-t. No "S."

22 Q Ah. Robin Robert. Okay.

23 Are you a part of the Robert Ranch 5 Plus 1, LLC?

24 A Yes.

25 Q Okay. And who else is a part of Robert Ranch 5 Plus 1?

1 **A There is a total of six of us. Actually, the 5 Plus 1**  
2 **means five brothers and one sister.**

3 Q Okay.

4 **A And our sister passed away about seven, eight years**  
5 **ago, so her daughter Sammie now represents her mom --**

6 Q Okay. And does Robert --

7 THE REPORTER: Pardon me. This is  
8 the court reporter.

9 "Now represents her mom..." Was there more to  
10 that?

11 THE WITNESS: No, just Sammie Mesman  
12 represents her mom who had passed away.

13 MS. ANDERSON: Thank you.

14 Q (By Ms. Anderson) Does Robert Ranch own property in  
15 the Wautoma Valley?

16 **A Yes.**

17 Q How much land?

18 **A The Robert -- Robert Ranch 5 Plus 1 has 6,000 acres.**

19 Q Okay. Do your cousins own land out there as well?

20 **A Yes. They -- they had -- they had 6,000 acres at one**  
21 **time.**

22 Q Where is this located generally, Mr. Robert?

23 **A The ranch is about 12 miles or more north of Sunnyside,**  
24 **close to Highway 241.**

25 Q And what is the climate like there?

1 A Usually pretty dry and hot.

2 Q Like, how much rain do you get in a year's time?

3 A Approximately maybe five to six inches of rain a year.

4 Q All right. And what is on either side of your  
5 property?

6 A Well -- excuse me -- our south boundary meets the top  
7 of the Rattlesnake Hills with Jeff Wiersma, who runs a  
8 cattle ranch.

9 And east were Hanford -- Hanford reservation.

10 And then north of us, we meet Jewel Beaumelle  
11 (phonetic), who runs a cattle operation.

12 And then west of us is -- is pretty close to  
13 Highway 241.

14 Q All right. When did your family first acquire this  
15 land?

16 A Our grandfather, Amel Robert, who came from France back  
17 in 1890, came to the United States. He traveled  
18 through United States to California. Eventually moved  
19 into the Yakima Valley probably back in the 19 --  
20 roughly 1920s. He started out as a shepherd.  
21 Eventually bought his own sheep, started a flock of  
22 sheep. And he started buying the hillside, the  
23 Rattlesnake hillside.

24 Q Would your other --

25 A So it's been in the family.

1 Q I'm sorry. I interrupted.

2 A Sorry.

3 Q Go ahead.

4 A It's been in the family since probably about 1920.

5 Q Okay. Were there other ranching or farming families in  
6 the Wautoma Valley when your grandfather was there  
7 working the land?

8 A Yes, there was probably maybe 10 to 12 families in the  
9 valley, in the valley itself.

10 Q And are they still farming and ranching today?

11 A No. They left a long time ago. They couldn't make a  
12 go of it.

13 Q All right. So what happened to their land? Is that  
14 how your grandfather acquired more acreage?

15 A Yeah, they -- they just couldn't raise any crops. I  
16 think most of these settlers were from probably the  
17 Midwest where they had higher rain. And here, we don't  
18 have much rain, so they really couldn't raise a crop.  
19 So they eventually moved on. My grandfather would  
20 buy -- buy some of their ground and eventually bought  
21 pretty much all the valley.

22 Q All right. Why couldn't they get water from an  
23 irrigation district like the Sunnyside Valley  
24 Irrigation District or Roza?

25 A Well, there's no irrigation district, at least

1 Sunnyside and Roza, until probably the -- maybe around  
2 the 1940s. And they're probably at least 10 to 12  
3 miles away.

4 Q I see.

5 So your grandfather ended up owning 12,000 acres,  
6 correct?

7 A Yes.

8 Q All right. And what was that farm or ranch originally  
9 called?

10 A It was called Robert and Sons Sheep Ranch.

11 Q And did it ever have its own brand?

12 A And that -- yes. It was "ER."

13 Q And was that on your -- your family brand?

14 A Yeah, on the sheep. And then later on, when we bought  
15 cows, it went onto the cows.

16 Q Do you still use the "ER" brand today?

17 A Yes.

18 Q All right. Did your grandfather farm and ranch with  
19 his children?

20 A Yes. Our grandfather, Amel, he was a sheep man. And  
21 that's where he bought the hillside, Rattlesnake Hills,  
22 he had about five or six springs, so he just needed  
23 water sources for the sheep, and they graze the  
24 hillside.

25 Q I see.

1 **A** Later on, the last -- the last family that had left, he  
2 had bought that and had a small well. And they did do  
3 a little irrigation back in the -- well, back in the  
4 '50s.

5 Q Okay. And did your dad ultimately leave his land to  
6 his children?

7 **A** Yeah, my grandpa did, yes. To -- and he -- he turned  
8 it over to Amel Robert, Jr., and then my dad, Victor  
9 Robert.

10 Q I see.

11 So do any of -- you said you were one of five  
12 brothers, correct?

13 **A** Yes. Yes.

14 Q Do any of the brothers work full-time on that property  
15 today?

16 **A** Yes. My brother Gene Robert.

17 Q How long has Gene worked on the ranch?

18 **A** Probably getting close to 50 years.

19 Q And how much is Gene paid per month?

20 **A** Well, he gets a thousand dollars, but also he does have  
21 some irrigated ground with our -- with the ranch, gets  
22 some income, and then he also runs some of his cows  
23 with our cows too, so he gets that income.

24 Q Okay. Is the thousand dollars a month what he's always  
25 been paid by the ranch for the work he does for Robert



1 Ranch?

2 **A Yeah, pretty much. Yeah, pretty much. Yeah.**

3 Q Does he get any paid vacation, retirement benefits, or  
4 health care benefits from that?

5 **A Well, no. No health -- health care benefits. He is**  
6 **68, so he's not on -- he's on Medicare, and he's got a**  
7 **supplemental insurance. When you're a farmer, you make**  
8 **vacations when you can. That's kind of how it goes.**

9 Q Does the ranch employ anybody outside the family?

10 **A Yes. We have one employee. His name is Chris Tucker.**  
11 **He's kind of the young guy on the farm. He's 58 years**  
12 **old. He's been with us 36 years.**

13 Q All right. Has your family ever tried dryland crop  
14 farming, such as dryland wheat?

15 **A Yes, we did in the past. But it wasn't -- there again,**  
16 **with only five, six inches of rain, we only got maybe**  
17 **20 to 25 bushel wheat, soft white wheat.**

18 Q Okay. What equipment do you need to even raise wheat?

19 **A Well, usually a big tractor to disc it. Probably a rod**  
20 **weeder, which kind of undercuts the weeds. Then you**  
21 **got to have the grain drills to plant the seed. And**  
22 **then later on, a combine to harvest the grain.**

23 Q All right. Are there other areas of the state of  
24 Washington where dryland wheat is more productive or  
25 highly productive?

1 A A lot of them -- a lot of time people talk about the  
2 Palouse. That's a very good area for wheat. They --  
3 they get maybe average 60 or 70 bushels. Sometimes on  
4 a real good year, 80 or 90 bushel.

5 Q So why do they get more than you?

6 A Well, I'm guessing they probably get maybe 15 or 20  
7 inches of rain.

8 Q All right. So where is the price of a bushel of soft  
9 white winter wheat today?

10 A I believe it's around \$5.80, roughly, right now.

11 Q All right. What was it when you were actually farming  
12 dryland wheat?

13 A Well, back in the middle '70s, it was -- it was  
14 probably 5.50, almost \$6 a bushel back then.

15 Q Okay. So the price of wheat is flat?

16 A Yes.

17 Q All right. Has the price of farm equipment, seed, and  
18 fertilizer stayed flat since the 19 --

19 MS. HOLT: Your Honor, if I can  
20 object. In the interest of time, I'm not really sure  
21 where this line of questioning is going in terms of  
22 relevance to land use.

23 JUDGE GERARD: Ms. Anderson,  
24 response, please.

25 MS. ANDERSON: Yes. This is

1 entirely relevant to land use. It's the County's  
2 position that this is agricultural land of long-term  
3 commercial significance and therefore it should not be  
4 preempted by EFSEC. This goes precisely to the heart  
5 of the County's argument here.

6 JUDGE GERARD: Ms. Holt, response.

7 MS. HOLT: Your Honor, I believe the  
8 record herein shows that the applicant has agreed it is  
9 categorized as GMAAD lands at this time, and at the  
10 time of the application, I do not see any argument that  
11 it needs to be decommissioned as ag land. I don't  
12 believe that that is an issue before the Council today.

13 MS. ANDERSON: Your Honor, if I may.

14 JUDGE GERARD: Yes.

15 MS. ANDERSON: We already heard  
16 Ms. McClain talk about the various Benton County  
17 comprehensive plans that a solar project in conjunction  
18 with the Roberts' other activities on their land is not  
19 only compatible but supportive of agriculture. That  
20 goes to the heart of the County's argument here that  
21 that is why this project cannot go forward, that they  
22 cannot be compatible or supportive. That is precisely  
23 what Mr. Robert is here to share his family story  
24 about. It is entirely relevant.

25 JUDGE GERARD: The objection's

1 overruled. You can answer the question.

2 Don't answer till I make my legal ruling, please,  
3 sir.

4 The objection's overruled. Please re-ask the  
5 question. Allow the witness to answer it if we didn't  
6 get an answer to the previous question.

7 Q (By Ms. Anderson) I believe the previous question I  
8 asked was whether the price of farm equipment, seed,  
9 and fertilizer has stayed flat since the 1970s.

10 A **Everything's gone up. Everybody can remember back in**  
11 **the middle '70s, a car was 4,000. Now a new car is**  
12 **probably 40,000. So same with farm equipment. It's**  
13 **probably gone up ten times.**

14 Q All right. Would dryland wheat farming on your land  
15 today be enough to cover your costs?

16 A **No.**

17 Q All right.

18 A **Could I -- could I say something?**

19 Q Certainly.

20 JUDGE GERARD: Well, that depends.  
21 If it's response to a question. If it's just an open  
22 narrative, then no. If it's -- is it an amendment --  
23 is it in addition to a question that was asked of you,  
24 sir, or is it something you just want to say?

25 **THE WITNESS: Well, I'm just trying**

1 to maybe speed things along if you wanted to.

2 JUDGE GERARD: Let's -- if that's  
3 the nature of what you're going to ask, I prefer you  
4 didn't. And --

5 THE WITNESS: Okay.

6 JUDGE GERARD: -- Innergex is  
7 represented by the attorney. But thank you for the --

8 THE WITNESS: Okay.

9 JUDGE GERARD: -- consideration.

10 THE WITNESS: Sure.

11 Q (By Ms. Anderson) I'll try to speed this up,  
12 Mr. Robert.

13 When did the ranch first get irrigation water, and  
14 from what source?

15 A There was a smaller well that was on -- down the  
16 valley. Actually, back then, actually it was put in in  
17 the 1920s. Actually was artesian. With several  
18 hundred gallons a minute. Eventually that stopped. It  
19 was pretty much just for domestic use for -- for sheep  
20 and other things.

21 They did have a little bit of maybe 60 or 70 acres  
22 of irri- -- irrigated for alfalfa. That was it.  
23 Eventually we improved it with wheel lines and was  
24 doing about 140 acres. And that was -- it was like  
25 that until 1975, '76, until the big well came in.

1 Q Okay. And how much did that newer well produce when it  
2 went in?

3 A When it went in, it was producing 4,000 gallons a  
4 minute. I was running four circles, but we had --  
5 since the water was so good, we had it on more. We had  
6 wheel lines, about ten wheel lines. And we were  
7 probably farming a thousand acres then.

8 Q Okay. And do you recall what depth that well had to go  
9 to reach groundwater?

10 A I think that went down a thousand, maybe 1100 feet.

11 Q Okay. Now, you said that you expanded the farming  
12 operations.

13 Did you include alfalfa?

14 A Yes.

15 Q And does alfalfa take a lot of water?

16 A Yes, it does.

17 Q All right. Since the 1970s, has that well continued to  
18 produce the same amount of water?

19 A No. Like, especially for the water table has dropped.  
20 We eventually kept going down for -- for the water. We  
21 had to go with smaller bowls, which is used to pump the  
22 water. And then last winter, we had to have the bowls  
23 pulled, 'cause the last two years, we've been sucking  
24 in air. So now we're -- instead of 4,000 gallons a  
25 minute, we're down to about 14- to 1500 gallons a

1       **minute.**

2       Q   All right.  And is this issue regarding the declining  
3       level of the aquifer unique to you?

4       A   **That's just the way it is in the area.  A lot of wells**  
5       **towards Yakima, towards Coal Creek, the water tables**  
6       **are going down.**

7       Q   Are they not getting enough recharge from snowfall or  
8       rainfall?

9       A   **Yes.**

10      Q   All right.  Do you have any idea, just quickly, how  
11      much it would cost to replace your current well with a  
12      new one?

13      A   **No.  Probably maybe 500,000.  I'm just guessing.**

14      Q   Do you have that money to put in a new well?

15      A   **No.  This --**

16      Q   All right.

17      A   **This winter when we lowered the bowls, Allison Keeler**  
18      **and us, we had to put in, well, 190-, almost 200,000 to**  
19      **get the water -- the bowls down farther to get to the**  
20      **water.**

21      Q   Okay.  Would a new well make any difference insofar as  
22      how deep you have to go to get to the water?

23      A   **Well, the well we have now is crooked.  So I don't**  
24      **think we could really lower our bowls any farther.**  
25      **We'd almost have to drill another well.**

1 Q Okay. So I want to make sure I understood your  
2 description.

3 What is the highest number of acres you've ever  
4 had in irrigated crops in the history of farming this  
5 land?

6 **A Is approximately a thousand acres.**

7 Q Okay. And have you reduced the number of acres under  
8 cultivation because of dwindling water supply?

9 **A Yes. We're probably total about 740 acres now.**

10 Q Okay. And that includes both your and the Keelers'  
11 land?

12 **A Yes.**

13 Q Has your yield per acre of alfalfa been affected by  
14 dwindling water supply?

15 **A Yes, we haven't raised as much alfalfa 'cause the  
16 demand for water. So instead of raising alfalfa for  
17 hay, we've been raising barley for hay and triticale  
18 for hay.**

19 Q Okay.

20 **A And that only has water for April and May. There's  
21 only two months of irrigation there. Then you cut it.**

22 Q Okay. Now, do you know that Benton County has  
23 designated your land as Growth Management Act  
24 Agricultural District and that it has listed as ag  
25 lands of long-term commercial significance your



1 property based on factors including growing capacity,  
2 productivity, and soil composition?

3 **A Probably. If you have the water, you could raise some**  
4 **pretty good crops. But if you don't have the water,**  
5 **you don't get much.**

6 Q Okay. Do you know if anyone from the Robert Ranch has  
7 tried to reach out to the County to talk about the  
8 designation of your land without water?

9 **A No, not that I know of.**

10 Q Okay. Do you know if your lands have any promise of  
11 long-term commercial significance, Mr. Robert?

12 **A Well, what we're really hoping is Innergex for solar.**  
13 **That's the main thing for us right now.**

14 Q All right. What's the value of your land per acre  
15 without water rights or poor water rights?

16 **A Without any water, it's probably worth between 5- to**  
17 **\$600 an acre.**

18 Q And if it has water rights?

19 **A Well, I know over toward Sunnyside, it's between 10,000**  
20 **to \$14,000 an acre.**

21 Q Okay. So let's -- let's talk about what you're  
22 ranching today.

23 How many head of cattle do you have?

24 **A We have 160 head.**

25 Q Okay. And you testified earlier that your cousins

1 ended up owning half of the 12,000 acres that Amel  
2 Robert owned.

3 Is that adjacent to you?

4 **A Yes.**

5 Q Okay. And do they grow the same crops as you?

6 **A Well, they -- probably 15 -- 15 years ago, they decided**  
7 **to go a little different direction. They decided to**  
8 **raise wine grapes, 60 acres of wine grapes. And then**  
9 **they were farming their two circles, one for wheat and**  
10 **one for alfalfa. Yeah, that's what they did for a**  
11 **while.**

12 Q Okay. Do they have the same issue with declining water  
13 supply, or do you share those water rights?

14 **A We share the water rights 50/50.**

15 Q All right. Did they have any barns or sheds?

16 **A Yes. They had, well, the sheep sheds down by the main**  
17 **ranch. A hay barn. Some outbuildings, yes.**

18 Q Did they own sheep as part of their ag activities?

19 **A Well, they didn't. But we -- we had sheep from 1920**  
20 **until 1988, and then my father, Victor Robert, and my**  
21 **Uncle Amel wanted to retire, so they sold the sheep,**  
22 **increased their cattle herd. My brother Gene and I are**  
23 **more farmers than sheep men.**

24 Q Okay. Did they also put any land in CRP?

25 **A Yes.**

1 Q And for the benefit of the Council, what is CRP?

2 A It is called Conservation Reserve Program. You idle  
3 your ground. We have to plant it in grass, usually  
4 crusty wheat or Secar or bluebunch. And then it sits  
5 idle for ten years. And the government pays you --  
6 back then, it was \$50 an acre.

7 Q So they were, in essence, paid by the government not to  
8 farm that land, correct?

9 A Yes. Yes. Let the land kind of -- let it sit idle and  
10 let it rest.

11 Q Okay. Now, you spoke about the vineyard.

12 Do you know whether the vineyard produced quality  
13 wine grapes?

14 A I believe it did, yes. I know two -- two, maybe three  
15 years into it, had a terrible frost. It killed  
16 everything. So it had to be cut back and started  
17 again. But I believe at maybe it's sixth, seventh  
18 year, I was told they raised some pretty good grapes  
19 for -- for wine.

20 Q All right. So how did your cousins fare financially  
21 with their farm plan pivoting from sheep and a lot of  
22 crops to two pivots and 60 acres of vineyard?

23 A Well, like farming, there's always something goes  
24 wrong. So combination. I think they had a frost later  
25 on that affected the grapes. And then it got really

1 hard to sell their grapes to anybody, so they didn't  
2 have any buyers, I think, the last two years. They  
3 were part -- I don't know exactly. That's -- that was  
4 their business, so...

5 Q Understood.

6 Do you know if they had financed some of their  
7 agricultural efforts?

8 A Yes.

9 Q Were they able to make the payments --

10 A And they --

11 Q -- after they lost the vineyard?

12 (Interruption by reporter due  
13 to simultaneous speaking.)

14

15 Q (By Ms. Anderson) I was asking whether they were able  
16 to make the payments after the loss of the vineyard.

17 A They -- they told us -- it got to the point they --  
18 they owed the Columbia Bank \$1.7 million. They were  
19 paying the interest, but they could not pay the  
20 principal.

21 Q So did they secure that debt with the farmland?

22 A Yes.

23 Q Did they end up in foreclosure?

24 A No. They almost did. But that was about the same  
25 point Innergex was talking about putting a solar farm

1 on the ranch. And then to keep the project going,  
2 Allison Keeler came in to buy around 1500 acres of our  
3 cousins' to pay off the hundred -- the \$1.7 million,  
4 cleared up their debt, and then actually she had -- I  
5 don't know; it's up to them, say what they were going  
6 to do -- but it was -- Allison Keeler was going to  
7 share their rent of solar with our cousins.

8 Q Okay. So your cousins still have some land.

9 Did the water rights go with the property that the  
10 Keelers purchased?

11 A Yes.

12 Q All right. Did your cousins have cattle?

13 A Yes, they did. For a while.

14 Q They don't have them anymore?

15 A No.

16 Q What happened --

17 A They had to sell them -- you say they had to sell them  
18 'cause they're about ready to go to bankrupt. They're  
19 trying to come up with any money they can, so they sold  
20 their cows to us. We bought their cows.

21 THE REPORTER: And, Your Honor, this  
22 is the court reporter again. Once again, I'm missing  
23 the end of the question.

24 JUDGE GERARD: Yeah. Just before we  
25 go any further: Mr. Robert, I understand you want to

1 answer the questions, but I need you to wait until the  
2 question is fully answered [sic], then answer it.

3 **THE WITNESS: Oh.**

4 JUDGE GERARD: 'Cause right now,  
5 you're kind of speaking over each other, which the  
6 court reporter's having and the record is having a hard  
7 time to distinguish from. So --

8 **THE WITNESS: Okay.**

9 JUDGE GERARD: -- please just hold  
10 off until --

11 **THE WITNESS: All right.**

12 JUDGE GERARD: -- you're absolutely  
13 sure she's done. No problem, sir.

14 So, Ms. Anderson, please re-ask the question for  
15 the court reporter.

16 MS. ANDERSON: I believe I had asked  
17 what happened to the cattle.

18 JUDGE GERARD: Very good. And I  
19 believe Mr. Robert has answered it, so let's move on to  
20 the next question.

21 Q (By Ms. Anderson) Okay. So if I understand, your  
22 grandfather's 12,000 acres includes the 6,000-acre  
23 Robert Ranch, 1500-acre Wautoma Farms of the Keelers,  
24 and then unfarmed land owned by your cousins, correct?

25 **A Yes.**

1 Q All right. And the Keelers now own the lamb sheds, the  
2 vineyard, and the pivots. And combined, you have --

3 **A Yes.**

4 Q And combined, you have 700 acres in production today  
5 and 150 cows?

6 **A Yes.**

7 Q All right. Your brother is paid a thousand dollars a  
8 month, and you have a full-time hired hand.

9 JUDGE GERARD: Ms. Anderson, we  
10 don't need to recap what's already stated. So the  
11 witness has testified. It's already in the record.  
12 Just ask the questions, please.

13 MS. ANDERSON: Thank you.

14 Q (By Ms. Anderson) Do you and your other siblings get  
15 paid by the ranch?

16 **A No.**

17 Q Have you tried to get other family members into farming  
18 and ranching?

19 **A Yes. We've talked to our nieces and nephews, but**  
20 **they're not interested.**

21 Q Okay. So, Mr. Robert, if you recall, when you entered  
22 into the leases with Innergex, was a major solar  
23 facility allowed in this zone with the conditional use  
24 permit?

25 **A I -- I thought it was back in 2020. I thought it was.**

1 Q Okay. Did you hear Ms. O'Neill testify earlier today?

2 **A Yeah, I probably did, yes.**

3 Q Okay. Let me ask you: Did you hear her testify that  
4 the amount of water needed for the construction of the  
5 facility is small?

6 **A Yes, it's small. Yes.**

7 Q All right. And will the water rights that you share  
8 today between your family and the Keelers be  
9 reallocated to clear up what water goes where, to whom,  
10 and what amounts?

11 **A Yes.**

12 Q All right. You'll get revenue from the solar leases,  
13 correct?

14 **A Yes.**

15 Q All right. Do you plan to keep the same size herd and  
16 operate the same circles, or are there changes afoot?

17 **A We would keep the same amount of cows, approximately**  
18 **150 head of cows, and run those on the Rattlesnake**  
19 **Hills. The irrigated, we'd probably get it down to**  
20 **about 50, maybe 60 acres of alfalfa, which we would**  
21 **need for our cows.**

22 Q Okay. Do cattle demand as much water as alfalfa?

23 **A Oh, no.**

24 Q Is it a more sustainable practice to run cattle with  
25 the diminishing water supply?



1 **A It is right now.**

2 Q All right. Can you graze your cattle year-round?

3 **A Yes. On the ranch, yes.**

4 Q Okay. Will you be growing anything to feed the cattle  
5 in addition to grazing?

6 **A Well, the -- we hope the 50 to 60 acres alfalfa. And  
7 that hay will be during the wintertime while they're  
8 calving. We have to feed them, provide them hay.**

9 Q Okay. Will you be putting in any new facilities or  
10 improvements or stock ponds on the ranch with the  
11 revenue from the solar leases?

12 **A Yes, we hope to put in at least two, maybe three ponds,  
13 real big ponds for the -- our cows, but also we have  
14 elk and deer on our property, so they'd have a water  
15 source.**

16 **But also a big thing it'd be help: In the  
17 summertime when they have range fires, they like to  
18 come in to -- we have smaller ponds now, but we'd like  
19 to put in some big ponds so they come with the  
20 helicopters and dip into our ponds and help fight fire.**

21 Q Okay. So if you're shifting away from water-heavy  
22 alfalfa and you're focusing on your cattle, will you  
23 need less water in the future?

24 **A Yes, less water.**

25 Q Okay. And a small portion of your water rights will be

1 used on the solar facility; is that correct?

2 **A Yes.**

3 Q All right. If I were to combine the two, your cattle  
4 operations in the future and the solar facility, will  
5 you collectively use more water, the same amount, or  
6 less water than you do today?

7 **A Less.**

8 Q All right. Do you know what happens if you use less  
9 water? Do you -- are you able to keep the excess water  
10 that you're not using?

11 **A Yes, we hope to bank it into a trust.**

12 Q Okay. So where will the water go if you're not using  
13 it? What happens to it?

14 **A Well, it sits there in the aquifer. And we kind of  
15 hope it recharges itself. Hope the water table will  
16 come up.**

17 Q Okay. Will the ranch be more profitable with the lease  
18 revenue and the focus on cattle?

19 **A Yes.**

20 Q And you'll still grow alfalfa?

21 **A Some, yes.**

22 Q All right. Will this solar facility interfere with  
23 your access to your land?

24 **A No.**

25 Q Is it a visual impediment, or will it block your views

1 of scenery, hilltops, or any other high-value  
2 viewsheds?

3 **A No.**

4 Q Okay. What about construction dust? Is that going to  
5 interfere with your farming and ranching?

6 **A No, I don't think so. Farming, we're just given --**  
7 **it's dusty anyway when you're farming, so about the**  
8 **same.**

9 Q Okay. Even so, if conditions could be imposed that  
10 required Innergex to keep their construction dust down,  
11 would you support that?

12 **A Yes.**

13 Q Okay. Now, as for this facility interfering with area  
14 traffic, are there lots of farms and ranches in the  
15 Wautoma Valley with trucks, fertilizer trucks,  
16 combines, harobeds, and the like?

17 **A No. We're the only ones in the valley.**

18 Q Okay. Is the area heavily populated otherwise with  
19 just residents that create a lot of traffic?

20 **A No.**

21 Q Okay. Are you concerned that construction activities  
22 on the project will adversely impact any traffic out  
23 there?

24 **A Probably only impact would be the employees coming in**  
25 **the morning to go to work. That'd probably be the only**

1       **time there'd be impacted on the -- on the 241 and**  
2       **Wautoma Road.**

3   Q   Okay.  Would you support a condition being imposed on  
4       the project that requires them to have a traffic plan?

5   A   **They probably should have something.**

6   Q   Okay.  Will the lambing sheds and pastures still be  
7       available every spring for the mother sheep and lambs?

8   A   **Yes.**

9   Q   All right.  What about smells?  Is this project going  
10      to give any odors off?

11  A   **No, I don't think so.**

12  Q   All right.  How about noise?  Do you know if it is  
13      required to comply with noise requirements of state law  
14      or local law?

15  A   **I'm sure there will be some noise, but it'll all be**  
16      **down deep into our valleys.  West, you probably**  
17      **wouldn't really hear them.**

18  Q   Okay.  By the way, there are already two state highways  
19      in the neighborhood, correct?

20  A   **Yes.  241 and 24.**

21  Q   All right.  Are there any utility structures in the  
22      area now?

23  A   **Yes.  There's probably at least three big power lines**  
24      **go through -- and then probably two -- some smaller**  
25      **power lines that go through our valley.**

1 Q Okay. And you have the Hanford nuclear reservation to  
2 the east?

3 A Yes.

4 Q Are there any substations in the area?

5 A Yes. North on our property, there's the Wautoma  
6 substation.

7 Q Okay. Do you recall when that was built?

8 A Not exactly. It was probably built -- well, we didn't  
9 get -- well, that's a good question. We didn't get  
10 electricity until the '50s there at the ranch, so  
11 probably then.

12 Q Okay. Is this project incompatible in any way with the  
13 ag uses in the Wautoma Valley?

14 A No.

15 Q To the best of your knowledge, is this project going to  
16 require any new public roads that have to be built that  
17 taxpayers will have to maintain?

18 A No.

19 Q Okay. Now, does Robert Ranch pay property taxes to the  
20 County?

21 A Yes.

22 Q Do you get a reduced rate because it's ag land?

23 A Well, when you talk ag land, a lot of people think of,  
24 you know, farming, irrigated ground. But most of our  
25 ground is a range grounds, and that's not worth very

1       **much, so the taxes aren't very high on that.**

2   Q   Okay.  Mr. Robert, will having the second stream of  
3       income from the leases support your family's ability to  
4       stay in cattle and farming?

5   **A   Yes.**

6   Q   All right.  And do you expect Innergex to return the  
7       property to your family at the end of the lease in  
8       substantially the same condition it is today so that  
9       it's available for ag use?

10  **A   Yes.**

11  Q   All right.  Do you -- would you support this Council  
12       imposing conditions that require them to do that?

13  **A   Yes.**

14  Q   All right.  Do you want them to have to post security  
15       to guarantee that the money is available to do that in  
16       the event they don't do it?

17  **A   Yes.**

18  Q   All right.

19  **A   Is there -- could you repeat that.  Sorry.**

20  Q   Would you support a condition that requires them to  
21       post a bond to guarantee that it gets decommissioned  
22       and restored?

23  **A   Yes.**

24  Q   All right.  So my last question:  Is the Wautoma solar  
25       energy project putting an end to over a hundred years

1 of farming and ranching in your family?

2 **A No. It'll keep -- it'll keep going. Our farm will**  
3 **still keep going.**

4 **Q Okay. Is there anything else you would like this**  
5 **Council to know?**

6 **A Well, I just want to say: Keep talking about 3,000 ag**  
7 **land. Well, that's about 740 of irrigated ag land.**  
8 **Rest of that inside the solar is just either old CRP**  
9 **ground or range ground.**

10 MS. ANDERSON: Okay. Thank you,  
11 Mr. Robert. I know this was long. We're going to keep  
12 you under oath because we're -- the judge is going to  
13 allow the Council and chair and perhaps himself and the  
14 attorney for Benton County to ask you any questions, so  
15 please don't hang up or disconnect, and you're still  
16 under oath.

17 **THE WITNESS: Okay.**

18 JUDGE GERARD: Okay. Before I allow  
19 cross-examination, I did need to rectify an oversight  
20 with the last witness.

21 Mr. Korol, are you present, sir?

22 MR. KOROL: I am present, Your  
23 Honor.

24 JUDGE GERARD: I did not give you an  
25 opportunity to cross-examine Mr. Jossart. I moved

1 directly to the Council.

2 If you would like -- if you had any questions for  
3 that witness, we can recall them, as you are obviously  
4 a party of interest and have that right.

5 Did you want me to recall the witness after we  
6 finish with Mr. Robert, or did you not have any  
7 questions for him?

8 MR. KOROL: I don't have any  
9 question for him, Your Honor.

10 And also for the record, I believe the previous  
11 witness as well, the similar thing happened. But I did  
12 not have any questions for them as well.

13 JUDGE GERARD: Thank you for the  
14 clarification. My apologies for the oversight. That  
15 was not intentional by any means.

16 MR. KOROL: It's quite all right.

17 JUDGE GERARD: Okay. Very good. So  
18 thank you for clarifying that.

19 Ms. Holt, any cross-examination of Mr. Robert?

20 MS. HOLT: Yes. Thank you.

21

22 CROSS-EXAMINATION

23 BY MS. HOLT:

24 Q Mr. Robert, sounds like the property's been in your  
25 family for generations.



1 Did you grow up out --

2 **A Yes. Well, I moved between third and fourth grade from**  
3 **Yakima to the ranch. Yes.**

4 (Clarification by reporter.)

5

6 MS. HOLT: My apologies. I'm trying  
7 to keep that feedback to a minimum.

8 Q (By Ms. Holt) My question was: Did you grow up out  
9 there?

10 **A Yes.**

11 Q Okay. Did you go to school out in that area?

12 **A Excuse me. Starting fourth grade, I -- I went to**  
13 **school at Sunnyside.**

14 Q Is your school located nearer to the farm or out in  
15 town?

16 **A It was in the town of Sunnyside.**

17 Q Do you live at the farm now?

18 **A No, I don't. I live in Grandview.**

19 Q Okay. Is it common for people in that area to live at  
20 their farm or nearby?

21 **A At least one person, yes.**

22 Q Is it helpful -- do you think it's helpful for farm  
23 operations to be able to have that closeness between  
24 their residents and their workplace?

25 **A Yes. Especially at this time of year. Somebody's got**

1 to be on the ranch. You have to watch out for range  
2 fires.

3 Q Does your family still keep sheep on your ranch?

4 A No. We got out of the sheep business back in 1988.

5 But the last three years, a gentleman, Shawn Bryan, is  
6 bringing sheep to the ranch at the sheep sheds and then  
7 lambing there in the spring.

8 Q How come your family moved away from sheep?

9 A Well, my uncle and my dad retired. They're in their  
10 60s. And they wanted to sell the sheep. My brother  
11 Gene and I were more farmers and enjoyed cows. And it  
12 was getting harder to find shepherders and go up to  
13 the mountains for rain. Just got -- just got harder.

14 Q Is sheep ranching profitable at all?

15 A Not right now. There's good years, bad years.

16 Q Does sheep farming take up much water?

17 A No.

18 Q How about cow farming or ranching? Sorry.

19 A No. They figure a cow in summertime takes about 15 to  
20 20 gallons a day. That's not very much water.

21 Q And in comparison, how much would something like  
22 dryland wheat farming take in a day?

23 A Our time? Oh. Oh. Dryland -- sorry. Are you talking  
24 about water?

25 Q Yes.

1 How much --

2 (Simultaneous speaking.)

3  
4 JUDGE GERARD: Mr. Robert, let her  
5 finish -- let her ask the question before you answer.

6 Ms. Holt, that feedback is terrible. Will you  
7 please mute yourself. Just the interim while we set  
8 the record.

9 Mr. Robert, even if you guess what she's going to  
10 ask, which is perfectly normal, wait till she asks it.  
11 That way the record's clear, sir.

12 **THE WITNESS: Okay.**

13 JUDGE GERARD: Please re-ask the  
14 question, Ms. Holt, then mute yourself, then allow the  
15 witness to answer. My apologies for having to do this,  
16 but it really is impactful on the record.

17 MS. HOLT: And I apologize for that,  
18 Your Honor. I haven't really run into that issue  
19 recently.

20 Q (By Ms. Holt) The question was: In comparison to cow  
21 ranching, does dryland wheat farming take more or less  
22 water?

23 **A Well, dryland wheat only takes rain. We don't irrigate**  
24 **dryland wheat.**

25 Q Based on your knowledge of the property, what other

1 crops are appropriate to be grown on your property?

2 **A Well, pretty much anything if it had the water. You**  
3 **could raise apples, cherries, pears, mint, all that --**  
4 **that type of thing. But without water, you can't have**  
5 **those things.**

6 Q And which kind of crops require less water?

7 **A Grain crops take less water.**

8 Q Are grain crops profitable?

9 **A Not now.**

10 Q Are there risks associated with farming these various  
11 available crops?

12 **A Danger? No.**

13 Q Not necessarily danger, but risk in terms of financial  
14 risk.

15 **A Yes.**

16 Q What are some of those risks that you see over time?

17 **A Well, if it's a grain crop and you plant the wrong one**  
18 **and there's no price for it, or if you have bad weather**  
19 **and the yields are terrible, then you're -- you're in**  
20 **financial trouble.**

21 Q Okay. Is frost a risk that could affect your crops?

22 **A Yes.**

23 Q Do you -- based on your knowledge over time, is frost a  
24 risk that happens every year?

25 **A No.**

1 Q Recently it sounds like you've changed a little bit  
2 about your crop choices and your land uses.

3 What are those changes most recently?

4 **A The biggest change is from alfalfa to -- for hay to**  
5 **grain, grain crops for hay.**

6 Q Will you continue on farming in accordance with those  
7 changes if the project is not approved?

8 **A Yes.**

9 Q If the project is not approved, do you have plans to  
10 continue ranching on your property?

11 **A Yes.**

12 Q If the project's approved, would that put you in a  
13 better position financially?

14 **A Yes.**

15 Q Would it be fair to say you have an interest, then, in  
16 the approval of this project?

17 **A Yes. Yes, we do.**

18 MS. HOLT: I don't have any further  
19 questions.

20 JUDGE GERARD: All right.

21 Mr. Korol, before I forget, any questions of this  
22 witness before we turn it over to the Council?

23 MR. KOROL: Thank you, Your Honor.  
24 I do not.

25 JUDGE GERARD: Very good.

1 And as before, Council, please raise your hands,  
2 and we'll go ahead and see if there's any questions.

3 Mr. Livingston, please go ahead.

4 MR. LIVINGSTON: Mr. Robert, you  
5 mentioned the ponds that -- the additional ponds you  
6 might build would be good for firefighting and also  
7 perhaps elk.

8 Do you know -- do you have an idea of what the  
9 elk's behavior will do with the -- the land-use change  
10 on the property? How will they -- how will they change  
11 their behavior to the new project if it gets built?

12 **THE WITNESS: Well, they won't be**  
13 **coming into our irrigated fields and eating our crops.**  
14 **I know that will happen. And -- but they'll just move**  
15 **up more on the hillside.**

16 MR. LIVINGSTON: I think that's all  
17 I had for you. Thank you, sir.

18 **THE WITNESS: Thank you.**

19 JUDGE GERARD: Any other questions  
20 from the Council? We'll go ahead and give you -- Chair  
21 Drew, please.

22 CHAIR DREW: Thank you. Thank you,  
23 Mr. Robert. Appreciate you being here.

24 You mentioned that in 2020, when -- was that the  
25 year that Innergex first contacted you about the

1 potential of a solar farm on your property?

2 **THE WITNESS: Yes.**

3 CHAIR DREW: And at that point in  
4 time, it was an allowable use in the county?

5 **THE WITNESS: Well, that part I**  
6 **don't know. I just -- they approached us about solar,**  
7 **and I thought it was something that could be done in**  
8 **Benton County. I -- I guess I didn't -- that part I**  
9 **wouldn't know. I guess I thought it would just --**  
10 **something you could do.**

11 CHAIR DREW: Yeah, the record shows  
12 that that did not change until December 21st of 2021 --

13 **THE WITNESS: Right.**

14 CHAIR DREW: -- when the County put  
15 a moratorium or banned the -- banned the development of  
16 solar facilities, major, on ag land.

17 In that time period, when the -- Innergex first  
18 contacted you, do you know of or do you think the  
19 County was also aware of the project?

20 **THE WITNESS: That part I -- I don't**  
21 **know.**

22 CHAIR DREW: Okay. Did -- as the  
23 ordinance went forward in the County, did anyone from  
24 the County reach out to you and ask you about this  
25 project or what would happen to you in your property if

1 that ordinance went forward?

2 **THE WITNESS:** No. We just knew --

3 CHAIR DREW: So you were --

4 **THE WITNESS:** If -- sorry.

5 CHAIR DREW: Go ahead. No, go  
6 ahead.

7 **THE WITNESS:** Like I say, we knew it  
8 was going to probably take out quite a bit of the  
9 irrigated and some of the dry -- dryland ground and the  
10 CRP ground. But we knew we already had problems with  
11 irrigation, so in some ways it'd be -- it'd be a help  
12 for us, the solar.

13 CHAIR DREW: Right.

14 But no one from the County reached out to you  
15 while they were considering that ordinance to ban  
16 solar, did they?

17 **THE WITNESS:** No. We just went to a  
18 meeting that -- that December there at Prosser and  
19 listened to the -- the commissioners and the public and  
20 their -- their views of the solar and the wind power.

21 CHAIR DREW: Did you testify?

22 **THE WITNESS:** Yes, I did.

23 CHAIR DREW: Okay. Thank you.

24 In your knowledge of the County's activities, do  
25 you know of anyone who has changed their land use? Not



1 farming anymore, but perhaps putting a business or  
2 winery or some other type of business on their property  
3 where the County has required them to replace the  
4 agricultural use that was on the land before by perhaps  
5 purchasing other land or making other land agriculture?  
6 Have you ever heard of that?

7 **THE WITNESS: No, I haven't.**

8 CHAIR DREW: Okay. Thank you.  
9 That's all.

10 **THE WITNESS: Sure.**

11 JUDGE GERARD: Any other questions  
12 from the Council members?

13 Ms. Anderson, any redirect of your witness?

14 Ms. Anderson, you're on "mute," if you spoke.

15 Ms. Anderson, if you responded, I didn't hear you.

16 Do you have any redirect of your witness?

17 MS. ANDERSON: I do not. Can you  
18 hear me?

19 JUDGE GERARD: I can hear you now.  
20 Thank you.

21 MS. ANDERSON: Thank you,  
22 Mr. Robert. I don't have any further questions.

23 JUDGE GERARD: Okay. Ms. Anderson,  
24 that was the -- all the listed witnesses. Does the  
25 applicant rest?

1 MS. ANDERSON: Yes, we do. Thank  
2 you.

3 (Applicant rests.)  
4

5 JUDGE GERARD: Okay. Thank you,  
6 sir. We're at two hours into it. I propose we just  
7 take a five-minute, start back up at 2:00 for Benton  
8 County's case in chief, if everyone needs to stretch  
9 their legs, take care of other business. The hearing  
10 is going to continue to run for the next -- I'm sorry.  
11 It's 2:10, rather, not 1:50. That's the time.

12 Let's rejoin 2:15, but the record will run during  
13 that five-minute interim. So, everyone, please be back  
14 at that point.

15 (Pause in proceedings from  
16 2:10 p.m. to 2:15 p.m.)  
17

18 JUDGE GERARD: All right. It is  
19 2:15, so we're going to go ahead and reconvene and pick  
20 up with Benton County's case in chief.

21 All right. I'm going to confirm that the  
22 participants are present. Ms. Owens, once I'm  
23 finished, I would ask that you do the same with the  
24 Council.

25 Ms. Holt, it appears you're back. And can you

1 hear me? Just nod your head if that's the case. Thank  
2 you.

3 Ms. Anderson, are you back as well?

4 MS. ANDERSON: Yes, I am, sir.

5 JUDGE GERARD: Mr. Korol?

6 MR. KOROL: Yes, I'm here.

7 JUDGE GERARD: Thank you.

8 And the court reporter, Mr. Botelho, are you  
9 present as well?

10 THE REPORTER: I'm here, Judge.

11 JUDGE GERARD: Thank you.

12 Ms. Owens, if you'd go ahead and do a roll call of  
13 the Council.

14 MS. OWENS: Certainly.

15 Chair Drew.

16 If she's not back, should I continue or wait till  
17 she returns?

18 JUDGE GERARD: No. Let's wait till  
19 Chair Drew returns, please.

20 MS. OWENS: Thank you.

21 JUDGE GERARD: Chair Drew, are you  
22 back?

23 CHAIR DREW: I am. Sorry if I was a  
24 moment delayed here.

25 JUDGE GERARD: No problem. We just

1 didn't want to start without you.

2 Ms. Owens, if you go ahead and complete the roll  
3 call, we'll go ahead and pick up.

4 MS. OWENS: Absolutely.

5 Chair Drew.

6 CHAIR DREW: Present.

7 MS. OWENS: Department of Commerce.

8 MS. OSBORNE: Elizabeth Osborne,  
9 present.

10 MS. OWENS: Department of Ecology.  
11 Department of Fish and Wildlife.

12 MR. LIVINGSTON: Mike Livingston,  
13 present.

14 MS. OWENS: Department of Natural  
15 Resources.

16 MR. YOUNG: Lenny Young, present.

17 MS. OWENS: Utilities and  
18 Transportation Commission.

19 MS. BREWSTER: Stacey Brewster,  
20 present.

21 MS. OWENS: Benton County.

22 MR. SHARP: Dave Sharp, present.

23 MS. OWENS: Department of  
24 Transportation.

25 MR. GONSETH: I'll unmute myself.

1 Paul Gonseth, present.

2 MS. OWENS: That is the entire  
3 Council.

4 JUDGE GERARD: Thank you, Ms. Owens.

5 And, once again, since we were briefly off the  
6 record even though the recording still continued to  
7 run, I did not have any conversations with any of the  
8 party participants, witnesses, or Council members  
9 during that brief break. If anyone disagrees with that  
10 statement, please take yourself off -- or please raise  
11 your hand, rather, and we'll go ahead and deal with  
12 whatever concerns you have or disagreements into the  
13 record.

14 I'm not seeing any. So let's go ahead and move on  
15 to Benton County's case in chief.

16 Ms. Holt, please call your first witness.

17 MS. HOLT: Thank you, Your Honor. I  
18 would call Greg Wendt.

19 JUDGE GERARD: Good afternoon,  
20 Mr. Wendt.

21 **THE WITNESS: Good afternoon.**

22 JUDGE GERARD: Have you been present  
23 throughout the entire proceedings?

24 **THE WITNESS: I have.**

25 JUDGE GERARD: And do I need to go

1 over the instructions of what's expected of a witness  
2 in these proceedings, or can we forego that?

3 **THE WITNESS: We can forego that.**  
4 **That's fine.**

5 JUDGE GERARD: Then please raise  
6 your right hand, and I'll swear you in as a witness.

7 Do you solemnly swear or affirm the testimony  
8 you're about to give will be the truth, the whole  
9 truth, and nothing but the truth, under penalty of  
10 perjury?

11 **THE WITNESS: Yes, sir.**

12 JUDGE GERARD: You're under oath.

13 Ms. Holt.

14

15 GREG WENDT, having been first duly sworn  
16 by Judge Gerard, was  
17 examined and testified as  
18 follows:

19

20 DIRECT EXAMINATION

21 BY MS. HOLT:

22 Q Mr. Wendt, can you say and spell your last name for the  
23 record, please.

24 A **Wendt, W-e-n-d-t.**

25 Q Could you describe for us your educational background.

1 A Sure.

2 I have two planning degrees. I have the -- an  
3 undergraduate degree from Eastern Washington University  
4 in urban and regional planning.

5 And I have a master's degree from Washington State  
6 University. It's a master's in regional planning, from  
7 their environmental -- their environmental department,  
8 so -- and then -- yeah.

9 Q What is your employment title with Benton County?

10 A Director of community development.

11 Q How long have you been in that role?

12 A I have been the director of community development, I  
13 believe for two and a half years. And prior to that, I  
14 was the planning manager.

15 Q What does this role entail?

16 A Well, we deal with a lot of different things here at  
17 the County. I'm in the public services department. We  
18 focus on the land use, planning, code enforcement,  
19 building, as well as canine shelter services.

20 Q Can you describe other past employment experience that  
21 might be relevant to municipal planning?

22 A Sure.

23 I -- I've -- my planning experience goes back as  
24 late -- as early as 1994 through different internships  
25 with different cities in the state of Washington. And

1 then I started working full-time as a practicing  
2 land-use planner. I have experience in three different  
3 states, but I started in 1997. So I have probably 27  
4 years-plus of everyday experience and 25 years in the  
5 state of Washington.

6 Q Okay. Switching gears to the project: Do you recall  
7 receiving the Exhibit 4, the July 26, 2021, e-mail from  
8 Innergex to you?

9 A I did find that e-mail when we went back and started in  
10 November of that year when we started processing the --  
11 the text amendment to the GMAAD zone. And we had  
12 that -- we received their public comments from that  
13 company. They raised a question with us here in the  
14 office, and I did go back into my e-mails. I did find  
15 that old e-mail, yes, at that time.

16 Q Was this e-mail your first awareness of the applicant's  
17 project, or was it at a different time?

18 A Well, I didn't -- I didn't -- you know, back in that  
19 time, we received many, many different phone calls from  
20 lots of different companies asking about different  
21 projects. I didn't remember that e-mail. And so my --  
22 the first time I learned about this project was in the  
23 days leading up to the -- to the code change.

24 Q Did the applicant ever reach out to you to follow up on  
25 that e-mail that you're aware of?



1 A No, I think the only time I ever really spoke to them  
2 was potentially at the hearing, itself. And I may have  
3 spoken to them again very briefly at the EFSEC land-use  
4 hearing. But I -- we -- we've had lots of  
5 conversations with different companies, so I'm not  
6 sure.

7 Q So once you started communicating with them around the  
8 time of the code change, were you ever asked by the  
9 applicant about how they could work with Benton County  
10 to develop this project within our Benton County codes?

11 A I did not ever have that conversation with this  
12 company, that I'm aware of, no.

13 Q Other than objecting to the code change, did the  
14 applicant ever reach out to you to ask about modifying  
15 the Benton County Code in any other areas that would  
16 allow for this project?

17 A Not that I remember, no.

18 Q Based on your understanding of the proposed project  
19 site, what is the classification of the lands that are  
20 subject to these proceedings under the Benton County  
21 Code?

22 A Well, the property is currently zoned GMAA agriculture,  
23 and then the comprehensive plan has it designated as  
24 GMA agriculture as well. And with that, in our  
25 comprehensive plan, it has been designated agricultural

1 lands of long-term commercial significance, or we refer  
2 to that as ALLTCS, just as a...

3 Q So the comprehensive plan covers many areas. But with  
4 regard to these ALLTCS lands, what is the purpose and  
5 intent of our comprehensive plan?

6 A Our purpose is to have a long -- you know, the Growth  
7 Management Act came into play in 1990, and it -- and it  
8 issued a lot of different mandates to cities and  
9 counties, which is to have a long-range planning  
10 document to framework and provide on how your -- your  
11 lands are going to -- how your properties in the county  
12 are going to grow, how your community's going to grow.

13 And so certainly the long-range comprehensive plan  
14 lays that overall foundation that then we can implement  
15 through zoning and development regulations that we're  
16 all additionally required and mandated to do.

17 Q Sorry. I forgot to unmute myself there.

18 What percentage of Benton County is made up of  
19 GMAAD lands?

20 A I believe it's about 58 percent. I would have to look  
21 in the comp plan. I don't remember all those numbers  
22 off the top of my head. Things I can easily look up I  
23 don't always remember, but I believe it's about 58  
24 percent.

25 Q Okay. If I can show you what's been marked as our

1 Exhibit C, perhaps that would jog your memory here.  
2 I'll try and share my screen with you.

3 Are you able to see that?

4 **A Yes.**

5 Q Okay. And in that table, under the "Growth Management  
6 Act Agriculture," what is the percentage shown there?

7 **A I believe that's 58.96.**

8 Q If I can move on to another page here.

9 What does this document depict?

10 **A That is our -- that is from our comprehensive plan. It**  
11 **was from our periodic update. And I believe this was**  
12 **showing our -- our comprehensive land use for our**  
13 **previous comprehensive plan with the next folio map**  
14 **being the current plan.**

15 Q Can you describe what the light-green portion of this  
16 map represents?

17 **A Sure. That is our Growth Management Act agricultural**  
18 **zone, whether it's our zoning or our land-use**  
19 **designation in our comprehensive plan. It's also the**  
20 **lands that have been designated ALLTCS based upon the**  
21 **criteria in our comprehensive plan.**

22 Q Is the project area located within this light-green  
23 area?

24 **A Yes.**

25 Q Okay. Can you summarize for us how the comprehensive

1 plan addresses GMAAD lands?

2 A Can I summarize? Well, our comprehensive plan, it  
3 is -- well, it's two different parts.

4 Back in 2018, we adopted our ALLTCS memo. And --  
5 and so when we came in and we started working on  
6 updating all of our plans, one of the things we really  
7 wanted to do is ensure that our -- our Growth  
8 Management Act agricultural lands were designated  
9 correctly.

10 And so we hired a company. We worked with them.  
11 Worked with our planning commission and worked with our  
12 community to come up with that memo and that  
13 reclassification document that was done in 2018. And  
14 that became a big part of our comprehensive plan, kind  
15 of the foundation for our 2018 periodic update that we  
16 did complete.

17 And it does -- you know, we do have our goals and  
18 policies in our plan, and it does talk about how our  
19 uses are going to be limiting incompatible uses and  
20 having the uses that are allowed in our agricultural  
21 areas to be accessory to ag, and that's really, really  
22 important.

23 And so our ALLTCS and our -- and that document  
24 that is an appendix in our comprehensive plan really  
25 provides the framework and foundation for how our --

1 those areas are to grow and allow development.

2 Q So would it be fair to say that this new information  
3 coming in around 2018 impacted the County's views on  
4 what is an acceptable use in these areas?

5 A I believe so, yeah. 'Cause in -- in 2018, we -- we  
6 kinda started that process of evaluating our ALLTCS,  
7 reaffirming them, and then that kind of led us to  
8 conversations over, you know, from 2018. We did the  
9 re-adoption. And then in 2019 and 2020, we started  
10 looking at our different codes and ordinances as we  
11 were doing our development regulations. And certainly  
12 the GMA ag zone and the allowed uses were -- were some  
13 of the things that we did look at.

14 Q And did Benton County react to this new information?  
15 Did it begin updating its code?

16 A Well, yeah. I mean, as with -- with our -- with the  
17 adoption of our ALLTCS and the reaffirmation of them,  
18 you know, over the course -- I believe that was in  
19 about 2020 is the first time I can remember us sitting  
20 down as a community with your -- you know, with our  
21 volunteer boards and having the conversation about our  
22 agricultural lands and looking at the different uses  
23 that maybe don't make as much sense anymore to have in  
24 our -- whether they're conditional use or an allowed  
25 use.

1           And -- and then certainly as we continued to move  
2           on in 2021, the decision was made to move forward that,  
3           you know, it was -- it was determined that legally we  
4           were going to really struggle allowing and permitting,  
5           based upon the compatibility tests, continuing to allow  
6           wind and solar commercial facilities as a conditional  
7           use permit option in our GMAAD zone. We knew we had to  
8           make that change.

9   Q   Okay. And so specifically when we're talking about  
10       solar, energy solar facilities, major, when did that  
11       discussion start?

12   A   We started --

13   Q   (Speaking simultaneously.)

14   A   -- that discussion -- yeah, sorry. We started that  
15       discussion in 2020 originally. And then -- and then  
16       by -- I don't know -- probably the summer of '21, we  
17       had put in works to -- to start the -- the process of  
18       evaluating our different zone to see where we could  
19       integrate wind and solar rather than in our  
20       agricultural lands.

21           'Cause we -- 'cause we knew that legally we  
22       couldn't permit a wind and solar commercial facility in  
23       our GMAAD zone. We knew we had to have that removed.  
24       There was no way that we could -- the size, scope, and  
25       impacts of those projects as it related to our ALLTCS,

1           **they weren't compatible.**

2                           THE REPORTER:   And, Ms. Holt, this  
3           is the court reporter.  The interruption there,  
4           those -- that last tidbit didn't make it into the  
5           transcript -- just want you to be aware -- that you  
6           added at the end.

7                           MS. HOLT:   Thank you.  Understood.

8   Q   (By Ms. Holt)  So when these discussions started, was  
9           this -- did you have knowledge of the applicant's  
10          project even generally?

11  A   **No.  No.**

12  Q   Did you have any knowledge about the lease that it --  
13          Wautoma had with the Roberts Ranch?

14  A   **When we started these conversations, I -- I had no**  
15          **inkling whatsoever about the Wautoma project, no.**

16  Q   As these discussions started going along, what effort  
17          does the County usually make to do public outreach for  
18          people that might be affected or allow for public  
19          comment?

20  A   **Sure.  I mean, it certainly -- if -- if there were**  
21          **projects that we had -- had conversations with people**  
22          **about before we go to make an amendment, we certainly**  
23          **give people heads-up that we'll be doing that.  We put**  
24          **notice in our -- you know, we do typical noti- --**  
25          **notifications that are required under the GMA if you're**

1 going to be doing an ordinance amendment. We put  
2 notice on our website. We do social media, and we do  
3 all the different things.

4 And so certainly, yeah, I mean, in this case with  
5 this project, like I said earlier, I had not heard of  
6 this project until we started receiving public  
7 testimony and comments as we moved into December of  
8 that year.

9 Q And among those public comments, did the applicant or  
10 any of the -- the affected parties reach out?

11 A No, not that I'm aware of.

12 Q Did the applicant make public comments with regard to  
13 the proposed code change?

14 A At the hearing. Yeah. There -- there was a group of  
15 them at that hearing. Whether -- they all had an  
16 interest in the project that spoke. They were either  
17 landowners, related to landowners. I mean, it -- it  
18 was typical what you see, you know, when in  
19 developer-driven environments like that. And so you  
20 had the developer and -- and those people there.

21 There was no other -- there weren't -- the only  
22 people who showed up at those hearings were people who  
23 had a, you know, an interest. I guess I'll just leave  
24 it at that.

25 Q So can you detail the reasoning behind specifically why



1 the County opted to remove the conditional use  
2 permitting for these solar facilities, major?

3 A Yeah, well, I mean, as -- as I stated earlier, you  
4 know, we knew we were going to have trouble approving a  
5 conditional use permit for one of these facilities in  
6 that zoning district. And so, you know, I'll just --  
7 I'll just go back to what the board of County  
8 commissioners, in their findings of fact. You know,  
9 the board has been really resolute in this the last  
10 three years.

11 You know, they -- they -- in their findings of  
12 fact, they said that they wanted to comply with the  
13 State mandates, ensure consistency with our comp plan,  
14 which previously, you know, as the code had originally  
15 been set up prior to my arrival, it was not consistent  
16 with our comprehensive plan. So we wanted to ensure  
17 that consistency was there.

18 We wanted to protect our ALLTCS; conserve critical  
19 areas, habitat, and visual resources; protect our rural  
20 character, all while limiting incompatible uses and  
21 non-ag uses in our GMAAD zone. And that is what the  
22 County commissioners made in their findings. And I  
23 thought that was very -- you know, they've been very  
24 resolute in their -- in their thoughts on this.

25 Q What makes these sort of facilities incompatible with

1 agricultural use?

2 A Well, I mean, you -- you know, in the land-use world,  
3 the compatibility test in Benton County, you start to  
4 look at -- I mean, you start the test with size, scale,  
5 scope, and location. And then you take that size,  
6 scope, scale, and location, and you compare it to  
7 outright permitted uses. Even if you go back into  
8 our -- what is a conditional use, as basic as that.  
9 You know, if the requirement is, is no more  
10 incompatible and other outright permitted uses in the  
11 zone, the use can't be more incompatible than the other  
12 outright permitted uses.

13 And so when you go through and look at outright  
14 permitted uses as it relates to, you know, the size and  
15 scope and scale of a 3,000-acre industrial project  
16 being dropped in the middle of our agricultural area,  
17 you know, it's -- it's not compatible.

18 And when you relate it to the other uses, the  
19 other uses are typically small. You know, if we -- if  
20 we wanted -- if you want to look at agricultural  
21 activities, all our permitted uses -- agricultural  
22 stands, single-family homes, adult family homes, just  
23 kind of touching on a few of them, even just an  
24 individual cell tower, a meteorological tower, a  
25 school, or a church -- those things typically occur on

1 a parcel or two and are -- and even if they're non-ag,  
2 you know, we allow allowances up to an acre under the  
3 state GMA to do so. But -- but it's very clear that  
4 the compatibility test isn't there when you relate it  
5 back to ag and the other allowed uses.

6 Q So of these allowed uses, there are some larger  
7 versions than a cell tower.

8 Say, for example, is a private airstrip permitted?

9 A Yes. Absolutely. And we do -- we do see those.  
10 They're typically -- you know, they don't take up a lot  
11 of acreage. And most the time, they're related to  
12 agriculture. You know, whether they're providing  
13 services for that farm or they're spray -- you know,  
14 they're spray -- they're spray airports. They're  
15 typically -- if they're out in our agricultural areas,  
16 they're typically related to agriculture. And in this  
17 case, they would need to be.

18 Q But the County did have these solar power generator  
19 facilities, major, as a conditional use permit option.

20 Were those facilities compatible with agricultural  
21 use 10 years ago, 20 years ago?

22 A No. Well, I can't say -- I -- I can't -- you know, in  
23 my mind, an industrial use, it's not. And I think  
24 that's been well documented. But, you know, for the  
25 2018 comprehensive plan and -- and that's what I'll

1 just discuss from, from 2018 -- it's clearly not.  
2 Especially with ALLTCS. And -- and, you know, the  
3 conversion of ALLTCS, you know, that takes the -- I  
4 mean, the compatibility test is done at that point in  
5 time. If you're going to convert agricultural land for  
6 proposed use, it's no longer compatible.

7 Q So for some of the allowed uses like the airstrip, why  
8 isn't the County requiring those applicants to create  
9 new ag land somewhere else in the county?

10 A Typically they -- they are -- those non-ag uses,  
11 there's an -- there's an exception in the state law and  
12 their GMA that allows up to an acre, where you can take  
13 that out, and -- and -- but the reality is, with  
14 these -- with the example you're using, they're all  
15 related to agriculture, so that's never been an issue.

16 Q So as it exists today, which portion of Benton County  
17 Code governs these GMAAD lands?

18 A Well, we have -- we have numerous things. We have our  
19 comprehensive plan. We have our zoning ordinance. And  
20 it's all under the umbrella of the Growth Management  
21 Act.

22 Q So focusing specifically on Chapter 11.17 of the Benton  
23 County Code, what is the purpose of that section?

24 A The purpose is to, you know, have uses allowed that are  
25 compatible with agricultural uses. I mean, I don't

1 have the purpose written in front of me, but I can tell  
2 you that, you know, the idea is to limit  
3 nonagricultural uses and encourage agricultural uses  
4 that are compatible with each other.

5 Q Would it help refresh your recollection if I were to  
6 share that statute regarding purpose?

7 A Sure.

8 Q Are you able to see that?

9 A Yeah.

10 Q Or would you like me to make it bigger?

11 A That's fine.

12 Q Are there minimum requirements that the County must  
13 follow in creating its comprehensive plan and codes?

14 A Yeah, we're under the umbrella of the GMA, so the GMA  
15 does lay out the framework that we are to have a  
16 comprehensive plan, have development regulations, and  
17 within that, we're to preserve and protect our resource  
18 lands and our critical areas.

19 Q So under the GMA, what is the State's interest in  
20 preserving GMA lands?

21 A Well, the State requires us to -- it has the mandate  
22 for counties to preserve and protect our agricultural  
23 lands. And so we've done that in our comprehensive  
24 plan, and then we've implemented that through our GMAAD  
25 zone. We've designated our ALLTCS, and we've met that

1 mandate to preserve and protect our ag lands. And that  
2 was reaffirmed in 2018.

3 Q Now, doesn't the GMA also have a mandate to promote  
4 conservation energy projects?

5 A I do believe so, yes.

6 Q Is that goal in the GMA mandatory on the County?

7 A I believe. I -- yeah, I believe so. Certainly, you  
8 know, you -- the County -- the counties want to, just  
9 like everything else, all the other uses, have  
10 locations in our county to fulfill -- to fulfill those  
11 requirements through our comprehensive plan and through  
12 our zoning requirements.

13 Q Based on your understanding of the GMA, does it require  
14 the County to allow energy facilities like solar in GMA  
15 ag lands?

16 A No. No. Each -- every community has the option to  
17 determining how, you know, whatever framework you wish  
18 to have and guidance you want to give through your  
19 policies and through your regulations. You can -- you  
20 can place those in areas however you wish that makes  
21 sense for you as a community.

22 Q Does the county have areas where these solar power  
23 generator facilities can be located?

24 A Yes. You know, the -- we have -- we have two different  
25 levels of industrial zoning as well as our unclassified

1 zoning here in Benton County where those can be placed  
2 as well.

3 Q Is the County's code stagnant, or is this something  
4 that is a work in progress?

5 A It's always changing, you know. You know, there's  
6 always lots of conversations around it. And so  
7 certainly we are in the process now of -- of getting a  
8 new grant from the Washington State Department of  
9 Commerce for our periodic update.

10 And so with that, we will be starting our  
11 comprehensive planning process, looking at all of our  
12 development regulations, and -- and fine-tuning our  
13 regulations, because we still have things in our  
14 agriculture zone, in our CUP list, that, you know, to  
15 be honest, would be very difficult to approve because  
16 of the same reasons as -- as the -- the wind and solar  
17 facilities. And so we'll be looking at those and --  
18 and all of our different land-use classifications.

19 Q If I can -- can you see my screen still?

20 A Yes.

21 Q Okay. With regard to the industrial areas where these  
22 solar facilities are currently allowed, can you  
23 describe where they are on this map?

24 A We have -- we have some industrial down around Plymouth  
25 and Paterson, I believe, out in Finley. And trying to

1 remember where else. They're certainly not large  
2 swaths of it in current state. Most of the large  
3 swaths that would be available for large acreage would  
4 be more in the unclassified areas in working with  
5 the -- at or around the Hanford site, out around there.

6 Q If I can move forward to Page 190, we see a change in  
7 the color at the top to dark gray.

8 What is that area?

9 A That is generally an area. It's the Hanford site, is  
10 kind of the name. Department of Energy. But we do  
11 have -- it is unclassified in our zoning. And they do  
12 have lots of land out there that has been set aside  
13 for -- for different developments related to renewable  
14 energy projects.

15 Q So what does this map depict? What is the purpose of  
16 this map?

17 A This is our future land-use map. So it has our  
18 land-use designations providing our future growth in  
19 the county that is then implemented with our zoning  
20 map. That is our current map.

21 Q If I'm reading this map correctly, the gray zone in the  
22 legend is listed as rural industrial; is that correct?

23 A I believe so, yeah. It's hard to see, but I believe  
24 so.

25 Q If this is the future plan for the county, would the --



1 this sort of solar facility be permitted in that area?

2 **A Yes.**

3 Q Okay. Stop sharing that and move on.

4 Is renewable energy permitted under this code  
5 chapter generally in any case? And I'm sorry. Perhaps  
6 I should clarify. Under Benton County Code 11.17.

7 **A Under 11.17? Ask your question once again. I missed  
8 it.**

9 Q Does Benton County Code 11.17 ban all -- or ban all  
10 renewable energy, or are some formats of renewable  
11 energy permitted?

12 **A Yeah, no, just the -- just the -- the large commercial  
13 facilities. You know, the ones that are accessory to a  
14 permitted use. Those -- those type we still allow in  
15 those areas. The small-scale permitted use, that are  
16 accessory to a permitted use.**

17 Q Why does size matter when we're talking about  
18 compatibility with ag lands?

19 **A Well, I mean, you're talking about a large-scale --  
20 you're talking about the -- it's a -- it's a  
21 compatibility issue between industrial and agriculture.  
22 You know, and it falls back to what are those allowed  
23 uses and how -- how a project that is industrial in  
24 nature -- if you're going to go in and place a  
25 3,000-acre project and do the conversion of**

1 agricultural lands that have been designated ALLTCS,  
2 you know, that -- that is the crust of the  
3 compatibility issue between agriculture and industrial  
4 uses.

5 Q We've heard some testimony that there seems to be a  
6 diminishing ag use for the specific lands in question  
7 here.

8 Why doesn't the County just declassify these  
9 lands?

10 A They still meet the test. The County, in 2018,  
11 developed the criteria for -- for agricultural lands of  
12 long-term commercial significance. And as a community,  
13 that was adopted. And it has criteria, and the  
14 properties in question still meet it.

15 Q When we're talking about long-term commercial  
16 significance, does the commercial significance ebb and  
17 flow over time?

18 A Not from a land-use perspec- -- not from -- not from a  
19 county land-use perspective. We have three  
20 different -- we have -- we have irrigated lands. We  
21 have dryland. And we have rangeland. And we treat  
22 them all equally regardless of values or incomes. That  
23 doesn't -- I don't know if that answers your question,  
24 but that's...

25 Q So if a farmer or rancher has a couple bad years -- no

1       rainfall, things of that nature -- does the County come  
2       in and reassess the designations?

3     **A No. No. And it's not -- it's not a site-specific**  
4       **evaluation at all. And it's preempted -- the State**  
5       **mandates us to look at this as a countywide view of**  
6       **this and not one project or one property-specific**  
7       **evaluation. That's not how GMA is built. So no.**

8     **Q** We've heard some testimony earlier regarding  
9       environmental conditions in both the application and  
10      the revised MDNS.

11               Have you read through those?

12    **A Somewhat. I have reviewed them in the past. I haven't**  
13      **looked at them recently.**

14    **Q** If this project is approved, would you like to see  
15      those in -- put into place as conditions of approval?

16    **A Well, certainly anything -- I mean, if -- if -- if --**  
17      **if this project was approved, yeah, absolutely. I**  
18      **mean, if that's what the State determined was the**  
19      **correct requirements under an MDNS, sure. But**  
20      **certainly, you know, it -- from a land-use perspective,**  
21      **it doesn't meet the test.**

22    **Q** So are there any conditions in that Table A.5 or the  
23      revised MDNS that address the preemption of the GMAAD  
24      lands if the application were to be approved?

25    **A No.**

1 Q Are you recommending any conditions that could address  
2 that interest of the County?

3 A No. It's unmitigatable. I mean, if you -- you're  
4 talking about 3,000 acres converting ALLTCS. That's  
5 unmitigatable. There are no conditions that can do  
6 that. And that was -- the applicant explained that  
7 earlier that they weren't planning anything, because  
8 you can't.

9 Q We've also heard some testimony that surrounding ag  
10 lands could actually benefit from the project in terms  
11 of being more financially able to farm.

12 Does -- does that address the County's issue if  
13 these subject properties were to be preempted?

14 A No. I mean, those type of conversations aren't taken  
15 into land-use evaluations of whether or not a use  
16 should be placed someplace. I mean, the economics  
17 associated with that are not typically evaluated.

18 Q Is there anything else that you would like to share  
19 with the Council today that you believe would be  
20 helpful in them making a decision?

21 A Well, you know, I -- I guess, you know, the Growth  
22 Management Act, you know, is in place. It's been in  
23 place since 1990. It gives us an opportunity as -- as  
24 local communities to -- to have comprehensive plans, to  
25 have development regulations, to designate our resource

1 lands, protect those areas and our critical areas.

2 And, you know, I -- the -- the GMA is an effective  
3 tool that, when it was -- when it was -- when it began,  
4 it -- one of the major premises of it was to eliminate  
5 ideas of -- of reactive developer-driven development  
6 and for 35 years has been very, very effective at doing  
7 that. And -- and my hope is -- is GMAs, given the  
8 opportunity, continue to allow communities to implement  
9 their comprehensive plan and have development  
10 regulations and long-range plans that make sense for  
11 each community.

12 MS. HOLT: That's all the questions  
13 that I have for you. The others may have some  
14 questions.

15 JUDGE GERARD: Ms. Anderson, any  
16 questions of Mr. Wendt?

17 MS. ANDERSON: Yes, Your Honor.  
18 Just a few.

19  
20 CROSS-EXAMINATION

21 BY MS. ANDERSON:

22 Q Good afternoon, Mr. Wendt.

23 A Hi.

24 Q Yes or no: Do you agree that the first issue in this  
25 case is whether the Council should recommend

1       preemption?

2     **A   Yeah.**

3     Q   Okay.  And if -- if the County is preempted, who  
4       actually makes that decision to preempt?

5     **A   The EFSEC Council.**

6     Q   All right.  Would it surprise you if I said it was the  
7       governor?

8     **A   Well, as we sit here today, they will be making a  
9       recommendation to the governor.  But I don't know that  
10      they give them their due respect today.**

11    Q   Ah.  Understood.

12                But who makes the final decision to preempt?

13    **A   The final decision was made by the governor.**

14    Q   Okay.  Thank you.

15                So, now, you testified earlier you're concerned  
16       with getting into legal trouble about allowing a use  
17       such as this in your GMAAD zone, correct?

18    **A   I think that was one of the concerns, yeah, is -- is  
19       legally how could it meet the compatibility test under  
20       a conditional use permit.  Absolutely.**

21    Q   Could you be sanctioned if you violate the Growth  
22       Management Act?

23    **A   I hope to never find out.  I haven't for 27 years.  I'm  
24       assuming they could, yes.**

25    Q   Okay.  You said that you had been told that you could

1       legally get into trouble.

2               Who were you going to get into trouble with?

3   **A Well, I don't know that -- maybe I -- I probably**  
4   **misspoke a little bit. But certainly you open yourself**  
5   **up to -- to challenge legally if you're approving**  
6   **conditional use permits that -- that don't meet the**  
7   **test.**

8   **Q Mr. Wendt, do you know who is authorized to impose**  
9   sanctions on a county under the Growth Management Act  
10  for a violation of things like ag lands of long-term  
11  significance?

12 **A To be honest, I hope I don't find out. But I don't --**  
13 **I don't know right off the top of my head. I'd have to**  
14 **do some research.**

15 **Q I'm going to put up Innergex Exhibit No. -- let's see.**  
16       Okay. Exhibit -- this is for illustrative  
17  purposes only.

18       You're pretty conversant with the Growth  
19  Management Act, correct?

20                       JUDGE GERARD: Tell me what -- what  
21  exhibit this is first --

22                       MS. ANDERSON: I'm sorry.

23                       JUDGE GERARD: -- please.

24                       MS. ANDERSON: It would be Applicant  
25  Exhibit 29 used for cross-examination regarding the

1 witness. And he's testified about -- extensively about  
2 the Growth Management Act and its legal requirements.

3 JUDGE GERARD: There was no  
4 Applicant Exhibit 29.

5 MS. ANDERSON: I'm putting it up now  
6 for illustration. We didn't know he was going to go  
7 there in his testimony. I'm offering --

8 JUDGE GERARD: So it's not an  
9 exhibit is what you're telling me?

10 MS. ANDERSON: I would offer it as  
11 an exhibit, but I'm not -- I am offering it for  
12 illustrative purposes.

13 JUDGE GERARD: If you're offering it  
14 into the record, then you need to offer it, see if  
15 there's any objections to the admission, and then we do  
16 it -- if you're doing illustrative purposes, then I  
17 need to know where it would be necessary -- you simply  
18 can't reference it without demonstrating the document  
19 that's not in the record.

20 MS. ANDERSON: All right. I will  
21 offer it for admission. It is part of the Growth  
22 Management Act laws. And it is Siting Statute WAC 365,  
23 which is Growth Management Act 196-560.

24 JUDGE GERARD: Okay. Are you  
25 offering it as Applicant's Exhibit 29 even though



1 Exhibit 28 was not offered?

2 MS. ANDERSON: I can offer it as 28,  
3 sir.

4 JUDGE GERARD: It would make better  
5 sense if that is the case.

6 MS. ANDERSON: Agreed.

7 JUDGE GERARD: Okay. So I'm going  
8 to see if -- Ms. Holt, any objection to the admission  
9 of this citation of the WAC?

10 MS. HOLT: I'd like to reserve  
11 objection until I understand the relevance of this, but  
12 otherwise, no.

13 JUDGE GERARD: Well, if I admit the  
14 document and you have no objection, you can't come back  
15 and object to its relevancy to the admission of it.  
16 You can object to the discussion of it afterwards.  
17 Just so we're clear as to what's going to happen if you  
18 don't have any objections at this point.

19 MS. HOLT: Yeah, I don't have any  
20 objections to it being an authentic summary of that  
21 WAC.

22 JUDGE GERARD: Do you have any  
23 objections to admission into the record as Exhibit --  
24 Appellant's Exhibit -- or Applicant's Exhibit 28?

25 MS. HOLT: (Unintelligible.)

1 JUDGE GERARD: All right.

2 Mr. Korol, any objection to the admission of that  
3 document?

4 MR. KOROL: I don't have any  
5 objections.

6 THE REPORTER: Pardon me, Your  
7 Honor.

8 JUDGE GERARD: Yes, sir.

9 THE REPORTER: I don't have a  
10 response from Ms. Holt, if there was.

11 JUDGE GERARD: There was.

12 Ms. Holt, would you please repeat your response to  
13 your objection to the admission of that document.

14 MS. HOLT: Yes. My apologies.

15 I do not have an objection to admission.

16 JUDGE GERARD: Okay. Did you --  
17 Mr. Botelho, did you get that?

18 THE REPORTER: Yes, Your Honor.

19 Thank you.

20 JUDGE GERARD: All right.

21 Ms. Anderson, I would ask that you submit that document  
22 in the same manner which you submitted the other  
23 documents, and we will make it available to the Council  
24 for consideration.

25 MS. ANDERSON: Thank you, Your Honor

1 I will do so.

2 (Applicant's Exhibit No. 28  
3 admitted.)

4  
5 JUDGE GERARD: Thank you. Please  
6 continue.

7 Q (By Ms. Anderson) Mr. Wendt, would you please take a  
8 moment and read the document in front of you,  
9 specifically Subsection 1.

10 **A It's fine. I've read it.**

11 Q Where in the Benton County Comprehensive Plan and  
12 development regulations do you accommodate situations  
13 where the State has explicitly preempted local land-use  
14 registrations; for example, siting major energy  
15 facilities?

16 **A Well, we do allow the siting of major energy facilities**  
17 **in Benton County. And as for that statement, it is --**  
18 **as far as I'm aware, there is no standard for that in a**  
19 **county code.**

20 Q So you -- let me ask you.

21 This provision says making provisions for all  
22 local land-use regulations.

23 Doesn't 11.17.070 not account for EFSEC's role in  
24 siting energy facilities?

25 **A Yeah, we're not arguing that EFSEC has the ability to**

1       **preempt.**

2       Q    But you are -- I'll leave it at that. Thank you.

3                You can take that down.

4                You briefly referenced a map that showed a large  
5       area that was dark gray, and you identified that as  
6       unclassified, correct?

7       **A    Yes. I believe so.**

8       Q    And that you will make it lawful in the future to put  
9       solar here; is that correct?

10      **A    No. In the unclassified zone, they had the -- the**  
11      **unclassified zone has the ability to have certain**  
12      **allowed uses and conditional uses from underlying zones**  
13      **such as the industrial zone or different zoning**  
14      **districts. So you could potentially place a commercial**  
15      **wind and solar facility, if you met the test, in one of**  
16      **those zone -- in the unclassified zone.**

17      Q    Who owns that land?

18      **A    The federal government.**

19      Q    All right. Do you know what the standard is, in the  
20      event of preemption, what should inform the conditions  
21      that the Council should consider?

22      **A    Repeat your question.**

23      Q    Do you know what standard the Council should embrace if  
24      they decide to put conditions on a site certification  
25      in the event of preemption?

1 A I don't know what stand- -- you know, there used to be  
2 a criteria for preemption in the state law, but that  
3 was removed, so I don't know what standards they use,  
4 no.

5 MS. ANDERSON: All right. I'm going  
6 to put up a different exhibit, Your Honor, Council, and  
7 Mr. Wendt.

8 Q (By Ms. Anderson) Okay. Does this help refresh your  
9 memory as to --

10 JUDGE GERARD: Counsel, just for the  
11 record, is that Exhibit 22? It's already been --

12 MS. ANDERSON: I'm sorry.

13 JUDGE GERARD: -- admitted into the  
14 record?

15 MS. ANDERSON: Yes, sir. Yes, sir.  
16 I'm sorry. It's Exhibit 22.

17 JUDGE GERARD: Thank you. Please  
18 continue.

19 Q (By Ms. Anderson) So, Mr. Wendt, should the conditions  
20 that are imposed if the Council recommends preemption,  
21 should those conditions reflect community interest?

22 A That's not for me to say.

23 Q Okay.

24 A I mean, I've made the statements that, you know, based  
25 upon Benton County Code, that it's -- it's not

1 consistent, it's not compatible, it doesn't meet the  
2 test, it's converting ag lands, those things. I -- you  
3 know, whatever standards the Council wishes to place on  
4 this is -- it's their permitting process.

5 Q All right. You testified earlier that people comment  
6 and engage on development of changes in county comp  
7 plans and regulations, correct?

8 A Yes.

9 Q And do you recall being at the December 21 public  
10 hearing when the Benton County commissioners adopted  
11 the ordinance that removed major solar from the zoning  
12 provisions?

13 A I was there.

14 MS. ANDERSON: Okay. I'm going to  
15 put up Exhibit No. 11 on the screen, Your Honor,  
16 Council, Mr. Wendt.

17 Q (By Ms. Anderson) Now, I believe that you said earlier  
18 that the only people that showed up that night were the  
19 people who had an interest in their property, right?

20 A I -- I -- yeah, that was what I remembered, yes.

21 Q Yeah.

22 Isn't that how it should be, that people should  
23 show up if they care about their property?

24 A Absolutely.

25 Q Great.

1           So how many people that showed up on December  
2           21 --

3                           MS. ANDERSON: And you can move to  
4           Exhibit Page 4 --

5 Q (By Ms. Anderson) How many people that had an interest  
6           in this property showed up that night to support the  
7           change?

8 **A I don't know.**

9 Q In fact, if you take a look at the exhibit in front of  
10          you, won't you see that everybody that testified about  
11          this ordinance opposed it?

12 **A I do remember that.**

13 Q All right. Would you say that that reflects the  
14          community interest in the outcome of this zoning  
15          ordinance in this neighborhood?

16 **A That was a very small -- a small fraction of people in**  
17          **the overall county when dealing with a -- with a**  
18          **significant change to protect our ALLTCS.**

19 Q Would you please answer my question.

20 **A What was the question?**

21 Q The question was: Doesn't that reflect the community  
22          interest of the people?

23 **A Well, the people that were there.**

24 Q The only people that testified at the hearing.

25 **A Well --**

1 JUDGE GERARD: Hold on. Hold on.  
2 Ms. Anderson, you just changed the question. So if you  
3 want to ask the question, one form, let the witness  
4 answer it. Don't move the goalpost when he gives  
5 you -- when he starts answering, please.

6 Q (By Ms. Anderson) Did all of the people who testified  
7 in opposition have an interest in the outcome?

8 A I don't know.

9 Q Didn't you testify earlier that the people --

10 A That was my recollection when asked.

11 JUDGE GERARD: Mr. Wendt as well,  
12 please allow her to fully ask the question even if you  
13 anticipate. This isn't a conversation. We still need  
14 to make sure the record's clear, sir.

15 So, Ms. Anderson, please fully ask the question.  
16 Allow Mr. Wendt to answer.

17 Q (By Ms. Anderson) Mr. Wendt, I'm trying to figure out  
18 which is true: That it was the people who were  
19 interested that showed up at that hearing because they  
20 had an interest in the land, or was it the people who  
21 were interested at the hearing because they had an  
22 interest in the land?

23 I asked that two ways, the same question. Because  
24 earlier you testified that only people who had an  
25 interest in this ordinance showed up.



1           Isn't that correct?

2   **A**   **That's what I remembered. I haven't gone back and**  
3       **looked at the minutes. I haven't thought about it in**  
4       **three years, so I'm going by recollection.**

5   Q   All right. Have you read the County's brief in this  
6       matter?

7   **A**   **Can you repeat your question?**

8   Q   Yes.

9           Have you read the brief that the County filed in  
10       this matter?

11   **A**   **Yeah.**

12                           MS. ANDERSON: All right. One more  
13       exhibit, Your Honor, Council, Mr. Wendt. I'm going to  
14       ask that Innergex Exhibit 15 be put back up.

15   Q   (By Ms. Anderson) Mr. Wendt, did you receive this  
16       document? It's the SEPA staff report.

17                           JUDGE GERARD: It's not published  
18       yet, Counsel.

19                           MS. ANDERSON: It's coming. Sorry.

20                           JUDGE GERARD: Excuse me.

21   Q   (By Ms. Anderson) Can you see it now?

22   **A**   **Yes.**

23   Q   All right. Did you receive this document?

24   **A**   **Yes.**

25   Q   Did you read it?

1 A Yes.

2 Is that -- wait. Back up. This is the -- oh,  
3 their actual recommendation that came back after the  
4 SEPA determination?

5 Q No. This is --

6 A Can you move -- can you move down on the document so I  
7 can see the document.

8 Our office did probably receive that. I don't --  
9 I don't specific remember reading that document, no.

10 Q Have you ever been a SEPA responsible official?

11 A Yes.

12 Q Okay. Is this project a matter of concern to the  
13 County?

14 A Yes.

15 Q Is there any reason why you didn't read this document?

16 A Well, Michelle Mercer is currently our SEPA responsible  
17 official, so -- but back on that date -- what date was  
18 this issued? Just trying to determine who the SEPA  
19 responsible official was.

20 Q We'll go to the top. I believe it was in May.

21 There we go. May 15, 2024.

22 A Okay. Yeah. Well, and certainly if it was a Benton  
23 County project for sure. Absolutely. She would have  
24 been the SEPA responsible official for that -- for a  
25 project in Benton County.

1 Q Okay. So you don't know why Benton Coun- -- did Benton  
2 County comment on this MDNS, if you know?

3 A No, we did not.

4 Q Why not?

5 A Well, you know, we -- we -- we have only so many  
6 resources to spend on projects like this, and so  
7 certainly we chose to spend it, you know, on -- the  
8 project was incompatible. It's prohibited. You know,  
9 it -- we -- we decided to spend our resources focusing  
10 on the land-use issues at the adjudication rather than  
11 the SEPA review. With limited -- with limited  
12 resources the County has, that's how we focused our  
13 time.

14 MS. ANDERSON: I have nothing  
15 further. Thank you.

16 THE WITNESS: No problem.

17 JUDGE GERARD: Mr. Korol, any  
18 questions of Mr. Wendt?

19 MR. KOROL: No, I do not.

20 JUDGE GERARD: Okay. Again, Board  
21 members, or Council members, rather, if you have any  
22 questions, please raise your hand.

23 (Videoconference background  
24 dialogue.)

25 ////

1 JUDGE GERARD: Ms. Anderson, you're  
2 not on "mute," so just know that whatever sidebar  
3 conversation is being heard by everybody. Thank you.

4 All right. Mr. Young, go ahead and ask your  
5 question, please.

6 MR. YOUNG: Good afternoon,  
7 Mr. Wendt. At the time that the County did its GMA  
8 land designations, what proportion of all the  
9 agricultural land in the county was judged to have  
10 long-term commercial significance?

11 **THE WITNESS: The County designated**  
12 **through the study that was done. I know we saw earlier**  
13 **58 percent of the county was GMAAD. The entire -- the**  
14 **entire 58 percent was designated that. And ag --**  
15 **whether ag lands, are irrigated, are rangeland, and are**  
16 **dryland were considered equal.**

17 MR. YOUNG: So there were no  
18 agricultural lands that were judged as not having  
19 long-term commercial significance?

20 **THE WITNESS: That is correct.**

21 MR. YOUNG: Thank you.

22 JUDGE GERARD: Any other question,  
23 Mr. Young?

24 MR. YOUNG: No, no further  
25 questions. Thank you.

1 JUDGE GERARD: Mr. Gonseth, please  
2 ask your question.

3 MR. GONSETH: Thank you.

4 So my question is: Is your ag designation  
5 consistent with your surrounding counties in the rest  
6 of the state as only having one designation as opposed  
7 to a couple designations?

8 THE WITNESS: I can't speak for the  
9 other counties. I can tell you that, you know -- well,  
10 I guess I could. I'm not going to speak for Yakima or  
11 Walla Walla. I can tell you, over in Franklin, that  
12 would be the case. They have -- it's very similar to  
13 that. Both Benton and Franklin are very similar setups  
14 in term of their agricultural lands and having one  
15 designation.

16 MR. GONSETH: Thank you.

17 JUDGE GERARD: Any other questions  
18 from the Council?

19 Chair Drew.

20 CHAIR DREW: Thank you.

21 Mr. Wendt, you mentioned that there are -- since  
22 this ordinance that banned solar -- major solar  
23 facilities from the agricultural zone, there are two  
24 other places under county jurisdiction where there  
25 could be a solar facility, major, that is allowed; is

1 that correct? That's the light industrial and the  
2 heavy industrial.

3 **THE WITNESS: And the un- -- and**  
4 **unclassified. Yes.**

5 CHAIR DREW: Is unclassified under  
6 your jurisdiction or under the federal government?

7 **THE WITNESS: Part of it -- the**  
8 **permitting is -- in parts of it, it is -- parts of it**  
9 **still does get permitting through Benton County.**

10 CHAIR DREW: What's the acreage of  
11 that part?

12 **THE WITNESS: Thousands. I don't**  
13 **know. I would have to look it up.**

14 CHAIR DREW: Okay. But in the light  
15 industrial zone, there's 1,333 acres, correct? That's  
16 what I saw in the chart.

17 **THE WITNESS: Probably. Yeah.**

18 CHAIR DREW: And in the heavy  
19 industrial, there's 2,334 acres.

20 **THE WITNESS: Okay.**

21 CHAIR DREW: So do you see actually  
22 the potential for any major solar facility to site  
23 within those districts?

24 **THE WITNESS: Well, light and heavy,**  
25 **probably not, the way it's currently set up. It could**

1 change as we're going through our -- our periodic  
2 update, and that's what we're --

3 CHAIR DREW: At this point in time.

4 THE WITNESS: And certainly with the  
5 unclassified zone -- and there's lots and lots of land  
6 out there with the federal government. And developers  
7 have been working with them to do the -- to do these  
8 projects in Benton County, and those are projects we  
9 fully support.

10 CHAIR DREW: Under Benton County's  
11 jurisdiction, you don't --

12 THE WITNESS: Right.

13 CHAIR DREW: -- know the acreage of  
14 the unclassified. But of the --

15 THE WITNESS: No, I'd have to look  
16 at that one.

17 CHAIR DREW: -- classified that was  
18 listed, 1,333 acres in light industrial and 2,334 acres  
19 of heavy industrial. That is where you would direct  
20 major solar facilities, but then you just said that  
21 wouldn't be a good place for them.

22 THE WITNESS: No. We allow them in  
23 light, heavy, and unclassified.

24 CHAIR DREW: But there is not the  
25 appropriate acreage there for a major solar facility,

1 is there?

2 **THE WITNESS:** Where?

3 CHAIR DREW: In light indus- -- or  
4 heavy industrial areas. The acreage is too small.

5 **THE WITNESS:** I'm not -- I don't --  
6 I don't design solar facilities. If they can put one  
7 in there, that'd be great. We've talked to people out  
8 in some of our industrial lands about putting in solar  
9 facilities, and --

10 CHAIR DREW: So you -- okay. So you  
11 don't know anything about what a solar facility needs;  
12 is that correct?

13 **THE WITNESS:** No, that's not true.  
14 I'm just saying that there's different sizes. We have  
15 a -- the -- the Wautoma Solar project is 300 acres.  
16 So, I mean, there are projects that you can place in  
17 some of those areas.

18 CHAIR DREW: Okay. So --

19 (Interruption by reporter due  
20 to simultaneous speaking.)

21

22 JUDGE GERARD: Yeah, we're kind  
23 of --

24 CHAIR DREW: Sorry.

25 JUDGE GERARD: We're kind of



1 speaking over each other and not letting people fully  
2 answer questions.

3 Mr. Botelho, what part do you need repeated so we  
4 can get the record clear for you?

5 (Pertinent part of the record  
6 read by the reporter.)

7  
8 JUDGE GERARD: Okay. Mr. Wendt --

9 CHAIR DREW: Let's just withdraw the  
10 rest of that, so...

11 JUDGE GERARD: Okay. Then it is  
12 stricken. Thank you. Please move on.

13 Any other questions, Chair Drew? Chair Drew, any  
14 other questions of the witness?

15 CHAIR DREW: No. That's all. Thank  
16 you.

17 JUDGE GERARD: Okay. And then,  
18 Ms. Holt, any redirect of your witness?

19 MS. HOLT: If I could just briefly.

20  
21 REDIRECT EXAMINATION

22 BY MS. HOLT:

23 Q Mr. Wendt, if I share with you the comprehensive plan  
24 here -- give me just a second.

25 Can you see that document?

1 **A Yes, ma'am.**

2 Q Okay. And in that Table 3.4 there, can you describe  
3 which areas are zoned as classified -- or I'm sorry --  
4 unclassified?

5 **A (Videoconference audio distortion.)**

6 (Clarification by reporter.)

7

8 JUDGE GERARD: Yeah, I didn't hear  
9 the answer either.

10 Would you please repeat that, Mr. Wendt.

11 **THE WITNESS: Hanford -- I believe**  
12 **it's Hanford and the Hanford Reach are both**  
13 **unclassified.**

14 Q (By Ms. Holt) And then looking at Table 3.3, above,  
15 for the Hanford site and the Hanford Reach, what is the  
16 acreage within those --

17 (Interruption by reporter due  
18 to simultaneous speaking.)

19

20 JUDGE GERARD: Yes, Mr. Wendt, you  
21 need to wait until the answer [sic] is fully asked.  
22 You're kind of jumping the gun on it.

23 Ms. Holt, please re-ask the question.

24 Q (By Ms. Holt) In the Table 3.3 under Hanford site and  
25 Hanford Reach, what is the acreage there?

1 **A 265,567, I believe. And the other, for the Hanford**  
2 **Reach, is 12,443.**

3 MS. HOLT: That is all the redirect  
4 that I have for him. Thank you.

5 JUDGE GERARD: Thank you.  
6 (Witness excused.)

7  
8 JUDGE GERARD: All right. Ms. Holt,  
9 please call your next witness.

10 MS. HOLT: For my next witness, I  
11 would like to call Michelle Mercer.

12 JUDGE GERARD: Good afternoon,  
13 Ms. Mercer.

14 **THE WITNESS: Good afternoon.**

15 JUDGE GERARD: All right. Do you  
16 have camera capabilities?

17 **THE WITNESS: Yep.**

18 JUDGE GERARD: Go ahead and turn it  
19 on. I'm not sure if you're in one of the screens that  
20 I don't have up.

21 **THE WITNESS: My camera is on.**

22 JUDGE GERARD: I can see it now.  
23 Thank you. You were on the second page for me.

24 Have you been present throughout the entirety of  
25 the proceedings?

1                                   **THE WITNESS: I have.**

2                                   JUDGE GERARD: Have you heard the  
3 instructions I've given all witnesses?

4                                   **THE WITNESS: I did.**

5                                   JUDGE GERARD: Do you have any  
6 questions about what's expected of you?

7                                   **THE WITNESS: No, sir.**

8                                   JUDGE GERARD: Then please raise  
9 your right hand.

10                                  Do you solemnly swear or affirm the testimony  
11 you're about to give will be the truth, the whole  
12 truth, and nothing but the truth under penalty of  
13 perjury?

14                                  **THE WITNESS: I do.**

15                                  JUDGE GERARD: You are under oath.

16                                  The one thing I would ask that we have been  
17 experiencing with is, even if you know what the party  
18 is going to ask, don't answer immediately. Just wait  
19 until the question's fully asked. That way we have a  
20 nice smooth transition of question and answer. Thank  
21 you.

22                                  **THE WITNESS: Understood.**

23                                  JUDGE GERARD: Ms. Holt, please  
24 begin.

25                                  MS. HOLT: Thank you, Your Honor.

1 MICHELLE MERCER, having been first duly sworn  
2 by Judge Gerard, was  
3 examined and testified as  
4 follows:

6 DIRECT EXAMINATION

7 BY MS. HOLT:

8 Q Ms. Mercer, can you say and spell your name for the  
9 record.

10 A Michelle Mercer. M-i-c-h-e-l-l-e, last name Mercer,  
11 M-e-r-c-e-r.

12 Q Could you tell us about your educational background.

13 A Sure. I attended Portland State University and  
14 graduated with a bachelor of science in geography and a  
15 minor in community development, which is their  
16 equivalent of planning.

17 Q What is your employment title with Benton County?

18 A I'm currently the Benton County planning manager.

19 Q And how long have you had that role?

20 A I've been in this role for two years, and I've been  
21 with the County for nine years.

22 Q And what do your -- what does your current role entail?

23 A I currently manage a staff of seven, including the code  
24 enforcement officers. And I handle all of the  
25 long-term plans for the County as well as helping

1 customers at the counter and general land-use planning  
2 activities.

3 Q Do you have any other past employment or other  
4 experience relevant to municipal planning?

5 A Yeah. I currently serve as the president of the  
6 Washington State Association of Counties and Regional  
7 Planning Directors. I'm also on an advisory group, the  
8 fish and wildlife biodiversity area and corridors  
9 practitioner group.

10 Q And then do you have any personal experience with the  
11 agricultural community?

12 A I do.

13 Prior to working for Benton County, I was a farmer  
14 in Africa as well as a fish-farming Peace Corps  
15 volunteer for the U.S. government.

16 Prior to that, I worked in forestry nonprofits,  
17 natural resource conservation groups, and as a wildland  
18 firefighter for the Forest Service.

19 I also am a fifth-generation local -- from a  
20 fifth-generation local farming family here in Benton  
21 County. Our farm is located on southern -- in the  
22 southern part of Benton County, and we also have a  
23 winery in Prosser.

24 Q Based on your personal, professional, educational  
25 experience, do you feel like you have an understanding

1 of the interests and policies related to ag land on the  
2 counties and state level?

3 A I do. I feel like I'm uniquely positioned in this role  
4 at Benton County to understand the concerns and needs  
5 of the farmers while understanding the State's Growth  
6 Management Act and laws surrounding land-use practices,  
7 and I try my best to marry the two where I see fit.

8 I often have to explain to the agricultural  
9 community that some of their ideas aren't able to be  
10 implemented in the agricultural zone, and I am very  
11 well-suited to explain why and let them know from a  
12 professional level but then also empathize with them on  
13 a personal level as my family relies on farming as an  
14 economy as well.

15 Q So we're here today because of one of those ideas and  
16 requests.

17 When did you first become aware of the applicant's  
18 project?

19 A I first heard about Innergex -- I received a phone call  
20 from a resident who had received some sort of piece of  
21 mail, and he was inquiring with me regarding if I had  
22 heard about it or knew anything else of the project.  
23 And I believe that was in early July, about a month  
24 prior to the company reaching out to Greg and our  
25 generic planning department's e-mail that I wasn't

1       **aware of.**

2                               JUDGE GERARD: Ms. Mercer, can you  
3 tell me the year, please. You said July, but that's  
4 rather...

5                               **THE WITNESS: July 20 -- I think it**  
6 **was July of 2021.**

7                               JUDGE GERARD: Please continue,  
8 Ms. Holt.

9                               MS. HOLT: Thank you.

10 Q (By Ms. Holt) And when did the resident and the  
11 neighbor reach out to you? Do you recall about what  
12 month?

13 **A That was in July. I want to say it was maybe July 7th.**

14 Q And when they reached out to you, what was your  
15 takeaway whether -- did they have any concerns? Were  
16 they just informing the County? What was the purpose  
17 of their call?

18 **A They were looking for more information and wondering**  
19 **what the County regulations were at that time for such**  
20 **a project.**

21 Q Based on your understanding of the proposed project  
22 site, what is the classification of lands that are  
23 subject to these proceedings today under the Benton  
24 County Code?

25 **A The lands are zoned GMA agriculture district.**



1 Q Did you hear the testimony from Mr. Wendt regarding the  
2 County's history regarding GMAAD districts?

3 **A I did.**

4 Q Okay. Do you have anything to add regarding the  
5 County's history on designating GMAAD lands that you  
6 believe will be helpful for the County -- or I'm  
7 sorry -- for the Council today?

8 **A The only thing that I would add, since I've been here**  
9 **the longest, Mr. Wendt and Mr. MacPherson, our county**  
10 **administrator, came over to run the planning department**  
11 **about two years after I started.**

12 And the only other things I have to add is that  
13 the County began significant changes once they started  
14 as new management in the planning department, because  
15 our previous codes weren't in compliance with the state  
16 rules and regulations, so we ratified quite a few  
17 county codes, including our comprehensive plan was  
18 shortly updated thereafter, and that really began the  
19 ball rolling with a lot of our updates to become  
20 compliant and practice good planning practices instead  
21 of prior planning practices that weren't necessarily  
22 the best.

23 Q And how involved were you personally with the updates  
24 to the planning provisions in the Benton County Code?

25 **A At that time, I was a junior planner, so I wasn't**

1       overly involved in the 2018 updates. I was on the  
2       periphery, and I was aware of the on-goings. But at  
3       that time, it was primarily Mr. Wendt and  
4       Mr. MacPherson who led the charge on those updates and  
5       that work.

6   Q   Okay. Even from that kind of stepped-back distance,  
7       are you aware of what efforts the County makes to reach  
8       out to the public to solicit comment on these county  
9       code changes?

10  A   Yeah, so generally under state statute, we're required  
11       to do public notification for any project of any size,  
12       but depending on the type of project, they have  
13       different requirements.

14               So when we have a site-specific project, we  
15       typically notify not only the property owners on record  
16       but also the neighbors within a certain distance to the  
17       subject property. If it's non-project-specific or  
18       non-site-specific or a non-project, then no -- no  
19       direct notice is required as it applies to the entire  
20       county. And to be able to send out 36,000 notices  
21       would be a cost burden to the County, so we publish in  
22       the newspaper, and that is our due diligence for  
23       notifying people of proposed actions when it comes to  
24       countywide.

25  Q   Do you recall, when the public hearing was held on this

1 change to the Benton County Code, were there any  
2 persons that came forward to speak?

3 **A Yes, there were. There was a handful of interested**  
4 **parties who had direct ties to renewable projects or**  
5 **potential -- potential renewable projects.**

6 Q And were those people residents of Benton County?

7 **A No. Only a few of them were residents of Benton**  
8 **County. The others, as I mentioned, either had special**  
9 **interests or were developers looking to develop within**  
10 **the county. They weren't actual residents of our**  
11 **county.**

12 Q Prior to the hearing, do you recall receiving any  
13 community outreach by other means: E-mail, phone  
14 calls, anything like that?

15 **A I'm sure there were at least a few phone calls. I**  
16 **don't recall. It's been quite some time. And my**  
17 **memory's not the best from that, that time.**

18 Q If I may share with you what has been marked as  
19 Exhibit 10.

20 Can you see that document?

21 **A Yes.**

22 Q There at the bottom of that first page, appears to be  
23 an e-mail from a Brent Strecker.

24 Do you recall receiving that?

25 **A I don't recall it off the top of my head. But it's**

1 very common for us to receive emotional e-mail such as  
2 this from folks in the county when projects are  
3 happening.

4 Q Did you happen to go by the last name Cooke in the  
5 past?

6 A I did. I recently went through a divorce, so my last  
7 name reverted back.

8 Q Okay. So would that be you, then, on the "cc" line,  
9 Michelle Cooke, of the e-mail?

10 A That is -- that is correct.

11 Q Okay. And is that comment from a member of the public  
12 as far as you know?

13 A Yep. It appears that the person who wrote that is from  
14 unincorporated Benton County based on the address.

15 Q And is that comment in support of the change to the  
16 Benton County Code or against it?

17 A It is in opposition. Or it's in support, I suppose.  
18 It's in opposition to renewable projects.

19 Q And so changing now, the same document, going down to  
20 Page 374, do you recall receiving that e-mail?

21 A I don't. I receive a lot of e-mails.

22 Q Does that e-mail appear to be in favor of or against  
23 the change in the Benton County Code?

24 And I can scroll down so you can see the rest, if  
25 necessary.

1 A No. It -- it sounded like from my quick reading that  
2 the resident didn't understand the intent, so we had a  
3 conversation where I explained to her what it meant,  
4 and then she was in favor of the ordinance amendment to  
5 prohibit the renewable energy projects.

6 Q So would it be fair to say that not everyone in the  
7 county is aware of these changes to the Benton County  
8 Code?

9 A Yes, I would say that's true.

10 Q Okay. Would it be fair to say you did get some  
11 participation from community members?

12 A Yes, we did. Even if they didn't show up at the  
13 hearing that night, or that day.

14 Q And would it be fair to say that the change in the  
15 Benton County Code is in line with some of those  
16 community interests?

17 A Yes. I believe that the changes that we proposed and  
18 that were adopted are in line with the majority of the  
19 county's 37,000 residents, not necessarily obviously in  
20 alignment with the people who have a vested interest in  
21 projects like this for economical reasons, but overall,  
22 I would say the county is in support, especially the  
23 agricultural community.

24 I know in my experience with the Horse Heaven Wind  
25 Farm, reaching out to the AVA associations and other

1 special-interest ag groups, they were opposed to such a  
2 project. The farmers who were in support of it were  
3 the ones who were directly financially benefitting from  
4 the project. However, their neighbors necessarily  
5 aren't in support of such a project.

6 Q And what is your understanding of why solar power  
7 generator facilities, major, were removed from having  
8 the option of getting a conditional use permit on GMAAD  
9 lands?

10 A They were removed because they are considered  
11 industrial in nature, and the amount of land that they  
12 take up is too great to meet the test of the one acre  
13 or less when it comes to non-ag uses.

14 We have a provision in our code that's non-ag  
15 accessory uses, but they must be limited to less than  
16 one acre and meet a host of other tests. Projects of  
17 this size and scope are much larger than that and  
18 obviously misappropriately convert ag lands that are  
19 meant to be conserved and protected under our charge.

20 Q If the Council were to preempt that code and allow this  
21 facility, are there any conditions that you're going to  
22 recommend the Council include in their recommendation  
23 to the governor?

24 A I can't think of any conditions in the land-use matter  
25 specifically that would enable the mitigation of a

1 project of this size and scope. I know that there was  
2 lots of discussion today about other mitigation  
3 measures specifically through the SEPA and  
4 environmentally based. And that's a completely  
5 different topic.

6 While you can -- you might be able to mitigate for  
7 environmental issues, you can't mitigate for the loss  
8 of lands that are zoned and designated and that are  
9 supposed to be protected and conserved. So unless we  
10 are able to find extra land in Benton County that meet  
11 the set of criteria laid out by the State to designate  
12 lands of long-term commercial significance, then I  
13 don't see a way to condition them under this specific  
14 and very pointed purview that we're discussing today.

15 Q And in terms of conditions, what is your understanding  
16 of the law on, when the Council makes their  
17 recommendation, what sort of conditions must be  
18 imposed? Are you aware of that?

19 A Typically. But after participating in one project  
20 already, my understanding is that the -- the Council  
21 has quite a broad view of -- of their ability to be  
22 able to propose or recommend conditions. Whether or  
23 not that's upheld by the governor is a different  
24 matter, but they certainly can review all of the  
25 reports and assessments and the environmental impacts

1 and make appropriate recommendations to mitigate  
2 projects.

3 Q There were conditions in the revised MDNS.

4 Why didn't the County comment publicly on the  
5 original MDNS and propose conditions that would help  
6 those land-use issues?

7 A I don't believe that we chose to comment on the MDNS,  
8 because we typically as land-use planners aren't the  
9 most technical experts. We rely on our partners, such  
10 as Fish and Wildlife and others, to provide those  
11 technical recommendations or those technical conditions  
12 that should be imposed, because it is environmental in  
13 nature.

14 As much as I would like to be able to speak to  
15 wetlands and habitat and all of those things, I'm  
16 not -- I'm not the local expert on that, nor do I have  
17 the education for speaking to environmental impacts and  
18 mitigation. That would be in the hands of, you know,  
19 our technical counterparts.

20 And so in reviewing the MDNS document, I felt like  
21 the agencies who needed to recommend conditions  
22 certainly did that in there, and I didn't feel that I  
23 had anything to add.

24 Q So if the MDNS had gone beyond environmental concerns  
25 to specifically land-use preemption, would the County



1 have commented?

2 **A More than likely.**

3 Q Okay. Having the opportunity today, are there any  
4 conditions that you are asking the Council to impose  
5 that address the County's concern with land-use  
6 preemption?

7 **A There are not.**

8 Q Does the county code ban solar and other renewable  
9 energies blanketly?

10 **A We do not. As was previously discussed with Mr. Wendt,**  
11 **we allow them in our industrial zones. Although those**  
12 **are limited. We also allow them in the unclassified**  
13 **zone. And just this year, in July or August,**  
14 **8,000-acre solar project is being proposed at the**  
15 **Hanford site. I think that is an appropriate use of**  
16 **the Department of Energy's land and resources that they**  
17 **own. And so private developers are now seeking to site**  
18 **their projects there. That land has been disturbed**  
19 **historically and is a very appropriate place for**  
20 **projects such as -- as this one.**

21 Q Why is that area more appropriate than ag lands if in,  
22 at the end of the day, the lands, through the MDNS  
23 requirements, could potentially be returned to ag  
24 lands?

25 **A I would say that's because the Hanford site has**

1 historically had -- they've had disturbances, and  
2 they've had energy projects there with the Hanford  
3 nuclear reservation that have compromised the overall  
4 health of that area. And while the DOE and partners  
5 are working hard to bring back environmental  
6 enhancement in some of the site, some of that site  
7 isn't going to be restored a hundred percent to a  
8 workable area that would be safe for any other use than  
9 energy or industrial-type uses.

10 Q We've heard some testimony earlier.

11 Do you recall testimony that this is a compatible  
12 use with surrounding area lands? Do you recall that?

13 A I do recall the applicant's witnesses trying to make  
14 that case, yes.

15 Q Do you agree?

16 A Do not. I believe that --

17 Q Can you tell me why?

18 A Yeah. I believe that it's not compatible with  
19 surrounding areas. Although it may make a -- although  
20 it doesn't seem to have a large impact, I think when  
21 you parcelize and break up agricultural lands, there is  
22 long-term effects that happen from that. I don't think  
23 a lot of regular people who are n't aware of long-term  
24 land-use patterns would necessarily understand that.

25 I also feel like it's a disturbance to the soils

1 underneath. We have yet to understand what the  
2 long-term impacts to soils that are shaded for 20 or 30  
3 years will be. And so it's hard to say with certainty  
4 that it's going to be as vibrant of a agricultural area  
5 as it is currently today under the Robert family.

6 Q Is there anything else that you'd like to share with  
7 the Council today that you feel would be helpful in  
8 them making a decision?

9 A I don't have anything too much more. I would like to  
10 just to point out that the Washington Clean Energy Act  
11 has been brought up a number of times. And I think one  
12 of the important things to remember with that,  
13 especially when talking about preemption, is that the  
14 renewable energy that the governor has charged us with  
15 is to be consumed in Washington State. I don't know  
16 that the -- the energy in this project is actually  
17 going to stay in state or even locally.

18 And I think that's a very important idea to  
19 consider as the Council, especially when many projects  
20 are happening, and you have to think collectively that  
21 we're impacting one county and the burden is being  
22 shifted on one county or a small handful of counties in  
23 the state when perhaps it's not even a need that's  
24 being met locally or on the state level.

25 And I don't think it's appropriate personally or

1 professionally to do that here in Benton County without  
2 taking a holistic approach and looking at the  
3 collective impacts that all of these projects in the  
4 surrounding areas have on land use and the health of  
5 our state.

6 MS. HOLT: Thank you. That's all  
7 the questions that I have for you.

8 JUDGE GERARD: Ms. Anderson, any  
9 questions of Ms. Mercer?

10 MS. ANDERSON: I have no questions  
11 for her. Thank you.

12 JUDGE GERARD: All right.  
13 Mr. Korol, any questions of Ms. Mercer?

14 MR. KOROL: I have no questions.

15 JUDGE GERARD: Council members, if  
16 you have questions, please raise your hand.

17 Chair Drew, any questions before we release this  
18 witness?

19 CHAIR DREW: I have no questions.

20 JUDGE GERARD: Okay. Very good.

21 (Witness excused.)

22  
23 JUDGE GERARD: And then, Ms. Holt, I  
24 do believe that was the entirety of witnesses; is that  
25 correct?

1 MS. HOLT: That is correct.

2 JUDGE GERARD: Does Benton County  
3 rest?

4 MS. HOLT: We rest.

5 (Benton County rests.)

6  
7 JUDGE GERARD: Mr. Korol, you didn't  
8 have any witnesses or -- or exhibits.

9 Does counsel for the environment anticipate  
10 presenting any case?

11 MR. KOROL: No, Your Honor.

12 JUDGE GERARD: Okay. So with that,  
13 we can segue at this point to closing statements.  
14 Again, I propose we just take a five-minute rest, let  
15 the counsels compose themselves and get their -- their  
16 closing statements ready, and then rejoin at 3:55.

17 So the hearing will continue to run, so we're  
18 going to get about ten minutes of dead air, or seven  
19 minutes, and we will pick up at that point. So please  
20 be back at 3:55.

21 (Pause in proceedings from  
22 3:48 p.m. to 3:55 p.m.)

23  
24 JUDGE GERARD: All right. It is  
25 3:55. Let's go ahead and move on to closing

1 statements.

2 We'll do another roll call to make sure everyone  
3 is present, and then we'll go ahead and segue into  
4 those closing statements.

5 Ms. Anderson, are you present on behalf of the  
6 applicant? Doesn't look like it quite yet.

7 MS. ANDERSON: Yes, sir, I am.

8 JUDGE GERARD: Ah. There we go.

9 Ms. Holt, are you present on behalf of Benton  
10 County?

11 MS. HOLT: I am.

12 JUDGE GERARD: Good.

13 And, Mr. Korol, present on behalf of counsel for  
14 the environment?

15 MR. KOROL: I am.

16 JUDGE GERARD: And, Ms. Owens, if  
17 you go ahead and take the roll of the Council again,  
18 please.

19 MS. OWENS: Absolutely.

20 Chair Drew.

21 CHAIR DREW: Present.

22 MS. OWENS: Department of Commerce.

23 MS. OSBORNE: Elizabeth Osborne,  
24 present.

25 MS. OWENS: Department of Ecology.

1 Department of Fish and Wildlife.

2 MR. LIVINGSTON: Mike Livingston,  
3 present.

4 MS. OWENS: Department of Natural  
5 Resources.

6 MR. YOUNG: Lenny Young, present.

7 MS. OWENS: Utilities and  
8 Transportation Commission.

9 MS. BREWSTER: Stacey Brewster,  
10 present.

11 MS. OWENS: Benton County.

12 MR. SHARP: Dave Sharp, present.

13 MS. OWENS: Department of  
14 Transportation.

15 MR. GONSETH: Paul Gonseth, present.

16 MS. OWENS: That is the entire  
17 Council.

18 JUDGE GERARD: Thank you, Ms. Owens.

19 Mr. Botelho, are you present as well?

20 THE REPORTER: I'm here, Judge.

21 JUDGE GERARD: Excellent.

22 Okay. One final confirmation. There was no ex  
23 parte communication. I represent to all parties I did  
24 not have any conversations with anybody whilst we were  
25 on that brief break. If anyone disagrees with that

1 statement, please raise your hand, and we will preserve  
2 it for the record.

3 No hands have been raised. Let's move into  
4 closing statements.

5 I do remind both -- all three parties, rather,  
6 we've all agreed to five-minute closing statements, and  
7 then one week after closing, to submit post-hearing  
8 briefs.

9 So with that, Ms. Anderson, do you wish to make a  
10 closing statement on behalf of the applicant?

11 MS. ANDERSON: Yes, sir, I do.

12 JUDGE GERARD: All right. Then go  
13 ahead and begin. We'll estimate the time in general.

14 MS. ANDERSON: I will be under five  
15 minutes.

16 JUDGE GERARD: Thank you.

17 MS. ANDERSON: Thank you, Your  
18 Honor. I'll be brief.

19 There is only one topic before this Council today,  
20 and that is land-use inconsistency, which drives the  
21 two issues the Council has to resolve: The need for  
22 preemption and conditions for the SCA to recognize  
23 preempted local provisions.

24 The SEPA issues are already covered in the final  
25 MDNS: Soil monitoring and restoration, water supply



1 and quality, dust. Notably, pursuant to SEPA  
2 Regulation 197-11-444, land use and shorelines are  
3 included in SEPA as well. Cumulative impacts, traffic,  
4 lights, noise, all of these have been addressed and  
5 mitigated by SEPA responsible official for EFSEC. And  
6 Benton County did not challenge any of that. There is  
7 nothing more to do on these issues during this  
8 adjudication.

9 EFSEC's priorities: They're set forth in  
10 RCW 80.50.010. And preemption, which should be guided  
11 and informed by those policies, is authorized by  
12 RCW 80.50.110. If anything, the urgency of siting  
13 clean energy facilities has been brought into painfully  
14 stark focus with the passage of the Clean Energy  
15 Transformation Act, whose deadlines to transition  
16 Washington away from fossil fuel-generated electricity  
17 are bearing down quickly. And in no uncertain terms,  
18 when a county refuses to permit a renewable energy  
19 project, EFSEC has the authority to do so.

20 EFSEC used its preemption powers in a similar  
21 situation involving the GMA years ago when Kittitas  
22 County tried to block a wind project using the GMA.  
23 The Council should preempt again here. We have the  
24 same identical situation.

25 It is telling that Benton County's GMAAD

1 previously authorized solar energy projects of this  
2 scale as a conditional use, and yet not one word of  
3 testimony was offered today in this adjudication that  
4 the change in the code was driven by any change in the  
5 comp plan. What changed was County's mind about clean  
6 energy.

7 Despite this, Innergex has agreed to appropriate  
8 CUP conditions as set out in the MDNS in order to  
9 address the County's conditional use criteria and  
10 RCW 80.50. Benton County, in its brief and as  
11 concurred with by the County's community development  
12 director, agrees that those are the appropriate  
13 conditions if EFSEC exercises or recommendations  
14 exercise of preemption powers. And, indeed, Benton  
15 County is not seeking any additional land-use  
16 conditions beyond the land-use and shoreline conditions  
17 expressly called out as land and shoreline use  
18 conditions in the MDNS.

19 Applicant has developed Wautoma to be sited on  
20 agricultural lands that have been declining in  
21 productivity and commercial relevance for decades. Its  
22 current and future water availability is questionable.  
23 And this project will help the landowners expand their  
24 ag activities through a smart water strategy that will  
25 result in them collectively using less groundwater,

1 leaving more in the aquifer.

2 And harvesting solar energy here is not displacing  
3 any ranchers, any farmers, or any viticulturalists in  
4 their ventures. It is providing them with the means to  
5 actually grow their agricultural business and  
6 profitability. Conversely, not preempting Benton  
7 County land-use regulations will deprive the state of  
8 Washington of the renewable energy that it needs, and  
9 it will deprive these landowners of their best and  
10 possibly only chance of becoming profitable on their ag  
11 lands.

12 EFSEC's statutory mandate under 80.50.010,  
13 including the pressing need for more energy facilities  
14 in this state, should drive your decision and justify  
15 preempting Benton County's ban on renewable energy in  
16 the GMAAD. The Council is legally authorized to  
17 recommend preemption, and I would posit: If not here,  
18 then where?

19 We respectfully ask that you do, in fact,  
20 recommend preemption approval and the imposition of all  
21 of the conditions in the staff's MDNS and all of the  
22 conditions in the applicant's Section A.5 measures in  
23 the application for site certification. We will  
24 provide a post-hearing brief further explaining how and  
25 why preemption is EFSEC's best choice for the Wautoma

1 project. Thank you.

2 JUDGE GERARD: Thank you,  
3 Ms. Anderson.

4 Ms. Holt, do you wish to make a closing statement  
5 on behalf of Benton County?

6 MS. HOLT: Yes. Thank you, Your  
7 Honor.

8 The Council has heard testimony from both parties  
9 that the local land-use regulations do not currently  
10 allow siting of solar power generator facilities,  
11 major. The parties also agree that EFSEC has the  
12 ability to recommend preemption of those regulations.  
13 Where the parties disagree is whether there are  
14 sufficient proposed conditions that address state and  
15 county land-use interests regarding the preservation of  
16 agricultural lands.

17 There has been testimony that both the state and  
18 the local level have an interest in this. If the  
19 Council recommends preemption, the law requires that  
20 they make condition recommendations in its draft  
21 certification agreement that address these local  
22 interests. The applicant proposes that environmental  
23 conditions and the boost to surrounding area ag is  
24 enough. However, we have heard testimony from the  
25 County that none of the conditions in Table A.5 of the

1 application or their revised MDNS address the loss of  
2 ag lands during the life of the project.

3 The exhibits -- specifically, the revised MDNS --  
4 in the record further show that even with all of the  
5 conditions imposed, return of the subject property  
6 lands to ag use is not a foregone conclusion. Benton  
7 County's position is that there are no conditions  
8 proposed to protect its interest in the loss of ag  
9 lands. If no such conditions are required in this  
10 case, we are setting a standard for future similar  
11 projects to move forward in a manner that will  
12 completely undercut the County's ability to protect its  
13 own interests and in a manner that is contrary to  
14 Chapter 80.50 RCW.

15 The County is recommending -- or the County is  
16 requesting that the Council recommend against  
17 preemption to the governor. Thank you.

18 JUDGE GERARD: Thank you, Ms. Holt.

19 Mr. Korol, do you wish to make a closing statement  
20 on behalf of counsel for the environment?

21 MR. KOROL: Thank you, Your Honor.  
22 I do not.

23 JUDGE GERARD: Okay. So with that,  
24 we are going to close today's proceedings.

25 **A couple matters of housekeeping I'd like to**

1 address.

2 Ms. Anderson, I would ask that you immediately, if  
3 you haven't already done so, upload the new Exhibit 28  
4 to what has been previously -- to the same manner in  
5 which you uploaded the other documents for the  
6 Council's consideration.

7 Prehearing briefs will be submitted by all  
8 parties, if they choose to do so, by October 2nd, by  
9 5 p.m. In addition, I will make the audio of today's  
10 hearing available for the Council for their review.

11 And with that, I will hand the ending, the closing  
12 of the proceeding off to Chair Drew and any final  
13 statement she wishes to make.

14 CHAIR DREW: Thank you, Judge  
15 Gerard. And thank you to everybody for participating  
16 in this hearing today.

17 The Council will take all the information provided  
18 before making a determination. And we look forward to  
19 those briefs and also to Judge Gerard's findings and  
20 conclusions, at which point we will then deliberate.  
21 Thank you very much.

22 And this --

23 JUDGE GERARD: Thank you, all.

24 CHAIR DREW: -- meeting is  
25 adjourned.

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JUDGE GERARD: Thank you, all.

CHAIR DREW: If you're ready to do  
so, Judge.

JUDGE GERARD: I am. Thank you.

The time is 4:05, and the record is closed.  
Everyone, have a very good evening. Thank you, all.

(Proceedings concluded at  
4:06 p.m.)

1 STATE OF WASHINGTON ) I, John M.S. Botelho, CCR, RPR,  
2 ) ss a certified court reporter  
3 County of Pierce ) in the State of Washington, do  
4 hereby certify:

5 That the foregoing proceedings were taken in my  
6 presence and were concluded on September 25, 2024, and  
7 thereafter were transcribed under my direction; that the  
8 transcript is a full, true and complete transcript of the  
9 said proceedings and was transcribed to the best of my  
10 ability;

11 That I am not a relative, employee, attorney or counsel  
12 of any party to this action or relative or employee of any  
13 such attorney or counsel and that I am not financially  
14 interested in the said action or the outcome thereof;

15 IN WITNESS WHEREOF, I have hereunto set my hand  
16 this 2nd day of October, 2024.

17 \_\_\_\_\_  
18 /s/John M.S. Botelho, CCR, RPR  
19 Certified Court Reporter No. 2976  
20 (Certification expires 5/26/2025.)  
21  
22  
23  
24  
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