

WA State Energy Facility Site Evaluation Council
Verbatim Record of Proceedings, Adjudicative Hearing - September 25, 2024

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Application)
of:)
)
)
Innergex Renewable Development) Docket No. EF-220355
USA, LLC, for Wautoma Solar)
Project,)
)
)
)
)
Applicant.)
)

ADJUDICATIVE HEARING
VERBATIM RECORD OF PROCEEDINGS

September 25, 2024

Conducted via Microsoft Teams

Reporter: John M.S. Botelho, CCR, RPR

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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.

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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.

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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

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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.

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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

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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

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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.

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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,

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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

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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

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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

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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.

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1 If the witness answers before I give my ruling and
2 I sustain the objection, I may indicate that the answer
3 is stricken from the record and instruct the Council to
4 disregard that response.
5 After all parties have rested their case, we will
6 then move on to closing arguments. A closing argument
7 is a party's opportunity to tell the Council why they
8 should find in that party's favor. A closing argument
9 may only refer to the exhibits entered into the record
10 and the testimony given under oath. If any party
11 refers to anything outside of the record, another party
12 may object, or I may simply strike that part of the
13 argument from the record, and, again, which the Council
14 may not consider (videoconference audio distortion).
15 (Clarification by reporter.)
16
17 JUDGE GERARD: If a party does
18 mention anything outside the scope of the admitted
19 exhibits or the testimony, I either may strike it from
20 the record; another party may object, at which point
21 the Council may not consider that in rendering their
22 decision.
23 Did you hear that clearly?
24 THE REPORTER: Thank you. Yes.
25 JUDGE GERARD: Very good.

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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

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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,

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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

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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

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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.

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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.

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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.

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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.

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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

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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.

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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

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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

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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,

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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.

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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.

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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

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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

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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

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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.

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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.

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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**

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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**

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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

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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

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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;

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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**

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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.

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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

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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.**

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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

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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.**

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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

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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.

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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

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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

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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.**

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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.**

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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**

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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,**

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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

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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

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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.

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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?

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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

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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

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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

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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.

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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

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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.**

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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,**

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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

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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.**

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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**

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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**

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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**

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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**

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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.**

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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**

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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**

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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.**

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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

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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?

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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.**

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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**

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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.

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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.

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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

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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

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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

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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 JUDGE GERARD: I asked Ms. Anderson
23 if she had any response prior to making my ruling.
24 MS. ANDERSON: No, Your Honor.
25

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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**

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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?

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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

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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

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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

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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

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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

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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.

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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**

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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?

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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**

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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

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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

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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

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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

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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

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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**

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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.

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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?

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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**

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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

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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**

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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

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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**

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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?

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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

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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.**

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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**

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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?

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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

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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

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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.

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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

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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.

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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

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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 ////

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1 LESLIE McCLAIN, having been first duly sworn
2 by Judge Gerard, was
3 examined and testified as
4 follows:
5
6 DIRECT EXAMINATION
7 BY MS. ANDERSON:
8 Q Ms. McClain, would you please state your name,
9 occupation, and where you live.
10 **A My name is Leslie McClain. I reside in White Salmon,**
11 **Washington. I'm employed at Tetra Tech, which is an**
12 **environmental consulting firm which, among other**
13 **things, serves the renewable energy industry.**
14 Q What is your background and work experience?
15 **A I have a bachelor's of art in environmental studies and**
16 **public administration from Carroll College.**
17 **I've been a professional land-use and**
18 **environmental planner for over 16 years. I've worked**
19 **extensively on land-use permitting, environmental**
20 **review, project management, primarily on infrastructure**
21 **projects in Washington, Oregon, and Hawaii, including**
22 **several solar projects.**
23 MS. ANDERSON: Ms. McClain, Your
24 Honor, and Council, I'm going to put up Innergex
25 Exhibit No. 20.

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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**

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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?

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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**

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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

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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.**

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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?

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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**

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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**

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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

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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

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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

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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

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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

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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.

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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?

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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

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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

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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

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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?

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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.

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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

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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**

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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**

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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,**

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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?

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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

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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?

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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

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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**

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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

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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**

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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.**

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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?

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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

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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

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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.

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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?

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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.

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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,

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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

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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?

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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.

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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

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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?

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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 ///

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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

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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

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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,

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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?

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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?

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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 sheepherder.**
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.**

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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**

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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.

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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

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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?

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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

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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

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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**

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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.**

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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**

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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.**

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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

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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

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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.**

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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**

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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**

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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

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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.**

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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.**

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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?

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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

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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

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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**

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**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.**

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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**

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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

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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

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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.

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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**

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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 **lambling 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.

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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

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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.**

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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.

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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

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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

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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

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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?

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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

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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

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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.

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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

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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 GREG WENDT, having been first duly sworn
15 by Judge Gerard, was
16 examined and testified as
17 follows:
18
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.

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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

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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?

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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**

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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

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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

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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 --**

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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.**

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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, --**

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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**

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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

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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

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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**

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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

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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

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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

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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

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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**

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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 --

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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**

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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

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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.**

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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**

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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

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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

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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

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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

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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.)

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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

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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

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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?

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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

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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.

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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 --**

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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.

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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?

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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.**

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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 ///

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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.

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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

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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**

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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,

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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

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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?

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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?

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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?

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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.

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1 MICHELLE MERCER, having been first duly sworn
2 by Judge Gerard, was
3 examined and testified as
4 follows:
5
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

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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

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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**

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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.**

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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**

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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

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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**

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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.

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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**

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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**

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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

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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

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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

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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

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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

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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?

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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

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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.

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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

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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

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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

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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,

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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

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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

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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**

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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.

<p style="text-align: right;">Page 294</p> <p>1 JUDGE GERARD: Thank you, all. 2 CHAIR DREW: If you're ready to do 3 so, Judge. 4 JUDGE GERARD: I am. Thank you. 5 The time is 4:05, and the record is closed. 6 Everyone, have a very good evening. Thank you, all. 7 (Proceedings concluded at 8 4:06 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	
<p style="text-align: right;">Page 295</p> <p>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 6 That the foregoing proceedings were taken in my 7 presence and were concluded on September 25, 2024, and 8 thereafter were transcribed under my direction; that the 9 transcript is a full, true and complete transcript of the 10 said proceedings and was transcribed to the best of my 11 ability; 12 That I am not a relative, employee, attorney or counsel 13 of any party to this action or relative or employee of any 14 such attorney or counsel and that I am not financially 15 interested in the said action or the outcome thereof; 16 17 IN WITNESS WHEREOF, I have hereunto set my hand 18 this 2nd day of October, 2024. 19 20 21 22 23 24 25</p> <p style="text-align: center;">_____ /s/John M.S. Botelho, CCR, RPR Certified Court Reporter No. 2976 (Certification expires 5/26/2025.)</p>	

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