BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of INNERGEX RENEWABLE DEVELOPMENT USA, LLC (IRD), for Wautoma Solar Energy Project	DOCKET NO. EF-220355 APPLICANT'S PRE-HEARING MEMO IN SUPPORT OF SITE CERTIFICATION

I. INTRODUCTION

Washington's Energy Facility Site Evaluation Council ("Council") has a narrow focus. It is singularly charged, under the Energy Facility Site Location Act ("EFSLA," ch. 80.50 RCW), with siting energy facilities in the State of Washington. EFSLA and its implementing regulations contain comprehensive criteria that must be met for the state to enter into a Site Certification Agreement ("SCA") for an energy generation facility. With the passage of EFSLA, the Washington Legislature determined that the state thereafter occupied, or 'pre-empted', the field of energy facility siting.[1] Consequently, when state laws or local ordinances conflict with EFSLA, those conflicting provisions are superseded.[2] pursuant to RCW 80.50.110(1). However, preemption does not occur in a vacuum without consideration for the local regulations. Rather, the Council must consider whether conditions can be imposed on a project that reflect the local regulations that are preempted. In this case, those conditions would be aimed at reducing conflicts between agricultural uses and a solar facility, or conditions that would enable the solar facility to be supportive of agricultural use.

[1] RCW 80.50.110(2).
[2] RCW 80.50.110(1).

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Benton County Code ("BCC") §11.17.040 conflicts with RCW 80.50 because it does not allow "solar power generation facility, major" to be sited in its Growth Management Act Agriculture District ("GMAAD") zone. In such a scenario, RCW 80.50.110 applies, and EFSEC receives jurisdiction over whether to site the proposed Project and with what conditions.

In the case at hand, this adjudication is limited to the topic of Land Use,[3] namely the following two questions:

(1) Whether the Council should recommend to the Governor that the state preempt the land use plans, zoning ordinances, or other development regulations for the site for the alternative energy resource proposed by the Applicant, and

(2) If the Council approves the Applicant's request for preemption, what conditions the Council should include, if any, in a draft certification agreement to consider state or local governmental or community interests affected by the construction or operation of the alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted pursuant to RCW 80.50.110(2).[4]

Applicant Innergex, by this memorandum and through testimony to be received at hearing, submits that the answer to Question (1) is 'Yes'. This is due to the answer to Question (2): specifically, the Council should impose all the conditions contained in the Application for Site Certification ("ASC") Table A5, and all the conditions contained in the Revised Mitigated Determination of Non-Significance ("RMDNS") developed and recommended by EFSEC staff for the Wautoma Solar Energy Project. Imposition of these conditions will enable the Council to recommend approval of the Project with a Site Certification Agreement that complies with all the siting criteria under RCW 80.50, and which is consistent with and supportive of the purposes of the GMAAD zone and comprehensive plan provisions that are pre-empted.

The Council's role has taken on new urgency with the passage of the Washington Clean Energy Transformation Act (CETA, Ch. 19.405 RCW) in 2019. CETA is aggressive: it requires that by 2025 no electricity consumed in Washington can come from coal generation, that all

[3] Consistent with RCW 80.50.090(4)(b), WAC 463-28-060 and 070, the EFSEC Director's MDNS under RCW 43.21C.031, and this Council's November 15, 2022, "Order Finding Project Wautoma Solar Energy Project, LLC Inconsistent with Land Use Regulations."

[4] June 20, 2024 "Order Commencing Adjudication" at p. 4.

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electricity consumed in the state must be carbon-neutral by 2030, and all electricity must be fully carbon-free by 2045. In other words, energy generation in Washington must transition at lightning speed to 'clean energy' sources that emit no greenhouse gases. This is why, in 2022, the Legislature revised EFSLA to add among its driving policies the need to "reduce dependence on fossil fuels by recognizing the need for clean energy".

The Wautoma Solar Energy Project ("Project") proposed by Innergex Renewable Development USA LLC ("Innergex" or "Applicant") will be a CETA-consistent new source of clean, renewable electricity for Washington. The Project is designed to generate up to 470 megawatts (MW) of electricity using solar voltaic panels, which electricity can be moved directly onto the power grid or stored in a 4-hour battery system. Approval of the Wautoma Solar Energy Project advances utilities' ability to meet CETA's rigorous standards and rapidly approaching deadlines.

The evidence at hearing will demonstrate that the effects of the Wautoma Project on the environment, adjacent landowners, land use patterns and other agricultural land uses in the area have been minimized by its remote location and significant measures built into the Project's design. The Project itself complies with all the requirements of Benton County zoning but for use and was specifically designed to meet all GMAAD requirements for lot dimensions and setbacks. Council staff has recommended additional measures that further reduce the likelihood of adverse impacts through a heavily conditioned Revised Mitigated Determination of Non-Significance ("RMDNS").

The RMDNS does not only cover traditional territory such as safe-guarding water supply and quality; reducing impacts on animals, plants and habitat; protecting against erosion and suppressing dust; controlling noise emissions and visual effects; and avoiding cultural resources while also planning for how to handle inadvertent discoveries. The RMDNS also approaches the issue of land use inconsistency head-on and proposes conditions to eliminate the incompatibilities. Evidence at the adjudication will show that Council staff's review of the application was specifically informed by Benton County's concerns about effects on and inconsistency with its GMAAD zoning. The staff was also informed by input from the Washington Department of Agriculture regarding the Project's impacts on agricultural soils. Considering those concerns, this Council will learn that its staff took an unprecedented, highly rigorous approach to the matter of preserving agricultural land. It required additional study, then developed conditions to ensure that

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the leased land will be restored to the substantially same condition as today, i.e., suitable for agricultural use.

As the Council will hear, the participating landowners will continue undertaking agricultural activities alongside the Project. Indeed, approval of a Wautoma SCA will enable landowners to tap an additional abundant and recurring natural resource – solar irradiance – to diversify the streams of revenue that they can obtain from their land while knowing at the end of the Project's life, the land must be restored to a condition that is available for agriculture. Allowing the landowners to do this is consistent with the Benton Conty Comprehensive Plan, which favors uses that are supportive of, complimentary to, and/or not in conflict with agricultural activities in areas designated GMA Agriculture.

Innergex will testify that the company agrees to the imposition of all the conditions in the RMDNS. By combining the RMDNS conditions with the measures already contained in Table A5 of the ASC, this Council can recommend the Project for approval confident that the SCA reflects Benton County's comprehensive plan and zoning code interest in uses in the GMAAD being consistent with and supportive of agriculture.

Upon careful consideration of the state's need for energy at a reasonable cost and the need to minimize environmental impacts, it is respectfully submitted that this Council can and should determine that this facility is consistent with the policy and intent of Chapter 80.50 RCW in all aspects, and that it should recommend the Governor's approval with the conditions of the RMDNS and Table A5 to reflect the local land use provisions that would be preempted thereby.

II. LEGAL FRAMEWORK

A. EFSEC's Authority Under EFSLA.

EFSLA authorized the EFSEC Council to administer Washington's energy facility siting process by recommending to the governor whether applications for site certification of energy facilities should be approved.[5] EFSLA establishes clear policy mandates to guide the Council in the execution of its duties, including reducing Washington's dependence on fossil fuels,[6] recognizing a "pressing need" for increased energy facilities,[7] streamlined review for energy

[5] Ch. 80.50 RCW.
[6] RCW 80.50.010.
[7] *Id.*

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facility applications,[8] the development of clean energy sources,[9] and providing abundant clean energy at reasonable cost[10] balanced with ensuring such projects have "minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life".[11]

The Council is authorized to codify regulations into the WAC to develop criteria for site certification application review.[12] The RCW and WAC sections that govern the Council direct the preemption and superseding of local land use controls inconsistent with the siting of clean energy facilities.[13] However, the Council must include conditions in their recommendations to the governor considering the effects of preemption on the local interests that underpin the superseded land use controls.[14]

B. Disputed Issues.

The Council, sitting as the presiding officer in the upcoming adjudication, has limited the topic of this adjudication to Land Use alone.[15] Unless revised by a future order, the only issues the Council needs to address in the adjudication are:

1. Whether [the Council] should recommend to the Governor that the state preempt the land use plans, zoning ordinances, or other development regulations for the site for the alternative energy resources proposed by the Applicant?[16]
2. If [the Council] approves the Applicant's request for preemption, what conditions the Council should include, if any, in a draft certification agreement to consider state or local governmental or community interests affected by the construction or operation of the alternative energy resources and the purposes of laws or ordinances, or rules or regulations, promulgated thereunder that are preempted pursuant to RCW 80.50.110(2)?[17]

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[8] *Id.*
[9] RCW 80.50.010(3).
[10] RCW 80.50.010(4).
[11] RCW 80.50.010.
[12] RCW 80.50.040.
[13] RCW 80.50.110(1)-(2); *see also* WAC 463-28-020.
[14] WAC 463-28-070.
[15] Pre-Hearing Conference Order (July 31, 2024) at 3.
[16] *Id.*
[17] *Id.*

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The topic at hearing is narrow because the Council has already determined there are no significant environmental issues associated with the Project. Through its issuance of a State Environmental Policy Act ("SEPA") Revised Mitigated Determination of Non-Significance on June 14, 2024, staff has indicated that with imposition of the RMDNS conditions, the Project's environmental impacts are reduced to a degree that is less than significant. The Project's compliance with the substantive provisions of EFSLA and correlating WAC provisions are evidenced by the fact that the Proposal has advanced to the Council for a decision. When an ASC has been thoroughly reviewed and advanced for a decision, and when its impacts are minimized to an MDNS, as is the case here, RCW 80.50.090(4)(d) empowers the Council Chair to limit the adjudication topic to Land Use alone. Chair Drew has, accordingly, so limited the topics.

Although preemption is identified as the first issue in this case both statutorily and through the Order Commencing Adjudication, this Memorandum speaks first to the conditions that EFSEC should include in the Site Certification Agreement to reflect community interest and local rules. Those conditions help inform the Council in determining whether to recommend preemption, which is discussed thereafter.

III. DISCUSSION

A. Conditions Can Be Imposed in the Site Certification Agreement to Reflect Local Regulations.

The Wautoma Solar Energy Facility is a well-sited project designed to be built and operated compatibly with agricultural uses allowed in the GMAAD zone. Further, it will support landowners in their on-going efforts to keep their agricultural efforts afloat in the face of diminishing water tables and other stressors on the profitability of farming and ranching. EFSEC staff has recommended thoughtful and thorough RMDNS conditions to ensure that the presence of this solar facility in the GMAAD can co-exist compatibly with the and support the purposes of the GMAAD as set forth in the Benton County Comprehensive Plan and the Benton County Code. The measures in Table A5 of the ASC help to further ensure such compatibility. Provided that the Council adds the RMDNS and ASC Table A conditions to the Site Certification Agreement, EFSEC should recommend that the Governor preempt Benton County Code §11.17.040 and any inconsistent Comprehensive Plan provisions in order to allow this Project to move forward.

The best evidence of compatibility of solar and agricultural land uses will come from the participating landowners themselves. The Council will hear from the landowners who have leased

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their property to Innergex for the Wautoma Project. One of the families testifying has farmed and ranched on this land for over 100 years. They are not leaving farming, viticulture or ranching as a result of the Wautoma Project. One family will continue its current viticultural pursuits and plans to use the Wautoma lease revenue to expand existing vineyards on land adjacent to the solar project. Another landowner will continue to use sheds for spring lambing and will keep running cattle on his land with an eye toward using Wautoma lease revenue to develop a new pivot in order to grow alfalfa on site for his herds rather than having to buy it at retail. That these landowners will continue growing crops and managing stock on the land is the best proof that agricultural can coexist and is compatible with the Wautoma facility. And both sets of landowners expect that the land leased will be returned to them in the condition substantially similar to today, namely to a condition that allows agricultural uses. Not only are they not leaving agriculture, but agriculture is not leaving them.

Other potential effects of the facility that could be incompatible with agricultural uses, such as traffic, noise, erosion, dust and invasive weeds, can and will be mitigated through the conditions contained in the RMDNS and Table A5 of the ASC. The Project's location away from population centers and proximity to electrical transmission infrastructure is ideal to avoid conflicts with other land uses, as well as to minimize impacts to natural and cultural resources.

It is accurate that one of the purposes of the GMAAD is to limit non-agricultural uses to only those that are can be made compatible with agriculture,[18] along with several allowable[19] and conditionally permitted[20] non-agricultural uses enumerated in the BCC.

Indeed, under the Benton County Comprehensive Plan ("BCCP"), the GMAAD is intended to "[c]onserve areas designated [GMAAD]… for a broad range of agricultural uses to the maximum extent possible and protect these areas from the encroachment of incompatible uses…" [21] in part by recognizing that only "uses related or ancillary to, supportive of, complimentary to, and/or not in conflict with agricultural activities are appropriate in areas designated GMA Agriculture."[22]

[18] BCC 11.17.010.
[19] BCC 11.17.040.
[20] BCC 11.17.070.
[21] BCCP 2.3 NR(1) P(1).
[22] BCCP 2.3 NR(1) P(3).

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"Agricultural Use" is defined in the BCC as "raising crops and livestock, horticultural activities, viticulture, animal husbandry, beekeeping, the storage of equipment for the above and related activities normally and routinely a part of such uses."[23]

But in fact, the GMAAD does not provide only for bucolic pastoral lands. Other uses such as schools, churches, adult family homes, and personal airstrips[24] entirely unrelated to agricultural are allowed in the zone without any CUP conditions at all. Others, such as "Communications Facilities," defined as "any facility used for the transmission and/or reception of communication services… consist[ing] of an antenna array, connection cables, and a communication tower…"[25] may be built as an allowable use "anywhere" in GMAAD zones up to a height of one hundred and fifty feet.[26] Similarly, "Meteorological Towers" can be built as an allowable use unconditionally.[27] The GMAAD requires no land use permit whatsoever for these uses to be developed and yet their impacts, including traffic, noise, permanent loss of agricultural soil, and visual effects, can far eclipse those of the Wautoma Project.

Other uses conditionally allowed in GMAAD zones pose greater hazards to traditional agricultural lands, and certainly more than solar energy facilities. For example, solid waste disposal sites, defined as "a parcel of land or structure… used for the storage, collection, or abandonment of solid waste…"[28] may be permitted conditionally in the GMAAD. "Solid waste" is defined as "all putrescible and non-putrescible solid and semi solid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles, or parts thereof, and discarded commodities… *[a]gricultural wastes are exempt from this definition*…"[29] "Agricultural waste" is defined separately as "wastes on farms resulting from the production of agricultural products including but not limited to crop residues, manures, and carcasses of dead animals…"[30]

Therefore, by the county's own definition, landfills containing waste that must have no connection whatsoever to agricultural waste, can be permitted as a conditional use on agricultural

[23] BCC 11.03.010(11).
[24] See generally BCC 11.17.040.
[25] BCC 11.03.010(49).
[26] BCC 11.47.040(2)(iii).
[27] BCC 11.17.040(g).
[28] BCC 11.03.010(170).
[29] BCC 11.03.010(169) (emphasis added).
[30] BCC 11.03.010(12).

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lands. Additionally, a landfill can only be conditionally permitted if it is at least 160 acres in size,[31] resulting in significant displacement of agricultural lands, negative impacts to any future agricultural uses, and negative impacts to adjacent properties. Nonetheless, solid waste disposal sites are permitted as a conditional use in GMAAD zoned areas. Unlike restoration of the land that would be required for the Wautoma Project by imposition of the RMDNS conditions in the SCA, it is nearly unfathomable that a dump filled with solid and semi solid wastes, garbage, ashes, industrial wastes, construction wastes and abandoned vehicles could ever be returned to a condition that would allow for agricultural uses.

Certain industrial and resource extraction uses also can be conditionally permitted in GMAAD zones as well. Per the policy of the BCCP, "Mineral Resource lands scattered throughout [Benton] County represent an important economic opportunity because sourcing these materials locally is more cost effective than importing them from other regions…"[32] and "[m]ineral resources in Benton County will continue to be responsibly extracted from commercially viable sites to support local business and development."[33] The BCC, therefore, permits commercial sand and gravel pits, stone quarries, other mineral extraction, and asphalt and concrete batching plants as conditional uses in GMAAD zones,[34] as well as asphalt manufacturing in conjunction with rock, sand, and gravel mining.[35] The irreversible effects of these uses on the GMAAD cannot be overestimated

In the present case, the Council will learn that "solar generation facility, major," also used to be allowed in this zone with a CUP. This means that the County previously found that a "solar generation facility, major" with appropriate conditions was a compatible use in the GMAAD and consistent with the comprehensive plan that existed at that time. Curiously, the relevant portions of the BCCP that used to be consistent with major solar being permitted in the GMAAD have not changed. Nevertheless, it is anticipated that Benton County will contend that the effects of any major solar generation facility are now known to be such that one could never be made consistent with agricultural uses in the GMAAD. In fact, the opposite is true, as will be seen regarding this specific facility. The effects and potential for land use incompatibility between the Wautoma

[31] BCC 11.17.040(g).
[32] BCCP 4.4.1.
[33] BCCP 4.4.2.
[34] BCC 11.17.070(u).
[35] BCC 11.17.070(i).

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Project and other uses that might be found in the GMAAD not only pale by comparison, but they are readily mitigated with the conditions advanced by the Applicant and the EFSEC staff.

In the case of preemption, the EFSEC Council sits in the role of the County. In this case, the role is that of the Hearings Examiner, who would otherwise evaluate the application against the County's Conditional Use Permit criteria. Testimony and evidence at the adjudication of this matter will show that the Wautoma Solar Project's compliance with each of the applicable CUP criteria is made possible by the conditions recommended in the RMDNS and Table A5 of the ASC. It is for these reasons, which will be further demonstrated in this adjudication, that the Council should recommend that the Governor approve the Wautoma Solar Project conditioned by the provisions of the RMDNS and the ASC. This ability to render the Project compatible with other agricultural uses commends preemption.

B. PREEMPTION

i. EFSEC Should Preempt Because the Project Complies with Benton County CUP Criteria per the Conditions to be Imposed.

EFSEC and the statutory framework around it exist because the Legislature long ago recognized that siting of energy facilities, and provisions of cleaner sources of electricity, are matter of state-wide importance. However, the statute also recognizes that local interests may be superseded by the application of EFSLA. Those local regulations are not to be ignored by the Council when considering whether to recommend an SCA for a project. Consequently, the first step that the EFSEC Council is charged with once it receives an application is to determine whether a proposal is consistent with local land use provisions. If it is not, the project moves on to the next EFSEC steps, including the staff's review of the proposal's compliance with EFLSA provisions and SEPA. Only after those are complete does an adjudication on the application occur. At the adjudication, the Council will be charged with determining if there are conditions that can be placed on the Project that reflect the community interest and local regulations that may be preempted.

The discussion above previews what the Council will learn through review of the Wautoma Project, including the testimony and evidence to be received at hearing: the Wautoma Project is specifically sited and designed to accommodate and operate compatibly with Benton County's GMAAD zone. There are conditions enumerated in Table A5 of the ASC that ensure this.

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Rather than simply agreeing with the Applicant's proposed conditions, however, EFSEC staff has developed even more conditions that ensure the Project will not have unmitigated impacts on the environment, including on land use patterns in Benton County. The Council should impose all these conditions. Because, as conditioned, the Project will not only be compatible with the GMAAD, it will support the participating landowners in their continued agricultural pursuits while also implementing other Benton County Comprehensive Plan policies such as protecting groundwater supplies. In such a case, preemption is appropriate.

ii. EFSLA Controls in Face of Inconsistent Local Regulation

Innergex understands the county's position to be that because it has adopted land use provisions pursuant to the Growth Management Act ("GMA") that prohibit this project in the GMAAD, EFSEC cannot site it as proposed. There is no dispute that EFSLA and the Benton County Code §11.17.040 promulgated under the GMA are inconsistent and in direct conflict. But if the county's position were the law, the state's preemption of siting energy facilities would be rendered meaningless. Every one of the state's 39 counties and 281 cities and towns could thwart critical state-wide energy policies simply by using zoning under the authority of the Growth Management Act to effectively prohibit clean energy projects. Such an interpretation would render RCW 80.50.110 superfluous.

EFSEC previously grappled with this precise scenario in the matter of the Kittitas Valley Wind Project, a case where applicant Sagebrush Power Partners proposed a wind energy facility in a zone where Kittitas County had determined the use was not allowed. The County took the position that the Growth Management Act superseded EFSLA, and that the project must be denied as inconsistent with the county's land use regulations. However, the EFSEC Council preempted the inconsistent local regulation in Council Order No. 826 - Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition,[36] finding as a matter of law that "[Kittitas County's] Ordinance improperly usurps . . . EFSEC's statutory role in the siting of energy facilities and, in accordance with RCW 80.50.110, must therefore be preempted by state law."

[36] In the Matter of: APPLICATION NO. 2003-01 SAGEBRUSH POWER PARTNERS, LLC KITTITAS VALLEY WIND POWER PROJECT, May 27, 2007.

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Dissatisfied with this Order, local opposition group Residents Opposed to Kittitas Turbines ("ROKT") and others appealed, arguing that the GMA superseded EFSLA and not the other way around. To resolve this dispute, the Washington Supreme Court in *Residents Opposed to Kittitas Turbines v. Energy Facility Site Evaluation Council*, 197 P.3d 1153 (Wash. 2008) addressed this *in pari materia (*two statutes 'on the same subject') situation. In essence, if a plain reading of both *in pari materia* statutes indicates they irreconcilably conflict, the more specific statute will control unless legislative intent shows that the more general statute controls. Courts refer to this rule of statutory interpretation as the "general-specific rule." In *ROKT*, the Washington Supreme Court applied the general-specific rule to reconcile EFSLA and the GMA to the extent they were in *pari materia*. In assessing the two statutes, the Court found EFSLA to be more "specific," because it narrowly applies only to the certification, construction, and operation of energy facilities, whereas the GMA was found to be more "general," because it applies to the broader comprehensive planning and management of all land within GMA jurisdictions.[37] The Court noted that the GMA did not [at that time] mention energy facilities nor did the GMA "give any express indication" that the GMA was intended to repeal the preemption and supersession established by EFSLA.[38] Not only has this not changed since the publication of *ROKT*, the outcome of *ROKT* has been reinforced: in 2010, the Washington Department of Commerce (the agency responsible for adopting GMA regulations) implemented WAC 365-196-560(1), which requires that county "[c]omprehensive plans and development regulations adopted under the [GMA] should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110".

Under applicable law, Benton County cannot simply pass a GMA-driven zoning ordinance and overcome the Legislature's intent to vest EFSEC alone with the authority to site important energy facilities like the Wautoma Project. The Legislature, the Washington Supreme Court, and the Department of Commerce have spoken definitively on this issue. Accordingly, this Council should respectfully give effect to EFSLA in the face of Benton County's inconsistent regulations.

[37] *Residents Opposed*, at 309-10.
[38] *Id.* at 310.

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iii. EFSLA Preemption is non-discretionary in effect.

The Legislature has declared that the State of Washington occupies the entire field of siting energy facilities.[39] The GMA acknowledges as much in WAC 365-196-560(1). When local land use controls conflict with EFSLA, they are superseded by operation of law.[40] Due to this statutory mandate, EFSLA supersedes and preempts all local land use controls in conflict with the Council's mandate and the Council must so "deem" such conflicting local land use controls to be superseded and preempted in their recommendation to the governor. Specifically, EFSLA requires that

> "if any provision of [EFSLA] is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, [EFSLA] shall govern and control and such other law or rule or regulation promulgated thereunder ***shall be deemed superseded*** for the purposes of [EFSLA]."[41] (Emphasis added).

The statute goes on to preempt the "regulation and certification of the location, construction, and operational conditions of certification…" of energy facilities.[42] When the word "shall" is used in legislation, Washington courts presume the word imposes a mandatory requirement "unless a contrary legislative intent is apparent."[43] No such legislative intent exists in regard to the mandatory nature of RCW 80.50.110.

IV. CONCLUSION

The location of energy facilities is a matter of statewide interest. For that reason, the Legislature has created the Energy Facility Site Evaluation Council, which is charged with approving such facilities to ensure that clean and abundant energy remains available to all. Part of the Council's role is to recommend Site Certification Agreements when projects can advance the state's energy policy while ensuring that a project reflects community interest and local regulations. The Wautoma Solar Energy Project is just such a project. It is well-sited and designed to be compatible with and supportive of continued agricultural pursuits. When conditioned with the measures in the RMDNS and the Table A5 of the ASC, the Council can be confident that a

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[39] RCW 80.50.110(2).
[40] RCW 80.50.110(1).
[41] RCW 80.50.110(1) (emphasis added).
[42] RCW 80.50.110(2).
[43] *State v. Krall*, 125 Wash.2d 146, 148, 881 P.2d 1040 (1994) (Quoting *Erection Co. v. Department of Labor & Indus.*, 121 Wash.2d 513, 518, 852 P.2d 288 (1993)).

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recommendation of approval for this facility will comprehensively reflects all stakeholders' interests.

It is submitted that after considering all the evidence in this matter, the Council can affirmatively answer the two questions posed to it in the Order Commencing Adjudication provided it imposes the recommended conditions in an SCA. Innergex respectfully requests that it do so and forward the SCA to the governor with a recommendation of approval.

DATED this 18th day of September, 2024.

VAN NESS FELDMAN

s/ Erin L. Anderson
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CERTIFICATE OF SERVICE

I, I'sha Willis, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein:

That I, as a Legal Assistant in the office of Van Ness Feldman LLP, caused true and correct copies of the following documents to be delivered as set forth:

1. Applicant's Pre-Hearing Memo in Support of Cite Certification;
2. Certificate of Service

and that on September 18, 2024, I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, but authorized method of service pursuant to WAC 463-30-120(3) as follows:

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EXECUTED at Washington, DC on this 18th day of September, 2024.

s/ I'sha Willis
I'sha Willis, Declarant

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