SITE CERTIFICATION AGREEMENT

BETWEEN

THE STATE OF WASHINGTON

AND

BP WEST COAST PRODUCTS, LLC

For the

CHERRY POINT COGENERATION PROJECT

WHATCOM COUNTY, WASHINGTON

Executed December 21, 2004
Amendment No. 1: Resolution No. 317, October 10, 2006
Amendment No. 2: Resolution No. XXX, XXXXXXX XX, 2008

ENERGY FACILITY SITE EVALUATION COUNCIL

OLYMPIA, WASHINGTON

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FOR THE CHERRY POINT COGENERATION PROJECT
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1 Site Legal Description.

2 Legal Description of Wetland Mitigation Property and Deed Restrictions for Wetland Mitigation Areas.

3 Prevention of Significant Deterioration/Notice of Construction Permit.

4 National Pollutant Discharge Elimination System Permit.

5 Wastewater Disposal Permit.

6 Amended Stipulation Between the Council for the Environment and BP West Coast Products, LLC dated December 10, 2003.

7 BP – Whatcom County Amended Stipulation and Settlement Agreement dated July 27, 2004.

8 Council Order No. 803, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition, dated September 24, 2004.

9 Letter of Understanding (LOU) 66, between Washington State Department of Transportation (WSDOT) and BP Cherry Point Refinery regarding traffic mitigation during construction of the BP Cherry Point Cogeneration Project.

10 Council Resolution No. 317: Amendment No. 1, Cherry Point Cogeneration Project Site Certification Agreement.

11 Council Resolution No. XXX: Amendment No. 2, Cherry Point Cogeneration Project Site Certification Agreement.

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SITE CERTIFICATION AGREEMENT
FOR THE CHERRY POINT COGENERATION PROJECT

between

THE STATE OF WASHINGTON

and

BP WEST COAST PRODUCTS, LLC.

This Site Certification Agreement (Agreement) is made pursuant to Chapter 80.50 of the Revised Code of Washington (RCW) by and between the State of Washington, acting by and through the Governor of the State, and BP West Coast Products, LLC, (BP or the Certificate Holder), 4519 Grandview Road, Blaine, Washington, 98230.

BP filed, as required by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of a natural gas-fired combined-cycle cogeneration facility to be located in the Cherry Point area of Whatcom County, Washington. The Council reviewed the application, conducted public and adjudicative hearings, and by order, recommended approval of the application by the Governor. On December 21, 2004, the Governor approved the Site Certification Agreement authorizing BP to construct and operate the Cherry Point Cogeneration Project (Project). The Council will administer this Agreement for the State of Washington. On October 10, 2006, the Council approved, by resolution, an amendment to this Agreement allowing an alternative phased construction schedule and project configuration, and other minor changes to this Agreement. On XXXXXX XX, 2008, the Council approved, by resolution, amendment to this Agreement changing the provisions governing the water supply for the Project.

The parties hereby now desire to set forth all terms, conditions, and covenants in relation to such site certification in this Agreement pursuant to Chapter 80.50.100(1) RCW.

The effective date of this Agreement shall be December 21, 2004.

ARTICLE I: SITE CERTIFICATION

A. Site Description

1. The Site on which the Cherry Point Cogeneration Project (Project) is to be constructed and operated is located in the Cherry Point area of unincorporated Whatcom County, and is described more particularly in Attachments 1 and 2 to this Agreement.

2. Within thirty (30) days of the effective date of this Agreement, the Certificate Holder shall provide the Council with the legal description of the property to be used for wetland mitigation. This legal description will be added to Attachment 2 of this Agreement. At least sixty (60) days prior to the beginning of site preparation, the Certificate Holder shall provide to EFSEC a copy of fully executed and recorded deed restrictions for the wetland mitigation areas, which shall be included as Attachment 2 of this Agreement.

B. Site Certification

The State of Washington hereby authorizes the BP West Coast Products LLC (BP or Certificate Holder to construct and operate the Project, as described in Article I.C. of this Agreement, subject to the terms and conditions set forth in Council Order No. 803, Findings of Fact and Conclusion of Law, And Order Recommending Site Certification on Condition, and this Site Certification Agreement. Such construction and operation shall be located within the areas designated herein and in the Revised Application for Site Certification submitted by BP on April 15, 2003, and as described in Attachments 1 and 2 to this Agreement. In addition, this Agreement incorporates the settlements and stipulated agreements made between BP and parties to the adjudicatory hearings set forth in Attachments 6 and 7 to this Agreement.

This Site Certification Agreement authorizes the Certificate Holder to begin construction of the Project by December 21, 2014; provided, however that the construction schedule that the Certificate Holder submits pursuant to Article IV.L of this Agreement demonstrates its intention and good faith basis to believe, that construction of the Project or Phase I of the Project shall be completed within thirty-three (33) months of beginning construction.

If the Certificate Holder does not begin construction of the Project or of Phase I of the Project as described in section D below, by December 21, 2009, the Certificate Holder shall report to the Council its intention to continue and shall certify that the statements and conditions contained in the Application are still valid and applicable, or identify any changes and propose appropriate resulting changes in the Site Certification Agreement to address changes. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the effective date of any necessary or appropriate changes to the Site Certification Agreement.

C. Project Description

The Cherry Point Cogeneration Project will consist of a combined-cycle, Cogeneration Facility (Facility), and of wetlands Compensatory Mitigation and Restoration Areas. Unless the alternative phased configuration outlined in section D below is pursued, the Facility will consist of the three natural gas-fired combustion turbine generators with heat recovery steam generators, steam turbine generator, and associated equipment, buildings and structures. The Facility will have a gross nominal generation capacity of 738 megawatts (MW). Approximately 18 MW will be consumed on site, and 85 MW would be supplied to the BP West Coast Products LLC Refinery.

1. Combustion Turbine Generators

The Facility will have three General Electric Model 7FA natural gas-fired combustion turbine generator (CTG) units. Each gas-fired generator is expected to have a nominal power rating of 174 MW at average annual ambient temperatures. The Facility will be fired by natural gas, delivered at an estimated pressure of 550 psig, as measured at the turbine fuel train. Natural gas will be the only fuel fired in the turbines. The combustion turbines will use dry low-NOx technology.

2. Heat Recovery Steam Generators

Each CTG will be equipped with a heat recovery steam generator (HRSG) with supplemental duct-firing capability. The high temperature exhaust produced by each CTG will flow directly to an HRSG. Each HRSG will be equipped with Selective Catalytic Reduction and an oxidation catalyst for post-combustion NOx and CO emission reduction. Exhaust gases leaving each HRSG boiler will exit into a 150 foot tall steel stack.

3. Steam Turbine Generator and Process Steam

The Facility will be designed as a combined-cycle cogeneration facility. The steam produced by the HRSG will be delivered to the condensing steam turbine generator (STG). In addition, the Facility will be designed to deliver steam to the BP Cherry Point Refinery for use in refinery processes. The STG is rated to produce about 216 MW of electricity when 510,000 lbs/hr of steam is delivered to the refinery.

4. Fuel Supply

The Facility will be fueled with natural gas, delivered to the site by a connection to the 16-inch Ferndale Pipeline, which currently delivers natural gas from the West Coast Pipeline system at the United States - Canada border near Sumas, Washington to the BP Cherry Point Refinery and the Alcoa Intalco aluminum smelter. Natural gas may also be provided by a third party pipeline.

The Ferndale Pipeline will deliver gas to the Project site at a pressure of about 250-300 psig. The CGTs require a higher fuel pressure, so new electric-driven natural gas compressors will be installed to raise the pressure to approximately 550 psig at the Project battery limits.

Refinery fuel gas may also be used to fire the Project's duct burners so long as the project is able to comply with the emission limits found in the Prevention of Significant Deterioration/Notice of Construction permit (Attachment 3 of this Agreement).

5. Water Supply System

The Facility will use industrial water provided by Whatcom Public Utility District No. 1 (PUD) pursuant to the PUD's existing water rights. The PUD owns and operates pipelines from its Nooksack River diversion facilities to both the Alcoa Intalco Aluminum Smelter and the BP Refinery. An underground pipe will be installed to transport water to the Facility.

Deleted: If the Alcoa Intalco Works aluminum smelter is in operation, the Facility will use recycled once-through cooling water from Alcoa, supplied by Whatcom County PUD.

Potable water required for drinking, personal washing and sanitation will be provided by the PUD or the Birch Bay Water and Sewer District.

6. Water Discharge System

All process wastewater from the Facility will be collected and discharged to the BP Refinery wastewater treatment system pursuant to the conditions of a Wastewater Disposal Permit (WDP), included as Attachment 5 to this Agreement. BP Refinery wastewater is treated and discharged to the Strait of Georgia under National Pollutant Discharge Elimination System (NPDES) permit number WA-002290-0 issued by the Washington Department of Ecology.

Stormwater from the Facility will be collected, treated and discharged pursuant to the conditions of the NPDES permit included as Attachment 4 to this Agreement.

Sanitary wastewater from the Facility will be discharged to the Blaine Water and Sewer District.

7. Cooling Tower

The Facility will use a wet evaporative, multi-cell, counterflow, mechanical draft cooling tower to cool condensed steam prior to entering the hotwell for condensate return and recycling into the boiler feedwater system.

8. Electrical Interconnection

The Facility will provide electricity to the BP Cherry Point Refinery by two

230 kilovolt (kV) transmission lines and a new 230 kV substation located within the refinery.

The Facility will also export electricity to the Bonneville Power Administration system. A new 0.8-mile 230 kV transmission line will connect a new 230 kV switchyard at the Facility to an interconnection point with Bonneville's existing transmission corridor at Kickerville Road.

9. Back-Up Generator

A small diesel-powered emergency generator will also be provided for emergency back up power to critical systems in the event of a total grid power failure. This generator is not expected to be larger than 1500 kW.

10. Fire Water Pump

A small diesel-powered emergency fire water pump will also be provided for emergency fire water in the event of a total grid power failure. The pump is not expected to be larger than 265 hp.

11. Wetlands Compensatory Mitigation and Restoration Areas

The Project includes the restoration of wetland areas.

Approximately 110 acres of degraded wetlands and surrounding uplands located in two Compensatory Mitigation Areas (CMAs) located north of Grandview Road will be restored. CMA1 consists of approximately 50 acres located east of Blaine Road and CMA2 consists of approximately 60 acres located west of Blaine Road. Historic drainage patterns will be restored by rerouting treated stormwater runoff and plugging existing ditches. Non-native invasive plant species, such as reed canary grass, will be removed and suppressed. Native plant communities will be established.

Approximately 4.86 acres of wetland and 4.41 acres of wetland buffers (collectively the "Restoration Area") that will be temporarily impacted by construction activities and equipment laydown will be restored. Wetland hydrology will be restored in the 4.86 acres of wetlands. Both wetland and buffer portions of the Restoration Area will be planted with a variety of forested, scrub-shrub and emergent plant communities dominated by native vegetation.

D. Alternative Facility Description – Phased Construction

As an alternative to the Facility described in section C above, the Certificate Holder is authorized, at its discretion, to construct the Facility in two phases as outlined in this section. Unless specified otherwise below, aspects of the Project Description found in Section C above apply to the Alternative Phased Construction.

1. Phase I

Phase I of the Facility will have two natural gas-fired CTG units, two HSRGs and a STG.

The CTGs will be either General Electric 7FAs, each with a nominal power rating of approximately 173 MW at average annual ambient temperatures, or Siemens SGT6-5000Fs, each with a nominal power rating of 198 MW. Natural gas will be the only fuel fired in the turbines. Natural gas will be delivered at an estimated pressure of 525 psig, as measured at the turbine fuel train. The combustion turbines will use dry low-NO_x technology.

Each CTG will be equipped with a HRSG with supplemental duct-firing capability. The high temperature exhaust produced by each CTG will flow directly to an HRSG. Each HRSG will be equipped with Selective Catalytic Reduction and an oxidation catalyst for post-combustion NO_x and CO emission reduction. Exhaust gases leaving each HRSG boiler will exit into a 150-foot tall steel stack.

Phase I will have a STG rated to produce 520-570 MW of electricity when 510,000 lbs/hr of steam is delivered to the refinery, depending on the model of turbine selected. The Facility will be designed as a combined-cycle cogeneration facility. The steam produced by the HRSG will be delivered to the condensing STG. In addition, the Facility will be designed to deliver steam to the BP Cherry Point Refinery for use in refinery process.

2. Phase II

Phase II will consist of modifications and additions to the Facility designed to increase its total gross capacity to no more than 738 MW. The Certificate Holder shall notify the Council of the specific modifications and additions, including equipment specifications and ratings, at least 180 days before commencing construction of Phase II. If the Council concludes that the proposed Phase II additions and modifications comply with the conditions set forth in this Agreement, it shall authorize the Certificate Holder to proceed with construction.

If the proposed Phase II construction would increase the Facility's total capacity to more than 738 MW, would not comply with conditions set forth in this agreement, or would result in environmental effects substantially greater than those associated with the originally approved project, the Certificate Holder shall be required to obtain an amendment to this Agreement (pursuant to the Council's rules and regulations) before proceeding with construction.

ARTICLE II. DEFINITIONS

Where used in this Site Certification Agreement, the following terms shall have the meaning set forth below:

1. "Application" or "Revised Application" means the *Revised Application for Site Certification: BP Cherry Point Cogeneration Project*, designated No. 2002-01, dated April 15, 2003, and incorporated by reference herein.

2. "Approval" (by EFSEC) means an affirmative action by EFSEC or its authorized agents regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.

3. "Associated facilities" means: the natural gas fuel line from the Facility metering point at the Ferndale Pipeline to the turbines; the electrical transmission lines connecting the Facility to the Refinery and to the Bonneville Power Administration's transmission facilities; and the water delivery and return system (consisting of pipelines for industrial water, potable water, sanitary wastewater and industrial wastewater up to the Refinery property limits).

4. "BACT" means Best Available Control Technology

5. "Begin construction" or "Beginning of construction" means the initiation of any actual construction activities at the Site such as form work, rebar, and pouring concrete for the power block structures; and for the electrical transmission line: pouring footings for, or erection of, transmission line structures.

6. "Begin operation", "Beginning of operation", or "Beginning of commercial operation" means the time when the Certificate Holder begins delivering electricity to purchasers under commercial power purchase agreements.

7. "BMPs" means Best Management Practices.

8. "Bonneville" means Bonneville Power Administration.

9. "BP" means BP West Coast Products, LLC.

10. "Certificate Holder" means BP West Coast Products, LLC, or its successor.

11. "Cherry Point Cogeneration Project" or "Project" means the Cogeneration Facility, its associated facilities, the wetlands Compensatory Mitigation Areas, and the Restoration Area. The specific components of the Project are identified in Article I.C.
12. "Cogeneration Facility" or "Facility" means the three natural gas-fired combustion turbine generators with heat recovery steam generators, steam turbine generator, and associated equipment, buildings and structures.

13. "Combustion turbine generator" or "CTG" means a natural gas-fired combustion

turbine configured to drive an electric generator.

14. "Compensatory Plan" means the Final Cogeneration Project Compensatory Mitigation Plan (Compensatory Plan), Appendix H-7 of the Application as revised and submitted to the U.S. Army Corps of Engineers on June 2, 2004.

15. "Corps" means the U.S. Army Corps of Engineers.

16. "County" means Whatcom County, Washington.

17. "Ecology" or "WDOE" means the Washington Department of Ecology.

18. "EFSEC" or "Council" means the State of Washington Energy Facility Site Evaluation Council, or such other agency or agencies of the State of Washington as may hereafter succeed to the powers of EFSEC for the purposes of this Agreement.

19. "Ferndale Pipeline" means the existing 16-inch natural gas pipeline extending from the United States -Canada border at Sumas, Washington to the BP Cherry Point Refinery and the Alcoa Intalco aluminum smelter.

20. "First Fire" means the first time natural gas is combusted in the gas turbine generators.

21. "NOC" means Notice of Construction

22. "NPDES permit" means National Pollutant Discharge Elimination System permit.

23. "p.l.c." means public limited company.

24. "PSD" means Prevention of Significant Deterioration.

25. "RCW" means the Revised Code of Washington.

26. "Site" means the property identified in Attachment 1 and Attachment 2, located in the Cherry Point area of unincorporated Whatcom County, on which the Facility is to be constructed and operated, and the wetlands restoration is to occur.

27. "Site Certification Agreement" "SCA" or "Agreement" means this formal written agreement between the Certificate Holder and the State of Washington, including all attachments hereto and exhibits, modifications, amendments, and documents incorporated herein.

28. "Site Preparation" means any of the following activities: clearing, grading, filling, pre-loading, surcharge fill placement, excavation, and preparation of lay down areas.

29. "Site Release" means the date on which the Engineering, Procurement and Construction contractor is given authorization to proceed with the Project and is

given full access to the Project site.

30. "State" or "state" means the State of Washington.

31. "Steam turbine generator" or "STG" means the condensing steam turbine with an electric generator.

32. "IBC-2003" means the International Building Code of 2003.

33. "WAC" means the Washington Administrative Code.

34. "WDFW" means the Washington Department of Fish and Wildlife.

35. "WDP" or "WD Permit" means Wastewater Disposal permit.

36. "Wetland Compensatory Mitigation Areas," "Compensatory Mitigation Area" or "CMA" means the approximately 110-acre area located north of Grandview Road that has been designated for wetland mitigation, restoration and preservation. The area is more specifically described in Attachment 2.

37. "Wetland Restoration Area" or "Restoration Area" means the approximately 4.86 acres of wetland and 4.41 acres of wetland buffers that will be temporarily impacted by construction activities and equipment laydown and has been designated for wetland restoration.

38. "WSDOT" means the Washington State Department of Transportation.

ARTICLE III. GENERAL CONDITIONS

A. Legal Relationship

1. This Agreement shall bind the Certificate Holder, and its successors in interest, and the state and any of its departments, agencies, divisions, bureaus, commissions, boards, and its political subdivisions, subject to all the terms and conditions set forth herein, as to the approval of, and all activities undertaken with respect to, the Project or the Site. The Certificate Holder shall ensure that any activities undertaken with respect to the Project or the site by its agents (including affiliates), contractors, and subcontractors comply with this Agreement. The term "affiliates" includes any other person or entity controlling, controlled by, or under common control of or with the Certificate Holder.

2. This Agreement, which includes those commitments made by the Certificate Holder in the Revised Application (the Revised Application is hereby incorporated by reference), constitutes the whole and complete agreement between the State of Washington and the Certificate Holder, and supersedes any other negotiations, representations, or agreements, either written or oral. This Agreement incorporates the stipulation between BP and the Counsel for the Environment, which is set forth in Attachment 6 to this Agreement, the settlement agreement between BP and Whatcom County, which is set forth in Attachment 7 to this Agreement, as well as the other attachments listed on page 46 of this Agreement.

B. Enforcement

1. This Agreement may be enforced by resort to all remedies available at law or in equity.
2. This Agreement may be suspended or revoked pursuant to RCW Chapter 34.05 and RCW Chapter 80.50, for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, for violations of RCW Chapter 80.50 and the rules promulgated thereunder, or for violation of any applicable resolutions or orders of EFSEC.
3. When any action of the Council is required by or authorized in this Site Certification Agreement, the Council may, but shall not be required to, conduct a hearing pursuant to Chapter 34.05 RCW.

C. Notices and Filings

Filing of any documents or notices required by this Agreement with EFSEC shall be deemed to have been duly made when delivery is made to EFSEC's offices in Thurston County.

Notices to be served on the Certificate Holder shall be deemed to have been duly made when deposited in first class mail, postage prepaid, addressed to the Certificate Holder at 4519 Grandview Road, Blaine, Washington, 98230.

D. Rights of Inspection

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site, the Facility, Associated Facilities and their respective rights of way, the Wetland Compensatory Mitigation and Restoration Areas, and all records relating to the construction and operation of the Project to designated representatives of EFSEC in the performance of their official duties. Such duties include, but are not limited to, monitoring and inspections to verify the Certificate Holder's compliance with this Agreement.

E. Retention of Records

The Certificate Holder shall retain such records as are necessary to demonstrate the Certificate Holder's compliance with this Agreement.

F. Consolidation of Plans

Any plans required by this Agreement may be consolidated with other such plans, if such consolidation is approved in advance by EFSEC.

G. Site Certification Agreement Compliance Monitoring and Costs

The Certificate Holder shall pay to the Council such reasonable monitoring costs as are actually and necessarily incurred during the construction and operation of the Project to assure compliance with the conditions of this Agreement as required by RCW Chapter 80.50. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.

H. Site Restoration

The Certificate Holder is responsible for site restoration pursuant to the Council's rules.

The Certificate Holder shall submit its initial site restoration plan in accordance with the requirements set out in Article IV.A of this Agreement. The Certificate Holder may not begin site preparation until the Council has approved such an initial site restoration plan.

The Certificate Holder shall submit a detailed site restoration plan to EFSEC for approval within twelve (12) months of the termination of the Project. The detailed site restoration plan will provide for restoration of the Site within a reasonable time frame, taking into account the restoration plan and the anticipated future use of the Site.

I. EFSEC Liaison

Within thirty (30) days of the effective date of this Agreement, the Certificate Holder shall designate a person to act as a liaison between EFSEC and the Certificate Holder.

J. Changes in Project Management

The Certificate Holder shall notify EFSEC of any change in the management of, or responsibilities for, the Cherry Point Cogeneration Project.

K. Amendment or Modification of Agreement

1. This Agreement may be amended pursuant to EFSEC rules and procedures. Any requests by the Certificate Holder for amendments to this Agreement shall be made in writing.

2. A change in ownership of the Project shall be pursuant to EFSEC rules and procedures.

3. Any change in the terms or conditions of the following Sections or Attachments to this Agreement shall not require amendment of this Site Certification Agreement in the manner prescribed in Section K.1 above:
    a. Any changes in the terms or conditions of Attachment 1 – Site Legal Description, or Attachment 2 – Legal Description of Wetland Mitigation Property and Deed Restrictions for Wetland Mitigation Areas, unless otherwise required by the Council.

    b. Any changes in the terms and conditions of Attachment 3 -Prevention of Significant Deterioration/Notice of Construction (PSD/NOC) permit, any future PSD/NOC or Title V Air Operating Permit, Attachment 4 National Pollution Discharge Elimination System (NPDES) permit, Attachment 5 –Wastewater Disposal (WD) permit, any future NPDES or WD permits, or this Site Certification Agreement required by federal law or regulations, shall be governed by applicable laws and regulations.

    c. Any changes in the terms and conditions of Article IV. B – Wetland Compensatory Mitigation Plan shall be governed by applicable laws and regulations, unless otherwise required by the Council.

4. In circumstances where the Project causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement or where such impacts are imminent, EFSEC may impose specific conditions or requirements on the Certificate Holder as a consequence of such a situation in addition to the terms and conditions of this Agreement. Such additional conditions or requirements initially shall be effective for not more than ninety (90) days, and may be extended once for an additional ninety (90) day period if deemed necessary by EFSEC.

L. Order of Precedence

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and State of Washington statutes and regulations;

2. The body of this Site Certification Agreement as amended;

3. Attachment 8, Council Order No. 803, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition, and Council Resolution No. 317, amending this Agreement;

4. Any other provision, term or material incorporated herein by reference or otherwise attached to, or incorporated in, this Site Certification Agreement.

ARTICLE IV. PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION

The following plans, submittals and/or approvals shall be submitted to the Council a minimum of sixty (60) days prior to the beginning of site preparation, unless otherwise specified below.

A. Initial Site Restoration Plan

The Certificate Holder is responsible for site restoration pursuant to Council rules. At least ninety (90) days prior to the beginning of site preparation, the Certificate Holder shall submit to the Council for review and approval an initial site restoration plan.

At a minimum, the initial site restoration plan shall address both the possibility that site restoration occurs at the end of the useful life of the Project and also the possibility of the Project being suspended or terminated during construction. The plan shall comply with WAC 463-42-655 in effect the date of Application and shall also include at least the following components:

1. A description of the assumptions underlying the plan. For example, the plan should explain the anticipated useful life of the Project, the anticipated time frame of site restoration, and the anticipated future use of the site.

2. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.

3. An initial plan for disposing of hazardous materials (if any) present on the site, and remediating hazardous contamination (if any) at the site.

4. An initial plan for restoring the site, including the removal of structures and foundations and the regrading of the site, if appropriate.

5. Provisions for retaining systems owned and operated by Whatcom County and/or any other municipality.

6. Provisions for retaining and protecting wetlands mitigation sites.

7. Provisions for restoration of the electrical transmission line and natural gas pipeline facilities and corridor if applicable.

8. Provisions for preservation of the site and facilities if the Project is suspended or terminated during construction.

Prior to beginning site preparation, the Certification Holder must obtain approval from the Council of the initial site restoration plan. The Certificate Holder shall be required to post a bond to secure site restoration only if, at any time following execution of this Agreement, the Certificate Holder's Standard & Poors credit rating falls below "BBB-/Stable" or its Moody's credit rating falls below "Baa3/Stable," unless another corporate entity with credit rating at least equal to

those levels provides a formal corporate guarantee making that corporate entity jointly liable for site restoration expenses. The Certificate Holder shall notify the Council within 30 days of the changes in credit rating described above, and shall submit to EFSEC a plan for posting the required corporate guarantee or bond to secure site restoration within 60 days of the notification.

B. Wetland Compensatory Mitigation Plan

1. Compensatory Plan Goals: The Certificate Holder shall implement the wetland mitigation plan provided in the Final Cogeneration Project Compensatory Mitigation Plan (Compensatory Plan), Appendix H-7 of the Application as revised and submitted to the U.S. Army Corps of Engineers on June 2, 2004, and any subsequent revisions submitted to, and approved by the Army Corps of Engineers through issuance of the federal Clean Water Act Section 404 permit. The goals of the Compensatory Plan are:

    a. The restoration of approximately 110 acres of degraded wetlands and surrounding uplands located in two compensatory mitigation areas (CMAs) located north of Grandview Road. CMA1 consists of approximately 50 acres located east of Blaine Road and CMA2 consists of approximately 60 acres located west of Blaine Road. Historic drainage patterns will be restored by rerouting treated stormwater runoff and plugging existing ditches. Non-native invasive plant species, such as reed canary-grass, will be removed and suppressed. Native plant communities will be established.

    b. The restoration of approximately 4.86 acres of wetland and 4.41 acres of wetland buffers (collectively the "Restoration Area") that will be temporarily impacted by construction activities and equipment laydown. Wetland hydrology will be restored in the 4.86 acres of wetlands. Both wetland and buffer portions of the Restoration Area will be planted with a variety of forested, scrub-shrub and emergent plant communities dominated by native vegetation.

2. Implementation of the Compensatory Plan: The Certificate Holder shall execute the elements of the Compensatory Plan, including but not limited to:

    a. Conduct the restoration activities in manner to meet or exceed the Performance Standards identified in the Compensatory Plan;

    b. Develop and Submit to EFSEC an As-Built Report documenting the final grading, hydrologic pathways, and planting schemes, consistent with the requirements of the Compensatory plan.

c. Conduct temporary Site Protection activities consistent with the Compensatory Plan;

d. Prior to beginning site preparation, execute and record deed restrictions with respect to the wetland mitigation areas consistent with the requirements of the Compensatory Plan. A copy of the executed and recorded deed restrictions shall be added to this Agreement as Attachment 2

e. Conduct a ten year Monitoring Plan consistent with the Compensatory Plan, including the monitoring of wetland hydrology through the installation of monitoring wells;

f. Implement a Maintenance and Contingency Plan consistent with the Compensatory Plan;

g. Submit reports consistent with the Compensatory Plan;

h. Implement and comply with construction, Monitoring and Reporting Schedules required by the Compensatory Plan;

i. Provide a Parent Company Guarantee to the U.S. Army Corps of Engineers consistent with the requirements of the Compensatory Plan;

j. Implement the requirements of Appendix F of the Compensatory Plan: "BP Cherry Point Cogeneration Facility Wetland Mitigation and the Birch Bay Great Blue Heron Colony", June 2004, submitted as part of the Stipulation and Settlement Agreement with Whatcom County (Attachment 7 to this Agreement).

3. Additional Federal Clean Water Act Section 401 Requirements.

a. This Agreement only authorizes the Certificate Holder to construct, operate and maintain the Project and associated Wetland Compensatory Mitigation and Restoration Areas as identified in the Revised Application for Site Certification, and the Final Cogeneration Project Compensatory Mitigation Plan as revised and submitted to the U.S. Army Corps of Engineers on June 2, 2004.

b. Any significant modifications to the Compensatory Plan must be approved in advance by EFSEC, and as appropriate by the U.S. Army Corps of Engineers. Modification of the Compensatory Plan shall not require amendment of this Site Certification Agreement in the manner prescribed in Article III.K.

c. The Certificate Holder shall no begin site preparation prior to receiving a Clean Water Act Section 404 permit issued by the U.S. Army Corps of Engineers for this Project. The Certificate Holder shall

comply with all requirements of the Federal Clean Water Act Section 404 Permit.

d. Applicable state water quality standards (Chapter173-201A WAC and Chapter 173-200 WAC) and sediment quality standards (Chapter 173-204 WAC) shall not be exceeded at any time. The Certificate Holder shall be liable for any adverse impacts resulting from contamination of water quality and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or poerations.

e. This Agreement does not authorize in-water work. All in-water work must be approved in advance by the council, and may require an amendment to this Agreement.

f. Wetland Mitigation Design Plan - A Wetland Mitigation Design Plan shall be submitted to EFSEC for approval at least sixty (60) days prior to the beginning of construction. The Wetland Mitigation Design Plan shall include detailed plans for construction of the Compensatory Mitigation and Restoration Areas. Plan sheets shall include grading plans showing final finish grade elevations and any related construction; planting plans snowing plant types, locations, and quantities; and detail sheets showing specific methods for the construction of wetland and buffer mitigation areas. Specifications shall describe materials, quality, and finish of Plan elements, and shall include quantities for all mitigation area plantings.

g. The Certificate Holder shall notify EFSEC in writing of the following activities:

    i. at least 10 days prior to starting construction at either of the Compensatory Mitigation Areas or the Restoration Area;

    ii. at least three (3) working days prior to the start of placing fill in wetlands or other waters of the state; and

    iii. within seven (7) days after completion of construction at either of the Compensatory Mitigation Areas or the Restoration Area.

h. During any site preparation, construction and maintenance activities associated with any of the Mitigation Areas, the Certificate Holder and all of its contractors shall meet the standards set forth in this Agreement. The Certificate Holder shall set forth such conditions necessary thereto in its bidding documents, plans and contracts

i. The Certificate Holder and all its contractors shall comply with the requirements of the NPDES permit (Attachment 4 to this Agreement), Wastewater Disposal permit (Attachment 5 to this Agreement), and

the provisions of Article IV.B of this Agreement.

j. The wetlands that are not authorized to be filled shall be identified for protection from construction impacts prior to clearing and grading. Construction fencing and flags shall be installed at the edge of clearing within 50 feet of the existing wetlands to be protected prior to the start of any clearing activities. All project staff and contractors shall be trained to recognize construction fencing and/or flagging that identifies protected wetland boundaries. The Certificate Holder shall take all necessary measures to prevent or minimize the alteration or disturbance of existing protected wetland and upland vegetation that is not to be impacted by Project construction or wetland mitigation activities.

k. Equipment shall not be moved into or operated in wetlands that are not authorized to be filled.

l. All construction debris and excess excavation materials shall be stored and properly disposed of in designated areas so as to prevent reentry into waters of the state or cause water quality exceedances in state waters.

m. The Certificate Holder shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

n. Water generated from construction activities, including dewatering, shall not be discharged directly to waters of the state or the mitigation wetlands. Water shall be collected, treated and then discharged in compliance with the NPDES permit (Attachment 4 to this Agreement), or transferred offsite to an appropriate treatment facility.

o. In the event the Applicant is unable to comply with any of the provisions of Article IV.B for any reason, the Certificate Holder shall:

    i. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.

    ii. Notify EFSEC and Ecology of the failure to comply. Spills shall be reported immediately to Ecology's 24-hour spill response team, and within the next business day to EFSEC.

    iii. Submit a detailed written report to EFSEC within five (5) days that describes the nature of the violation, corrective action taken and /or planned, steps to be taken to prevent a recurrence, analytical results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Certificate Holder from responsibility to maintain continuous compliance with the terms and conditions of this Agreement or the resulting liability from failure to comply.

p. Pre-Construction Meeting. The Certificate Holder shall consult with EFSEC, Ecology and the Corps to determine if a pre-construction meeting is warranted before beginning of construction to discuss final details of the Compensatory Plan. At EFSEC's or Ecology's request, the location of the discharge trench and/or other major Compensatory Plan mitigation elements shall be surveyed and staked prior to the pre-construction meeting.

C. Construction Management Plan

At least sixty (60) days prior to the start of site preparation, the Certificate Holder shall submit for the Council's review and approval a detailed construction management plan addressing the primary site preparation and construction phases for the Project. The construction plan shall be generally based on the mitigation measures contained in this Agreement. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the construction management plan. If the Certificate Holder proceeds with phased construction, the Certificate Holder shall submit for the Council's review and approval a detailed construction management plan for each phase at least sixty (60) days prior to commencing construction the relevant phase.

D. Construction Materials Reuse Plan

The Certificate Holder shall develop and implement a plan to reuse construction and construction waste materials to the extent feasible. The construction materials reuse plan shall be submitted to EFSEC for review and approval ninety (90) days prior to the beginning of construction of the project. If the Certificate Holder proceeds with phased construction, the Certificate Holder shall submit for EFSEC's review and approval a construction materials reuse plan for each phase at least ninety (90) days prior to beginning construction of the relevant phase.

E. Construction Traffic Management Plan

Sixty (60) days prior to the beginning of site preparation, a construction traffic management plan shall be submitted to EFSEC for its review and approval. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the construction traffic management plan. If the Certificate Holder proceeds with phased construction, the Certificate Holder shall submit for EFSEC's review and approval a construction traffic management plan for each phase at least sixty (60) days prior to beginning construction of the relevant phase.
This plan will consist of those items outlined in section 3.15.4 of the Application for Site Certification, which include:

1. A traffic control plan indicating the methods to be used to implement necessary traffic rerouting, means of assuring access to impacted properties, and methods of providing temporary traffic control for safety.

2. The designation of a responsible person on the site as the Transportation Coordinator. The Transportation Coordinator shall have responsibility for managing site-generated traffic and parking.

3. The Certificate Holder shall notify EFSEC of any permits or approvals required to conduct oversize or overweight hauls.

4. The Certificate Holder shall implement the requirements of the Letter of Understanding (No. 66) between Washington State Department of Transportation and BP Cherry Point Refinery regarding traffic mitigation during construction of the BP Cherry Point Cogeneration Project (Attachment 9 to this Agreement).

F. Construction Plans and Specifications

1. Sixty (60) days prior to the beginning of site preparation, the Certificate Holder shall submit to EFSEC or its designated representative for approval, those construction plans, specifications, drawings and design documents that demonstrate the project design will be in compliance with Agreement conditions. The design documents will

include conceptual design studies, process flow diagrams, overall project plot plans, equipment specifications, and vendor guarantees for equipment performance as appropriate. If the Certificate Holder proceeds with phased construction, the Certificate Holder shall submit construction plans, specifications, drawings and design documents for each phase at least sixty (60) days prior to beginning construction of the relevant phase.

2. Project buildings, structures, and piping systems shall be designed and constructed consistent with requirements found in the International Building Code of 2003 (IBC-2003). The Facility shall be designed to comply with the appropriate Seismic Zone standards of the IBC-2003.

G. Natural Gas Pipeline Connection Specifications

Sixty (60) days prior to construction of the pipeline connection, the Certificate Holder shall prepare and submit written specifications and standards for the pipeline connection consistent with regulations set forth in 49 C.F.R. Part 192, and Washington state regulations. All underground gas piping and pipeline connections shall be equipped with cathodic protection systems and corrosion resistant coatings.

H. Construction Stormwater Pollution Prevention Plan

The Certificate Holder shall submit and implement a Construction Stormwater Pollution Prevention Plan (SWPPP) as required by the NPDES permit included as Attachment 4 to this Agreement.

I. Temporary Erosion and Sedimentation Control Plan.

The Certificate Holder shall develop and submit for Council approval a Temporary Erosion and Sedimentation Control Plan (TESC), no later than 90 days before site preparation. The Certificate Holder shall not begin site preparation prior to obtaining approval from the Council of the TESC. The TESC shall include, but not be limited to the following measures:

1. Work near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts.

2. Construction stormwater, sediment and erosion control Best Management Practices (BMPs) shall be implemented prior to and/or concurrent with Site preparation, as applicable, to prevent exceedences of state water quality standards (e.g., hay bales, detention areas, filter fences, etc.). BMPs shall also be consistent with requirements of the Construction SWPPP and NPDES permit. The erosion control devices shall be maintained so as to be effective throughout construction.

3. The TESC shall identify a regular inspection and maintenance schedule for all erosion control structures. The schedule shall include inspections after significant rainfall events. Any damaged structures shall be addressed immediately. Inspections, and subsequent erosion control structure corrections, shall be documented in writing and available for EFSEC's review on request.

J. Construction Phase Spill Prevention, Control and Countermeasure Program

The Certificate Holder shall submit and implement a Construction Phase Spill Prevention, Control and Countermeasure Program (SPCCP) as required by the NPDES permit included as Attachment 4 to this Agreement.

K. Construction Emergency Plan

The Certificate Holder shall retain qualified contractors, familiar with the construction of gas-fired electrical generation plants, for the construction of the Project. The construction specifications shall require contractors to prepare and implement a safety program that includes an emergency plan. The Certificate Holder shall submit the emergency plan to EFSEC for approval sixty (60) days prior to the beginning of site preparation. If the Certificate Holder proceeds with phased construction, the Certificate Holder shall also submit for EFSEC's approval a construction emergency plan for Phase II at least sixty (60) days prior to commencing construction of Phase II. The Certificate Holder shall coordinate development and implementation of the plan with the Refinery Fire Marshal, the Whatcom County Fire Department, and other applicable local and state emergency services providers. The Construction Emergency Plan shall include, but not be limited to, the following elements:

1. A Fire Prevention and Response Plan;

2. A Medical Emergency Plan;

3. An Explosion Risk Management Plan.

The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the construction emergency plan.

L. Construction Schedule

Thirty (30) days prior to the beginning of site preparation, the Certificate Holder shall submit an overall construction schedule. Notices of significant changes in the construction schedule shall be filed with EFSEC within fifteen (15) days of the schedule change.

If the Certificate Holder proceeds with phased construction, the Certificate Holder shall submit a construction schedule for Phase I thirty (30) days prior to beginning site preparation, and a construction schedule for Phase II thirty (30) days prior to commencing construction of Phase II.

ARTICLE V. PROJECT CONSTRUCTION

A. General Construction Procedures

1. The Certificate Holder shall provide an independent environmental monitor (EM) with "stop-work" authority that reports to EFSEC.

2. Standard environmental monitoring criteria shall be developed for EFSEC, in consultation with WDFW and Ecology, prior to beginning construction of the Project.

3. The Certificate Holder shall identify EM "stop-work" implementation criteria for EFSEC, in consultation with WDFW and Ecology.

4. No excavation, filling or regrading work shall be performed at any time unless there is full, concurrent and independent environmental monitoring on-site.

5. All EM reports are to be submitted to EFSEC at the same time that they are submitted to the Certificate Holder's project engineer.

6. EFSEC, WDFW, and Ecology are to be promptly notified by facsimile (fax) or in person of any emergency response or any work stoppage requested by the EM.

B. Quarterly Construction Reports

The Certificate Holder shall submit quarterly construction progress reports within thirty (30) days after the end of each quarter. Such reports shall describe the status of construction and identify any changes in the construction schedule.

C. Stormwater Runoff and Erosion Control

The Certificate Holder shall comply with the stormwater and erosion control requirements of the NPDES Permit included as Attachment 4 to this Agreement, and the requirements of Article IV.I of this Agreement.

D. Construction Inspection

EFSEC shall contract with Whatcom County, or other appropriate agency or firms, to provide construction inspection services for all Project buildings, structures, piping systems and electrical transmission lines to ensure compliance with this Agreement. Construction shall be in accordance with the approved design and construction plans, the IBC-2003, and Whatcom County building codes and regulations, and applicable construction, and fire and life safety codes and requirements

E. As-Built Drawings

The Certificate Holder shall maintain a complete set of as-built drawings on file for the life of the Project, and shall allow the Council or its designated representatives access to the drawings on request following reasonable notice.

F. Construction Noise

The Certificate Holder and its contractors and subcontractors shall use industry standard noise attenuation controls during construction to mitigate noise impacts and shall comply with applicable state and local noise emission regulations. The Certificate Holder shall limit loud construction activities to daytime hours (7 a.m. to 10 p.m.), and shall comply with the applicable requirements of WAC 173-60-040 during the hours of 10:00 p.m. and 7:00 a.m..

G. Cultural and Archeological Resources

Prior to the start of site preparation, with the assistance of an experienced archeologist, the Certificate Holder shall develop and implement a plan for monitoring construction and responding to the discovery of archeological artifacts or buried human remains. The Plan shall include, but not be limited to, the following:

1. The Certificate Holder shall monitor any construction activities that occur within 30 meters of the location within construction laydown area #3, where scattered lithic materials were found. Monitoring shall be directed by an experienced archaeologist. Any lithic material discovered in construction laydown area #3 during construction shall be collected.

2. In the event of inadvertent archaeological discovery during the construction, or in the unlikely event that buried human remains are discovered, all ground disturbing activities shall cease in the vicinity of the discovery and the area surrounding the discovery shall be secured. Proper notifications shall be made to the Lummi Cultural Department, BOAS, Inc., the Washington State Office of Archaeology and Historic Preservation (OAHP) and EFSEC. An assessment team will be assembled to address the discovery and to develop a mutually agreeable plan forward. The Certificate Holder shall invite the Lummi Indian Nation to participate in the process and help to coordinate a cultural management plan.

H. Public Services and Utilities

1. Construction activities shall be coordinated with local police and fire departments and emergency medical service providers to ensure access to all locations on the Site vicinity in the case of an emergency.

2. During construction, precautions shall be used to ensure that excavations do not damage underground utilities, including communications cables.

3. If the construction of the Project requires specific unanticipated services that result in additional overtime for the Whatcom County Sheriff's Department, the Certificate Holder shall pay the reasonable costs of such overtime, provided that the Whatcom County Sheriff's Department seeks approval in advance from the Certificate Holder.

4. To help mitigate loss of access and other traffic related impacts, adequate traffic control and signage, indicating closures and alternate routes, shall be provided during construction.

5. The Certificate Holder shall implement the requirements applicable to construction activities of the Letter of Understanding No. 66, reached with the Department of Transportation, Attachment 9 to this Agreement.

I. Construction Safety and Security

1. The Certificate Holder shall comply with applicable federal and state safety regulations (including regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act), as well as local and state and industrial codes and standards (such as the Uniform Fire Code or those standards administered by the National Boiler Board and Pressure Vessel Inspectors). The Certificate Holder, its general contractor, and all subcontractors shall make every reasonable effort to maximize safety for individuals working at the Project.

2. During construction, the Generation Facility site will be fenced with an eight-foot chain link and barbed wire fence. Access to the Generation Facility site will be controlled for personnel and vehicles.

3. The contractor's construction office, parking area and laydown areas will be secured by fencing.

4. Visitors shall be provided with safety equipment where and when appropriate.

5. At the request of the Whatcom County Sheriff's Department, the Certificate Holder shall provide office space within the Cherry Point Industrial Area for the Sheriff's Department's use as a substation. Office space for this purpose shall be maintained by the Certificate Holder until such time that the Whatcom County Sheriff Department indicates the space is no longer needed.

J. Fugitive Dust

To control fugitive dust during construction, water shall be applied as necessary, and access roads shall be graveled or paved, as practical. Where applicable, exposed areas and topsoil storage piles shall be promptly revegetated, seeded, or otherwise managed to minimize dust sources.

K. Construction Clean-Up

The Certificate Holder shall dispose of all temporary structures not intended for future use upon completion of construction. The Certificate Holder also shall dispose of used timber, brush, refuse or flammable materials resulting from the clearing of lands or from construction of the Project in a manner approved by the Council. The Certificate Holder also shall comply with the construction materials reuse plan approved by the Council as required in Article IV.D.

L. Number 2 Detention Pond

Number 2 Detention Pond will receive stormwater runoff from the Main Laydown Area, located southwest of the intersection of Grandview and Blaine Roads. The Main Laydown Area includes Laydown Areas 1, 2 and 3, and the contractor's parking lot. Stormwater will be routed through, and receive treatment in, an oil/water separator prior to discharge to the pond. The pond will provide flow control of stormwater prior to discharge into the existing drainage system immediately west of the Project.

Stormwater discharges from Number 2 Detention Pond are subject to the conditions of the BP Cherry Point Cogeneration Project NPDES permit, Attachment 4 to this Agreement.

At the conclusion of Project construction, the Certificate Holder shall seek EFSEC approval to transfer Number 2 Detention Pond to the BP West Coast Products LLC Refinery. EFSEC approval may require amendment of the BP Cherry Point Cogeneration Project NPDES Permit, Attachment 4 to this Agreement.

ARTICLE VI. SUBMITTALS REQUIRED PRIOR TO FIRST FIRE OR THE BEGINNING OF OPERATION

The following plans, submittals and/or approvals are required either prior to First Fire or prior to the start of operation:

A. Greenhouse Gas Mitigation

1. BP Ownership & BP's Corporate Policy. If BP holds an equity (ownership) interest in the Project, BP shall voluntarily offset its ownership (equity) share in the Project's emissions through greenhouse gas (GHG) emission reductions within the worldwide operations of BP and its affiliates, consistent with its voluntary corporate policy. BP shall provide EFSEC with a copy of the independent audit of BP p.l.c.'s greenhouse gas emissions prepared on an annual basis under that policy. However, in the event that BP p.l.c. changes, discards or significantly alters its current corporate GHG objective such that the result is a lesser commitment to GHG emission reduction than provided in Article VI.A.2 below, BP shall be required to mitigate Project GHG emissions according to Article VI.A.2 below.

2. Mitigation Requirement. In the event that BP sells the Project to a third party, or BP p.l.c. changes, discards or significantly alters its current corporate GHG objective as described above, the following GHG mitigation requirements shall apply.

    a. The Certificate Holder shall mitigate 23% of the Project's actual CO2 emissions on an annual basis. Mitigation may be accomplished by any combination of:

        i. Boiler Offsets – CO2 emissions avoided as a result of the Project providing steam to the BP Refinery.

        ii. Other Offset Projects – The implementation of offset projects approved in advance by EFSEC.

        iii. Funding to an Approved Organization -Providing funding to an approved organization that implements GHG reduction projects, such as the Climate Trust. The amount to mitigate each metric tonne of CO2 will be $0.87 for the first year of the Project's operation, and will increase in subsequent years according to the Producer Price Index (PPI) for All Commodities (WPU-00000000) as reported by the Bureau of Labor Statistics.

    b. Timing and Verifying Actual Emissions and Boiler Offsets.

        i. Sixty (60) days prior to the beginning of the Project's commercial operation, the Certificate Holder shall pre-pay mitigation based upon the Project's maximum potential CO2 emissions for the first year of operation minus the CO2 emissions expected to be avoided

by providing steam to the Refinery, either by providing funding to an approved organization and notifying EFSEC, or by providing EFSEC with documentation demonstrating the implementation of an approved offset project.

ii. One year and thirty (30) days following the beginning of the Project's commercial operation, the Certificate Holder shall file with EFSEC a report documenting the Project's actual CO2 emissions for the first year of operations and the actual amount of CO2 emissions avoided by providing steam to the Refinery during that year. The report will also present a reconciliation of the mitigation obligation for the first year and the mitigation provided. If the Certificate Holder has provided more mitigation than is due, then the Certificate Holder would receive a credit against its obligation for the following year. Any unused credits would carry over year-to-year. If the Certificate Holder has provided less mitigation than is due, it would provide the additional mitigation owed. The Certificate Holder shall also pre-pay mitigation for the next year's maximum potential CO2 emissions in the manner described in Article VI.A.2.b.i above at that time. This process shall continue on an annual basis for the 30-year assumed life of the Project, except that the cost per tonne will be adjusted by the PPI ratio as indicated in Article VI.A.2.a.iii above.

c. Approved Organizations. If the Certificate Holder elects to satisfy its mitigation obligation by providing funding to an approved organization as described above, it shall provide funding to an organization qualified to administer such funds and that has been approved by EFSEC. In selecting mitigation projects, the approved organization shall give preference and priority to offset projects located within Whatcom County or the immediate surrounding counties where the Project is located, and second within the state of Washington. The organization shall file biennial reports with the Council on actual offsets achieved and a statement of costs for the period. The organization may seek approval from EFSEC to bank money received from BP for a period of up to three years so that larger mitigation projects may be pursued. In no instance may the organization use more than ten percent (10%) of the total funds received for selection, monitoring, evaluation, management and enforcement of contracts.

3. If BP sells a portion of the Project to a third party, then assuming BP's voluntary policy is still in effect, BP shall voluntarily offset its ownership (equity) share of the Project's CO2 emissions as provided in Article VI.A.1 above, and the third-party Certificate Holder shall mitigate its ownership (equity) share of the CO2 emissions as provided in VI.A.2 above.

4. If BP sells a portion of the Project to a third party, emissions offsets resulting from removal of refinery boilers shall not be accounted for twice by the third party and BP.

B. Operations Spill Prevention, Control and Countermeasure Plan (SPCCP)

The Certificate Holder shall submit and implement an Operations Spill Prevention, Control and Countermeasure plan (SPCCP) as required by the NPDES Permit included as Attachment 4 to this Agreement.

C. Emergency Response Plan

One hundred eighty (180) days prior to First Fire, the Certificate Holder shall submit for the Council's approval an Emergency Response Plan for the Project to provide for employee safety in the event of emergencies, such as those listed in Article VI.C.3 below. First Fire shall not occur prior to approval of the emergency plan.

1. In preparing the Emergency Response Plan, the Certificate Holder shall:

    a. Coordinate such Plan with local, state and federal agencies directly involved in implementing such a Plan, including the Whatcom County Division of Emergency Management.

    b. Develop a response protocol with Whatcom County Fire District #7 to ensure that additional support and resources are available from the district and other fire jurisdictions through Mutual Aid Agreements.

    c. Follow the requirements of WAC 296-24-567 and 296-62-3110 and 29 C.F.R. §1910.38, Emergency Action Plan.

    d. Include detailed provisions for employee and public health and safety, emergency medical treatment, special emergency training programs and prevention of property damage.

    e. Periodically provide the Council with updated lists of emergency personnel, communication channels and procedures.

2. The Emergency Response Plan shall address the following in detail:

    a. Evacuation Procedures;

    b. Emergency Signals and Communication;

    c. First Aid Procedures;

    d. Emergency Medical Procedures; and

    e. Establishment of a fire brigade.

3. The Emergency Response Plan shall address in detail the procedures to be followed in the event of the following:

    a. Fire or explosion;

b. On-site natural gas release;

c. Off-site natural gas release;

d. Chemical release;

e. Flood;

f. Weather abnormalities or emergencies, such as blizzard, hurricane, tornado, and extreme wind;

g. Earthquake;

h. Volcanic eruption (ash fall);

i. Blackout and/or power loss; and

j. Terrorist threat or attack;

k. Medical Emergency.

4. The Certificate Holder shall coordinate with the Whatcom County Division of Emergency Management to assure acquisition and maintenance of proper radio equipment.

5. The Certificate Holder shall participate in the Specialized Emergency Response Program (SERP), a non-profit public/private consortium including local businesses and industry that provides specialized emergency response capabilities to the Whatcom County community and its contributors.

D. Operations Spill Prevention, Control and Countermeasure Plan

The Certificate Holder shall submit and implement an Operations Spill Prevention, Control and Countermeasure Plan (SPCCP) as required by the NPDES permit included as Attachment 4 to this Agreement.

E. Aesthetics and Landscaping Plan

At least ninety (90) days prior to First Fire, the Certificate Holder shall submit to EFSEC an Aesthetics and Landscaping Plan for approval.

F. Water Reuse Equipment

Prior to First Fire, the Certificate Holder shall fund the installation of equipment necessary either to allow industrial water used for non-contact once-through cooling at the Alcoa Intalco aluminum smelter to be returned to the Whatcom Public Utility District No. 1 (PUD) water line serving the BP Refinery and the Project, or to eliminate the use of water for non-contact once-through cooling at the Alcoa Intalco aluminum smelter.

ARTICLE VII. PROJECT OPERATION

A. Water Use

1. The Certificate Holder shall use industrial water provided by the Whatcom Public Utility District No. 1 (PUD).

2. The Certificate Holder shall use potable water provided by either the Blaine Water and Sewer District or the PUD.

3. If the Alcoa Intalco Works aluminum smelter is in operation, the Certificate Holder shall minimize fresh water consumption by using recycled once-through cooling water from Alcoa, supplied by Whatcom County PUD, or by funding the installation of equipment that will allow Intalco to eliminate the use of water for once-through cooling.

B. Water Discharge

1. Industrial wastewater will be treated in the Refinery's wastewater treatment system prior to being discharged to the Strait of Georgia.

2. The Certificate Holder shall ensure that all discharges to the BP Refinery wastewater treatment system comply with the Wastewater Disposal Permit included as Attachment 5 to this Agreement, and that they are consistent with the Refinery's NPDES Permit.

3. The Certificate Holder shall ensure that all discharges of stormwater are consistent with the requirements of the NPDES permit included as Attachment 4 to this Agreement.

C. Air Emissions

1. The Certificate Holder shall operate the Facility so that emissions to the atmosphere comply with the Prevention of Significant Deterioration / Notice of Construction (PSD/NOC) permit issued by the Council (Attachment 3 to this Agreement), or with any subsequent PSD/NOC Permit or Title V Air Operating Permit issued for the Facility by the Council, or extension or renewal of such permits.

2. The Certificate Holder shall properly operate and maintain in good working order all air pollution control equipment and monitoring equipment required in the PSD/NOC Permit (Attachment 3 to this Agreement), or with any subsequent PSD/NOC or Title V Air Operating Permit issued for the Facility by the Council, or extension or renewal of such permits.

3. The Project shall be subject to the time limitations for construction and renewal conditions as set forth in the PSD/NOC Permit (Attachment 3 to this Agreement), or with any subsequent PSD/NOC or Title V Air Operating

Permit issued for the Facility by the Council, or extension or renewal of such permits.

4. The Certificate Holder shall report immediately to the Council whenever the air monitoring programs disclose the existence of emergency conditions or conditions that might lead to a violation of the air emission permit conditions specified in Attachment 3.

5. Removal of BP Refinery Boilers: BP shall decommission the Cherry Point Refinery's #1, #2, and #3 boilers within six months of the Project's beginning operation. Upon completion of the decommissioning, the Certificate Holder shall provide EFSEC with written notification and assurances that those Refinery boilers have been decommissioned.

6. Solar Connection School Project. The Certificate Holder shall offer to fund and implement the "Solar Connection" program at one school in each of Whatcom County's seven (7) school districts for a period of ten (10) years, beginning with the first school year following the beginning of commercial operations. The program consists of the installation of a demonstration (3-5kW) solar generating system, the provision of curriculum materials exploring the science and benefits of renewable energy sources that have been developed by the National Energy Education Development Project, and the participation of the Certificate Holder's employees in instructional portions of the program. The Certificate Holder will discuss the program with appropriate representatives of the Whatcom County School Districts and selected schools to determine whether they are interested in implementing the program. The Certificate Holder shall have no obligation to fund or implement this program if the Project is not constructed and operated.

7. Alternative Project: Commute Trip Reduction Program. In the event that, despite good faith efforts, the Certificate Holder is unable to implement the Solar Connection School Project described in Article VII.C.6 above, the Certificate Holder shall participate in the Whatcom County Commute Trip Reduction ("CTR") Program by contributing $10,000 annually to the CTR Program for ten (10) years. The initial payment shall be made at least ninety (90) days prior to the beginning of operation of the Project, and on each of the nine anniversaries thereafter. The Certificate Holder shall have no obligation to provide funding to the Whatcom County CTR Program if the Project is not constructed and operated.

D. Noise Monitoring

1. The Certificate Holder shall operate the Project in compliance with applicable Washington State Environmental Noise Levels chapter 17360 WAC.
2. The Facility shall be equipped with stack silencers, and the three gas turbine generators and the steam turbine generator shall be housed within enclosures.

Because Phase I of the Facility has two gas turbines rather than three, the need for stack silencers will be evaluated during detailed design of the Phase I project. Phase I of the Facility will meet all the noise limitations specified in this SCA.

3. In addition to applicable Washington regulations, the Project shall comply with the noise limitations set out in Attachment 7 of this Agreement when the Cogeneration Facility is operating normally under steady-state conditions with all units operating at full load, as follows:
    a. At Receptor #7 (as identified in Figure 3.9-1 of the Draft Environmental Impact Statement (DEIS)), project-only noise shall not exceed 47.7 dBA (regardless of wind direction).
    b. At Receptor #9 (as identified in Figure 3.9-1 of the DEIS), project-only noise shall not exceed 45.8 dBA (regardless of wind direction), and shall not exceed 70 dBC (regardless of wind direction).
    c. At Receptor #10 (as identified in Figure 3.9-1 of the DEIS), project-only noise shall not exceed 41.5 dBA (during calm winds and winds from all quadrants except SW) or 45.0 dBA (during winds from the SW quadrant), and shall not exceed 70 dBC (regardless of wind direction).
    d. At the Cottonwood Beach Receptor, located at 4961 Morgan Road, project-only noise shall not exceed 36.4 dBA (during calm winds and winds from all quadrants except SW) or 43.6 dBA (during winds from the SW quadrant) and shall not exceed 70 dBC (regardless of wind direction).
    e. At Receptor #13 (as identified in Figure 3.9-1 of the DEIS), project-only noise shall not exceed 54.4 dBA (regardless of wind direction).
4. Within 180 days following the beginning of operation, the Certificate Holder shall conduct post-operation noise monitoring at the five receptor locations identified in Article VII.D.3 above to determine compliance with the noise limitations included in Article VII.D.3 above, and report the results of the monitoring to EFSEC. Compliance will be verified by measurements taken when the Cogeneration Facility is operating normally under steady state conditions with all units operating at full load. Compliance monitoring will be conducted in the manner outlined in D. Hessler, "Operational Noise Emissions Test Protocol" dated June 14, 2004, which is included in Attachment 7 to this Agreement, BP – Whatcom County Amended Stipulation and Settlement Agreement.

    If the Certificate Holder proceeds with phased construction, the Certificate Holder shall also be required to conduct noise monitoring after operation of Phase II commences.
5. If the monitoring indicates that the Cogeneration Facility is not in compliance with the applicable Washington noise regulations of chapter 173-60 WAC, and the limitations set forth in Article VII.D.3. above, the certificate Holder shall notify EFSEC and Whatcom County. The Certificate Holder shall investigate the source of the noise and identify, develop and implement one or more means of mitigating the noise including, but not limited to, installing

additional noise mitigation measures at the Facility.

6. Once post operational monitoring indicates that the Facility is in compliance with applicable Washington noise regulations and the limitations set forth in Article VII.D.3. above, the certificate shall seek Council approval to determine that post-operation noise-monitoring program is deemed complete.

E. Safety and Security

1. The safety of operating personnel is required by regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act. The Certificate Holder shall comply with applicable federal and state safety regulations (including regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act) as well as local and industrial codes and standards (such as the Uniform Fire Code or those standards administered by the National Boiler Board and Pressure Vessel Inspectors).

2. The Facility's perimeter shall be enclosed by an eight-foot chain-link fence with three strands of barbed wire at the top. There will be an access-controlled entrance. Automatically or manually operated gates shall be provided at all roads crossing the fence and lockable personnel gates shall be added where appropriate. The electrical switchyard shall have its own perimeter fence and gates of similar construction to prevent unauthorized access to the high voltage equipment.

3. Visitors shall be provided with safety equipment where and when appropriate.

F. Dangerous or Hazardous Materials

The Certificate Holder shall handle, treat, store, and dispose of all dangerous or hazardous materials in accordance with Washington state standards for hazardous and dangerous wastes, Chapter 463-40 WAC and Chapter 173-303 WAC. Following any abnormal seismic activity, volcanic eruption, severe weather activity, flooding, vandalism or terrorist attacks the Certificate Holder shall inspect areas where hazardous materials are stored to verify that containment systems are operating as designed.

G. Structural Inspection Plan

The Certificate Holder shall develop and conduct a periodic program to monitor the structural integrity of Project's facilities.

The Certificate Holder shall develop and submit to the Council a plan for regular inspection of the facility's structural integrity, and after significant seismic events. The plan shall indicate the proposed inspection schedule. Inspections shall include:

1. Inspect major foundation seams for differential movement,

2. Inspect major foundation grout pads for cracking,

3. Check for proper alignment of major piping shoe supports,

4. Check piping spring hangars for proper position,

5. Check for piping and cable tray misalignment at building penetrations,

6. Review equipment vibration monitoring logs for unusual vibration patterns.

Appropriate repairs shall be made if problems or discrepancies are identified during the inspections, and shall be reported to the Council. Records shall be maintained consistent with the requirements of Article III.E, and shall be made available to the Council upon request.

H. Lighting

Outdoor or directional lighting angles shall be adjusted to minimize glare impacts, or supplemental light shields and/or vegetation shall be used for extra screening in those areas where glare or light spillover would be obtrusive to nearby residents or to users of local roads.

CHERRY POINT COGENERATION PROJECT
SITE CERTIFICATION AGREEMENT
SIGNATURES

Dated and effective this _____ day of _____, 2004.

FOR THE STATE OF WASHINGTON

Gary Locke, Governor

FOR BP WEST COAST PRODUCTS, LLC.

Rick Porter, Vice President

ATTACHMENTS

Attached hereto and incorporated in this Agreement by this reference are the following:

1. Site Legal Description.

2. Legal Description of Wetland Mitigation Property and Deed Restrictions for Wetland Mitigation Areas.

3. Prevention of Significant Deterioration/Notice of Construction Permit.

4. National Pollutant Discharge Elimination System Permit.

5. Wastewater Disposal Permit.

6. Amended Stipulation Between the Council for the Environment and BP West Coast Products, LLC dated December 10, 2003.

7. BP – Whatcom County Amended Stipulation and Settlement Agreement dated July 27, 2004.

8. Council Order No. 803, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition, dated September 24, 2004.

9. Letter of Understanding (LOU) 66, between Washington State Department of Transportation (WSDOT) and BP Cherry Point Refinery regarding traffic mitigation during construction of the BP Cherry Point Cogeneration Project.

Council Resolution No. 317: Amendment No. 1, Cherry Point Cogeneration Project Site Certification Agreement.