

**SUPPLEMENTAL REGULATORY  
INFORMATION**

**WAC 463-60-075. General — Assurances.**

**The application shall set forth insurance, bonding or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction, operation, abandonment, termination, or when operations cease at the completion of a project's life. The application shall describe the applicant's commitment to the requirements of chapter 463-72 WAC, Site restoration and preservation.**

Insurance:

The Applicant will establish or cause to be established and maintained, policies of insurance during the development construction and operation of and for the Project. Such forms of insurance will be established and maintained as required by state, federal and local ordinance or law, customary business practice and third-party participants and lenders. The following coverage will be included:

- Commercial General Liability Insurance:

The construction contractor and subcontractors or the Applicant will be required to carry commercial general liability insurance, including products and completed operations in specified amounts to respond to liability and property damage claims arising during the construction and startup phase of the Project.

The Applicant will obtain and maintain in full force and effect, commercial general liability insurance against claims for liability and property damage arising out of the use and occupancy of the premises.

The Applicant will purchase insurance policies to cover liabilities arising from casualty and other major incidents.

Upon completion of power plant design, insurance underwriters will evaluate the design and estimate potential damages. In some cases, design changes may be implemented to mitigate the damages.

- Automobile Insurance:

The construction contractor and subcontractors will be required to carry automobile liability insurance covering all owned, leased, non-owned and hired automobiles used during the construction and startup phase of the project.

The Applicant will obtain and maintain in full force and effect automobile liability insurance covering owned, non-owned and hired autos.

- Property Insurance:

The Applicant will obtain and maintain, at all times during the term of construction and operation of the Project, physical damage insurance on the buildings and all improvements that are to be erected on the premises on an "all risk" basis, including coverage against damage or loss caused by earth movement and flood to the full insurable value of such improvements, if commercially available.

Upon completion of Project construction, the Applicant will be required by its customer(s) and lenders to maintain specific forms of business interruption coverage to ensure continued operation of the Project.

- Machinery Insurance:

The Applicant will obtain and maintain machinery insurance at all times during the term of construction, including testing, and operation of the facility. Coverage will be written on a comprehensive form for all insurable objects, including all production machinery located on or adjacent to the property in a minimum amount equal to the maximum foreseeable loss, and including expediting expenses, extra expense and business income.

- Worker's Compensation and Washington Stop Gap Liability:

The Applicant will comply with the worker's compensation and unemployment laws as required with respect to any employees performing work on the Project property and premises. The Applicant will also insure for exposure under Washington Stop Gap Liability. The Applicant will require that the construction contractor and subcontractors working on the Project similarly comply with the worker's compensation and unemployment laws with respect to their employees performing work on the subject property and premises. The Applicant also will require insurance for exposure under Washington Stop Gap Liability.

### Environmental Impairment

The Applicant will be responsible, as required by law, for acts of environmental impairment related to the ownership and operation of the Project. Such losses may, in some circumstances, be covered by liability insurance, which the Applicant and/or the construction contractor will carry. In addition, the Applicant and/or its contracted operator will obtain environmental impairment liability insurance to the extent such coverage is commercially available. This insurance will cover the acts of the Applicant and its operators at the Project site, consistent with prevailing wind power industry standards for such insurance. Commercial availability is determined by reference to the norm of the industry.

Project Site Abandonment:

If the Project were to terminate operations, the Applicant would obtain necessary authorizations from the appropriate regulatory agencies to decommission the facilities. A Final Site Restoration plan would be developed and submitted to EFSEC. Experience in other regions with older wind power projects indicates that a non-operating wind power project does not present any significant threats or risks to public health and safety or environmental contamination.

Experience with older wind plants that have been decommissioned or repowered has shown that the scrap value of the materials and equipment contained in the Project infrastructure (steel towers, electric generators, steel, copper, etc.) would likely exceed the cost of dismantling the Project, based on historic and current scrap prices. The Applicant will provide adequate financial assurances to cover anticipated costs associated with decommissioning the Project.

**WAC 463-60-085(2) Fair treatment.**

**The application shall describe how the proposal's design and mitigation measures ensure that no group of people, including any racial, ethnic, or socioeconomic group, bear a disproportionate share of the environmental or socioeconomic impacts resulting from the construction and operation of the proposed facility.**

The Project has been designed so that it will not result in significant adverse impacts to any individuals or group of people. There is no reason to believe that any racial, ethnic or socioeconomic group will bear a disproportionate share of the Project's impacts. On the contrary, the FEIS describes substantial economic benefits that will be experienced by individuals throughout the County.

**WAC 463-60-101 General — Consultation.**

**(1) Preapplication consultation. The application shall summarize all consultation that the applicant has conducted with local, state and federal agencies and governments, Indian tribes, nonprofit organizations and community citizen and interest groups prior to submittal of the application to the council.**

**(2) Meaningful involvement. The application shall describe all efforts made by the applicant to involve the public, regardless of race, ethnicity, or socioeconomic status, prior to submittal of the application to the council. The application shall also set forth information for contacting local interest and community groups to allow for meaningful involvement of all people, regardless of race, ethnicity or socioeconomic status. For example, such information may include contacts with local minority radio stations and news publications**

The SEPA process conducted by the Kittitas County Department of Community Development Services included extensive consultation with local, state and federal agencies as well as tribal representatives. This consultation is summarized in Chapter 6 of the County FEIS.

In addition, the Applicant has involved the public, community leaders, organizations and Kittitas County officials throughout the development of the Project. The following is a summary of meetings the Applicant has had with the public and community organizations:

May 14 and 15, 2003	Open House in Ellensburg
2003 – 2004	Meetings with Kittitas County Economic Development Group
April 14, 2004	Ellensburg Rotary Club Meeting
April 20, 2004	Ellensburg Lion's Club Meeting
April 27, 2004	Ellensburg Kiwanis Club Meeting
May 19, 2004	Upper County Rotary Club Meeting
May 26, 2004	Ellensburg School Board Meeting
June 14, 2004	Ellensburg Kiwanis Club Meeting
June 23, 2004	Cle Elum Kiwanis Meeting
Dec. 2004 – Feb. 2005	Meetings with Kittitas County Fire District No. 2

The following is a summary of meetings and hearings the Applicant has had with Kittitas County officials and staff:

August 6, 2002	Pre-application meeting with County Planning Department staff
September 25, 2002	Meeting with County Planning Department staff regarding application and permit process
November 14, 2002	Meeting with County Planning Department staff regarding application
January 15, 2003	Meeting with County Planning Department Director and staff, County Director of Public Works and Building Department staff regarding application
February 19, 2003	Meeting with County Planning Department staff regarding permitting
February 27, 2003	Meeting with County Planning Department staff and WDFW staff regarding mitigation requirements

March 25, 2003	Meeting with County Planning Department Director and staff regarding EIS
April 8, 2003	Meeting with County EIS consultant regarding Draft EIS
May 7, 2003	County EIS Scoping meeting
May 14, 2003	County open house and community meeting for project
June 24, 2003	Meeting with County Planning Department regarding Draft EIS
August 12, 2003	Meeting with County Planning Department regarding Draft EIS
August 26, 2003	Meeting with County Planning Department regarding Draft EIS
September 3, 2003	Meeting with County Planning Department regarding Draft EIS
September 9, 2003	Meeting with County Planning Department regarding Draft EIS
October 29, 2003	Meeting with County Planning Department and County Attorney regarding Development Agreement
December 1, 2003	Meeting with County EIS consultant regarding Draft EIS
January 16, 2004	Meeting with County Planning Department staff and WDFW staff regarding permit and mitigation
January 20, 2004	County hearing regarding Draft EIS
February 10, 2004	Meeting with County Planning Department regarding Draft EIS
March 16, 2004	Meeting with County Planning Department and Director of Public Works regarding FAA/Smithson Road issues
May 3, 2004	Meeting with County Director of Public Works regarding Smithson Road.
May 4, 2004	Meeting with Bowers Field Airport Advisory Committee, County Planning Department staff and County Director of Public Works
May 26, 2004	Meeting with County Planning Department regarding FEIS
June 1, 2004	Meeting with County staff
June 15, 2004	Meeting with County Planning Department staff and Director of Public Works
August 10, 2004	Meeting with County Planning Department staff regarding Final EIS

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September 13, 2004	Meeting with County Planning Department staff regarding Development Agreement
September 30, 2004	Meeting with County Planning Department staff regarding Development Agreement
October 11, 2004	Meeting with County EIS consultant regarding Development Agreement

During September and October 2006, the Applicant contacted property owners in the Project vicinity and met with several property owners about changes made to the Project. The Applicant also met with the Kittitas County Commissioners and the Director of Community Development Services.

**WAC 463-60-135 Proposal — Legal descriptions and ownership interests.**

**(1) Principal facility. The application shall contain a legal description of the site to be certified and shall identify the applicants and all nonprivate ownership interests in such land.**

**(2) Associated and transmission facilities. For those facilities described in RCW 80.50.020 (6) and (7) the application shall contain the legal metes and bounds description of the preferred centerline of the corridor necessary to construct and operate the facility contained therein, the width of the corridor, or variations in width between survey stations if appropriate, and shall identify the applicant's and others' ownership interests in lands over which the preferred centerline is described and of those lands lying equidistant for 1/4 mile either side of such center line.**

The Project Area comprises portions of Township 19N, Range 18E, Sections 4, 9, 16, 17, 18, 20, 21, 22, 27 and 29.

Of the 4,783 acres within the Project Area, 3,191 acres are privately owned by five landowners, and 1,592 acres are owned by WDNR. One parcel has a severed estate in which a private party owns the surface and WDNR controls the mineral rights.

The legal description for the WDNR land is:

All of Section 16, Township 19 North, Range 18 East, W.M., All of Section 18, Range 19 North, Range 18 East, W.M., and the Western Half of Section 22, Range 19 North, Range 18 East, W.M.

The legal description for the Nelson property is:

The North Half of Section 27, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, EXCEPT:  
The Southeast Quarter of the Northeast Quarter,

1. Tracts of land conveyed to the Kittitas Reclamation District by deed dated December 16, 1927, recorded in book 46 of Deeds, page 106, and by deed dated March 4, 1929, recorded in book 47 of Deeds, page 255 and by deed dated March 5, 1929, and recorded in book 47 of Deeds, page 256;
2. Parcels 1 and 2 of that certain Survey recorded August 6, 1993, in Book 19 os Surveys, pages 120 and 121, under Auditor's File No. 562115, being a portion of the Northeast Quarter of Section 27, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington;
3. Right of way for Robbins Road (also shown of record as Evans Road);
4. Right of way for Reecer Creek Road.

The legal descriptions for the three parcels of the Wade/White property are:

PARCEL D:

The Southwest Quarter of Section 17, Township 19 North, Range 18 East, W.M., Kittitas County, State of Washington;  
EXCEPT the north one rod of the Northeast Quarter of the Southwest Quarter of said section,  
EXCEPT the North 5 rods of the Northwest Quarter of the Southwest Quarter of said section; and  
EXCEPT the right of way of Reecer Creek Road along the East line, thereof.

PARCEL E:

The West Half of Section 20, Township 19 North, Range 18 East, W.M., Kittitas County, State of Washington;  
EXCEPT right of way of Reecer Creek Road along the East boundary thereof.

PARCEL F:

All of the North Half and the portion of the South Half of Section 29, Township 19 North, Range 18 East, W.M., Kittitas County, State of Washington, lying North of and above the North line of the North Branch Canal of the Kittitas Reclamation District;  
EXCEPT the right of way of Reecer Creek Road along the North line thereof and right of way of Lower Green Canyon Road along the East line thereof.

The legal descriptions for the three parcels of the Frable property are:

PARCEL 1:

The Southeast Quarter of Section 4, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

PARCEL 2:

The East Half of Section 9, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

PARCEL 3:

The Northwest Quarter of Section 9, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington; EXCEPT the improvements, in any, specifically as to a manufactured home.

The legal description for the Doman property is:

The Southwest Quarter of Section 9, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

The legal description for the two parcels of the Roan property are:

PARCEL 1:

The Southeast Quarter of Section 17, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington;

AND

That part of the South Half of the Northeast Quarter of Section 17, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, which is described as follows:

A tract of land bounded by a line beginning at a point on the East boundary line of the right of way of the county road 30 feet East and 16.5 feet North of the Southwest corner of said Northeast Quarter of said section and running thence North 89degrees 15' East parallel with the South line of said quarter section 1714 feet; thence North 61degrees 33' East 398.2 feet; thence South 84degrees 15' East 188 feet; thence South 23degrees 15' East 177 feet to a point on the South boundary line of said section; thence South 89degrees 15' West along said South boundary line of said section 2329.5 feet; and thence North 16.5 feet to the point of beginning;

EXCEPT a strip of land 12 feet wide lying South of a line described as follows: Beginning at a point 30 feet East and 16.5 feet North of the Southwest corner of said section and running thence North 89degrees 15' East 1714 feet; thence North 61degrees 33' East 398.2 feet; thence South 84degrees 15' East 188 feet; and thence South 23degrees 15' East 177 feet to a point on the South boundary line of said section;

AND

The East Half of Section 20, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

PARCEL 2:

The South Half and that portion of the North Half of Section 21, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, which is described as follows:

A tract of land bounded by a line beginning at a point on the West boundary line of the Northeast Quarter of said section, 4 rods North of the Southwest corner of said quarter section, and running thence East 4 rods; thence North on a line parallel with the West boundary line of said quarter section 100 rods; thence West 4 rods to the West boundary line of said quarter section; thence North to the North boundary line of said quarter section; thence West to the Northwest corner of said section; thence South on the West boundary line of said section to the Southwest corner of the Northwest Quarter of said section; thence East on the South boundary line of said Northwest  $\frac{1}{4}$  of said section 60 rods; thence North 4 rods; and thence East on a line parallel with the South boundary line of said quarter section 100 rods to the point of beginning.

AND

That portion of the South Half of the Northwest Quarter of Section 21, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, which is described as follows:

A tract of land beginning at the Southwest corner of the Northwest Quarter of said section; thence East on the South boundary line of said Northwest Quarter of said section, 60 rods to the true point of beginning; thence North 4 rods; thence East on a line parallel with the South boundary line of said quarter section, 100 rods, to the East boundary line of said Northwest Quarter of said section; thence South 4 rods to the South boundary line of said quarter section; and thence West on the South boundary line of said Northwest Quarter of said section, 100 rods to the true point of beginning.

AND

The Northeast Quarter of Section 21, Township 19 North, Range 18 East, W.M., in the County of Kittitas, State of Washington;

EXCEPT a tract of land bounded by a line beginning at a point on the West boundary line of said quarter section which is 4 rods North of the center of said section, and running thence East 4 rods; thence North on a line parallel with and 4 rods distant from the West boundary line of said quarter section 100 rods; thence West 4 rods to the West boundary line of said quarter section; and thence South along said West boundary line 100 rods to the point of beginning.

**WAC 463-60-285 Proposal — Study schedules.**

**The application shall furnish a brief description of all present or projected schedules for additional environmental studies. The studies descriptions should outline their scope and indicate projected completion dates.**

The Applicant has retained Northwest Archeological Associates to perform a cultural site survey on the WDNR property that has been added to the Project Area. Northwest Archeological Associates performed cultural resource surveys and consultations with tribes in connection with the County FEIS. The Applicant expects to receive a final report by December 31, 2006.

The Applicant has no current plans to perform other additional environmental studies.

**WAC 463-60-295 Proposal — Potential for future activities at site.**

**The application shall describe the potential for any future additions, expansions, or further activities which might be undertaken by the applicant on or contiguous to the proposed site.**

The Applicant has no plans to add to, expand or conduct additional activities on the Project Area in the future. Although there is the potential for further expansion on contiguous or adjacent lands, the Applicant has no current plans for such an expansion. Any future expansion would depend upon landowner consent, market demand, turbine pricing, and the ability to obtain required regulatory approvals.

**WAC 463-60-297 Proposal — Pertinent federal, state and local requirements.**

**(1) Each application shall include a list of all applicable federal, state, and local statutes, ordinances, rules, permits, and required use authorizations (i.e., leases, easements, rights of way, or similar authorizations) that would apply to the project if it were not under council jurisdiction. For each federal, state, or local requirement, the applicant shall describe how the project would comply or fail to comply. If the proposed project does not comply with a specific requirement, the applicant shall discuss why such compliance should be excused.**

**(2) Inadvertent failure by the applicant to discover and list a pertinent requirement shall not invalidate the application, but may delay the council's processing of the application.**

The following is a summary of major federal, state and local statutes, regulations, permits and approvals that would be applicable to the Project if it were not under EFSEC's jurisdiction.

## **Federal Statutes, Regulations, Rules and Permits**

### **Aviation Regulations & Lighting (49 USC 44718, 14 CFR 77 )**

*Summary:* The Federal Aviation Administration (FAA) requires filing of Notice of Proposed Construction or Alteration and completion of a study for objects, such as wind turbines, that may pose a hazard to aviation (Advisory Circular No. 70/460-2H). This standard is applicable to any object over 200 feet above ground level. The FAA has also promulgated standards for the marking and lighting of such objects (Advisory Circular No. 70/7460-1K).

The proposed site is in the vicinity (within 6 nautical miles) of Bowers Field, located in Kittitas County near Ellensburg. Federal Aviation Regulation (FAR) 77.23 would require that FAA conduct a study of the proposed project.

*Discussion of Compliance:* The Applicant will file a Notice of Proposed Construction or Alteration with the FAA, and comply with FAA's preferred lighting system for wind turbines. The FAA will determine, based on the plan submitted by the Applicant, how many turbines should be lighted.

### **Endangered Species Act (16 U.S.C. 1533) (1973), Bald Eagle and Golden Eagle Protection Act (1940)**

*Summary:* The Endangered Species Act (ESA) requires the protection and recovery of threatened and endangered species. The National Oceanic and Atmospheric Administration (NOAA) administers the ESA for species with ocean habitats or for anadromous fish species, while the US Fish and Wildlife Service (USFWS) has ESA responsibility for all other species. NOAA and USFWS designate critical habitat for species that are identified as threatened or endangered or that are listed as potentially threatened or endangered. Section 7 of the ESA requires federal agencies to assess the effect of their proposed actions on listed species and consult with NOAA and/or USFWS, as applicable. Section 9 makes it unlawful to 'take' endangered species. Take is defined to include harm, harassment, and habitat modification or degradation. Section 10 enables interested parties to obtain a regulatory certainty (i.e., a take permit) in exchange for voluntary measures that conserve protected animals. 'Incidental take' or 'enhancement of survival' permits allow lawful activities that might unintentionally harm a species to proceed under a habitat conservation plan, candidate conservation agreement, or a safe harbor agreement.

The Bald Eagle and Golden Eagle Protection Act protects the bald eagle and golden eagle and imposes its own prohibition on any taking of these species. 'Take' is defined by actions to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb these species.

*Discussion of Compliance:* Section 3.4 of the County FEIS addresses potential impacts to plants and wildlife that are listed, or are candidates for listing, as threatened or endangered

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and that may occur on or near the Project Area. No rare plants have been identified in the Project Area. Although some federally threatened or endangered species have been identified as potentially occurring, they are not believed to be likely to use the Project Area and would not be affected. None of the streams in the Project Area are known to contain fish, although there is anecdotal information suggesting that juvenile steelhead trout (a threatened species) can be unintentionally routed into Reecer Creek from upstream trans-basin water diversions. Bald eagles are known to use the land within and around the Project Area and are listed as threatened under the ESA. Golden eagles have a moderate potential for use of the Project Area and are classified as a State Species of Concern. Mortality is expected to be very low and would not have a measurable effect on the eagle population.

### **Clean Water Act (42 USC 1251, 15 CFR 923-930)**

*Summary:* The goals of the Clean Water Act are to eliminate the discharge of pollutants into surface waters and to achieve a level of water quality that provides for the protection of fish and wildlife. The major implementing elements of the Act are a prohibition on non-complying discharges (Section 301), a permit program to authorize and regulate discharges (Section 402), a system to determine the limitations to be imposed (Sections 301, 306, 307), standards and implementing provisions (Sections 401, 402), a system for preventing and responding to spills (Section 311), and enforcement mechanisms (Sections 309, 505).

The U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology (Ecology) oversee most provisions of the Clean Water Act. The National Pollution Discharge Elimination System (NPDES) permit program is a primary component of the Act. An NPDES permit is required for any discharge of pollutants from a point source, including stormwater runoff, to waters of the United States. Section 404, which is administered by the U.S. Army Corps of Engineers, regulates the discharge of dredge and fill materials to waters of the United States, including associated wetlands. EFSEC has delegated authority to issue NPDES permits and Section 401 certification for projects under its jurisdiction.

*Discussion of Compliance:* The Project will require an NPDES permit to manage stormwater discharges during construction. The Project will not require a Section 404 permit because it does not result in any fill in or disturbance to jurisdictional wetlands.

### **National Historic Preservation Act (PL 90-577) (1966)**

*Summary:* The National Historic Preservation Act protects historic sites and values (in cooperation with other nations, states, and local governments) as federal policy. It generally establishes a grant program to states for historic preservation and requires federal agencies to consider the effects of their actions on historic resources. Agencies can require private interests to pay costs of protecting archaeological and historic resources. Historic resources are identified by literature searches, sample evaluation and site surveys.

Federal criteria provide a useful way to measure the scientific or historic value of properties. Properties eligible for the National Register of Historic Places generally must be at least fifty years old, possess integrity of physical characteristics, and meet at least one of four criteria of significance. (The criteria are discussed in detail in Section 3.6 of the County FEIS.)

*Discussion of Compliance:* No sites within or adjacent to the Project Area are known to be listed on or proposed for listing on the National Historic Register. The Kittitas County Historical Site record indicates a homestead (the Robbins Homestead or Springfield Farm) located within the Project Area. Heritage resources identified in the field survey for the original project proposal included 13 prehistoric sites, 19 historic sites, 28 historic isolates (locations with fewer than 5 artifacts) and 48 prehistoric isolates. A preliminary assessment of resource significance for these sites identified 13 sites as likely to be significant, including 8 historic sites, 4 prehistoric resources and 1 site with both historic and prehistoric components within the original project area. Evidence of potentially significant agriculture/settlement heritage resources includes the Morrison Homestead, Springfield Farm, Roan Farm, White Ranch, Hodges Residence, the North Branch Canal and miscellaneous historic farm structures and debris. Prehistoric resources include lithic scatters that represent the manufacture and sharpening of stone tools or activities associated with short-term camps. Potential project impacts on these resources and associated mitigation measures are identified in the County FEIS, Section 3.6.

Ethnographic data indicate that three Yakama villages were located within a few miles of the Project Area. People of these villages would have utilized the land for hunting, plant gathering, and traditional activities.

### **State Statutes, Regulations, Rules and Permits**

#### **Indian Sites and Resources Act; Indian Graves and Records Act**

*Summary:* The Indian Sites and Resources Act (RCW 27.53) and the Indian Graves and Records Act (RCW 27.44) address cultural resources pertaining to the Indian history within Washington. RCW 27.53 prohibits the disturbance or excavation of historic or prehistoric archaeological resources on state or private land without a permit. RCW 27.44 prohibits knowingly disturbing a Native American or historic grave.

*Discussion of Compliance:* The Project involves a number of ground-disturbing activities that have the potential to directly impact cultural resources within the Project Area. Ground-disturbing activities would occur at most stages of Project development, including construction of roads, tower foundations, power collection systems, substations, operations and maintenance facility, and other project features. Section 3.6 of the County FEIS analyzes existing cultural resources and potential impacts within the original project area. The Applicant has retained a consultant to provide a similar analysis of the WDNR land that

has been added to the Project Area. Protocols and procedures would be implemented to address any discovery of Indian resources.

### **Electrical Construction Permit**

*Summary:* The Washington Department of Labor & Industries has adopted regulations regarding safety and installation of electric wires and equipment (WAC 296-746A). The Department reviews applicable design plans, issues construction permits for compliant systems, and enforces its regulations.

*Discussion of Compliance:* The Project would be designed, constructed and operated in accordance with Department of Labor & Industries' regulations.

### **Sound Level Regulations**

*Summary:* The Washington Department of Ecology has established limits on sounds crossing property boundaries based on an Environmental Designation for Noise Abatement (EDNA). (WAC ch. 173-60) EDNAs are established based on the land use and/or zoning classification of the sending and receiving properties.

*Discussion of Compliance:* The Project will comply with WAC chapter 173-60. A sound analysis is provided as part of this Application.

### **Water Quality**

*Summary:* State water quality requirements are found in RCW 90.48 (Water Pollution Control Act), WAC 173-220 (Ecology's NPDES Permit Program), WAC 173-226 (Waste water General Permits) and 173-201A (Water Quality Standards for Waters of the State). See discussion of the federal NPDES program above. The proposal would require an General NPDES Construction Stormwater Permit, which may be issued by EFSEC (per WAC 463-38).

*Discussion of Compliance:* The Applicant will develop and implement a Stormwater Pollution Prevention Plan (SWPPP) and comply with other requirements of the General Permit.

### **Fish & Wildlife Priority Species & Habitats**

*Summary:* The Washington Department of Fish & Wildlife designates priority species and habitats and describes guidelines for management (WAC 232-12). Priority species of plants and wildlife are located in the Project Area. Detailed information on specific species is found in the County FEIS at pages 3-63 through 3-113.

*Discussion of Compliance:* The Applicant will follow WDFW guidelines for Wind Power Projects.

### **State Environmental Policy Act (RCW 43.21C & WAC 197-11)**

*Summary:* SEPA requires state and local governments to give appropriate consideration to environmental values in decision making. SEPA requires the preparation of an Environmental Impact Statement (EIS) before state and local governments take major actions significantly affecting the quality of the environment.

*Discussion of Compliance:* Kittitas County published a Final EIS in August 2004, as the SEPA lead agency for the original project proposal. No appeal of the EIS was filed. EFSEC is the SEPA lead agency for the current Project application.

### **Pertinent Local Statutes, Regulations, Rules and Permits**

#### **Kittitas County Comprehensive Plan (1996, as amended)**

In 1996, Kittitas County adopted a Comprehensive Plan that contains the County's goals for managing growth and development over a 20-year period (1996 to 2016). It includes general goals and policy statements for five major elements, including: land use, housing, transportation, capital facilities, and utilities. The land use and utility policies are the most relevant to the Project and are summarized and discussed below.

#### Land Use Goals & Policies

*Summary:* The Land Use section includes designations and policies for guiding land use in the County. Land use designations establish general locations for specific land use and development activities throughout the County. The Project Area and much of the surrounding area is designated as Rural in the Comprehensive Plan, except for areas to the north and northwest, which are designated as Commercial Forest. The Plan identifies the importance of natural resource activities, as they contribute to the County's economic base.

Chapter 8, Section 8.5, of the Comprehensive Plan states, "Rural lands in Kittitas County are now, and have historically been, a mix of resource lands, rural neighborhoods, and varied developments scattered throughout the county." The Plan's goals, policies, and objectives for land uses on rural lands are "established in an attempt to prevent sprawl, direct growth toward the Urban Growth Areas and Nodes, provide for a variety of densities and uses, respect private property rights, provide for residences, recreation, and economic development opportunities, support farming, forestry and mining activities, show concern for shorelines, critical areas, habitat, scenic areas, and open space while keeping with good governance and the wishes of the people of Kittitas County and to comply with the GMA and other planning mandates."

The Comprehensive Plan states that utilities using natural resources may be appropriate in rural areas:

*The economy of our rural community has traditionally been based on natural resource activities and Kittitas County encourages and supports their continuation in Rural Lands.... Economically viable farming and logging may occur with or beyond the state designated areas but more and more it is necessary to supplement income from outside sources in order to support natural resource operations. Other businesses and economic growth can be realized without sacrificing our rural character.*

*Discussion of Compliance:* The Project is consistent with the Land Use goals and policies of the Comprehensive Plan. The Project would not directly change or replace existing agricultural uses or adversely affect the pattern of rural uses in the surrounding area. Wind farms are a relatively new and innovative type of energy or utility use that would support economic growth and generate revenues to Kittitas County and junior taxing districts.

#### Utilities Goals & Policies

*Summary:* The Utilities section of the Comprehensive Plan identifies the general location and capacity of all existing and proposed utilities, including but not limited to, electrical lines, telecommunication lines, and natural gas lines. Generally, the goals, policies, and objectives seek to promote the maintenance of current information on existing and proposed facilities; plan for expansion or improvement of utility systems; encourage coordination between jurisdictions and utility providers; and ensure the proper placement and appropriateness of utility siting.

*Discussion of Compliance:* The Project is consistent with the Utilities goals and policies of the Comprehensive Plan. It is located within the Comprehensive Plan's designated Rural Area and would produce electricity to meet regional energy demands. The Project will connect to an existing electric transmission line, and proximity to a transmission line is a key criterion for siting wind energy facilities. Electricity generated by wind turbines will be collected through cables that run above or below the ground in the project area or within utility rights-of-way to an on-site substation. Most of the power collection lines will be located within the Project Area.

#### **Kittitas County Zoning Code (Title 17)**

*Summary:* The Zoning Code regulates the use and development of all property within the unincorporated area. Most of the land within the Project Area is zoned Ag-20 (agricultural use with a 20-acre minimum parcel size). The northwestern portion of the Project Area is within a foothill-area zoned as Forest & Range (FR).

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Application for Site Certification – Project Description*

Wind farms are not a permitted use in any Kittitas County zoning district. Instead, Kittitas County has adopted an ordinance that establishes an elaborate siting process for wind projects. In order to construct a wind project, the proponent must apply for a site-specific rezone and modification of the County Comprehensive Plan to designate the project site as a Wind Farm Resource Overlay Zone, as well as obtaining a Wind Resource Development Permit and executing a development agreement (KCC, Chapter 17.61A).

*Discussion of Compliance:* In 2003, Desert Claim applied to Kittitas County for the approvals necessary to construct and operate an earlier version of the Project. Desert Claim submitted a draft and revised draft development agreement that included standards for wind turbines (location, number, size and setback) and other facilities; mitigation measures; and other development conditions to protect surrounding properties, communities, and the County as a whole. Desert Claim believes that the original project proposal was consistent with Kittitas County's Zoning Code and Comprehensive Plan, but the County denied its application.

### **Kittitas County Critical Areas Ordinance (Title 17A)**

*Summary:* Kittitas County's Critical Areas Ordinance (CAO, KCC 17A.03.045) sets forth the requirements for protecting frequently flooded areas, aquifer recharge areas, wetlands, fish and wildlife habitat conservation areas, and geologically hazardous areas.

- **Wetlands:** Kittitas County has adopted a 'zero net loss' wetlands policy. "Zero" or "no" net loss does not mean that no impacts to wetlands can occur. Rather, it means that wetland impacts must be compensated for to ensure that no *net* reduction in wetland functions and values will occur; wetland subtractions may be offset by wetland additions, for example.

*Discussion of Compliance:* The Project has been designed to avoid impacts to wetlands.

- **Fish and Wildlife Habitat Conservation Areas:** These areas include wetlands, big game winter range, riparian habitat and habitats for species of local importance (based on WDFW designations). Riparian areas are prioritized according to stream type, with buffers ranging from 10 to 200 feet from the ordinary high water mark. Terrestrial habitat is protected according to State and federal direction and local importance.

*Discussion of Compliance:* The Applicant will review and potentially modify the location of turbines and other facilities (i.e., micro-siting) to avoid or minimize disturbance to shrub-steppe habitat and riparian communities. Disturbance to habitat will be mitigated according to the WDFW's Wind Power Guidelines.

- **Agriculture:** Agricultural land is defined to include livestock raising, crop cultivation and harvesting, irrigation and drainage ditches, and farm roads. The County has

adopted GMA minimum guidelines for classification and designation of agricultural lands, and has established an interim Commercial Agricultural Zone. Non-farm uses are discouraged in farm areas; incentives and support for farmers are a significant component of the designation.

*Discussion of Compliance:* None of the Project Area is within the Commercial Agriculture Zone. Use of the area for wind energy facilities would not displace or interfere with existing agricultural uses.