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3 **CTED Rules Support the Applicant’s Contention that EFSEC Retains Sole Authority to**
4 **Permit the Kittitas Valley Wind Power Project.**
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7 In the Growth Management Act, Chapter 36.70A RCW, (Act) the legislature directed the
8 Department to develop procedural criteria to assist counties and cities in adopting
9 comprehensive plans and development regulations that meet the goals and requirements of the
10 Act. WAC 365-195-020. CTED, through its rules, provides guidance to counties and cities in
11 multiple areas of land use planning. In a number of sections in WAC 365-195, CTED
12 addresses the issue of the Act’s planning requirements relative to other planning requirements.
13 CTED directs counties and cities to attempt to identify other statutes and legal authorities
14 affecting subjects addressed by the plans and regulations that the counties and cities develop
15 under the Act. WAC 365-195-710(1). A key reason for this is to avoid unnecessary
16 duplication of effort. But it has the practical purpose of helping counties and cities not waste
17 time in planning efforts that are not in their jurisdiction. In the same section, CTED suggests
18 that state agencies, among others, should aid in this identification by implementing programs
19 to inform the planning entities of relevant programs and provisions within their jurisdiction or
20 expertise. WAC 365-195-710(2). In the rules implementing the act, CTED provides basic
21 assumptions of the Act relative to other statutory provisions, lists statutes expressly amended
22 by the Act, and cites state preemption of energy permitting through EFSEC as a specific state
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1 authority *not* amended by the Act. Regarding the preemptive effect of the Act on other
2 statutory provisions, WAC 365-195-705(2) states:

3 Absent a clear statement of legislative intent or judicial interpretation to the
4 contrary, it should be presumed that neither the [A]ct nor other statutes are
5 intended to be preemptive. Rather, they should be considered together and,
6 wherever possible, construed as mutually consistent.

7 This rule supports the contention that EFSEC retains authority to preempt local ordinances
8 regarding the siting of energy facilities because the EFSEC enabling statute explicitly
9 establishes state preemption, and the Act does not explicitly amend and preempt Chapter 80.50
10 RCW. In the rule, CTED lists all the statutes that are explicitly amended by the Act, and
11 Chapter 80.50 RCW is not among them. WAC 365-195-750. Finally, CTED advises the
12 counties and cities that “Plans and regulations adopted under the [A]ct should accommodate
13 situations where the state has explicitly preempted all local land use regulations, as for
14 example, in the siting of major energy facilities under RCW 80.50.110.” WAC 365-195-745.
15 CTED concurs with the Applicant’s preemption arguments as set forth in pages 6-27 of the
16 Applicant’s Opening Post-Hearing Brief. It could hardly be more clear that the Act did not
17 impliedly repeal the state’s authority to preempt local ordinances insofar as they apply to the
18 certification of energy facilities under RCW 80.50.
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21 **The Kittitas Valley Wind Power Project Furthers the State’s Interests in Promoting**
22 **Indigenous and Renewable Energy Resources.**
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25 The Legislature has expressed a strong public policy in favor of renewable energy in
26 RCW 43.21F.010 and RCW 43.21F.015(1). RCW 43.21F.010 reads:

1 The legislature finds and declares that it is the continuing purpose of state
2 government, consistent with other essential considerations of state policy, to
3 foster wise and efficient energy use and to promote energy self-sufficiency
4 through the use of *indigenous and renewable* energy sources, consistent with
the promotion of reliable energy sources, the general welfare, and the protection
of environmental quality.” (emphasis added)

5 Similarly, RCW 43.21F.015(1) provides that “It is the policy of the state of Washington to
6 encourage the development and use of a diverse array of energy resources with emphasis on
7 renewable energy resources.” Subsection (7) of this statute provides that the state energy
8 strategy “shall provide primary guidance for implementation of the state’s energy policy.” The
9 latest edition of the State Energy Strategy identifies wind as a renewable resource and supports
10 its development in Guiding Principle #2. The principle is: “Encourage the development of a
11 balanced, cost-effective and environmentally sound resource portfolio that includes
12 conservation, renewables, (e.g., *wind*, geothermal, hydro, biomass, and solar technologies), and
13 least-cost conventional resources.” (Emphasis added). (Exhibit 60.2) (TU-2) In addition,
14 CTED is identified in RCW 43.21F.045 (g) as the state department that shall “Serve as the
15 official state agency responsible for coordinating implementation of the state energy strategy.”
16 It is state policy to encourage the development of wind resources, and CTED supports this
17 Project to further that end.

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19 In addition, EFSEC’s enabling legislation lists a number of premises upon which
20 permitting actions should be taken, including the premise to provide abundant energy at
21 reasonable cost. RCW 80.50.010(3). The following bullets provide a summary of key *energy*
22 *policy reasons* why CTED believes this Project should be permitted:

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25 • The Project is a renewable resource, with no significant air emissions (criteria pollutants or
26 greenhouse gases), negligible water use, a small footprint, and few avian impacts;

- 1 • The Project makes use of an indigenous energy resource - wind;
- 2 • The Project will provide utility scale amounts of electricity supply;
- 3 • The Project will provide power at low cost relative to alternatives;
- 4 • The Project will provide power at known costs and carries no risk of fuel cost increases
- 5 (i.e. the fuel is free);
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- 7 • The Project will help diversify Washington state’s portfolio of energy resources;
- 8 • The Project’s characteristics fit well into our hydropower based system, capable of being
- 9 coordinated with hydropower and providing a reliable supply of energy on an annual basis
- 10 improving system sufficiency;
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- 12 • The Project site is crossed by two sets of high voltage transmission lines eliminating the
- 13 need to construct transmission, reducing costs and environmental impacts; and
- 14 • The Project is proposed to be located in an area zoned for resource extraction that has rural
- 15 characteristics, allowing the Project to “extract” power from the wind while grazing and
- 16 farmland uses continue unhindered.
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18 The Department believes the record developed at the hearing demonstrates
19 unequivocally that the Project will be an exceptional generating station, with great benefits for
20 the State and the county and few negative impacts.
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23 **Conclusions**

24 There are few energy resources in the world that can compare to wind power. Not only are the
25 environmental impacts low, but the cost is low compared even to traditional alternatives, and
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1 free from fuel cost increases over time. No other major electricity supply resource can be
2 constructed so as to allow use of the land after construction in the same way it was used before.
3 This is particularly beneficial when it allows continued grazing and farming and maintenance
4 of the rural character of the site. In addition, the proposed site combines a good wind regime
5 with existing transmission lines, eliminating the need to construct additional transmission
6 towers and lines.
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8 It is primarily for these reasons that state energy policy and the State Energy Strategy
9 encourage the development of indigenous and renewable resources like wind power. And it is
10 therefore for these reasons that we encourage the Council to recommend to Governor Gregoire
11 that the Sagebrush Power Partners L.L.C., receive a site certificate and be permitted to
12 construct the Kittitas Valley Wind Power Project.
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