

## 1.6 PERTINENT FEDERAL, STATE AND LOCAL REQUIREMENTS

*WAC 463-42-685 Pertinent federal, state and local requirements .*

- (1) *Each application submitted to the council for site certification shall include a list of all applicable federal, state, and local codes, ordinances, statutes, rules, regulations and permits that would apply to the project if it were not under council jurisdiction. For each listed code, ordinance, statute, rule, regulation and permit, the applicant shall describe how the project would comply or fail to comply with each requirement. If the proposed project does not comply with a specific requirement, the applicant shall discuss why such compliance should be excused.*
- (2) *Inadvertent failure to discover a pertinent provision after a reasonable search shall not invalidate the application, but may delay processing the application as necessary to gather and consider relevant information.*

### **1.6.1 Table of Pertinent Federal, State and Local Codes, Ordinances, Statutes, Rules, Regulations and Permits**

Table 1.6.1-1 Pertinent Federal, State and Local Codes, Ordinances, Statutes, Rules, regulations and Permits lists the pertinent federal, state and local permits and related requirements pursuant to Chapter 463-42-685 WAC that apply to construction and operation of the Kittitas Valley Wind Power Project. The table lists the permits or requirements, identifies the permitting agency, and cites the authorizing statute or regulation. The table also identifies the sections in the Application relating to each permit or requirement.

**Table 1.6.1-1  
Pertinent Federal, State and Local Codes, Ordinances, Statutes, Rules, Regulations and Permits**

Permit Or Requirement	Agency/Code, Ordinance, Statute, Rule, Regulation Or Permit	Application Section)
<b>Federal:</b>		
Aviation Regulations And Lighting	Federal Aviation Administration (FAA) 14, CFR Part 77: specifies the criteria for determining whether a “Notice of Proposed Construction or Alteration” is required for potential obstruction hazards; FAA Advisory Circular 70/7460-1 AC70/7460-1K, Obstruction Marking and Lighting, Chapters 4, 8 and 12 describes the FAA standards for marking and lighting structures that may pose a navigation hazard as established using the criteria of Title 14, CFR Part 77; FAA Advisory Circular No. 70/460-2H, relates to the filing of a “Notice of Proposed Construction or Alteration.”	5.1.4.
Threatened Or Endangered Species	U.S. Fish and Wildlife Service Endangered Species Act of 1973 (16 USC, Section 1531, et seq.) and implementing regulations. Designates and provides for protection of threatened and endangered plants	

Permit Or Requirement	Agency/Code, Ordinance, Statute, Rule, Regulation Or Permit	Application Section)
	and animals and their critical habitat.	
<b>State:</b>		
Electrical Construction Permit	Washington Department of Labor and Industries Chapter 296-746A WAC Washington Department of Labor and Industries Safety Standards – Installing Electrical Wires and Equipment – Administration Rules.	NR
Noise Control	Washington Department of Ecology Noise Control, Chapter 70.107 RCW; Chapter 173-58 WAC, Sound Level Measurement Procedures; and Chapter 173-60 WAC, Maximum Environmental Noise Levels.	4.1.1.
Water Quality Storm Water Discharge: Construction Activities	Washington Department of Ecology Water Pollution Control Act, Chapter 90.48 RCW establishes general stormwater permits for the Washington Department of Ecology National Pollutant Discharge Elimination System Permit Program (NPDES) ; Chapter 173-201A WAC Washington Department of Ecology Water Quality Standards for Surface Waters of the State of Washington, which regulates water quality of surface waters. Federal statute(s) and regulations implemented by the above state statute(s) and regulations include: Federal Clean Water Act, 42 USC 1251; 15 CFR 923-930.	1.1.4; 2.3; 2.10; 2.13; 2.15.6; 3.1.7; 3.3.2; and 3.4.7.
Ground Water	Washington Department of Ecology Washington Water Resources Act, Chapter 90.54 RCW; Chapter 18.104 RCW; and Chapter 43.12 RCW: Chapter 173-160 WAC Washington Department of Ecology, Minimum Standards for Construction and Maintenance of Wells, which establishes minimum standards for the construction and decommissioning of all wells in the state of Washington; and Chapter 173-162 WAC regulation and licensing of water well contractors and operators.	3.3.5
Fish And Wildlife	Washington Department of Fish and Wildlife Chapter 232-12 WAC Washington Department of Fish and Wildlife Permanent Regulations, provides information on classification of wildlife species and promotion of the delisting of bald eagles as a threatened or endangered species	3.4
State Environmental Policy Act (SEPA)	Kittitas County would have been lead agency absent EFSEC jurisdiction, Washington Environmental Policy Act, Chapter 43.21C RCW; Chapter 197-11 WAC Washington Department of Ecology SEPA Rules, which establishes uniform requirements for compliance with SEPA.	NR
Transportation/Highway Access	Washington Department of Transportation State Of Washington Highway Access Management, Chapter 47.50 RCW; Chapter 468-51 WAC and Chapter 468-52 WAC, Washington Department of Transportation Highway Access Management Access Permits – Administration Process, which regulates and controls vehicular access and connection points of ingress to and egress from the state highway system	2.3.2; and 5.2.

<b>Permit Or Requirement</b>	<b>Agency/Code, Ordinance, Statute, Rule, Regulation Or Permit</b>	<b>Application Section)</b>
Archaeology and Historic Preservation	Washington State Office of Archaeology and Historic Preservation Archaeological Sites and Resources, Chapter 27.53 RCW.	5.1.6.
<b>Local:</b>		
Comprehensive Plan	Kittitas County Comprehensive Plan, 2000-2020.	2.1.5; 5.1.1; and 5.1.2
Zoning Ordinance.	Kittitas County Code Title 17	2.1.5; 5.1.1; and 5.1.2.
Building Codes	Kittitas County Code 14.04  Implements Chapter 19.27 RCW, State Building Code and Chapter 51-40 WAC State Building Code regulations.	NR
Sewage Disposal Installation And Design And Septic Tank Cleaning Regulations	Kittitas County Code Title 13.04	NR
County Road Franchise for Underground Transmission Line	Kittitas County Code Title 12.56	2.3.2; and 5.2.
Culvert Installation Permit	Kittitas County Code Title 12.16	2.3.2; and 5.2.
Storm Water Management Plan	Kittitas County Code Title 12.70	2.3; 2.10; 2.15.6; 3.1.6; and 3.3.2.
Noxious Weed Control	Kittitas County Noxious Weed Control Board Noxious Weeds-Control Boards Chapter 17.10 RCW.	NR

Legend: NR means not referenced directly in this section but project compliance required.

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

### **1.6.2.1 Federal Aviation Administration (FAA) “Notice of Proposed Construction or Alteration”**

The Federal Aviation Administration (FAA) requires notification and lighting of objects that might pose a hazard to aviation. The applicable regulation is as follows: 49 USC, Section 44718 and Title 14, CFR part 77: specifies the criteria for determining whether a “Notice of Proposed Construction or Alteration” is required for potential obstruction hazards; FAA Advisory Circular 70/7460-1 AC70/7460-1K, Obstruction Marking and Lighting, Chapters 4, 8 and 12. describes

the FAA standards for marking and lighting objects such as wind turbine generators that may pose a navigation hazard as established using the criteria of 14 CFR 77; and FAA Advisory Circular No. 70/460-2H, relates to the filing of a “Notice of Proposed Construction or Alteration”.

#### Statement of Compliance

The Applicant filed a “Notice of Proposed Construction or Alteration” with the FAA and will comply with all requirements related to 14 CFR 77. The FAA reviewed the notice and completed an aeronautical study to determine if the proposed structures will be a hazard to air navigation. The FAA concluded that the proposed structures (wind turbine generators and meteorological towers) will not pose a hazard to air navigation (FAA Aeronautical Studies No. 2002-ANM-1017-OE through 2002-ANM-1199-OE dated October 28, 2002. The aforementioned FAA Aeronautical Studies indicate which structures should be lighted in accordance with FAA Advisory Circular 70/7460-1 AC70/7460-1K, Obstruction Marking and Lighting, Chapters 4, 8 and 12.

The Applicant will submit a revised “Notice of Proposed Construction or Alteration” to the FAA based on the final, approved site layout and proposed turbine size and will comply with all requirements of the FAA. The FAA’s aeronautical studies state that, for certain turbines, a Notice of Actual Construction or Alteration (FAA Form 7460-2) be submitted within 5 days after the construction reaches its greatest height. The Applicant will submit a Notice of Actual Construction or Alteration (FAA Form 7460-2) for all structures for which the FAA has required them in accordance with the required timeline.

#### **1.6.2.2 Threatened or Endangered Species**

The Endangered Species Act of 1973 (16 USC 1531, et seq.) and implementing regulations designates and provides for protection of threatened and endangered plants and animals and their critical habitat. It requires a determination of whether a protected species is present in the area affected by a project. Section 7 of the ESA requires that Federal agencies consult with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) for their determination in authorizing a project that may affect listed species or designated critical habitats that may be found in the vicinity of a project. Prior to any consultation process with these agencies, the project proponent and Federal agency develop and submit a biological assessment (BA) for listed species (animals and plants) and critical habitat that may occur with the project vicinity. The biological assessment is typically based on an analysis of project information (e.g. field studies/surveys) and pertinent natural resource information and provides an effects analysis for the project on the listed species. The BA concludes with a determination of whether the project will adversely affect each listed species or adversely modify critical habitat. Upon completion of the biological assessment, formal consultation between the action agency and the USFWS or NMFS is initiated. In cases where a project does not require the approval, funding or conduct of a federal agency, Section 10 of the ESA provides a parallel process whereby non-federal entities may consult with the USFWS or NMFS and acquire a take statement for incidental adverse effects or take of listed species by the project.

#### Statement of Compliance

The Applicant has carried out studies and field surveys conducted by Project consultants who have determined that bald eagle (*Haliaeetus leucocephalus*), a threatened species, is present in the Project area during the winter months and therefore may be adversely affected by the Project. There are no other threatened, endangered, proposed or candidate species, or designated critical habitat present at the Project site. The Applicant has prepared a thorough draft BA to analyze and

disclose the potential for the project to adversely affect bald eagles (See Exhibit 12, Biological Assessment.) The Applicant has committed to continued coordination and consultation with the USFWS to prepare a Habitat Conservation Plan (HCP) in order to acquire an incidental take statement through Section 10 of the ESA. The Applicant has initiated several conservation measures designed to minimize the potential for the project to adversely affect bald eagles (see Section 3.4.8, Plants and Animals-Mitigation). Continued consultation with the USFWS will determine the need for additional conservation measures necessary for ESA compliance. The Project will fully comply with the ESA through the Section 10, HCP process.

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

### **1.6.3.1 Electrical Construction Permit**

Washington Department of Labor And Industries which permits, inspects and enforces regulations regarding electrical installations pursuant to Chapter 296-746A WAC Washington Department of Labor and Industries Safety Standards – Installing Electrical Wires and Equipment – Administration Rules.

#### Statement of Compliance

The Washington Department of Labor and Industries will administer and enforce all electrical permitting, inspecting, design and enforcement regulations regarding electrical installations either directly or pursuant to a contract with EFSEC. The Project will be designed and constructed in conformance with Chapter 296-746A WAC.

### **1.6.3.2 Noise Control**

The Washington Department of Ecology has the authority regarding noise standards and control pursuant to Chapter 70.107 RCW Noise Control; Chapter 173-58 WAC, Sound Level Measurement Procedures; and Chapter 173-60 WAC, Maximum Environmental Noise Levels.

#### Statement of Compliance

The Project will be designed, constructed and operated to meet the Washington Department of Ecology's noise regulations and standards.

### **1.6.3.3 Water Quality Storm Water Discharge: Construction Activities and Operation**

The Project will require a Stormwater General Permit for construction activities because construction of the facility will disturb more than five acres of land. EFSEC has jurisdiction regarding the National Pollution Discharge Elimination System (NPDES) Permit over the Project pursuant to Chapter 463-38 WAC. The Washington Department Of Ecology would have had jurisdiction in the absence of EFSEC. The applicable statutes and regulations are as follows: Chapter 90.48 RCW Water Pollution Control Act; Chapter 173-226 WAC Waste Water General Permit Program establishes general stormwater permits for the Washington Department of Ecology National Pollutant Discharge Elimination System Permit Program (NPDES); Chapter 173-201A WAC Washington Department of Ecology Water Quality Standards for Surface Waters of the State of Washington, which regulates water quality of surface waters.

Federal statute(s) and regulations implemented by the above state statute(s) and regulations include: 42 USC 1251 Federal Clean Water Act; 15 CFR 923-930. A NPDES Permit will be required for construction activities and may be required for operation.

### Statement of Compliance

The Applicant will obtain the necessary NPDES Permit(s) from EFSEC pursuant to Chapter 463-39 WAC that will conform and be in compliance with all the requirements set forth above. An NPDES Permit for stormwater will be obtained for construction of the Project.

#### **1.6.3.4 Minimum Standards for the Construction and Maintenance of Wells**

The Washington Department of Ecology regulates the withdrawal and water rights permit and permit modifications for ground water sources. The applicable statutes and regulations include: Chapter 90.54 RCW Washington Water Resources Act; Chapter 18.04 RCW; Chapter 43.21A RCW; Chapter 173-160 WAC Washington Department of Ecology Minimum Standards for Construction and Maintenance of Wells, which establishes minimum standards for the construction and decommissioning of all wells in the state of Washington; and Chapter 173-162 WAC regulation and licensing of water well contractors and operators.

### Statement of Compliance

A well using less than five thousand gallons of water a day exempt pursuant to RCW 90.44.040 will be installed to provide water for domestic type use to the operation and maintenance building. The well will be installed by a licensed well contractor, licensed pursuant to Chapter 173-162 WAC, and in compliance with the requirements and standards of Chapter 173-160 WAC.

#### **1.6.3.5 Department of Fish and Wildlife**

The Washington Department of Fish and Wildlife, pursuant to Chapter 232-12 WAC provides information on the classification of wildlife species and promotion of the delisting of bald eagles as a threatened or endangered species. Additionally the Washington Department of Fish and Wildlife, pursuant to Chapter 232-12 WAC, designates certain "Priority Habitats".

### Statement of Compliance

The Applicant will comply with the substantive requirements of Washington Department of Fish and Wildlife regarding the promotion and delisting of the bald eagle and the appropriate minimization and mitigation of impacts to "Priority Habitat" areas.

#### **1.6.3.6 State Environmental Policy Act (SEPA)**

A Development Permit would have been required from Kittitas County, which would have made it the lead agency for SEPA absent EFSEC jurisdiction. The applicable statutes, regulations are as follows: Chapter 43.21C RCW Washington Environmental Policy Act; Chapter 197-11 WAC Washington Department of Ecology SEPA Rules, which establishes uniform requirements for compliance with SEPA and Kittitas County SEPA regulations set out in Kittitas County Code Title.

### Statement of Compliance

A SEPA EIS will be issued by EFSEC that will comply with the statutes and regulations set out above. The substantive requirements set out in the Kittitas County Code Chapter 15.04 is the same and will be used by EFSEC in its SEPA process.

### **1.6.3.7 Transportation/Highway Access**

The Washington Department of Transportation regulates access onto state highways. The applicable statutes and regulations are as follows: Chapter 47.50 RCW State of Washington Highway Access Management; Chapter 468-51 WAC and Chapter 468-52 WAC, Washington Department of Transportation Highway Access Management Access Permits – Administration Process, which regulates and controls vehicular access and connection points of ingress to and egress from the state highway system.

#### Statement of Compliance

The Project will need to obtain access directly to U.S. Highway 97, which is under the Washington Department of Transportation jurisdiction and would require an access permit. The Applicant has been consulting and coordinating with the Washington Department of Transportation and will substantively comply with all of its requirements.

### **1.6.3.8 Archaeological Sites**

The Washington State Office of Archaeology and Historic Protection regulates and protects the cultural and historic resources on private and public lands in the State of Washington. The applicable statute is as follows: Archaeological Sites and Resources, Chapter 27.53 RCW.

#### Statement of Compliance

The Project will comply with Chapter 27.53 RCW. The Applicant has researched state and federal registries along with all archaeological and historical files and maps located at the Washington State Office of Archaeology and Historic Preservation (OAHP) in Olympia. The Applicant conducted a comprehensive pedestrian field survey of the project area. This archaeological survey project covered the entire areas within the Project where ground-altering activities are proposed. Two small lithic scatter sites were identified. These sites will be avoided during construction and operation of the Project. A qualified archeologist will monitor all ground disturbing activities during the construction process. The Yakama Nation has been consulted during the planning process, beginning in February of 2002. The Yakama Nation will be notified prior to commencement of construction and will be invited to have representatives present during all groundbreaking activities. It is anticipated that a stipulation will be made with the Yakama Nation establishing procedures to be followed in the event of any finds during construction.

## **1.6.4 Pertinent Local Ordinances and Permits**

### **1.6.4.1 Zoning**

The Kittitas County Zoning Regulations are found in Title 17 of the Kittitas County Code. Specifically, Kittitas County Zoning Code 17.61.020 (D) provides that “major alternative energy facilities” are allowable in Agriculture-20, Forest and Range, Commercial Agriculture and Commercial Forest zones pursuant to the provisions of Kittitas County Code 17.61A. The

primary conditions are for the protection of the health, welfare, safety, and quality of life of the general public, and to ensure compatible land use in the vicinity.

#### Statement of Compliance

The Project site is in a zoning designation(s) for which the proposed use may be allowed pursuant to conditions that protect the health, welfare, safety, and quality of life of the general public, and ensure compatible land use in the vicinity. The requirements set out in the Kittitas County Code Chapter 17.61A for approval are substantially of the same nature as used by EFSEC in its administrative and SEPA process.

#### **1.6.4.2 Comprehensive Plan**

The Kittitas County Comprehensive Plan is not directly applicable to the Project, in that the Plan is implemented through adopted development regulations. However, to the extent that the Plan contains goals and policies, which may be considered to be criteria applied in any development regulations or as substantive SEPA policies, the Applicant summarizes such goals and policies below.

Chapter 2, "Land Use," contains goals and policies encouraging land uses in agricultural and forestry zones which are compatible with, promote, conserve and protect agricultural and forestry uses, and discouraging land uses which are not compatible with these goals and objectives. (GPO 2.114B, 2.118, 2.130, 2.132, 2.133, 2.135, 2.139 and 2.140).

Chapter 5, "Capital Facilities Plan" contains goals and policies concerning Kittitas County's development of electric generation and transmission facilities both within urban areas and in rural areas. (GPO 5.110A and 5.110B).

Chapter 6, "Utilities" contains goals and policies relating to the development of utility facilities, including provisions for processing permits in a fair and timely manner, requiring the solicitation of community input prior to county approval of utility facilities, and requiring that decisions regarding utility facilities be made "in a manner consistent with and complementary to regional demands and resources." Chapter 6 also addresses policies guiding the routing of electric transmission and distribution facilities in rural areas. (GPO 6.7, 6.10, 6.18, 6.21, 6.31, and 6.32.)

Chapter 8, "Rural Lands," contains goals and policies guiding the development of rural areas of the county. These policies include the assurance that private land owners "should not be expected to provide public benefits without just compensation," and that "if the citizens desire open space, or habitat, or scenic vistas that would require a sacrifice by the land owner or homeowner, all citizens should be prepared to shoulder their share in the sacrifice." Chapter 8 encourages the development of "resource based industries and processing." (GPO 8.7, 8.24, 8.42, and 8.62).

#### Statement of Compliance

The Project will be compatible with the goals and policies of the Kittitas County Comprehensive Plan and will not conflict with surrounding land uses. It will comply with all Kittitas County Comprehensive Plan standards as may be applicable and enforceable through relevant regulatory criteria.

### **1.6.4.3 Building Codes**

A building permit will be required from Kittitas County pursuant to Kittitas County Code Title 14.04 for the construction of the permanent buildings. A permit is usually issued upon submittal of detailed plans.

#### Statement of Compliance

The Applicant will coordinate with Kittitas County and comply with the building codes. It is anticipated that EFSEC will enter into a contract with Kittitas County for the administration of the building codes.

### **1.6.4.4 Sewage Disposal Installation and Design Regulations**

Kittitas County has the jurisdiction and regulates the design, installation and maintenance (including pumping) of on-site sewage disposal systems using septic tanks and subsurface disposal fields for systems with designed flows of less than 3,500 gallons/day pursuant to Kittitas County Code Title 13.04.

#### Statement of Compliance

The Project will require an on-site septic system with a design flow of less than 3,500 gallons/day. The Applicant will coordinate with Kittitas County and comply with the septic tank and subsurface disposal field design, installation and maintenance requirements pursuant to Kittitas County Code Titles 13.04. It is anticipated that EFSEC will enter into a contract with Kittitas County for the administration of the on-site sewage disposal systems design and installation.

### **1.6.4.5 County Road Franchise for Underground Transmission Line**

Kittitas County has the jurisdiction and regulates the design and installation of all transmission lines utilizing its right of way pursuant to Kittitas County Code Title 12.56.

#### Statement of Compliance

The Project will require the installation of underground transmission lines and potentially other utilities in the right of way of county roads. The Applicant will coordinate with Kittitas County and comply with its substantive road franchise requirements. It is anticipated that EFSEC will enter into a contract with Kittitas County for the administration of all roadway design and construction.

### **1.6.4.6 Culvert Installation Permit**

Kittitas County requires a permit for the installation of any culvert within its road right of way pursuant to Kittitas County Code 12.16.

#### Statement of Compliance

Kittitas County requires a permit for culverts installed on county right of ways and it is anticipated that the Project may require the installation of culvert(s) on county right of way. The Applicant will coordinate with Kittitas County and comply with its substantive culvert permit requirements. It is anticipated that EFSEC will enter into a contract with Kittitas County for the administration of all roadway design and construction.

#### **1.6.4.7 Stormwater Management Plan**

Kittitas County requires stormwater management plans under for projects pursuant to Kittitas Count Code Title 12.70.

##### Statement of Compliance

It is uncertain whether a stormwater management plan would be required for this project, however Applicant will coordinate with Kittitas County and comply with to stormwater control. It is anticipated that EFSEC will enter into a contract with Kittitas County for the administration of all design and construction regarding the project including aspects related to stormwater management.

#### **1.6.4.8 Noxious Weeds**

Kittitas County Noxious Weed Control Board regulates noxious weeds in Kittitas County pursuant to RCW 17.10.

##### **Statement of Compliance**

The Project will comply with the requirements of Chapter 17.10 RCW as administered by the Kittitas County Noxious Weed Control Board.