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**SITE CERTIFICATION AGREEMENT
BETWEEN**

THE STATE OF WASHINGTON

AND

WIND RIDGE POWER PARTNERS, LLC



For the

WILD HORSE WIND POWER PROJECT

KITTITAS COUNTY, WASHINGTON

Executed _____

ENERGY FACILITY SITE EVALUATION COUNCIL

OLYMPIA, WASHINGTON

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DRAFT

SITE CERTIFICATION AGREEMENT

FOR THE WILD HORSE WIND POWER PROJECT

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Attachments

1. Site and Mitigation Parcel Legal Descriptions.
2. Transmission Feeder Line Legal Descriptions.
3. Stipulation and Settlement Agreement between Applicant and Kittitas County.
4. Development Agreement between Kittitas County, Washington, and Wind Ridge Power Partners, LLC.
5. Settlement Agreement between Washington State Department of Fish and Wildlife and Applicant.
6. Council Order No. ____, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition, dated _____, 2005.

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SITE CERTIFICATION AGREEMENT

FOR THE WILD HORSE WIND POWER PROJECT

between

THE STATE OF WASHINGTON

and

WIND RIDGE POWER PARTNERS, 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 Wind Ridge Power Partners, LLC, (Wind Ridge or the Certificate Holder), 210 SW Morrison, Suite 310, Portland, Oregon, 97204.

Wind Ridge filed, as permitted by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of a wind powered generation facility to be located in Kittitas County, Washington. The Council reviewed the application, conducted public and adjudicative hearings, and by order, recommended approval of the application by the Governor. On _____, the Governor approved the Site Certification Agreement authorizing Wind Ridge to construct and operate the Wild Horse Wind Power Project (Project). The Council will administer this Agreement for the State of Washington.

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 _____.

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ARTICLE I: SITE CERTIFICATION

A. Site Description¹

1. Project Site. The Site on which the Wild Horse Wind Project (Project) is to be constructed and operated is located in unincorporated Kittitas County, and is described more particularly in Attachment 1 to this Agreement.

2. Mitigation Parcel. The legal description of the Mitigation Parcel to be used for mitigation of habitat, vegetation and wildlife impacts is set out in Attachment 1 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 Mitigation Parcel, which shall be included in Attachment 1 of this Agreement.

3. Electrical Transmission Feeder Line Route. The proposed route of the electrical transmission feeder line(s) connecting the Project to the Puget Sound Energy and/or Bonneville Power Administration transmission systems is described in particularity in Attachment 2. The Certificate Holder shall provide the Council with the final legal description of the transmission feeder line(s) constructed no later than six (6) months after transmission feeder line construction is completed. This final legal description will replace Attachment 2 of this Agreement.

B. Site Certification

The State of Washington hereby authorizes Wind Ridge Power Partners, LLC, and any and all parent companies (Wind Ridge 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. _____, 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 Application for Site Certification submitted by Wind Ridge on March 09, 2004, and as described in Attachments 1, and 2 to this Agreement. In addition, this Agreement incorporates the settlements and stipulated

¹ EFSEC boilerplate.

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agreements made between Wind Ridge and parties to the adjudicatory hearings, set forth in Attachments 3 and 5 to this Agreement².

This Site Certification Agreement authorizes the Certificate Holder to construct the Project such that Commercial Operation is achieved no later than 5 years from the date that all state and federal permits necessary to construct the Project are obtained, but in no event later than six (6) years from March 4, 2005, the effective date of the Development Agreement with Kittitas County, Attachment 4 to this Agreement, provided, however, that such construction is not delayed by a Force Majeure Event³, and that the construction schedule that the Certificate Holder submits pursuant to Article IV.I. of this Agreement demonstrates its intention and good faith basis to believe, that construction shall be completed within eight to twelve (8-12) months of beginning construction. Due to the unique attributes of wind energy generation facilities, the Wild Horse Wind Power Project may be constructed in phases, with all or some of the wind turbine generator strings becoming fully operational and generating and delivering power to the electric grid prior to build-out of the full Project. Nothing in this Agreement will be construed to restrict the ability of the Site Certificate Holder to construct and operate some but not all wind turbine generator strings prior to completing all turbine strings and other components.

C. Project Description⁴

The Wild Horse Wind Power Project will consist of: wind turbine generators (WTGs) and their construction corridors; permanent meteorological and monitoring towers; access roadways; electrical collection/interconnection and communication systems, and their respective corridors and rights of way; electrical step-up and interconnection substations; one or two transmission feeder lines; an operations and maintenance (O&M) facility; informational kiosk; temporary construction related facilities; other related Project facilities as described in the Application, and an approximately 600 acre Mitigation Parcel. The Project will have a gross nominal generation capacity not to exceed 312 megawatts (MW).

² EFSEC boilerplate.

³ County Development Agreement at 5.16.

⁴ Source of information: Application for Site Certification, County Development Agreement Exhibit A, unless otherwise noted.

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1. Wind Turbine Generators and Corridors: The Project shall consist of a maximum of 158 3-bladed wind turbines on tubular steel towers, not to exceed a maximum height (hub height plus blade tip height) of 410 feet⁵. The WTGs will be equipped with turbine control, safety and braking systems, and will be interconnected to a central Supervisory Control and data Acquisition (SCADA) system. The certificate holder shall select a Project configuration within the range of the turbine scenarios that follow:

Turbine Size Scenario:	Small Turbine Scenario	Large Turbine Scenario
Generator Nameplate Rating	1.0 MW	3.0 MW
Approximate Rotor Diameter	60 meters	90 meters
Number of Turbines not to exceed	158	104
Total Nameplate Capacity not to exceed	158 MW	312 MW

The general location of components of the Project including, but not limited to: the turbine corridors, roadways, electrical collection and distribution system, operations and maintenance facility, electrical substations, electrical transmission lines and other related Project facilities are described in the Application for Site Certification (“Application”) and in Attachment 4, Exhibit A, ‘Project Description’, and Exhibit B, ‘Project Site Layout’, modified as necessary to be consistent with the development standards and mitigation measures set out in the Application, the Final Environmental Impact Statement (EIS), the requirements of this Agreement, and the requirements of the County Development Agreement⁶. The WTGs shall be located only in the turbine corridors identified in the Application, provided that no turbines shall be located in positions A1, A2, A3, B1, B2, B3, D1, D2, and D3.

⁵ County Development Agreement at 5.1 and 5.2.

⁶ County Development Agreement at 5.3.

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2. Meteorological Stations and Monitoring Towers: The Project will include up to five free-standing (non-guyed) permanent meteorological towers⁷. The height of the towers shall not exceed the Hub-Height of the WTGs selected⁸.

3. Access Roadways: The Project will include up to 32 miles (approximately) of roadways for access to the WTGs and other Project facilities,

4. Electrical Collection/Interconnection and Communication Systems:

- a) Collector System: The electrical output of the WTGs will be collected and transmitted to the Project Substation(s) via a system of underground and overhead electric cables. Fiber optic or copper communication wires will also link the individual WTGs to a central computer monitoring system.
- b) Project Step-Up Substation(s): Power from the Project will be collected and fed to the Puget Sound Energy (PSE) and/or the Bonneville Power Administration (BPA) to the high voltage transmission lines through a Project step-up substation(s). The step-up substations would connect to the respective PSE and/or BPA interconnect substations via Project feeder lines as illustrated in the Project Site Layout contained in Exhibit B of Attachment 4.
- c) Feeder Lines: The Project will employ one or both of two feeder lines to allow interconnection with the BPA and/or PSE transmission systems. The BPA feeder line (230 or 287 kilovolt (kV)) runs west from the Project Site for approximately 5 miles where it intersects with the existing BPA Schultz to Wautoma 500 kV line corridor. The PSE feeder line (230 kV) runs approximately 8 miles south and west from the Project Site to the PSE interconnection substation with PSE's Inter-Mountain Power line.

⁷ WDFW letter, middle of page 4.

⁸ Application, Section 2.2.3.7.

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- d) PSE Interconnection Substation: The PSE interconnection substations would be located east of where PSE's Intermountain Power Line crosses state highway I-90⁹.

5. Operations and Maintenance Facility and Informational Kiosk:

- a) The Operations and Maintenance (O&M) facility will include a main building with offices, spare parts storage, restrooms, visitor reception area, shop area, outdoor parking facilities, turn around area, lay down area, outdoor lighting and gated access. The O&M building will have a foundation footprint of approximately 50 feet by 100 feet and the O&M facility will have a footprint of approximately 2 acres.
- b) The O&M facility will include on-site storage tanks for potable water supply. Sanitary wastewater from the O&M facility will be discharged to an on-site septic system.
- c) An informational kiosk will be constructed near the Project Site entrance to Vantage highway.

6. Temporary Construction Related Facilities: Up to three temporary rock quarries, a portable rock crusher and a concrete batch plant will be established and operated during the construction phase of the Project.

7. Mitigation Parcel: An approximately 600 acre Mitigation Parcel has been designated for mitigation of all permanent and temporary impacts to habitat caused by construction and operation of the Project. The area designated for mitigation is located in Section 27, T8N, R21E in Kittitas County.

8. Turbine Setbacks from Residences. A minimum safety zone set back of 541 feet shall be maintained between Project wind turbines and any residences which are constructed after the date of this Agreement outside the Project boundaries illustrated in Exhibit B, Attachment 4 to this Agreement. In the event that the Certificate Holder wishes to install wind turbines closer than 541 feet to the Project boundary, the Certificate Holder shall obtain

⁹ Application Section 2.2.3.5 (bottom page 19) indicates that the BPA interconnection substation would be owned/operated by BPA, and is therefore not part of the certification.

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an easement or covenant that restricts the construction of any new residences within 541 feet of any Turbine as measured from the nearest Turbine tower center point to any such new residence¹⁰. The Certificate Holder shall provide a copy of said easement or covenant to EFSEC within 30 days of recording.

¹⁰ County Development Agreement at 5.17.

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ARTICLE II: DEFINITIONS

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

1. “Application” means the *Application for Site Certification: Wild Horse Wind Power Project*, designated No. 2004-01, dated March 8, 2004, 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. “Begin operation”, “Beginning of operation”, “Beginning of commercial operation”, or “Commercial Operation” means the time when the Project generating and delivering electricity to the electric power grid, other than electricity which may delivered as a part of testing and startup of the Project¹¹. Nothing in this Agreement will be construed to restrict the ability of the Site Certificate Holder to construct and operate some but not all wind turbine generator strings prior to completing construction and operation of all wind turbine generator strings and other Project components.
4. “BMPs” means Best Management Practices.
5. “Bonneville”, or “BPA” means Bonneville Power Administration.
6. “Certificate Holder” means Wind Ridge Power Partners, LLC, or its successor.
7. “Construction” means any of the following activities: any foundation construction including: hole excavation, form work, rebar, excavation and pouring of concrete for the WTGs, and/or the O&M Building;

¹¹ Based on Development Agreement definition of Substantial Completion.

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erection of any permanent, above-ground structures including any transmission line poles, substation poles, met towers, turbine towers; and any other construction activities necessary to bring Site into Commercial Operation.

8. “County” means Kittitas County, Washington.
9. “Development Agreement”, means the Development Agreement between Kittitas County, Washington, and Wind Ridge Power Partners, LLC, executed on March 04, 2005 and included as Attachment 4 to this agreement.
10. “DNR” means the Washington State Department of Natural Resources.
11. “Ecology” or “WDOE” means the Washington Department of Ecology.
12. “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.
13. “Electrical Transmission Feeder Line” or “Feeder Lines” means the transmission lines that would interconnect the project to the PSE or BPA transmission systems, constructed from the Project Site to the point of delivery.
14. “FAA” means the Federal Aviation Administration.
15. “Force Majeure Event” has the meaning accorded to this term in Attachment 4, Section 2.11.
16. “IBC” means the International Building Code.
17. “NPDES permit” means National Pollutant Discharge Elimination System permit.

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18. “PSE” means Puget Sound Energy.
19. “RCW” means the Revised Code of Washington.
20. “Site” or “Project Area” means the property identified in Attachments 1 and 2, located in Kittitas County, on which the Project is to be constructed and operated, including the Mitigation Parcel, electrical transmission feeder line routes and interconnect substation.
21. “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.
22. “Site Preparation” means any of the following activities: Project Site clearing, grading, earth moving, cutting or filling, excavation, and preparation of roads and/or lay down areas.
23. “State” or “state” means the state of Washington.
24. “UBC” means the Uniform Building Code of 1997.
25. “WAC” means the Washington Administrative Code.
26. “WDFW” means the Washington Department of Fish and Wildlife.
27. “Wild Horse Wind Power Project” or “Project” means: wind turbine generators (WTGs) and their construction corridors, and all or a portion of wind turbine generator strings as may be constructed and made operational by phased development; permanent meteorological and monitoring towers; access roadways; electrical collection/interconnection and communication systems, and their respective corridors and rights of way; electrical step-up and interconnection substations; an operations and maintenance (O&M) facilities; informational kiosk; temporary construction related facilities; other related Project facilities as described in the

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Application, and an approximately 600 acre Mitigation Parcel. The specific components of the Project are identified in Article I.C.

28. “Wind Ridge” means Wind Ridge Power Partners, LLC.
29. “WTG” means wind turbine generator.
30. "WSDOT" means the Washington State Department of Transportation.

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ARTICLE III: GENERAL CONDITIONS

A. Legal Relationship¹²

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 Application (the 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 Wind Ridge and Kittitas County which is set forth in Attachment 3 to this Agreement, the settlement agreement between Wind Ridge and the Washington Department of Fish and Wildlife, which is set forth in Attachment 5 to this Agreement, as well as the other attachments listed on page ___ of this Agreement.

B. Enforcement¹³

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, following expiration of the cure period in WAC 463-54 for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, or for violations of RCW Chapter 80.50 and the rules promulgated thereunder setting out substantive siting criteria and standards in effect on the date of the Application, or for

¹² EFSEC boilerplate.

¹³ EFSEC boilerplate.

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violation of any applicable resolutions or orders of EFSEC, including orders and conditions imposed pursuant to Article III K. 6..

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 Filings¹⁴

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 by EFSEC 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 210 SW Morrison, Suite 310, Portland, Oregon, 97204 with a copy to 1001 McKinney St., Suite 1740, Houston, TX 77002.

Notices between the Certificate Holder and Kittitas County shall be served in accordance with the provisions of Section 11 of the Development Agreement, Attachment 4 to this Agreement¹⁵.

D. Rights of Inspection¹⁶

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site, the Project structures, buildings and facilities, electrical transmission lines and their respective rights of way, the Mitigation Parcel, and all records reasonably related to the construction and operation of the Project to designated representatives of EFSEC in the performance of their official duties. EFSEC personnel or any EFSEC designated affiliates on the Project site shall observe all worker safety requirements enforced and observed by the Site Certificate Holder and its contractors. Such duties include, but are not limited to, monitoring and inspections to verify the Certificate Holder's compliance with this Agreement.

¹⁴ EFSEC boilerplate unless otherwise noted.

¹⁵ County Development Agreement at 11.

¹⁶ EFSEC boilerplate.

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E. Retention of Records¹⁷

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

F. Consolidation of Plans and Submittal to EFSEC¹⁸

Any plans required by this Agreement may be consolidated with other such plans, if such consolidation is approved in advance by EFSEC. This Site Certificate Agreement includes time periods for the Certificate Holder to provide certain plans and other information to EFSEC. By imposing these time periods, it is EFSEC's intent to provide ample time for EFSEC to fully review complete information provided by the Certificate Holder during the stated review period, without delay to the Project.

G. Site Certification Agreement Compliance Monitoring and Costs¹⁹

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. EFSEC shall provide to Certificate Holder with a budget for such monitoring services for review at least 30 days prior to such monitoring activities. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.

H. Site Restoration²⁰

The Certificate Holder is responsible for site restoration pursuant to the Council's rules, chapter 463-42 WAC, in effect at the time of submittal of the Application.

The Certificate Holder shall submit a Project Decommissioning and Site Restoration Plan (i.e. initial site restoration plan) in accordance with the requirements set out in Article IV.C of this

¹⁷ EFSEC boilerplate.

¹⁸ EFSEC boilerplate.

¹⁹ EFSEC boilerplate.

²⁰ EFSEC boilerplate and County Development Agreement.

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Agreement. The Certificate Holder may not begin Site Preparation or Construction until the Council has approved the project decommissioning and Site Restoration Plan.

The Certificate Holder shall submit a detailed site restoration plan to EFSEC for approval in accordance with the requirements of Article VIII.A. of this Agreement. The Certificate Holder shall provide a copy of the restoration plan to the County as set forth in Attachment 4.

I. EFSEC Liaison²¹

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 Management²²

The Certificate Holder shall notify EFSEC of any change in the primary management personnel or scope of responsibilities of such personnel for, the 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 writing²³.

2. A change in ownership of the Project shall be pursuant to EFSEC rules and procedures. The Certificate Holder shall also comply with the requirements of Section 10.1 of Attachment 4 to this Agreement. Provided however, pursuant to the terms of this Agreement and WAC 463-36-100, EFSEC hereby pre-approves and permits the Certificate Holder to transfer ownership, without further action by EFSEC, to Puget Sound Energy effective immediately upon notice provided to EFSEC by the Transferor (Applicant) and Transferee (PSE) pursuant to WAC 463-36-100 (3).

²¹ EFSEC boilerplate.

²² EFSEC boilerplate.

²³ EFSEC boilerplate.

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3. Amendment, modification or termination of the Development Agreement (Attachment 4 to this Agreement) with Kittitas County by the Certificate Holder, pursuant to Section 9 of Attachment 4, or by mutual agreement of Kittitas County and the Certificate Holder pursuant to Section 1.2 of Attachment 4, or by modification pursuant to the requirements of Section 1.3 of Attachment 4, shall constitute a modification to this Agreement. The Certificate Holder shall notify EFSEC of any such action pending before the County, and shall initiate a request for modification of this Agreement pursuant to EFSEC rules and procedures²⁴.

4. 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: Attachment 1 – Site and Mitigation Parcel Legal Descriptions, and Attachment 2 – Transmission Line Legal Descriptions, unless otherwise required by the Council, provided said change does not materially alter the size or purpose of the mitigation parcel.

5. Activities undertaken by the Certificate Holder pursuant to Sections 8.1 and 8.2 of Attachment 4 to this Agreement shall not constitute an amendment to this Agreement. However, the Certificate Holder shall notify EFSEC of the replacement of a WTG with a “Comparable Turbine” as defined in Section 8.2.ii of Attachment 4, no later than 30 days prior to the replacement occurring.

6. In circumstances where the Project causes a significant adverse impact on wildlife or the natural environment not previously analyzed or anticipated by this Agreement, including wildlife impacts that significantly exceed projections anticipated in the Application and FEIS, or where such impacts are imminent, EFSEC may take all steps it deems reasonably necessary and 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 EFSEC²⁵. Provided however EFSEC may impose conditions on a longer term basis pursuant to WAC 463-36-090.

²⁴ Acknowledgement of County Development Agreement modifications.

²⁵ EFSEC boilerplate.

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L. Order of Precedence²⁶

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;
3. Attachment __, Council Order No. _____, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition;
4. Any other provision, term or material incorporated herein by reference or otherwise attached to, or incorporated in, this Site Certification Agreement.

²⁶ EFSEC boilerplate,

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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 or Construction, unless otherwise specified below. In accordance with RCW 80.50.110 and .120, this Agreement, along with Order No. _____, constitute the final action of the State of Washington approving the Project. No further action by any state or local government or agency shall be required.

A. Notice of Federal Permit Approvals

No later than 30 days from the effective date of this Agreement, the Certificate Holder shall notify the Council of all Federal permits, not delegated to EFSEC, that are required for construction and operation of the Project, and the anticipated date of permit issuance to the Certificate Holder. The Certificate Holder shall notify the Council when all required federal permits have been obtained, no later than 10 businesses days after the last permit has been issued.

B. Mitigation Measures

During construction, operation, decommissioning, and site restoration of this Project, the Certificate Holder shall implement the mitigation measures presented in the Application, as modified or amended in the Final EIS and Exhibit D of Attachment 4 to this Agreement, and as further amended by additional conditions appearing in this Agreement. The plans and submittals listed in the remainder of this Article, and in Articles V, VI, VII and VIII shall incorporate these mitigation measures as applicable.

C. Construction Stormwater Plans

1. Notice of Intent. The Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities. The Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General NPDES Permit for Stormwater Discharges for Sand and Gravel operations²⁷.

²⁷ EFSEC boilerplate tailored for project.

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2. Construction Stormwater Pollution Prevention Plan. The Certificate Holder shall develop and submit for EFSEC approval a Construction Stormwater Pollution Prevention Plan (SWPPP) at least 60 days prior to Site Preparation. The Construction SWPPP shall meet the requirements of the Ecology stormwater pollution prevention program (chapter 173-230 WAC), and the objectives and requirements in Special Condition S.9. of the *National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activities* issued by the Department of Ecology on October 4, 2000.²⁸

The Construction SWPPP shall include measures for temporary erosion and sedimentation control. The SWPPP 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 request²⁹.

3. Construction Spill Prevention, Control and Countermeasures Plan. A construction phase Spill Prevention, Control, and Countermeasure Plan (SPCCP), consistent with the requirements of Chapter 40 CFR Part 112, shall be developed and submitted to the Council at least 60 days prior to Site Preparation, for review and approval. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the construction phase SPCCP. The construction phase SPCCP shall include the Site, feeder line corridors, and all access roads. The construction phase SPCCP shall be implemented prior to the beginning of SP. The Certificate Holder shall require all contractors working on the facility to have a spill prevention and countermeasure program consistent with 40 CFR. Part 112³⁰.

²⁸ EFSEC boilerplate tailored for project.

²⁹ EFSEC boilerplate.

³⁰ EFSEC boilerplate.

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B. Temporary Construction Facilities³¹

The Certificate Holder proposes to operate up to three gravel quarries, one rock crusher, and one concrete batch plant during construction of the Project. The Certificate Holder shall comply with the following conditions regarding these facilities:

1. Temporary Air Quality Permit. The Certificate Holder shall submit to EFSEC an Application for a Temporary Air Quality permit for operation of the rock crusher and concrete batch plant, in the form of the requirements set out in WAC 173-400-035, Portable and temporary sources.
2. Notice of Intent. The Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General NPDES Permit for Stormwater Discharges for Sand and Gravel operations. Stormwater Pollution prevention measures associated with the Sand and Gravel operations shall be incorporated into the Construction SWPPP required by Article IV.0.
3. Gravel quarries. Gravel quarries on the site shall be only for on-site use during construction. The Certificate Holder shall comply with Washington state DNR requirements for gravel pit reclamation, and the restoration standards of Article IV.D.³²
4. Concrete batch plants. Concrete batch plants on the site shall be strictly for on-site use and shall be removed from the site when construction is complete.³³

C. Project Decommissioning and Site Restoration Plan³⁴

The Certificate Holder is responsible for Project decommissioning and site restoration pursuant to Council rules. The Certificate Holder shall develop a project decommissioning and site restoration plan (Decommissioning Plan), pursuant to the requirements of WAC 463-42-655 in effect the date of Application, in consultation and active participation with Kittitas County, and

³¹ SCA requirements for state permits, tailored for County Development Agreement.

³² County Development Agreement at 5.11.

³³ County Development Agreement at 5.12.

³⁴ EFSEC boilerplate as modified per County Development Agreement.

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shall submit the Decommissioning Plan to the Council and Kittitas County at least 60 days prior to Construction for review. The Certificate Holder shall not begin Construction prior to obtaining approval of the Decommissioning Plan from the Council.

The Decommissioning Plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Applicant on the date hereof. The Decommissioning Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project site or otherwise protect the public against risks or danger resulting from the Project. The Decommissioning Plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the Project site restoration or management costs. The Decommissioning Plan shall be prepared in detail commensurate with the time until site restoration is to begin. The scope of proposed monitoring shall be addressed in the Decommissioning Plan.³⁵

The Plan shall be approved so long as it includes the following elements pursuant to the Kittitas County Development Agreement:

1. Decommissioning Scope and Timing, as required by Article VIII.B. of this Agreement.
2. Decommissioning Funding and Surety, as required by Article VIII.C. of this agreement.
3. Mitigation measures for the Project contained in Attachment 4, Exhibit D.
4. Provisions at least as stringent as those listed in Attachment 4, Article 5.
5. The Decommissioning Plan shall address both the possibility that site restoration occurs prior to or at the end of the useful life of the Project and also the possibility of the Project being suspended or terminated during construction.

³⁵ County Development Agreement at 6.1.

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6. 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.
7. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.
8. Performing an on-site audit, and preparing an initial plan for disposing of hazardous materials (if any) present on the site, and remediating hazardous contamination (if any) at the site.
9. An initial plan for restoring the site, including the removal of structures and foundations and the regrading of the site, if appropriate.
10. Provisions for retaining systems and equipment owned and operated by Kittitas County, any other municipality, or any utility
11. Provisions for retaining and protecting the Mitigation Parcel for the life of the Project.
12. Provisions for restoration of the electrical transmission line(s) and corridor(s) if applicable.
13. Provisions for preservation or removal of Project facilities if the Project is suspended or terminated during construction.

D. Habitat, Vegetation, and Fish and Wildlife Mitigation

1. Construction Timing: The Certificate Holder shall avoid, to the greatest extent possible, construction activities outside permanently disturbed areas except for during the months of May through October when soil moisture is low. Trenching of underground electric collection cables may be performed outside this time window, as the soil cover in

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those areas will be disturbed regardless of the season and will need to be restored and reseeded³⁶.

2. Turbine Micrositing. The turbine layout was adjusted by eliminating WTG's located in positions A1, A2, A3, B1, B2, B3, D1, D2, and D3 to avoid prominent saddles and potential wildlife and avian crossing routes along the ridge associated with Whiskey Dick Mountain. Turbines shall not be sited within the aforementioned saddles or located adjacent to the springs, identified during habitat mapping. Turbine locations shall be no less than 150 m from the identified springs as measured from the turbine tower's center-point (Wild Horse, Skookumchuck Heights, Dorse, Reynolds, Thorn, Government, Pine, Seabrock and other springs identified in the habitat mapping and FEIS.). The "center point" is the point at the geometric center of the bottom of the wind turbine tower.

Turbines shall not be located on the ridges away from the riparian areas of the drainages that likely contain a higher diversity of bird specie, as is currently reflected in the proposed layout.

Turbines shall be located approximately 140m from the area generally known as the Pines, located in the central portion of the project area, as depicted in the Project layout.³⁷

3. Construction Best Management Practices. In addition to the mitigation measures identified in the Application, the Final EIS, and this Agreement, the Certificate Holder shall use construction techniques and Best Management Practices (BMPs) to minimize potential impacts to habitat and wildlife. These include the following³⁸:

- a) Use of BMPs to minimize construction-related surface water runoff and soil erosion
- b) Use of certified "weed free" straw bales during construction to avoid introduction of noxious or invasive weeds;

³⁶ WDFW letter, top of page 2.

³⁸ WDFW letter bottom page 7, top page 8.

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- c) Flagging of any sensitive habitat areas (e.g. springs, raptor nests, wetlands, etc.) near proposed areas of construction activity and designation of such areas as “off limits” to all construction personnel;
- d) Proper storage and management of all wastes generated during construction;
- e) Requiring construction personnel to avoid driving over or otherwise disturbing areas outside the designated construction areas.

4. Technical Advisory Committee³⁹. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall convene a Technical Advisory Committee (TAC) to evaluate the mitigation and monitoring program and determine the need for further studies or mitigation (based upon post-construction avian and bat mortality surveys). The TAC shall initially be composed of representatives from WDFW, U.S. Fish and Wildlife Service (if they elect to participate), EFSEC, Kittitas County, DNR, a representative appointed in writing by the Kittitas Field and Stream Club, a representative appointed in writing by Washington State Audubon, a representative appointed in writing by the Kittitas County Farm Bureau and the Certificate Holder. EFSEC, at its discretion, may add additional representatives from local interest groups, state, local, federal and tribal governments to the TAC. Any community representative or local interest group will not be anyone party to a turbine lease agreement, or any other contractual obligation with the Certificate Holder, and shall be a person mutually agreeable to the other participants on the TAC. TAC members shall be approved by EFSEC.

No later than 60 days after the beginning of Construction, the Certificate Holder shall submit to EFSEC an initial proposed plan describing how the TAC shall operate, including but not limited to a schedule for meetings, a meeting procedure, a process for recording meeting discussions, a process for presenting TAC recommendations to the Council, and other procedures that will assist the TAC to function properly and efficiently. The TAC may suggest modifications of the plan to be approved by EFSEC.

The role of the TAC is to ensure environmental protection, in part by reviewing results of monitoring studies to evaluate impacts to wildlife and habitat, and addressing issues that arise regarding wildlife impacts during operation or that may have arisen during construction of

³⁹ WDFW letter, page 6, post construction monitoring item 4.

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the Project. The TAC will consider problems and impact mitigation issues and will serve for the life of the project; *provided*, that during the life of the Project, if the TAC ceases to meet due to attrition, confirmation of pre-permitting environmental assessments, or for any other reason, the failure to meet and participate shall not be deemed a violation of this Agreement, any condition of approval, or any mitigation measure. However, EFSEC shall be notified of termination of the TAC and must approve any intentional termination of the TAC.

The TAC will monitor all mitigation measures and efforts and examine information relevant to assessing project impacts to habitat, avian, bat species, and other wildlife. The TAC will determine whether further mitigation measures would be appropriate, considering factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings regionally or at a nearby wind power facility. If appropriate in the TAC's judgment with respect to the biological significance of the impact identified, the TAC shall recommend mitigation measures. The TAC shall notify EFSEC if at anytime impacts to wildlife exceed Application and Final EIS projections. The ultimate authority to implement additional mitigation measures, including any recommended by the project TAC, will reside with EFSEC. The TAC's participation is intended to ensure that monitoring data is considered in a forum in which independent and informed parties can collaborate with the owner to develop appropriate responses⁴⁰.

The Certificate Holder shall coordinate with the TAC to prepare the post construction monitoring plan pursuant to Article VI.D.13, below. The TAC will evaluate the mitigation and monitoring program and determine the need for further studies and mitigation measure.⁴¹

5. Meteorological Towers. The certificate holder shall install and operate non-guyed permanent meteorological towers⁴².

6. Mitigation for Potential Impacts to Sage Grouse: The Certificate Holder shall consider the historic presence of sage grouse at the Project site in the strategic plan for the location of rock sources and the location/operation of the concrete batch plant.

⁴⁰ SEPA DEIS mitigation measure Section 3.5.4.4 and WDFW letter.

⁴¹ WDFW letter, page 6 post construction monitoring item 1. cite dated that draft-Aug '03?

⁴² WDFW letter, middle page 4.

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During the Sage Grouse lekking season, no routine maintenance of the substation area or facilities within ¼ mile of an active lek shall be conducted between the hours of sunset and 9:00 am, and recreational use of the Project site will be restricted to the extent feasible⁴³.

7. Unique Plant Species. The Certificate Holder shall post a sign at the visitors' kiosk indicating that collection of any hedgehog cactus plants in the Project area is prohibited⁴⁴.

8. Wetlands, Streams and Riparian Areas. No Project facilities shall be located within Class 3 wetlands (in the form of seeps and springs within the Project area), or within wetland buffer zones specified by County regulations on the date of this Agreement to prevent any impacts to these wetlands. Roads, underground cables, turbine foundations, transmission poles and other associated infrastructure shall not be located within any wetlands, riparian areas or streams. Heavy equipment shall not be used in wetlands, stream beds or riparian areas⁴⁵.

9. Standards for Post-Construction Restoration of Temporarily Disturbed Areas. The Certificate Holder shall develop a Post-Construction Restoration plan for temporarily Disturbed Areas, and shall conduct habitat reseeding programs when optimal germination and establishment conditions are present, as determined in consultation with the Technical Advisory Committee (TAC) and WDFW, and not necessarily immediately following the disruption. The Post-Construction Restoration Plan shall include a restoration schedule that shall identify timing windows during which restoration should take place, and an overall timeline for when all restoration activities shall be completed. The Certificate Holder shall not begin Construction until EFSEC approval of the Post-Construction Restoration Plan.

The Certificate Holder shall cover temporarily disturbed areas in accordance with erosion control measures set forth in the Application and the Final EIS at such time as site conditions are deemed favorable.

⁴³ WDFW letter, bottom page 4 and top page 5.

⁴⁴ WDFW letter, Page 7.

⁴⁵ WDFW letter, page 7.

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The Post-Construction Restoration Plan shall include provisions for reclamation of temporary rock quarries⁴⁶.

The Certificate Holder shall work with WDFW and the TAC to monitor and evaluate the success of restoration efforts using an agreed-upon “reference site” in order to gain insights which might inform future restoration efforts at other projects. The Certificate Holder shall ensure effective erosion and weed control and shall provide a good-faith effort to restore habitat on the Project site. The Certificate Holder shall not be responsible for additional mitigation measures beyond what has been proposed in the Application and Final EIS, and required by this Agreement, should restored habitat on the Project site differ in quality from the standard established by the “reference site;” however, WDFW and the TAC may suggest alterations to the initial plan as new information becomes available.⁴⁷

10. Habitat Mitigation Parcel: The Certificate Holder shall mitigate for all permanent and temporary impacts to habitat caused by the Project in accordance with the ratios outlined in the WDFW Wind Power Guidelines. The area designated for mitigation is estimated at approximately 600 acres and includes all of in Section 27, T18N, R21E in Kittitas County, WA, with the exception of that area which is being developed for the Project (String L). No other development shall take place on this mitigation parcel for the life of the Project. The Parcel shall be fenced to exclude livestock grazing, if grazing practices continue on adjacent properties at the time the project goes into operation⁴⁸.

No later than 45 days prior to the beginning of Construction, the Certificate Holder shall submit a proposal to EFSEC for providing legal protection for the Mitigation Parcel for the life of the Project.

11. Post Construction Rangeland Management and Grazing Plan: Grazing on the Project area will not be allowed during construction. After completion of construction grazing will not be allowed on the project area until the Certificate Holder has developed and implemented a post-construction Rangeland Management and Grazing Plan, in coordination with the WDFW, for EFSEC approval, for the entire project area, which is intended to

⁴⁶ SEPA Mitigation measures, page 2, last paragraph of 3.1.4.1.

⁴⁷ WDFW letter, first full bullet on page 2.

⁴⁸ WDFW letter, second bullet on page 2.

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improve residual grass cover and potential nesting, brood-rearing and habitat for sage grouse, other shrub-steppe nesting species, and big game on the project. The Plan shall include provisions for the restoration of shrub steppe lands, native seeding prescriptions and management of livestock grazing on shrub steppe rangelands.

Livestock grazing at the springs, as described in Section IV. F. 2, within the project area will be eliminated. If fences are needed to protect these springs, they will be constructed using fence designs conducive to passage by wildlife, as outlined below⁴⁹.

12. Hunting Plan for Project Area. Hunting shall be prohibited during construction. During operation in order to minimize impacts on recreation and potential impacts on neighboring property owners from big game damage resulting from the Project, the Certificate Holder shall prepare a hunting plan for the Project area in consultation with WDFW and the TAC. At a minimum, the plan will include the following⁵⁰:

- a) In order to minimize potential conflicts and risks to both workers and hunters, no hunting will be allowed on the property during construction.
- b) After the end of construction, controlled hunting will be allowed on the Project Site. Possible measures to control hunting may include, without limitation: access control, limiting hunting to those individuals who have completed the WDFW Advanced Hunter Education program, and/or hunting by permit.
- c) The Certificate Holder will take measures to inform the hunting public of the changes in hunting practices on the site. Said measures may include a combination of advertisement in hunting periodicals and WDFW publications, signage, and outreach through sporting organizations.
- d) To promote the safety of big game animals, any permanent fencing located within the Project site boundary shall not exceed 42 inches in height to prevent the top wire from being broken when big game animals jump over the fence. The top wire will be at least 10 inches above the

⁴⁹ WDFW letter, first bullet on page 3.

⁵⁰ County Development Agreement at 5.15, and WDFW letter top page 6.

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next wire. The bottom wire will be at least 16 inches above the ground to allow fawns and small animals to crawl under the fence⁵¹.

- e) The Certificate Holder shall post and enforce driving speed limits of 25 miles per hour within the Project area to minimize potential collisions with wildlife during both construction and operation. Project-related vehicle trips on the Project roads will be minimal during project operations, primarily limited to scheduled maintenance performed approximately 2-3 days on each unit approximately every 6 months, with the exception of the main site access road which will be driven daily (Monday through Friday)⁵².

13. Post Construction Avian Monitoring Plan. No later than one hundred twenty days (120) after the beginning of Construction and prior to Commercial Operation the Certificate Holder shall submit to EFSEC for review and approval a post construction monitoring plan. The purpose of the plan shall be to quantify impacts to avian species and to assess the adequacy of mitigation measures implemented. All plans, reports and minutes related to the TAC shall be submitted in a timely manner to and retained by EFSEC. The monitoring plan shall include the following components⁵³:

- a) The Certificate Holder shall implement a wildlife casualty/fatality reporting and handling system by wind project personnel (O&M staff) for the life of the project following a detailed written protocol developed for the project and similar to other wind projects in the region, the Vansycle Wind Plant and the Stateline Wind Plants for example.

Fatality monitoring shall include standardized carcass searches, scavenger removal trials, searcher efficacy trials, and reporting of incidental fatalities by maintenance personnel and others.

⁵¹ WDFW letter, bottom of page 3.

⁵² WDFW letter, top of page 4.

⁵³ WDFW letter page 6, numbers 2 and 3, and DEIS Mitigation Measures, Section 3.5.4.4.

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- b) The Certificate Holder shall perform a minimum of one breeding season raptor nest survey of the study area including a 1 mile buffer to locate and monitor active raptor nests potentially affected by construction and operation of the Project.
- c) The Certificate Holder shall conduct two years of monitoring studies to evaluate impacts to avian species, with incidental monitoring during the life of the project. This study will include at a minimum, standardized casualty searches on a 28-day interval throughout the year combined with searcher efficiency trials and carcass removal trials to estimate the direct impacts to avian species from the project. In the event the project is phased, post construction monitoring shall begin upon commencement of commercial operation and continue until at least two years after construction of the entire project is completed.
- d) The post-construction monitoring plan for the project will follow a detailed written protocol which will document the monitoring measures being conducted.
- e) The TAC shall be reconvened if unanticipated circumstances arise during incidental monitoring.

E. Construction Traffic Development Standards and Plan⁵⁴

1. Development Standards: The Certificate Holder shall incorporate the mitigation measures presented in Section 3.15.5 of the Application, additional mitigation measures noted in the Final EIS, additional mitigation measures noted in Exhibit D of Attachment 4⁵⁵, and the following development standards into the design and construction of the Project:

- a) Project Access Road. The main Project access road shall be aligned so as to be located on the north side of Vantage Highway directly across from the driveway of the County's Landfill Site Driveway. The intersection of the Project driveway and Vantage Highway shall be constructed to

⁵⁴ County Development Agreement

⁵⁵ County Settlement

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commercial access standards as contained in the WSDOT Design Manual. Project site roads shall be designed in accordance with table 12-1 of the Kittitas County Road Standards for Private Roads with Low Density Traffic. In areas where Project roads exceed a 12% grade, the roads shall be designed to ensure that fire vehicles can gain access to the site as necessary to provide emergency services. If variances from the above requirements are required, the Certificate Holder shall seek such administrative variances from Kittitas County as described in Section 5.7 of Attachment 4 to this Agreement. The Certificate Holder shall notify EFSEC of any such request for administrative variance from the County's road standards; request of a variance shall not constitute a modification of this Agreement pursuant to EFSEC rules and procedures⁵⁶.

- b) Road Degradation Monitoring and Mitigation. County and City of Kittitas highway and shoulder pavement shall be video monitored before and after construction of the Project. If construction of the Project results in the degradation of the existing pavement and/or shoulders the Certificate Holder shall reinstate these facilities to equal or better condition than they were prior to construction⁵⁷.

The Certificate Holder shall videotape Transporter Route 1 roadways to document pavement conditions before and after construction and shall address changes to road conditions in discussions with the City of Kittitas and Kittitas County⁵⁸.

- c) Visitor's Kiosk. The Certificate Holder will construct a visitor's kiosk near the Project site entrance as shown on Exhibit B, Attachment 4 to this Agreement, with adequate signage directing the public to a safe place to park, view and learn about the Project. Said kiosk shall be located a minimum of 500 feet from Vantage Highway so as to provide adequate stacking space for vehicles entering the Project site. The

⁵⁶ County Development Agreement at 5.7.

⁵⁷ County Development Agreement at 5.8.

⁵⁸ SEPA mitigation measure, page 35, Section 3.14.4.1.

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visitor's kiosk will be approximately 10 to 15 feet wide by 15 to 25 feet long by 10 to 15 feet tall⁵⁹.

2. Construction Traffic Management Plan: At least sixty (60) days prior to the beginning of Site Preparation, a construction traffic management plan shall be submitted to EFSEC and Kittitas County for review. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the construction traffic management plan. This plan will incorporate those items outlined in Article IV.E.1., above.

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

4. FAA Review: Prior to the beginning of Construction, the Certificate Holder shall provide to EFSEC and Kittitas County copies of the Determination of Non Hazard certificates issued by the Federal Aviation Administration (FAA) and related information, which demonstrates that the Project will not impact approved flight approaches, flight communications, or operations at the Bowers Field Airport in Ellensburg⁶⁰.

F. Cultural and Archeological Resources Plan⁶¹

Not later than 60 days prior to the start of Site Preparation, with the assistance of an experienced archeologist, and in consultation with the Office of Archeology and Historic Preservation., the Certificate Holder shall develop a cultural resources monitoring plan for monitoring construction activities and responding to the discovery of archeological artifacts or buried human remains. The Certificate Holder shall submit the plan to EFSEC for review. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Plan from the Council. The Plan shall be implemented prior to the start of Site Preparation. The Plan shall include, but not be limited to, the following:

1. The Certificate Holder shall maintain 100-foot design and construction buffers as measured from any ground disturbing construction activities and the archaeological and

⁵⁹ County Development Agreement at 5.9.

⁶⁰ County Development Agreement at 5.5.

⁶¹ County Development Agreement, Exhibit D, section 3.13.4 and EFSEC boilerplate.

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historical sites identified during the cultural resource survey performed for the Application, even though they do not meet the standard qualifications for National Register of Historic Places (NRHP). The Project archaeologist shall flag off or otherwise delineate the archaeological sites with a 100-foot buffer. Ground disturbing actions within a specified radius of any archaeological sites, either recorded during the initial survey or previously documented, will be monitored by a professional archaeologist to prevent damage or destruction to both known and unanticipated archaeological resources.

2. If any archaeological materials, including but not limited to human remains, are observed, excavation in that area will cease, and the Certificate Holder shall notify the Office of Archeology and Historic Preservation (OAHP), EFSEC, and the affected tribes. At that time, appropriate treatment and mitigation measures shall be developed in coordination with the agencies and tribes cited above, and implemented following approval by EFSEC. If the project cannot be moved or re-routed to avoid the resources, the Certificate Holder shall test the resources for eligibility for listing in the NRHP. Depending on the outcome of the testing for eligibility, the Certificate Holder shall prepare a mitigation plan in consultation with OAHP and any affected tribes.

3. Prior to any excavation or disturbance to the archaeological sites, the Certificate Holder shall obtain an excavation permit from OAHP pursuant to the requirements of RCW 27.53.060. The Project archaeologist will remove any flagging tape or pin flags at the end of the construction-monitoring phase of the Project.

4. If a tribe requests to have their representatives present during earth-disturbing construction activities, the Certificate Holder shall comply with their wishes. In all cases the Certificate holder shall note all concerns raised through tribal requests, and shall inform EFSEC of such tribal requests.

G. Construction Emergency Plan⁶²

1. Construction Emergency Plan. The Certificate Holder shall retain qualified contractors, familiar with the general construction techniques and practices used for the Project and its related support facilities. The construction specifications shall require

⁶² Source: County Development Agreement, Application, and EIS mitigation measures.

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contractors to implement a safety program that includes an emergency plan. The Certificate Holder shall submit the emergency plan to Kittitas County and EFSEC for review at least 60 days prior to the beginning of Site Preparation. The Certificate Holder shall coordinate development and implementation of the plan with applicable local and state emergency services providers. The Certificate Holder shall not begin site preparation or Construction prior to obtaining EFSEC approval of the construction emergency plan. The Construction Emergency Plan shall include consideration of:

- a) Medical emergencies;
- b) Construction emergencies;
- c) Project area evacuation;
- d) Fire protection and prevention;
- e) Flooding;
- f) Extreme weather abnormalities;
- g) Earthquake;
- h) Volcanic Eruption;
- i) Facility blackout;
- j) Hazardous materials spills;
- k) Blade or tower failure;
- l) Aircraft impact;
- m) Terrorism, sabotage, or vandalism;
- n) Bomb threat.

2. Fire Protection Services. The fire protection services agreement that Certificate Holder has executed with Ellensburg Rural Fire District #2 for the Project, Exhibit G of Attachment 4 to this Agreement, assures that suitable fire protection services are in place during the construction and on-going operations of the Project. A fire protection services agreement shall be maintained for the life of the Project, or until the Project site is annexed into a Fire District or other municipal entity which provides fire protection services⁶³.

3. Fire Control Plan. The Certificate Holder shall develop and implement a Fire Control Plan in coordination with state and local agencies to minimize risk of accidental fire during construction and to ensure effective response to any fire that does occur on the Project Site. The Certificate Holder shall submit the Fire Control Plan to EFSEC and the County for

⁶³ County Development Agreement at 5.4.

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review at least 60 days prior to Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the fire control plan.⁶⁴

H. Construction Management Plan⁶⁵

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.

I. Construction Schedule⁶⁶

Thirty (30) days prior to the beginning of Site Preparation, the Certificate Holder shall submit to EFSEC 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.

J. Construction Plans and Specifications⁶⁷

1. At least sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit to EFSEC or its designated representative for approval, those construction plans, specifications and drawings that demonstrate the project design will be in compliance with Agreement conditions. The plans will include overall Project site plans, foundation drawings, equipment and material specifications as appropriate. The construction plans will include design specifications and further details for excavation, blasting and other activities associated with the removal and preparation of quarry materials for Project Construction⁶⁸.

⁶⁴ SEPA mitigation measures, Section 3.5.4.2, page 22.

⁶⁵ EFSEC boilerplate.

⁶⁶ EFSEC boilerplate.

⁶⁷ EFSEC boilerplate with specific code requirements from Application.

⁶⁸ SEPA mitigation measures, Section 3.1.4.1, page 2.

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2. The UBC and IBC standards require that under the design earthquake the factors of safety, or resistance factors, are used in the design to exceed certain values. This factor of safety is introduced to account for uncertainties in the design process and to ensure that performance is acceptable. Application of these codes in the Project design will provide adequate protection for the Project facilities and ensure protection measures for human safety, particularly given the relatively low level of earthquake risk for the site. Project buildings, structures, and associated systems shall be designed and constructed consistent with requirements including seismic standards of the Uniform Building code (UBC) or the International Building Code (IBC), but no less stringent than those found in the Uniform Building Code of 1997 (UBC-97).

3. Project facilities shall be located consistent with the mitigation measures proposed for facility protection from instable land or landslides.

4. The Certificate Holder shall design, install, operate and maintain the domestic on-site sewage system in accordance with Kittitas County requirements.

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ARTICLE V: PROJECT CONSTRUCTION

A. Environmental Monitoring During Construction:

1. The Certificate Holder shall provide an independent environmental monitor (EM) with “stop-work” authority that reports to EFSEC⁶⁹.

2. Environmental Compliance Program. The Certificate Holder shall identify and develop environmental monitoring and “stop-work” criteria in consultation with EFSEC staff, prior to beginning Site Preparation. The Environmental Compliance Program will cover avoidance of sensitive areas during construction, waste handling and storage, stormwater management, spill prevention and control and other components required this Agreement. The Certificate Holder shall implement the program to ensure that construction activities meet the conditions, limits and specifications set out in the Site Certification Agreement, all Attachments thereto, and all other applicable state and federal environmental regulations⁷⁰.

3. Copy of Permits Kept On-site. A copy of the Site Certification Agreement, Plans approved by the Council or its designee, and all applicable construction permits will be kept on-site. The lead Project construction personnel and construction Project Managers will be required to read, follow and be responsible for all required compliance activities. A Project Environmental Monitor will be responsible for ensuring that all construction permit requirements are adhered to, and that any deficiencies are promptly corrected⁷¹.

4. The Environmental Monitor will provide weekly reports to EFSEC on environmental problems reported or discovered as well as corrective actions taken to resolve these problems. Upon identification of an environmental noncompliance issue, the Environmental Monitor will work with the responsible subcontractor or direct hire workers to correct the violation; if not corrected in a reasonable period of time a “stop work” order shall be issued for that portion of the work not in compliance with the Project environmental requirements⁷².

⁶⁹ EFSEC boilerplate.

⁷⁰ WDFW letter, and boilerplate EFSEC language.

⁷¹ WDFW letter, top page 7.

⁷² WDFW letter, top page 7.

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5. No excavation, filling or regrading work shall be performed at any time unless there is full, concurrent and independent environmental monitoring on-site⁷³.

6. All EM reports are to be submitted to EFSEC at the same time that they are submitted to the Certificate Holder's Project Manager. EFSEC and WDFW, shall be promptly notified of any emergency response or "stop work" orders that have been issued⁷⁴.

B. Quarterly Construction Reports

The Certificate Holder shall submit quarterly construction progress reports within thirty (30) days after the end of each calendar quarter. Such reports shall describe the status of construction and identify any changes in the construction schedule⁷⁵.

C. Construction Inspection

EFSEC shall contract with Kittitas County to provide plan review and construction inspection services for all Project buildings, structures, electrical transmission feeder lines, sanitary waste water discharge systems, and other Project facilities to ensure compliance with this Agreement. Construction shall be in accordance with the approved design and construction plans, the IBC, and Kittitas County building codes and regulations, and applicable construction, and fire and life safety codes and requirements⁷⁶. If Kittitas County is unable to provide timely review and inspection services, EFSEC shall coordinate with the County the selection of other appropriate agency or firms to provide such services.

The Certificate Holder will pay for County costs, including 3rd party consultant costs, if necessary, incurred to support plan review and inspection of the Project during construction, in accordance with K.C.C. 14.04 et. al., under a County Staffing Agreement. Such Staffing agreement shall be substantially similar in form to a previous Staffing Agreement in place for the Project, dated August 3, 2004, including the hourly costs for County staff and consultant

⁷³ EFSEC boilerplate.

⁷⁴ ESEC boilerplate.

⁷⁵ WDFW letter page 8.

⁷⁶ County Settlement.

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resources. The Staffing Agreement shall be approved by the County prior to beginning of construction, and such approval shall not be unreasonably withheld⁷⁷.

D. 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 notice⁷⁸.

E. 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 blasting and 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.⁷⁹.

The Certificate Holder shall ensure that oversized loads as defined by Washington Department of Transportation associated with Project Construction do not travel through the City of Kittitas during evening or nighttime hours, and that haul trucks do not park and idle within 100 feet of a residential dwelling⁸⁰.

F. 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). The Certificate Holder, its general contractor, and all subcontractors shall make every reasonable effort to ensure adequate safety for individuals working at the Project⁸¹.

⁷⁷ County Development Agreement at 10.9.

⁷⁸ EFSEC boilerplate.

⁷⁹ SEPA DEIS mitigation, Section 3.8.4, Application for Site Certification.

⁸⁰ SEPA mitigation measures Section 3.8.4.

⁸¹ EFSEC boilerplate.

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2. Construction Phase Health and Safety Plan. The Certificate Holder shall develop and implement a construction phase site health and safety plan. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the even of an emergency.

3. Construction Phase Site Security Plan. The Certificate Holder shall develop and implement a construction phase site security plan to effectively monitor the Project Site. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the even of an emergency. The Certificate Holder shall submit the plan to EFSEC for review and approval.

Site access will be controlled and all on-site construction staff and visitors will be required to carry an identification pass. Temporary fencing with a locked gate may be installed at laydown areas for storage of equipment and materials.⁸²

4. The Certificate Holder shall consult with the County regarding the impact on County law enforcement staffing. If additional staffing is required, the Certificate Holder shall pay additional costs for law enforcement associated with construction impacts and activities to be provided by the County Sheriff's office or provide private onsite security as necessary.

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

G. Fugitive Dust

The certificate Holder shall implement appropriate mitigation measures to control fugitive dust from roads, construction activities, and temporary construction facilities (quarries, rock crusher and concrete batch plant).⁸³

H. Contaminated Soils

In the event that contaminated soils are encountered during construction, the certificate holder shall notify EFSEC and Ecology as soon as possible. The certificate Holder shall manage,

⁸² Application, Section 3.16.4.6, page 20.

⁸³ EFSEC boilerplate.

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handle and dispose of contaminated soils in accordance with applicable local, state and federal requirements⁸⁴.

I. Visual Light and Glare

The Certificate Holder shall implement mitigation measures to minimize visual light and glare impacts. Project structures shall be painted with neutral/low reflectivity finishes to the extent feasible. The O&M facility shall be painted with a low reflectivity earth tone finish. The only lighting on the turbines will be the aviation lighting required by FAA. Outdoor lighting at the O&M facility and substation(s) will be minimized to safety and security requirements, sensors will be used to keep lighting turned off when not required, and lighting will be equipped with hoods and directed to minimize backscatter and offsite light trespass⁸⁵.

J. Unique Features⁸⁶

In the event that unique physical or geological features (such as petrified wood deposits) are discovered at the Project site during construction, the Certificate Holder shall require that work be stopped at that location, and shall notify EFSEC and OAHP to coordinate appropriate response.

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 and schedule approved by the EFSEC staff.⁸⁷

⁸⁴ SEPA Mitigation measures, section 3.1.4.7,

⁸⁵ SEPA mitigation measures section 3.10.5, page 30.

⁸⁶ SEPA mitigation measures 3.1.4.6.

⁸⁷ EFSEC boilerplate.

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ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO THE BEGINNING OF OPERATION

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

A. Operations Stormwater Pollution Prevention Plan⁸⁸

1. Operations Stormwater Pollution Prevention Plan. The Certificate Holder shall prepare an operations stormwater pollution prevention plan (operations SWPPP) and submit it to EFSEC, for approval at least thirty (30) days prior to Commercial Operation. The Operations SWPPP shall include an operations manual for permanent BMPs. The Operations SWPPP shall be prepared in accordance with the guidance provided in the *Stormwater Management Manual for Eastern Washington, September 2004*..
2. Operations Spill Prevention, Control and Countermeasure Plan. The Certificate Holder shall submit to EFSEC an operations Spill Prevention, Control and Countermeasure Plan (SPCCP) for review and approval. The operations SPCCP shall be prepared pursuant to the requirements of 40 CFR Part 112, Sections 311 and 402 of the Clean Water Act and Section 402 (a)(1) of the Federal Water Pollution Control Act (FWPCA) and RCW 90.48.080. The operations SPCCP shall include the Site, all project structures and facilities on the site, substations(s), feeder line corridors, and all access roads. The operations SPCCP shall be implemented within six (6) months of the beginning of operation.

B. Emergency Plans

1. Operations Emergency Plan. At least 60 days prior to Commercial Operation, the Certificate Holder shall submit for County review and 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 below. The Certificate Holder shall coordinate development of the plan

⁸⁸ EFSEC boilerplate tailored for project.

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with local and state agencies that provide emergency response services in the project area. Periodically, the certificate Holder shall provide the Council with updated lists of emergency personnel, communication channels and procedures. The Emergency Response Plan shall address in detail the procedures to be followed in the event of the following⁸⁹:

- a) Medical emergencies;
- b) Construction emergencies;
- c) Project area evacuation;
- d) Fire protection and prevention;
- e) Flooding;
- f) Extreme weather abnormalities;
- g) Earthquake;
- h) Volcanic Eruption;
- i) Facility blackout;
- j) Hazardous materials spills;
- k) Blade or tower failure;
- l) Aircraft impact;
- m) Terrorism, sabotage, or vandalism;
- n) Bomb threat.

2. Fire Protection Services. The Certificate Holder shall maintain a fire protection services agreement for the life of the Project, or until the Project site is annexed into a Fire District or other municipal entity which provides fire protection services⁹⁰.

3. Fire Control Plan. The Certificate Holder shall develop and implement a Fire Control Plan in coordination with state and local agencies to minimize risk of accidental fire during operation and ensure effective response to any fire that does occur. The Certificate Holder shall submit the Plan to the County for review and to EFSEC for Review and Approval.⁹¹

⁸⁹ EFSEC boilerplate, Application, SEPA mitigation measures from county Development Agreement.

⁹⁰ County Development Agreement at 5.4, and WDFW letter at page 8.

⁹¹ SEPA mitigation measures, Section 3.5.4.2, page 22.

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ARTICLE VII: PROJECT OPERATION

A. Water Discharge⁹²

The Certificate Holder shall ensure that all stormwater control measures and discharges are consistent with the Stormwater Manual for Eastern Washington, September 2004.

Household sewage discharges shall be directed towards an on-site septic system.

B. Noise Emissions⁹³

The Certificate Holder shall operate the Project in compliance with applicable Washington State Environmental Noise Levels chapter 173-60 WAC.

C. Fugitive Dust Emissions⁹⁴

The Certificate Holder shall continue to implement construction dust abatement measures as necessary⁹⁵.

D. Habitat, Vegetation and Wildlife BMPs

During Project operations, the Certificate Holder shall implement appropriate operational BMPs to minimize impacts to plants and animals. In addition to those mitigation measures presented in the Application and the Final EIS, these include the following⁹⁶:

1. Implementation of a fire control plan, in coordination with local fire districts, to avoid accidental wildfires and respond effectively to any fire that might occur;

⁹² EFSEC Boilerplate.

⁹³ EFSEC boilerplate.

⁹⁴ EFSEC boilerplate.

⁹⁵ SEAP mitigation measures, Section 3.2.4, page 7.

⁹⁶ EFSEC boilerplate.

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2. The Certificate Holder has entered into an agreement with Kittitas County Rural Fire District #2 to provide fire protection services during the construction and operation of the Project;
3. Operational BMPs to minimize storm water runoff and soil erosion;
4. Implementation of an effective noxious weed control program, in coordination with the Kittitas County Noxious Weed Control Board, to control the spread and prevent the introduction of noxious weeds;
5. Identification and removal of all carcasses of livestock, big game, etc. from within the Project that may attract foraging raptors.
6. During the Sage Grouse lekking season, no routine maintenance of the substation area or facilities within ¼ mile of an active lek shall be conducted between the hours of sunset and 9:00 am, and recreational use of the Project site will be restricted to the extent feasible⁹⁷.

E. Traffic Monitoring

The Certificate Holder shall monitor traffic levels following construction of the Project for a period of three years. After that time, the Certificate Holder shall continue monitoring of tourist and operations traffic to the Project upon written request from the County. Should tourist and operations related traffic to and from the Project site exceed WSDOT warrants, as contained in Chapter 910 of the WSDOT Design Manual, the Certificate Holder shall construct right and/or left turn lanes on Vantage Highway. Said improvements shall be designed and constructed in accordance with WSDOT guidelines.⁹⁸ Construction of new turn lanes may constitute a modification of this Agreement pursuant to EFSEC rules and procedures.

⁹⁷ WDFW letter, bottom page 4 and top page 5.

⁹⁸ County Development Agreement at 5.10.

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F. Project Site Access

The Project access road from Vantage Highway lies on private land; however, in order to avoid and minimize potential impacts to recreation, such as hunting, the Certificate Holder will implement an adaptive management approach to allow access to and through the Project Area and recreational use of the site. Adaptive management allows for changes over time to the level of control and types of activities on the Project site, as needed. In general, the Certificate Holder will permit controlled access to and through the site, as long it does not interfere with or introduce adverse impacts on Project operations or personnel, as follows:⁹⁹

1. Property owners who wish to access their property from Project Access Road will be allowed to do so as necessary under a formal access license and a key to a gated entrance.
2. Officials of the Washington State Departments of Natural Resources and Fish Wildlife are currently allowed to access the site and will continue to be allowed access by key.
3. The Certificate Holder will allow others to access the Project site on a case-by-case basis.
4. Active recreation activities on the Project site such as camping, off-road vehicle usage will not be allowed in order to avoid and minimize potential impacts to habitat and wildlife from such activities.
5. Access to the site for hunting activities will be allowed in accordance with the Hunting Plan set forth in Section 5.15 of Attachment 4.

G. 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

⁹⁹ County Development Agreement at 5.14.

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and the Washington Industrial Safety and Health Act) as well as local and industrial codes and standards (such as the Uniform Fire Code.

2. Operation Phase Health and Safety Plan. No later than sixty (60) days after Commercial Operation, the Certificate Holder shall develop and implement an operation phase site health and safety plan. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the even of an emergency. --

3. Operation Phase Site Security Plan. No later than sixty (60) days after Commercial Operation, the Certificate Holder shall develop and implement a detailed security plan. The Plan shall include, but not be limited to the following elements: controlling access to the site to any visitors, contractors, vendors, or suppliers; security lighting of the O&M building; fencing of the substation(s); and securing access to wind turbines, pad transformers, pad mounted switch panels and other outdoor facilities¹⁰⁰. A copy of the security plan shall be provided to EFSEC and any other agencies involved in emergency response.

4. Visitors shall be required to observe the safety plans and shall be provided with safety equipment where and when appropriate.

H. 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 designed¹⁰¹.

¹⁰⁰ Application.

¹⁰¹ EFSEC boilerplate.

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ARTICLE VIII: PROJECT DECOMMISSIONING AND SITE RESTORATION

A. Detailed Site Restoration Plan

The Certificate Holder shall submit a detailed site restoration plan to EFSEC for approval within ninety (90) days from the time the Council is notified of the termination of the Project. The detailed site restoration plan will provide for restoration of the Site within the time frame specified in Article VIII.B., below, taking into account the restoration plan and the anticipated future use of the Site. The Detailed Site Restoration Plan shall address the elements required to be addressed in WAC 463-42-655 (in effect at the date of submittal of the Application), and the requirements of the Council approved Project Decommissioning and Site Restoration Plan pursuant to Article IV.C. of this Agreement¹⁰².

B. Decommissioning Timing and Scope.¹⁰³

1. Timing. The Certificate Holder shall decommission the Project within twelve (12) months following the earlier of either: (a) the date of termination of the County Development Agreement, in accordance with Section 1.2 of the Development Agreement; or (b) at the written request of the County and EFSEC, the Certificate Holder demonstrates that the energy generated by the Project for the past 12 month period is less than 10% of the Historical Energy Production defined below and no exemptions apply.

The Certificate Holder will be exempted from the decommissioning requirement if the twelve (12) month reduced energy output period described above is the result of (i) a repair, restoration or improvement to an integral part of the Project that affects the generation of electricity that is being diligently pursued by the Applicant, or (ii) a Force Majeure Event, including, but not limited to, an extended low wind period. For these purposes, the Historical Energy Production shall be the sum of all energy generated by the Project divided by the number of months since the beginning of commercial operation multiplied by twelve, starting twelve months after commercial operation commences.

¹⁰² EFSEC boilerplate and County Development Agreement.

¹⁰³ County Development Agreement at 6.2. (order shuffled).

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The twelve (12) month period to perform the decommissioning may be extended if there is a delay caused by sources beyond the control of the Applicant including, but not limited to inclement weather conditions, equipment failure, wildlife considerations or the availability of cranes or equipment to support decommissioning.

2. Scope. Decommissioning the Project shall involve removal of the Turbines; removal of foundations to a depth of 3 feet below grade; re-grading the areas around the Project Facilities; removal of Project access roads and overhead cables (except for any roads and/or power cables that Project Area landowners wish to retain); and final reseeded of disturbed lands (all of which shall comprise “Decommissioning”). Decommissioning shall occur in the order of removing the Turbines as the first priority and performing the remaining elements immediately thereafter.

3. County Access. The County and EFSEC shall be granted reasonable access to the Project site during decommissioning of the Project for purposes of inspecting any decommissioning work or to perform decommissioning evaluations. County and EFSEC personnel on the Project site shall observe all worker safety requirements enforced and observed by the Applicant and its contractors. If requested by the County and EFSEC, the Certificate Holder will provide monthly status reports until this decommissioning work is completed.

C. Decommissioning Funding and Surety¹⁰⁴.

Except as provided in Article VIII.D. below, the Certificate Holder shall post funds sufficient for Decommissioning in the form of a guarantee bond, or a letter of credit to ensure the availability of said funds (the “Decommissioning Funds”) to EFSEC prior to the end of the first year after commencement of construction. The Certificate Holder shall request that the County be listed as additionally insured. A detailed engineering estimate of the amount of the Decommissioning Funds is included in Exhibit F of Attachment 4 to this Agreement.

The Decommissioning Plan shall provide that the Decommissioning Funds shall be reevaluated annually during construction of the Project and at least every five (5) years thereafter from the date of Commercial Operation to ensure sufficient funds for Decommissioning and, if deemed appropriate at that time, the amount of the Decommissioning Funds shall be adjusted accordingly.

¹⁰⁴ County Development Agreement at 6.3.

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The duty to provide such security shall commence annually after Substantial Completion or when the Project ceases to generate electricity as defined in Article VIII.B., above, whichever occurs first. On or before the date on which financial security must be established, the Certificate Holder shall provide the County and EFSEC with a copy of one of the following security devices for their information:

1. Performance Bond. The Certificate Holder, shall provide financial security for the performance of its decommissioning obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and is, at the time of delivery of the bond, is on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be in an amount equal to the Decommissioning Funds. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a default of the Certificate Holder under the Development Agreement, this Agreement, and under the Bond provisions; or,

2. Letter of Credit. The Certificate Holder shall provide financial security for the performance of its decommissioning obligations through a letter of credit issued by a bank whose long-term debt is rated “A” or better by a Rating Service. The letter of credit shall be in an amount equal to the Decommissioning Funds. The letter of credit shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of the Development Agreement and this Agreement, or until the secured decommissioning obligations are satisfied, whichever occurs sooner. The State of Washington, by and through EFSEC or its successor or designees shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank of the Certificate Holder’s failure to perform its decommissioning obligations when due.

D. Financial Security and Utility Project Ownership.

The Certificate Holder shall obtain, and provide to EFSEC and Kittitas County, proof of financial security for the performance of its Decommissioning obligations pursuant to Article VIII.C. unless if, at the time the duty to provide Decommissioning security arises under Article VIII.C. above, the owner of the Project is an entity, such as Puget Sound Energy, which is an investor-owned electric utility regulated by the FERC and the Washington Utilities and

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Transportation Commission (WUTC), in which case the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner¹⁰⁵.

¹⁰⁵ County Development Agreement at 6.4.

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WILD HORSE WIND POWER PROJECT

ARTICLE IX: SITE CERTIFICATION AGREEMENT SIGNATURES

Dated and effective this _____ day of _____, 2005.

FOR THE STATE OF WASHINGTON

Christine Gregoire, Governor

FOR WIND RIDGE POWER PARTNERS, LLC.

[name here]

This Draft Site Certification Agreement (Draft SCA) was prepared by EFSEC staff. It is based on the Application for Site Certification, Settlement Agreements, SEPA mitigation measures presented in the Draft EIS and at the adjudicative hearings, as well as other commitments made by the Applicant. The purpose of this Draft SCA is to provide the Applicant and other parties to the case a framework for an SCA should they want to propose to the Council that it make a positive recommendation to the Governor.

THIS DRAFT SITE CERTIFICATION AGREEMENT IS PROVIDED IN ACCORDANCE WITH RCW 80.50.085 AND SHOULD NOT BE INTERPRETED TO REPRESENT CONCLUSIONS, CONDITIONS OR RECOMMENDATIONS TO THE GOVERNOR DRAWN BY THE ENERGY FACILITY SITE EVALUATION COUNCIL IN THIS MATTER.

ATTACHMENTS

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

1. Site and Mitigation Parcel Legal Descriptions.
2. Transmission Feeder Line Legal Descriptions.
3. Stipulation and Settlement Agreement between Applicant and Kittitas County.
4. Development Agreement between Kittitas County, Washington, and Wind Ridge Power Partners, LLC.
5. Settlement Agreement between Washington State Department of Fish and Wildlife and Applicant.
6. Council Order No. _____, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition, dated _____, 2005.