

**SITE CERTIFICATION AGREEMENT  
BETWEEN**

**THE STATE OF WASHINGTON**

**AND**

**SAGEBRUSH POWER PARTNERS, LLC**



**For the**

**KITTITAS VALLEY WIND POWER PROJECT**

**KITTITAS COUNTY, WASHINGTON**

**ENERGY FACILITY SITE EVALUATION COUNCIL**

**OLYMPIA, WASHINGTON**

Governor Signature: September 18, 2007

Sagebrush Power Partners Signature: September 25, 2007

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**FOR THE KITTTITAS VALLEY WIND POWER PROJECT**  
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## **Attachments**

1. Project Legal Description
2. Council Order No. 826, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition dated March 27, 2007.
3. Final Project Configuration
4. RES America, Inc. - Underground Cable Trenching Protocol
5. Department of the Army, Corps of Engineers - Nationwide Permit
6. Washington Department of Fish and Wildlife - Hydraulic Project Approval

**SITE CERTIFICATION AGREEMENT**  
**FOR THE KITTITAS VALLEY WIND POWER PROJECT**

**between**

**THE STATE OF WASHINGTON**

**and**

**SAGEBRUSH 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 Sagebrush Power Partners, LLC, (Sagebrush or the Certificate Holder), 53 Yamhill Street, Portland, Oregon, 97204.

Sagebrush 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 Application 2003-01, conducted public and adjudicative hearings, and by order, recommended approval of the application by the Governor. On September 18, 2007, the Governor approved the Site Certification Agreement authorizing Sagebrush to construct and operate the Kittitas Valley Wind Power Project (Project).

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

## ARTICLE I: SITE CERTIFICATION

### A. Site Description

1. Project Site. The site on which the Kittitas Valley Wind Power Project (Project) is to be constructed and operated is located in unincorporated Kittitas County, and is described more particularly in Attachment 2 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 3 of this Agreement. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall provide to EFSEC the final metes and bounds of the Mitigation Parcel and a copy of fully executed and recorded deed restrictions for the Mitigation Parcel, providing legal protection for the Mitigation Parcel for the life of the Project.

### B. Site Certification

The State of Washington hereby authorizes Sagebrush Power Partners, LLC (Sagebrush or Certificate Holder), and any and all parent companies 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. 826, Findings of Fact, Conclusions of Law, and Order Recommending Site Certification on Condition, and this Site Certification Agreement. Attachment 2 to this agreement.

Such construction and operation shall be located within the areas designated herein and in the Application for Site Certification submitted by Sagebrush Power Partners LLC on January 13, 2003, and in accordance with any modifications to those areas as set out in the Final Environmental Impact Statement (FEIS). Construction of any Project facilities or structures on lands leased from the Washington State Department of Natural Resources (DNR) is permitted when lease agreements are secured from DNR.

This Site Certification Agreement authorizes the Certificate Holder to construct the Project such that Substantial Completion is achieved no later than five (5) years from the date that all final state and federal permits necessary to construct and operate the Project are obtained and associated appeals have been exhausted; provided, however, that such construction is not delayed by a *force majeure* event, and that the construction schedule that the Certificate Holder submits pursuant to Article IV.J of this Agreement demonstrates its intention and good faith basis to believe that construction shall be completed within eighteen (18) months of beginning Construction.

Nothing in this Agreement will be construed to restrict the ability of the Certificate Holder to Begin Commercial Operation of some wind turbine generators prior to completing construction of all wind turbine generator strings and other Project components.



### C. Project Description

The Kittitas Valley Wind Power Project will consist of: wind turbine generators (WTGs) and their construction corridors; permanent meteorological 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) facility; an informational kiosk; temporary construction-related facilities; other related Project facilities as described in the Application; and an approximately 539-acre Mitigation Parcel.

1. Wind Turbine Generators and Corridors. The Project shall consist of a maximum of sixty-five (65), 3-bladed wind turbines on tubular steel towers, not to exceed a maximum height (hub height plus blade tip height) of 410 feet. 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 turbine scenarios that follow:

Turbine Size Scenario	330-foot Turbine	410-foot Turbine
Approximate Generator Nameplate Rating	1.5 MW	3.0 MW
Maximum “Tip” Height (Hub height plus blade length)	330 feet	410 feet
Approximate Total Nameplate Capacity	97.5 MW	195 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 visitors center; maintenance facility, electrical substations, electrical feeder line(s) and other related Project facilities as described in the ASC, and as updated in the Final Environmental Impact Statement (EIS). The WTGs shall be located only in the turbine corridors identified in the Final EIS, as illustrated in Attachment 3, and in accordance with the final construction plans approved by EFSEC pursuant to Article IV. K.

2. Meteorological Towers. The Project will include up to five (5) free-standing (non-guyed) permanent meteorological towers. The height of the towers shall not exceed the Hub Height of the WTGs selected.
3. Access Roadways. The Project will include up to twenty-one (21) 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) high voltage transmission lines through a Project step-up substation(s). The step-up substation(s) would connect to the respective PSE and/or BPA interconnect.
- c) Interconnecting Transmission Systems. The Project will interconnect with the BPA and/or PSE transmission systems on or adjacent to the Project site.

5. Operations and O&M Facility and Informational Kiosk.

- a) The O&M facility will include a main building with offices, restrooms, visitor reception area, outdoor parking facilities, turn-around area, laydown area, outdoor lighting and gated access. The O&M facility building will have a foundation footprint of approximately 5,000 sq. ft. and will be placed on a site of approximately five (5) acres. It will be constructed near the northwest corner of the intersection of US 97 and Bettas Road.
- b) The O&M facility will include a water well exempt pursuant to RCW 90.44.050 (withdrawing less than 5,000 gallons per day) for water supply. Sanitary wastewater from the maintenance facility will be discharged to an on-site septic system.
- c) An informational kiosk will be constructed near the O&M facility off Bettas Road.

6. Mitigation Parcel. An approximately 539-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 Sections 22 and 27, T 79 N, R 17 E in Kittitas County.

7. Turbine Setbacks.

Turbines shall be set back from existing built elements as follows:

- Distance from residences, existing as of January 13, 2003, of adjacent landowners without signed agreements with the Certificate Holder: four times the maximum turbine tip height (i.e. 330-foot turbine = 1,320-foot setback; 440 = 1,640-foot setback). For each turbine located within 2,500 feet of a non-participating landowner's existing residence, micro-siting determinations shall give highest priority to increasing the distance of the turbine from that non-participating landowner's residence, even beyond the minimum four times height setback described above, so as to further mitigate and minimize any visual impacts on that non-participating landowner. Prior to commencement of construction, the Applicant shall provide EFSEC with documentation demonstrating its engineering efforts to site the applicable turbine locations in this manner, indicating the various factors reviewed for each micro-siting recommendation.
- Distance from residences of landowners with signed agreements with the Certificate Holder: maximum turbine height (also called "blade tip height").

For purposes of this article, "existing built element" is defined as those built elements constructed as of January 13, 2003, or properties with vested rights to build as of January 13, 2003. For purposes of this article, "residence" means the primary physical structure on a residential lot utilized as a single family home; as used herein, "residence" includes the entire structure within the main walls and the eaves of the roof, but does not include uncovered decks, uncovered patios, or outbuildings.

Distance shall be measured horizontally from the centerline of the turbine tower to the outermost envelope of the built element considered.

Turbines shall be set back from property lines, roads, and other features as follows:

- Distance from property lines of adjacent landowners without signed agreements with the Certificate Holder: 541 feet.
- Distance from property lines of landowners with signed agreements with the Certificate Holder: N/A.
- Distance from Bonneville/PSE transmission lines: maximum turbine height or as dictated by the respective transmission line owners.
- Distance from county and state roads: maximum turbine height.

As noted above, distance shall be measured horizontally from the centerline of the turbine tower to the property line or the outermost edge of the road or other feature considered.

## 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: Kittitas Valley Wind Power Project*, designated No. 2003-01, submitted January 13, 2003 and incorporated by reference herein.
2. “Approval” (by EFSEC) means an affirmative action by EFSEC or its authorized agents regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.
3. “Begin Commercial Operation” or “Beginning of Commercial Operation” means the time when the Project begins generating and delivering electricity to the electric power grid, other than electricity which may delivered as a part of testing and startup of the Project.
4. “BMPs” means Best Management Practices.
5. “Bonneville” or “BPA” means Bonneville Power Administration.
6. “Certificate Holder” means Sagebrush 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, the operations and maintenance facility building, or the substations and erection of any permanent, above-ground structures including any transmission line poles, substation poles, meteorological towers, or turbine towers.
8. “County” means Kittitas County, Washington.
9. “DAHP” means the Washington State Department of Archeology and Historic Preservation.
10. “DNR” means the Washington State Department of Natural Resources.
11. “Ecology” means the Washington State 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. “EFSEC Costs” means any and all reasonable costs, both direct and indirect, associated with EFSEC activities with respect to this Site Certification Agreement (SCA), including but not limited to monitoring, staffing and SCA maintenance.
14. “EIS” or “Final EIS” means the EFSEC Kittitas Valley Wind Power Project Final Environmental Impact Statement (February 2007) issued pursuant to the requirements of the State Environmental Policy Act.
15. “End of Construction” means the time when all Project facilities have been substantially constructed and are in operation.
16. “FAA” means the Federal Aviation Administration.
17. “Force Majeure Event” has the following meaning: Any event that directly prevents or delays the performance by the Party affected of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a governmental authority other than EFSEC.
18. “Kittitas Valley Wind Power Project” or “Project” means: wind turbine generators (WTGs) and their construction corridors; permanent meteorological 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 facility; informational kiosk; temporary construction-related facilities; other related Project facilities as described in the Application, and an approximately 539 acre Mitigation Parcel. The specific components of the Project are identified in Article I.C.
19. “IBC” means the International Building Code.
20. “Micro-siting” means the final technical and engineering process by which the Certificate Holder shall recommend the precise placement of the final location of each wind turbine generator. The plans produced by this process shall be

included in the Site Certification Agreement's Construction Management Plan as required by Article IV, Section I.

21. "NPDES permit" means National Pollutant Discharge Elimination System permit.
22. "PSE" means Puget Sound Energy.
23. "RCW" means the Revised Code of Washington.
24. "Site", "Project Site" or "Project Area" means the property identified in Attachments 2 and 3, located in Kittitas County, on which the Project is to be constructed and operated, including the Mitigation Parcel, underground and overhead electrical collection and interconnect substations.
25. "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.
26. "Site Preparation" means any of the following activities: Project Site clearing, grading, earth moving, cutting or filling, excavation, and preparation of roads and/or laydown areas.
27. "State" or "state" means the state of Washington.
28. "Substantial Completion" means: the Project is generating and delivering energy to the electric power grid.
29. "UBC" means the Uniform Building Code of 1997.
30. "WAC" means the Washington Administrative Code.
31. "WDFW" means the Washington Department of Fish and Wildlife.
32. "WTG" means wind turbine generator.
33. "WSDOT" means the Washington State Department of Transportation.

## **ARTICLE III: GENERAL CONDITIONS**

### **A. Legal Relationship**

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

### **B. Enforcement**

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

### **C. Notices and Filings**

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

Notices to be served 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 53 SW Yamhill Street, Portland, Oregon 97204, with a copy to 808 Travis, Suite 700, Houston, TX, 77002.

#### **D. Rights of Inspection**

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

#### **E. Retention of Records**

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

#### **F. Consolidation of Plans and Submittal to EFSEC**

Any plans required by this Agreement may be consolidated with other such plans, if such consolidation is approved in advance by EFSEC. This Site Certification Agreement includes time periods for the Certificate Holder to provide certain plans and other information to EFSEC or its designees. The intent of these time periods is to provide sufficient time for EFSEC or its designees to review submittals without delay to the Project construction schedule, *provided* submittals made to EFSEC and/or its designees are complete.

#### **G. Site Certification Agreement Compliance Monitoring and Costs**

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

The Certificate Holder shall to EFSEC's satisfaction deposit or otherwise guarantee payment of all EFSEC Costs as defined in Article II.12, for the period commensurate with the activities of this Agreement. EFSEC shall provide the Certificate Holder an annual estimate of such costs. The instrument guaranteeing payment of EFSEC's costs shall be structured in such a manner as to allow EFSEC to collect from a third party and without approval of the Certificate Holder any such costs which the Certificate Holder fails to pay to EFSEC during any preceding billing period.

#### **H. Site Restoration**

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 an Initial Site Restoration Plan in accordance with the requirements set out in Article IV.D of this Agreement. The Certificate Holder may not begin Site Preparation or Construction until the Council has approved the Initial Site Restoration Plan, including the posting of all necessary securities or funds associated therewith.

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.

### **I. EFSEC Liaison**

No later than thirty (30) days from the effective date of this Agreement, the Certificate Holder shall designate a person to act as a liaison between EFSEC and the Certificate Holder.

### **J. Changes in Project Management**

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

### **K. Amendment of Site Certification Agreement**

1. This Agreement may be amended pursuant to EFSEC rules and procedures applicable at the time of the request for amendment. Any requests by the Certificate Holder for amendments to this Agreement shall be made in writing.
2. A change in ownership of the Project shall be pursuant to EFSEC rules and procedures.
3. Unless otherwise required by EFSEC 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, Project legal description; Attachment 4, RES America - Underground Cable Trenching Protocol; Attachment 5, Department of Army Corps of Engineers Nationwide Permit; and Attachment 6, WDFW - Hydraulic Project Approval.
4. Repair, maintenance and replacement of Project Facilities
  - a) The Certificate Holder is permitted, without any further amendment to this agreement, to repair and maintain Project Facilities described in Article I.C, including the WTGs, consistent with the terms of this Agreement.
  - b) The Certificate Holder is permitted to replace the WTGs without amendment to this Agreement provided the replacement meets the following conditions:
    - (i) the WTG is being replaced with the same make and model WTG originally used in the Project (“Replacement Turbine”); or the WTG is

being replaced with a wind turbine that is within the size limits and general configuration defined in Article I.C, Project Description (“Comparable Turbine”);

(ii) the Replacement Turbine or Comparable Turbine is located in the same location as the WTG being replaced; and

(iii) the Replacement Turbine or Comparable Turbine meets all other conditions set out in this Agreement.

c) The Certificate Holder shall notify EFSEC of the replacement of a WTG no later than thirty (30) days prior to the replacement occurring.

5. In circumstances where the Project causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement, including wildlife impacts that significantly exceed projections anticipated in the Application and Final EIS, or where such impacts are imminent, EFSEC shall take all steps it deems reasonably necessary, including imposition of specific conditions or requirements on the Certificate Holder as a consequence of such a situation in addition to the terms and conditions of this Agreement. Such additional conditions or requirements initially shall be effective for not more than ninety (90) days, and may be extended once for an additional ninety (90) day period if deemed necessary by EFSEC; provided, however, EFSEC may impose conditions on a longer-term basis pursuant to WAC 463-36-090.

#### **L. Order of Precedence**

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

1. Applicable federal and State of Washington statutes and regulations;
2. The body of this Site Certification Agreement;
3. Attachment 2, Council Order No.826, 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.

## **ARTICLE IV: PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION**

### **A. Notice of Federal Permit Approvals**

No later than thirty (30) days after 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, if any, 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 ten (10) business 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 set forth in this Agreement, including those presented in the Application, as modified or amended in the Final EIS.

No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall file with EFSEC a comprehensive list of mitigation measures required by the Final EIS and this Agreement. For each of these mitigation measures, including the micro-siting of turbines required by Article I(C)(7), the Certificate Holder shall further identify the construction plan and/or operation plan addressing the methodology for its achievement.

The specific plans and submittals listed in the remainder of this Article IV, and Articles V, VI, VII and VIII, shall incorporate these mitigation measures as applicable.

### **C. Construction Stormwater Plans**

1. Notice of Intent. No later than sixty (60) days prior to the beginning of Site Preparation 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.
  
2. Construction Stormwater Pollution Prevention Plan. No later than sixty (60) days prior to the beginning of Site Preparation the Certificate Holder shall develop and submit for EFSEC approval a Construction Stormwater Pollution Prevention Plan (Construction SWPPP). 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 November 16, 2005 or as revised. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction SWPPP.

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

3. Construction Spill Prevention, Control and Countermeasures Plan. The Certificate Holder shall submit to the Council for review and approval a Construction Spill Prevention, Control, and Countermeasures Plan (Construction SPCCP), consistent with the requirements of Chapter 40 CFR Part 112. The Construction SPCCP shall include the Site, feeder line corridors, and all access roads. The Certificate Holder shall require all contractors working on the facility to have a spill prevention and countermeasure program consistent with 40 CFR Part 112. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction SPCCP. All applicable elements of the Construction SPCCP shall be implemented prior to the beginning of Site Preparation.

#### **D. Initial Site Restoration Plan**

The Certificate Holder is responsible for Project decommissioning and site restoration pursuant to Council rules. The Certificate Holder shall develop an Initial Site Restoration Plan, pursuant to the requirements of WAC 463-42-655 in effect on the date of Application, and shall submit the Decommissioning Plan to the Council for review at least sixty (60) days prior to the beginning of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Initial Site Restoration Plan from the Council.

The Initial Site Restoration 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 Certificate Holder on the date the Plan is submitted to EFSEC. The Initial Site Restoration 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 Initial Site Restoration 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 Initial Site Restoration 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 Initial Site Restoration Plan.

The Plan shall include the following elements:

1. Decommissioning Timing and Scope, as required by Article VIII.C. of this Agreement.

2. Decommissioning Funding and Surety, as required by Article VIII.D of this Agreement.
3. Mitigation measures contained in the Final EIS that would be implemented for decommissioning of the Project.
4. The Initial Site Restoration Plan shall address both the possibility that site restoration will occur 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.
5. 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.
6. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.
7. Performing an on-site audit, and preparing an initial plan for disposing of hazardous materials (if any) present on the site and remediation of hazardous contamination (if any) at the site.
8. An initial plan for restoring the site, including the removal of structures and foundations and the regrading of the site, if appropriate.
9. Provisions for preservation or removal of Project facilities if the Project is suspended or terminated during construction.

#### **E. Habitat, Vegetation, and Fish and Wildlife Mitigation**

1. Construction Timing. The Certificate Holder shall avoid, to the greatest extent possible, construction activities outside areas that will be permanently disturbed except 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 those areas will be disturbed regardless of the season and will need to be restored and reseeded. Trenching activities will be conducted in accordance with the Underground Cable Trenching Protocol in Attachment 4.
2. 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 following:
  - 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;
- 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.
- f) Covering temporarily disturbed areas in accordance with erosion control measures set forth in the Application, the Final EIS, and the Construction Storm Water Plans, Article IV.C of this SCA.

3. Technical Advisory Committee. The purpose of the Technical Advisory Committee (TAC) is to ensure that monitoring data collected pursuant to the required Post-Construction Avian Monitoring Plan (see Article VI.C) or other related monitoring data is considered in a forum in which independent and informed parties can collaborate with the Certificate Holder. The TAC will make recommendations to EFSEC if it deems additional studies or mitigation are warranted to address impacts that were either not foreseen in the Application or the Final EIS, or exceed impacts that were projected. In order to make advisory recommendations to EFSEC, the TAC will review and consider: results of Project monitoring studies, including post-construction avian and bat mortality surveys, to evaluate impacts to habitat and wildlife, including avian and bat species; new scientific findings made at wind generation facilities with respect to the impacts on habitat and wildlife, as they may relate to the Kittitas Valley Wind Power Project. The TAC will assess whether the post-construction restoration and mitigation and monitoring programs for wildlife that have been identified and implemented merit further studies or additional mitigation, taking into consideration factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings.

The TAC will coordinate with the Certificate Holder to review the draft of the Post-Construction Avian Monitoring Plan (Article VI.C). The TAC will also review the Applicant’s implementation of the Post-Construction Habitat Restoration Plan (Article IV.E.6).

The TAC may include, but need not be limited to, representatives from WDFW, U.S. Fish and Wildlife Service, EFSEC, Kittitas County, DNR, the Audubon Society, and the Certificate Holder. EFSEC, at its discretion, may add additional representatives to the TAC from local interest groups as well as state, local, federal and tribal governments.

No individual representative to the TAC may be party to a turbine lease agreement, or any other contractual obligation with the Certificate Holder. All TAC members shall be approved by EFSEC.

No later than sixty (60) days prior to the beginning of Site Preparation the Certificate Holder shall contact the agencies and organizations listed above requesting that they designate a representative to the TAC, and that the agencies or organizations notify EFSEC in writing of their TAC representative and of their member's term of representation. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall convene the first meeting of the TAC.

No later than sixty (60) days after the beginning of Construction, the Certificate Holder shall submit to EFSEC proposed Rules of Procedure 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 making and presenting timely TAC recommendations to the Council, and other procedures that will assist the TAC to function properly and efficiently. The Certificate Holder will provide a copy of the proposed Rules of Procedure to the TAC at their first meeting for their review and comment. The TAC may suggest modifications of the plan; any such modifications must be approved by EFSEC.

The TAC will be convened for the life of the Project, except that EFSEC may terminate the TAC if: the TAC has ceased to meet due to member attrition; or, the TAC determines that all of the pre-permitting, operational and post-operational monitoring has been completed and further monitoring is not necessary; or the TAC members recommend that it be terminated. The failure of the TAC to meet and/or members to participate at any meeting shall not be deemed a violation of this Agreement, any condition of approval, or any mitigation measure. If the TAC is terminated or dissolved, EFSEC may reconvene and reconstitute the TAC at its discretion.

The ultimate authority to implement additional mitigation measures, including any recommended by the TAC, shall reside with EFSEC.

4. Meteorological Towers. The Certificate Holder shall install and operate up to five (5) non-guyed permanent meteorological towers.
5. Wetlands, Streams and Riparian Areas. The Certificate Holder shall implement the following mitigation measures for all work conducted in wetlands, streams and riparian areas:
  - a) Mitigation measures required by the Department of the Army, Corps of Engineers, Nationwide Permit report as issued March 15, 2004, and

revised and extended April 3, 2006 (included as Attachment 5 to this agreement);

- b) Mitigation measures set out in WDFW Hydraulic Project Approval dated June 25, 2004 (included as Attachment 6 to this Agreement);
- c) Mitigation measures set out in the Application for Site Certification No. 2003-01 and the Kittitas Valley Wind Power Project Final EIS.

At least sixty (60) days prior to the beginning of site preparation the Certificate Holder shall submit to EFSEC for review and approval construction drawings for all work in wetlands, streams and riparian areas. The drawings shall specify the exact locations of work to be conducted, buffers that are required, and best management practices and mitigation measures that will be implemented as required by this article.

6. Restoration of Habitat in Temporarily Disturbed Areas. The Certificate Holder shall develop a Habitat 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 WDFW, and not necessarily immediately following the disruption. No later than forty-five (45) days prior to the beginning of Construction, the Post-Construction Restoration Plan shall be submitted to the Council for review and approval. 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.
7. Reference Site. 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. No later than 60 days before Site Preparation, the Certificate Holder shall inform EFSEC of the “reference site” selected in agreement with WDFW. 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 modifications to the initial plan as new information becomes available.
8. Habitat Mitigation Parcel. The Certificate Holder shall protect an approximately 539-acre Mitigation Parcel to mitigate for all permanent and temporary impacts to habitat caused by the Project. The Mitigation Parcel meets the requirements for ratios outlined in the WDFW Wind Power Guidelines (2003). The Certificate Holder shall



ensure that no development takes place on the parcel by protecting and retaining the Mitigation Parcel for the life of the Project. The Parcel shall be fenced to exclude livestock grazing.

9. Speed Limit. 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 construction.
10. Hunting. Hunting shall not be permitted in the Project Area during Construction of the Project. Hunting in the Project Area after Construction shall only be permitted in accordance with the Hunting Plan described below (see Section VI.D.6).

## **F. Construction Traffic Development Standards**

Development Standards: The Certificate Holder shall incorporate the mitigation measures presented in Section 1.4 of the Application, additional mitigation measures noted in the Final EIS and the following development standards into the design and construction of the Project.

1. Project Access Roads. Access to the various rows of turbines will be achieved via graveled roads branching from state Highways 10 and 97 and the County's Bettas and Hayward Roads.

Access roads from state Highways 10 and 97 shall be constructed with slope and culverts designed according to WSDOT and Washington state access management standards under Title 468 WAC and Chapter 47.50 RCW. Access from County roads shall be constructed with the appropriate slopes and culverts in accordance with Kittitas County standards. 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.

2. Video Monitoring. County roads, including shoulder pavement, shall be video monitored before and after construction of the Project to identify road degradation.
3. Bettas Road. That portion of Bettas Road that will be used for Project construction and operations (approximately 1.4 miles from state Highway 97 to Hayward Hill Road) will be improved, following construction, to the current Kittitas County road standards applicable to this section of road.
4. Hayward Hill Road. That portion of Hayward Hill Road that will be used for Project construction and operations (approximately 1.4 miles from Bettas Road to the access road to turbine string row B) will be improved, to a 22-foot gravel road. If construction of the Project results in the degradation of the existing pavement and/or shoulders on the County's roads other than Bettas and Hayward Hill Roads, the Certificate Holder shall reinstate these roads to their condition prior to construction.

5. Visitors' Kiosk. The Certificate Holder will construct a visitors' kiosk and public viewing area near the proposed O&M facility off Bettas Road with adequate signage directing the public to a safe parking lot to view and learn about the Project.
6. County-State Right-of-Way. The Certificate Holder shall seek Approval of a franchise for location of facilities within County owned right-of-way (including overhead electric power lines).
7. Project Site Access. Project access roads run across both private and public (WDNR) lands. In order to coordinate access to public lands in accordance with DNR land management practices the Certificate Holder will implement an adaptive management approach in coordination with DNR. 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 to public lands, as long as it does not interfere with or introduce adverse impacts on Project operations or personnel. At a minimum, Project site access during operation shall be allowed as follows:
  - Officials of the Washington State Department of Natural Resources are currently allowed to access the Project site and will continue to be allowed access by key.
  - The Certificate Holder will allow others to access the Project site on a case-by-case basis as permitted by leases entered into with private and public landowners.
8. Construction Traffic Management Plan. At least sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit to EFSEC for review a Construction Traffic Management Plan. 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.F.1 through 7, above.
9. Off-Site Disposal Plan. The Certificate Holder shall notify EFSEC, at the earliest time possible, of any permits or approvals required to conduct oversize or overweight hauls.
10. FAA Review. No later than thirty (30) days prior to the beginning of Construction, the Certificate Holder shall provide to EFSEC 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 Kittitas County Airport (Bowers Field).

## **G. Cultural and Archeological Resources Plan**

With the assistance of an experienced archeologist, and in consultation with the Department of Archeology and Historic Preservation (DAHP), 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 provide copies of the Plan for comment to potentially affected tribes. The Certificate Holder shall submit the Plan to EFSEC for review and approval no later than forty-five (45) days prior to the start of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Plan from the Council. All applicable elements of 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 historical sites identified during the cultural resource survey performed for the Application, even though these sites do not meet the standard qualifications for National Register of Historic Places (NRHP) listing. 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 but later discovered archaeological resources.
2. If any archaeological artifacts, including but not limited to human remains, are observed, disturbance and/or excavation in that area will cease, and the Certificate Holder shall notify the DAHP, 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 on the NRHP. Depending on the outcome of the testing for eligibility, the Certificate Holder shall prepare a mitigation plan in consultation with DAHP and any affected tribes.
3. Prior to any excavation of, or disturbance to, the archaeological sites, the Certificate Holder shall obtain an excavation permit from DAHP 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 its representatives present during earth-disturbing construction activities, the Certificate Holder shall comply with its wishes. In all cases the Certificate Holder shall note all concerns raised through tribal requests, and shall inform EFSEC of such tribal requests.

## H. Construction Emergency Plan

1. Construction Emergency Plan. The Certificate Holder shall retain qualified contractors familiar with the general construction techniques and practices to be used for the Project and its related support facilities. The construction specifications shall require contractors to implement a safety program that includes an emergency plan. The Certificate Holder shall prepare and submit a Construction Emergency Plan to EFSEC for review at least sixty (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 the Certificate Holder has executed with Kittitas County Fire District #1 for the Project assures that suitable fire protection services are in place during the construction and ongoing 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 that provides fire protection services.
  
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 for review and approval at least sixty (60) days prior to Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Fire Control Plan.

## **I. Construction Management Plan**

At least sixty (60) days prior to the start of Site Preparation, the Certificate Holder shall submit for the Council's review and approval a detailed Construction Management Plan addressing the primary Site Preparation and Construction phases for the Project. The Construction Management Plan shall be generally based on the mitigation measures contained in this Agreement and those identified in the Final EIS. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction Management Plan.

## **J. Construction Schedule**

No later than 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 no later than fifteen (15) days before the schedule change.

## **K. Construction Plans and Specifications**

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, drawings and design documents that demonstrate the Project design will be in compliance with the conditions of this Agreement. The plans shall include overall Project site plans, foundation drawings, equipment and material specifications, and vendor guarantees for equipment performance as appropriate. The Certificate Holder shall not Begin Construction prior to obtaining Council approval of the construction plans and specifications.
2. The Certificate Holder shall provide a final project layout plan to demonstrate that project structures comply with the setback conditions of Article I.C.7., to include the micro-siting determinations required to minimize visual impacts to non-participating landowners' existing residences. The Council shall approve each individual turbine location, to include micro-siting decisions, in accordance with the mitigation priorities identified in Article I.C.7.
3. Project buildings, structures, and associated systems shall be designed and constructed consistent with requirements, including the seismic standards, of the Uniform Building Code (UBC) or the International Building Code (IBC), but no less stringent than those found in the UBC of 1997.
4. Project facilities shall be located consistent with the mitigation measures proposed for facility protection from unstable land or landslides.
5. The Certificate Holder shall design, install, operate and maintain the domestic on-site sewage system in accordance with Kittitas County requirements.

6. The Certificate Holder shall purchase water only from sources that have been certificated or otherwise authorized by the Department of Ecology. At least thirty (30) days prior to the beginning of Site Preparation, the Certificate Holder shall provide to EFSEC proof of contract for the water supply source it intends to use during Site Preparation, Construction and Operation. The Certificate Holder shall notify EFSEC of any changes in the source of supply no later than fifteen (15) days before the change.
7. Prior to the beginning of Site Preparation, the Certificate Holder shall present to EFSEC copies of the signed and executed leases with DNR.

#### **L. Noise and Shadow Flicker Modeling**

Thirty (30) days prior to the beginning of site preparation the Certificate Holder shall submit to EFSEC for review the modeling of noise and shadow flicker impacts from the project in its final layout and accounting for the specific WTG components selected.

## ARTICLE V: PROJECT CONSTRUCTION

### A. Environmental Monitoring During Construction

1. Environmental Monitor (EM). EFSEC will provide Environmental Monitoring for the construction phase of the Project, at the Certificate Holder's cost. The Environmental Monitor shall be an independent, qualified engineering firm (or a person associated with such firm) selected by EFSEC and shall report directly to EFSEC.
2. Environmental Compliance Program for Construction Activities. The Certificate Holder shall identify and develop environmental monitoring and "stop-work" criteria in consultation with the EM and other EFSEC designees prior to beginning Site Preparation. EFSEC will review and approve the final stop-work criteria to be implemented for the Project. The Environmental Compliance Program will cover avoidance of sensitive areas during construction, waste handling and storage, stormwater management, spill prevention and control, habitat restoration efforts begun during the construction phase of the project and other mitigation measures required by 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 regulations.
3. Copies of Plans and Permits Kept On Site. A copy of the Site Certification Agreement, Plans approved by the Council or its designees, 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. The EM will be responsible for monitoring that all construction permit requirements are adhered to, and that any deficiencies are promptly reported and that corrective measures are initiated.
4. Environmental Monitor Weekly Reports. The EM will provide weekly reports to EFSEC on environmental problems reported or discovered as well as corrective actions taken by the Certificate Holder to resolve these problems. Upon identification of an environmental noncompliance issue, the EM will work with the responsible subcontractor or direct-hire workers to correct the violation; if non-compliance is not corrected in a reasonable period of time the EM shall issue a "stop work" order for that portion of the work not in compliance with Project environmental requirements.
5. Environmental Monitor Availability. No excavation, filling or re-grading work shall be performed at any time unless the EM is available for full, concurrent and independent environmental monitoring on-site.

6. Environmental Monitor Report Copies. The EM will provide copies to the Certificate Holder of reports submitted to EFSEC. The Environmental Monitor will promptly notify EFSEC of any “stop work” orders that have been issued.

### **B. Quarterly Construction Reports**

The Certificate Holder shall submit quarterly construction progress reports to EFSEC no later than 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 schedule.

### **C. Construction Inspection**

EFSEC shall provide plan review and inspection of construction for all Project buildings, structures, underground and overhead electrical 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 UBC and other relevant regulations. EFSEC may contract with Kittitas County to provide these services. 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.

### **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 representative access to the drawings on request following reasonable notice.

### **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.

### **F. Construction Safety and Security**

1. Federal and State Safety Regulations. 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 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 maximize safety for individuals working at the Project.



2. Construction Phase Health and Safety Plan. The Certificate Holder shall develop a Construction Phase Health and Safety Plan. The Plan shall be implemented prior to the beginning of Site Preparation. 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 event of an emergency. The Certificate Holder shall submit the plan to EFSEC for review and approval no later than sixty (60) days prior to Site Preparation.
  
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 event of an emergency. The Certificate Holder shall submit the plan to EFSEC for review and approval no later than sixty (60) days prior to Site Preparation.

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.

4. Visitors Safety. 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 and construction activities.

### **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, handle and dispose of contaminated soils in accordance with applicable local, state and federal requirements.

### **I. Light and Glare**

The Certificate Holder shall implement mitigation measures to minimize light and glare impacts. Project structures shall be painted with neutral/low reflectivity finishes to the extent feasible. The O&M facility buildings shall be painted with a low reflectivity earth tone colored finish. The only lighting on the turbines will be the aviation lighting required by FAA. Outdoor lighting at the operations and maintenance 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 trespass.

## **J. Unique Features**

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 stop work at that location, and shall notify EFSEC and DAHP to coordinate an appropriate response.

## **K. Construction Wastes and Clean-Up**

The Certificate Holder shall dispose of sanitary and other wastes generated during construction at facilities authorized to accept such wastes.

The Certificate Holder shall properly 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 EFSEC.

## **ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO THE BEGINNING OF COMMERCIAL OPERATION**

### **A. Operations Stormwater Pollution Prevention Plan**

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 the beginning of 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 Ecology *Stormwater Management Manual for Eastern Washington, September 2004*. The Certificate Holder shall periodically review the Operations SWPPP against the guidance provided in the applicable Ecology Stormwater Management Manual, and make modifications as necessary to the Operations SWPPP to comply with current requirements for BMPs.
2. Operations Spill Prevention, Control and Countermeasure Plan. No later than thirty (30) days prior to the beginning of Commercial Operation the Certificate Holder shall submit to EFSEC an Operations Spill Prevention, Control and Countermeasures Plan (Operations 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 three (3) months of the beginning of Commercial Operation. The Operations SPCCP must be updated and submitted to the Council every two (2) years.

### **B. Emergency Plans**

1. Operations Emergency Plan. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall submit for the Council's approval an Emergency Response Plan for the Project to provide for employee safety in the event of emergencies, such as those listed below. The Certificate Holder shall coordinate development of the plan 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 emergencies listed in Article IV.H.1.
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 services.

3. Operations Fire Control Plan. The Certificate Holder shall develop and implement an operations phase 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. No later than sixty (60) days prior to the beginning of Commercial Operation the Certificate Holder shall submit the Plan to EFSEC for review and approval.

### **C. Post-Construction Avian Monitoring Plan**

No later than one hundred twenty (120) days after the beginning of Construction and prior to beginning Commercial Operation the Certificate Holder shall submit to EFSEC for review and approval a Post-Construction Avian Monitoring Plan. The Post-Construction Avian Monitoring Plan shall be developed in coordination with the WDFW and the TAC. The purpose of the plan shall be to quantify impacts to avian species and to assess the adequacy of mitigation measures implemented. The monitoring plan shall include the following components:

1. The Certificate Holder shall implement a wildlife casualty/fatality reporting and handling system by Project personnel (operations and maintenance staff) for the life of the Project following a detailed written protocol developed for the Project and similar to that used by other wind projects in the region, the Wild Horse, Vansycle and the Stateline wind projects, 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.

2. The Certificate Holder shall perform a minimum of one breeding season's raptor nest survey of the project area including a 1 mile buffer to locate and monitor active raptor nests potentially affected by construction and operation of the Project.
3. The Certificate Holder shall conduct a two-year monitoring study 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 each year combined with searcher efficacy trials and carcass removal trials to estimate the direct impacts to avian species from the Project.
4. The Post-Construction Avian Monitoring Plan for the Project will follow a detailed written protocol which will document the monitoring measures being conducted.
5. EFSEC shall reconvene the TAC if unanticipated circumstances arise during incidental monitoring.

## **ARTICLE VII: PROJECT OPERATION**

### **A. Water Discharge**

The Certificate Holder shall ensure that all stormwater control measures and discharges are consistent with the Operations SWPPP, required by Article VI.A and the Ecology *Stormwater Management Manual for Eastern Washington, September 2004*.

Domestic sewage generated at the O&M facility shall be discharged to on-site septic system.

### **B. Noise Emissions**

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

### **C. Fugitive Dust Emissions**

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

### **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 following:

1. Implementation of the Operations Fire Control Plan developed pursuant to Article VI.B.3, in coordination with local fire districts, to avoid accidental wildfires and respond effectively to any fire that might occur.
2. Implementation of the Certificate Holder's agreement with Kittitas County Rural Fire District #1 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 the Project Area that may attract foraging raptors.
6. Hunting shall not be permitted in the Project Area. Should control of large game be required, the Certificate Holder shall prepare a hunting plan in consultation with

WDFW and, as necessary, with DNR, and shall submit the plan to EFSEC for review and approval. Hunting will be permitted only after the Hunting plan is approved.

### **E. Traffic Monitoring**

The Certificate Holder shall monitor traffic levels following construction of the Project for a period of three years. Monitoring shall start at the beginning of Commercial Operation. Monitoring results shall be reported to EFSEC no later than thirty (30) days after the end of each calendar quarter. 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 state Highway 97. Said improvements shall be designed and constructed in accordance with WSDOT guidelines. Construction of new turn lanes may constitute a modification of this Agreement pursuant to EFSEC rules and procedures, and may require prior EFSEC approval.

### **F. Safety and Security**

1. Personnel Safety. 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 laws and regulations (including regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act) as well as local and industrial codes and standards (such as the Uniform Fire Code).
2. Operations Phase Health and Safety Plan. No later than sixty (60) days after the beginning of Commercial Operation, the Certificate Holder shall develop, and after EFSEC approval, implement an Operations Phase 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 event of an emergency.
3. Operations Phase Site Security Plan. No later than sixty (60) days after the beginning of Commercial Operation, the Certificate Holder shall develop and implement an Operations Phase Site Security Plan. The Certificate Holder shall submit the Plan to EFSEC for review and approval. The Plan shall include, but not be limited to, the following elements: controlling access to the site by any visitors, contractors, vendors, or suppliers; security lighting of the operation and visitors center and the maintenance facility buildings; fencing of the substation(s); and securing access to wind turbines, pad transformers, pad-mounted switch panels and other outdoor facilities. A copy of the final Security Plan shall be provided to EFSEC and any other agencies involved in emergency response.
4. Visitors Safety. The Certificate Holder shall require visitors to observe the safety plans and shall provide them with safety equipment where and when appropriate.

## **G. Dangerous or Hazardous Materials**

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

## **H. Decommissioning of Individual Wind Turbine Generators**

During the lifetime of the project, the Certificate Holder may choose, or be otherwise required to, decommission individual WTGs without the entire project being terminated pursuant to Article VIII of this agreement.

In accordance with Article III, Section K, paragraph 5, of this agreement, individual WTGs found to cause unanticipated significant adverse impact(s) on the environment may have further operating conditions imposed by EFSEC, including permanent shutdown, decommissioning, and removal from the Project Area. In addition, EFSEC retains the authority to order removal of any individual WTG that remains inoperable or is not used for more than six months.

The Certificate Holder will disassemble and remove from the Project Area the WTG being decommissioned within one year of the last date the WTG produced power for sale. Decommissioning of the WTG does not require removal of the WTG foundation.

The Certificate Holder shall notify EFSEC of its intent to decommission the turbine, and shall provide a schedule for decommissioning activities.

## **I. Shadow Flicker Mitigation Measures**

To mitigate for shadow flicker effects, the Certificate Holder shall shut down the operation of a WTG, for the duration of such impact, upon the written request of a non-participating landowners whose residence:

- was constructed as of January 13, 2003, or was located on a property with vested rights to build as of January 13, 2003; and
- is located within 2,500 feet of the offending turbines; and
- has a line of sight view of the turbine.

Within five (5) business days of receipt of any such request, the Certificate Holder shall notify EFSEC of the request received to mitigate shadow flicker effects. In addition, within two (2) weeks of original receipt of any such request, the Certificate Holder shall notify EFSEC of the actions taken in response. EFSEC shall retain authority to review and override the Certificate Holder's denial(s) of any non-participating landowner's request(s) in this regard.

## **ARTICLE VIII: PROJECT TERMINATION, 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 timeframe specified in Article VIII.C., taking into account the Initial Site 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 463-42-665 (in effect at the date of submittal of the Application), and the requirements of the Council-approved Initial Site Restoration Plan pursuant to Article IV.D. of this Agreement. The Certificate Holder shall not begin Site Restoration activities without prior approval from the Council.

### **B. Project Termination**

1. Termination of this Site Certification Agreement, except pursuant to its own terms, is an amendment of this Agreement.
2. The Certificate Holder shall notify EFSEC of its intent to terminate the Project.
3. The Certificate Holder shall terminate the Project if, at the written request of the Council, the Certificate Holder demonstrates that the energy generated by the Project for the past twelve (12) month period is less than 10% of the Historical Energy Production (as defined below) and the following exemptions do not apply: 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 Certificate Holder, or (ii) a force majeure event, including, but not limited to, an extended low wind period. Historical Energy Production means 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.
4. The Council may initiate proceedings leading to SCA amendment pursuant to WAC 463-36-090.

### **C. Decommissioning Timing and Scope**

1. Timing. The Certificate Holder shall commence decommissioning of the Project within twelve (12) months following the termination described in Article VIII.B. above.



The period to perform the decommissioning may be extended if there is a delay caused by conditions beyond the control of the Certificate Holder 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. Monthly Reports. If requested by EFSEC, the Certificate Holder will provide monthly status reports until this decommissioning work is completed.

#### **D. Decommissioning Funding and Surety**

1. Except as provided in Art. VIII, D, 3 below, the Certificate Holder or any Transferee, as the case may be, shall provide financial assurance sufficient for Decommissioning costs in the form of a performance bond, guaranty or a letter of credit to ensure the availability of funds for such costs (the “Decommissioning Security”) to EFSEC. The Certificate Holder shall include a detailed engineering estimate of the cost of decommissioning in its Initial Site Restoration Plan submitted to EFSEC.

The Initial Site Restoration Plan shall provide that the Decommissioning costs shall be reevaluated annually during construction of the Project and once every five (5) years thereafter from the date of Substantial Completion to ensure sufficient funds for Decommissioning. If deemed appropriate at that time, the amount of decommissioning funds may be adjusted by EFSEC accordingly.

2. The duty to provide such security shall commence thirty (30) days prior to the beginning of Construction of the Project, and shall be renewed on an annual basis. On or before the date on which financial security must be established, the Certificate Holder shall provide EFSEC with one of the following security devices that is reasonably acceptable to EFSEC:

*Performance Bond.* The Certificate Holder or any Transferee, as the case may be, 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 which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be in an amount equal to the Decommissioning costs. The Performance Bond shall be for a term of one (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 Applicant under this Agreement and under the Bond provisions; or

*Letter of Credit.* The Certificate Holder or any Transferee, as the case may be, 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 costs. The letter of credit shall be for a term of 1 year and shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Development 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 Applicant’s or Transferee’s (as the case may be) failure to perform its decommissioning obligations when due; or

*Guaranty.* Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations by delivering a payment guaranty guaranteeing its Decommissioning obligations hereunder from an entity (i) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating (“Credit Rating”) of (1) if such entity has a Credit Rating from Standard and Poor’s but not from Moody’s, BBB- or better from Standard and Poor’s or (2) if such entity has a Credit Rating from Moody’s but not from Standard and Poor’s, Baa3 or better from Moody’s or (3) if such entity has a Credit Rating from both Standard and Poor’s and Moody’s, BBB- or better from Standard and Poor’s and Baa3 or better from Moody’s; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least \$75,000,000.

3. If Project ownership is transferred after the effective date of this Agreement pursuant to applicable EFSEC laws and regulations, EFSEC may consider and approve other financial instruments and/or assurances that would provide for the Certificate Holder’s performance of its Decommissioning obligations pursuant to Article VIII.C. and VIII.D.

KITTITAS VALLEY WIND POWER PROJECT

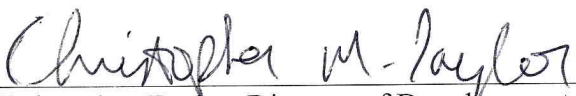
ARTICLE IX: SITE CERTIFICATION AGREEMENT SIGNATURES

Dated and effective this 18<sup>th</sup> day of September, 2007.

FOR THE STATE OF WASHINGTON

  
Christine Gregoire, Governor

FOR SAGEBRUSH POWER PARTNERS, LLC.

  
Christopher Taylor, Director of Development